

## STATE RIGHTS AND NATIONALISM

(By Judge George Gray.)

language of the constitution with the idea that the common and federal government are one sovereign people, instead of the peoples of the several states.

What is hoped to be accomplished I do not know by the fashion in which the constitution is being amended within comparatively recent times. Speaking of the United States in the singular number and in the plain indication of the language employed in the constitution itself that the United States are one and not unitary; plural and singular.

I do know that the plain facts of history cannot be thus contradicted and their significance obscured. Such a fiction is not necessary to enshrine the truth, which calm and dispassionate exposition has abundantly established, that in the practical partition of power between the states and the federal government has plenary power to govern our intercourse with the outside world, and may do and should do all those acts and things which are really necessary for our independent existence in the family of nations. For all practical purposes that power is national.

The scheme of government thus established there is no place for abatement. Arbitrary power is everywhere checked, even should its exercise be attempted by the people themselves. Much more is it denied to and withheld from the mere governmental agencies that have been established. The fathers who framed the constitution had a keen realization of the hatefulness of arbitrary power, and they took care that no power should be found for its exercise in the frame of the government which were about to erect.

Arbitrary power less hateful now than to the people of this country. If not, let us remember that we can only preserve ourselves from a hateful sway by keeping alive in the breasts of the men of today the sentiments that animated their fathers and the hatred of tyranny and plutism from whatever source it comes.

Feelings of just and patriotic pride pour hearts as we turn the pages of our diplomatic history and read of American conscience and American altruism have measurably raised the standards of international morality and strengthened the moral sanction of international law.

The constitution which has enabled us to occupy so high a place in the family of nations and has clothed our government with every national attribute necessary for the assertion of self-respect at home and abroad needs no amendment in the direction of increased powers that would destroy the balance between them and be reserved by the states.

But it would be idle to close our eyes to the fact that there are many people in this country to whom enlargement of this national power seems attractive, and who would transfer to the general government many of the responsibilities and duties which have from the beginning been recognized as belonging to the local government and sovereignty of the states. It has been more than suggested that this enlargement of federal power should take place by the result of judicial action, and by some of those subtle refinements of which the human mind is so capable and to which human language is always amenable we may state and aggrandize a national government that would strip the states of much of their reserved sovereignty.

The greatest blessing of our system of government in the past has been that the people of the states, as separate bodies politic, have been compelled to develop their capacity for self-government and provide, by their own civic activity, for the faithful exercise of those great powers upon which the well-being and safety of the individual and the community must depend.

The danger of this centralizing sentiment is that it appeals to the selfishness of human nature and to the willingness to be relieved of the burdens and responsibilities of self-government. But I am persuaded that the prevailing sentiment of the American people does not favor the exchange of our self-governed communities and the individual liberty that they foster for the paternalism of a national government which suppresses the one and must, in the nature of things, tend to extinguish the other.

There is no danger that our courts, and especially our supreme court, will respond to such a suggestion, whatever be its source. The few and simple words which have conferred on congress the power to regulate commerce among the

states have served as a door which has been opened wider and wider in recent times for the admission of the general government into participation in the internal affairs of the states. We do not wish to close that door, but it does behoove all who love our institutions to guard, so far as they can, against entry through it of those forces of centralization which, under the mere pretense of regulating interstate commerce, are now clamoring for admission.

Admitted unguardedly, they will throng thick and fast over all the barriers of the constitution and reduce to ruin the citadel of local self-government, so long and so fondly believed to be the palladium of our liberties. It is no fancied danger against which I presume to warn you. Examples of this mode of seeking to surmount the bulwarks erected by the constitution against encroachments on the rights of the states are in evidence at each session of congress. It is a trick easily practiced. It is only to insert in a bill the words "so far as affects commerce among the states," and there are never wanting those who, to forward private interests or class interests, propose enactments by congress to control the most intimate and exclusive police powers of the state—powers which affect the everyday business and conduct of their citizens.

It hardly needs pointing out how dangerous such abuse of the tremendous power conferred by the commerce clause of the constitution may become. Thanks to the common sense and wisdom of congress, many of those propositions do not escape the limbo of the committees to which they are assigned. But it sometimes happens otherwise. A conspicuous instance of this occurred in the last session of congress. An appeal to place all child labor under federal control, on the pretext that its product might enter into interstate commerce, was reported from the committee, and seriously and ably discussed by its distinguished advocate. Of course, if one kind of labor can be brought in this way within the purview of congressional legislation, all kinds of labor can, and it is easy to see, if such projects were successful, that little power of managing their own affairs would be left to the states. Emaculated and degraded, we might expect that they would soon lapse into the condition of provinces, to be governed by the satraps of a central government.

Zealous reformers, as well as social scoundrels, possessed with the sense of their own altruism, are eager to enlist for the advancement of their schemes the all pervading and powerful agency of the central government. They little heed the consequences that may flow from their mistakes, which will fall at once upon the whole people, from ocean to ocean and from the lakes to the gulf, and not upon the people alone of a single state.

It is a doctrine full of peril to our liberties that congress may seize upon any weapon it pleases out of the great armory of federal powers and wield it for a purpose for which it was not there deposited.

And what are we to say of the suggestion recently made that if congress is dissatisfied with the control given it by the constitution over interstate commerce it may arrogate to itself the power of control all commerce—that which is confined within state boundaries as well as that which is interstate in its character? The specific power under which this claim is to be made is, I believe, the power to establish post-offices and postroads, which is among the legislative powers enumerated in the eighth section of the first article of the constitution. No intimation is made as to the creation and building of a postroad by the government or of any needed regulation in the interest of the postal service of those roads over which that service is conducted. It is a bald assertion of the right to exercise a power not granted, under color and guise of an essentially different power granted for a specific purpose, in the exercise of which the power proposed to be usurped is not involved. It is a claim of the right to regulate interstate commerce though the constitution that has expressly confined the power of regulation to interstate commerce.

If this suggestion can be carried out, what police power of the state, however essential to its existence, will not be at the mercy of the caprice of congress, under some such fanciful construction as this, and of what value is our boasted right of local self-government if a legal caustic can be invented for the perversion of the plain language of the constitution? It is not a question between a strict construction and a liberal construction. That distinction is no longer to be recognized. It is the honest construction of the constitution upon which we should always insist. It can only be so in-

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