

latures began many people expected a rush of compulsory automobile liability insurance legislation. Time has not justified that fear. In no state has any really serious threat existed in 1939 though in a few states such bills were introduced. It seems reasonable to believe, therefore, that the educational efforts of the carriers and many others who have opposed such legislation in the past, have begun to have their effect. Perhaps more and more people are beginning to realize that not all problems, social or otherwise, can be cured by legislation, if at all, and that much may be lost so far as eventual and satisfactory solutions are concerned, by ill-considered and ineffective laws, however noble in purpose.

So far as I am concerned, I believe there is but one course to follow, and that is to oppose the adoption of laws providing for

Compulsory Automobile Liability Insurance and to strive for the perfection of the Financial Responsibility Laws and for improvement in their administration. The evil sought to be eliminated is recognized. It is not an evil for which the carriers are responsible, any more than the churches are responsible for sin. Like sin, it can only be eradicated finally when human perfection in all things can be reached. To attempt to solve it by legislation of the Massachusetts type is to bring about other evils which, it is submitted, are worse than the original evil. If such laws are inevitable, so be it, but I doubt that they are. Yet when and wherever adopted the carriers will make the best of them, cooperating in full degree, but knowing full well that surely, and probably swiftly, the process of rate-making and selection of risks will succumb to the insidious influence of the politician.

Insuring the Frontiers of Freedom

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ONE is loath to rise to speak in days like these. When we think of the streams of words that have flowed from the lips of men during these latter years, and now in this hour of civilization's travail behold the apparent futility of them all, we feel disposed to have done with speech making. This is a time when humanity is fairly struck dumb in the presence of its own folly. And yet, we dare not surrender to this sense of dejection. We must and shall remind ourselves that this world of ours has heretofore been shrouded in darkest gloom, and somehow the race has muddled through.

I have been refreshed in courage lately by reading again, as I do from time to time, the biography of Andrew Jackson, that stalwart patriot who began his fight for his country at the age of thirteen, in the days of the Revolution, and who continued fighting in one fashion or another for some sixty-five years thereafter. He saw the Republic born. He gave to it the best that was in him. He died happy in the consciousness that it had weathered the perils of adolescence and was able to assume its proper place in the family of nations.

The temper of the man is best illustrated by a remark made on the day after he had ceased to be president. For eight years he had held that post amid a turbulence such as no incumbent knew before or after his time. The day following the inauguration of his successor, the battle-scarred old veteran, whom his enemies had often hopefully believed to be on the verge of death, calmly took his cane and strolled about the streets of Washington. At a home where he had entered to converse with old friends, he was asked if he had any regrets over the two administrations he had then completed. He replied that he did have just two regrets. These were that he had not had the opportunity of shooting Henry Clay or of hanging John C. Calhoun! The record seems clear that the latter gentleman had reason to believe on several occasions that he was quite near the gallows.

However any of us may disagree with certain of Jackson's policies or techniques, we must revere the man for his tenacity of purpose in never compromising or surrendering. There seemed to be stored within him an inexhaustible force that opposition and obstacles served only to make stronger in behalf of the

cause of freedom and of the rights of men. With a punctilious regard for all the amenities of life, he was ruthless as against special privilege, tyranny from any source, and injustice in any form.

You remember, I am sure, the humble origin of this man. While he was a frontiersman, yet he was of the aristocracy of that frontier, an aristocracy of sheer merit and achievement. A remarkable fact is that until called to the presidency he never sought office of any kind, and yet we see the influence of the man steadily broadening and his star ascending. Beginning his career in Tennessee as a prosecuting attorney, we see him as judge, senator, general, governor, and ultimately the chief magistrate of his country. These were places for which he was literally drafted and which were not of his own seeking. The young nation had need of the services of a man like that.

I am aware that it is a common belief that the old American frontier has now disappeared. To this fact many of our so-called new problems are ascribed. This is regularly offered as an excuse for resorting to strange practices and departing from long tried principles. I venture to disagree. The frontier has not disappeared, and the old frontier perils and problems, as well as its opportunities, are yet with us. In Jackson's day it may be that the line was rather clearly marked, but even he at times found it a shadowy one, for the enemies of freedom operated from behind the line as well as before it. Beyond the line were Indians, Spaniards and British who from time to time laid their plans and made their onslaughts. Within the line were clever schemers, traitors, and nondescript seekers of special privilege. Old Hickory dedicated himself to the task of insuring the frontier of freedom. For him those frontiers lay wherever the attack was being made, and there he fought.

If you think that conditions and problems of that day were radically different from those of our own, let me point out that they were strikingly similar. Unemployment and the unrest therefrom were common. Mechanical power was upsetting man power. Prices fell, surplus crops could not be disposed of, and yet there was widespread want and suffering for lack of the bare necessities of life. About the only difference was that the difficulties besetting life in this country a century ago were composed of a combination of real physical perils coupled with dire economic distress. We stultify ourselves if we think we of this generation are the victims of some strange

malady heretofore unknown. That in itself is a disease of the mind well recognized in medical circles.

So it was in those dark days that there arose on the frontier a champion who, in his daily life, wherever he went, poured out his strength in behalf of the great cause of justice, equality and freedom for American manhood. That struggle is not over. It will never be over. It will recur as regularly as generations come and go. The frontier may be changed in line and in form, but along its course there will ever be fought this age old struggle. The scene may alter, the attack may vary, but the fight is ever on. It was this truth that the great Irish lawyer Curran was voicing when he uttered those memorable words, "Eternal vigilance is the price of liberty."

It is to a modern phase of this battle along the frontier of freedom that I invite your attention this evening.

Mankind has come a long way in its effort to administer justice. There was a time when influence, power and intrigue could gain for privileged persons and groups, favorable decisions at the hands of judges. Getting the ear of the court in secret became the deciding factor, and thus justice was prostituted. Centuries of tireless struggle were required to end such a system, but the fight was carried through, until today we are warranted in saying that before our law and its tribunals rich and poor, weak and strong, stand upon an equal footing. The judicial officer now guilty of betraying his trust is so rare an exception that our confidence in the integrity of our courts is in no wise shaken. That was a great ideal—to establish a dispensing of justice that was no respecter of persons, that operated impartially upon the mighty and the lowly. We treasure that ideal, and well may we do so. You will see it emblazoned in letters of stone on the facade of the new Supreme Court building in Washington, "Equal Justice Under Law." That is a simple statement of a priceless heritage, one that lies at the foundation of any civilization worthy of the name.

But the forces of selfishness and of greed have not surrendered. If they cannot procure an unequal administration of justice, they have perceived that another course is open to them. By procuring the enactment of unequal laws they can force the courts into administering an unequal justice in their behalf. This is a day of unequal laws. Highly organized pressure groups descend upon legis-

lative halls. Sometimes openly and sometimes under cover they demand and procure enactments that give them special privileges under apparent legal authority. We have come to see campaigns waged on no higher plane than the promise of unequal laws. We have found subtle forces at work bringing about the passage of such laws in disguise. It is a game as ruthless and as brazen as any that has ever been pitted against the cause of freedom.

Do not misunderstand me. I am not here to condemn legislators. What I am dealing with is the existing situation as we find it. Legislators are human, and they can be unduly swayed and imposed upon. When the loud clamor is raised by one of these high pressure, self-seeking groups, legislators are easily led to believe that such is "the voice of the people", and they succumb to it. Again, they may be deliberately fooled. Let me give you a concrete example of this latter method. Some years ago I was asked, from a very responsible source, to draft a statute which would drastically regulate the production of a certain article in a certain state. It happened that this article was one which did have a direct relation to the public health, and hence far reaching regulation would be valid under the police power. I incorporated into the bill all of the extreme regulations that had been submitted. On delivering the draft to the parties who had requested it, I remarked that they would doubtless experience considerable difficulty in getting the bill passed, since the large producers, who would be on the lookout, would combine their influence to defeat such a highly regulatory measure. The gentleman to whom I spoke smilingly replied, "No, we shall have their active support, for they are behind this bill. It has been drawn for the purpose of eliminating all the small producers from the field. The big producers can easily comply. The little fellows can not." Unwittingly, I had lent my hand to that which I stand here tonight to condemn.

You gentlemen interested in protecting the rights of insurance companies are no strangers to the kind of legislation I am talking about. You have seen the taxing power, the police power and the general regulatory power of government used in the guise of legislative enactments to bring about unequal justice against your clients.

Of course, the first reaction of the constitutional lawyer is that all such discriminatory legislation can and will be properly disposed of by the courts under the equal protection

clauses of our written constitutions. Unfortunately our former ideas concerning class legislation appear to be due for some drastic revision.

Classification for purposes of legislation is clearly valid, and has always been recognized, but our courts have long held that the classification must be reasonable and not arbitrary. Hitherto the courts have been the judges of what is reasonable and what is arbitrary classification. Under such a system we were fairly well protected against these unequal laws.

But today there is a new demand. The forces behind these legislative enactments have gone further, and are demanding that the legislature must be regarded as the final judge of what is reasonable classification. In other words, the courts must accept the classification as adopted by the legislative branch of government. It is not my purpose here to discuss the validity or the propriety of that demand. That is a subject unto itself. What we are concerned with right now is the fact that such demand is being made, and the further fact that it is gaining recognition.

There are various reasons why the courts are tending to heed this demand. In the first place, there is the old established principle that courts will sustain legislation as valid whenever under any reasonable view it is possible to do so, while the burden is placed on the complaining party clearly to show the invalidity of the enactment. In the second place, so-called new conditions and problems are said to have broadened the scope of classification for various purposes. In the third place, there has been an insistent demand from highly vocal and influential quarters that the legislative branch of government be accorded a place of supremacy over the courts in matters of legislative policy.

Without assuming to pass judgment on the new attitude toward this type of law making, it is proper here to consider the implications that flow from it. In his recent address before the American Bar Association, Mr. Hogan, president of the Association, made the important point that by virtue of what has euphoniouly been termed "shifts in constitutional doctrine" by the Federal Supreme Court, there has resulted a "devastating destruction of constitutional limitations upon Federal power". He concluded his thoughtful discussion with the assertion that henceforth for protection against the exercise of arbitrary power, the people must place reliance in the legislative rather than in the judi-

cial department of the National Government. Without entering the controversial field, I venture to add another thought to that conclusion. Not only must the people look to the legislative branch of government, but they must look at it, they must watch it as never before. Again, let me say, it is not my purpose to disparage the legislative branch, nor do I here undertake to argue the point of its being given precedence over the judicial branch. What I do say is that if it be accorded this position, and all the signs indicate that such a change is being achieved, then the legislature must be made the object of a scrutiny it has never received before. These men are in the very midst of political activity and pressure. Often their votes represent not their sound judgment but their reaction to vote-getting measures. It is natural, then, that all the forces of special privilege, seeking their avaricious ends, should here center their efforts. The larger and unorganized groups of citizens, going about their daily tasks, and who in the end must be the victims, will find it difficult to protect themselves.

To state it bluntly, men may be enslaved to other men through the process of unequal laws. Here then is the frontier of freedom, and here the battle must be fought. We as lawyers must enter that fight, if we are to meet the responsibility that rests upon us. I suggest three phases of the campaign to be waged.

In the first place, the people should be told. It must carefully be explained to them that the meaning and the extent of their constitutional rights no longer rest in the decisions of the courts, but in the will of the legislature. The gentlemen who would have it so, can not object to this campaign of enlightenment. Surely such a reversal in our legal system ought to be brought home to those who live under it. They ought to know just what is coming to pass.

In the second place, we must insist that the personnel of the law making bodies be raised to the highest standard. The bar has fought hard and valiantly to the end that the judiciary should be able and above reproach. We have done this because we knew that in the keeping of the judges rested the ultimate rights of our clients and the fundamental liberties of our citizenship. Now that these responsibilities are being transferred, we must be equally zealous that legislators shall be men of integrity and discernment, who can

and will, in every action, place right and justice above all other considerations. The accomplishment of this end will be no easy task. Elections are frequent, the numbers elected are large, and political pressure is ever present. But it happens that these are problems the new regime forces us to face. Henceforth every legislator must be a judge, with all the qualities, abilities and impartiality of a judge.

Finally, every proposed act of the legislative body must be subjected to careful scrutiny. This, again, will be a difficult task. Hitherto, these enactments have been subject to review in the courts, where both sides are represented, and with a right of appeal for the correction of errors. If legislatures are now to have a free hand, if their decision to single out and to legislate for or against a particular group of citizens, is to be deemed conclusive on matters of constitutional right, then it behooves lawyers in the interest of their clients, it behooves every citizen, to watch every move of the legislative body before it is too late to complain.

I am not at all certain that we can begin to measure up to the task. What I have undertaken to do is to point out where the frontier of freedom lies today, and what the nature of the struggle is. The scene of the contest is in the legislative halls of the nation. The fight is against the organized groups who seek unequal laws to promote their selfish interests. Obviously, our success in the fight will depend in large measure upon an aroused and enlightened public opinion. The iniquities of class legislation must be brought home to our people. They must be made to see that if it be tolerated for one class, the system leads to special favors for other classes. Blocks are formed, log rolling begins, and government becomes a game of grab.

Let us say to the American people that it matters not that a particular measure be backed by one million organized voters; if it be vicious class legislation, using the powers of government for the benefit of a special group, then it shall and must be defeated. Let us amplify that phrase marking the Supreme Court's building, by writing into it another word, so that it shall read, "Equal Justice Under *Equal Law*"; and when so rewritten let us carry it into every legislative chamber in the land. In this manner we shall serve notice upon legislators that equal justice demands equal laws, and that the day of playing to favored groups is at an end.

