

---

---

## LAW OR PERSONAL POWER.

ADDRESS DELIVERED AT THE NATIONAL DEMOCRATIC CLUB, NEW YORK, APRIL 13, 1908. FROM ORIGINAL TYPEWRITTEN MANUSCRIPT WITH MR. WILSON'S CORRECTIONS, IN THE LIBRARY OF PRINCETON UNIVERSITY.

WE hear a great deal of candidates and programmes, but very little of principles. Parties seem almost to have gone to pieces and to have become indistinguishable, except in so far as men by habit call themselves by this party name or by that. Both parties have with like eagerness turned to the regulation of the business of the country, the restraint and regulation of the great business corporations, and vie with each other in the radical measures which they propose; but the measures of the one might be the measures of the other. They are virtually indistinguishable in principle, and the principle they have in common is a bad principle which, if carried far enough in its application, would inevitably change the whole character of our government. It is time we stopped, for a little, speaking of candidacies and undertook to test measures by principles.

The greater part of the business of the country has come into the hands of great corporations and trusts, and its new aspects unquestionably require adjustments and re-formulations of the law, which the courts have not had the power or the courage to make and which must therefore be made by legislation. The mere scale of business operations, moreover, has vastly increased. Comparatively small groups of men in control of great corporations wield a power and control over the wealth and the business operations of the country which makes

them seem rivals of the government itself. Law must be strengthened and adapted to keep them in curb and to make them subservient to the general welfare. No one now advocates the old *laissez faire*; no one questions the necessity for a firm and comprehensive regulation of business operations in the interest of fair dealing, of a responsible exercise of power. We are all advocates of a firm and effective regulation, but those of us who are Democrats challenge the prevailing principles of regulation, the principles which the Republican party has introduced and carried to such radical lengths and which some Democrats, confused by the clamour of the hour, have too thoughtlessly and hastily espoused.

We have in fact turned from legal regulation to executive regulation. We have turned from law to personal power. It is that choice which as Democrats we challenge, and challenge with confidence, as opposed to every ancient principle of liberty and of just government. Have we given up law? Must we fall back on discretionary executive power? The government of the United States was established to get rid of arbitrary, that is, discretionary executive power. If we return to it, we abandon the very principles of our foundation, give up the English and American experiment and turn back to discredited models of government.

A mere casual examination of recent legislation will show that these statements are not based upon fancy or upon exaggeration, but upon the necessary character of the things we have been trying to do. Law which cannot define and discriminate the transactions which it is the purpose of the legislature to forbid is not ready to become law at all, and yet it is just that that our recent statutes enacted by way of regulating some of the most important enterprises of the country have failed to do. They have run in vague terms, lumping things permissible with things impermissible, interfering with business without analyzing it or carefully discriminating its good and bad features. And then when the results were

unsatisfactory they have sought to lodge the power to discriminate, to permit and forbid, in the hands of commissions with very extensive discretionary powers, administrative in character, not judicial; for no process is judicial which does not rest upon definition, upon detailed and explicit provisions of known law. The Sherman Act was as clumsy as it has been ineffectual, and the remedy for it has been to lodge the power to discriminate between what it should have forbidden and what it should have permitted in the hands of bodies of commissions appointed by the President.

The latest proposals are typical of all the rest. All combinations or agreements in restraint of trade had been forbidden by statute. But some agreements in restraint of trade, some sorts of pooling of rates by the railroads for instance, do not in fact operate to the detriment of the public or of trade itself, but are beneficial rather and to be desired in the interest alike of efficiency and economy. The lawmakers, upon that discovery, are not invited by the reformers to attempt definition of law which will discriminate between those agreements in restraint of trade which are innocent of monopolistic intent or effect and desirable in the interest of the community itself, from those which the vague original law was intended to prevent. They are urged, on the contrary, to put the whole matter in the hands of an executive officer. It is proposed to invite all corporations which wish to keep within the limits of the law to register with him and to submit all their contracts and arrangements to him for his sanction or disapproval, to let him make law by executive order.

The principle underlying the laws which have here and there set up powerful public service commissions is the same. These commissions are authorized not to administer precise rules of law made clear in the definitions of statutes, but to order this, that, or the other alteration, addition or adjustment in the actual administration of the business of the corporations which they

are set to supervise. It is true that these corporations are in a sense public servants: street railway companies, gas lighting companies, and the like. They use the public highways and enjoy public franchises of one kind or another and are engaged in kinds of business which can hardly be called private in character, but they are owned by private capital and operated for private profit. And yet their business is regulated, even in its chief administrative details, by public officers whose practical judgment is the standard of regulation, who are administering not rules of law but their own discretionary opinions. The law attempts no definitions in respect of these undertakings: it puts them in the hands of public officers; and yet undertakes no responsibility for their success or bankruptcy.

If this is necessary, government by law has broken down, and personal government has been substituted. I for one do not believe that it is necessary. Neither do I believe that the American people have consciously made any such choice. They have been hastened by reformers who acted upon no principle whatever into measures the real character and consequence of which were not explained to them. When those measures are understood, the people of this country will turn from them and substitute law once more for personal power.

To all thoughtful persons, scrupulous of the ancient principles of our law, it is evident where this demoralization crept in. It is plain why the federal government has become the patron of the people instead of the arbiter of just and definite law. Our later tariff legislation has not been based upon the general welfare, but upon the patronage of special interests already strong, already very influential in politics. No one can examine the confused and illogical schedules of the present tariff without perceiving that it is really a mass of special favors piled together in a bill which was not seeking a symmetrical development of the industries of the country, such as Hamilton urged in his great

Report on Manufactures upon which all tariff laws profess to be founded, but only to please every interest whose hostility was to be feared in the elections. A system of special favors is in its nature paternal. Its idea is not law but patronage, and, having created artificial conditions and produced thereby interests which in their time grew so large as to threaten to dominate the government itself by the very processes which produced the tariff, it is plain logic that this same patronizing government must play a further paternal rôle of special regulation, not by careful scientific definitions of law but by detailed variations of administrative process.

The opportunity of the Democratic party is the same all along the line: to return to government by law; to insist upon a tariff reconsidered in all its definitions, adjusted to the actual conditions of trade and manufacture, viewed, not interest by interest, but upon the proud basis of the country's needs and economies; to insist upon a currency, not based upon the sale of this, that or the other body or class of securities, but upon the actual assets and soundness of the banks of issue, redundancy checked by taxation, hazard offset by inspection for the enforcement of definite and uniform rules; to insist upon laws, whether of combination or of contract, of offensive or of defensive action, which shall be the same for the capitalist and for the laborer; to insist upon the precise fixing of responsibility on individuals; to insist, in brief, everywhere upon definition, uniform, exact, enforceable. If there must be commissions, let them be, not executive instrumentalities having indefinite powers capable of domineering as well as regulating, but tribunals of easy and uniform process acting under precise terms of power in the enforcement of precise terms of regulation.

It is perfectly possible to pick out transactions one by one to which definitions and regulations of law can be applied. If it is not, then law is impossible. The process is indeed slow; it is a process of investigation and

of experience of which ardent reformers are infinitely impatient; a process difficult to institute in a time of excitement and impatience for results like the present; but it is the only process of sound law-making. Moreover, it is perfectly possible to pick out responsible individuals and visit upon them the punishments of the law instead of checking business in order to eliminate undesirable practices. Sound government must ever be based upon definite law and individual responsibility. Corporate responsibility lacks vitality, corrects nobody. Corporations are creatures of the law; the law may exact of them any publicity of process it pleases, any analysis of their functions, any disclosure of their organization.

If juries have failed to convict indicted officials when the officers of the law have tried by indictment to correct corporate abuses, it has been because they were by no means sure that the persons indicted were really the responsible persons. Our lawmakers have made too little analysis of the things they wished to correct. Our law has not carefully enough discriminated real from nominal control, the masters from the servants. Many of the practices of our corporations which are most demoralizing, most against the public interest, most corrupt and most dangerous, were not originated by the official administrators of the corporation, the men actually in charge of its daily transactions, but by manipulators who owned or controlled the majority of their stock, who could change the officers of the corporation as they pleased, who wished to create this, that or the other impression on the stock market and who wished to get certain effects wrought on the balance sheet of the corporation reports. These were the real masters, with these rested the real responsibility. Has our law made an intelligent effort to find these men in its definitions of responsibility or in its imposition of penalties? It has known only fines, which fall upon innocent stock-

holders and guilty alike, and has left the real offenders unmolested in their practices.

The people of this country are not jealous of fortunes however great which have been built up by the honest development of great enterprises, which have been actually earned by business energy and sagacity; they are jealous only of speculative wealth, of the wealth which has been piled up by no effort at all but only by shrewd wits playing on the credulity of others, taking advantage of the weakness of others, trading in the necessities of others. This is "predatory wealth" and is found in stock markets, not in the administrative offices of great corporations where real business is conducted, real commodities made or exchanged. And what the lawmaker has failed to perceive in recent years is that the charges made by corporations for their manufactured goods or for their services have been determined oftentimes not by the desire of the corporation to charge more than what it sells is worth, but by the necessity it is under to earn dividends on watered stock or make good the terms of the sale of its plant at extravagant figures when it was made a part of some greater combination. Processes of over-capitalization are processes of fraud. The law should analyze and frustrate them. If it cannot, our situation will not be improved by putting the matter in the hands of some executive inquisitor. Our battle cry must be, "Back to the reign of law." The discretion of executive officers, whether you call them commissioners or not, is a mere quicksand upon which no nation can stand.

Only principles are constructive. No miscellaneous programme of measures formed by no principle, unified by no controlling purpose, can give life to a great national party and lift it above faction or futility. The principle to which the voters of this country should be called back now is the great constructive principle of the reign of law. The familiar Jeffersonian maxim that that government is the best which governs least,