

CHAPTER III

THE BAYONET IN CIVIL AFFAIRS

ALONG with the abnormal development of the injunction principle has come within the last two decades in the United States a startling use of soldiers in civil affairs. Privilege has forced laborers in self-defense to organize into unions and then has abnormally developed the injunction principle for a weapon against those unions. Concurrently with this it has requisitioned the bayonet in many of the conflicts with labor unions, until it has aroused in the unions a deep-seated fear that the military arm of the Government is intended not so much for defense or offense against foreign powers as for use against the body of the citizens.

All in all, the most remarkable instance of military rule in the history of the United States occurred during 1903-1904 in the State of Colorado during a great strike of smelters and gold, silver and coal miners.

The real owners of Colorado are not the body of the citizens, but closely associated and harmonious mining, smelting and railroad corporations. What these corporations own they manage, subscribing to either or both political parties when it pleases them to do so; influencing elections when and in what manner they desire; effecting or blocking or neutralizing such legislation as they choose; swaying the higher courts, and to great extent directing administrative government and the military arm when they deem that necessary. These owners of Colorado

make and unmake the makers of laws as easily and quietly as they make and unmake the laws themselves.

The coal mines are in the south-central part of Colorado. The miners had serious grievances. Constitutional and statutory provisions for their protection against robbery and persecution by the coal-mining companies were dead letters. At the time of the trouble the mines were owned mainly by two corporations — the Victor Fuel Company and the Colorado Fuel and Iron Company (now the Rocky Mountain Coal and Iron Company), the latter controlled by Mr. John D. Rockefeller and Mr. George J. Gould. The people of Colorado had by a very large majority ratified an amendment to the Constitution requiring the Legislature to pass an eight-hour law, but the Legislature, influenced, it was commonly believed, by the monopoly corporations, suddenly adjourned without taking such action. Thus these corporations annulled what the people had by constitutional mandate decreed. The coal miners saw but one recourse — the strike. Thereupon the mine owners immediately appealed to the Governor, J. H. Peabody, for militia; they said to protect life and property. There really was no danger to life or property. There were but a few cases of personal violence, and these probably had been provoked by assault upon the miners by sympathizers with the company; in one or two instances, it is suspected, by detectives in company pay, not an unheard-of proceeding in other coal regions. But it was necessary to show sufficient cause to have the troops, and the troops were necessary to break the strike.

Governor Peabody appeared ready to send soldiers. Only one thing barred him. He did not have the means to pay them. The Legislature had made no financial provision for the contingency of calling out the militia. The monopoly corporations quickly met this difficulty. They offered to furnish the State with all the money necessary to pay such soldiers as the Governor should call out, agreeing to look for repayment of such advances by the passage of a

special appropriation bill at a subsequent meeting of the Legislature. The Governor accepted the proffer and thus, in effect, sold the militia to the service of corporate privilege in Colorado, just as the Grand Duke of Hesse-Cassel sold Hessian troops to George III for service in the British army against the patriots of this Republic during the Revolution. This was too much for even that high military authority the *Army and Navy Journal*, which might have been expected to pass over the circumstances as justified by "military necessity." That periodical said: —

But that he [the Governor] should virtually borrow money from the mine owners to maintain the troops who he had assigned to guard their property was a serious reflection upon the authorities of the State. That arrangement virtually placed the troops, for the time being, in the relation of hired men to the mine operators, and morally suspended their function of State military guardians to the public peace. It was a rank perversion of the whole theory and purpose of the National Guard, and more likely to incite disorder than prevent it.¹

Yet under these circumstances the troops were sent to the coal regions, and at their head the commanding general of the State militia, Adjutant-General Sherman M. Bell. The soldier was in the middle thirties and had been educated in the rough school of cattle ranches and mining camps. He had been a Wells, Fargo & Company detective, had served in the Roosevelt company of Rough Riders in the Cuban campaign, and had been a mining superintendent in the Cripple Creek district. By his own statement he had never taken a drink of liquor in his life.

General Bell is one of the kind of men who forget the rights and duties of the citizen when they don soldier clothes. Their first duty, they say, is to obey. General Bell received his orders from Governor Peabody, who had appointed him to his high command, and Bell obeyed like a Russian military official at Warsaw. He arrested men and clapped them into jail without warrant and even

¹ *Army and Navy Journal*, October 17, 1903.

without formal charge. He deported them out of the State for no other offense than that they were members of the miners' union. In these actions Governor Peabody upheld him. As no strike could succeed against a combination of mine owners and soldiers, this one after long, weary months miserably failed; and such mine workers as were permitted to go back to the coal mines were glad to return to employment under conditions even worse than those against which they had struck.

The strike of the smelters and gold and silver miners, all of whom were members of the Western Federation of Miners, was in progress in other parts of Colorado during the coal strike. The chief points were in the Cripple Creek district almost in the center of the State, and in the Telluride district in the extreme western portion. Incensed at the deliberate refusal of the Legislature to pass the eight-hour law in face of the mandate in the constitutional amendment, the miners and smelters struck. Their strike badly crippled the mines and smelting works. The allied mining, smelting and railroad monopolies therefore determined to break up the unions. Mr. C. C. Hamlin, secretary and directing power of the Mine Owners' Association at Cripple Creek, said frankly to me when I went to Colorado to look into this trouble: —

“We have had working together union miners and non-union miners. We are persuaded that they cannot work together harmoniously. Our conclusion is that all the men we employ should be union or all non-union, and we have decided that they shall be non-union. We are driving out every union man and none will ever again be used in the mines of this district.”

What is thought to have led up to this determination was the support of the unions to a proposed amendment to the Constitution the year before by Senator James W. Bucklin. This proposal aimed to introduce the single tax principle by giving municipalities option in taxation, the expectation being that they would heavily tax the great mineral and

railroad site values of the State, which now bear only inconsiderable taxes.

This support of the Bucklin movement doubtless helped to urge the allied monopolies to destroy the unions, which now were charged with all manner of violence and crime, but apparently on little or no real evidence. With all their high-handed military government and with every facility in their hands for prosecution, the allied monopolies have proved little against the so-generally accused union men. The blackest charge was that members of the miners' union had dynamited a railroad station at Independence, in the Cripple Creek region, and had thereby killed fifteen non-union men. The Mine Owners' Association and General Bell assured the public that there was an abundance of damning evidence implicating the union. But to this day not a single man has been convicted of connection with that tragedy. The only clew that had appearance of reality pointed toward a disreputable individual formerly employed by the Mine Owners' Association. It is surmised that the purpose may have been to blow up the station before the non-unionists actually arrived there, but sufficiently close to their arrival to give color to a charge against the union of "an all-but-successful diabolical dynamite horror."

Long before the Independence tragedy had occurred, the Mine Owners' Association and the Citizens' Alliance had procured militia for the Cripple Creek and Telluride districts. General Bell was in command. He frankly announced that his main purpose was to "break up" the Western Federation of Miners and its supporting unions and to "run out" the most active of its members. As to whether or not a man had the right to be a member of a labor union, or as to whether or not a citizen had a right to live where he pleased so long as he infringed not the right of another, gave the General small thought. His openly expressed purpose was to wipe out all aggressive unions in the strike center of Colorado.

With an abundance of zeal and courage, General Bell thereupon had large numbers of union men arrested and locked up in military jails. No formal charges were preferred. And then began the policy of deportation which had been tried in the coal regions. Without trials, without other explanation than the curt one of "military necessity," men known to be union men were put upon trains and shipped out of the State. To cap the climax, Charles H. Moyer, President of Western Federation of Miners, was arrested, put into the military prison and kept there for months, on what pretext neither Moyer, his attorneys, his union nor the public could learn.

Of all this Governor Peabody approved. He called it "military rule." General Bell called it "military necessity." The general public called it "martial law."

Ignoring the deportations, Governor Peabody said: "I have only arrested men, and I hold them until I deem it proper to turn them over to the civil authorities for trial." But he showed that he regarded himself as judge and executioner, for he added, "I believe in stamping out this set of dynamiters and intend it shall be done."

The soldiers did not bother with fine distinctions. When accused of violating the Constitution of the State, Judge Advocate McClelland exclaimed, "To hell with the Constitution; we are not following the Constitution." Colonel Verdeckberg, commanding officer in the Cripple Creek district, said, "We are under orders only from God and Governor Peabody." When asked how long martial law was to be enforced at Telluride, General Bell answered: "The soldiers never will be taken out of there until we have rid the country of the cut-throats, murderers, socialists, thieves, loafers, agitators and the like who make up the membership of the Western Federation of Miners. We don't care what the Supreme Court, the newspapers or anybody or anything else does. The soldiers are going to stay there, regardless of court decisions; and if there is

any more monkey business there is going to be some much-needed shooting."

This remarkable speech had reference to an order issued on a *habeas corpus* writ by District Judge Stevens to General Bell to liberate Moyer. The soldier not only announced that he would not obey the court order, but that he would put the judge into the military jail if he came near headquarters, continuing: "If Sheriff Corbett takes me to Ouray it will have to be over the dead bodies of all the soldiers under my command in this county. He has not men enough to do that."

The power of the court being gone, Judge Stevens adjourned it and announced that he would thereafter adjourn from term to term until the court's mandates could be executed without military interference.

Appeal was then made to the Supreme Court of the State for a *habeas corpus* writ for Moyer. That tribunal granted a hearing.

The Supreme Court of Colorado was composed of three judges, William H. Gabbert, John Campbell and Robert W. Steele. Judge Gabbert, who was chief judge, had formerly been a banker and had mining interests in Telluride, where Moyer had been arrested and imprisoned by the soldiers. Judge Campbell had formerly been a corporation lawyer, representing railroad and mining interests in Colorado. Judge Steele had been an attorney also, but with general practice.

Two of these judges — Gabbert and Campbell — practically decided that the Governor had constitutional authority for his extraordinary military arrests of Moyer and others, and his arbitrary deportations. Judge Gabbert wrote the prevailing opinion, the main points of which, condensed, were: —

(1) The Governor has sole power to determine when a state of insurrection exists in any county in the State. The courts have no power to interfere with the exercise of this prerogative.

(2) The Governor has the right to use the military forces of the State to suppress domestic insurrection. He also has the power to order the imprisonment and the killing of insurrectionists if in his opinion that extremity is necessary.

(3) He can detain military prisoners until he decides that the insurrection is quelled.

(4) The courts of the State have no right to interfere with the military authorities and their handling of prisoners. They have no power to attempt to discharge military prisoners.

That is to say: two of the three judges of the highest tribunal of Colorado declared that that court had no jurisdiction in Moyer's case; that Moyer had been arrested and was being held under military law; that similarly the deportations were occurring under military law; that under this military law the Governor had constitutional authority to go to any lengths in his opinion deemed necessary to suppress insurrection; that the courts could not question such gubernatorial power or action.

Judge Steele dissented from this decision, but as Judge Gabbert somewhat significantly admitted from the bench, the former had not had opportunity to prepare his opinion in the brief time remaining after the other two judges had agreed to deliver the decision of the court. In the course of the opinion which he subsequently delivered, Judge Steele said: —

It follows, of course, that if the present Executive is the sole judge of the condition which can call into action the military power of the Government, and can exercise all means necessary to effectually abate the conditions, and the judicial department cannot inquire into the legality of his acts, the next Governor may by his ukase exercise the same arbitrary power. If the military authority may deport the miners this year, it can deport the farmers next year.

If a strike, which is not a rebellion, must be so regarded because the Governor says it is, then any condition must be regarded as a

rebellion which the Governor declares to be such ; and if any condition must be regarded as a rebellion because the Governor says so, then any county in the State may be declared to be in a state of rebellion, whether a rebellion exists or not, and every citizen subjected to arbitrary arrest and detention at the will and pleasure of the head of the executive department.

We may then, with each succeeding change in the executive branch of the Government, have class arrayed against class, and interest against interest, and we shall depend for our liberty, not upon the Constitution, but upon the grace and favor of the Governor and his military subordinates. . . .

The court has not construed the Constitution ; it has ignored it. And the result is that it has made greater inroads on the Constitution than it intended, and that not one of the guarantees of personal liberty can be enforced. . . .

If one may be restrained of his liberty without charge being preferred against him, every other guarantee of the Constitution may be denied him.

Reduced to its lowest terms, the highest court of Colorado, through the majority of its judges, abdicated at this most serious crisis. And when appeal was made to a Federal court, and Governor Peabody and Attorney-General Miller were cited to appear with Moyer on a writ of *habeas corpus* before United States Circuit Judge Thayer, sitting at St. Louis, Governor Peabody suddenly revoked martial law in the district where Moyer had been imprisoned and turned him over to the civil authority, the sheriff, who immediately turned him over to the sheriff of Teller County, where martial law still prevailed. Thus Moyer was technically out of the Governor's hands. He was technically in civil hands. But he was still virtually in the hands of the soldiers, as the sheriff of Teller County had been put in that office with the help of the soldiers.

And thus while the Governor avoided collision with a Federal court which did not appear to be under monopoly influence, he had, as Supreme Court Judge Steele implied, been restraining men of their liberty without preferring charges against them. More than this, he had been deporting men on the mere *ipse dixit* that he intended

to get rid of labor unionists, socialists, agitators and the like.¹

He even closed up the Portland mine in the Cripple Creek district because that mine, continuing to run, employed union as well as non-union men, and the union men were suspected of contributing part of their earnings to the strike fund. It was announced that the Portland mine would be allowed to reopen only with men "holding cards issued by the Mine Owners' Association" — a new kind of a labor union, but one not organized by and for the mass of laborers, but by and for the benefit of the Mine Owners' Association.

In accordance with this proceeding, General Bell issued an order (Special Order No. 19) declaring that "no organization will be allowed, while this county [Teller] is under military control, to furnish aid in any form to the members of any organization or their families in this county, unless the same is done through military channels."

The Governor and General Bell went even further than this. They conspired to strike at the ballot itself. While Teller County was under military rule the Governor and his Adjutant-General permitted a mob of respectable citizens of Cripple Creek, composing the active members of the Mine Owners' Association and the Citizens' Alliance, to force the sheriff, the county coroner, the county treasurer, the county clerk, a prosecuting attorney and a number of minor local officials to resign from their offices, to which they had been regularly elected, and the functions of which they had been performing so far as the presence of the soldiers would permit. The mob of respectables

¹ Things had come to such a pass when I went to Colorado in June, 1904, that General Bell thought it necessary to issue a special military proclamation (Special Order No. 14), to the effect that "as the said Henry George, Jr., is a law-abiding American citizen and has the good of this country at heart at all times, he shall be treated as an honored guest by every officer and enlisted man of the National Guard of Colorado and the forty thousand loyal, law-abiding citizens of Teller County," thereby giving him assurance that "Colorado is in America to-day."

carried firearms and in one or two instances went so far as to display a noosed rope and threaten its use if necessary to compel compliance with their demands. To all the official vacancies men were appointed who were known to be in one way or another identified with the monopoly powers.

One of General Bell's declarations over his signature was: "I am going to banish the agitators, and then I will establish a military quarantine that will keep them banished." This was no idle boast. He meant it, and he acted upon it so long as his soldiers were on duty. Indeed, in an interview with me, he said that he would not, if he had his way, restrict the use of soldiers to the mining regions. He would use them in the metropolis and capital of the State, Denver, and "run out the bad men and ballot-box stuffers."

And what was the net result of the strike-military term in Colorado? That in round numbers a thousand men were locked up in the military prisons without charges being preferred against them; that six hundred and fifty coal and metal miners were arbitrarily deported, some of them put down on the open prairie without food or shelter; that houses were searched and stores looted by so-called citizens' committees acting under the protection of soldiers; that local courts were prevented from exercising their functions; that regularly elected local officials were coerced into resigning and monopoly appointees substituted; that the Governor and militia, passively supported by an abdicating Supreme Court, did or helped to do all this; that the cost for the militia exceeded \$800,000, which the great parties at interest — the Colorado monopolies — paid, and for which they purposed some day to be reimbursed by a special legislative appropriation.

How could a strike win in face of such odds, no matter how justifiable the cause? And the metal miners and smelters' strike failed as utterly as had the coal struggle. The strike went down in utter ruin, and with it for the

time being the labor unions in Colorado to which those men belonged.

Now, as has been said, a strike is not according to the natural order of things. It is only a temporary expedient of combined laborers. But if, under cloak of protecting life and property against strikers, a military despotism is for a season to be erected, what is to become of the sacred principles of liberty. And if this can be done in one State, why should it not be done in others? If miners in one part of the United States, because they are labor unionists, can be thrown into prison or deported, why cannot miners in other places be similarly treated? If the owners of Colorado can substitute bayonet for ballot rule, why should not the coal, steel and transportation lords of Pennsylvania take it as a precedent? Why should not the railroad masters of California, Nevada, Oregon and Washington hail it and follow it? Why bother with popular suffrage in New York, Ohio, Connecticut, Illinois or Massachusetts? If a Governor of Colorado can, on the pretext of protecting life and property, set aside civil government and establish in its stead arbitrary military rule by which citizens are cast into prison or deported without charges, and by which regularly elected public officials are deposed to give place to appointees of Privilege, why should this not some day be done by a President over the country at large?

Nor can the fulfillment of these possibilities appear so remote when we realize that what has been done in Colorado has really only been in the free exercise of principles clearly established by a President of the United States, who sent Federal troops to Chicago at the behest of railroad powers there and despite the protests of the Governor of Illinois.