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# THE CITIZEN AND THE CONSTITUTION

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## \*THE CITIZEN AND THE CONSTITUTION

An old adage admonishes that young men be chosen for action but old men for counsel. And true it is that the young act with less deliberation and the old ponder long ere they move.

I can wish you no greater blessing than that each of you carry your youthful activity into your eldest days, that you may be boys at heart when your hairs are quite gray—or gone, that the soul of your youth may survive to save your aged deliberations from abortion.

And I can wish the world no greater blessing than that your youthful activity may be directed by the habit cultivated now of preliminary consideration.

Useful to yourself as this restraint will be, it cannot fail also to be a blessing to your country. For what we need most among the voters and among the statesmen of this great country is more wise deliberation and less hasty action.

The great prophets who preached the gospel of liberty to our fathers foresaw this condition, and established a system of deliberation which works so well that loud complaints are made against it and its successful operation.

Very true, these constitutional curbs upon haste do not operate so drastically as to prevent the incorporation into our law and customs of those changes the people know they want, like the Income Tax. But certain eager reformers wax very impatient over the tendency of constitutional limitations to defer the adoption of those changes the people do not yet know they want.

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\* Address delivered before the graduating classes of the Yale Law School, June, 1914.

It were well if each of you could learn to appreciate fully the purpose and efficiency and beneficence of the constitutional guards against excessive speed, as well as the constitutional insurance to us and our progeny of the rights and liberties that constitute a priceless heirloom in our national family.

The country needs a host of clear-headed, active men in the electorate who shall discern and brand with the infamy it deserves every assault upon the constitutional foundation of our liberty, prosperity and happiness.

Something is radically wrong in the mental processes of the electorate or else patriotism is at its last gasp when, with hardly a whisper of protest, a retired chief executive may brag to the representatives of the people of his treasonable scheme to intrude upon state rights and violate otherwise the fundamental law by establishing a military receivership over coal mines pending a strike, admitting without a suspicion of decent shame that he had well considered that his offense might be impeachable if committed—impeachable, of course, only because the acts planned would have been unconstitutional and lawless.

Our forebears, clear of head and far of sight, anticipated just such vicious attacks by those in power and sought to insure to us a government of laws and not of men. And through their wisdom such a government is ours for a little vigilance.

Of one thing, however, you may be most sure: the duty and opportunity of vigilance rests not alone upon the federal and state officials, not alone upon the courts, but primarily and most fully upon the men with the ballots. And since lawyers are well qualified to appreciate the necessity for law and to understand how imperative it is that the necessary law be respected and obeyed—that duty of eternal vigilance lies heavily upon the legal profession.

Therefore, I call upon you to stand ever ready to do battle against every enemy of constitutional law and constitutional liberty, because you are young, because the country needs such service from you and because, as lawyers, you will have a special mission to faithfully serve in the Constitutional Army.

I do not pretend that any reward follows such service except the most satisfactory and completely adequate reward which is found in the consciousness that you have discharged faithfully the duty you owe to the country, to your children and their children and to yourself—the duty to bear your part in the human

struggle for truer freedom and higher and better civilization.

True patriotism is the only foundation upon which such a service can rest—not the oratorical type, that loves the flamboyant peroration and the applause of the crowd; not the functional type that is satisfied with the high seat at the public feast; not the stipendary sort that is happy only in public office; not the patent medicine kind that is always prescribing a newer and more nauseous cure for a body politic that needs only watchful care and the fresh air of real freedom.

The true patriotism is the only brand that will produce real citizenship, and it is free from selfishness and shorn of pyrotechnics. The man inspired by it stands ever ready for any service, at primary, at the poll, in the campaign, on the stump, or in public office or wherever else his work is most needed. His voice is heard in commendation of every political and social betterment accomplished by whatever party. But his great care for the true weal of the public prevents his advocating or acquiescing in the novel and risky theories that pretend to point a short cut to the Millenium. He is ever ready to consider any proposal for betterment but its novelty does not insure his acceptance. There must be other adequate evidence of its feasibility and probable efficiency. He has sufficient reasons for his every opinion on public questions and can state them without noisy declamation or impatience. He is closely allied to one of the great political parties because he recognizes their office in our form of government and because he realizes that his effort to serve his country can, as a rule, be most effective inside party lines. He stands eternally opposed to all that may be petty or unclean in his party and its strife for victory. He bends every effort toward the nomination by his party of the man most fit for each office. Upon every question his vote and his voice are guided by his conscience, by careful study and deep deliberation. He is never among those who advocate that form of lynch law which seeks to punish the wrongdoer or attain better conditions for the masses by usurpation or other violation of fundamental or statute law. The heart of his patriotism is a sincere desire for the best attainable conditions for every soul that calls his native land "Home". But he realizes that any possible step ahead would be too dear if purchased only by the sacrifice of some constitutional safeguard. He remembers always that the framers of our system of government left ample space for the incorporation there-

in of every needed reform, the only restriction being that no changes shall be effected ere due pause is made for deliberation. His soul is not filled with impatience and despair at this necessary and brief consideration by the people, for he reflects philosophically that the longest way round is apt to be the safest way home.

I have sketched briefly and crudely the man in whose soul true patriotism is enshrined. And I appeal to each of you to cultivate and exercise such patriotism.

There is in this no promise or hope, perhaps, of material reward, of adulation, or glorious achievement, of high station, of power or of a noble mausoleum even. But there is the certainty that you will enjoy the supreme satisfaction that comes of the consciousness that partly through your effort and the efforts of the true men who stand shoulder to shoulder with you, this country of ours, great and free, marches still at the head of the great army of human progress.

Your country calls you to this great devotion in its hour of unrest. Your fellow men here and yonder and from the hills and deserts of distant lands cry your help.

If our people cannot govern themselves here, wisely and safely, how shall there be inspiration for other peoples to struggle for self-government? And if each man does not his share toward the accomplishment of that wise and safe government, how shall it be attained?

We cannot leave our government to the professional politician. He is not always a statesman. He is not always a patriot. He is not always wise. He is not always honest.

It is our duty and privilege to govern ourselves through our representatives. But they should be our carefully selected and watched and counselled agents.

Never dream that our government could be conducted without politicians and parties. Never think that your patriotism can find room for full exercise outside of party lines.

Choose your party with care. Let it be one with numerical strength and that one whose principles and men strongly appeal to you. Nor worry if it be not the ancestral party.

Well affiliated there are two directions for effort. First your endeavor must be to assist the element that in your, as in every,

party strives for the adoption of wisest principle and the nomination of fittest men. Next you must work with a will for the party's victory.

Unless an office needs you, or your nomination eliminates a man eminently unfit, leave the nominations to office to others.

Do not seek prominence in the party. That will come without seeking when earned.

Show no pride when apparently insignificant party work is offered. Faithful service in little things may be the highest service possible just because it is so hard to get efficient men for minor tasks.

#### UNCONSTITUTIONALISM.

Reject every man and every principle that fails to recognize the supremacy of the law.

The best man born of woman is but a fiend incarnate if he holds the sceptre of power and defies the law which placed that sceptre in his hand temporarily.

The best principle born of thought is but a red rag of anarchy if it must be flaunted defiantly in the face of a constitution.

It is ever easy to modify our constitutions. It is but necessary that the people will it and evidence their will by the prescribed method. Only a wobbly cause seeks to dodge the constitutional restrictions.

It is ever easy to win over the people to a strong and wise course. But the people are the masters of the constitutions and wise or unwise their judgment controls. The framers of the Constitution were right, however, in the assumption that almost invariably the action of the people will be wise provided always they act after due deliberation.

Those who find the Constitution a stumbling block are either near-statesmen impatient to break the reform record for the resulting vote, or they are political demagogues or social dreamers who seek to force some sweet morsel of human betterment down the throat of the public, ready or no.

No need can be great enough to justify defiance of constitutional provision or reform by usurpation.

Washington realized that many a self-opinionated public official would dare to defy the limits placed upon his power by the people, masters alike of official and Constitution, and he saw the danger of the peoples' co-operation or acquiescence in such a violation of the charter of the government, and he warned us

“Let there be no change by usurpation, for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed—the precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can, at any time, yield.”

There is serious danger of usurpation at but one point, and that is in the executive department of government. The courts empowered but to construe the fundamental law established directly by the people and the statute law passed by the legislative branch and O. K'd. by the executive have no opportunity or temptation to usurp other powers or oppress the people. The legislative department, empowered but to pass laws, which can be enforced by the executive only and which the courts construe and if unconstitutional reject, can never grasp other powers or rob the people of any right or liberty however much they may attempt to do so.

The executive alone is sufficiently dangerous to constitute a risk for insurance.

We have already instanced an executive who was prevented only by Providence from most tyrannous acts of usurpation.

Executive influence over legislation is so common that it no longer excites even the mildest remonstrance. The constitutions permit an executive to suggest subjects for legislation and to sign or veto passed bills. But neither by letter nor spirit does any constitution I am familiar with permit the executive to “put through” legislation. But rare is the executive of recent history who has not regarded this as his prime work.

We have had at least one executive who usurped the function of chastising the courts, even the highest court, for decisions unsatisfactory to him personally.

All such grasping for power by the executive branch is a defiance of our constitutions and our people and should be vigorously condemned and opposed.

The executive department of the national government is ever prone to cast covetous eyes on powers not surrendered by the states to the Federal Government.

You remember, of course, that the Constitution commits specified powers to the Federal Government, and it expressly provides that powers not definitely conferred are withheld.

This being so, it therefore follows that, whether it leaves the Federal Government impotent as we are told, or amply equipped, as we believe, the Federal Government must manage to get on, as it has now for lo! these many years, without any additional powers unless the people expressly grant them in the manner by the fundamental law prescribed.

It might be well to say here in a parenthesis that neither the Federal nor any State Government can complain with justice of lack of power. Each and every one is blessed with a superabundance of power. What with their powers, their annual or semi-annual overplus of statute and their countless officials, departments, commissions, etc., we are a very much be-governed people. There would be great advance in economy and efficiency if our big stick of government could be whittled down to the essential size of a policeman's billy. We have gone beyond the point of paternalism and our governments are now maternalistic and are nursing and cuddling us like so many yearlings just out of our long clothes. The other sex will have little to add to the day nursery arrangements when those fair sisters come to their own in the body politic.

The federal powers were long ago amply extended by judicial construction of the commerce clause, and in other minor and numerous respects until doubtless the framers of that magnificent deed of powers grew restless in their graves.

In these days nothing commands respect solely because of its antiquity. And there is no good reason why it should. Neither is there any good reason to assume antiquity is alone sufficient ground for condemnation of anything.

Such a view of our fundamental law is absurd because it was the product of sore experience, large observation and long consideration. It has excited the admiration of every sober mind studying it. It has been thoroughly tested and found flexible and efficient at every point.

And yet by the narrow minded its provisions are severely criticised, its omnipotence is questioned and its provisions are threatened with evasion.

It is sought to lop off from the only department of government which has shown any disposition to maintain the supremacy of the constitutions, or is equipped to, its inherent right and duty to choose to follow the constitutions rather than statutes that are in conflict with them.



So far as an ordinary mind can discern the carping critics do not care whether this power goes to the people, to some other governmental official or department or commission, or whether it vanishes into thin air. Their one thought seems to be that since the courts have been faithful to their trust the courts must be shorn of the opportunity to longer protect the people and their constitutions.

The favorite of all suggestions for preventing the courts from following the provisions of the fundamental as well as the statute law is to fling from the bench any judge so offending. This method is known as the recall of judges.

It would work out very comfortably for a judge without a conscience for he need bother not at all about the legal questions in a case. It would but be necessary for him to ascertain the disposition of the political powers that might be and decide the case accordingly. Once systematized this might very speedily reduce the crowded court calendar to a working basis. And eventually a further reform might be instituted by dispensing with the trials and arguments. The counsel could submit papers accompanied by an order consented to by the recognized leadership of the party in power and the order could be signed at once.

The feeling against the courts is without justification and was conceived and nursed in resentment excited by the neglect of our courts to abdicate their functions and become the personally conducted tribunal of a masterful executive.

The courts deserve better treatment and if you will study our judicial history you will become members of the select few who constitute the Order of the Defenders of the Judiciary, the judges themselves being *ex-officio* members of the A. O. D. C.—the Ancient Order of Defenders of the Constitutions.

In this connection I wish to point out to you another opportunity to serve the Homeland, it being a peculiar duty incumbent on the bar. It is the defense of the courts from the attacks of the ignorant. Our courts maintain a dignified reserve under the severest attacks and the bar fully equipped to appreciate the ground for every decision are alone qualified to stand between the courts and unjust criticism.

Never be of those who peevishly abuse the court behind the judicial back, but defend warmly against every ignorant critic.

The lawyer has been and ever will be a power in politics because the public recognizes his special equipment. And his opin-

ion on any political question is received with great respect by his neighbors, and friends and clients. This condition carries with it a considerable responsibility, for it demands of every member of the bar great care lest he be a blind leader of the blind.

The men who seek and accept his opinions for their guidance believe that he has investigated and deliberated each public question; and fairness to these seekers for help and to himself demands that he thus qualify himself to play the oracle.

There are plenty of tongues that preach before they think and the man with the cool head must counteract the effect upon public opinion of all aimless, unthought and unthinkable twaddle.

In speech, newspaper interview, lecture and magazine article, in ordinary conversation and in general discussion of public questions let your deliberately formed opinions do battle with the crude, glib drivel of the man who has no time or inclination for careful thought.

Do what you can, too, to excite the interest of others in public questions and to incite them to take upon their shoulders at least their own share of the duty of the electorate.

There is but one fault in the system of government formulated for us by the lofty souls who were the recognized leaders at the end of the sixteenth century. Having paid the price of liberty they never counted on human nature being so careless of the great inheritance. They assumed that each man would eagerly perform the full duty of citizenship by casting an honest and informed vote at the polls on election day and guarding his dearly-bought rights and liberties from encroachment on every day.

The fact is clearly apparent to us now, however, that as Mr. Bryce has said: "The greatest peril to self-government is at all times to be found in the want of zeal and energy among the citizens. This is a peril which exists in democracies as well as despotisms. Submission is less frequently due to overwhelming force than to the apathy of those who find acquiescence easier than resistance."

Every man you can bring to a knowledge of his duty as a citizen and to an understanding exercise of his rights, privileges, opinion and vote, is another recruit enlisted in the crew of the Ship of State, *U. S. Constitution*.

The good old ship is sailing upon a happy and prosperous voyage, mates. The fair wind of freedom bears the shapely craft

swiftly on her way. Every seaman aboard ship fills his lungs with the same sturdy air as he bends his muscles to his will, Freedom's flag flutters in the breeze, and the ship sails on in calm and storm, by day and night, freighted with her millions of good men and true, and bearing them ever onward in safety. Countless millions line the shore stretching their sight to mark her course and other countless millions eagerly inquire, "The good ship, 'What of her'?" For, in the course she sails, our Ship of State, smaller craft and meaner dare to venture, in the hope that they too may ride the sea she breasts so nobly, and be wafted onward in her wake by the same fair wind. And God grant that each may weather the storms and sail on in prosperity and peace.

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