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“WHAT CONSTITUTION ARE YOU TALKING ABOUT?”

By WILLIAM L. RANSOM*

I commend and thank the officers and council of the Indiana Bar Association for having General Hugh Johnson address your annual banquet last night, upon the subject which he selected, for the presentation of his views and experience as to the need for a National regulation and control of the rates of pay and conditions of labor, throughout the United States. It impressed me as an earnest and reasoned statement of a point of view which we ought all to hear and consider on its merits. By the same token that I disagree personally with many of his assumptions and most of his conclusions, I vindicate his right to state them to American lawyers and our duty to hear them and think about them.

Less than at any time in the history of our institutions and our laws, the Bar could afford now to be intolerant or hostile to the statement of reasoned views. One of George Bernard Shaw's most brilliant sentences is that which he ascribes to Jesus the Christ, in his apocryphal account of the trial before Pontius Pilate: "Beware how you kill an idea that is new to you." We should put an end to the intolerant notions that it is treasonable or un-American to propose and discuss orderly changes in the powers of government, by constitutional amendment if need be, or that it is sinister and selfish to oppose amendments in general or particular, or to advocate retention of the essentials of the present balance of governmental powers. At almost any hazards, we must keep open the avenues of fair and open-

*Remarks of William L. Ransom, president of the American Bar Association, at the annual luncheon of the Indiana Bar Association, on September 7, 1935.

mindful consideration of the reasons for and against proposals of constitutional change.

The General's selection of subject was "What Constitution Are We Talking About?" That question might have been asked at the close of his address, rather than as its title.

The General did not answer his question. I claim the privilege of an American lawyer here to answer it, speaking for myself and for no one else.

We are talking of—

The Constitution that was written under the wise guidance of George Washington;

The Constitution that was expounded in great opinions by John Marshall and his illustrious successors;

The Constitution concerning which Thomas Jefferson wrote state papers and letters that were instinct with human liberty and that resounded with resistance to Federal bureaucracy and centralization of power, and insisted upon local self-government as best suiting the needs and conditions of the people;

The Constitution which brave men brought through the Cumberland Pass, up and down the rivers, and out where there were few trails;

The Constitution that was in the hearts and minds of rugged men and quiet, anxious women beneath covered wagons that streaked across prairies, and down the Santa Fe trail, past the ruins of collectivist civilizations, to face Spanish dreamers of arbitrary power;

The Constitution that Lewis and Parkman carried to Oregon and Washington, and that followed the flag raised on the missions of California;

The Constitution for which Jackson fought; Webster thundered his eloquence; and Lincoln paid with his life "the last full measure of devotion";

The Constitution which safeguards in our country, as they are safeguarded in no other, the most sacred and priceless of human rights and liberties—the right of each individual to freedom of speech, freedom of the press, freedom from an established church, freedom to worship God in his own

way and according to his own conscience, immunity from unreasonable searches and seizures of persons and their homes, immunity from being placed twice on trial for the same offense, protection against being compelled to testify against oneself, right to a public trial by an impartial jury, right to be informed of the nature and cause of any accusation and to be confronted with the witnesses supporting the charge, right to equal protection of the laws, freedom from discrimination before the law on account of race, color, or creed, protection against the taking of life, liberty or property without due process of law and without due hearing upon notice, with opportunity for the accused to be heard in his own defense—rights wrested from benevolent autocrats at Runnymede and on blood-drenched fields and in dark rooms of old castles—rights which all should cherish as they do their lives, because such rights are denied or unprotected in other lands—priceless guarantees which were part of the soul of America before horses knew buggies—rights which newcomers to our shores should do all in their power to preserve unimpaired, because they have seen the oppression from denial of these rights across the seas;

The Constitution which was written, not for a day or a decade, or even for an age or an era, but for the life of a Nation; which has proved adequate to great strains and adaptable to great conflicts and dire emergencies; which has been chart and guide and compass, beacon and bulwark, in the darkest of hours and the gayest of National moods; which has met the needs of "the infinite variety of the changed and changing conditions of our National life"; which has seen and aided the long struggles of a free people to surmount pioneer and primitive conditions and build a better, happier land in which to live—the Constitution which has never let its people down or proved a poor or feeble instrument in an hour of need;

The Constitution which has been amended from time to time as specific need arose, always under full safeguards and usually upon adequate and reasoned consideration; and chiefly to define and protect the rights of the people and

the powers of the States;—the first ten amendments were adopted virtually as a part of the understanding under which the Constitution was ratified—each of the first ten amendments was written to make clear and preserve the rights of the people and the powers and rights of the State—the Eleventh Amendment, in 1798, was likewise to safeguard the powers of the States; the Twelfth Amendment, in 1804, introduced the present method of electing the President and Vice-President by Electors; the Thirteenth Amendment, in 1865, prohibited human slavery and involuntary servitude; the Fourteenth, in 1868, defined, among other things, the rights and privileges of all citizens, against denial of due process of law and the equal protection of the laws; the Fifteenth, in 1870, established the right of citizens to vote and forbade its denial on account of race, color, or previous condition of servitude; the Sixteenth Amendment, in 1913, gave to the Congress the power to lay and collect taxes upon incomes; the Seventeenth, in 1913, provided for the election of United States Senators by direct vote of the people; the Eighteenth, in 1920, as to intoxicating liquors, was adopted under the pressure of a minority agitation and without full consideration by the people, and led to later regret and repeal; the Nineteenth, in 1920, gave to women citizens the right to vote; the Twentieth repealed the error made in 1920, in attempting to regulate by amendment the lives and habits of the people;

The Constitution which expressly provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”;

The Constitution whose demise has sometimes been announced by its friends, and has doubtless been desired by its foes, but has always reappeared in full virility and adequacy for the public needs, and has remained secure in the deepest affections of the people, irrespective of party, profession, or social station;

The Constitution of which the mighty Gladstone said, in 1878, that it “is, so far as I can see, the most wonderful

work ever struck off at a given time by the brain and purpose of man."

That, sirs, is the Constitution we are talking about!

Here in Indiana, I know that you are thinking and talking about the Constitution which was revered by Voorhees and Gresham and Hendrick; which was expounded and respected by Benjamin Harrison; first President of your State Association and one of the founders of the American Bar Association; the Constitution of John W. Kern and of Thomas Marshall, with his quiet, American philosophy of life and law.

There can be no reason why a suggestion of specific amendment to the Constitution should not be considered fairly and open-mindedly on its merits, by lawyers as by anyone else, provided the suggestion is specific and is made on its merits. The Constitution has been amended, usually in the safeguards of human rights, ordered freedom, and the substance of impartial justice under law; doubtless it will be amended again and again, let us hope for like purposes.

What are the aspects of the matter that give proper concern to men of all parties and social faiths, who truly revere and respect the Constitution and desire only orderly processes of change?

First, there is a proper desire that suggestions of constitutional change shall be made specific, so that their text and effects can be carefully studied; and there is impatience and anxiety when sweeping change is agitated without definition or text. In the nature of things, any proposal for constitutional change has to be very definitely and specifically formulated before it can be considered or put in the processes of submission to the States. So there is little reason for concern on that score.

Secondly, there is a concern that drastic change shall not be considered and acted upon except upon mature consideration and under full safeguards. It could not be otherwise, as to the time element; the methods of amendment, provided for in the Constitution itself, assures a period for full and most deliberate consideration by the States.

Thirdly, there is a concern that any proposals for sweeping changes shall not be acted upon except under conditions which permit and assure a reasoned and deliberate judgment of the people, uninfluenced by any considerations foreign to the best interests of the people as a whole. On the part of many citizens, there is an aversion to the submission of a constitutional amendment as a party measure, under the pressures of political exigency and patronage and the quest for partisan advantage. There have been instances, in the past, where ill-considered amendments were due to these influences, which appear to be inherent in the party system of government. It should be possible to offer and consider constitutional amendments on their merits, under no whip of parties or minorities, and with neither advocacy nor opposition made a partisan measure or maneuver. To offer an amendment as a party measure leads to the equally undesirable step of opposition as a party measure.

A still more serious hindrance to the free and reasoned consideration of Constitutional amendments on their merits arises, at the present time, from the incomplete state of industrial and agricultural recovery from the recent depression. If, as General Johnson says to you, there are now 10,000,000 people on the relief rolls and one-fourth to one-third of the population dependent on the Federal Government for the necessities of food, shelter, and clothing, it may well be doubted whether such conditions are conducive to a deliberate and untrammelled expression of the will of the people, as to changing their Constitution in a manner proposed by those upon whom so many voters and their families are directly dependent.

Finally, we come to the merits, the real issue for the great debate, the question whether, by constitutional amendment or by representation of the matter to the Supreme Court, the Congress should be given the power to regulate wages, hours, and conditions of labor, in all employment and in all business, in each of the forty-eight States. Here is an issue of basic change in our structure of government, and it merits the fullest and fairest consideration on its merits. Such a

proposal runs contrary to the fundamental theory of our Federal system and our laws. Probably for the first time in our history, a proposal is made for change in the Constitution, without anything being said in support of the Constitution and the part it has played in our National life; and the proposal is not along lines in harmony with the Constitution and the system of State and Federal Government under it, but in derogation and destruction of the reserved powers of the States and rights of the people. If the Federal Government regulates and prescribes the wages, hours, and conditions of labor in all our communities, the Federal Government will thereby dictate and control the lives of our people, their standards of living, the extent of opportunity for individual enterprise and self-reliance to build character and citizenship. The America of the Constitution is not a charitable or correctional institution; its people should not be made dependents or treated as wards or defectives. Self-support and individual ambition are not yet in disrepute.

The text and scope and far-reaching effects of any such proposed change deserve the most careful and patriotic consideration. The change should not be permitted to go far beyond the requirements of any situation for which remedy is needed. The lawyers, in particular, owe a high duty to preserve and urge a reasoned and balanced view of the whole matter. As George Washington said, in the Convention which drafted the Constitution:

"Let us raise a standard to which the wise and honest may repair; the rest is in the hands of God."