

Salem, Oregon, April 10, 1911.

Hon. Willis Van Devanter,
U. S. Supreme Court,
Washington, D. C.

My Dear Justice,--

Your letter was and is a real pleasure to me. How such bring back events, providences, opportunities turned down or improved, and emphasize the decrees in life,--the predetermining of later years by early decision and application. I had it in mind during my early formative days to be a great preacher, and this kept me from fitting myself for other calling; but my theology would not stay fixed, so I could not preach successfully and satisfactorily;--and thus from me the years slipped by.

In my former letter to you I was addressing an old school fellow, rather than a justice of the Supreme Court. So also now, in descanting upon the court and its acts, may it still be so considered.

I see how you say you stand for the defense of every character of right that is recognized, protected or created by the laws of the land. And, theoretically, you are right, I think; but practically, as I see it, the court is expected, and generally does represent and express the bias of the president who appoints it, (so far, at least, as regards his general philosophy of government) and the spirit of the particular ruling element which he represents. If to him the prosperity of big business is the basis of good to all the people, the men he appoints to interpret the laws, and the interpretations thereof, so far as he can control the matter, will be favorable to Big business.

This to him is essential, fundamental. At this time, it seems to me, this is the philosophy that is being applied to government; and so, the idea of the superior rights of property is having its inning. That is to say, this idea is fundamental, dominant, and controls the presidential activity and appointments, and in the same way largely also the decisions of the court. It is a bias of association, of feeling, of sympathy, of psychological suggestion, which puts emphasis upon those certain features of constitutions and laws which relate to the rights of property.

Isn't it likely that Mr. Taft's appointments to the Supreme Court are of a different sort of men from what Mr. Bryan would appoint, were he president, and that they reach conclusions quite different from what Bryan's court would reach,--even from the laws and constitutions now in force?

The experience of the Income Tax law before the court illustrates the point. It was said at the time that the court reversed its uniform record of a century, which, if true, showed some development, or change, in the conception of the rights of property, or of the meaning of the constitution relative thereto, or both, and also exhibited two views of constitutional rights which at that time were pretty evenly balanced in the court.

I remember when President Harrison called Justice Brewer to the bench it was said that the president had investigated his record to see that he stood right on certain important points.

From the record of Justice Lurton before entering the Supreme Court, it seems he had demonstrated pretty conclusively to the president that emphasis would be generally placed by him upon those features of legislation and constitutions which favor the corporation--especially the rail road corporation--as against the individual, or the larger corporation as against the smaller one--on the principle, presumably, that big business has rights commensurate with its

bigness. And I can see the logic of this attitude, for, the corporation is an institution, the individual is an incident,--why should the incident have standing against the institution?

I have noted the tendency of the federal courts to reverse the findings in cases wherein the lower courts found for the plaintiff in damage suits against corporations,--which shows that upon the question of rights there are two views, the higher court taking the one, the lower court the other.

I have in mind a very recent decision by a federal judge that is very much to the point, but since the case is to be appealed to the Supreme Court I will not discuss it.

From the dissenting opinion by Justice McKenna in the kidnapping case of the Western Federation of Miners officials it would seem that there might be yet some immaturity in the court, two distinct court views of the reserved rights of the individual in the U.S. Constitution, even though that document has been in view and review for a century,--or does the view of the court evolve with new conditions, take on new life with new inspirations? This case involved the question of personal rights directly, and looked simple enough on the surface; but to the layman the majority decision was like a repudiation of the constitution, and must have partaken somewhat of social or political bias, or was influenced by peculiar conditions that obtained at the time. How the constitutional right of habeas corpus is maintained in a kidnapping process which deprived the men of all access to law or court is too big a question for the layman.

If I remember rightly, when Justice Fields wrote the opinion upon the postal censor law he got around the objection that the congress may not restrict the freedom of the press and speech by saying, in effect, that the forbidden literature could be carried by express, and so the law excluding it from the mails was not in conflict with the constitutional right of free press and free speech, I am not quite sure about this point, but, anyway, as I recall it, there was some extra-

legal judicial rendering to arrive at the conclusion upholding the law. I see just now a Free Speech League has just been formed in New York, one object of which is "To promote such judicial construction of the constitution," etc, etc, and "to oppose every form of government aimed at the censorship of ideas." May their tribe increase.

Many years ago our fellow townsman, Asbury Steele, discussing local option, which the state supreme court had held unconstitutional, said, in effect, "When public sentiment gets right and demands it, the court will come around to it." It has since so transpired, and local option is now constitutional under the same constitution, I believe.

In all of which I am trying to say, Rights and things are not fixed and definite quantities in our laws and constitutions, but are the product largely of judicial rendering, and are secured and made applicable according to the bent of the court.

Like our religion which finds new interpretation in every age suited to the needs and enlightenment of that age, so the Rights of man and the interpretation of constitutions and laws will find ever new judicial interpretation according to the developing sense of justice, and the necessities of the case--the emphasis at present being put upon the rights of property as fundamental in a developing system of capitalistic government. Every age has its fundamental, ruling idea, and this idea finds expression in every phase of the social order.

At our home one time my Father asked Senator Morton if the Reconstruction act of the government was constitutional. Morton said, "no, not exactly constitutional; but in this case it is neck or nothing, and in such case I take neck." I believe the court upheld the measure,--or was this one of the measures that the congress told the court to let alone as it was too important for the court to handle?

It was my privilege to attend two cases in the federal court at Chicago brought under the postal censor law for sending lewd literature in the mails. One case was in Betheas court, the other in Landis court. In these cases it was held by the court that the question to be decided was not whether any one would be benefitted by the literature, nor whether it would affect injuriously the average person, but as to whether it would increase a certain kind of thought in any bodys mind. That the law was made to protect the weak, and so only the weak were to be considered in the case.

Now, by this rendering, no matter what the educational value of a book or document, if in it any common pervert would find material for the play of his corrupt imagination the production is forbidden the mails. Well, this may be the intent of the law; presumably it is; but if so, it raises an other question:--Why did not the Supreme Court, when the law was before it, say the congress or the people cannot legislate away their enlightenment and education? It once said that concerning health and morals, why not also in regard to education upon the very thing ignorance of which begets immorality, ill-health,--that is, the universally existent wallowing ignorantly in sexual perversity?

To be sure, I do not vouch for the soundness of the idea that a people in whom are the sources of all governmental power, may not and can not legislate away their morals if they so elect. To say they can not, it seems to me, is to deny the very foundation principle of all republican or democratic government, the Supreme Court to the contrary, notwithstanding. But the point I make is on consistency of action. In the case above cited the court held for the protection of the pervert, and so the general education of the people upon matters of sexual relations is leveled down to the capacity of the weak to assimilate without injury to himself.

Now, there are so many ways in which the court could have been sensible upon this matter. It could have said, "It is against public policy to impose ignorance upon the people;" or it could have said, "The right of education is inherent in the people," or it could have said--but what's the use, it didn't say it.

Well, enough of all this. We are having fine weather here. The past winter the thermometer showed 23 above zero for the coldest. Some garden products are now coming in to use. Fruit is our specialty in these parts, farming not good in this fruit soil. East and south of us are great farms, over in the arid and sub-arid country. Multitudes of tourists are landing in this state now, many to remain. About 1,000 daily in Portland for the past month. We are a great people to toot our horn abroad and fetch them in. We do all kinds of advertising, tell of mighty yields of everything desirable, and a complete dirth of undesirable things. Men and women live to a very great age, prosperous, happy, etc, etc.

Begging your pardon for such a letter,

I am most respectfully,

L. D. Ratliff