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A Few Fundamentals*

SILAS H. STRAWN†

We are on the eve of another National election. For weeks orators have been going about the country declaring that the salvation of the Republic depends upon the election of the candidate of the particular party with which the speaker is affiliated. As is usual in politics, appeals have been made to the emotions, the passions, and the prejudices of the people. There is no particular issue between the Democratic and the Republican parties. The Progressive party, however, has been trying to convince the voters that there is something radically wrong, not only with the administration of our affairs, but with the very structure of our Government. Thus we have an issue between those who believe in our form of government; in maintaining the distinction between its legislative, executive and judicial branches; in American independence; and in the administration's policy of cooperating with foreign nations, *and* those who believe that American democracy has been a failure; that the structure of our Government is at least defective; and that in reality we are an oligarchy governed by a few rich individuals and corporations.

The purpose of an election is to enable every one to express his choice as to whom he would have exercise the functions of government, yet how few, in casting their ballots, are controlled by their judgment rather than by their emotions or prejudices; how very few vote understandingly.

This is not the time or place to discuss the platforms of the respective parties. I inquire whether there is anything wrong with our government and are the people really suffering from misrule? Although the radical party cannot hope to succeed in this election, the efforts made and the attitude of its leaders in the Congress seem to indicate that we must meet the propositions put forth by this new party for some time to come. The charges they make and the remedies they suggest cannot be disposed of by vituperative denunciation or by ignoring them. The people of the country must be convinced of the unsoundness of their proposals. Radical thinkers are not all dishonest. They are often temperamental. Their impulses or emotions prevail over their judgment. They reach con-

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clusions without considering the premises. They do not study facts.

The platform of the Progressive party is made up by assembling in one document the propaganda of radicalism that has been spreading, not only in this country, but all over the world, since the great war.

The radicals propose to amend the Constitution by providing: (1) that no inferior federal judge shall set aside a law of Congress on the ground that it is unconstitutional; and (2) that if the Supreme Court assumes to declare any act of Congress unconstitutional or, by interpretation, undertakes to assert a public policy at variance with the statutory declaration of Congress, the Congress may, by re-enacting the law, nullify the action of the Court.

Experience has demonstrated that ours is the best governmental scheme yet devised, and that it functions effectively, because, during all the years of our national existence, we have adhered to the proposition that one branch of the government should not encroach upon the functions of the other branches. The line of distinction between the executive, legislative, and judicial departments is clearly defined by the Constitution.

Montesquieu said:

"There is no liberty if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

"There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."

Warren, in his excellent work on the Supreme Court, says:

"No institution of government can be devised which can be satisfactory at all times to all the people. But it may truly be said that in spite of many human imperfections, the Constitution today fulfills its functions in our national system better than any instrumentality which has ever yet been devised as a substitute."

A little more colloquial, but to the point, is the language of an editorial in a recent issue of the *Saturday Evening Post*, commenting upon the proposals of the radicals.

"If this plan is put into effect, it will result in handing the Constitution of the United States over to Congress to carry about in its pocket like a plug of eating tobacco, with the right to whittle off a chew at will as long as the plug holds out. It can be done if our people are tired of liberty, are tired of

living under the Constitution and want to see it whittled and chewed away."

Contemplate for a moment the chaos that would ensue if the Constitution should be so amended as to provide that no inferior federal judge shall set aside a law of Congress on the ground that it is unconstitutional; or that if the Supreme Court should decide any law unconstitutional, or by interpretation undertake to assert a public policy at variance with the statutory declaration of Congress, that Congress may, by re-enacting the law, nullify the action of the Court. Yet these are some of the proposals which were made in the last Congress.

This Republic is irrevocably committed to the principle of government by the majority. If we depart from that principle we strike at the very foundation upon which our nation rests.

Our Governmental machinery as now geared up is adequate to meet every emergency which may confront us. If the statesmen at Washington would devote more time to a conscientious employment of the existing governmental agencies, and less to investigating each other and to the preparation and advocacy of bills designed to get them into the lime-light, or which appeal to the reds and soviets we harbor, it would make for our greater happiness and prosperity.

There is nothing particularly new in political science. May I quote from Aristotle:

"Democracy, for example, arises out of the notion that those who are equal in any respect are equal in all respects; that because men are equally free, they claim to be absolutely equal. Oligarchy is based on the notion that those who are unequal in one respect are in all respects unequal; being unequal, that is, in property, they suppose themselves to be unequal absolutely. The democrats think that as they are equal they ought to be equal in all things; while the oligarchs, under the idea that they are unequal, claim too much, which is one form of inequality. All these forms of government have a kind of justice, but tried by an absolute standard, they are faulty; and therefore both parties, whenever their share in the government does not accord with their preconceived ideas, stir up revolution. * * *

"The universal and chief cause of this revolutionary feeling has already been mentioned, viz., the desire of equality, when men think that they are equal to others who have more than themselves; or, again, the desire of inequality or superiority when conceiving themselves to be superior they think they have not more but the same or less than their inferiors; pretensions which may and may not be just. Inferiors revolt in order that they may be equal and equals that they may be

superior. Such is the state of mind which creates revolutions. * * *

Every man and woman in this country, whether worker or shirker, rich or poor, is directly dependent upon capital. Capital is only a name for savings. We are all capitalists to a greater or less degree, as we or our ancestors have accumulated savings. The assertion that capital is the possession of a few individuals who have obtained and retain it wrongfully is not based on facts. Those who so vociferously advocate the disintegration of the capitalistic system and the sovietizing of our Government, are necessarily the beneficiaries of the system which they would destroy.

Corporations are denounced as the means whereby the few get together and rob the many. Yet, it is an undeniable fact that the larger the corporation the more general is its ownership by the people. The list of stockholders of the United States Steel Corporation alone contains more than 178,000 names. The reports of the Interstate Commerce Commission show that there are 777,132 holders of stock of Class 1 railroads and that the aggregate par value of the outstanding railroad stock held by these owners is \$7,242,191,000; that is, on the basis of \$100 per share par value, the average holdings of each owner is 93.2 shares. More than a million of our citizens own railroad bonds. The owners of these stocks and bonds belong in every walk of life and are scattered all over the United States.

Some advocate with piteous plaintiveness that the Congress of the United States is controlled by a small band of highwaymen having headquarters in Wall Street, and that these outlaws are always conspiring to reduce the great mass of our people to a condition of economic slavery by bribing or coercing the Congress. You may search the Congressional Record in vain for a verification of these wild statements. No important piece of legislation has come out of the Congress in my time except as the result of a compromise between the different factions. The compromises were not always satisfactory to anybody, nevertheless they were compromises. If the Government of the United States were dominated, as the radicals would have us believe, by a ruthless oligarchy, we would have had no Income Tax Law, no Sherman Anti-Trust Act, no Clayton Act, no Federal Trade Commission Act, no Federal Reserve Act, no Farm Loan Act, no direct election of United States Senators, and no Prohibition Act.

Every nation has its financial and commercial centers. The demands and conveniences of trade and commerce make this inevitable. Vice and Virtue, however, are not questions of geography. What

proof have we that the denizens of Wall Street are any less moral or more vicious than the citizens of Main Street? The activities on Wall Street may be more intense, and larger in volume, than those on Main Street, but if those of you who work on Wall Street will sit down with those of us who live or have lived on Main Street and frankly discuss the moral obliquity of our respective communities, I dare say we would conclude, as did Josh Billings, that "human natur' is the same in some folks as 'tis in others, 'cept a little more so."

Is our country prosperous and are our people happy? May I quote a few statistics:

We produce 43 per cent of the world's output of coal and consume 42 per cent.

We produce 54 per cent of the world's output of iron and consume 53 per cent.

We produce 64 per cent of the world's output of steel and consume 57 per cent.

We produce 49 per cent of the world's output of copper and consume 44 per cent.

We produce 64 per cent of the world's output of petroleum and consume 72 per cent.

We produce 69 per cent of the world's output of cotton and consume 37 per cent.

We produce 52 per cent of the world's output of timber and consume 51 per cent.

We produce 41 per cent of the world's output of shoes and consume 39 per cent.

We produce 43 per cent of the world's output of print paper and consume 50 per cent.

The homes of 47,000,000 of our people are provided with electricity.

We own 88 per cent of all the automobiles in the world—more than one motor car for every two families.

We have better food, better clothing, better homes, more newspapers and magazines, more amusements, and more luxuries than any other people; all of which are available alike to him who works as well as to him who loafs. We spend infinitely more for schools, hospitals, churches, and charity than any other people.

The American Red Cross is the greatest charitable agency ever created. No part of the earth is too remote to realize its beneficence. A Wall Street man, the late Mr. Henry P. Davison, gave a large part of his fortune, his health, and perhaps his life, to its permanent es-

tablishment. As you all know, the President of this University was once the honored head of the Red Cross.

It is difficult to understand why any laboring man can be discontented in this country. Labor is infinitely better off here than anywhere else. To the laboring man may I quote the figures given by the President of the United States in a recent address as follows:

"A most significant comparison has been made of wages paid by a concern operating in this country and abroad, making the same products, with exactly the same equipment, for the month of August. The average eight-hour wage is as follows: Italy, \$0.96; Belgium, \$1.10; France, \$1.35; Germany, \$1.46; England, \$2.28, but in the United States, \$5.60. * * * Our high wages have a remarkable effect on the consumption of farm products. We consume yearly 17 pounds of butter; Great Britain, 12; Italy a little over 3. We consume 103 pounds of sugar; Great Britain, 80; Italy, 18. We consume 183 pounds of meat; Great Britain, 120; Italy, 46. We consume 53 gallons of milk; Great Britain about 14, Italy about 10."

The people of every nation in the world would gladly exchange places with us. Let him who doubts the truth of these facts visit the countries of Europe and see how the Governments function and how the people live, and I predict that when he enters New York Harbor on his return trip he will thank God he is a citizen and resident of the United States even though, as has been facetiously remarked, the Statue of Liberty does over-shadow Ellis Island, a detention camp.

Why do not some of the agitators and promoters of the spirit of unrest in this country go to Russia and enjoy the luxuries (?) and comforts (?) offered by the Soviet government? We "spared" Emma Goldman to make the trip! She doesn't seem to like it there.

Walter Rathenau, the late German statesman and philosopher, said:

"If all the capital in the world were nationalized today, it would tomorrow be made over to innumerable borrowers, and would the day after tomorrow be distributed among innumerable owners. * * *

"Socialism has never enkindled the heart of man, nor has any great and fortunate deed ever been performed in its name. It has awakened interest, and aroused fear, but interests and fears rule for a day, not for an epoch."

How many of those who advocate a change in our governmental scheme would be willing to trust their coadjutors with the responsibility of working out the changes, governmental or economical, which they demand? They are sure that they, themselves, are the only ones capable of doing the job.

Although our form of government is the best, it is not perfect. Why not correct its imperfections and inadequacies in a spirit of con-

structive helpfulness, rather than declare its fundamental structure should be torn down and destroyed? No great statesman of this or any other age ever spent all of his time dwelling upon the defects of government. The men who have contributed most to the world's progress, or who have created anything that endured, have spent their time in being and doing, instead of in seeming and croaking. Too many are shouting about the lack of liberty and justice, because some one does not do their work for them, instead of doing it themselves. Most of the poverty that exists in these United States is the result of shiftlessness and indolence, and not of lack of opportunity for employment or of oppressive laws.

A little while ago it was my privilege to visit again the city of London as one of the guests of the British lawyers. The outstanding impression made by that experience was the respect for the law of the land, evidenced not only by the members of the British bar, but by every citizen of Great Britain, whatever his political faith, his occupation, or his station in life.

In England freedom of speech is encouraged and soap-box orators of every variety are numerous. I heard them voice their vagaries on a number of subjects, chiefly unemployment and doles, of which there is a great deal there at this time. However enthusiastic the speakers became, there was never a word of denunciation of the government as such.

The British always jealously maintain the spirit of obedience to the law and the speedy administration of justice. They exemplify the philosophy of Aristotle:

“for transgression creeps in unperceived and at last ruins the state, just as the recurrence of small expenses in time eats up a fortune.

“That which most contributes to the permanence of constitutions is the adaptation of education to the form of government, and, yet in our own day this principle is universally neglected. The best laws though sanctioned by every citizen of the state will be of no avail unless the young are trained by habit and education in the spirit of the constitution, * * *. And in democracies of the more extreme type there has arisen a false idea of freedom which is contradictory to the true interests of the state. For two principles are characteristic of democracy, the government of the majority and freedom. Men think that what is just is equal and that equality is the supremacy of the popular will; and that freedom and equality means the doing what a man likes. In such democracies every one lives as he pleases, or in the words of Euripides ‘According to his fancy.’ But this is all wrong. Men should not think

it slavery to live according to the rule of the constitution for it is their salvation."

I realize full well that every form of government, every economic scheme, every creative measure, and every social or political status is debatable. Let us qualify ourselves for the debate by becoming thoroughly imbued with a few fundamentals.

The Oxford scholar, Jowett, spoke well when he said:

"Don't let us complain of things or persons or of the indifference of the country, occupied in making money, but simply say to ourselves 'these are the things and persons through which and with which we have to work, and by influencing them or managing them or forcing them, the end must be attained or not at all.'"

How shall this spirit of unrest be quieted, and who shall assume the responsibility? Nearly forty years ago I heard Henry Ward Beecher say that when a man's business was out of order, he went to his lawyer; when his body was out of order, he went to his doctor; but when he didn't know what he wanted, he went to his preacher. Since the time of Beecher the complexity of our civilization has been so intensified that I would assume to change the conclusion reached by that eminent divine and say that *today*, when a man does not know what he wants, he goes to his lawyer.

Ever since the framing of our Federal Constitution the lawyer has been regarded as the leader of constructive thought in this country. Lawyers always have been, and probably always will be, the most potential factors in all governmental affairs. It is now customary to call upon the lawyer not only to diagnose the difficulties arising in all the vast field of social, business, and legal problems of our time, but to require him to prescribe the remedy for their solution. Why is this so? Is it not because the lawyer is presumed to have a trained and disciplined mind? He is assumed to be able to reason accurately from premises to conclusions. It is he who looks at conditions objectively and who resolves difficulties on general principles, uninfluenced by his selfish interests, his prejudices, or his emotions.

Why should not the lawyer be able to think accurately on political questions as well as upon those which are purely legal? All lawyers cannot be expected to reach the same conclusion from the same premises, but respecting the assaults upon the foundations of our government I believe all sane and sensible lawyers should have one opinion. Every lawyer is sworn to support the Federal Constitution. It therefore becomes his duty, when the Constitution is assailed or the basic laws of our country are sought to be subverted, to rise in defense of his

Government with as much vigor, courage, and enthusiasm as he does when war is declared against us by a foreign nation.

President Coolidge, in his New York address of April 22 last, said:

“One of the pre-eminent requisites of our country at the present time is to re-establish and emphasize in the public mind the law of service. The danger to America is not in the direction of the failure to maintain its economic position, but in the direction of the failure to maintain its ideals.”

The duty of the lawyer is service—service to his client, service to his country, but most important of all, service to his ideals. If the Constitution be the lawyer's ideal, as it should be, it is his duty to prevent it from being wrongfully amended or subverted. Assuming that I am speaking to lawyers, embryonic as well as real, we now come to a consideration of the question of how shall the lawyer prepare himself for his job? Artisans, such as carpenters, masons, plumbers, and coal miners, are required to pursue a long course of apprenticeship and to know *how* before they are permitted to ply their trades. Why should not the members of the bar be equally careful to see that those who intend to practice law should be well prepared? The time has long passed when the lawyer can practice law by ear, intuition, or impulse. That is true irrespective of how great a natural genius he may be. The science is too exacting, the range of activities too great.

The ultimate goal of every ambitious man is power and influence,—not money power. The power and influence of money is infinitely less satisfactory than is the power and influence of mind and character. To attain any degree of success at the bar and to exert any influence in his community, the lawyer must have a mind disciplined and trained by a liberal general education in addition to a thorough knowledge of fundamental legal principles. He must be a constant student, not only of the law, but of social, economic, and political conditions throughout the world.

A few days ago the President said:

“Education must teach more than the ability to earn a livelihood; it must teach the art of living. It is less important to teach what to think than to teach how to think. The end sought should be broad and liberal, rather than narrow and technical. The ideals of the classics, the humanities, must not be neglected. After all, it is only the ideal that is practical.”

The lawyer of today must know that this is a government of *all* the people and for *all* the people, not of some particular bloc or for any particular interest or bloc. A capable lawyer must be honest mentally as well as commercially. He is commercially honest because his business instinct tells him it is always the best policy.

He is mentally honest because he cannot be effective if he rides a hobby or sees red on any subject. If the lawyer of today is to measure up to the requirements expected of him by society; if he is to shape and guide aright the thought and action of the people and mould the public sentiment of his community, his city, or his state; if he is to do his full duty not only as a lawyer but as a citizen, he must be qualified by education and training. The more thorough the qualification, the better the lawyer.

Recognizing the necessity of raising the standard for admission to the bar, the American Bar Association at its meeting in Cincinnati in 1921 adopted certain standards for admission to the bar with which most of you are familiar:

"1. Every candidate for admission to the Bar should give evidence of graduation from a law school complying with the following standards:

- (a) It shall require as a condition of admission at least two years of study in a college;
- (b) It shall require its students to pursue a course of three years duration if they devote substantially all of their working time to their studies, and a longer course equivalent to the number of working hours, if they devote only part of their working time to their studies;
- (c) It shall provide an adequate library available for the use of its students;
- (d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

2. The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the Bar, and that every candidate should be subjected to an examination by public authority to determine his fitness."

Since the adoption of those resolutions the Council on Legal Education and Admissions to the Bar of the American Bar Association has been diligently carrying on the work delegated to it, with the result that 39 law schools are now complying with the requirements. I am glad to say that Cornell is a Class A School.

With this splendid start I am encouraged to believe the law schools and lawyers of this country will co-operate in an effort to better qualify those who intend to practice our profession. I am conscious, however, of the fact that colleges and universities can only furnish the facilities for men to fit themselves for positions; they cannot *make* the men for the places which they themselves must create. Colleges and universities afford an advantageous environment and an oppor-

tunity for that orderly discipline which enables one to keep one's feet on the ground, however high one's ideas may soar. Demagogues and agitators we shall always have with us. That their specious arguments shall not attain momentum; that the foundations of our government shall stand unshaken by their assaults; that the people of the United States shall not become a mere aggregation of groups or of individuals each going his own way and each distrustful of his neighbor, but that we shall remain a united nation, continuing to enjoy an abundance of prosperity and happiness in the future, as we have in the past, is the task for the accomplishment of which all loyal citizens, especially the lawyers, will enthusiastically enlist.