

No Amendment Needed

No American worthy of the name wants the U.S. Constitution to be superseded by a treaty or by an executive agreement entered into by the President. But within these borders there certainly are many who hold a completely opposite view. Over the years, such individuals have issued a host of pronouncements, court decisions, treaties, and agreements claiming that treaty law has greater weight than the Constitution itself. If so, the limitations upon government and the protection of rights contained in what is supposed to be "the supreme law of the land" can be overturned via the treaty process.

Recent examples of this denigration of the Constitution include the use of a UN Convention to block the creation of a gold mine in Montana and the World Trade Organization ruling against established U.S. environmental laws. The recently ratified Chemical Weapons Treaty now threatens unwarranted search of 8,000 U.S. busi-

nesses by UN inspectors.

Internationalists within our borders want ratification of other UN treaties such as the Convention on the Rights of the Child and the Biodiversity Treaty. A frightening assortment of additional UN-sponsored population, environment, and disarmament treaties and conventions looms on the horizon.

What is to be done about this growing threat to the God-given freedoms Americans enjoy? After viewing all of this internationalism with well-founded alarm, Representative Helen Chenoweth (R-ID) introduced House Joint Resolution 83, a proposed constitutional amendment designed to state firmly that treaties and executive agreements cannot supersede the Constitution. Chenoweth has insisted that her measure be named "the Bricker Amendment" in honor of the Ohio senator whose similar effort failed in 1954.

No discussion of this topic can proceed without studying what the Constitution states. Article VI grants treaty-making power as follows: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

It is clear from this wording that no law or treaty can properly be made unless it is "in Pursuance thereof" and "under the Authority" of the Constitution. These phrases are two different ways of saying that the Constitution itself is the supreme authority and any laws or treaties made in accordance with its provisions cannot be more weighty than the document itself. Such was the ruling of the U.S. Supreme Court in *Geofroy v. Riggs* (1898), which held that treaties cannot "authorize what the Constitution forbids...." Other decisions of the High Court affirming this principle include *Forster v. Neilson* (1829), *New Orleans v. U.S.* (1836), *Doe v. Braden* (1853), and *Reid v. Covert* (1957).

But as the 20th century has unfolded and internationalism gained ascendancy,

other Supreme Court rulings have affirmed the primacy of laws made by treaty or executive agreement. Recent acts of Congress have placed the U.S. in NAFTA and GATT/WTO, where potential exists for international bodies to cancel or overrule U.S. law.

Numerous statements by the Founding Fathers affirm their conviction that the Constitution cannot be overridden by a treaty or an executive agreement. Consider:

- James Madison: "I do not conceive that [the treaty] power is given to the President and the Senate to dismember the empire, or to alienate any great, essential right. I do not think the whole legislative authority to have this power."

- Alexander Hamilton: "A treaty cannot be made which alters the Constitution of the country, or which infringes any express exceptions to the power of the Constitution...."

- George Mason: "[T]he power which can make treaties cannot ... dismember the empire."

The question which must be raised here is whether the kind of unconstitutional abuse engaged in by Congress, the President, and the courts should be countered by a constitutional amendment. We aggressively protest such action because it implicitly concedes that the abuser had the right to do what was done because the Constitution allows it. Further, it incorrectly grants that the Constitution itself is deficient and in need of repair.

If Congressman Chenoweth's measure were to win approval and become part of the Constitution, the use of treaty law to override the Constitution would seem to have been blocked. But the Constitution does not now and never has permitted what her proposal seeks to block, and the courts have run roughshod over the intent of its framers.

The problem this proposed amendment seeks to address does not lay in the Constitution. It can be found instead in the courts, the presidency, the Congress, and wherever an affection for internationalism has replaced a love for national sovereignty. Amending these institutions and the attitudes that undergird them is what must be accomplished. ■

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