



Max M. Kampelman Papers

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REMARKS BY
MAX M. KAMPELMAN
AMERICAN ENTERPRISE INSTITUTE
ON ROBERT GOLDWIN'S "FROM PARCHMENT TO POWER"

Washington, DC

July 24, 1997

Bob Goldwin has the gift of bringing complex constitutional issues down to their essentials and then, with clarity and repetition, communicating them to the reader in a reasonable and non-combative idiom. He has now done so again in his extraordinarily fine book on our Bill of Rights, with emphasis on the intent of those who originated, drafted and enacted the first ten amendments to our Constitution.

Each of us on this panel brings to Bob's excellent study our own individual and possibly long-held personal opinions. I should like this morning to apply Bob's scholarship to my own judgments in two or three Constitutional areas.

At the very outset, let me look at the over-used word "rights." Bob persuasively demonstrates that they are and should be uniformly related to "Congress shall make no law. . . ." The enumerated constitutional rights are designed to strengthen our democracy by protecting the individual from encroachment by the State, acting through Congressional laws. But you and I know that the term has been dangerously expanded. Many with views on social and economic goals for the individual and society call their objectives "rights"

and would require the state to act to attain and guarantee those objectives for the individual.

Our society would perhaps be a more just one if every adult American had a job, adequate health and housing facilities, free educational opportunities, and the like. These may well be highly desirable goals which Congress may wish or decline to attain by legislation — but they are not and should not be considered “rights” under our Constitution. Constitutional Rights are protected against state interference. These new so-called “rights” would require the state to act to attain them.

During my days as our country’s ambassador to four different meetings under the Helsinki Final Act, this difference between our view of rights and those of many European leaders was a constant source of misunderstanding. Its origin can be traced to the Soviet argument that our American rights were political and not social or economic, while their’s were economic and social — a difference they acknowledged, but isn’t it, they argued more important to guarantee a person a job? We now know that the Soviet totalitarian state not only failed the democracy test, but failed to provide the jobs, health facilities and other social values advertised by their propaganda. I have long felt that the U. S. made a serious error in abandoning our principles and accepting the notion of economic and social “rights” in some of the U.N. policy declarations.

Let me now address the question of political majority rule and whether a majority could act to end that democracy. Madison and his associates understood that this was probably not a realistic danger. After all, there is no constant majority. I am white and part of the majority; but I am at the same time Jewish and thus part of a minority; as a registered Democrat, I am sometimes in the majority and sometimes in the minority. We all experience similar relationships, which serve to moderate majoritarian excesses.

The Bill of Rights adds to that protection against excesses that would undermine democracy by preventing the Congress from taking away from the people those freedoms relating to the press, religion, speech, assembly that are the foundation prerequisites for democracy. In effect, it says to the State and those who make its decisions: "No! You cannot end this democracy, unless you end the Constitution!"

This brings me to a related question. The first amendment was not adopted to permit the individual to find a therapeutic means of expressing himself or herself. It was adopted in order to permit the electorate to be politically informed through debate and information so that the vote is more likely to be an intelligent and responsible one. It is freedom of "speech" that is protected; not freedom of "expression."

I fail to see how the First Amendment can be responsibly or legally interpreted — as it has been — to protect pornography, libel, slander, and even, in my opinion, excessive campaign spending. To extend our constitutional protections to protect these aberrations is, I believe, a serious error of interpretation. These aberrations should be addressed by our Congress and state governments in a manner consistent with the community's standards without regard to constitutional restraints that do not properly apply.

Finally, I would address, in the same vein, the debate in our country over firearms and the Second Amendment. Bob has made it clear on a number of occasions that the constitutional right to bear arms is directly and only designed to protect the right of citizens to serve in the militia. And yet the National Rifle Association and those who support their opposition to laws aimed at restricting the widespread abuse of firearms in our country, wrap the Constitution around their arguments and get away with it. It is time for this charade to end and I

pray we will not require a series of additional human tragedies to persuade our Congress to respond to the overwhelming national sentiment that exists to get those guns off the streets and out of the hands of criminals and vigilantes.

Did most American, particularly in rural areas, have guns at the time our Constitution was adopted? Yes. But it did not become a Constitutional right not to be interfered with by the Congress. Bob points out that not every right that existed then and now are Constitutionally protected. A great many Americans had hunting dogs along with their guns, but legislation can and did put restraints on their use, requiring dog licenses, for example. The right to wed is fundamental, but not being Constitutionally protected, licenses are required; there are legal restrictions; and polygamy is prohibited. Those distinctions must be recognized or we put ourselves in handcuffs as we proceed to address legitimate community concerns. Such restrictions in no way adversely affect the democratic political process which is at the center of our Bill of Rights.

I conclude by repeating my appreciating to Bob Goldwin for his many contributions to our political democracy.

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