

THE NATION AND THE STATES

SPEECH BEFORE THE COLORADO LEGISLATURE

29 August, 1910

I WAS very much pleased by your invitation to me to address you to-day. It is nearly twenty-nine years ago that I began my service in politics as a member of the Lower House of the New York State Legislature. I always felt that I graduated from Harvard, went into the New York Legislature, and began my education. I realize the great importance of the work of a state legislator, the difficulties under which he does that work, the temptations to which he is exposed; and I sympathize with the men who, having worked well, have the bitter knowledge that their good work has not been appreciated. If Colorado is at all like New York, there are occasional men who do not work well at all, and the extent of whose shortcomings should be practically appreciated more than it is. Since then, I have served in many different positions, including Governor and the position of Deputy Sheriff in the cow country under an employee of

mine who was Sheriff; and, looking back, I can say with sincerity that I do not know any place where it is more necessary to have good work done, or where, together with bad work, there is more disinterested honest work done, than in the state legislatures of our country. Three or four gentlemen to-day have expressed the hope that I would speak to you about some of your own troubles. To relieve the obvious nervousness of the Assembly, I shall say that I am not going to do it, one reason being that, though each of those who addressed me felt very strongly that I should speak to you, each radically differed from all the others as to what I should say. There are troubles and failings connected with all legislative bodies about which I could speak; and of some of these I should speak to you now if I were not to make a speech this evening where I shall take them up at length.

I want now, as a man recently connected with the national government, to call attention to the great need that there shall be more coherent work in the future than in the past between the state and the national governments. The legislative and executive officers of our country, national and state, but, above all, the judicial officers,

are to blame for the fact that there has grown up a neutral land — a borderland — in the spheres of action of the national and the state governments—a borderland over which each government tends to claim that it has the power, and as to which the action of the courts unfortunately has usually been such as to deny to both the power. Now, we have what I think is, on the whole, and with all its shortcomings and imperfections, the most satisfactory form of government that has yet been devised by men. I am accustomed to speak as a historian. There are plenty of defects in our system of government that I could point out; but, compared with the systems of government of other countries, good though some of them are, ours, I think, is the most satisfactory. One of the most valuable features is the largely realized effort to have the affairs that concern all of us throughout the land treated by the central or national legislature, while the affairs which concern us only in each of our several localities are treated by our state legislatures. That is the wisest possible method so long as no areas are left uncovered by them; so long as there are no spaces that are not filled in by government control.

Unfortunately, the course of governmental construction by the courts, as also the course of governmental action by legislator and executive, has not kept pace in this nation during the last forty years with the extraordinarily complex industrial development. We have changed from what was predominantly an agricultural people, where all were on planes of livelihood not far apart, and where business was simple, into a complex industrial community with a great development of corporations, and with conditions such that by steam and electricity the business of the nation has become completely nationalized. In consequence, the needs have wholly changed. There was no need, in the old days, of the law taking special care of the rights of the farm laborer; for he could take care of himself, and, if he was not treated right, he could move on and take up a farm himself. If he did not succeed on a farm, he could go to a city, or he could go West. But at present the relations of employer and employee are wholly different from what they were before. We now have to protect the employee to a degree unnecessary half a century ago. We now have to recognize the desirability of the right of collective bargaining on the part of the employ-

ees face to face with the great corporation, as was not necessary when the employer was one man or a partnership of two or three men employing half a dozen or half a score of men. So a hundred years ago, when the sail-boat and the canal boat and the wagon and the pack train represented the only means of communication, the states could each take care of the business within the state. Now, as we have had to recognize in laws for the control of railroad business and of other interstate business, the national government is obliged to act.

It happens, probably inevitably, that the courts occupy a position of importance in our government such as they occupy in no other government, because, instead of dealing only with the rights of one man face to face with his fellow men, as is the case with other governments, they here pass upon the fundamental governmental rights of the whole people as exercised through their legislative and executive officers. Unfortunately, the courts, instead of leading in the recognition of the new conditions, have lagged behind; and, as each case has presented itself, have tended by a series of negative decisions to create a sphere in which neither nation nor state has effective control; and where the great business inter-

ests that can call to their aid the ability of the greatest corporation lawyers escape all control whatsoever. Let me illustrate what I mean by a reference to two concrete cases. Remember that I believe in state's rights wherever state's rights mean the people's rights. On the other hand, I believe in national rights wherever national rights mean the people's rights; and, above all, I believe that in every part of our complicated social fabric there must be either national or state control, and that it is ruinous to permit governmental action, and especially judicial action, which prevents the exercise of such control. I am for a fact, not a formula; I am for the rights of the people first and foremost, and for the "rights" of the nation or state, in any given series of cases, just in proportion as insistence upon them helps in securing popular rights.

The first case to which I shall refer is the Knight Sugar Trust case. In that case the Supreme Court of the United States handed down a decision which rendered it exceedingly difficult for the people to devise any method of controlling and regulating the business use of great capital in interstate commerce. It was a decision nominally against national rights, but really against popular rights —

against the democratic principle of government by the people.

The second case is the so-called New York Bakeshop case. In New York City, as in most large cities, the baking business is likely to be carried on under unhygienic conditions — conditions which tell against the welfare of the general public. The New York Legislature passed, and the New York Governor signed, a bill remedying these unhealthy conditions. New York State was the only body which could deal with them; the nation had no power whatever in the matter. Acting on evidence which to them seemed ample and sufficient, acting in the interest of the public and in accordance with the demand of the public, the only governmental authority having affirmative power in the matter, the Governor and the Legislature of the State of New York, took the action which they deemed necessary, after what inquiry and study was needed to satisfy them as to the conditions and as to the remedy. The Governor and the Legislature alone had the affirmative power to remedy the abuse. But the Supreme Court of the United States possessed — and, unfortunately, exercised — the negative power of not permitting the abuse to be remedied.

By a five to four vote they declared the action of the State of New York unconstitutional, because, forsooth, men must not be deprived of their "liberty" to work under unhealthy conditions.

All who are acquainted with the effort to remedy industrial abuses know the type of mind (it may be perfectly honest but is absolutely fossilized) which declines to allow us to work for the betterment of conditions among the wage earners on the ground that we must not interfere with the "liberty" of a girl to work under conditions which jeopardize life and limb, or the "liberty" of a man to work under conditions which ruin his health after a limited number of years.

Such was the decision. The court was, of course, absolutely powerless to make the remotest attempt to provide a remedy for the wrong which undoubtedly existed, and its refusal to permit action by the state did not confer any power upon the nation to act. The decision was nominally against state's rights, really against popular rights.

Such decisions, arbitrarily and irresponsibly limiting the power of the people, are of course fundamentally hostile to every species of real popular government. Representatives of the People of Colorado, here assem-

bled in your legislative capacity, we as a nation should see to it that the people, through their several legislatures, national and state, have complete power of control in all matters that affect the public interest. There should be no means by which any man or set of men could escape the exercise of that control.

We should get the power; that is the first requisite. Now, then, the second is to see that the power be exercised with justice and moderation. The worst enemy of wise conservatism that I know is the type of conservative who tries to prevent wrongs from being remedied because the wrongs have existed for a long time; and, on the other hand, the worst enemy of true progress is the demagogue, or the visionary, who, in the name of progress, leads the people to make blunders such that in the resulting reaction they tend to distrust all progress. Distrust the demagogue and the mere visionary just as you distrust that hidebound conservative who too often, though an honest man himself, proves to be one of the most efficient friends of corruption. Remember that if you fall into the Scylla of demagogism, on the one hand, it will not help you that you have avoided the Charybdis of corruption and conservatism on the other. If you are in

one gulf, it is perfectly true that you are not in the other. But you are in one.

Be progressive. A great democracy has got to be progressive, or it will soon cease to be either great or a democracy; but remember, no matter what your enthusiasm, that if you make rapid progress in the wrong direction you will merely have to undo it before you get to the right path again. As I have said before, each one of our localities has its own special problems to work out; and as to those special problems, an outsider is not competent to speak; but there are certain things to which all of us in every state should pay heed, we in New York and you in Colorado, the people of every state and the people of the national capital.

If I were asked to name the three influences which I thought were most dangerous to the perpetuity of American institutions, I should name corruption in business and politics alike, lawless violence, and mendacity, especially when used in connection with slander.

Corruption: You cannot afford to tolerate in your ranks the corrupt man, and the first duty of a constituency should be to see that its representative is not merely honest in the sense that he cannot be legally shown to be

dishonest, but that he is a dead straight man whom no one can think of as crooked. I do not want it to be praise to a man that he is honest; I want it to be an impossible supposition for a representative to be thought of as anything else; but you cannot get that honesty unless you insist upon it among yourselves in your own relations of life. If you train up your children to hear a shady scoundrel spoken of with a certain half admiration as, "Well, he is smart"; if you let your children hear a man's crookedness excused on the ground that he is clever, that he is a cheat, but that he cheats mighty well, you have yourselves to blame if your legislatures betray you. More than that, distrust anything in the nature of class privilege; distrust the labor leader who will inveigh against corruption only when it is shown by the rich man; and distrust equally the rich man who will subscribe heavily to put down lawbreaking among small politicians, and who is shocked at corruption among labor leaders, but who leaves you instantly as soon as you try to bring the big corporation to book. If you elect a man because you think he will be honest towards your class, — capitalists, farmers, laborers, — and if you are indifferent as to whether he is

honest towards other people, you can make up your minds absolutely that he will betray you if he gets the chance. You cannot afford not to have a man honest all the way through, because if he is not, you do not know quite where the breaking down will come.

Lawless violence: Here again remember that in time of mob violence all reform has to wait until order is restored. As a people it is gravely to our discredit that there should be so much unpunished murder, so many deeds of lawlessness and mob violence. Let the friend of the people who is severe upon the corruption of wealth make up his mind that he is a mighty poor public servant if he does not set his face against disorder when it takes the form of violence, just as much as against corruption. The man who can only see evil in the corruption of the rich, and the man who can only see evil in the lawless violence of the poor, stand on the same plane of bad citizenship. Keep order. War both against corruption and against lawless violence. That is what you and public officials need to keep in mind.

Now as to critics. I don't like the thief, but I like the liar just a little. The very fact that we need to have corruption in every phase unflinchingly exposed, the very fact

that we need to have every man shown up who has acted improperly, because it is not merely a disgrace but a vital injury to us to permit corruption in public life or corruption in business life, that very fact emphasizes the wrong done by the man who without warrant accuses another of corruption. He has committed one of the cardinal sins against the body politic. It is not merely an injury to the man accused, it is an injury of the deepest type to the body politic, because after awhile, when accusations are continually and sweepingly made against all men, good and bad, the public as a whole grow to believe in each accusation a little and in no accusation entirely, so that they grow to believe that there is a little something bad about the decent man and that there is not much bad about the crook. No greater harm can be done to the body politic than by those men who, through reckless and indiscriminate accusation of good men and bad men, honest men and dishonest men alike, finally so hopelessly puzzle the public that they do not believe that any man in public life is entirely straight; while, on the other hand, they lose all indignation against the man who really is crooked. Greatly though I scorn and despise the corrupt public servant, greatly though I

wish to see him punished with the utmost severity of the law, my scorn and contempt for him are no greater than for the man who by mendacity and through slander attacks the character of honest men just as he attacks the character of dishonest men, and thereby does his best, be that best great or small, to tear down the pillar of the temple and bury us all under the ruins. I speak of the man who writes in the daily press. (*Loud applause.*) I trust that it is not because this is a legislative assembly that you have applauded this more than what I said about public officials! Now, I will go with you to the last point in condemning the man who in the public press writes an untruth, if you will go with me to the last point in condemning equally actively the legislator who acts corruptly. Now, I will resume my sentence where I left off. I speak of the man who writes in the public press. I speak of the man who writes in the magazines. I speak of the politician on the stump. (*A pause—silence.*) Applaud! (*Loud applause.*) I knew I would get it when I pointed out the need of it! Judge men not by the class to which they belong, but by their conduct as individuals. The only man who I think is a little more useful than the wise and honest

public official is the wise and honest man in the press, and the only man who I think is a little more noxious than the dishonest public official is the untruthful man in the public press. I will make myself perfectly clear. I ask you to stand by the official who is honest; I ask you to stand by the newspaper man and magazine writer who truthfully exposes corruption; and I ask you to stand against the official scoundrel who is dishonest and his equally base brother in the press who falsely accuses an honest man of dishonesty.

I thank you for the patience with which you have listened to me, and I am very glad I finally got all the applause I wanted at the points I wanted it.