

DO YOU BELIEVE IN THE RULE OF THE PEOPLE?

EDITORIAL BY THEODORE ROOSEVELT

THERE has been much effort made to fog the issue raised in my Columbus speech. In reality, the issue is perfectly simple: Do you believe in the rule of the people? If you do, you are with us. • If you do not, you are against us.

Many good and honorable persons do not believe in the rule of the people, and openly say so. We disagree with these persons, but we can respect them. There are other persons, however, who do not believe in the rule of the people, but who dare not say so, and who endeavor by trickery, by chicanery, by fraud, to seem to give the people the right to rule and at the same time to deprive them of that right. These persons we do not respect.

Let the men of little faith who fear the people keep steadily in mind that they have no part in the heritage of Abraham Lincoln and of those who worked with him for the preservation of this Nation. Abraham Lincoln did not try to trick or defraud the people into freeing the slave and restoring the Union; he appealed to them in the name of duty, in the name of honor and self-sacrifice, to risk all, including life itself, for a high ideal; and the people responded, and Abraham Lincoln was justified and the slave was freed and the

Union preserved. Those who stand for the cause of social and industrial justice, to be obtained through the genuine rule of the people, are but carrying forward the work which dropped from Abraham Lincoln's hands when the patient, tired, kindly eyes were closed forever. He strove against intrenched wrong, against privilege in the most hateful form of his day. We, in our day, strive against hateful forms of intrenched wrong and privilege. We are not striving in bitterness of spirit, or with anger and hatred; as far as in us lies, we seek to emulate Abraham Lincoln's charity and kindness in dealing with those who, as we believe, think erroneously; but we also endeavor to emulate the unflinching resolution, the unswerving purpose, with which he fought for the great cause of righteousness.

Abraham Lincoln believed in the liberty and the power of the people, achieved in law-abiding and orderly fashion. He believed in that liberty of the people which has law and order as its twin handmaidens. He respected the judges. But he regarded them as the servants and not the masters of the people; and he believed that the people had the right to decide for themselves the great fundamental questions of public policy, upon the proper

solution of which it depends whether there shall or shall not be true social justice in the land.

Therefore we hold that, as regards these questions of public policy, courts, like executives and legislatures, must bow to the sober and well-thought-out judgment of the people.

Let me repeat once more what I have so often said—that I am not now speaking of ordinary cases of justice between man and man, such as must be decided by judges here in America as they are decided by judges in all other lands. I shall speak of these cases in some subsequent articles, in which I shall ask the people soberly to consider such facts as those set forth by Mr. C. P. Connolly in his recent articles in "Everybody's Magazine." In this article I speak purely of the kind of decision which only American courts are entitled to make—the kind of decision which no judge in our neighbor Canada, in Australia, in England, in Germany, or in France has the right to make, or would for one moment be permitted to make. Nor, at the moment, am I treating of the action of the National courts, because the Federal form of our Government makes it more difficult to propose a working remedy in the case of the Nation than in the cases of the several States. I am speaking of the action of the court of a State when it declares that a law passed in the collective interest of the whole community is unconstitutional; and I have especially in view the laws affecting human rights from a most vital standpoint—the laws affecting the terms and conditions of life and employment among the wage-workers.

I am not primarily concerned with methods; my aim is to secure the right of the people to decide for themselves, according to the principles of common sense and justice, what the public policy shall be in these matters. I am concerned with the end, not the means. If in any State the Constitution so clearly defined the power of the Legislature to act for the general welfare as to prohibit the courts from nullifying any law that is consonant with morality and public policy as understood by a majority of the people, and if in actual practice the courts respected such Constitutional prohibition, then there would be no need for what I propose; because in such case there would be full recognition of the absolute right of the people to decide the policy of their representatives, legislative and judicial, in these matters—and this is all for which I contend.

But in actual practice I know no State

where such conditions prevail; they certainly do not prevail in the State of New York. Therefore I hold that provision should be made in the Constitutions of the several States which, in the event of a clash between the Legislature and the Court as to the constitutionality of such legislation as I have spoken of, should permit the people themselves to decide what the true interpretation of the Constitution is. I am not concerned with terminology. Whether this is called a referendum to the people or whether it is called a shorter and simpler way of amending the Constitution, to my mind matters nothing. The essential thing is to get the power for the people.

It is not merely untruthful but silly to say that such a process would leave us "at the mercy of the mob." Such a process as I advocate would take at the very least two years' time. If in two years the people cannot come to a sober and deliberate judgment, then it is impossible that they should ever so come. If they have not the character and the intelligence to enable them, after two years' deliberation, after seeing the whole matter threshed out by the Legislature and before the executive and by the court, and finally by public speakers in an election, to themselves decide what they meant when they framed the Constitution, then it is idle to talk of their being fit to frame a constitution.

The wisest judges have always fully recognized this right of the people to rule, this right of the people to be their own masters and ultimately to decide their own policy. As former Chief Justice Campbell, of Michigan, said, "The greatest knowledge that we have in this world is the common knowledge of the common people." I do not propose to give the people any new power. I propose to restore to them the power out of which they have been defrauded, the power which it is their right and their duty to exercise. I propose to provide a better and more effective method for the exercise of the power reserved and inherent in the people to make or unmake their Constitution or construe the Constitution in accordance with their well-considered needs. I preach no new doctrine. The proposal that I make for the several States was in actual practice acted upon by the people of this whole Nation but a very short time after the Constitution was adopted. The United States District Judge for the Eastern District of Arkansas, Judge Trieber, in 1907, in an article in the "Amer-

ican Law Review," discussed the decision of the Supreme Court of the United States when, but two or three years after it had come into being, it decided that under the language of the Constitution a State was liable to be sued in that Court by a citizen of another State or of a foreign country. In consequence of this decision the Eleventh Amendment to the Constitution was adopted. Says Judge Trieber: "The amendment, it will be noticed from the language used, does not aim to change the Constitution, nor even add any limitations not in the instrument, but is merely explanatory, and in effect reverses the decision of the Supreme Court rendered in *Chisholm vs. Georgia* by declaring that 'the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign country.'" Judge Trieber also refers to the decision rendered in another case by the Supreme Court through Mr. Justice Bradley, when, in speaking of this Eleventh Amendment, the Court said: "This amendment, expressing the will of the ultimate sovereignty of the whole country, superior to all legislatures and all courts, actually reverses the decision of the Supreme Court."

It thus appears that it has been officially recognized by the Supreme Court, as is set forth in the words of Justice Bradley, that

the people of the United States have actually construed for themselves the Constitution of the United States, reversing and overriding the decision of the Supreme Court in so doing. All I ask is that what the people of the Nation have actually done the people of each State shall actually be allowed to do. Let the power so secured to them be a real and not a nominal power, a power of actual exercise; a power which shall not be exercised save after sober and deliberate thought, but which shall permit such sober and deliberate judgment of the people to become, as it should become, the unquestioned law of the land.

In concluding, then, let me ask those who disagree with me frankly to state whether or not they believe that the people have the right to rule themselves, and to settle for themselves the course they wish to pursue as regards great and vital questions of public policy. If our opponents do not believe in this right of the people, then they must repudiate the principles and the policies of Abraham Lincoln. If they are true to the teachings of Lincoln, if they do believe in the right of the people to rule, then they are bound also to hold that the power of the people, in the language of Mr. Justice Bradley, speaking for the Supreme Court, "is superior to all legislatures and all courts, and expresses the will of the ultimate sovereignty of the whole country."