THE FEDERAL INVASION OF ARKANSAS

IN THE LIGHT OF THE CONSTITUTION

by R. Carter Pittman

The author, R. Carter Pittman, attorney at law of Dalton, Georgia, is a member of the Board of Bar Examiners of the State of Georgia, the American and Georgia Bar Associations, the American Judicature Society and National Federation of Insurance Counsel. He is the author of many articles in the field of Constitutional Law and history, published in the American Bar Association Journal, the Virginia Law Review, Georgia Bar Journal, Alabama Lawyer, Florida Law Journal, and other publications. He began years ago collecting originals and copies of letters, manuscripts and holographs by or relative to George Mason of Virginia, author of the Virginia Declaration of Rights, June 12, 1776, (3 weeks before the Declaration of Independence) and of the Virginia Constitution of the same year—from which our U.S. Constitution's Bill of Rights *was derived. He is an authority on the* Bill of Rights *and Constitutional law pertaining to it.*

SINCE the Federal Government is a parchment Government created by a written instrument, which we know as the Constitution, all officers of that Government, including the President, must look to that parchment for every power that they exercise, whether in Washington or in Little Rock. That is true, not only of the President; but of the Congress and of the Federal Courts.

If a power is not granted to federal officers by the Constitution itself such power is retained by the States or by the people.

The Tenth Amendment states that truism, but that was true before the Tenth Amendment was adopted. It was spelled out merely to settle and satisfy the minds of those who were fearful of the evils that lurked in the shadows of the new and untried government. Thus, the Federal Constitution is the power-of-attorney of those

whose offices were created by the Constitution.

The exercise of a power not granted in the Constitution itself is usurpation. The usurpation of power creates no legal authority. Upon the integrity of that principle rests the validity of every right man has ever wrested from power and every liberty he has ever torn from tyrants. The soundness of that proposition is not disputed among men of learning and honor anywhere.

So, we must search the Constitution to see if we can find authority for the actions of President Eisenhower in sending federal troops to Little Rock and in federalizing Arkansas troops. There are only two provisions of the Constitution relating to such a situation.

One, relating to the use of federalized state troops, appears in Article I and the other, relating to the use of federal troops, appears in Article IV of the Constitution. The latter provides that the United States shall protect each state "against invasion; and on Application of the Legislature, or of the Executive (when the Legislature *cannot* be convened) against domestic violence."

OBVIOUSLY, there has been no invasion or threatened invasion of Arkansas, hence the President had no authority to send federal troops into Arkansas, except upon the application of the Legislature of Arkansas for the purpose of putting down domestic violence. The Legislature of Arkansas did not ask for federal troops and since there is no reason why it could not be convened, the Governor of Arkansas has no authority to call on the President to send federal troops. If the Governor of Arkansas had such authority he has not exercised it. Therefore, the President had no authority to send federal troops into Arkansas under any fair construction of Section 4 of Article IV or of any other provision of the Constitution.

The other provision relating to the use of military force by the President, in Section 8 of Article I, empowers the Congress "to provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrection and repel Invasion".

Obviously, there was no insurrection to be suppressed and no invasion to be repelled in Arkansas; therefore, the Congress had no power to authorize the President to call forth, or federalize the state troops or militia of Arkansas, unless it was "to execute the laws of the Union."

Shortly after the Civil War and during the reconstruction period the Congress, while led by sadistic men, attempted to authorize the President to federalize state troops under certain conditions. It is not

necessary to examine those acts because the authority of the Congress itself is limited by the specific constitutional provision quoted.

The final and crucial question is whether or not the President acted "to execute the Laws of the Union" in accordance with the Constitution. The answer to that question answers all questions as to the existence of an "insurrection".

What are the "Laws of the Union"? The phrase "the Laws of the Union" has the identical meaning as the phrase "the law of the land", which is defined in Article VI as "this Constitution, and the laws of the United States which shall be made in pursuance thereof;" (and treaties). *A decision of the Supreme Court of the United States or any other federal court is excluded by the definition itself.* As a matter of fact, Article III of the Constitution provides that the judicial power of federal court may not extend to any *case* arising under federal "law", unless that law be "this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their authority", thus repeating the definition of "the law of the land".

> Those who favored a Bill of Rights, knowing that power feeds upon itself and tends to increase as a malignant growth, feared that those in power would find an excuse to assert that the new government was a consolidated government able "to promote the general welfare" without limits. In order to quiet the people the Tenth Amendment was made to say:
>
> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."—R. Carter Pittman

NO FEDERAL or state court of record in America has ever held that a decision of the Supreme Court of the United States or that of any other federal court is "the law of the land" or "the Law of the Union". Such decision is never anything more than *the law of the case* actually decided by the court and binding only upon the parties to that case and on no others. As was said by Charles Warren, in his *History of the Supreme Court,* page 748, Volume 2:

> "However the court may interpret the provisions of the Constitution, it is still the Constitution which is the law and not the decision of the court."

Federal courts must look to the Constitution for their powers and their jurisdiction the same as the President and the Congress. If

jurisdiction is not conferred by the Constitution it cannot be conferred by the Supreme Court itself. Only the Congress may make a federal law under authority granted in the very first line of the Constitution, which vests the power to make law in the Congress. The First Amendment predicates our most precious Freedom on the proposition that only the Congress may make a federal law.

The common law is not a part of the body of federal laws as it is a part of the body of state laws. Hence all federal laws must be "made" by lawmakers in the manner provided in the Constitution. When *made* they are written to be read, while state laws may be unwritten. A decision of the Supreme Court of a state expounding or declaratory of common law may, in a sense, become *a law of the state* until changed by the legislature of that state, when that state has adopted or inherited the common law, as have all American states except Louisiana. The federal courts are bound by the common law of the states, in diversity of citizenship cases, as declared by the highest courts of the states. The Federal Constitution did not adopt the common law; hence federal courts must hunt the law within the four corners of the Constitution or within the bounds of statutes or treaties. If federal courts find "the law of the land" or "the Law of the Union" elsewhere they must go to sociology or to alien philosophy—and their judges become usurpers. If there is "insurrection" in Arkan-

> Every effort to establish despotism in America prior to the American Revolution was done through servile tribunals, exercising judicial power, without the intervention of impartial juries, and under the control of those who wielded the power of government.
>
> Is it any wonder that the Constitution's framers determined that never again in America should lives or liberties or property be taken from the people, in the name of government, except by the verdict of a jury and the judgment of a judge emancipated from control by the President, the Congress, Karl Marx or Karl Myrdal? The framers would have been stunned if they had dreamed that some day a packed Supreme Court bench would "refuse to turn back the clock" to fundamental principles so as to turn up the clock to Myrdal, whose book, *The American Dilemma,* is now *Corpus Juris Tertius* in federal *pseudo-socio* law that displaces constitutional law.

sas it is against the laws of Arkansas—not against any federal laws.

IT IS contended by some that the 14th Amendment is involved and that such Amendment constitutes a "law of the Union" authorizing the use of state troops by the President. If we concede that the 14th Amendment was legally adopted it provides how it is to be implemented and enforced. That was not left to chance, caprice —or to Warren. It says in its last clause that only the Congress has the power to implement or enforce it. If one line of the Amendment is legal, the last line is legal. If that Amendment confers power on the Congress to legislate with respect to segregated schools (which need not be discussed here), the Congress has passed no law since its adoption relating to segregated schools in Arkansas or in any other State, except to establish segregated schools in the District of Columbia and to sanction them in laws relating to the distribution of surplus commodities in the schools of the states.

"The law of the land" and "the law of the Union" is the same today as it was on May 16, 1954, as it was in 1927 when a unanimous Supreme Court bench upheld segregated schools in *Gong Lum vs. Rice,* as was held in *Plessy vs. Ferguson* in 1896, with one judge dissenting, and as it was during all preceding and intervening years. The Supreme Court rested its integration decision of May 17, 1954, on sociological writings — not on the Constitution. An alien socialist, Myrdal, of socialistic Sweden, was substituted by Warren and Frankfurter for Mason, Franklin, Morris, Wilson, Madison and Marshall.

> The current effort of the Eisenhower administration to go "modern" and destroy jury trials and set up servile tribunals is as old as tyranny itself. The argument of Assistant Attorney General Warren Olney III for the Administration on April 5th, 1957, in Washington, D. C., reads as if torn from the note book of Charles I in 1631.
>
> When the Stuart Kings determined to turn their arbitrary wills into law, the first thing they did was to by-pass juries and establish tribunals whose judges were dependent upon the smiles of the crown both as to tenure and as to pay. Those the least familiar with American history should know that it was the tyrannical tribunals of the Stuart Kings that brought about the first settlement of the American continent by the English people.—R. Carter Pittman

THERE IS no "law of the Union" on which the President's order may legally rest. Since the President had no "law of the Union" to enforce in Little Rock he had no Constitutional authority to federalize Arkansas troops.

The second paragraph of the Bill of Rights records a lot of forgotten history. It says: "A well regulated Militia, being necessary to the security of a *free* State, the right of the people to keep and bear Arms, shall not be infringed."

When the Militia of Arkansas was federalized by President Eisenhower's edict, the State of Arkansas lost constitutional freedom and its people lost security from despotism.

What is said here relates to *right* —not *might*.

It relates to Constitutional power —not usurped power. Boss Tweed once said, "the way to have power is to take it". President Eisenhower has torn a page out of that notorious old man's philosophical book; he has not used a page or a paragraph from *any* law book.

The Mercury's H. L. Mencken Had This To Say:

"The only guarantee of the Bill of Rights which continues to have any force and effect is the one prohibiting quartering troops on citizens in time of peace. All the rest have been disposed of by judicial interpretation and legislative whittling. Probably the worst thing that has happened in America in my time is the decay of confidence in the courts. No one can be sure any more that in a given case they will uphold the plainest mandate of the Constitution. On the contrary, everyone begins to be more or less convinced in advance that they won't. Judges are chosen not because they know the Constitution and are in favor of it, but precisely because they appear to be against it."—H. L. Mencken

---

The Ways of Women

In order for any diet to be successful it must first provide a woman with some interest to replace shopping, cooking and eating.

—Gerard Dennis

A mother with six children boarded a bus and gave the driver so much trouble that he said at the end of the trip, "Lady, I wonder why you don't leave half of your youngsters at home when you travel."

The mother looked him straight in the eye and said: "I did!"

COMMON MARKETS:

LET US KEEP OUR OWN

The United States pursues a free-trade policy while Europe adopts our sound "common market" plan.

by E. F. Tompkins

HERE is an issue with which Congress must soon grapple: Europe is adopting the abandoned American policy of protecting its home markets, while America is pursuing further the New Deal's visionary free-trade practices.

The White House has announced its intentions to a House Subcommittee which is completing a two-year study of our tariff and trade laws. The Administration will ask Congress to extend again, probably for five years, the Reciprocal Trade Agreements Act under which our protective tariff system has been virtually demolished. This decision has been made despite the facts that the Tariff Commission has before it numerous appeals from American industries injured by foreign competition under the low-tariff policy and, in several instances, has recommended remedial action.

The Administration will also ask Congress again to vote the United States into a proposed Organization for Trade Cooperation, an international agency that will put our overseas commerce under the jurisdiction of competitor foreign countries. The OTC is to enforce decrees of GATT (General Agreement on Tariffs and Trade) in which the United States now participates by action of the State Department without the assent of Congress.

Meantime, in Europe the four Scandinavian countries are combining into a "common market" to embrace free trade among themselves and to exclude foreign competition by use of tariffs or embargoes.

The Scandinavian action follows a similar program elsewhere.

Seventeen nations of Western