

Work for Panama Canal Zone

“LET individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose, directly or indirectly.”

“MOREOVER, I believe it would be wrong altogether to prohibit the use of injunctions. It is criminal to permit sympathy for criminals to weaken our hands in upholding the law.”

“EVERY lynching represents by just so much a loosening of the bands of civilization; the spirit of lynching throws into prominence in the community all the foul and evil creatures who dwell therein.”

The traffic manager in this case presumably, acted without any advantage to himself and without any interest in the transaction, but by the direct authority or in accordance with what he understood to be the policy or the wishes of his employer.

Criminal Law Faculty

“The sentence of this court in this case is, that the defendant Pomeroy, for each of the six offenses upon which he has been convicted, be fined the sum of \$1000, making six fines, amounting in all to the sum of \$6000; and the defendant, The New York Central and Hudson River Railroad Company, for each of the six crimes aforesaid, be fined the sum of \$15,000, making six fines amounting in the aggregate to the sum of \$108,000, and judgment to that effect will be entered in this case.”

In connection with this matter I wish to call attention to the very unsatisfactory state of our criminal law, resulting in large part from the habit of setting aside the judgments of inferior courts on technicalities absolutely unconnected with the merits of the case, and where there is no attempt to show that there has been any failure of substantial justice. It would be well to enact a law providing something to the effect that:

Injunction Should Not Be Abolished

In my last message I suggested the enactment of a law in connection with the assurance of the courts to the effect having been sharply drawn to the matter by the demand that the right of applying injunctions in labor cases should be wholly abolished. It is at least doubtful if the use of injunctions in such cases would stand the test of the courts; in which case of course the legislation would be ineffective. Moreover, I believe it would be wrong altogether to prohibit the use of injunctions. It is essential to the law that we seek to destroy life or property by mob violence there should be no impairment of the power of the courts to deal with them in the most summary and effective way possible. But so far as possible the abuse of the power should be provided against by some such law as I advocated last year.

Guard Against Abuse

But there must likewise be no such abuse of the injunctive power as is implied in forbidding laboring men to strike for their own betterment in peaceful and lawful ways; nor must the injunction be used merely to aid extreme corporations in carrying out schemes for their own aggrandizement. It must be remembered that a preliminary injunction in a labor case, if granted without adequate proof (even when authority can be found to support the contention that the injunction is founded), may often settle the dispute between the parties; and therefore if improperly granted may do irreparable wrong. Yet there are many judges who assume a matter-of-course granting of a preliminary injunction to the ordinary and proper judicial disposition of such cases; and there have undoubtedly been flagrant wrongs committed by judges in connection with labor disputes even within the last few years, who do think much less often than in former years. Such judges by their unwise action immensely strengthen the hands of those who are striving entirely to do away with the use of injunctions; and therefore such careless use of the injunctive process tends to threaten its very existence, for if the American people ever become convinced that this process is habitually abused, when the judges affecting labor or in matters affecting corporations will be well-nigh impossible to prevent its abolition.

Disregard Sentiment

It may be the highest duty of a judge at any given moment to disregard not merely the wishes of individuals of great political or financial power, but the overwhelming tide of public sentiment, and the judge who does think disregard public sentiment when it is wrong, who brushes aside the plea of any special interest when the pleading is not founded on righteousness, performs the highest service to the country. Such a judge is deserving of all honor, and all honor cannot be paid to this wise and fearless judge if we permit the growth of an absurd convention which would forbid any criticism of the judge of another type, who shows himself timid in the presence of arrogant disorder or who on insistent grounds grants an injunction that does grave injustice, or who in his capacity of a construer and therefore in a manner in flagrant fashion thwarts the cause of decent government. The judge has a power over which no review can be exercised; he himself sits in review upon the acts of both the executive and legislative branches of the Government; save in the most extraordinary cases he is amenable only at the bar of public opinion, and it is unwise to maintain that public opinion in reference to a man with such power shall be the extent of his review.

The best judges have ever been foremost to disclaim any immunity from criticism. This has been true since the days of the great English Lord Chancellor Eyre, who said: “I am not a judge by liberty to know what I found my judgment upon; that, so when I have given it in any cause, others may be at liberty to judge of me.” The proprieties of the case were set forth with singular clearness and good temper by

Judge W. H. Taft when a United States Circuit Court Judge eleven years ago, in 1895:

Quotes Judge Taft

“The opportunity freely and publicly to criticize judicial action is of vastly more importance to the body politic than the immunity of courts and judges from unjust aspersions and attack. Nothing tends more to render judges careful in their decisions and anxious to be scrupulously exact in justice than the consciousness that every act of theirs is to be subjected to the intelligent scrutiny and candid criticism of their fellow-men. Such criticism is beneficial in proportion as it is fair, dispassionate, discriminating and based on a knowledge of sound legal principles. The comments made by learned text writers and by the acute editors of the various law reviews upon judicial decisions are therefore highly useful. Such critics constitute more or less impartial tribunals of professional opinion before which each judgment is made to stand or fall on its merits, and thus exert a strong influence to secure uniformity of decision. But non-professional criticism also is by no means without its uses, even if it is not so effective as that of the professional attack upon the judicial fairness and motives of the occupants of the bench; for if the law is but the essence of common sense, the protest of many average men may evidence a defect in the law which the learned and the wisest legal reasoning and profoundest learning. The two important elements of moral character in a judge are an earnest desire to reach a just conclusion and courage to enforce it. In so far as fear of public comment does not affect the mind of a judge, it only spurs him on to search his conscience and to reach the result which approves itself to his inmost heart, such comment serves a useful purpose. There are few men, whether they are judges or not, who are not afraid to comment on the conduct of their fellow-men, and who do not prefer to earn and hold the respect of all, and who cannot be reached and made to pause and deliberate by hostile public criticism. In the case of judges having a life tenure indeed, their very independence makes the right freely to comment on their decisions of greater importance because it is the only practical and available instrument in the hands of a free people to keep such judges alive to the reasonable demands of those they serve.”

Safety in Criticism

“On the other hand, the danger of destroying the proper influence of judicial decisions by creating unfounded prejudices against the courts justifies and requires that unjust attacks shall be met and answered. Courts must ultimately rest their defense upon the merits of the law, and the opinions they deliver as the ground for the conclusions and must trust to the calm and deliberate judgment of all the people as their best vindication.”

Death Fit Punishment

Moreover, in my judgment, the crime of rape should always be punished with death. It is a crime which is an assault with intent to commit rape should be made a capital crime, at least in the discretion of the court; and provision should be made by which the punishment may be lowered to life imprisonment in the case of a woman who is the victim of the offense; while the trial should be so conducted that the victim need not be wantonly shamed while giving testimony, and the least possible publicity shall be given to the details.

Enemies of Reform

Forever, while such preaching and such agitation may give a livelihood and a certain notoriety to some of those who take part in it, and may result in the temporary political success of some of the demagogues, this movement will either fail or else will itself result not merely in undoing the mischief wrought by the demagog and the agitator, but also in undoing the greatest honor and glory of the true upholder of popular rights, has painfully and laboriously achieved. Corruption is never so rife as in communities where the demagog and the agitator bear full sway, because in such communities all moral and honorable principles are loosened, and hysteria and sensationalism replace the spirit of sound judgment and fair dealing as between man and man. In sheer revolt against the squalid anarchy thus produced men are sure in the end to work toward a leader who can restore order, and then their relief at being free from the intolerable burdens of class hatred, violence and demagoguery is such that they cannot for some time be aroused to indignation against the men of their own class; so that they permit the growth of the very abuses which were in part responsible for the original outbreak. The one hope for success for our people lies in a resolute and fearless attitude toward the demagog and the agitator, and in the steady advance along the path marked out last year by this very Congress. There must be a stern refusal to be misled into following either that base creature who appears as a panders to the lowest instincts of the masses, or that demagog one set of Americans against their fellow-citizens, or that other creature, equally base but no baser, who in a spirit of greed, or to accumulate, or add to an already huge fortune, seeks to exploit the fellow Americans with regard to their welfare of soul and body. The man who debauches others in order to obtain a high office stands on an evil equality of corruption with the man who debauches others for financial profit and when the money is down the crock which springs up can only be evil.

Lynching Epidemic Bestial Vengeance

In connection with the delays of the law I call your attention to the prevalence of crime among us, and above all to the epidemic of lynching and bestial vengeance that springs up, now in one part of our country, now in another. Each section, North, South, East or West, has its own faults; no section can with wisdom spend its time jeering at the faults of another section; it should be busy trying to amend its own shortcomings. To deal with the crime of corruption it is necessary to have an awakened public conscience, and to supplement this by whatever legislation will add speed and certainty to the execution of the law. When we deal with a lynching even more is necessary. A great many white men are lynched, but the crime is peculiarly frequent in respect to black men. The greatest existing cause of lynching is the perpetration, especially by black men, of the hideous crime of rape—the most abominable in all the category of crimes, even worse than murder. Mobs frequently avenge the commission of such a crime by lynching the perpetrator to death, man committing it, thus avenging in bestial fashion a bestial deed, and reducing themselves to a level with the criminal.

Menace to Republic

Lawlessness grows by what it feeds upon; and when mobs begin to lynch by rape, the lawless grows by the sphere of their operations and lynch for many other kinds of crimes, so that two-thirds of the lynchings are not for rape at all; while a considerable portion of the individuals lynched are innocent of crime. Governor Galloway of Georgia stated on one occasion some years ago: “I can say of a verity that I have, within the last month, saved the lives of half a dozen innocent negroes who were pursued by the mob, and brought them to trial in a court of law in which they were acquitted.” As Bishop Galloway of Mississippi has often said: “When the rule of a mob obtains that which distinguishes the highest civilization is surrendered. The mob which lynches a negro charged with rape will in a little while lynch a white man suspected of crime. Every Christian patriot in the land should endeavor to lift up his voice in loud and stern protest against the mob spirit that is threatening the integrity of this republic.” Governor Jelks of Alabama has recently spoken as follows: “The lynching of any person for whatever crime is inexcusable

anywhere—it is a defiance of orderly government; but the lynching of innocent people under any provocation is infinitely more horrible; and yet innocent people are likely to die when a mob's terrible lust is once aroused. The lesson is this: No good citizen can afford to be indifferent to the rights of the colored man, no matter what the provocation. The innocent frequently suffer, and it is my observation, more usually suffer than the guilty. The white people of the South indict the whole colored race on the ground that even the slightest elements lend no assistance whatever in ferreting out criminals of their own color. The respectable colored people must learn not to harbor their criminals, but to assist the officers in bringing them to justice. This is the larger crime, and it provokes such atrocious offenses as the one at Atlanta. The two races can never get on until there is an understanding on the part of both to make common cause with the law-abiding against criminals of any color.”

Whole Race Attacked

Moreover, where any crime committed by a member of one race against a member of another race is avenged in such fashion that it seems as if not the individual criminal, but the whole race, is attacked, the result is to exasperate to the highest degree the race feeling, and to excite to other brutal and depraved natures thoughts of committing crime. Swift, relentless and unflinching punishment under the law is the only way by which criminality of this type can permanently be suppressed.

Demagog Enemy Of Capital and Labor

In dealing with both labor and capital, with the questions affecting both corporations and trades unions, there is one matter more important to remember than any other, and that is the demagog and the agitator. These are the men who seek to excite a violent class hatred against all men of wealth. They seek to turn wise and proper movements for the better control of corporations and connected with the labor force into a campaign of hysterical excitement and falsehood in which the aim is to inflame to madness the brutal passions of mankind. The demagog and the agitator are the worst enemies of the cause they profess to advocate, just as the purveyors of sensational slanders in newspaper or magazine are the worst enemies of all men who are engaged in honest and useful work. They are the men who are engaged in the most unscrupulous and unprincipled manner to do the worst enemies of the cause they profess to advocate, just as the purveyors of sensational slanders in newspaper or magazine are the worst enemies of all men who are engaged in honest and useful work. They are the men who are engaged in the most unscrupulous and unprincipled manner to do the worst enemies of the cause they profess to advocate, just as the purveyors of sensational slanders in newspaper or magazine are the worst enemies of all men who are engaged in honest and useful work.

Protect the Children

The Congress at its last session wisely provided for a trust court for the District of Columbia, a marked step in advance on the path of properly caring for the children. Let me again urge that the Congress provide for a trust court for the District of Columbia, a marked step in advance on the path of properly caring for the children. Let me again urge that the Congress provide for a trust court for the District of Columbia, a marked step in advance on the path of properly caring for the children. Let me again urge that the Congress provide for a trust court for the District of Columbia, a marked step in advance on the path of properly caring for the children.

Put Risk on Employer

Among the excellent laws which the Congress passed at its last session was the employers' liability law. It was a marked step in advance to get the recognition of employers' liability on the statute books; but the law did not go far enough. In spite of all precautions, the number of accidents and deaths involved in nearly every line of business connected with the mechanic arts. This inevitable sacrifice of life may be reduced to a minimum, but it cannot be eliminated. It is the greatest social injustice to compel the employer, or rather the family of the killed or disabled victim, to bear the entire burden of such an inevitable sacrifice. In other words, society shifts its duty by the whole cost of the injury comes from what may be called the legitimate risks of the trade. Compensation for accidents or deaths due in any line of industry to the injured party and his family, whereas the injury comes from what may be called the legitimate risks of the trade. Compensation for accidents or deaths due in any line of industry to the injured party and his family, whereas the injury comes from what may be called the legitimate risks of the trade.

Safety in Sanity

The plain people who think—the mechanics, farmers, merchants, workers with head or hand—the men to whom American traditions are dear, who love their country and try to act decently by their neighbors, owe it to themselves to prevent the demagog and the agitator from blowing the trumpet of violence and hypocrisy. Whenever such an issue is raised in this country nothing is so useful for the people as to stand for in such case democracy is itself on trial, popular self-government under republican forms is itself on trial. The triumph of the mob is just as evil as the triumph of the plutocracy, and to have escaped one danger avails nothing whatever if we succumb to the other. In the end the honest man, whether rich or poor, who earns his own living and tries to deal justly by his fellows, has as much to fear from the insincere and unworthy demagog, promising men and performing nothing, or else performing nothing but to plunder the rich, as from the crude and unscrupulous plutocrat. We would permit the common people to be exploited by the very wealthy. If we ever let this Government fall into the hands of men of either of these two classes we shall show ourselves false to America's name. Moreover, and a 6,000,000 employees were thrown out of employment. During the same period there were 1005 lockouts, involving

about 10,000 establishments, throwing over 1,000,000 people out of employment. These strikes and lockouts involved an estimated loss to employees of \$307,000,000 and to employers of \$143,000,000, a total of \$450,000,000. The public suffered directly and indirectly probably a great additional loss. But the money lost, great as it was, did not measure the anguish and suffering endured by the wives and children of employees whose pay stopped when their work stopped, and the misery of the whole party or lockout upon the business of employers, or the increase in the cost of products and the inconvenience and loss to the public.

Eight-Hour Day Not Feasible on Canal

I call your attention to the need of passing the bill limiting the number of hours of employment of railroad employees. The measure is a very moderate one, and I can conceive of no serious objection to it. Indeed, so far as it is in our power, it should be our aim to have the number of hours of labor, with, as a goal, the general introduction of the eight-hour day. There are industries in which it is not possible that the hours of labor should be reduced, just as there are communities not far enough advanced for such a movement to be for their good, or, if in the tropics, so situated that there is no analogy between their needs and ours in this matter. On the isthmus of Panama, for instance, the conditions are such that the number of hours of labor, with, as a goal, the general introduction of the eight-hour day would be absurd; just as it is absurd, so far as the isthmus is concerned, where white labor can not be employed, or where as to whether the necessary work is done by alien black men or by alien yellow men. But the wage-workers of the United States are of so high a grade that, alike from the merely industrial standpoint and from the standpoint of the general welfare, it is our object to do what we can in the direction of securing the general observance of an eight-hour day. Until recently the eight-hour law on our Federal statute books has been very scantily enforced. Now, however, connected thru the instrumentality of the Bureau of Labor, it is being rigidly enforced, and I shall speedily be able to say whether or not there is need of further legislation in reference thereto, for the law is being observed in spirit no less than in letter. Half-holidays during summer should be established for Government employees; it is as desirable for wage-workers who toil with their hands as for salaried officials. It is a reasonable amount of holiday.

Nation Should Not Alienate Coal Land

It is not wise that the nation should alienate its remaining coal lands. I have temporarily withdrawn from settlement all the lands which the Geological Survey has indicated as containing, or in all probability containing, coal. The question, however, can be properly settled only by legislation, which in my judgment should provide for the withdrawal of these lands from sale or from entry, save in certain special circumstances. The ownership of the remaining coal lands in the United States, which should not, however, be attempted to work them, but permit them to be worked by private individuals under a royalty system, the Government keeping such control as to permit it to see that no excessive price was charged consumers. It would, of course, be as necessary to supervise the rates charged by the common carriers to transport the product as the rates charged by those who mine it; and the supervision must extend to the conduct of the common carriers, so that they shall in no way favor one competitor at the expense of another. The withdrawal of these coal lands would constitute a policy analogous to that which has been followed in withdrawing the forest lands from ordinary settlement. The coal, like the forests, should be treated as the property of the public and its disposal should be under conditions which would insure the benefit of the public as a whole.

Make Packers Stand Cost of Inspection

The present Congress has taken long strides in the direction of securing proper supervision and control by the National Government over corporations engaged in interstate business—and the enormous majority of corporations of any size are engaged in interstate business. The passage of the railway rate bill, and only to a less degree the passage of the pure food bill, and the provision for increasing and rendering more effective national control over the packers, are an important advance in the proper direction. In the short session it will perhaps be difficult to do much further along this line; and it may be best to wait until the next session, before endeavoring to increase their scope, because only operation will show with exactness their merits and their shortcomings and thus give opportunity to the further remedial legislation is needed. In the meantime, it will in the end be advisable in connection with the packing-house inspection law to provide for putting a date on the label and for charging the cost of inspection to the packers. All these laws have already justified their enactment. The Interstate Commerce law, for instance, has rather amusingly falsified the predictions, both of those who asserted that it would ruin the Standard Oil Company and as has been shown, since its enactment, that it did not go far enough and would accomplish nothing.

Probe Labor Troubles

The commission appointed by the President October 16, 1902, at the request of both the anthracite coal operators and miners, to inquire into, consider, and pass upon the questions in controversy connected with the strike in the anthracite regions of Pennsylvania and the causes out of which the controversy arose, in their report, findings and award expressed the belief that the State and Federal governments should provide the machinery for what may be called the compulsory investigation of controversies between employers and employees when they arise. This expression of belief is deserving of the favorable consideration of the Congress and the enactment of its provisions into law. A bill has already been introduced to this end.

Need Enlarged Power

It must not be supposed, however, that with the passage of these laws it will be possible to stop progress along the line of increasing the power of the National Government over the use of interstate commerce. For example, there will ultimately be a need of enlarging the powers of the Interstate Commerce Commission along sev-

erally 10,000 establishments, throwing over 1,000,000 people out of employment. These strikes and lockouts involved an estimated loss to employees of \$307,000,000 and to employers of \$143,000,000, a total of \$450,000,000. The public suffered directly and indirectly probably a great additional loss. But the money lost, great as it was, did not measure the anguish and suffering endured by the wives and children of employees whose pay stopped when their work stopped, and the misery of the whole party or lockout upon the business of employers, or the increase in the cost of products and the inconvenience and loss to the public.

Public Has Rights

Many of these strikes and lockouts were not the result of a dispute between the parties to the dispute, but required to appear before an unprejudiced body representing the nation and, face to face, state the reasons for their contention. In most instances the dispute was doubtless found to be due to a misunderstanding of the rights of the parties, aggravated by an unwillingness of either party to accept as true the statements of the other as to the justice or injustice of the matters in dispute. The exercise of this actual spirit by a disinterested body representing the Federal Government, such as would be provided by a commission on conciliation and arbitration would tend to create an atmosphere of friendliness and conciliation between contending parties; and the giving each side an equal opportunity to present fully its case in the presence of the other would prevent many disputes from developing into serious strikes or lockouts. In such cases, which would enable the commission to persuade the opposing parties to come to terms.

Encourage Individual

One of the most efficient methods of averting the consequences of a dangerous agitation, which is 80 per cent wrong, is to remedy the 20 per cent of evil as to which the agitation is well founded. The best way to avert a very undesirable move for the governmental ownership of railways is to secure by the Government on behalf of the people as a whole such adequate control and regulation of the great facilities of interstate commerce as will drive away the evils which give rise to the agitation against them. So the proper antidote to the dangerous and wicked agitation against the men of wealth, as such, is to secure by proper legislation the most effective abolition of the grave abuses which actually do obtain in connection with the business use of wealth under our present system—or rather no system—of failure to exercise any adequate control over the use of such wealth. If the exercise of such governmental control would do away with the freedom of individual initiative and dwarf individual effort. This is not a fact. It would be a veritable calamity to fail to put a premium upon the best of the individual capacity and effort; upon the energy, character and foresight which it is so important to encourage in the individual. But, as a matter of fact, the deadening and demoralizing effect of the present system, especially of its extreme form, communism, and the destruction of individual character which they would bring about, are in part achieved by the wholly unregulated competition which results in a single individual or a few individuals, such as the great trusts, until his or its rise effectually checks all competition and reduces former competitors to a position of utter inferiority and subordination.

Regulate, Not Operate

In enacting and enforcing such legislation as this Congress already has to its credit, we are working on a plan which is the best and the only one which is needed reform by the joint action of the moderate men, the plain men who do not wish anything hysterical or dangerous, but who do intend to deal in resolute common sense with the present system. The reactionaries and the violent extremists show symptoms of joining hands against us. Both assert, for instance, that if logical, we should go to government ownership of railroads, and like the reactionaries, because on such an issue they think the people would stand with them, while the extremists care rather to preach discontent and agitation than to achieve solid results. As a matter of fact, the present system, as it is, is a far more complete and effective control of the railroads than the government ownership of them. The present system, as it is, is a far more complete and effective control of the railroads than the government ownership of them. The present system, as it is, is a far more complete and effective control of the railroads than the government ownership of them.

Trusts Force Rebates

Rebates, for instance, are often due to the pressure of big shippers (as was shown in the investigation of the Standard Oil Company and as has been shown since its enactment, that it did not go far enough and would accomplish nothing. During the last five months the railroads have shown increased earnings and some of them unusual dividends, while during the same period the mere taking effect of the law has produced an unprecedented, a hitherto unheard of, number of voluntary reductions in freights and fares by the railroads. Since the founding of the commission there has never been a time of equal length in which anything like so many reduced tariffs have been put into effect. On August 27, for instance, two days before the new law went into effect, the commission received notices of over 5000 separate tariffs which represented reductions from previous rates.

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