

## AUTOMATIC INDEMNITY FOR INJURY.

*Former President Theodore Roosevelt Discusses the Economics and Obligation of Payment for Industrial Accidents.*

HON. THEODORE ROOSEVELT: It is a very great pleasure to me to come here to speak to this body on this subject, because, Mr. Low, I think that this organization largely realizes the ideal to which I alluded the other evening at New Haven, when I stated that I wished to see radicalism prosper under conservative leadership. Mind, when I say that,

I am not using a catch phrase, I am expressing my deepest conviction. I feel that it is absolutely essential to the welfare of this country that there should be progressive action among our people, especially that there should be progressive governmental action. You have either got to be progressive or retrogressive; you cannot stand still—if you stand still you go backward. We must either go forward or go backward; and we *must* go forward; but I want to see us go forward in the right direction, and to remember that to go off in a spiral, to one side, is not going forward at all. I wish to see the progress made in such manner that the progressive people will not part company with the great bulk of the moderates. In other words, I want to see this movement take the form of an evolution rather than a revolution and to see progress made in the spirit of Abraham Lincoln. I do not want us to become slaves of terminology. Abraham Lincoln was emphatically not merely a progressive but a radical progressive compared to the men of the schools of Buchanan and Fillmore, but Abraham Lincoln was denounced as a timid opportunist and conservative by that class of his fellow reformers who denounced the Constitution as a league with death and a covenant with hell. We tend to forget that Wendell Phillips described Abraham Lincoln as the Slave Hound of Illinois.

Now, compared to Buchanan or Fillmore, Abraham Lincoln was a radical progressive; compared to Wendell Phillips or Garrison, or John Brown, he was a conservative, and he was right in both positions. I want to see the great social movement, the great movement for social betterment in this country, go forward steadily and as rapidly as is consistent with wisdom, as rapidly as is consistent with our being sure that each step forward is really a step forward and not a step in some direction which later we shall have to retrace. For that reason, gentlemen, I feel a peculiar debt of obligation toward those who are responsible for this organization and for its work. Take this very matter that we are touching now, for instance, labor legislation. I wish to see labor legislation undertaken always in consequence of a good understanding between the wise leaders of labor and the far-sighted men who without having themselves any direct personal interest in labor legislation champion it and advocate it because they favor whatever is good for any of the

people of our common country. More and more during the last generation we have come to realize that there must be an increase in the collective as opposed to the merely individual action of our people. The night before last I listened to President Eliot speaking on the subject of conservation and was struck with the way he phrased this idea. Unfortunately, I cannot use the English language as such an instrument of precision as he can, and I can only give you a paraphrase of what he said, but it was in effect this: That the last half century had brought home to our people that there must be in the first place an increase in the amount of collective, in the quantity of collective, as compared with individual action, as compared with what had been the case in the past in our national history; and in the next place that this collective action would have to take place over larger territorial and social units than was formerly necessary. In other words, that not only must government in this country do more, compared with what is left to be done by the individual than formerly, but it must work more often on a national scale than was formerly necessary.

Now, this increase in collective activity must take place in several directions; in two ways notably:

1. In the attitude of the public toward the great aggregations of wealth used in business. Each of us here is able to deal fairly well with those with whom he comes in contact in ordinary relations of life; he can get on all right with the grocer, the carpenter, the butcher (or, if he is the grocer, for instance, he can get on all right with his several customers), because fundamentally he and they are of about the same size. If the butcher does not treat him well, he can change the butcher; on the other hand, if he does not pay his bills the butcher will change him. But if the grocer becomes a man worth two or three hundred millions of dollars, and in conjunction with others changes and enlarges his business so as to deal in railroads, steel, oil, whatever it is, on a scale that covers a number of the States of the Union, then he becomes too big a man for any one of us to deal with in his individual capacity. The big railroad man—in dealing with him, we cannot say that if we do not like his trains we will not ship by them; we must ship by his trains, and travel by them; we cannot walk. Therefore we face a situation where the other man has the entire power and yet where our need in

dealing with him is absolute. If we are small men, then our shipping with him is a matter of small concern to him; our travelling on his trains or buying his product, whatever it is, is of small concern to him; but he is of vital consequence to us; we must have whatever it is he supplies; we must have the necessity of life he supplies; or we must travel on the railroad. In consequence we face a new situation, one utterly unknown a century and a quarter ago. The enormous majority of private individuals must have dealings with great artificial creations, with corporations so great and so powerful that there is no kind of equality between the big corporation and the private individual. In consequence, as there is no natural man able to deal on terms of equality with such a corporation, we have to make an artificial entity able on behalf of all of us to deal with the existing artificial entity. If the artificial entity is sufficiently big and does an interstate business, there is only one popular artificial entity big enough to deal with it; and that is Uncle Sam. Uncle Sam must have the power to put his hand on the shoulder of the corporation and say, "Now, I want you to be good; if you are good and behave yourself, all right, I will guarantee you against injustice; but we want you to give justice in return; we want you to do it of your own accord—and if you do not do it of your own accord we will make you." And, friends, the method of dealing with the corporation by the national government or State government, whichever may be concerned, the way it should deal is in theory pretty simple to lay down. The Government should deal with the corporation just as one of us deals with the private individual with whom he does business. If you do not pay your grocer, your grocer will not give you provisions; that is fairly obvious. On the other hand if you do not look over his bills it will not show that you are a good man. It will show that you are a fool.

Now, in the same way, the government, national or State must treat the corporation with such justice and generosity as to make it to the interest of the corporation to do business. The railroad is not going to carry our freight for the free of carrying it. The men who subscribed their money must make a profit; the men who have the organizing and directive genius necessary to make the business a success must each make a much larger individual profit. It is not merely fool-

ish, but from the standpoint of self-interest, the height of folly for the nation or State not to recognize those facts in dealing with any corporation. We must do justice to the corporation, not merely for its sake but for ours; and on the other hand we must have power to see that the corporation does justice to us, for exactly the same reason that in private life we must be allowed to look over the grocer's bill before paying it.

The analogy is really complete. So far from there being less, there must be more, governmental supervision over the great concerns doing an interstate business, where they have a practical monopoly of something that is in effect a necessity of life.

The use of the collective power of the people through the government is more necessary than ever in dealing with the great corporations. It is necessary alike from the standpoint of the general public and from the standpoint of the multitude of employes of corporations. It is peculiarly necessary in trying to secure the proper safeguarding of the interests of the wage-workers of a corporation, because the growth of modern industrialism has produced so many changes in the relations of employer and employe. These changes are most evident in two directions: first, in the power of the employer as compared with the employe and the knowledge that one has of the other, and second, in the connection between what were called in the old law books the fellow-servants, the men serving together under the employer. As regards the first point, one hundred and twenty-five years ago there could not be very much harshness by an employer toward an employe, or too much disregard of his welfare, because the employe could easily go somewhere else. He had open to him any amount of land on which to settle if he did not wish to continue in the relation of an employe; and as ninety per cent. of all our people were or had been in some way connected with agricultural work, this was not a nominal but a real liberty of action; the man could always go and take up a farm for himself. Moreover, where the business was as small as it was then, there was an intimate personal relationship between the employer and employe, which, not invariably, but usually, told in favor of making the relations such as to render any interference by the law between them wholly unnecessary. As regards the second

point, the difference between fellow-servants under the old system and under the present system is so great that very little analogy can be drawn between them. Every representative of a body of wage-workers here knows that in judicial decisions which follow eighteenth century rather than twentieth century precedents, especial stress is often laid upon the fellow-servant doctrine in enforcing a line of action which works cruel injustice at the present time.

In the old days, if four employes of a farmer were loading a hay rick, and one got hurt because of the action of another, there was something substantial to be said in favor of the view that the man himself had probably been guilty of some kind of contributory negligence, that the man himself was responsible to a much greater extent than his employer for the accident. But, in working a railroad, or any big present-day enterprise, no such view is possible. If a switchman neglects his duty and ditches a train, under the eighteenth century type of judicial decision the engineer could not recover damages, because the switchman, of whom he knows nothing, and whose action he cannot possibly in any way control, is a fellow-servant. In reality, of course, the relations of the switchman and the engineer under present-day conditions, present no real analogy with the relations between two wage-workers working under conditions such as prevailed a century and a quarter ago; there is no real analogy, and in consequence the application of the fellow-servant doctrine in most cases works not justice, but cruel injustice under present industrial conditions.

So with the grossly ~~misused~~ doctrine of liberty of contract. It is really a little difficult to speak patiently of the effort to apply this doctrine as it has been applied; but I shall try to speak patiently about it. Under modern conditions, it repeatedly happens (and when I say repeatedly I don't mean in dozens of cases; I mean in many thousands of cases; in many tens of thousands of cases) that a wage-worker finds himself in such shape that his nominal liberty of working or not working is in reality ~~the liberty to starve~~ or not to starve. He has to work, and he has to work at the particular job which is open. Under such conditions, it is not only wise, but it is in the highest degree right that the Nation, where the Nation has power, and the State, where the State has power, shall say that they decline to recognize

him as having a liberty which is in reality merely nominal and fictitious, and that they decline to recognize any contract which he may under those conditions make which is against his welfare. That is the principle underlying much of the workmen's compensation legislation, both national and State.

Of course our attitude—the attitude that we take in these workmen's compensation laws, while it has seemed revolutionary to some very good people of an outworn philosophy, will, in a few years, seem to everybody so normal that they will be unable to understand how any one ever took the opposite view. And in this legislation, do remember that America, instead of leading, has lagged behind all other great civilized industrial nations. We are behind every nation of any size of the industrial type in the world in matters of legislation of this kind.

In modern industry—I suppose in all industry—we face the same certainty of loss of life and limb that we would face in a war. Loss of life and limb in a really great industry in the United States makes the loss of life and limb of the war in which I took part—the Spanish War—seem a very trifling thing by comparison; and if a contract is made to put up a number of great steel buildings here in this city, the chance of loss of life to the average workman engaged on the job is rather greater than the chance of loss of life to any soldier who went into a battle in the Spanish War; and infinitely greater than the chance of loss of life to any sailor who went into such a battle. A big steel building which was built with no greater percentage of killed and wounded among those employed in putting it up than was the case in the sea fights at Manila and Santiago would be quite a remarkable building. Now, that being the case, it is just as clearly our duty in one case as in the other to see that the whole burden of the loss does not fall upon the shoulders least able to bear it. If a man is crippled in action fighting for the country, it is felt that he is suffering because of dangers incident to his profession, and his wife and children are not permitted to bear the whole burden of that loss. It should be exactly the same in any industry.

A man engaged in working on such a building as the "Flat-iron Building"—any one of these buildings here—or a man engaged in railroad work, is following a profession in which

every year a certain number of men are sure to lose their lives, and a larger number of men are sure to suffer loss of limb. The man who goes into such work goes into it facing that fact. Yet, the work he does is essential to our welfare. It is essential to us here that we should be able to travel on the railroads; that we should be able to transact our business in the buildings, and it is not fair, it is not just, that the man who, because of the inevitable risks to be faced, loses his life or is maimed for life—that that man and those dependent upon him should have to pay the entire penalty while the profit comes to us. It is not fair; it is not just. The whole public should pay; all dealing with the business should pay; and the payment will then be distributed if we make the employer responsible for the loss to the man.

Now, let me just tell you how the old system worked—give you an exact example here. In this State, a girl, driven to it by the need of supporting her family, went to work in a certain factory, where they did not protect her and her fellow-workers from the dangerous machinery. She did it with her eyes open, knowing that the machinery was dangerous; but she simply had to take employment, had to get to work. She lost a limb; and, under the old law, the Court decided that she could not recover from the company, and was to go through life maimed, without having gotten a dollar of remuneration, of damages, because, forsooth, it was of vital consequence to preserve her “liberty of contract” to work under conditions which would jeopardize her life and limb!

Now, to me, that doctrine seems monstrous; and it seems just what it is. It is monstrous. It is a monstrous doctrine, and yet it was a doctrine that not so very long ago was held by *all* public servants—held in the legislature, held on the bench—to be the only proper doctrine from the standpoint of the general interest. It was so held because thoroughly good men in the legislative bodies and on the bench had not moved forward abreast of the times, and because they still thought in eighteenth century terms instead of in terms which recognized the needs brought about by changed conditions at the end of the nineteenth and opening of the twentieth centuries.

I will speak about “Workmen’s Compensation,” rather than “Employers’ Liability,” for two reasons. In the first place, I think the policy should be affirmative rather than

negative. I don't want to make it seem as if we were punishing the employer; often the employer is not in the least to blame where, nevertheless, it is absolutely necessary that he should pay. It is not that I blame the employer any more than I blame the employe. It is that the business is such that the employe ought to be compensated, and that ultimately the loss should be borne by, distributed among, all of us who are the customers; for, of course, the employer will ultimately pass most of the expense on to us.

In the next place, one reason I wish to speak of workmen's compensation, of the policy which has been inaugurated in the New York State Legislature, and which I hope will be carried very much further in our legislative body, is because I want to give the employe compensation and not a law suit. Too often we have proceeded upon the theory of giving the employe a right to sue; that is not just to him, and, curiously enough, it is not just to the employer, either. It is not just to the employe, because it means too often that the chief monetary benefit will go to the lawyer whom he employs; and in the next place, it is not just to the employer, because in such a law suit, while it may be that the employe will, for technical reasons, be debarred of his rights, it may also be that the jury will, for sentimental reasons, give him ten times as much as he ought to have, because they think "the corporation can afford to pay."

Don't forget, gentlemen, what I have said to you. I want you to keep just as much on your guard against those who would harm corporations as against the people who themselves profit by corporate wrong-doing. Justice must not be unilateral. Incidentally, I should like to warn you with all the emphasis I possess against the type of public man who can never see wrong-doing unless it is committed by an individual of a given class.

What we need in the matter of workmen's compensation is that it should be the duty of some administrative body to see, in accordance with a fixed scale, that the workman, as a matter of course and automatically, receives compensation, indemnification for any injury that comes to him. He should not be required to spend a penny on a lawyer. He should receive at once the money that is coming to him; and, on the other hand, the corporation, the business, should be able to tell in advance that it will only have to pay given amounts



for whatever loss comes to the employes. Do let me repeat (it is mere repetition; I want you to remember it) that the fact that it is a dreadful injustice to the employe not to pay him does not mean that I think the employer is necessarily in fault. Of course, he may be in fault—then punish him. But our chief concern is with those cases where it is not the employer's fault. It may be an inevitable risk of the business conditions. If so, the loss should be treated as part of the risks of the trade. The compensation should come to the man as a matter of course, without any regard to whether the employer has been guilty of carelessness or not, and without regard to whether a fellow servant has been guilty of carelessness or not. This policy should be applied everywhere. It should be applied where the Federal Government has power; that is, in everything dealing with interstate business, and especially in connection with men engaged in working on the instrumentalities of interstate commerce, on the railways.

I wish I had time to discuss with you a few of the absurdities—and I use a very mild term—of the absurdities connected with some of the rulings against permitting employes on railroads to recover from the companies—the decisions sometimes being based upon the inalienable right of a man, when driven by want, to contract to lose his life, and sometimes being delivered in the interest of “preserving local autonomy,” and “preventing over-centralization”—to prevent the over-centralization which is shown in giving a brakeman a chance to recover when crippled in jumping from one car to another (one perhaps bound for Iowa and the other for Illinois). Think of the theory which refuses to allow that man the right to recover for being crippled for life, which denies to his wife and children the right to a partial compensation for the loss of the activities of the breadwinner—denies it, gentlemen, so that there shan't be too much centralization in the government!

I remember last fall speaking with a friend of mine who had become very much alarmed about the tendency to centralization. In the course of our conversation, it finally developed that he was not going to vote against centralization where we were talking, because, although his business office was in New York, his bedroom was in New Jersey. It appeared that he slept in one State and spent his waking hours in the other. I asked him which State he thought we

were endangering by our encroachments, the one in which he went to sleep or the one in which he was waked up. He was not able to give me an entirely satisfactory answer. Still, I am bound to say that I did not convert him.

Now, in this compensation for employes matter, most of the work must be done by the States. There is, however, a large class of work which the Nation must do. Wherever the matter is something that affects all of us in one section of the country as well as another, the action has to be taken normally by the Nation. There is one thing that the Nation should do at once, and that is, take care of all its own employes who are maimed or lose their lives in working for the Nation. Last Spring something occurred that I felt was a national disgrace; and, mind you, the executive officers who actually did the act were not to blame at all. They had to do as they did under the law. An alien employed by the United States down at Panama was maimed in an accident for which he was not responsible—so maimed in an accident in Panama that he became unable to work. Not only we did not pay him any pension, pay him any compensation for what he suffered, but we ruled that he was now an alien who had lost the power of self-support, and so we sent him back to the country from which he had come.

Now, I fail to see how any man can learn of such an incident without feeling a thrill of indignation. Here was this man who came over and worked for Uncle Sam on a work where we are spending hundreds of millions of dollars. He was crippled for life; and not only did we not pay him anything, but we shipped him out of the country because he couldn't support himself any longer.

I am happy to say that a beginning has been made on the part of the United States toward giving compensation to those who, while doing Uncle Sam's work, are crippled or killed. But it is only a beginning. It ought to be a matter of course that a laborer of any kind employed in the navy yards or on the Panama canal or anywhere else, who is killed or crippled in doing that work, should himself personally, or, if he is killed, that his family should receive compensation for his death, from the Government. Uncle Sam should be a model employer. He should insist on good work, but when the work is good he should treat his employes as he feels the private employers should treat their employes. That is gen-

erally being done on the Isthmus of Panama. I think that, on the whole, the work down there is the most remarkable example we have ever seen in history of admirable national provision for the men hired to do a great and difficult national work. The work on the Isthmus has been simply phenomenal in character and success; the work done there has been one of the greatest assets of America that America has had for I don't know how many years. It is one of the great things to our credit in history—what has been done at Panama. The admirable efficiency of the work, the way the men have been housed, the way they have been cared for from a sanitary standpoint, the way they have been looked after in amusement—almost everything has been done in a way that gives us just cause for feeling the greatest satisfaction, the greatest pride as Americans. The one weakness, and it is a very, very great weakness, lies just where I have told you; that when, owing to the dangers of the profession, a man is killed or crippled, under the law we are powerless to do him bare justice.

I ask then, friends, that we continue in our several States, and in the Nation, to endeavor to secure just and far-reaching workmen's compensation acts which shall affect government employes no less than all employes in private enterprise. All employes should receive full compensation, automatically and as a matter of course, when loss of life or loss of limb is suffered in any business as one of the incidents of carrying on that business.

ELEVENTH ANNUAL MEETING  
**The National Civic Federation**

New York, January 12, 13 and 14, 1911

Welfare Workers' Conference

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THE NATIONAL CIVIC FEDERATION  
METROPOLITAN BUILDING, 1 MADISON AVENUE  
NEW YORK

*Afternoon Session of Friday, January 13.*

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JOHN MITCHELL.	
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BERNARD NOLAN.	
J. MAYHEW WAINWRIGHT, State Senator, Albany, New York, Chairman New York State Commission on Employers' Liability and Causes of Industrial Accidents.	
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