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IRVING MISCHKIND

70 PINE STREET

NEW YORK, March 25, 1933.

Hon. Louis D. Brandeis,  
United States Supreme Court,  
Washington, D. C.

My dear Mr. Brandeis:

It was like your kindly courtesy to send me a copy of the opinion in Liggett Company v. Lee, and I value the little note you attached to it more than I can easily say. Beyond all else, it seems necessary to interpret these turbulent times to themselves. I wish some of us were younger and had your golden quality of translating a mass of facts into a clear, swift synthesis showing the necessary direction.

The majority decision in that case has hit me pretty hard. In the Barclay v. Wabash Railroad case, Holmes' opinion made it possible to contend that the power of directors in handling property rights could be (substantially) absolute if the right words were in the charter. This case deprives the states of a principal weapon in endeavoring to direct the economic current rather than to become engulfed in its flowing stream. And yet a tide which threatens to become revolutionary is demanding at once a property right which is more secure, and an economic structure which is brought into some kind of intelligent control. As forces pile up on every side I find myself struggling to try to work out some kind of an orderly scheme along the lines of which the government may proceed and towards whose organization the law may assist. It is a job now for me and my generation – we cannot be called young – and we have, as I see it, about the last chance to make freedom and democracy work. If we fail, we are likely to get fascism or communism instead; and at the moment I would guess the odds are not better than even in our favor, if that.

What do you think of taking clean out of the area of competitive, individualistic life, certain of the great services of the country, notably banking, railroads, public utilities and perhaps the heavier industries and natural resources such as mines? We might in this way provide for a reasonably steady source of supply, leaving the chance for individualism to work in the less essential matters. But most of all we need a new philosophy of this; a world where men can and will work more for the joy of the work and the chance of being of use than to make additional profit or create for themselves a position of transitory power.

With kind regards, I am, as always,

Faithfully yours,

A.A. Berle, Jr.