

AT THE BOTTOM OF THE WELL.*

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When the ancient philosopher said that "truth lies at the bottom of a well" his purpose was to teach that truth is often concealed beneath a mass of deceptive indications and to warn against conclusions based upon hasty and superficial examination of the facts.

Not only may truth be obscured by the naturally attendant circumstances, but art may add to the concealment, and in social, economic and political matters dangerous falsehoods may wear a disguise so like the truth as to deceive even the elect.

The members of this old and honorable society are abundantly able to separate the true from the false in their several specialties in the art and mystery of pharmacy, but are they prepared to determine between the true and the false in the changes made, or from time to time proposed to be made in our political institutions, and have they sufficiently realized that they owe considerably more than purely professional obligations to the greater society of which this professional and scientific body is a part?

Under a form of government which professedly derives its just powers from the consent of the governed, all sections and divisions of society must exercise an intelligent and continuing interest in the manner in which it is conducted, or else be satisfied to witness its gradual degeneration into one which will eventually assert its right to govern without such consent.



JAMES H. BEAL.

THE THEORY OF CONSTITUTIONAL GOVERNMENT.

Between the theory of absolute autocracy in which no limit is placed upon the powers of government, and the theory of pure democracy in which no limit is placed upon the will of the people, lies the theory of constitutional government such as ours, under a voluntarily adopted written constitution which places limitations both upon the powers of government and upon the rights of individuals, in certain cases giving government paramount authority over the rights of individuals and in certain other cases regarding the rights of individuals as paramount to any alleged right or authority of government.

Unless there be constant and intelligent watchfulness on the part of the electorate there will be an inevitable drift away from these constitutional restraints, either in the direction of autocracy through the gradual invasion of individual rights on the part of the government, or in the direction of unrestrained democracy through the gradual weakening of the powers originally conferred upon the government by the Constitution. In either case the final result will be the same, the com-

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plete ignoring of individual rights whenever, in the opinion of those in power, the general good seems to require it.

There is special need for consideration of these subjects at this present time, when so many seem unfamiliar with the principles which constitute the heart and marrow of our fundamental institutions; when so many things which our fathers thought to be of vital importance are considered to be of little account; when personal liberty is coming to be regarded as an old-fashioned idea that can safely be ignored in the modern scheme of government; when the Constitution is by some regarded as an archaic document unsuited to present conditions, and by others is alternately appealed to as a fetish when its provisions support laws which run with their inclinations, or trampled under foot when they conflict with some law or method of law enforcement which they have set their hearts upon.

Observing the injunction to look beneath the surface of things let us inquire whether the evident changes in our institutions should be regarded as improvements or as corruptions, and whether the state of mind which has permitted them denotes increase of wisdom, or decay of ideals and a surrender of standards once thought to be established beyond dispute.

THE LAWS OF SOCIAL AND POLITICAL REACTIONS.

Fortunately we are not without some guiding principles in the exploring of human activities in their relations to law and government—principles which have been found to control in the social and economic relations of men no less than those which prevail in physical phenomena, and no less inevitable in the finality and certainty of their results.

In the physical sciences, when the setting up of the same conditions is universally followed by the same sequence of results, the sequence is accepted as expressing the rule of action which will prevail whenever the same conditions are repeated. In the same way it can be discovered that under like conditions human beings respond to externally applied forces with a high degree of uniformity, and that similar reactions will follow the application of similar forces to social groups in much the same manner as reactions occur between forces and matter in the laboratory of applied science.

Through careful study of the reactions which have followed when human beings have been subjected to the conditions of organized society it is learned that the origin, growth and decay of social and political institutions are not lawless and haphazard phenomena, but proceed according to natural laws as universal in their application as the laws which prevail in the development and decay of biological organisms; that certain specific factors have always functioned in the development of democratic institutions; that such institutions have peculiar susceptibility to certain types of accidents and disorders and that there are certain contingencies which must be avoided if they are to be preserved.

From this record of experiments can be discovered the economic consequences which follow the debasement of a national currency or the issue of fiat money; the political consequences which result when the orderly procedure of fundamental law is discarded for so-called direct action; the social injustice which results when accumulated capital denies a fair reward to the labor which creates capital, and the disorder and destruction which follow when labor, unwisely lead, forcibly appropri-

ates accumulated capital. From the same exhibit we can learn of the unfavorable social reactions which invariably occur when sumptuary laws are substituted for education and persuasion in the attempted correction of moral and ethical faults; of the hypocrisy and moral stagnation which ensue when the state exercises control over religion, and of the bigotry and persecution which are the consequences when fanatical religionists control the state.

All these and a multitude of other social and economic problems have been worked out for us in the sweat and blood of former generations. We do not need to repeat their costly experiments but only to bear their results in mind in order to properly appraise the projects of visionary or fanatical reformers who are blissfully ignorant that under other names and forms their proposals have been tested and discarded many times previously in the history of the race.

Rightly understood, therefore, the history of human institutions is the laboratory record of man's experiments in social and political science, through the study of which we are able to predict the probable reactions to a particular governmental policy with practically the same certainty that an insurance actuary can predict the number of deaths which will occur in a group of men of a given age within a specified time, the accuracy of the prediction in each case depending upon the completeness of the data upon which it is based.

SOUND POLITICAL INSTITUTIONS THE GROWTH OF EXPERIENCE.

The requirement that their theories be judged by the results of the past has always been specially objectionable to the devisers of utopian forms of society. "Why," asks the idealist, "should we be ruled by the dead hand of the past? Is it not as absurd to expect that institutions established nearly one hundred and fifty years ago should be sufficient to meet present conditions as to expect that transportation methods of the same date would satisfy modern requirements? Is there any reason why we should not have a new system of relations between men, property and government that shall be as superior to the old system as the automobile is superior to the ox-cart, or as the modern science of chemistry is superior to our elementary knowledge of that subject a century and a half ago?"

The mistake of the idealist and doctrinaire is that they devise their institutions without regard to the established laws of social reactions and imagine a special kind of human nature for the citizens who are to operate them. Practical statesmen, however, cannot bend situations and remedies to fit each other according to their ideals, but must accept conditions as they find them, and make use of such agencies as the qualities of human nature permit. They find that there is frequently a wide difference between the logic of mere words and the logic of facts, and that things seemingly true when expressed in conventional terms are not equally true when reduced to terms of experience.

The principles of sound political institutions were never more thoroughly considered, nor considered by a more capable group of men than when the original system of American Constitutional Government was formulated. The chief reason why it has survived so long and has served its purpose so well is that its basic principles were not evolved from philosophical speculations, nor derived from doctrinaire theories of what a perfect form of government might be, but from a study of the experiences of governments which had been. Its basic principles were not

American by invention but by adoption. Nearly all of its fundamental provisions were taken from the old English Common Law, from acts and usages long accepted as parts of the British Constitution, or were derived from the still older Roman Civil Law, and tested by centuries of practical experience.

American institutions did not begin with the Declaration of Independence in 1776 nor with the Constitution of 1787. These historic documents simply embodied the assertion of rights long established and of customs long admitted. They had a background consisting of the whole of colonial history and reaching back to Anglo-Saxon England and even beyond. They were already old in the political traditions, habits and usages of the colonists before they were embodied in the single document known as *THE CONSTITUTION OF THE UNITED STATES*, referred to by the English Statesman Gladstone as "the greatest work ever struck off at a given time by the brain and purpose of man."

LIBERAL INSTITUTIONS LOST THROUGH ABANDONMENT OF FUNDAMENTAL PRINCIPLES.

The first important lesson to be learned from the history of attempts at self-government is that the continuance of free institutions depends upon the constant adherence to certain great fundamental principles.

In our political system we may regard as among the important fundamentals:

1. That the Federal Constitution was not intended to be a code of police ordinances, but to provide the form and framework of government, to furnish the statement of Federal powers, of the manner in which they may be exercised and of the limits to which they are restrained.

2. The complete and entire separation of church and state, in theory and practice, both as expressed by the general tenor of the Federal Constitution as well as by the specific reference in the first Article of the Bill of Rights.

3. The distribution of the functions of legislation, of judgment and of administration between different departments so that the same authority shall not be prosecutor, judge and executioner in any cause.

4. The complete independence of the judiciary so that it may neither be swayed by official influence nor intimidated by popular clamor, but shall find its course always and only as directed in the Constitution.

5. And finally, the provisions of the Bill of Rights, which constitute a summary of the rights of person and property established by successful resistance to official wrong since the days of Magna Carta, including our own resistance to arbitrary assertions of power by Parliament and George the Third.

No people ever intentionally set out to destroy their free institutions. When they have destroyed them it has always been through ignorant attempts to make them better by methods which have undermined the only foundations upon which such institutions can stand. In the light of history it might be said with fairness that good motives are more dangerous to liberty than evil motives, since it is always in the pursuit of some high moral purpose that the people are persuaded to sacrifice the safe-guards against dangerous extension of governmental authority.

The first essential, then, to the perpetuation of liberal institutions is that the great body of citizens shall have an intelligent understanding of what these fundamental principles are, and sufficient strength of will to resist the blandishments of

those who, either through ignorance or a selfish desire to dominate, would lead them to their abandonment.

While liberty can be lost in various ways, by bartering it for the unsubstantial novelties of socialism, by sacrificing its essential principles for supposed expedience, or for the quick attainment of some moral good, or even through sheer neglect and carelessness, it can be regained in only one way—and that is by fighting for it.

THE DELUSION OF DIRECT ACTION.

A dangerous seduction to the abandonment of constitutional safeguards is contained in the theory known as "direct action," or the proposal that the representatives of the people shall direct the course of public affairs without being held to the observance of the forms and restrictions prescribed by a written constitution, or, as the doctrine is more attractively expressed by its advocates, "to make the government more quickly responsive to the will of the people."

In the nature of things, effective common action by large groups of men is possible only by proceeding according to a previously agreed upon plan of operations, conducted under the direction of previously selected agencies. Any attempted direct action of the whole body without the aid of such previously agreed upon plan is mob action and defeats itself.

A written constitution is the highest expression of the people's will, and the orderly procedure which it enjoins is the only security against legislative and administrative tyranny. When the Supreme Court declares a measure unconstitutional it is simply declaring that the solemnly expressed will of the whole body of the people shall control the actions of those selected to discharge the functions of government. When legislative and executive departments are not bound by constitutional restrictions the end of free institutions is not far distant.

Those who purposely design to destroy the guaranties of constitutional government can employ no more effective instrument than the expedient of direct action.

In 1849 Louis Napoleon was the head and front of the popular democratic movement in France, the professed design of which was to give the French people more direct control over the functions of government and to make the courts subservient to the legislature. Unfortunately the people chose to follow Napoleon rather than more conservative advisers with the result that five years later the Republic of France had become an Empire, and Louis Napoleon, the professed apostle of pure and unrestrained democracy, had made himself the Emperor.

The delusion of so-called direct action is that instead of obtaining more power for themselves the citizens are actually transferring power from themselves to the government.

PROPERTY RIGHTS UNDER THE CONSTITUTION.

With some a favorite argument to show that our constitutional system should be torn to pieces and reconstructed is the allegation that it gives greater security to property than to human rights, a charge found to be entirely without foundation when the instances of such alleged preference of property rights are subjected to critical examination.

If the man who steals an automobile is captured, the law in compliance with the Constitution will restore the property to its owner and deprive the thief of his liberty

in punishment for the crime; or if the automobile is damaged through the malice or carelessness of another, the law will afford the owner a suit for damages. But if the owner abandons his automobile upon the public dump, the first comer may either appropriate the whole machine or tear it to pieces with perfect impunity.

The Constitution does not protect the automobile simply as an automobile but the owner's right to the possession of his property; it is not the protection of property rights but of human rights. A consideration of all other cases of alleged preference of property rights above human rights will equally show that what the Constitution protects and defends is the right of men to their own property: never the rights of property as such against human rights.

A variation of the argument that the Constitution prefers property rights above human rights is employed by those who favor the further intrusion of the Federal Government into private affairs, and who think it very clever to assert that because the Agricultural Department distributes hog cholera serum but does not distribute free diphtheria antitoxin, it is therefore evident that under the United States Constitution hogs are valued above human babies.

It is precisely because human babies are valued above hogs and cattle which are bought and sold and shipped in interstate commerce that their care and culture are not made the subject of Federal jurisdiction, nor delivered over to the tender mercies of bureaucratic regulation.

When we go to the bottom all the communistic propaganda about the sacredness given by the Constitution to property rights over human rights are either the utterances of those who are ignorant of the meaning of the terms they use, or of clever demagogues aiming to dupe the ignorant for their own purposes.

REFORMS SHOULD FIRST BE ESTABLISHED IN CONVICTIONS OF THE PEOPLE. •

Another popular fallacy tending to break down liberal institutions is the mistaken idea that the first step in effecting a reform in public morals or manners is to have it entered upon the statute books with plenty of pains and penalties to secure its observance.

To the reformer unfamiliar with the limited value of statutory correctives of human conduct it seems reasonable to ask, "Why should this stupid old world blunder along with so many abuses uncorrected and so many wrongs unrequited? Why not compose a series of statutes commanding everything right and forbidding everything wrong, have Congress and State Legislatures enact them into laws and inaugurate the millennium at once?"

If the reformer will study the lessons of history he will discover that the world's chief stupidity has been in its attempting to cure with legislation so many things for which legislation is not a cure; he will learn that every known wrong has been many times prohibited by law, and that many times the prohibitions have only intensified the evils they were intended to correct, or have added new and greater evils to the old ones. He will learn that legislation never actually cured any moral or social wrong; that when it has seemed to cure, it has only put into declaratory form the well-settled convictions of a liberal majority of the people who live under it. He will learn, also, that no greater misfortune can happen to a moral or social reform than to have it enacted into formal law before it has come to represent the preponderating sentiment of the society in which it is to prevail, and that when not

supported by such preponderating sentiment, the law will provoke resentment and resistance, and may occasion more harm than good.

Instead, therefore, of violently thrusting his proposition upon the people before they are ready for it, the astute reformer will continue his propaganda until its wisdom is overwhelmingly established in the minds of the people, when its legal enactment will be followed by general observance, and active efforts at enforcement will be needed only as against the comparatively small element of society which will yield only to force.

WHAT BECOMES OF THE MULTITUDE OF LAWS?

It has been estimated that the number of separate laws upon the combined State and Federal statute books is something like a million and a quarter, and that as many as 40,000 new enactments have been added by state and Federal law-making bodies within a single year.

What becomes of this multitude of statutory commandments and prohibitions? How many statute laws can the oldest of us recall as having been repealed, not merely by their re-enactment in different form but repealed outright? Probably not as many as the fingers on our two hands!

So many and so various are the things commanded and forbidden by law that there is probably not a single person in the United States who has not at times gone astray in this wilderness of legal injunctions.

If suddenly all of the laws nominally in effect were to be literally and strictly executed, our political, social and commercial activities would experience a terrific shock: there probably would not be sufficient policemen and judges free of confinement to arrest and to try the accused, or sufficient prison capacity to accommodate the prisoners; and there might not be sufficient clergymen at liberty to administer spiritual consolation to the families of the convicted.

Fortunately very many of the laws nominally in effect are, with the tacit consent of the law-enforcing authorities, virtually nullified by sheer neglect and non-observance, or like the Sunday laws are only sporadically invoked when some particular faction desires to punish or harass some other faction.

One of the facts most certainly established in political science is that excessive law-making is always and invariably followed by excessive law-breaking. To this rule there is no known exception.

WHY MANY LAWS ARE ENACTED AND FEW ARE REPEALED.

The investigation of why it is comparatively so easy to secure the enactment of futile and foolish laws and so difficult to secure their repeal when their futility and foolishness are discovered affords an interesting study in human psychology.

It is hardly possible to imagine a situation involving human activities which does not present some incident seemingly undesirable. For those who believe in the magic of legislation, the simplest remedy is to have the undesired incident prohibited by law. Hence the introduction of forty thousand or more new bills at each session of Congress and of one to three thousand at each meeting of a state legislature.

Since the purpose of all legislation is to correct some real or imagined wrong, it follows that those who oppose its enactment seemingly become champions of the

wrong sought to be corrected, even though their objection is solely to the proposed method of correction; or if the proposal is to repeal some dead or inefficient statute the proposer is still liable to the accusation of favoring the wrong. In such case the friends of the law will exclaim, "What! you propose to legalize this great wrong? Surely it is bad enough that the law should be disregarded; it would be infinitely worse to set the seal of the state's approval upon the evil by repealing the prohibition. Let us at least leave the law upon the statute books to show the world that we condemn the wrong."

And thus through foolish confusion of purpose with effect the statute books are filled with measures constructively alive but actually dead.

THE PROBLEMS OF LAW ENFORCEMENT.

There is a very general failure to make a proper distinction between law observance and law enforcement. Law observance is obedience to law, while law enforcement consists of the efforts made by the proper officials to secure obedience, and may or may not be successful. There may be very general obedience to law without much effort at enforcement, or there may be very strenuous efforts at enforcement with little success in securing obedience. If in spite of vigorous attempts at enforcement the number of violations regularly increases, it is nearly conclusive evidence that a substantial majority of citizens do not believe in the wisdom and justice of the law, and that it should be modified accordingly.

If a measure for the control of typhoid fever should be followed by a progressively increasing number of cases, it would universally be said, "The remedy is a failure; let us try something else." A law enacted to produce some great social or moral reform but which is followed by a constantly increasing number of arrests and convictions for its violation cannot logically escape the same verdict.

It is important also to distinguish between ordinary or casual disobedience to law and resistance to law. Our colonial forebears not only disobeyed the laws of Parliament but resisted them to the point of rebellion; radical northern abolitionists not only disobeyed the fugitive slave law but resisted it to the extent of rioting in the streets and the mobbing of United States Officers charged with its enforcement.

Laws which are very generally recognized as serving a continuing useful purpose to the social organism are observed and upheld by all except the small fringe of the population constantly at war with society. To the laws which prohibit theft, forgery, robbery, murder, etc., the vast majority of men yield willing obedience, not because of the penalties prescribed for their violation nor for fear of the policeman and judge, but because the laws comply with their settled convictions of right and justice. Even if frequently disobeyed, no one ever suggests that such laws are unjust or that they should be repealed, not even the criminal who seeks to escape the penalty for his disobedience.

If, however, the justice or wisdom of the law is largely disputed, as one which suddenly makes a criminal offense of what was previously non-criminal, disobedience will not only be common but will be committed in a spirit of defiance and resistance. Even if we are not prepared to condone such resistance it is foolish not to recognize its difference from the common infraction of laws the justice of which is universally admitted.

ONLY INTELLECTUAL RESPECT FOR LAW SECURES ITS OBSERVANCE.

It is not so much fear of the law's penalties as respect for the law's purpose and because of the intellectual conviction of its propriety and justice which secures its general observance.

Much is said about putting teeth in certain laws which are very generally disregarded, by which it is commonly meant that the penalties prescribed for their violation should be increased. In this respect some present laws resemble the giant saurians of geologic time, which had wonderful armaments of teeth and claws, but which according to paleontologists became extinct because they lacked the mental capacity to cope with their environment. What is needed in our society is not more teeth in the laws, but better brain equipment on the part of law-makers.

For the naturally adventurous, added risk only increases the attractiveness of the adventure. For very moderate rewards men climb about the steel structures of sky-scrapers, descend in sub-marines, cross the oceans in air-planes, or jump from them in parachutes, and otherwise play at hazard with death.

In England, when death was the penalty for pocket-picking, it is related that the most frequent occurrence of that offense was in the dense crowds assembled to see pickpockets hanged. England learned her lesson long since, and to-day, with comparatively mild penalties, is noted among the nations for her law-abiding population and for the effective administration of her criminal laws.

THE LIMITED EFFECTIVENESS OF STATUTORY CORRECTIONS OF MORAL CONDUCT.

It is a familiar fact in chemistry that in certain reactions efficiency increases with application of heat until a particular temperature is reached, but that if this optimum temperature be exceeded there will be a reversal of the reaction with lowered efficiency. A similar rule controls in law-making. If we exceed the optimum established by experience, either in the number of laws enacted or in striving for theoretical perfection in a particular law, the result will not be added, but lessened, effectiveness.

Apparently there is no hope of relief from the flood of foolish and futile new laws until there is in the public mind a general consciousness of the limited effectiveness of statutory correctives of human conduct, and particularly:

1. That many real or supposed evils are the natural incidents to transitions from old to new social conditions, and like many ailments of the human body tend to correct themselves if left alone, but will only be made worse by active treatment.
2. That certain evils are the natural consequences of certain benefits, and that both must be accepted or rejected together. We cannot make it altogether impossible for men to abuse their liberties without also making their rational use impossible.
3. That when it is attempted to translate moral or religious aspirations into acts of legislature, we may weaken their moral or ethical appeal without providing effective legal obligations; and that it is far preferable to try to correct moral wrongs by moral and ethical teaching than to increase disrespect for law by the enactment of ineffective statutes.
4. That there are physical as well as moral limitations to a law's effectiveness, depending upon the ease or difficulty in securing evidence to support convictions.

Where the offense is one which can be consummated wholly within the privacy of the home, convictions may not be possible without such a degree of espionage as no self-respecting people will long endure.

5. That it is not the severity of the penalties declared in the law but the certainty of conviction and punishment which deters the wilful law-breaker. And that where the risk increases the profit, the prescribing of heavy penalties may operate as a reward for breaking the law by those who think they can escape conviction.

6. That any law which cannot be effectively enforced will not only speedily fall into contempt itself, but will bring a measure of contempt upon all other laws. This was the reason behind the ancient maxim that "the law will not command where it cannot compel obedience, lest it bring itself to contempt."

7. That it is the extreme of foolishness to pass a new law as a substitute for the enforcement of an old one, or to pass a new law of the same tenor as an old one which has proved incapable of enforcement.

INFLUENCE OF BIGOTRY AND INTOLERANCE ON LIBERAL INSTITUTIONS.

Of all the forces which have played a part in the breaking down of liberal institutions none have been more potent than the quality of human psychology known as bigotry or intolerance, or that perversion of reason which permits the egotistic assumptions by an individual that his own conceptions of religious truth, of state-craft or of morality are the only possibly correct ones, and consequently that all other views must be either the result of ignorance or the product of evil intentions.

What is called religious intolerance, because so frequently associated with the profession of religious faith, should rather be called the intolerance of religionists, since it is an exaggerated development of the primary instinct of man to dominate his fellows, using religion as its cloak and excuse. Because it is instinctive in human nature, men of all faiths will become intolerant when they have the power. The Puritans came to America seeking liberty to worship God according to the dictates of their own consciences, and when they had gained it, changed their faith to mean that every man should worship God according to the dictates of the Puritan conscience, and persecuted Anabaptists and Quakers as relentlessly as they had themselves been persecuted by the Church of England.

When to bigotry are added great enthusiasm and an overbearing disposition the result is the fanatic who is not satisfied merely to practice and proclaim his faith but is ready to overturn and destroy everything that stands in the way of its immediate and universal acceptance. Compromise between the old and the new is the essence of progress in human institutions, but the fanatic will not consent to what he calls half-way measures, or, as he loves to put it, will not make a bargain with sin nor compromise with evil.

Fanatics are the world's war-makers, and when not stirring up strife between nations are promoting it between their fellow citizens. They consider themselves the especial dispensers of the wrath of God, and their phraseology is of the camp and battle-field, of "Armageddon" and "the embattled hosts of sin," of the "army of righteousness," and "the fortified strong-holds of evil," through all the nouns and adjectives of military terminology. These are:

“Such as do build their faith upon
The holy text of pike and gun;
Decide all controversy by
Infallible artillery;
And prove their doctrine orthodox
By apostolic blows and knocks.”

In the British Empire the slavery evil was handled by statesmen and conservatives, and the slave was freed without blood-shed or the economic ruin of the slaveholding dominions. In the United States the question was handled by fanatical religionists at the cost of a great civil war with all of its terrible consequences—the destruction of the flower of the manhood of North and South, the financial prostration of one-half of the Union and the creation of a heritage of bitterness which has not yet completely worn away.

When the world discovers some method of suppressing its fanatics, peace pacts and limitation of armaments will no longer be topics of importance.

No man can certainly know that he is not bigoted in a cause in behalf of which his feelings are strongly enlisted, but he can make an earnest effort to find out by seriously asking himself these two questions: Is my position on this subject upon which I feel so strongly derived from a candid examination of the evidence on both sides, or to the persistent closing of my mind to the evidence and arguments which might show me to be in the wrong? Is my confidence in this particular reform measure based upon a logical review of all the facts or is it due to such intense sympathy for its expressed purposes that I cannot bear to think of it as a failure?

GREATEST GOOD TO THE GREATEST NUMBER.

When under the forms of law there is some gross invasion of personal and private rights it is universally defended upon the ground that its object is to promote the general welfare, the excuse which always has been given for the exercise of arbitrary power.

Centuries of struggle against oppression have taught that the greatest good to the greatest number is possible only when the fundamental rights of every individual are secured against invasion, either by groups of his fellow citizens or by the whole power of the state acting upon any excuse whatsoever.

Logically the rights of all the citizens in the state can be no greater than the sum total of the rights of its individual citizens. If any one citizen can be arbitrarily deprived of life, liberty or property, then all in succession can be deprived of them, and there is, therefore, no such thing as inalienable right.

It was, perhaps, the most distinguishing feature of our original constitutional system that in plain and unequivocal language it asserted the existence of certain individual rights that should be inalienable even as against the state, and prohibited their annulment except in punishment for crime, and then only after conviction by due process of law.

Slowly this principle of the sacredness of personal rights has been permitted to fade from public consciousness, until it is not uncommon for powerful social groups to assert that the individual is entitled only to such rights as the majority is pleased to allow.

If we surrender this principle we are, at a single bound, returning to the mediaeval conception of government as a super-power independent of the people who live under it, under which the people are not citizens but subjects, and with only such privileges as the organized forces in control of the government are pleased to grant or withhold at will.

Mathematically speaking, the powers of government and personal liberty are reciprocals—as the one increases the other is proportionately diminished. Every amendment to the Constitution giving government power to do something it could not do before, is a surrender of rights which cannot be rescinded except by extreme or revolutionary measures.

The proper apportionment of powers to government and of rights to the individual citizen has been the great political problem of the ages. The most successful apportionment in history was that arrived at by the framers of the original Federal Constitution, an apportionment which through the incredible folly of their successors now seems on the point of abandonment.

When a department of government desires to assert some power not authorized by law it selects for prosecution those who cannot command popular sympathy, as the bootlegger or seller of habit-forming drugs, knowing that popular prejudice against such criminals will prevent close scrutiny of the methods employed. Later its action in this case will be the precedent for use against better citizens. Should a department desire to establish some doubtful exercise of authority in the control of medicinal preparations, it will first select for trial the maker of some flamboyantly advertised patent medicine, knowing that the precedent thus created can later be applied to the makers of other medicines.

Bear this in mind, the precedents established yesterday are the rules of law today. If we consent to the application of arbitrary or extra-legal methods to the meanest citizen in the state, we consent to precedents which can be used against any citizen in the state; and as certainly as the progress of the suns, the same extra-legal methods will eventually be applied to the class to which we belong.

THE CENTRAL IDEA OF THE ORIGINAL AMERICAN SYSTEM.

As nearly as it can be expressed in few words, and as illustrated in the limitations in the Federal Constitution and Bill of Rights, the central idea of the original American System was to provide a form of government under which each individual might live his life in his own way and be free to pursue happiness in the manner which seemed best to him. It was intended to be a government in which the restraints upon the action of the individual were to be no more than necessary to prevent him from interfering with the exercise of similar equal rights by his fellow citizens. This was the central purpose; all the rest was machinery to provide the methods through which the central purpose could be realized.

The individual was to be free to select his own objectives in life, in which it was expected that he would succeed or fail in proportion to his natural talents and his industry in applying them. Under this system the miser might hoard his wealth, and the spendthrift squander his property in riotous living; the citizen might dedicate his life to the cultivation of lofty ideals, or waste it in frivolous pursuits; he might devote his energies to the accumulation of wealth, or to the study of phi-

losophy and the accumulation of wisdom; he might be either misanthropist or philanthropist. In religion he might be Pagan, Jew, Catholic, Protestant, Agnostic or Atheist, and his faith or lack of it was not to bar him either from the right to vote or to be elected to office. The Pagan had as much legal right to persuade his fellows to Paganism as the Christian to make converts to Christianity. All had equal right to proselyte, none were to have the power to persecute or compel.

All of this was directly antithetical to the older monarchic theocratic idea that the chief purpose of the individual was to serve the church and the king, and the chief purpose of government to see that he did so. To the clerical mind it was abhorrent that every man should be permitted to do that which was right in his own eyes, or to seek his soul's salvation in his own way. The divines believed that men should have what they wanted only when it was good for them to have it, and claimed the sole authority to decide between the good and the bad. In Catholic countries the citizen was required to save his soul by being a Catholic and in Protestant countries by being a Protestant, and in both he was compelled to contribute to the expense of saving the souls of his fellow creatures in the manner prescribed by law.

This ancient clerical idea is not only still alive but militant, and there are indications that the American people will again be called upon to decide whether their government shall confine itself to utilitarian purposes and to the protection of individual rights, or openly adopt the theory of paternal government and undertake to secure the moral salvation of its citizens through the enforcement of an officially prescribed code of ethics.

To a certain type of mind the assumption of such paternal duties by government seems eminently right and proper, but the lesson of history is that it has always resulted disastrously for practical morality as well as for liberty of conscience.

It has been the purpose of this discussion to persuade you that you have duties as citizens far transcending in importance your professional duties, and to urge that in your contact with the general public you assist in promoting a better understanding of the essential principles which constitute the foundations of the political system which our fathers bequeathed to us. These principles cannot live unless they live in the minds and hearts of the people; unless the average citizen understands and believes in them, our free institutions will perish.

Only the intelligence of the general electorate will enable us to resist the ardor of those who would replace these fundamentals with the superficially attractive fallacies of benevolent socialism, or to withstand the assaults of those who would transform the United States Constitution to a code of police ordinances, and enforce their theories of moral behavior with the strong arm of the law.

Above all it has been the purpose to emphasize the essential soundness of the basic principles embodied in the original Federal Constitution and the Bill of Rights; that they were not evolved from the thin air of metaphysical speculation but were founded upon the rock of universal human experience and belong among the eternal verities—truths that are valid for all times and places, and which will continue to be valid as long as it be required that justice be evenly measured between man and man.