

President's Message

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association or in a workman's association. The movement in question was one in which the appeal was made to all workmen to vote primarily, not as American citizens, but as individuals of a certain class in society. Such an appeal in the first place revolts the more high-minded and far-sighted among the persons to whom it is addressed, and in the second place tends to arouse a strong antagonism among all other classes of citizens, whom it therefore tends to unite against the very organization on whose behalf it is issued. The result is therefore unfortunate from every standpoint. This healthy truth, by the way, will be learned by the Socialists if they ever succeed in establishing in this country an important national party based on such class consciousness and selfish class interest.

The wage-workers, the workmen, the laboring men of the country, by the way in which they repudiated the effort to get them to cast their votes in response to an appeal to class hatred, have emphasized their sound patriotism and Americanism. The whole country has cause to feel pride in this attitude of sturdy independence, in this unpromising insistence upon acting simply as good citizens, as good Americans, without regard to fancied—and improper—class interests. Such an attitude is an object lesson in good citizenship to the entire nation.

Plea for Court Bulwark.

But the extreme reactionaries, the persons who blind themselves to the wrongs now and then committed by the courts on laboring men, should also think seriously as to what such a movement as this portends. The judges who have shown themselves able and willing effectively to check the dishonest activity of the very rich man who works inequity by the mismanagement of corporations, who have shown themselves alert to do justice to the wage-worker, and sympathetic with the needs of the mass of our people, so that the dweller in the tenement houses, the man who practices a dangerous trade, the man who is crushed by excessive hours of labor, feel that their needs are understood by the courts; these judges, the judges of the stamp of the president-elect, who have been fearless in opposing labor when it has gone wrong, but fearless also in holding to strict account corporations that work inequity, and far-sighted in seeing that the workingman, gets his rights, are the men of all others to whom we owe it that the appeal for such violent and mistaken legislation has fallen on deaf ears, that the agitation for its passage proved to be without substantial basis. The courts are jeopardized primarily by the action of these federal and state judges who show inability or unwillingness to put a stop to the wrongs of very rich men under modern industrial conditions, and inability or unwillingness to give relief to men of small means or wage-workers who are crushed down by these modern industrial conditions; who, in other words, fail to understand and apply the needed remedies for the new wrongs produced by the new and highly complex social and industrial civilization which has grown up in the last half century.

The rapid changes in our social life which have attended this rapid growth have made it necessary that, in applying to concrete cases the great rule of right laid down in our constitution, there should be a full understanding and appreciation of the new conditions to which the rules are to be applied. What would have been an infringement upon liberty half a century ago may be the necessary safeguard of liberty to-day. What would have been an injury to property then may be necessary to the enjoyment of property now. Every judicial decision involves two terms—one, an interpretation of the law; the other, the understanding of the facts to which it is to be applied. The great mass of our judicial officers are I believe alive to these changes of conditions which so materially affect the performance of their judicial duties. Our judicial system is sound and effective at core, and it remains, and must ever be maintained, as the safeguard of those principles of liberty and justice which stand at the foundation of American institutions, for as Burke finely said, when liberty and justice are separated, neither is safe. There are, however, some members of the judicial body who have lagged behind in their understanding of these great and vital changes in the body politic, whose minds have never been opened to the new applications of the old principles made necessary by the new conditions. Judges of this stamp do lasting harm by their decisions, because they convince poor men in need of protection that the courts of the land are profoundly ignorant of and out of sympathy with their needs, and profoundly ignorant or hostile to any proposed remedy. To such men it seems a cruel mockery to have any court decide against them on the ground that it desires to preserve "liberty" in a purely technical form by withholding liberty in any real and constructive sense. It is desirable that the legislative body should possess, and wherever necessary exercise, the power to determine whether in a given case employers and employees are not on an equal footing, so that the necessities of the latter compel them to submit to such exactions as to hours and conditions of labor as unduly to tax their strength; and only mischief can result when such determination is upset on the ground that there must be no "interference with the liberty to contract"—often a merely academic "liberty," the exercise of which is the negation of real liberty.

Explanation of Decisions. There are certain decisions by various courts which have been exceedingly detrimental to the rights of wage-workers. This is true of all decisions that decide that men are, by the constitution, "guaranteed the liberty to contract," or to work an undesirable or improper number of hours, or to work in unhealthy surroundings; and therefore cannot recover damages when maimed in that occupation, and cannot be forbidden to work what the legislature decides is an excessive number of hours, or to carry on the work under conditions which the legislature decides to be unhealthy. The most dangerous occupations are often the poorest paid and those where the hours of work are longest; and in many cases those who go into them are driven by necessity to do so, or to take the only alternative. Decisions such as those alluded to above nullify the legislative effort to protect the wage-workers who most need protection from those employers who take advantage of their grinding need. They halt or hamper the movement for securing better and more equitable conditions of labor. The talk about preserving to the misery-hunted being who make contracts for such service their "liberty" to make them, is either to speak in a spirit of heartless irony or else to show a utter lack of knowledge of the conditions of life among the great masses of our fellow-countrymen, a lack which unites a judge to do good service just as it would unite any executive or legislative officer.

There is also, I think, ground for the belief that substantial injustice is often suffered by employees in consequence of the custom of courts issuing temporary injunctions without notice to them, and punishing them for contempt of court in

instances where, as a matter of fact, they have no knowledge of any proceedings. Outside of organized labor there is a widespread feeling that this system often works great injustice to wage-workers when their efforts to better their working condition result in industrial disputes. A temporary injunction procured ex parte may as a matter of fact have all the effect of a permanent injunction in causing disaster to the wage-workers' side in such a dispute. Organized labor is chafing under the unjust restraint which comes from repeated resort to this plan of procedure. Its discontent has been unwisely expressed, and often improperly expressed, but there is a sound basis for it, and the orderly and law-abiding people of a community would be in a far stronger position for upholding the courts if the undoubtedly existing abuses could be provided against.

Matters for Thought for Labor.

Such proposals as those mentioned above as advocated by the extreme labor leaders, contain the vital error of being class legislation of the most unkind, and even if enacted into law I believe that the law would rightly be held unconstitutional. Moreover, the labor people are themselves now beginning to invoke the use of the power of injunction. During the last year, and within my own knowledge, at least fifty injunctions have been obtained by labor unions in New York city alone; most of them being to protect the union label (a "property right"), but some being obtained for other reasons against employers. The power of injunction is a great equitable remedy, which should on no account be destroyed. But safeguards should be erected against its abuse. I believe that some such provisions as those I advocated a year ago for checking the abuse of the issuance of temporary injunctions should be adopted. In substance, provision should be made that no injunction or temporary restraining order issue otherwise than on notice, except where irreparable injury would otherwise result; and in such case a hearing on the merits of the order should be had within a short fixed period, if not then continued after hearing, it should forthwith lapse. Decisions should be rendered immediately, and the chance of delay minimized in every way. Moreover, I believe that the procedure should be sharply defined, and the judge required to state the particulars both of his action and of his reasons therefor, so that the congress can if it desires examine and investigate the same.

Importance of Court Decisions.

The chief lawmakers in our country may be, and often are, the judges, because they are the final seat of authority. Every time they interpret the property, vested rights, due process of law, liberty, they necessarily enact into law parts of a system of social philosophy; and as such interpretation is fundamental, they give direction to all law-making. The decisions of the courts on economic and social questions depend upon their economic and social philosophy; and for the peaceful progress of our people during the twentieth century we shall owe most to those judges who hold a twentieth century economic and social philosophy, and not a long grown philosophy, which was itself the product of primitive economic conditions. Of course a judge's views on progressive social philosophy are entirely second in importance to his possession of a high and fine character, which means the possession of such elementary virtues as honesty, courage, and fair-mindedness. The judge who owes his election to pandering to demagogic sentiments or class hatreds and prejudices, and the judge who owes either his election or his appointment to the money or the favor of a great corporation are alike unworthy to sit on the bench, are alike traitors to the people; and no profundity of legal learning, or correctness of abstract conviction on questions of public policy, can serve as an offset to such shortcomings. But it is also true that judges, like executives, and legislators, should hold sound views on the questions of public policy which are of vital interest to the people.

The judges and executives are chosen to represent the people in enacting and administering the laws. The judges are not chosen to represent the people in this sense. Their function is to interpret the laws. The legislators are responsible for the laws; the judges for the spirit in which they interpret and enforce the laws. We stand aloof from the reckless agitators who would make the judges mere piliars of popular prejudice and passion; and we stand aloof from those equally unwisely partisan reactionaries and big game hunters who propose that, inasmuch as judges are chosen to serve the interests of the whole people, they should strive to find out what these interests are, and so far as they conscientiously can, should strive to give effect to popular conviction when deliberately and duly expressed by the lawmaking body. The courts are to be highly commended and staunchly upheld when they set their faces against wrongdoing or tyranny by a majority, but they are to be blamed when they fail to recognize under a government like ours the deliberate judgment of the majority as to a matter of legitimate policy, when duly expressed by the legislature. Such lawfully expressed and deliberate judgment should be given effect by the courts, save in the extreme and exceptional cases where there has been a clear violation of a constitutional provision. Anything like frivolity or wantonness in upsetting such clearly taken government action is a grave offense against the republic. To protest against tyranny, to protect minorities from oppression, to nullify an act committed in a spasm of popular fury, is to render a service to the republic. But the courts should not arrogate to themselves functions which properly belong to the legislative bodies is all wrong, and in the end works mischief. The people should not be permitted to pardon evil and slipshod legislation on the theory that the court will set it right; they should be taught that the right way to get rid of a bad law is to have the legislature repeal it, and not to have the courts by ingenious hair-splitting nullify it. A law may be unwise and improper; but it should not for these reasons be declared unconstitutional by a strained interpretation, for the result of such action is to take away from the people at large their sense of responsibility and ultimately to destroy their capacity for orderly self-restraint and self-government. Under such a popular government as ours, founded on the theory that in the long run the will of the people is supreme, the ultimate safety of the nation can only rest in training and guiding the people so that what they will shall be right, and not in devising means to defeat their will by the technicalities of strained construction.

People Sometimes to Blame.

For many of the shortcomings of justice in our country our people as a whole are themselves to blame, and the judges and juries merely bear their share together with the public as a whole. It is discreditable to us as a people that there should be any convicting murderers, or in bringing to justice men who as public servants have been guilty of corruption, or who have profited by the corruption of public servants. The result is equally unfortunate, whether due to a lack of law by judges, to sentimentality and class consciousness on the part of juries, or to hysteria and sensational-

ism in the daily press. For much of this failure of justice no responsibility whatever lies on rich men as such. We who make up the mass of the people cannot shift the responsibility from our own shoulders. But there is an important part of the failure which has specially to do with inability to hold to proper account men of wealth who behave badly.

The chief breakdown is in dealing with the new relations that arise from the mutualism, the interdependence of our time. Every new social relation begets a new type of wrongdoing—of sin, to use an old-fashioned word—and many years always elapse before society is able to turn this sin into crime which can be effectively punished at law. During the lifetime of the older men now alive the social relations have changed far more rapidly than in the preceding two centuries. The immense growth of corporations, of business done by associations, and the extreme strain and pressure of modern life have produced conditions which render the public confused as to who its really dangerous foes are; and among the public servants who have not only shared this confusion, but by some of their acts have increased it, are certain judges. Marked inefficiency has been shown in dealing with corporations and in re-settling the proper attitude to be taken by the public not only towards corporations, but towards labor, and towards the social questions arising out of the factory system, and the enormous growth of our great cities.

Corporations of Huge Wealth.

The huge wealth that has been accumulated by a few individuals in recent years, in what has amounted to a social and industrial revolution, has been as regards some of these individuals made possible only by the improper use of the modern corporation. A certain type of modern corporation, with its securities and its constant consolidation with allied undertakings, finally becomes an instrument so complex as to contain a greater number of elements than, under various judicial decisions, lend themselves to fraud and oppression than the device of a trust in the human brain. Corporations are necessary instruments of modern business. They have been permitted to become a menace largely because the governmental representatives of the people have worked slowly in providing for adequate control over them.

The chief offender in any given case may be an executive, a legislature, or a judge. Every executive head who advises violent, instead of gradual, action, or who advocates ill-considered and sweeping measures of reform, especially if they are tainted with vindictiveness, and disregard for the rights of the minority, is particularly blameworthy. The several legislatures are responsible for the fact that our laws are often prepared with slovenly haste and lack of consideration. Moreover, they are often prepared, and still more frequently amended during passage, at the suggestion of the very parties against whom they are afterwards enforced. Our great clutches of lawyers, huge trusts and fabulously wealthy multimillionaires, employ the very best lawyers they can obtain to pick flaws in these statutes after their passage; but they also employ a class of secret agents who seek, under the advice of experts, to render hostile legislation innocuous by making it unconstitutional, often through the insertion of what appear on their face to be drastic and sweeping provisions against the interests of the plain people, and against the corrupt creatures who introduce blackmailing schemes to "strike" corporations, and all who demand extreme, and undesirably radical, measures, show themselves to be the worst enemies of the very public whose loud-mouthed champions they profess to be. A very striking illustration of the consequences of carelessness in the preparation of a statute was the employers' liability law of 1906. In the cases arising under that law four out of six courts of first instance held it unconstitutional; six out of nine justices of the supreme court held that its subject-matter was within the province of congressional action; and four of the nine justices held it valid. It was, however, adjudged unconstitutional by a bare majority of the court—five to four. It was surely a very slovenly piece of work to frame the legislation in such shape as to leave the question open at all.

Real damage has been done by the manifold and conflicting interpretations of the interstate commerce law. Control over the great corporations doing interstate business can be effective only if it is vested with full power in an administrative department, a branch of the federal executive, carrying out a federal law; it can never be effective if a divided responsibility is left in both the states and the nation; it can never be effective if left in the hands of the courts to be decided by lawsuits.

COURTS HELD SACRED.

Respect for Law Essential to Permanence of Republic.

The courts hold a place of peculiar and deserved sanctity under our form of government. Respect for the law is essential to the permanence of our institutions; and respect for the law is largely conditioned upon respect for the courts. It is an offense against the republic to say anything which can weaken this respect, save for the gravest reason, and in the most carefully guarded manner. Our judges should be held in peculiar honor; and the duty of respectful and truthful comment and criticism, which should be binding when we speak of anybody, should be especially binding when we speak of them. On an average they stand above any other servants of the community, and the greatest judges have reached the high level held by those few greatest patriots whom the whole country delights to honor. But we must face the fact that there are wise and unwise judges, just as there are wise and unwise executives and legislators. When a president or a governor behaves improperly or unwisely, the remedy is easy, for his term is short; the same is true with the legislator, although not in the same degree, for he is one of many who belong to some given legislative body, and it is therefore less easy to fix his personal responsibility and hold him accountable therefor. With a judge, who, whose tenure is for life, there is no similar way of holding him to responsibility. Under ordinary conditions the only form of pressure to which he is in any way amenable are, public opinion, and the action of his fellow judges. It is the last which is most immediately effective, and to which we should look for the reform of abuses. Any remedy applied from without is fraught with risk. It is far better, from every standpoint, that the remedy should come from within. In no other nation in the world do the courts wield such vast and far-reaching power as in the United States. All this is necessary is that the courts as a whole should exercise this power with the far-sighted wisdom already shown by those judges who see the future while they act in the present. Let them exercise this great power not only honestly and bravely, but with wise insight into the needs and fixed purposes of the people.

Concluded in Next Week's Issue

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