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TOM JONES VS. UNITED STATES

BRIEF FOR PETITIONER

By HARRY S. SILVERSTEIN, ESQ., *of the Denver Bar*

WE CONCEDE the pressure of the economic depression to be intolerable to the vast majority of our population. We go full length with the doctrine, announced by the President, that consideration of humanity transcends all theories of business and of profits. We do not dispute that an economic emergency exists, not only nation-wide, but world-wide in scope, and unprecedented in its effect upon the habits and standards of living of increasingly larger numbers, to such an extent that the necessity for some *drastic change,* or a "New Deal," in business, and even in governmental regulation is emphatically demanded and obviously indicated.

But when we are pushed beyond these concessions, and are asked to further grant, almost as a postulate, that admitting the necessity and emergency, the power exists in the Federal Government to remedy the disease, administer the nostrum, and regulate the dose, for the whole nation, we cannot go that length.

Granted the urgency of immediate action, that "somebody must do something"—many questions arise. What are the remedies? Whose duty and obligation is it? Wherein what source lies the power and the authority to act, to prescribe, to administer, and to regulate.

Neither necessity, nor emergency, is sufficient to change the essential character of the structure of the Federal Government. So much is conceded, even in the Minnesota Moratorium Case (Home L. & L. Assn. v. Blaisdell, 54 Sup. Ct. 231, 235), when Chief Justice Hughes said, "Emergency does not create power * * * may not call into life a power which has never lived."

Hence "emergency," dire necessity, and like terms, form no basis for argument or authority, as to the *existence* of a power, but only as to the *exercise* of a power which already exists. If the power does exist, it can be constitutionally and lawfully exercised and called into action, whether conditions

are normal or emergent. If such power does not in fact exist, the Supreme Court decisions all declare that no necessities, expediencies, or emergency can call it into being. Only by amendment to the Constitution can such a change be peacefully—only by a revolution can it be forcefully—effected.

Congress has seen fit to act. The National Industrial Recovery Act was passed. Power to promulgate codes to govern all businesses, retail and wholesale, all agencies engaged in agriculture and manufacture, marketing and selling. The terms used in the Act are all embracing, i. e., "trade and industry." There is, however, one limitation, to be presently noted. These codes, whether framed by the trade or industry, and approved by the President, or prescribed and approved by the President, upon his own motion, are given the force and effect of law, and any violation of any provision thereof, is made a crime, a misdemeanor.

The limitation is only that the violation must be "in any transaction in or affecting interstate or foreign commerce." As will presently appear this is the gist of the present controversy, and is the point for decision in the instant case.

In justification of the indictment, trial and conviction of appellant, counsel for the government assert full power in Congress to enact the Law, and full legality for the Retail Code sanctioned thereunder. Let us search the source of their justification.

It must be found in the language of the Constitution itself, either in an express and enumerated grant of such power, or in a power implied to carry into effect an expressly enumerated grant.

All the prior decisions of this court stress and emphasize the doctrine, and none now contest it, that "the national government is one of enumerated powers," and that "such powers embrace only those expressly granted in the body of the Constitution, and such as may be implied from those so granted."

Such decisions are compelled by the very language of the Constitution itself. Even the so-called implied powers in Congress are expressly limited to the making of "laws to carry into effect the foregoing powers and all other powers *vested by this Constitution.*" (Art. I, Sec. 18.)

Not content with this, and to place forever, as they thought, outside the reach of Congress to enact laws like the N. R. A., when the first amendments were adopted, Article X of those amendments carefully stated:

"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."

We should, perhaps, apologize for calling attention to these provisions. While, years ago, every school boy knew them by heart as part of his grade school lessons, yet they seem to resound upon the halls of Congress as a dead language, instead of "the Supreme law of the land," and by which every judge is expressly bound, by the provisions of Sec. 2 of Article VI.

In these days of popular demands upon the Federal Government to take over and unto itself, and to assume, a general and supervising control over crimes and punishments, to limit production and raise consumption so as to raise prices of commodities; regulate hours and condition of labor and wages, and to engage in numerous activities through commissions, bureaus, committees, investigators, licensors, censors, etc., to such an extent that the alliterative, abbreviative designation of them has long since exhausted the alphabet, and the letters overlap, just as their administrators, clerks and employees collide with each other and so crowd Washington that the only persons appreciably benefited by the N. R. A. are the innkeepers and restaurateurs of the city—in such times, it is well to hesitate just a moment—to "stop, look and listen" to words solemnly spoken by this Court during the previous 150 years when we were laboring under what now appears to have been a delusion, that this was a government of constitutional *limitations* and not one of constitutional *expansions.*

Hark to the words of Mr. Justice Brewer in So. Carolina v. U. S. 199 U. S. 437, 448; 50 L. Ed. 261, 264.

"Two propositions in our constitutional jurisprudence are no longer debatable. One is that the national government is one of enumerated powers; and the other, that a power enumerated and delegated by the Constitution to Congress is comprehensive and complete, without other limitations than those found in the Constitution itself.

"The Constitution is a written instrument. *As such its meaning does not alter.* That which it meant when adopted, it means now. Being a grant of powers to a government, its language is general; and, as changes come in social and political life, it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred. In other words, while *the powers granted do not change,* they apply from generation to generation to all things to which they are in their nature applicable. This in no manner abridges the fact of its changeless nature and meaning. Those things which are within its grants of power, as those grants were understood when made, are still within them; *and those things not within them remain still excluded.*"

So. Carolina v. U. S., 50 L. Ed. 261, 264; 199 U. S. 437, 448.

Also Chief Justice Taney, in

Scott v. Sandford, 19 How. 383, 426; 15 L. Ed. 691, 709.

"It is not only the same in words, *but the same in meaning,* and delegates the same powers to the government, and reserves and secures the same rights and privileges to the citizen; and as long as it continues to exist in its present form, it speaks not only in the same words, but *with the same meaning and intent with which it spoke when it came from the hands of its framers,* and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day."

Scott v. Sandford, 19 How. 393, 426; 15 L. Ed. 691, 709.

We still further concede, for the sake of this argument, that reposed within a sovereign State lies the power to legislate prosperity for the People and profits into their pockets. Government counsel cannot seduce us into controversial argument over the statement that the laborer is worthy of his hire, that the community at large is vitally interested in securing

to the greatest number a living wage, and ever-increasing standards of living, opportunities for education, culture, and their welfare in general. Whether the Codes under the N. R. A. are adapted to that end, whether they will produce the expected results and promote prosperity or whether, on the contrary, they will retard it and operate in reverse; whether higher commodity prices really benefit the wage earner, or are in reality but a camouflage for greater capitalistic profits and further exploitation of humanity en masse, are all economic questions, upon which only the so-called experts, professors and "Brain Trust" dare to speak with confidence. Frankly, as to such questions, we confess our equality with the ordinary man in the street. We doubt their efficacy. We only know that the experience of history, ancient, modern and recent, has shown utter failure of the experiments of governments to control prices and production, by burning coffee, restricting rubber plantations, or the thirst and drinking habits of a nation. Whether such activities as the slaughter of milk cows and little pigs, the ploughing under of acres of cotton and wheat, the establishment of quotas for sugar beets, will somehow have a different result, we cannot even guess. All we can do is watch with amazement the financial and economic wizardry which boldly asserts and acts, and which is able to discover no inconsistency whatever in measures which simultaneously cut down the number of acres to be cultivated or devoted to the raising of agricultural products, because of the stated reason that there is too much, and at the same time spending not only millions, but hundreds of millions, of the public moneys, in reclamation projects which have the avowed purpose and only the purpose of making available more land for farming, and turning arid acres into productive competition with already too many such acres. We watch and will applaud when the rabbit comes out of the hat.

There are however some, unfortunately only too few, who still believe in some very old-fashioned and out-of-date ideas, in no way connected with any New Deal, and of which the "Brain Trust" probably never heard and would not recognize. Such as, that when income shrinks and debt threatens, it is time to economize and spend less—that you cannot,

by any legerdemain borrow yourself out of debt, whether an individual, a city, a state, or a nation. That ordinary habits of thrift and saving will still see us through a depression. That it is the business of the government merely to see to it that the channels of equal opportunity to all are kept open, not that the government owes us a living. That government has enough to do to enforce the laws at present existing, and in plenty, and sufficient, if so enforced, to prevent the greed, rapacity, peculation and exploitation on the part of the few and powerful, which has been one of the chief factors in causing the present catastrophe. "Equal rights to all and special privileges to none" is still worthy as a desideratum in legitimate government and just as helpful to business as a Blue Eagle.

As stated, these are questions of expediency, of legislative wisdom, or its opposite, of politics and statesmanship, not to be here discussed, nor of weight as concerns the decision of this case.

Granted that such powers are vested in a sovereign state, the query still obtrudes: Does the Federal Government possess those powers? Are they within the terms of the grant?

Even though the several states may have such power—which many of them have denied, as has Colorado—does it follow that such power has been delegated to the national government—can it be found among those expressly enumerated powers, and found within the Constitution itself?

Ours is a dual form of government. It has no counterpart among the other nations. Again we refer to the language of Mr. Justice Brewer in South Carolina v. U. S., *supra*, where he says:

"We pass, therefore, to the vital question in the case, and it is one of far-reaching significance. We have in this republic a dual system of government—national and state—each operating within the same territory and upon the same persons, and yet working without collision, because their functions are different. There are certain matters over which the national government has absolute control, and no action of the state can interfere therewith, *and there are others in which the state is supreme, and in respect to them the national government is powerless.* To preserve the even balance be-

tween these two governments, and hold each in its separate sphere, is the peculiar duty of all courts; pre-eminently of this—a duty oftentimes of great delicacy and difficulty."

So. Carolina v. U. S., 50 L. Ed., p. 264; 199 U. S. 437, 448.

Here then is the question in the case at bar, of great delicacy due to the present stress and strain, but, in our opinion, not of so great difficulty when a proper perspective is maintained as to the unrestricted powers of the States, and the limited powers of the National Government.

By what clauses, and by what language in the Constitution itself does or can the Government claim the power?

It cannot be the general welfare clauses. That occurs only in the Preamble and in the power of taxation. But the Preamble grants no powers. That clause is not the source of power. This court has so expressly declared, in so many words:

"Although that preamble indicates the general purposes for which the people ordained and established the Constitution, *it has never been regarded as the source of any substantive power conferred on the government of the United States, or on any of its departments.* Such powers embrace only those expressly granted in the body of the Constitution, and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States, unless, apart from the preamble, it be found in some express delegation of power, or in some power to be properly implied therefrom."

Jacobson v. Massachusetts, 197 U. S. 11, 22; 49 L. Ed. 643, 648.

Likewise without import for such authority is Art. I, Section 8, which provides that:

"The congress shall have the power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States."

This is commonly construed as a specification of the purpose for which money may be appropriated, and not as a substantive grant of power.

1 Willoughly, Const. Law (2nd Ed., 1929), 61;
1 Story on the Const. (5th Ed., 1905), 907-909; The Federalist, No. 41.

Remains therefore, only the Commerce Clause, as the only source from which any conceivable power here contended for may arise. This is recognized by the terms of the N. R. A. itself, which, throughout, refer to matters within its scope as being such as are "in or affecting interstate commerce."

Are the transactions here involved "in or affecting interstate commerce"? Unless this Court adopts the view that everything generally, wages, prices, means, manners and methods of production, hours and conditions of labor, all affect interstate commerce, then the answer must be "no." If this *is,* or is *in,* or *affects,* interstate commerce then there are no limits ,and those words may be stricken from the N. R. A. and also from the Constitution itself. Because, in a greater or less degree, everything done, or restricted from being done, in trade, industry, agriculture, mining, manufacturing, *does,* in some way or other have its effect on commerce.

But the language was not so used in the Constitution, nor has it yet been given that far-reaching expansion. Upon the contrary.

In the Child Labor Case (Hammer v. Dagenhart, 247 U. S. 251), this court distinctly held that that clause would not be extended to include any right in congress to prohibit shipment in interstate commerce of any articles in the manufacture of which the labor of children under 16 years of age had been employed. That the law aimed to standardize the ages at which children could be employed. That the commerce clause could not be used to clothe Congress with any "power as to a purely local matter to which the Federal authority does not extend" (p. 276), and would constitute the invasion by Congress of a field denied to it. That the result of such an usurpation of power would be that "all freedom

of commerce will be at an end, and the power of the states over local matters may be eliminated, and thus our system of government be practically destroyed." That this clause did not (274) "give it authority to control the states in their exercise of the police power over *local trade* and manufacture"—nor "to give to Congress a general authority to equalize such (competitive) conditions" (273) i. e., to prevent possible unfair competition.

It likewise held that where the article is manufactured, and is offered for shipment "and before transportation begins," the productive labor employed is over, and the mere fact that they were intended for interstate commerce "does not make their production subject to Federal control under the commerce power." This rule likewise applies when articles have already been transported in interstate commerce and have arrived in a state, when regulations or laws concerning the retail of such goods within the borders of the state are within the exclusive control of the State. Such was the holding of this court in Kidd v. Pearson, 128 U. S. 1; 32 L. Ed. 347, 351.

That case (the Kidd case) pointed out the danger of a contrary holding in words fraught with present significance:

"A situation more paralyzing to the State governments and more provocative of conflicts between the general government and the States, and less likely to have been what the framers intended, it would be difficult to imagine."

Reverting to the Dagenhart case, and as a rule governing the instant case, the following is quoted:

"In interpreting the constitution it must *never be forgotten* that the nation is made up of states, to which are intrusted the power of local government. And to them and to the people, the powers *not expressly delegated* to the national government, are reserved. The power of the states to regulate their purely internal affairs by such laws as seem wise to the local authority is *inherent*, and *has never been surrendered* to the general government. To sustain this statute would not be, in our judgment, a recognition of the lawful exertion of congressional authority over interstate commerce, but would sanction an invasion by the Federal power of the control of a matter purely local in character, and over which no authority

has been delegated to congress in conferring the power to regulate commerce among the states."

To uphold conviction here, the Dagenhart case will have to be overruled. When Tom Jones sells shirts at any price he sees fit, or even gives them away, or sees fit to give away one shirt to every customer who buys another, that transaction is neither interstate commerce, nor affects it in the sense used when the Constitution was adopted, or since. Whether Tom Jones decides to employ only union labor, or only non-union labor, or to employ only men with red hair, or with blue eyes, or under any other fanciful classification, does not concern either state or interstate commerce. Unless restricted by the State of Colorado nobody can control his liberty of contract, or his property rights, in regard thereto. Not unless this court is willing to adopt the views announced by Judge J. D. Moore of a Texas State District Court, handed down Oct. 12, 1933, in St. of Texas v. St. Oil Co., wherein the N. R. A. and the Texas Anti-Trust Law came into conflict. This judge frankly stated that everything affected interstate commerce. With especial reference to the Child Labor case, he said:

"The things and conditions that are closing down manufacturing plants throughout the United States are obviously operating to obstruct interstate commerce. And the same applies to filling stations. * * * In my view congress has the power to correct conditions existing in every state in the Union that had made it difficult for children and even their parents to work at all. The nation-wide conditions which have taken the children and their parents out of the factories and have put them on the highways as beggars have affected interstate commerce."

We await with interest to see if the above language is to be incorporated in a decision of the U. S. Supreme Court giving effect to it.

When bandits loot a bank, or even a citizen, the ability of one or more individuals to buy goods is stopped, and hence commerce is affected. When one, or several persons, fail to pay their bills promptly, commerce is affected. Hence Congress has power to legislate, under the commerce clause, to make highway or bank robbery a Federal crime, punishable

by death, and likewise to pass laws for the collection of private debts, or maybe to cancel them all, and give all a fresh start!

If the Texas judge is right, then the illustration is not absurd. Otherwise conviction in the case at bar cannot stand.

The matters here involved, conditions of labor, right and liberty to contract, the right of the owner to sell at retail, in a local store, his own merchandise, at any price he will, are not subject even to the regulation and control of the Colorado Legislature. Our Supreme Court has ever stood four-square to uphold the guaranties of these individual liberties, and to keep them immune from legislative interference. So have the courts of most of the States. Only when "a business is affected with a public interest" is this rule relaxed.

And such "public interest" must be real, not fanciful and not arbitrarily so assumed. Only such a business as is

(a) Carried on under a public grant of privilege imposing a duty of rendering public service to all demanding it, i. e., railroads, public utilities, etc.

(b) An exceptional occupation wherein the public interest has been recognized from earliest times, i. e., innkeepers, cab-drivers, grist mills.

(c) One which, though not public in its inception, may be fairly said to have risen to be such, wherein the owner, by devoting his business to a public use, in effect grants to the public an interest in such use—such as grain elevators, or now, coal mining in Colorado.

Not merely because a business is large, or even because the public is warranted in having a feeling of concern in its maintenance.

Such is the holding of this court in

Wolff Packing Co. v. Ind'l. Rel. Com'n., 262 U. S. 522, 67 L. Ed. 1103.

Only such public interest justifies even a sovereign State in regulating hours of labor, conditions and prices.

In all such cases, however, where such regulatory laws have been upheld, no Act of Congress was involved. They are cases where the State, in its sovereign capacity, is exercising inherent and not delegated powers.

Such are all the cases from Munn v. Illinois, 94 U. S. 113, down to the recent affirmance on March 5, 1934, of the New York State law fixing minimum prices for milk, in the Nebbia case. None involve any attempts by Congress, in strictly local affairs, to regulate hours or wages or to fix prices of commodities, outside the realm of interstate commerce.

Nevertheless, this court has denied even to a state, in a business not "clothed with a public interest," any power to infringe upon or to regulate the right of employer and employee to contract with respect to wages. "This is part of the liberty of the individual protected by the guaranty of the due process clause of the 14th amendment."

> Wolff Packing Co. v. Court of Ind'l. Rel. of Kansas, 262 U. S. 522, 534; 67 L. Ed. 1103, 1109,

affirming the same doctrine announced in the minimum wage law case in

> Adkins v. Ch. Hospital, 261 U. S. 525, 545; 67 L. Ed. 788, 791.

In the last case an Act of Congress, acting as a state legislative body for the District of Columbia, was held to be violative of such constitutional guaranties.

> In *Coppage v. U. S.*, 236 U. S. 14, 59 L. Ed. 446,

quoted in the Adkins case, Mr. Justice Pitney said:

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property." * * * If this right be struck down, or arbitrarily interfered with, there is a substantial impairment of *liberty* in the long established constitutional sense."

Here, in Colorado, our Supreme Court has spoken in no uncertain terms of and concerning tendencies on the part of the State Legislature to indulge in paternalistic measures, and in holding unconstitutional the act of 1899 regulating hours of employment in underground mines and in smelting

and ore reduction works. That court, *en banc*, and without dissent, speaking through Mr. Justice Campbell said:

"If the theory is correct, the state would be *justified in prescribing the most minute details for the regulation of the personal conduct of individual citizens, as to things in nowise affecting the great public interests. Whenever a man fails in business, or loses a fortune by some great calamity, or droughts or floods destroy his crops, the legislature could levy a tax, or make an appropriation, and therefrom establish him in business, or make good the loss. The practical application of the theory would destroy the fundamental principles upon which our government is founded.*"

In re Morgan, 26 Colo. 415, 429.

In 70 Colo. 90, *People v. Western Union*, the "Anti-Coercion Act" was held void, as in violation both of our Bill of Rights and the 14th Amendment to the Federal Constitution. That act attempted, just as the N. R. A. and the Retail Code, to make it a crime for any employer to require an employee to sever his connection with a labor union as a condition of employment.

Akin to regulating prices, our Colorado Court denied constitutionality to an ordinance forbidding the giving away of trading stamps, redeemable in merchandise, to purchasers of other merchandise.

Denver v. Frueauff, 39 Colo. 20.

Even though the U. S. Supreme Court later affirmed the ruling of the Courts of another state which recognized a similar law as valid, nevertheless our Court stood by its guns and refused to change its position, in

Denver v. United Cigar Stores, 68 Colo. 363.

Similarly has the Colorado Court refused to recognize validity to acts to compel parties to arbitrate disputes (11 Colo 629); to regulate the weighing of coal at mines (21 Colo. 27); to limit a day's work to eight hours (21 Colo. 29); to unduly limit the size of bill-boards, and their distance from buildings (47 Colo. 221); and requiring compulsory attendance of children to listen to readings from the Bible in

public schools (81 Colo. 276). These are but a few instances. Just recently the Court has refused to be influenced by emergent conditions to permit the Legislature to violate plain and mandatory provisions of our State Constitution in their efforts to raise funds for unemployment relief, while recognizing the crying necessity for such relief as well as the need of quick action.

We point to these decisions, not only as indicating the public policy of Colorado, but also as an example, worthy of emulation even by the highest court in the land, of a steadfast adherence to law and the mandates of the Constitution, in the face of popular demand and public clamor.

And as to selling shirts at a price too low to suit the Code, this Court has determined that the price of resale of theatre tickets cannot be thus fixed, or private property rights in respect thereto interfered with, in the case of

Tyson v. Banton, 273 U. S. 418, 71 L. Ed. 718.

These decisions demonstrate that the Colorado Legislature could not legally pass, nor the Colorado Courts enforce, compliance with such Code provisions as our client now stands branded as a criminal for having violated. And if this Court should uphold this conviction, and thus hold contrary to the public policy of Colorado, immediately arises the "paralyzing conflict" mentioned and warned against in the Kidd case, *supra*.

The cold logic of this case now compels recognition.

If the sovereign state of Colorado, possessed of and exercising inherent powers, which has every right and power except only where *expressly limited*, cannot legally adopt these Retail Code or N. R. A. provisions, here involved, how can such power be usurped by the Federal Government, possessing and exercising only expressly granted and limited powers, under the pretext that they come within the interstate commerce clause?

Can the river run higher than its source? Can the grantee have greater lands or more power than the grantor?

A recent article by Milton Handler, Assistant Professor of Law at Columbia University, appeared in the American

Bar Journal for August, 1933. The writer took a view strongly in sympathy with the N. I. R. A., and merely pointing out the questions naturally arising thereunder. In concluding his article the author says:

"For the statute in its main aspects to be invalidated would be little short of a major tragedy. But candor demands the admission that for the statute and the code to be sustained in their entirety requires a change of attitude on the part of the Supreme Court no less revolutionary than the legislation itself."

But it is no part of the duties of the Supreme Court to stage revolutions. On the contrary their oaths obligate them to interpret the Constitution, as it is written—binds them to it as the supreme law, to defend it against encroachments, against the demands of popular clamor.

The Constitution was made to operate most powerfully especially in an emergency. Lacking strain and stress the structure needs no support. But the Supreme Court stands as its buttress when storms threaten and it is buffeted and battered by the forces of political expediency and the cries of distress of a suffering people. In such cases let us recall the words of caution uttered by Mr. Justice Swayne in the case of

Edward v. Kearzey, 96 U. S. 595, 24 L. Ed. 793, 797.

He was repeating a similar warning, previously issued by Chief Justice Taney, in these words:

"Policy and humanity are dangerous guides in the discussion of a *legal* proposition. He who follows them far is apt to bring back the means of *error and delusion.*"

This country thus cannot repose in Congress, under our present Constitution, the power to exercise a broad national sovereignty. To do so we would have to reconstruct our entire frame of government, and amend the Constitution. If we are anxious to cast all our burdens upon the shoulders of Congress, to look to Washington as the source of all help, let us do so with our eyes open, after due deliberation of the whole subject and what it entails, its burdens as well as its benefits, in various State conventions assembled, and there amend the ancient document in the only fair way, in the only

way provided by law for that purpose. Let us have no amendments or new grants of power by judicial legislation or interpretation.

If the States are ready then to so surrender their rights of sovereignty, and if the People are brought to that state that they are willing to yield their liberties, to surrender their rights to think and to contract for themselves, to a central government, and let that government direct and order them in their daily trade and industry, tell them where and when and for whom to work, whom to employ, what to sow and when to reap, what to market and what to destroy, the price to buy and the price to sell; to turn over also the direction and control of education, primary and secondary schools, and colleges; arts, science and agriculture; all in the hope that the government will also, being thus placed *in loco parentis*, feed us, and clothe us and house us, and once in a while let us go to a movie—if, and when, we are thus ready to confess our utter inability to manage our own local affairs through our own states, let us say so frankly and openly, and confess, in conventions for that purpose duly called and assembled, that we are hungry, and are willing to trade our priceless birthright of liberty, for which our fathers fought, bled, froze and died, for a mess of pottage.

THE TWILIGHT OF THE SHERIFF

An extremely interesting article under the above caption appears in the *Saturday Evening Post* of the issue of February 17th last. It is well worth taking a few moments to read and a few moments thereafter to digest the situation portrayed in the article, particularly in view of the Dillinger escape from jail in Indiana and the holdup of the bank in Sioux Falls, with hundreds of spectators looking on.