

SPEECH

of

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My visit to Portsmouth is intended to serve many purposes. I would not be entirely candid if I did not tell you that an important factor in my acceptance of the National Committee's invitation was an opportunity to visit my family in Boston. I am, as you know, a Democrat in that fashion which makes for undying democracy, namely, by birth, and consequently I am anxious to play a modest role in the cause of Party regularity. Then too, the office I hold inspires me with zeal of the crusader for the Securities and Exchange Commission and its great accomplishments so that forsooth, I am eager to preach the gospel implicit in the important work of this governmental body. I am also attracted by the organization of Young Democrats, feeling as I do the confidence and pride in the ability of youth to correct the mistakes of yesterday and to chart the voyage of tomorrow. In addition, the clash of political philosophies regarding the solution of vital problems of our times makes it desirable that one speak one's mind at an occasion so attractive as is this one to which I have been invited this evening.

Purposely, I shall not talk politics as such. You will appreciate that it would not be appropriate for me to sound a rabid call to arms in behalf of our Party, or to anticipate the campaign a year hence with vitriolic invective against the personalities who shall command the opposition. As an official of the Government, I am a servant to no restricted class or political group and so, like the good cobbler, I shall stick to my last and in so far as I venture into the field of politics it shall be only as necessitated by a consideration of the legislation which the Commission administers and the activities it embraces. As you know, the Commission was created a year ago last July. In the Act of Congress which regulates the stock exchanges of this country, restrictions on methods of security trading were prescribed and obligations imposed upon corporate fiduciaries. In the same Act there was transferred to the Commission the task of administering the Securities Act of 1933, which legislation was born amid startling revelations of corporate corruption and fraudulent impositions upon an ignorant investing public. Recently, after one of the longest sessions of the Congress within the memory of this generation, and after a most bitter and protracted struggle, marked by intense passions on both sides, the Commission was given the task of administering the Public Utility Holding Company Act of 1935. In a period of three sessions of Congress, legislation, far-reaching in scope and extraordinarily novel and complex, has been passed in the interests of the American people. The singularly difficult, delicate and complex problems of administration were assigned to this new Commission which by the very nature of its duties created thereby has become an important factor in the business life of America. Let me speak briefly about each of these Acts.-

The Securities Act of 1933 is by far the simplest. It is based upon the powers of Congress to regulate interstate commerce and the mails. It goes little beyond a requirement that before a person can make a public offering of a security through the use of the mails or interstate commerce, he must register that security with the Commission by filing a statement containing information which Congress and the Commission have declared to be essential for the guidance of a reasonably prudent investor. This Act carries appropriate legal, civil and criminal sanctions. It was passed by the Congress without a dissenting vote. Although at its inception it was viewed with jaundiced eye by the banking fraternity, and although it has been the subject of many controversial discussions, its validity has been attacked only by the security underworld whose interstate swindling has been made a hazardous occupation by reason of this law. None seriously disputes that it is within the constitutional powers of the Congress and only last week in the Circuit Court of Appeals in New York at the conclusion of arguments on the issue of constitutionality one of the Judges who heard the argument stated that he had no doubt but that the Act was a valid exercise of the postal powers of the Federal Government. In at least two instances the lower Federal courts have specifically upheld the Act and even the Committee of Fifty-Eight Lawyers of that Rump Supreme Court finds no quarrel with the 1933 legislation. Its philosophy is neither novel nor extreme. The message of President Roosevelt in March of 1933, one of the first of his many important communications to the Congress, states the whole story. "This proposal", he said, referring to the requirement of full publicity, "adds to the ancient rule of *caveat emptor* the further doctrine 'let the seller beware'". "It puts the burden of telling the whole truth on the seller. It should give impetus to honest dealing in securities and thereby bring back public confidence." "What we seek", he concluded, "is a return to a clearer understanding of the ancient truth that those who manage banks, corporations and other agencies handling or using other people's money are trustees acting for others." It is gratifying to note that the fears of the critics of this legislation have been proved to be baseless. I am not conscious of any exaggeration when I state that no reputable individual connected with the securities business believes that the Securities Act of 1933 represents unwise legislation.

The Securities Exchange Act of 1934 was a more comprehensive, a more complicated, exercise of the Federal Government's power. It too was passed after a most spirited fight by stock exchanges, investment bankers, security dealers and brokers who believed that notwithstanding the great losses suffered by the American people, their particular business was not affected with a public interest. This Act, recognizing the evils of unrestricted speculation and the other factors which lay behind the unfortunate collapse of 1929, established a comprehensive scheme of control over the stock exchanges of the country, outlawing many practices which were either unfair or downright dishonest and giving to the Commission wide powers of discretion in supervising trading in securities to prevent improper overreaching, to require a candid disclosure of relevant facts on the part of issuers whose securities were traded on exchanges. Among other things, it granted a measure of power to control realistically the all too common practice of insiders profiting at the expense of the public.

Despite the forecasts of collapse, the legislation has been accepted by its principal victim, the New York Stock Exchange. Despite the oft repeated threat of failure, the Act has come to be regarded as a wise and sensible attempt to control a growing evil that threatened to wipe out forever public confidence in security trading.

No court has passed on the constitutionality of this statute, but the very absence of such suit is indicative of the generally accepted belief that the Act does not transcend the powers of the National Government. What is more important on this issue than any scholarly discussion or ancient judicial documents is the vital living fact that the legislation works and it affords a reasonable amount of protection to investors without unduly disturbing the complex business of security trading.

And now, we have the task of administering the Holding Company Act, which has had a stormy birth and even at the very inception of our control it seems to be provocative of bitter warfare. This Act is one which should have particular interest for the Democrats of New Hampshire. In its passage your Democratic Senator, Fred H. Brown, played a decidedly major part. His speech on the Floor of the Senate in favor of a realistic control of the growing evils of senseless concentration in the field of holding companies, with their properties scattered all over the country without any geographical or economic integration, was a splendid contribution to the cause of sanity in Government. The philosophy of this Act is fundamentally one of State rights. Although the powers of the National Government are invoked, they are called into action for the sole purpose of making more effective in the future State control of operating utilities.

I shall not bore you with a discussion of some of the interesting problems raised by this legislation, nor shall I even attempt to outline the scope of this statute, but in order that you may appreciate that by this legislation a definite philosophy of Government is given concrete expression, I should like to quote from the message of last March from the President of the United States, transmitting a report on the National Power Policy Committee with respect to the treatment of holding companies. He said:

"Most of us agree that we should take the control and the benefits of the essentially local operating utility industry out of a few financial centers and give back that control and those benefits to the localities which produce the business and create the wealth. We can properly favor economically independent business, which stands on its own feet and diffuses power and responsibility among the many, and frowns upon those holding companies which, through interlocking directorates and other devices, have given tyrannical power and exclusive opportunity to a favored few. It is time to make an effort to reverse that process of the concentration of power which has made most American citizens, once traditionally independent owners of their own businesses, helplessly dependent for their daily bread upon the favor of a very few, who, by devices such as holding companies, have taken for themselves unwarranted economic power. I am against private socialism of concentrated private power as thoroughly as I am against governmental socialism. The one is equally as dangerous as the other; and destruction of private socialism is utterly essential to avoid governmental socialism."

Although I stated that I would not beat the "tom tom", I think as Democrats we can take pardonable pride in the accomplishments represented by these three statutes. They are eloquent testimony to the effect that our great leader in times of great economic stress in the face of a continuous cry for recovery - no more reform - displayed the character, foresightedness and true wisdom which brought to the law of this country these methods for controlling the dangerous abuses which were such a serious threat to our Democratic institutions. Of course, there was a struggle. The articulate belief of the industrial and financial leaders of this country was the doctrine of "Live and Let Live". The Government, so they claimed, had a very limited function. It had no business to affect the National economy as a whole or to see to it that the vital balance between the individual and a giant combine of capital should be restored and preserved. They objected most vociferously against any steps which sought to give the widow, orphan or innocent investor a more even chance with the shrewd promoter. Government interference of that kind was meddling, expensive and dangerously radical. Of course, this rugged individualism was subject to some exceptions. The most noticeable one was disclosed during the course of our recent financial collapse - the Government should then come to the aid of business. There should be a policy of easy loans at favorable rates and just as in their conception of prosperity, the populace would benefit as the good things filtered down from above, so also should the Government in times of stress help the poor by loans to large enterprises.

I do not think it is an extravagant statement to make when I say that the good old days of unregulated competition, so-called, or unrestricted opportunity to impose on those less intelligent, and less powerful, belong to the "Dear Dead Past". Perhaps, it is too early to say that a new era has taken complete form. We have not as yet, I believe, reached a state of complete attainment of the ideal of American liberalism. Perhaps we shall never attain it. The fight for economic justice will never be won, but as a distinguished lawyer would put it: "The sword must be passed on to bleeding son from bleeding sire." I do not intend to assume the role of an alarmist, but one needs to take but a casual look at the changing forms of Government in the countries of the world to appreciate the importance to us and the generations yet unborn of the preservation of the American ideal of social justice. Unfortunately, current thought is clouded by the American habit of indulging in "labeling" as a substitute for critical thinking. The problems which underlie the legislation administered by our Commission and the evils sought to be eliminated are of the kind which if left uncontrolled would wreck our social structure. It is fashionable to attack reform measures of any serious moment as innovations from Moscow, and grants of power from Congress are regarded as forerunners of the new, but trying scheme of government in vogue in Berlin. It is seldom that the opposition will recognize that the truly American way of obtaining social justice is to put reasonable limits on power, that a democracy is less a democracy if in its social and economic phases it develops citizens who although politically free are serfs to absentee wealth.

To me one of the amazing features of hostile comment regarding legislation to control the evils which have followed in the wake of our corporate development has been the unwillingness of the critic to recognize

that countries similar to our own in tradition and in general culture have wrestled with analogous difficulties and have sought strikingly similar cures. Only a few weeks ago in a leading financial paper in England there was a very forceful argument for a revision of the British Company Law because since the last revision there had been more serious "companies scandals", more fraudulent business failures than in any period within living memory. They particularly mentioned the Royal Mail Steam Packet Company failure which resulted in the imprisonment of Lord Kylsant. This man, far more innocent than many of the notorious embezzlers who have received kind treatment at the hands of the American juries, went to jail for violation of an ancient principle which is part of the Securities Act of 1933, that half a truth made a whole lie. Let me quote from this article to show how England feels about the evils of holding companies:

"Undoubtedly, the sections of the Act on which most criticism from responsible quarters has centred are those relating to holding companies. The explanation of the 'group system' of company finance has been a leading feature of the history of recent years. Nowadays, the typical structure in large-scale industry tends to consist of a central holding, or parent company, controlling a planetary system of operating satellites or subsidiary companies. * * * * * "Astute and unscrupulous financiers have been quick to see the potentialities of the group system as a source of wealth not for innocent investors, but for themselves. The device which came into favour in 1928 was to obtain control of a reputable company possessing substantial cash resources. These resources were then used to buy control of another company in the same line of business, thus giving the directors of the first company control of the cash resources of the second. These, in turn, were used either to buy up new businesses, or, if necessary, to support the market in the shares of the first company. Thus the process continued. On the basis of a very small capital of their own, the promoters were able to gain control of a whole group of allied businesses. The public was lured in by all the old devices of market manipulation and glowing prospectuses and progress reports, and by the magic of the new word "rationalization." The cash resources of each newly acquired company were squandered in buying up shares in yet further companies at inflated prices. When the market turned adverse and the public would no longer buy, the group collapsed, leaving a wreckage of once-prosperous businesses, denuded of working capital and crippled by debts.

"It may be true that men cannot be made either moral or prudent by Act of Parliament. It is no less true, however, that, but for certain definite weaknesses in the Company Law, the 1928 bubble would never have swollen to gargantuan dimensions, but would have been pricked earlier."

This is a quotation not from a publication like the New Republic or the Masses, but from a leading conservative weekly of a standing comparable to the Wall Street Journal. The British have a very detached, sober and objective attitude toward proposed legislation which goes far to explain the general superiority of their legal system to our own. In this country we are more emotional, less impartial in our judgment, and our legal institutions reflect this difference of viewpoint.

Recently in Canada, a Royal Commission made a scholarly and comprehensive report on the problems of concentration of wealth and power in the corporate systems. It is interesting to note that most of their recommendations for legislation to control the evils in Canada resulting from the concentration of power in the hands of corporate management follow substantially the legislation which our Commission administers under the Securities Act and the Securities Exchange Act. They pay particular attention to the hopelessness of the individual shareholder in dealing with a management whose financial interest is infinitesimal but whose prerogatives and prerequisites are of great value. I dare say that when legislation is presented to the Parliament in Canada its proponents will be called "Reds", but I am equally certain that when the proposed legislation is passed and when the beneficial results of effective control are realized, the critics will be silent and society will have achieved substantial improvement.

So, you can see quite readily why I have come here in the spirit of a crusader to preach the gospel of the sufficiency of the Democratic Institution to solve its own distressing problems through rational methods, without revolution and without any major operation upon the forms of social control. The legislation administered by the Securities and Exchange Commission, I believe, will be permanent and I believe its permanency will be an enduring monument to the courageous and intelligent leadership of President Roosevelt.

One thing we must keep constantly in mind in the present wave of criticism regarding recent legislation. Such criticism is now a new phenomenon. It is as a matter of fact inevitable. The ones who are the present beneficiaries of the existing economic dislocation will not suffer a change without fighting desperately. Their usual weapon will be vilification and abuse, dismal foreboding and a consistent attitude of outraged righteousness, a righteousness which in many instances will be subsidized. We have recent history as infallible proof of the consistency of such men's reactions. The newspapers of the Progressive era are filled with cartoons, editorials and editorialized news items which were perhaps even more extreme than the types we now witness. When the elder Roosevelt, the fifth cousin of Franklin, was out to "bust the trusts", when he campaigned for the cause of conservation, he was mercilessly pilloried as a fanatical madman. Woodrow Wilson's new freedom was laughed to scorn and passionately assailed. The term "red" was not popular with the critics, but the word "radical" denoted social leprosy. Yet the campaign went on and would have been more lasting in its consequences but for the war which suspended all the arts. And, after the war came the great god Greed which warped the soul of America and which left ravages we shall not soon repair. The Progressive party, a movement which under different party labels is an ever recurring phenomenon in American political history, took up the torch for human rights. It had to bear the odium and the scurrility of those days. Over a quarter of a century ago the orator of the Progressive Convention stirred the minds and hearts of his hearers with words that have a familiar sound. -- "American mills, mines, factories and sweatshops are destroying -- American children in body, mind and soul". -- "Hunger should never walk in these thinly peopled gardens of plenty". -- "What is to become of the family of the laboring man whose strength has been sapped by excessive toil and who has been thrown upon the industrial scrap heap".

A consideration of the historical incidents of reform should give us courage. Intemperate blind criticism is a mark of merit for proposed legislation. What's more important, if history is a guide, it is a guarantee of ultimate success. I could cite innumerable instances to prove my point. Unyielding opposition greeted the proposal for a Federal Income Tax law, for a Federal Employers Liability Act, for an Interstate Commerce Commission, for the Federal Reserve Act, etc., etc. Against them all was hurled the withering charge - "It is unconstitutional". And yet, though halted, the march was steadily onward. Then, as now, the answer is complete. The Constitution's great virtue is its indefiniteness, its capacity for adjustment, its power of growth, its ability to serve society in step with changing needs and changing times.

The most amusing feature of the present unofficial campaign against the Administration is the Liberty Leagues, unofficial Supreme Court of Fifty-eight lawyers whose list of clients reads like a list of stocks on the Big Board. Alarmed at the socialistic trend of the times they assemble by correspondence and sign learned documents announcing a sentence of "anathema" on many a New Deal dogma. In this great land of free expression, no one can deny these estimable gentlemen the right to consolidate their views on current legislation, but no one should be fooled by their pretensions to impartiality. As judges, they fall within Professor Powell's definition of the ideal judge - "One who leans neither to partiality on the one hand nor to impartiality on the other." This adventure of Mr. Shouse has been a flop and the lawyers who took part in the experiment have not improved their reputation for candor or sincerity.

This self-appointed group of special pleaders, without any warrant in law, by concerted action savoring of a political conspiracy at the behest of a political organization, run by a politician and an unusually expensive one at that, purports to pronounce a solemn condemnation of the Acts of Congress. When the sham is exposed, when the professional impropriety of these lawyers who, in their private capacity advise clients opposed to the present Administration, are made the subject of public comment, the liberty league defends on the ground that all such comment is pure abuse. An amusing and fatuous account of the liberty league defense is contained in this morning's newspaper reports of a radio address by the former Solicitor General James M. Beck. He said that "the treatment of the dignified expression of opinion by American lawyers is but another illustration of the intolerance with which the present Administration has received any criticism even though it were respectful in expression and constructive in character." What a dead give-away! He unreservedly admits the statements of the Committee of Fifty-eight to be "criticism of the Administration". Then, why, I ask, mask it under the guise of a solemn professional pronouncement by lawyers who in the interest of the commonweal are purporting to give calm objection and nonpartisan opinions. The New Deal cannot fail to be helped by such puerile attempts at solemn bamboozlement. The only loser is the American Bar, the prestige of which has been attaining new lows of late through the lawyers social irresponsibility. A fortnight ago a real lawyer, with all of the implications of that term in ability and character, Mr. Charles C. Burlingham of the New York Bar, made short work of the Fifty-eight pretenders. In a letter to the New York Times, he said:

"Many of the fifty-eight are lawyers of high character and distinguished ability. They need no defense. If they were as open and frank as the Constitution Club of 1904, they would declare that their purpose was, in part at least, political, to save the Constitution by defeating the President. If they think that long and rather dull opinions on questions of constitutional law are good campaign documents, that is their affair.

"It is to be hoped that his new legal bird will lay no more eggs, and will forego further dissertations and await the decisions of the Supreme Court itself. There will be ample opportunity then for lawyers to laud and magnify, or to 'cuss' the court."

Advisory opinions are dangerous things. Our Supreme Court will not permit itself to indulge in such rash conduct as advising in advance of an actual controversy. It is proper, to be sure, for lawyers to express themselves but they should be frank as to their purposes or they should for their own protection be more clever at concealment.

Mr. Beck is right, in one respect. This performance was a dignified one but it had a sort of a comic dignity. We must never forget that many an error has been expounded by gentlemen in frock coats.

The task of fulfilling the Democratic ideal is not an easy one. And it is idle to suppose that our cause will triumph in this generation or in the next. But one may appreciate the enormous difficulties in attaining social regeneration and still have faith in the system we have invented. I can't speak to you, Democracy's young, with any practical message because of my limitations as a politician and, in any event, because of the restrictions of my office. But I can express the conviction that we are enlisted under the banner which must prevail if the assumptions of American government have meaning. Let's be grateful for honest criticism and let us with cheerfulness admit our mistakes, our shortcomings, and that there are tasks which the law cannot perform. In such fashion we will best defend our ideal of true ordered liberty which is a right which only wise and vigilant government can guarantee.