Lincoln Lore

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LINCOLN NEED NOT HAVE SIGNED THE RESOLUTION SUBMITTING THE THIRTEENTH AMENDMENT TO THE STATES

Editor's Note: *Lincoln Lore*, Number 1427, January, 1957, contains a short article (pages 3-4) entitled "The Thirteenth Amendment 'A king's cure for all the evils.'" This article is reprinted (with certain alterations and additions) to serve as an introduction concerning the Thirteenth Amendment in general and the arguments presented by Senator Lyman Trumbull of Illinois, Senator Reverdy Johnson of Maryland and Senator Timothy O. Howe of Wisconsin, in particular, in regard to President Lincoln's signature on the resolution submitting the Thirteenth Amendment to the States. The article follows:

THE THIRTEENTH AMENDMENT

"A king's cure for all the evils"

During Abraham Lincoln's lifetime he did not witness the enactment of a Constitutional Amendment. While he did sign the Joint-Resolution on February 1, 1865 (two-thirds of both houses concurring) which was submitted to the legislatures of the several states proposing the Thirteenth Amendment, his signature was unnecessary and he died before December 18, 1865 when three-fourths of the States had ratified the amendment.

The Thirteenth Amendment was passed by the 38th Congress during the Second Session. The Senate initiated the resolution in April 1864, and without any difficulty approved it with a vote of 38 to 6. The House of Representatives, while rejecting the resolution, on June 15 with a vote of 95 to 66 (not a two-thirds vote), met the issue on January 31, 1865 with a vote of 119 yeas and 56 nays (8 members not voting).

As President, it had been Lincoln's custom to approve resolutions and Acts of Congress, but such procedure was unnecessary in amending the Constitution. In fact, on February 7, the Senate fearing lest a wrong precedent be set, passed a resolution asserting that presidential approval was unnecessary. Before this action was taken, however, Lincoln had inscribed the document "Approved February 1, 1865."

Senator Lyman Trumbull, in an address printed in the *Congressional Globe*, February 7, 1865, pp. 629-31, cited a Supreme Court case dating back to 1798 which declared that the president had no authority to approve or disapprove of a proposition submitted for adoption as an amendment to the Constitution. Trumbull did not want inadvertent approval in this instance to be considered a precedent because a future president could defeat an amendment by pocket veto.

Article XIII, Section 1, of the Amendment Resolution follows: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Section 2 follows: "Congress shall have power to enforce this article by appropriate legislation."

The original document is a printed form with the appropriate words filled in by a clerk. Its phraseology is essentially that of the Ordinance of 1787, repeated in the Missouri Compromise and the Wilmot Proviso. The document also bears the signatures of Schuyler Colfax, Speaker of the House of Representatives, and H. Hamlin, Vice President of the United States and President of the Senate. There are also several engrossed copies extant bearing the signatures of the President, Vice President and Speaker of the House, along with the signatures of members of the Senate and House of Representatives.

Thirty-Eighth Congress of the United States of America;

A RESOLUTION

Submitting to the legislatures of the several States a proposition to amend the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring) That the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said legislatures, shall be valid to all intents and purposes as a part of the said Constitution, viz: Article XIII. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

Schuyler Colfax
Speaker of the House of Representatives
H. Hamlin
Vice President of the United States and President of the Senate

Approved February 1, 1865. Abraham Lincoln

From the National Archives

The original resolution approved by Lincoln was a printed form with blanks filled in by a clerk. Engrossed copies bearing the signatures of Colfax, Hamlin, Lincoln and members of the Senate and House are to be found in private and institutional collections.

Apparently many people thought that Lincoln's signature was necessary to validate the Thirteenth Amendment resolution, and after he had affixed his signature to the document he was honored with a serenade. To this group of admirers he made a brief address. Lincoln stated that, "The occasion was one of congratulation to the country and to the whole world. But there is a task yet before us—to go forward and consumate by the votes of the States that which Congress so nobly began yesterday." Lincoln expressed the belief that "all would bear him witness that he had never shrunk from doing all that he could to eradicate slavery by issuing an emancipation proclamation."

In his response to the serenaders Lincoln admitted that his Emancipation Proclamation "falls far short of what the Amendment will be when fully consummated." Then too, he said, a question might be raised whether the proclamation was legally valid. He knew that it would be declared that it did not meet the evil. But Lincoln continued, "this amendment is a king's cure for all the evils. It winds the whole thing up."

Lincoln was in a genial mood on February 1, 1865, and "he could not but congratulate all present, himself, the country and the whole world upon this great moral victory."

The President was pleased that his own State of Illinois had taken the lead in ratifying the amendment. Governor Richard J. Oglesby telegraphed Lincoln on February 1 that the Illinois Legislature had approved the amendment and Lincoln informed his serenading friends "that Illinois had already to-day done the work."

Rhode Island and Michigan ratified the amendment on February 2, followed by Maryland, New York and West Virginia on February 3. By the end of February, Missouri, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Louisiana, Indiana, Nevada, Minnesota and Wisconsin had "done the work." Vermont ratified in March. Early in April, Tennessee and Arkansas ratified (the latter on April 14, 1865) thus making a total of twenty-one states ratifying the amendment before Lincoln's assassination. Connecticut ratified in May, New Hampshire in June, South Carolina in November, Alabama, North Carolina, Georgia, Oregon, California and Florida in December. (Florida again ratified the amendment on June 9, 1868, upon its adoption of a new constitution.) Iowa ratified in January, 1866, followed by New Jersey the same month (the latter having rejected the amendment in March, 1865). Texas ratified in February, 1870, and Delaware on Lincoln's birthday, February, 1901 (after having rejected the amendment in February, 1865). The amendment was rejected by Kentucky in February, 1865, and by Mississippi in December, 1865.

Ratification was completed on December 6, 1865, when the legislature of the twenty-seventh State (Georgia) approved the amendment, there being then 36 States in the Union. On December 18, 1865, Secretary of State Seward certified that the thirteenth amendment had become a part of the Constitution.

Slavery as an institution had been in the process of rapid disintegration throughout the early 1860's. While about 200,000 slaves had gained their independence under the Emancipation Proclamation up to February, 1865, nearly 1,000,000 were still in bondage when the Thirteenth Amendment was introduced.

Certainly no man had a better right to sign his name to the Thirteenth Amendment resolution than Abraham Lincoln, even though his presidential approval was not a legal requirement. His signature on this particular document again dramatically presented his "oft-expressed personal wish that all men everywhere could be free."

In his arguments before the Senate on the question of Constitutional Amendments, Trumbull quoted Mr. Charles Lee, Attorney General (1795-1801) and Justice Samuel Chase (1796-1811) to bolster his contention that the President should not sign an amendment to the Constitution. The debate as it appears in *The Congressional Globe*, February 7, 1865, pages 629-631 follows:

Constitutional Amendment

The Senate accordingly proceeded to the consideration of the following resolution, which was submitted by Mr. Trumbull on the 4th instant:

Resolved, That the article of amendment proposed by Congress to be added to the Constitution of the United States, respecting the extinction of slavery therein, having been inadvertently presented to the President for his approval, it is hereby declared that such approval was unnecessary to give effect to the action of Congress in proposing said amendment, inconsistent with the former practice in reference to all amendments to the Constitution heretofore adopted, and being inadvertently done, should not constitute a precedent for the future; and the Secretary is hereby instructed not to communicate the notice of the approval of said proposed amendment by the President to the House of Representatives.

Mr. TRUMBULL. Since the Government was formed several amendments to the Constitution of the United States have been proposed by Congress and adopted by the States. They were all proposed at three different times; the first series of ten amendments was proposed in 1789; the eleventh amendment was proposed in 1794, and the twelfth amendment in 1803. The Constitution of the United States declares that "the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution," which being ratified in the manner prescribed shall become a part thereof; and the amendments which have been heretofore adopted have been adopted under this clause of the Constitution authorizing Congress to propose amendments, and those proposed amendments have never been presented to the President of the United States for his approval. The clause of the Constitution which declares that "every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States;" and the clause that requires "every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment,") to be "presented to the President of the United States" for his approval, are not applicable to the proposal of amendments to the Constitution. Those clauses of the Constitution requiring the approval of the President to the bills which pass Congress and to the resolutions which pass both Houses, have reference to ordinary legislative proceedings; and hence, when amendments were proposed in 1789, 1794, and 1803, they were not presented to the President for his approval.

I have before me a statement prepared by the Chief Clerk of the Senate, of the different amendments which have been adopted, and the manner in which they were adopted, from which the fact I have stated will appear. The question was raised distinctly in 1803 in the Senate of the United States on a motion that the then proposed amendment should be submitted to the President:

"On motion that the Committee on Enrolled Bills be directed to present to the President of the United States for his approbation the resolution which has been passed by both Houses of Congress proposing to the consideration of the State Legislatures an amendment to the Constitution of the United States respecting the mode of electing President and Vice President thereof, it was passed in the negative—yeas 7, nays 23."

On a distinct vote 23 to 7 voted that the Committee on Enrolled Bills should not present the proposed amendment to the President of the United States for his approval, and it was not presented to or approved by him. In 1798 a case arose in the Supreme Court of the United States depending upon the amendment to the Constitution proposed in 1794, and the counsel in argument before the Supreme Court insisted that the amendment was not valid, not having been approved by the President of the United States. This was his argument:

"The amendment has not been proposed in the form prescribed by the Constitution, and therefore it is void. Upon an inspection of the original roll, it appears that the amendment was never submitted to the President for his approbation. The Constitution declares that 'every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives,' &c. (Article one, section seven.) Now, the Constitution likewise declares that the concurrence of bóth Houses shall be necessary to a proposition for amendments. (Article five.) And it is no answer to the objection to observe that as two thirds of both Houses are required to originate the proposition, it would be nugatory to return it with the President's negative to be repassed by the same number, since the reasons assigned for his disapprobation might be so satisfactory as to reduce the majority below the constitutional proportion. The concurrence of the President is required in matters of infinitely less importance, and whether on subjects of ordinary legislation or of constitutional amendments the expression is the same, and equally applies to the act of both Houses of Congress."

Mr. Lee, the Attorney General, in reply to this argument, said:

"Has not the same course been pursued relative to all the other amendments that have been adopted? And the case of amendments is evidently a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of investing the President with a qualified negative on the acts and resolutions of Congress."

The court, speaking through Chase, Justice, observes:

"There can surely be no necessity to answer that argument. The negative of the President applies only to

the ordinary cases of legislation. He has nothing to do with the proposition or adoption of amendments to the Constitution."

The court would not hear an argument from the Attorney General on the point, it was so clear. If the approval of the President were necessary, none of the amendments which have been made to the Constitution since its adoption would be valid, for not one of them ever received his approval.

I ought to state, perhaps, that three or four years ago, when Congress passed a proposition to amend the Constitution by a two-thirds vote, it was inadvertently presented to the President for his approval, just as the one passed a few days ago was presented; but that amendment has never been acted upon by the States, and it ought not to form a precedent. The object of the resolution which I have introduced is to prevent the inadvertent approval in this instance being considered as a precedent hereafter; so that it shall not be in the power of any future President by pocketing, if you please, an amendment proposed by both branches of Congress by the constitutional majority, to defeat it. I think it important that the precedent should be right. The resolution also instructs the Secretary not to inform the House of Representatives that the President has approved the proposed amendment. His approval of it can do no harm, but it is not a necessity, and it having been inadvertently presented for his approval, the Senate ought so to declare lest a wrong precedent be set.

Mr. HOWE. As I was the instrument of the Senate who took this resolution to the President, perhaps the Senate will indulge me in a single word on the matter.

The bulk of the precedents are against the propriety of that step, as has been stated by the Senator from Illinois. There is a judgment of the Supreme Court of the United States declaring that the assent of the President is not necessary to a resolution of this kind. That is the authority for dispensing with the assent of the President. Nevertheless, to my understanding, the express language of the Constitution requires the assent of the President just as much to a resolution of this kind as to any other. It does not require the assent of the President to a vote for adjournment, and that is the only exception. The Constitution declares that —

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

All legislative powers are vested in a Congress, and we are expressly told of what the Congress consists. If you will look to see what Congress may do, in the eighth section of the first article you are told that the Congress shall have power to lay and collect taxes, duties, imposts, and excises, to borrow money, to establish a uniform rule of naturalization, &c. The Congress may do these things. That is precisely the tribunal, in precisely the words, which is authorized in a subsequent clause of the Constitution to propose amendments to that instrument. It is the Congress that may propose amendments; it is the Congress that may raise armies; and the Congress consists of a Senate and House of Representatives. Now, how does it happen that any bill or any resolution must go to the President for his signature? Because there is a distinct clause in the Constitution which provides that —

"Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States."

He is not a part of the Congress, and all legislative powers are vested in the Congress; nevertheless, you cannot have a law unless you have presented the bill previously to the President. Not only that, but another clause of the Constitution requires that —

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed"—

Not passed, but repassed—

"by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

If this language applies to any one resolution requiring the concurrent vote of the two Houses it applies to every one, for it says every one. So much for the express letter of the Constitution itself.

The Senator from Illinois, however, says — and in that he is borne out by the judgment of the Supreme Court, or at least he is borne out by the language of Justice Chase, formerly a member of that court — that this provision which I have just read only applies to the ordinary acts of legislation. It cannot be disputed that Justice Chase so said, and the court having concurred with him perhaps we are bound to consider the law settled upon that point. Not a reason was assigned for it; and the argument which was made by the counsel in that case against the validity of the amendment adopted was not answered either by the opposing counsel or by the court; nor have I heard it answered by any one. Justice Chase remarked, indeed, that argument was not necessary upon a point of that kind. In the vote which was taken in the Senate of the United States in 1803 I notice among the names of those who voted for presenting the resolution to the President the names of Mr. John Quincy Adams and Mr. Pickering. I think, with all deference to Justice Chase, that when such gentlemen as Mr. Adams and Mr. Pickering have affirmed that a step is necessary, some argument may fairly be offered to show that it is not necessary.

This resolution says that the resolution proposing an amendment to the Constitution was inadvertently presented to the President, and the aim of the resolution is to prevent its being made a precedent; but the Senator from Illinois has told us correctly that the precedent has already been established. In 1861 an amendment was agreed to by both Houses and was submitted to the President for his approval; and I have yet to learn that any member of either House of Congress entered any protest to that form of procedure. The President did approve it. The Senator from Illinois says it ought not to be considered a precedent because the Legislatures of the States did not adopt the amendment. How that can make it more or less of a precedent I do not understand. The two Houses concurred in the resolution; the organs of the Houses presented it to the President, and he approved it; and so your records show; and there is the precedent. If this resolution passes without dissent on the part of Congress it will be but another precedent. Precedents, I take it, cannot override the Constitution itself. The approval of the President will not do any hurt if the Constitution does not require it. My own judgment is that the express language of the Constitution does demand it, and my own judgment is that propriety sanctions it; that it is proper to present it to the President; for it does not follow, if the President dissents and presents his objections to the two Houses, that the vote of two thirds of each House can be again had to repass the resolution.

But assuming that the Constitution does not require the President's assent to such a resolution, and assuming that the resolution was inadvertently presented to the President, the resolution now pending declares that it was unnecessary to present it to him. I do not think that follows, even if the premises are as stated; for if it had not been presented to the President, I ask you, sir, and I ask the Senate, how would it have been transmitted to the Legislatures of the States? Your resolution proposing the amendment provided no means, and there has been no other action taken on the part of the two Houses to get it to the States. It would not go to the State Department unless presented to the President. When presented to the President, if he approves it he transmits it to the State Department; and being transmitted to the Secretary of State, he transmits it to the Legislatures of the States. I think I am abundantly authorized to say that but for this very action of the Committee on Enrolled Bills, which your resolution says was not necessary, the resolution proposing this amendment to the Constitution would not have reached the Legislature of a single State probably until this time. If it had, I do not know how it could have got there, or who would have sent it there. You took no steps whatever to send it there. It certainly would never have got there until after, under the procedure which was adopted,

many of the States had actually ratified the amendment. If it be the established law that these resolutions should not go to the President for his assent, certainly the two Houses which pass them ought to take some measures to execute them, and to get them before the State Legislatures.

I am free to confess that when I presented this resolution to the President I did so in pursuance of what is a mere habit, so to speak; I did not stop to distinguish between this and any other resolution. I had not looked into the precedents; I had not looked into the Constitution. Since my attention has been called to it I have looked into the precedents; I have looked into the Constitution; and as I have already said, my judgment is satisfied that the course taken was right, notwithstanding the authority which has been read goes so far against it.

Mr. JOHNSON obtained the floor.

Mr. TRUMBULL. If the Senator from Maryland will allow me, I desire to refer to the rule of the Senate on this subject. I omitted to do so when I was up before. One of the special rules of the Senate also shows that these constitutional amendments are not to be submitted to the President. The 26th special rule of the Senate declares:

"And all resolutions proposing amendments to the Constitution, or to which the approbation and signature of the President may be requisite, or which may grant money out of the contingent or any other fund, shall be treated in all respects, in the introduction and form of proceedings on them, in the Senate, in the same manner with bills."

Showing by irresistible inference that resolutions proposing amendments to the Constitution are not required to be submitted to the President for his signature; because the language is —

"And all resolutions proposing amendments to the Constitution, or to which the approbation and the signature of the President may be requisite," &c.

Mr. JOHNSON. It would be very improper to say that the question which is presented by the resolution offered by the honorable member from Illinois, if it was an original question, would be entirely free from doubt, not only because the honorable member from Wisconsin thinks differently, and has expressed a different opinion upon it, but because there were some six or seven Senators, in 1803, I think, who entertained a different opinion. But, to my mind — with due respect to the authority of my friend from Wisconsin — it seems to be quite clear that a resolution proposing an amendment to the Constitution is not to be submitted to the President for his approval. The object of the constitutional provision on the subject is simply to initiate a mode by which the people shall decide whether there shall be an amendment of the Constitution or not. It does not operate as a law. The whole effect of it is, if it is initiated by Congress, to submit the question to the people for their determination; and the Senate, of course, will have seen that that is but one way in which amendments are to be proposed. Precisely the same effect is given to amendments proposed by the Legislatures of the States. I suppose it will hardly be contended that the President has any control over a convention called by two thirds of the State Legislatures.

What makes it, as I think, still more obvious that it was not the purpose of the Convention that framed the Constitution that the President should decide upon a resolution of this description is, that the resolution itself is not to be passed unless it is concurred in by two thirds of each House. The constitutional provision which gives to the President the authority to veto any such bill as is to be submitted to him for approval or rejection says that if he disapproves, he is to send it to the House in which the bill or resolution originated, and if passed by that House and the other by two thirds it is to become a law notwithstanding the veto. You are not to construe these provisions, therefore, literally where they come in conflict with each other, but you are to construe them in relation to the subject-matter with which they deal. By looking at the provision upon which my honorable friend from Wisconsin relies, you find that —

"Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States."

The clause immediately preceding says:

"If he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House it shall become a law."

Now, as such a resolution as the one in question is a resolution which cannot be passed by either House except by a vote of two thirds, why should it become necessary to submit that to the President for his decision; for, after he decides, there is but one provision looking to what is to be done in consequence of his decision against the resolution, and that is that it is to be passed by two thirds; so that if this resolution was sent to the President for his approval, and he rejects it, and it comes back, it will just be precisely the same vote.

Mr. HOWE. It does not follow that it will get the same vote after Congress has heard the President's objections.

Mr. JOHNSON. I know it does not; but what I mean to say is, that looking at the two provisions — that is to say, the provision which gives the President the right to approve or disapprove, and the provision which looks to the duty of Congress consequent upon his disapproval — it is evident that what was intended to be submitted to the President was a question which was to be passed upon by more votes than were necessary before it was submitted. Then the provision is:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution" * * * * "which" * * * * "shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof."

Now, the proposition is that no proposal by Congress of an amendment to the Constitution, although receiving the support of two thirds of both Houses of Congress, is to be submitted to the States, unless the President shall approve it. That is not the case in relation to the other mode of proposing amendments. There being two modes, and stated in the alternative, the other mode is:

"Or, on the application of the Legislatures of two thirds of the several States."

What are Congress to do then? Suppose two thirds of the States propose amendments, has the President anything to do with that? All will admit that he has not. Has Congress anything to do with that? All will admit that their single duty then is—an imperative duty—to call a convention. So that the whole object of the clause, as it seems to me, is merely to begin a mode by which the people shall have an opportunity of deciding whether the Constitution shall be amended or not. But when, as is stated by the honorable chairman of the Judiciary Committee, every amendment which has been adopted has been submitted to the States without having been approved by the President, and when the Supreme Court, at a time when it stood as high as it has ever stood at any time since its organization, refused even to hear an argument on the subject, supposing it to be too clear for discussion, it would seem to me that we ought to consider the question as settled; and in order that it may be considered as settled, that it is advisable to take the particular case which is before us (where the amendment has been submitted to the President for his approval without at the time, as my friend admits, due consideration or any consideration, taking it for granted it was to go to him for approval) out of the way as a precedent.

The resolution was agreed to.