

A Judicial Experience

A YEAR after leaving Harvard I ran for the New York Legislature and was elected. In the Legislature I was soon brought in contact with various advocates of what is known as labor legislation; and I eyed both them and their schemes with great distrust. When in Harvard I had studied what were then considered the orthodox political economists; and after leaving college the older men whom I met were for the most part lawyers or business men of wealth who quite sincerely took the ordinary wealthy business man's view of labor matters. Moreover, in the Legislature, most of the men who professed a loud and ardent interest in the welfare of the laboring man were exceedingly unattractive persons, who, to put it mildly, did not impress one as being either sincere or honest. Many of the labor bills which were introduced were foolish, and were urged in a transparently demagogic spirit, and the labor leaders who came to Albany to argue for them eyed me with a suspicion which I cordially reciprocated. Most of them, I am now inclined to think, were by no means of the best type; and I, in my turn, because of my surroundings both in the class-room and in the social and business world, was alert to pick flaws in anything concerning a labor union, and possessed a self-satisfied narrowness in approaching all labor questions which must have been highly exasperating to my opponents.

My college training had biased me against all governmental schemes for the betterment of the social and industrial conditions of laborers, or for the control of corporations. The education which I afterwards received in these matters, and which completely changed my views, was

gained partly from books, but more from actual experience in governmental work, and from a constantly widening and more intimate knowledge of the real life of different bodies of our people. My first step in this education began when, after leaving college, I joined, and endeavored to make myself count in, my local Republican association—instead of joining some parlor gathering of well-meaning dilettante reformers.

The labor unions had been demanding legislation to stop the manufacture of cigars in tenement-houses, and during my second term in Albany the Assembly appointed a committee to look into the conditions. My belief is that the committee was appointed with the hope that it would not recommend any change in the law, and that I was put on because, on account of my education and social surroundings, it was supposed that I would naturally take this view; and I certainly expected to take it. One of my colleagues was a then well-known sporting Tammany politician who afterwards abandoned politics and became a professional racing man. There were many points on which our theories of ethics were as far asunder as the poles; but I soon discovered that there were other matters, and some of these of fundamental importance, on which we thought alike, and our association ended in mutual respect and good will. Soon after the investigation started I told him that I was a good deal shocked at what I had seen, and was wavering in my preconceived opinions. He answered by saying that, as far as he personally was concerned, he was pledged in advance against recommending any change in the law, but that he had known that I was a free agent and had all along believed that

when I looked into the matter for myself I would be a very ardent advocate of the change. He was quite right in his supposition. The investigation convinced me beyond shadow of doubt that to permit the manufacture of cigars in tenement-houses, which necessarily meant their manufacture not only by the men but by the women and children of the poverty-stricken immigrants who were engaged in the task, was an evil thing from every standpoint, social, industrial, and hygienic. I accordingly cordially supported the bill; which made a large number of my friends regard me as erratic and dangerous, or else as influenced by demagogic motives. The bill was badly drawn. No lawyer of any note had been consulted; there was no one to pay such a lawyer. When it passed both houses, the then Governor, Grover Cleveland, appointed a day for a hearing, and the labor unions asked me to appear. Appear we did, several good counsel being against us, while on our side there were, besides myself, merely five or six representatives of the cigar-makers' union, all of them foreigners—battered-looking men, with whom the battle of life had evidently gone hard. As this was long before I had established any real relations with, or had any real understanding of, the unions, while they felt that I was a crank, influenced by incomprehensible motives, we worked on entirely independent lines, neither side feeling altogether comfortable in the relationship. However, the main argument—and indeed almost the only argument—for the bill was made by me. I answered various questions which the Governor put to me. He afterwards called me up and told me that, though he felt very doubtful, yet that, in view of the state of facts I had set forth, he would sign the bill.

The employers and tenement-house owners immediately contested the constitutionality of the act, and after the usual long delays the highest State court finally pronounced the measure invalid. The cigar-makers were poor, and the great majority of them were ignorant foreigners. They had no money and no special influence even in the world of labor. They could not employ counsel either to draw their bill well in the first place, or to present their case to the best advantage when

it was before the courts. The great mass of respectable, well-to-do people were nervously sensitive to attacks on what they considered the rights of property, and regarded as an infringement on these rights any effort to correct the abuses of property. The judges, as was quite natural, shared the feelings of the classes from which they were drawn, and with which they associated. The decision went against the dwellers in the tenement-houses. Anything like an effective reformation of tenement-house conditions was thereby deferred for fifteen or twenty years, and during that time men, women, and children were guaranteed their "liberty" to fester in sodden misery.

The judges invoked a technical construction of the Constitution in order to declare invalid a law deliberately enacted by the legislative body; a law which I firmly believe it was entirely in the province of the Legislature to pass. Every consideration of public morals and public weal demanded that it should be declared valid. At the present day few courts in any State of the Union would make such a decision as was then made; yet the judges making it were learned in the law, and according to their own lights were upright and honorable men. But they were men without any sympathetic understanding or knowledge of the needs and conditions of life of the great mass of their fellow-countrymen. If those judges had understood "how the other half lived," if they had possessed a working knowledge of tenement-houses and factories, of tenement-house dwellers and factory workers, and of the lives that were lived where the tenement-house and the factory were one and the same, I am absolutely certain that they would have rendered no such decision as was rendered. They knew the life of the well-to-do, both the business life and the home life. They knew nothing of the lives of those who were not well-to-do. It was this lack of knowledge and the attendant lack of sympathetic understanding that formed the real barrier between the judges and a wise judgment.

My reason for relating this anecdote is because from that day to this I have felt an ever-growing conviction of the need of having on the bench men who, in addition

to being learned in the law and upright, shall possess a broad understanding of and sympathy with their countrymen as a whole, so that the questions of humanity and of social justice shall not be considered by them as wholly inferior to the defense of vested rights or the upholding of liberty of contract. A hair-splitting refinement in decisions may result in as much damage to the community as if the judge were actually corrupt. Freedom of contract should be permitted only so far as is compatible with the best interests of the community; and when vested rights become entrenched wrongs, they should be overturned. I do not for one moment believe that the mass of our judges are actuated by any but worthy motives. Nevertheless, I do believe that they often signally fail to protect the laboring man and the laboring man's

widow and children in their just rights, and that heartbreaking and pitiful injustice too often results therefrom; and this primarily because our judges lack either the opportunity or the power thoroughly to understand the working man's and working woman's position and vital needs.

There are many judges, from the Supreme Court of the Nation down to the district bench in each State, who do possess this sympathy and understanding, in addition to uprightness, trained ability, broad intelligence, and entire fearlessness in the face of wrong, whether committed by capitalist or by laboring men; such judges are the best and most useful of all our public servants; public opinion should uphold them as clearly as it condemns their short-sighted and narrow-minded brethren.

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