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DEMOCRACY AND LAW.

By Lindley M. Garrison.*

While democracy offers the greatest opportunity to the individual citizen it puts upon him the greatest responsibility. Its very essence being a revolt against arbitrary imposition, its essential basis is law.

In other forms there are the government and the people, those who govern and those who are governed. In democracy the people are the government and the government are the people, and the governors and governed are indistinguishable.

In other forms of government the responsibility for the conduct of public affairs is assumed by the oligarchy or monarchy and the individual has only his own personal affairs to attend to; in a democracy the public affairs are his as well.

In oligarchies or monarchies the arbitrary will of the rulers regulates and determines the nature, character and extent of government. In democracies this is done by the people themselves. They do this by the constitutional or fundamental law of their being.

If a democracy is to persist there must, therefore, be absolute reverence for the law. It is the very foundation and basis of its existence.

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It is imperative that we who are immediately concerned with the study and knowledge of law should pause and consider the present situation of our own experiment in democracy.

Is it the fact that our people reverence law? That they realize the basic principles of their government which must be adhered to and preserved if the government as conceived is to be maintained? That they appreciate the unique and wonderful opportunity which is theirs, and the danger which lies in thoughtless and heedless conduct with respect to it?

In the onrush of life in this New World, with its boundless and unprecedented opportunities for the individual, it is as natural as it is unfortunate that each one is so occupied with his own personal affairs that he pays little or no attention to vital matters of public concern.

We are so accustomed to accept whatever is, without question or analysis, that it is difficult for us to appreciate that our government is only 134 years old; that two biblical spans of threescore years and ten have not yet been attained by it.

Without a model when created, growing amazingly big with disconcerting suddenness, successful beyond all prophecy, surviving shocks and crises from without and from within and emerging therefrom strengthened instead of weakened, it is natural that we should believe our nation a true child of fortune whose sons need take no heed of the morrow.

It is certainly true that we are taking little or no heed of the morrow. We see upon every hand departure after departure from the essential principles upon which our whole governmental system was based. We observe the strain and stress thus put upon it. We see these things done heedlessly, not only with disregard of the immediate consequences, but entirely oblivious of the fact that such assaults are fundamental, not incidental, in their character; that they strike at the very basis.

Little by little the very foundation stones of the structure are being disintegrated or undermined. The means by which this is being accomplished are so subtle and insidious that few are even aware of the fact, and there not only is no numerous army of defense but the small handful who do utter warnings are un-

heeded. Their warnings fall upon deaf ears, they are scoffed at as reactionaries, as being wedded to the past, and incapable of appreciating modern ideas and the necessities of progress. The whole popular tendency at the present time is averse to the calm, steady consideration necessary to reach proper conclusions.

If what is taking place were merely the misuse of defined powers or even their abuse, it would be disturbing but not dangerous. If we were merely witnessing a people groping about in the conduct of public affairs under novel conditions, we might deplore the lack of wisdom or of reason shown in various of the results produced, but so long as each public agency confined itself to its appointed sphere and merely misused or failed to properly use the functions entrusted to it there would be no legitimate ground for despair and much legitimate ground for hope.

What is going on is, however, not this, but something very different and very much more dangerous. It is an entire failure to adhere to the law of our being. We are witnessing the departure in radical ways from the fundamental considerations which led to the adoption of our system of government and which distinguishes it from other prior experiments in government—a rending and breaking apart of the constituent elements of the whole structure and a changing of its nature and form; not changing, altering and amending it in accordance with the provisions furnished for that purpose, but despite them. The organic law is left as written, but action directly repugnant to it or violative of it is constantly tolerated and encouraged.

The distressing consideration is that this is not only being done without vigorous and hopeful opposition, but there is scarcely any realization of the fact. There is no political party, no school of thought, no propaganda engaged in bringing the truth home to the people. The few who very occasionally raise their voices in protest against some extreme departure from an essential principle of our system of government are immediately placed under suspicion and the inquiry is almost always as to their motives and not at all with respect to the soundness or value of their contentions. It must be admitted that there is little to encourage those who conceive it their duty to point

out the inevitable result of the prevailing tendency. The very fact that humanitarian motives of the most worthy character actuate those who are doing the harm makes it still more difficult to obtain a proper hearing and consideration.

It is difficult to make clear to the popular mind that in opposing the doing of a certain beneficent thing in the way proposed, you are not opposed to that which is sought to be done, but are opposed for proper reasons to the way it is sought to be accomplished. It is difficult to make clear that the preservation of the essential elements of our system of government is of much greater importance than the attainment of some greatly desired reform proposed to be secured at the expense of the integrity of the system. With a reform brought forward as necessary for the public welfare and for the advancement of society, little heed is given to one who refers to such abstruse things as the organic law or underlying principles of government. One who does so is immediately labelled as a praiser of past times and as non-progressive.

In many instances progress is popularly synonymous with movement and the direction of the movement is not considered worthy of thought. The constitution is too often treated as a mere scrap of paper, and fundamental elements of our system of government are cast upon the scrap heap as obsolete things.

I am not here concerned with the question as to whether the things done are wise or otherwise. I am directly considering whether they should have been done in the way in which they were done, and should continue to be done in like ways. If I am wrong in believing that the whole modern tendency threatens the very integrity of our system of government, then such mistakes as have been made are negligible; but if I am right in thus believing, then there is indeed the gravest matter for consideration. If the modern tendency is to disregard organic law, to depart from the basis upon which our system is based, and to act contrary to the spirit which animated it, then no immediate benefits to be secured by thus proceeding can counterbalance the untoward consequences of such conduct. The question is not initially, therefore, whether the new product is better or worse than that which could be pro-

duced by adhering to the law and spirit of our being, but whether the necessity of adhering thereto is not imperative and essential. By so doing reforms would be such in fact as well as in name. The form of the government would be legally and properly changed to give it the desired rights and powers; and thus reformed would function organically.

Much time and space has been devoted to debate as to the best form of government. Each one has its manifest advantages and obvious disadvantages. Each one has its supporters and opponents. Monarchy, oligarchy, constitutional monarchy, pure democracy and representative democracy, each has virtues and the defects of its virtue. Each, however, is *sui generis* and each differs in essential particulars from the other.

At the time of the conception and birth of our own national government each of these other kinds, excepting representative democracy, had been given a full and fair trial. From the first there was no thought of any other than a republican form of government—one in which the executives should be chosen by the people themselves. There was much dispute, however, as to the extent and character of the participation of the people; that is, the character of democracy that should be adopted.

The only experiments in pure democracy on any grand scale such as those of Athens and Rome had failed because pure democracy is incapable of government except within a very small and limited area. It is only where the people are in such intimate touch and contact with their public affairs that they are hardly distinguishable from their private affairs, that the people can successfully rule by direct participation in government. The little city of Rome through the exercise of governmental functions by its own citizens attempted to rule the world, and this effort at pure democracy failed, as it was inevitable that it should fail. Determined as the framers of our systems of government were to adopt a republican-democratic system, they wisely discarded any attempt at pure democracy and made definite and absolute provisions for representative government, the only kind which gave any hope of success under the circumstances existing and to exist

in this country. Representative government under a written constitution was therefore the very keystone of the arch.

Ours was the first great attempt at a representative democracy thus circumstanced. The choice was consciously and deliberately made. It was an almost inspired decision. It afforded, we firmly believe, the greatest opportunity ever offered mankind to expand and develop individual life under the best possible conditions of private and public welfare.

We are the heirs of this great spiritual and material estate. Ours is the responsibility to maintain it in its essential integrity or to impair it and perhaps waste it. Are we true to this great trust? Are we striving with every ounce of our strength and our intelligence to maintain and preserve the essential bases of our national existence, or are we careless and heedless, letting the popularity of superficial thought and unregulated emotion sweep us from our foundations and land us on quicksand, which has no stability and will sooner or later give way beneath us?

Do we even appreciate the magnificence of the opportunity which is ours? Do we realize that this great experiment in democratic-republican government is the present hope of mankind; that if we are firm of mind and steady of purpose and conserve the system by proper attention to its essential elements we are doing a service of world-wide importance; that the great wave of democracy which is sweeping over the world must contain itself in proper form or it will dash itself away uselessly; that to the extent that we preserve the principles upon which our whole system rests and demonstrate the usefulness to mankind of such government we give strength to the theory of democracy and powerful impetus is added to its proper execution throughout the world of men? And to the extent that we fail, we not only suffer in our own behalf, but we impair the very theory itself and stay the march of progress.

Think how long and toilsome was the journey of man before he attained this ideal and was able to put it in practical form and make it operative for his benefit. Think of the age long periods when the mass of mankind had little in life to differentiate them from the beasts of the field; when man's mind was given

nothing to feed upon, and his body only that which would make it useful to bear burdens; when the soul had nothing to satisfy its aspirations, but was atrophied from disuse and had no aspirations. Think of the hard and fast lines drawn about the individual life—confines which could not be passed. And then think how, little by little, by the revolt of mind and of body, by force of intellect and by force of arms, by brawn and by blood, by conflict and by conquest, the mass of mankind broke down the barriers and reached the high ground of boundless opportunity, became conscious of itself and emerged into a vital atmosphere where growth and expansion and aspiration were possible.

When our government was formed the time was ripe for this next great step forward along the line of progress in human government. Oligarchies had by their tyranny bred restlessness of mind and body and revolts had overturned them. Monarchies had by their selfishness and self-aggrandizement so abased their people that the latter had risen and exacted some measures of relief and extorted some concessions for their benefit. Pure democracy had been tried, had been short-lived and had demonstrated that it was unworkable on any large scale.

That which was left for trial and which gave the greatest chance of success was representative democracy.

Every citizen was made equal before the law. Every citizen was accorded certain inalienable rights.

These essential things were secured to him by the fundamental constitution providing for a federal system and marking out the sphere within which each agency should exercise its functions.

This was the wonderful boon the founders of this Republic furnished to its people. This the unprecedented opportunity afforded them for their own advantage and incidentally for the advantage of the rest of the race of men.

The great contribution, of the constructors of our government, to the science of government was a written constitution securing the humblest and poorest and weakest in his rights equally with the strongest, richest and most powerful—an unrestricted right to all to select their representatives to operate the system—

and a court supreme in its power to keep the legislative and executive branches within their appointed and well-defined bounds.

Before this time there had, of course, been executives of various kinds and with various powers. There had been assemblages of the people variously constituted and exercising differing measures of power, and there had been courts with varying jurisdictions and functions, but the executives had either been untrammelled, and therefore inevitably tending to tyranny, or so trammelled and restrained that they were mere marionettes, without initiative or useful function. The assemblages had either been too select or too numerous and had either had too much power or not enough, and similarly the courts had either too much or too little entrusted to them. Never before had there been devised and put into practical operation a system by which the basic, elemental, fundamental rights of the citizen were secured by a written constitution providing for an executive whose scope of power was limited by law, but who was left full judgment and discretion within the scope; a legislative body freely chosen by the people and granted full power within the limit permitted to it, and a court to conserve the virtue of the whole system by keeping all the branches of government within their lawful spheres.

One is certainly justified in saying that up to this time no other equally wise, practical and valuable advance in the science of government has been suggested, much less put into practical effect.

No such boundless opportunity for progress and advancement of the happiness, usefulness and worth of the individual has ever before been offered. Nothing affording anything like its possibilities for the benefit of mankind has ever been devised or designed by men.

To us who have it in our charge, it is the very Ark of the Covenant, and if we do not jealously and zealously guard and cherish it, great is our dereliction and disastrous our betrayal of trust.

How have we done up to now, and what are we doing now in this regard?

Starting with the Federal System we find that we have almost completely departed from the underlying basis of the whole structure. We have almost completely wiped out the state lines. The design was an indestructible union of indestructible states. Each was supreme within its appointed sphere and scope. Neither could invade the proper domain of the other without imperiling the controlling principle upon which the system rested.

The term "States' Rights" is entirely misleading since it does not connote the necessary correlations—States' Duties. And similarly the contract reference to the rights of the citizens is mischievous unless at the same time emphasis is laid upon the duties of the citizen.

The spirit animating our system of government rests upon the self-reliant, sturdy citizen taking care of himself and his personal responsibilities; choosing from among his neighbors those who shall represent him in the immediate government of his local civil community; over that, in turn, a larger municipal unit similarly operated by representatives thus chosen, and over all an immediate state government providing for the doing of the collective business of its citizens which the localized community and the individual citizen could not do for himself; over the collective states a federal government to which was granted such powers as would enable it successfully to do those things which the individual states could not otherwise properly do.

Of the very nature of this conception was the citizen glorying in the lack of restraint upon the proper conduct of his own life and proud of the opportunity to do well his part and to bear his full responsibility for himself and his own, taking counsel of himself and those about him to choose his representatives to whom should be entrusted the discretion and direction of public affairs; things which his own preoccupation with his own affairs made it impossible for him to study intelligently and determine wisely. The municipal governments likewise bearing their full responsibility for the public concerns entrusted to their charge—those which most immediately related to the citizen in his daily life; over them the state government with full jurisdiction and responsibility for the collective business which was its concern,

the states, in turn, granting to the central federal government such power as should enable it to administer those public affairs that were national in their scope and nature.

Each entity, from the citizen up, conscious not only of its rights, but of its duties. Each worthily measuring up to the full adequacy of its responsibilities. Each ardent to do well and to do fully its duty that the whole might do well.

Little by little for easily observable causes radical changes have taken place and radical departures appear from this initial conception. With the country's growth in numbers and the engrossment of the citizen in his own private affairs, the citizen came to view even his own immediate municipal government as a thing apart from himself—a thing to bestow benefits, not to receive them—a reservoir to be drawn on without need of replenishment so far as he was concerned. He was mainly concerned, so far as government was regarded, with his rights, with an entire omission to consider the co-relative duties. He no longer looked upon his city as something of his own, both with respect to its bestowal of benefits and bearing of burdens, but looked upon it as a thing outside of himself and exclusively responsible for its self-assumed duties.

With respect to his personal affairs the citizen chooses those to whom he entrusts responsibility only after a careful consideration of their qualifications. If he is engaged in matters requiring legal attention he selects his lawyer only after investigation of his character, his attainments and his standing, and so with his physician, and with the practical man of business to whom he gives a power of attorney. But with respect to his political responsibilities he exercises no such intelligent and careful method. He is well aware, if he stops to consider, that the collective affairs of a large community are infinite and intricate in their character and require careful study, analysis and consideration for their proper direction and determination. He comprehends, if he thinks about the matter, that the proper administration of public affairs calls for character of the highest degree, for intelligence, honesty, perseverance and courage. Curiously enough, when he comes to select his representatives to exercise these essential functions, he discards almost all

the consideration which should govern him and makes his choice for partisan reasons, for personal reasons, or for no reason that is worthy of the name. Nor does the citizen pay much heed to the conduct of his official after he has chosen him until some unfortunate situation ensues, when hastily and without proper consideration he revolts and either attempts to understand and decide the question for himself, which is usually impossible, or turns the duty over to another chosen in the same heedless and thoughtless fashion. As an inevitable result the citizen does not secure the services of the character of men to whom should be entrusted these delicate and difficult duties. Little or none of the proper credit is given to the painstaking, conscientious and able public administrator.

"Happy is the country that hath no history," says the proverb, and public officials who go about their duties without self-advertisement and who bring to bear conscience, probity and intelligence and produce the best results receive little or no public recognition. The history of their administration is uneventful and their praises are unsung. Representative government is thus slain at the threshold by the citizen's neglect.

The identical tendency next shows itself, as is natural, in the operation of our civic municipal government. Realizing that the citizen is largely confined in his interest in the affairs of government to the extent to which it personally benefits or costs him, those in charge strive to maintain their popularity by doing those ostentatious things which are conceived to be beneficial and pass on the burden of doing those things which entail cost upon the individual citizen and which earn his dislike. As a result, these smaller municipal units become supine with respect to many of their duties; and the larger unit, the state, is called upon to perform them. Since representatives in the state governments are chosen in the same haphazard and thoughtless method, they frequently do not find it to their interest to put back upon the local community the duty which it has neglected, but seeks to minimize the apparent burden or to pass it on to the federal government if it is possible for them to do so.

To an extent that is almost inconceivable unless one stops, accurately, to investigate, this process of shrinking from respon-

sibility and passing on of burdens is going on from the individual citizen up to the federal government. Without regard for the moment as to whether express constitutional limitations are violated or not, it is proper to observe that this course of conduct is directly at variance with the fundamental conception of our system as devised, and that whether it results finally in good or in evil, it has one inevitable result which is the alteration beyond recognition of the character of government which we ostensibly maintain.

When the ultimate point has been reached and those duties which have supinely passed from the hands of the states are sought to be cast upon the general government, the prevailing tendency produces similar consequences. The representatives of the people, there in charge, realize that their popularity and continuance in office depend upon the ostensible benefits bestowed by government and that nothing but dislike is engendered by one who raises his voice in opposition. Unconscious as the people are that in the pursuit of immediate benefits they are imperiling the very basis of their governmental structure, it is easy to understand why those immediately responsible take the easiest way. These representatives realize that in the present popular mood they are not selected as true representatives, charged in the highest degree with the responsibility for investigation, decision and courageous direction of public affairs, but are viewed largely as messengers to register the popular will of the moment and to please the popular fancy of the passing day. At the present time there is little or no encouragement for leadership—leadership without which representative government cannot exist. The present tendency has produced a hybrid between pure democracy and representative democracy and has all of the vices of each and none of the virtues of either.

However efficient pure democracy may be when confined to a small enough area, its inefficiency is demonstrated and demonstrable on any large field. It is absolutely impossible for the average man, burdened to the limit with his own personal affairs, to study, analyze, determine and direct public affairs. The utmost that he can do is to make a decision when the two sides of any

question are clearly presented to him. And the two sides can only be properly presented when courageous leaders, acting after the most painstaking consideration and effort, have reached and expressed the maturest judgment. If representatives of the people were really chosen as they should be, for their courage, their character and their attainments, representative democracy would produce this result. Chosen as they are and acting in the atmosphere produced by the prevailing tendency, they act along the line of least resistance and yield principle to expediency.

When the public becomes aroused upon any subject and feels that it has not been properly handled by the officials, the present remedy is a resort to pure democracy. The people are then supposed to be able to acquire the knowledge, to furnish the intelligence, to find the time, and to have the ability to absorb and deliberate upon and to properly decide and direct these matters of great public concern. Having refused to live up to the responsibility of selecting proper representatives and giving them proper support while they deserve it, the people seek to supply the deficiency by an impossible mass judgment. Paying so little attention to essential matters as to produce inevitably a disadvantageous situation, they are supposed to be able almost instantly to apply the proper corrective when their collective judgment is appealed to.

Flattering as is such an assumption, it is almost inconceivable that any reasonable man should believe in its truth. It is not the fact that representative government can be successfully so carried on. It is not the fact that supineness in the matter of attention to the choosing of proper representatives can be remedied by attaining a collective judgment upon the proper conduct of public affairs. It is not the fact that matters requiring minute attention, careful consideration, thorough study and courageous and independent judgment in their decision, can receive such at the hands of men who realize that their greatest hope of reward is to give what is asked for without regard to ultimate consequences which do not immediately concern them. It is not the fact that such questions can receive proper consideration and decision by

the mass of the voters in the short time given to their consideration before the decision must be made.

It is the fact that by the shrinking of the individual citizen from the doing of the numerous things which he as a citizen should do and should not look to his government to do for him, by the shrinking of his immediate government from measuring up to the full adequacy of its responsibility, by the shirking of the state government from assuming and bearing its full measure, and by the casting off upon the federal government of duties alien to its nature and purpose and subversive of the reason of its existence, we are deliberately and directly perverting the foundation upon which our whole system rests. In some instances the things done are directly violative of the fundamental constitutional law; others are just as violative of the conception of the system, although not within any constitutional inhibition. Whether directly opposed to the written law or just as positively opposed to the spirit which animated our being, the effect is identical. It destroys that reverence for law which is the absolute and imperative necessity for successful democracy.

Side by side with these tendencies and actuated by the same causes is another development of the times. There has sprung up a belief in the efficacy of mere legislative enactments. It is a curious confusion of thought which results in believing that law and laws are the same. It is literally true that in the making of laws there is no end. All of the ills to which mankind is heir are supposed to be remediable by the making of statutes. Whatever ails the individual man or the community evokes an outcry for immediate legislative consideration. Nothing is to be left to individual initiative, individual discipline of character, or to public opinion sustaining the upright and the just and ostracizing and minimizing the effect of those who do otherwise. Laws by the hundred and laws by the thousand are enacted affecting the citizens from the time of the rising of the sun to the doing down of the same, and government intrudes itself into every activity of mankind. Again, I suppose it is necessary for me to say that I am not now considering whether it is wise that this should be so, or whether it is unwise, but I am saying and

am emphasizing that it is absolutely opposed to every fundamental conception which went into the making of our government. It was never intended that our central government should have any such paternalistic participation in the daily life of man. It was conceived upon the theory of a federal agency to attend to federal affairs which were national in their scope and which necessarily could not be attended to by the states acting separately. Its jurisdiction was carved out of the plenary power of the states and was carefully limited in its scope so as to serve properly the purposes for which it was intended. It was, of course, given the most adequate power within the fields granted it, but the fields granted it were specifically limited and prescribed. By the modern tendency of casting innumerable duties upon the federal government which it was never intended that it should exercise, we are not only entirely changing the framework of our system of government, but are producing a situation which cannot endure. The federal government will break of its own weight unless the tendency is checked and a return to correct principles is had.

The most casual consideration brings to mind the extent of the departure. Initially the federal government started with one executive head and three heads of departments. There was a secretary to attend to the affairs of state, one to attend to the finances of the nation, and a third to manage the military and naval arms of the government. We now have ten heads of departments, and there is scarcely a human activity that is not the subject of federal participation in one form or another.

By the law of its origin and being, and as conceived by the founders, the federal government was absolutely confined in its activities to those things which the states could not do separately; those things which were truly and essentially national in their nature and scope; the making of treaties and the managing of foreign relations; the coining of money and the regulation of currency; the regulation of commerce between the states and with foreign lands; the collection of revenue and the protection and defense of the country by an army and navy; the handling of the mails and other like essential national functions. So far have

we departed from the spirit that animated the system that it is almost impossible to realize that these really are the constitutional limits and the sole source of federal power and jurisdiction.

We have now departments or bureaus or agencies of the federal government which deal with food, with drink, with mining, with farming, with standards, with education and with health. We have bureaus of animal industry and of home marketing. We cure disease in human beings, in horses, in hogs and in wolves. We distribute seed and attend to diseases in plants. We dredge and improve harbors and build and operate railroads and canals and run steamboats. We regulate transportation and the morals of those who travel. We pass judgment upon the labels that patent medicines may bear, and instruct communities in the proper way to build roads and to improve husbandry. We are about to engage in building roads in the various states and in managing ocean transportation and regulating the daily labors of mankind, and the hours and conditions thereof. Does any individual community suffer from fire or from flood? The national agency and the national treasury is immediately called upon for relief, rehabilitation and restoration. The citizen in his daily business transactions is brought into intimate relation with the federal government by bureaus or agencies that have jurisdiction to regulate, prescribe and practically to prohibit. Anomalous bodies without constitutional form or substance are necessarily created to exercise these anomalous and unprecedented powers.

Some of the functions thus exercised should not, I submit, be done by government at all. Others are clearly the duty of the local, civic or state governments and should be left to them.

The central government has duties of its own of such magnitude and importance as to occupy all of its time and attention, and, furthermore, is not so circumstanced that it can successfully or properly diffuse itself throughout the nation and touch the citizen in every activity of his daily life.

That which has been utilized by way of argument or persuasion to produce the present situation is capable of being extended to any limit so that it is proper to say that there now is no limit. Efficiency and the public welfare—these are the justi-

fications of every novel exercise of governmental power. It is undoubtedly true that a city can more effectively do certain things than the individual citizen, but if it is his duty to do them he should be required to bear his own responsibility and not slough it off upon the municipal government. In like manner, the supposed efficiency of the state with respect to many concerns which belong to the cities should not lead, as it does, to the states intruding upon the proper responsibility of the city and doing its work for it. The state should refuse to take over that which belongs to the smaller municipal unit. And the same is true of the nation.

Apart from what has already been adverted to, that the mass of duties thus unwarrantedly cast upon the central government will inevitably break it down from sheer weight, it is a disastrous yielding to expediency in the face of principle thus to stretch the powers vested in the general government even to satisfy the popular cry of efficiency and public welfare. Real efficiency and real public welfare can only be continued and effectively served by adhering to the essential law of our being, by keeping our system of government within its proper confines and bounds, and by not flying in the face of the law and bringing it into disrepute for some supposed immediate benefit to be derived from the easier course.

It is just because of the sentimental infusion arising out of the appeal to the supposed benefits of yielding and conceding in these respects that the great difficulty comes in combatting the tendency and applying the corrective.

If new conditions really make necessary any alterations in our form of government, I insist that we ought to meet such conditions only by a frank and open abandonment of the present, and by the adoption of the new form. At the present time we are evading and avoiding the issue. We are not openly and directly altering the organic law by making the changes in it to justify our present conduct, but we are maintaining the law as written and violating it in spirit and in action. We are bringing the law notoriously into disrepute and engendering a fatal lack of reverence for it. Without such reverence, I reiterate, no experiment in

representative democracy animated by the spirit which gave rise to our government can hope for success. We who are ministers of the law necessarily are the first to perceive this—are naturally the ones most to deplore it—and upon us rests the largest measure of responsibility of attempting to correct the evil.

If it be true that the representative system which is the very basic principle of our government is being perverted until its very existence is threatened; that the federal element has been ignored almost to the point of being neglected, and that the lines of responsibility between the states and the nation are now so faintly traced as to be almost undiscernible; if it be true that in the name of efficiency and the public welfare the national government is becoming overburdened to a dangerous degree and is exercising functions entirely alien to its constitution and spirit; that all these tendencies are not only not being combatted by any vigorous opposition, but are instead receiving practical encouragement on every hand—if it be the fact, as I firmly believe it is, that such tendencies unless checked will make the success of our system of government as devised impossible and will ultimately result in chaotic conditions, the end of which no one can prophecy—then indeed is there a great duty laid upon all who perceive and appreciate the situation.

It is no welcome or easy task. It will indeed be a case of voices crying in the wilderness; and were it not for the comfort derived from the knowledge that voices crying in the wilderness have finally sounded in the ears of men and produced tremendous results, the outlook would indeed be infinitely discouraging. But there is ground for hope, legitimate ground. The real thing to insist upon is not in itself abstruse. The real appeal is to that which we all hope we possess—manhood and courage. Though it required capacity of the highest order to conceive and put together the delicate machinery, with its careful balancing of parts to produce successful operation, it is not so very difficult to convey a proper understanding of the machine as constructed.

The beginning and the end is of course with the individual citizen. It must be made to see that the success of his government absolutely depends upon his own proper conduct with re-

spect to it. He cannot shirk his responsibility and expect that anything other than untoward results will ensue. He must be made to realize that government in a democracy partakes of the aggregate virtue or weakness of those who compose the citizenship. That if he is self-reliant and disciplined and will take the time and trouble to choose proper representatives, he may expect the beneficial results which would flow therefrom. That if he is negligent and inattentive to public affairs he will reap the inevitable result of such failure. That immediate benefits caused by the perversion, or subversion of government can never outweigh the deleterious effect upon the structure itself. That each unit of government must bear to the full its own measure of responsibility, and if it is supine and drops from its nerveless grasp duties which are thereupon cast upon some other unit, it not only suffers from its own weakness but participates in the general bad result produced by disarranging the whole system upon which the structure of government is founded.

Ripe and mellow are the conditions produced by the prevailing tendency for the demagogue and the charlatan. Eager to enact into law every humanitarian impulse that is suggested, sure that the onrush of popular sentiment will sweep over the opponent who only has cold reason and right to support him, they urge on the people from one excess to another in the abuse of power. It has come to pass that it is almost a reproach to refer to constitutional limitations. Impatience is the reward of those who try to urge them.

Until the people come to see that what we are dwelling upon is essential, we may hope for little sympathy or encouragement in our labor. I do not despair that we can cause them to see this. The time must come when it will be possible to point out that the greatest good to the greatest number must result from adhering to the essential spirit that animated our existence. That if this tendency is unchecked and power without regard to authority therefor is exercised merely because it promises beneficent things, there is nothing which stands between the citizen and absolute tyranny.

The only protection which the individual has is the rigid adher-

ence to the law which protects him with respect to his inalienable rights. If the law is violated even in the name of public welfare and humanity there is no longer any protection whatever for the individual. The will of the majority acting in violation of a constitutional principle can be and is just as much an exercise of sheer tyranny as the unrestrained will of a single tyrant. The very essence of representative democracy as devised and designed for our government is the functioning of each unit within its own sphere.

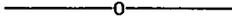
It is true, and it is unfortunate that it is true, that those who are most easily beguiled are those whose yielding is most threatening to their own interest. The humble, the poor, the powerless are those who need the protection of law cast about them by constitutional provisions rigidly adhered to. The rich and the powerful in all ages and in all governments are able to protect themselves without regard to written law. By enticing the people with promises of great benefits to be bestowed, the very structure which was erected to protect them is rent apart and great gaps are left in its walls through which enemies may at any time enter. Appeals to prejudice and to pride delude men into the belief that their government can be properly run by such time and attention as they can give to it in the few days preceding the periodical election of officers. This is not so and never can be so.

In this vast country with its varied characteristics and its numerous population, it is a miracle of miracles that the government as devised and conceived was not only adequate but ideal for its purposes. Its proper purposes can never be served either by pure democracy or by the hybrid of pure democracy and representative democracy toward which we are now rapidly proceeding. Home rule from the citizen up is an absolutely essential element in our system and self-reliant responsibility and bearing of proper burdens is imperative.

These things are the very warp and woof of our system. They were written into our State constitutions and our federal constitution. They are known of us and should be known to all men. The time has come when silence is no longer permissible

to those who perceive the nature and extent of the danger. It is peculiarly the province of lawyers to lead in this great movement which must be undertaken before it is too late.

From the beginning of the government to this day the lawyer has nobly responded to every appeal to his patriotism, to his ability and to his courage. The present appeal makes infinite call upon each of these qualities. I feel confident that as in the past with other great questions, this great national question will receive such attention and treatment at your hands that the nation will some day realize the debt it owes you for the great duty that you will perform.



THE DEMOCRACY OF JUSTICE—THE JURY.*

By Delphin M. Delmas.

In endeavoring to estimate the present value and to predict the future fate of trial by jury, it is but natural to seek guidance and instruction from the experience of the past.

That experience teaches the familiar lesson that trial by jury, as it is the most ancient, has been the most enduring of all the political and judicial institutions which have flourished among the English speaking peoples. Coeval with the earliest dawn of organized society in Britain, its origin is lost in the mists of antiquity. Though in a crude and rudimentary form, it had existed for centuries when the Norman invader set foot upon English soil, and it survived the general wreck of the English laws and customs which followed in the wake of his conquering footsteps. The hand of time, beneath which all other institutions underwent alteration or decay, left it untouched. The march of ages, which swept away other great achievements of human polity, but served to confirm it. The wars and revolutions, which uprooted weaker growths, but

* By courtesy of Southwestern Law Review.