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## POLITICS AND JUDICIAL ADMINISTRATION

by MAURICE E. CRITES \*

We are living in strenuous times. Much of the world is in a state of flux. Everywhere we observe almost universal dissatisfaction, uneasiness, unrest, lack of confidence, apprehension, fear. Notwithstanding all talk and planning for security, it is hard to conceive of any more general sense of insecurity.

Such periods are the greatest test of government and its stability, and of the character of its people. When prosperity is present we take our government for granted and wink at transgressions, but in times of depression, we look for panaceas, short-cuts and someone or something upon which to blame our troubles. We may even doubt the wisdom of our founding fathers in designing the form of government provided for us.

However bad we may view the present situation, it is no worse than that experienced by the people of the Colonies after the Revolution. A large number of them at that time favored no government at all, feeling that none could be trusted.

With that general background of almost unlimited distrust and unrest, our national charter was written. Many of the very things we are experiencing today our forefathers experienced then in equal degree of intensity.

This government of ours was not formed, however, to cope with temporary evils. It was the product of the experience of the ages. Many changes have taken place since then in the physical surroundings of men and in their general economic status, but human nature has not changed much. Mankind may be more cynical and sophisticated, but is still ruled much by the same impulses and emotions as has con-

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trolled its actions for centuries. Government must take cognizance of human nature. Some principles of government are elemental, hence fundamental and eternal—at least, so long as human nature remains as ungodlike as history records. It was upon these fundamentals that the American system of government was formed. It was in recognition of these very human frailties that certain safeguards were provided for in our Constitution.

The forms of free government are valuable only as they affect its purpose. They may defend liberty, but they do not constitute it, nor necessarily produce it. Neither government nor civilization contained any element of permanence until they came to be founded upon the principles of civil and religious liberty. To safeguard these principles was the task of the Builders of America then and to preserve these principles is our task.

The foundation stone of the American system of government is popular sovereignty. But the sovereignty of the people is not the arbitrary power or blind caprice of the multitude any more than of a despot. It is not the right of any class, small or great, high or low, to wrong or oppress another. It is not a struggle between classes at all. It is simply recognition of the natural and equal rights of men as a basis of a government formed for their protection by its people, and regulated by law,—a system whereby civil and religious liberty shall be enjoyed by indefeasible right and not by favor or sufferance. This has been our conception of the function of government.

Now, how may this be accomplished? By a government of law applicable alike to all. By the application of the principle that no person should suffer as to person or property except by due process of law, and no person should be exempt from the equal protection or operation of the law.

This theory of the function of government calls aloud for an independent judiciary. It can be realized in no other way. It presupposes a certain division of powers,—each independent of the others. Any system of bureaucracy empowered

to make, enforce and declare its own rules with the force of law is the very negation of the American conception. Any department of government that supinely surrenders its powers to another is a traitor to its trust.

We inherited from the mother country an independent judiciary. England and Canada have it still, which accounts for the largest share of unfavorable comparison between the administration of justice in these countries and our own.

The judiciary of state and inferior courts in this country is not independent to the extent that English and Canadian courts are, and a serious attempt has been made to rob the Supreme Court of the United States of its independence. Our state and inferior courts are already in the bondage of politics. God save America if ever the Supreme Court of the United States shall be sold into such bondage whether it be under the guise of liberalism, progressivism, or otherwise. American experience has made it an axiom in political science that no written constitution of government can hope to stand without a paramount and independent tribunal to determine its construction and to enforce its precepts in the last resort. Politics and justice, like oil and water, never have and never can mix. They never were a team designed to pull together. Our constitution, though flexible enough to meet most exigencies brought about by a change of conditions, is not made of rubber, and the Supreme Court is not a group of mental contortionists. If changes are needed, let the fundamental law be changed by the people whose law it is, but always let it be interpreted by an independent judiciary.

Now let us turn to a discussion of modern practical politics and its influence upon judicial administration. Practical politics is a business very definite in its aims and highly efficient in its technique. Theoretically, the purpose of an election is to choose between certain proposed policies of government. At times the issues are appealing enough to the electorate generally to lift the contest to a high plane, but in local elections the contest is usually upon a more or less sordid level.

The stock in trade of practical politics is votes. The business operates to gather the votes. The profits, if successful, are the offices, their salaries, patronage and perquisites. It may be thought of as a game. The most successful players are the best judges of the common weaknesses of men and the most resourceful in taking advantage of them. The offices are the prizes. Nominations and elections are rewards for services, a bid for future service and the product of organized influence. Candidates are a source of contributions. The game attracts active and popular men, not necessarily efficient,—but vote getters. There is every reason why the professional politician wants to increase the number of these prizes. It is a mistaken notion that the public generally demands the right to select a myriad of unimportant public offices.

To a certain extent, it may be argued that since under our form of government, political parties are indispensable and party organizations are necessary, that a certain amount of the spoils system is inevitable. I suppose that is true and do not generally condemn that idea. I do, however, most sincerely condemn the system as applicable to the judiciary.

In the eyes of the politically minded crowd, judgeships are no exception to the general rule that every office is a party asset and a political prize to be sought by political methods. The office is naturally attractive. Certain influential groups are sometimes interested in the personality of the judge whose decisions might affect them. The great mass of the voters, if they think at all, would probably say that the administration of the law ought to be subservient to the popular sentiment of the time and place, and that judgeships should be brought "nearer to the people".

The practice of law is by nature and by tradition a purely professional calling, but it has become so infected with politics that its standing has suffered immeasurably. The politically minded lawyer and the politically minded judge surely make a dangerous combination.

The effect of politics upon the prosecuting attorney has been equally deplorable. A prosecutor should be able, im-

partial and fearless, and approach his tasks with the idea of justice. His success should not be measured by his percentages of convictions. It is his duty to bring out all the facts of a case, whether they may assist the prosecution or the defense. He should win no glory by a conviction or lose no honor or respect through an acquittal. Such is the ideal. Making the office political has produced the opposite results.

In smaller communities, the pay is not sufficient to attract the seasoned practitioner, and the office is usually held by some young lawyer politician who hopes to use it as a stepping stone to something else. In the bigger cities he is often a political boss.

The influence of politics is reflected also in admissions to the bar. The young man who wanted a license to practice law but had little or no preparation would get scant consideration from an independent judiciary. Politicians do not care about qualifications, but they do care about who wants to practice and how many friends he has that want him to. Such influences make it hard to raise the standard of the profession. Disbarment and contempt proceedings will continue to be rare indeed. The presence of the shyster and the low criminal lawyer are accounted for in a large part by the influence of politics.

Another factor having its roots in politics has aggravated the evils of judicial administration. That factor is a certain type of public press. Modern journalism especially in the larger cities must cater to all sorts of tastes. Competition stimulates sensationalism. The natural consequence is to play up crime and court news. Reporters are not satisfied with a plain account of official proceedings. They demand inside stuff, advance tips, evidence, theories, clues, predictions, color, and the like. At the trial they want a free hand to deal with the proceedings as a great sporting event. Now the prosecutor got into office by votes and he must get back again by votes, and consequently, publicity to him is highly desirable. The same can be said of the sheriff and chief of police who are largely under the orders of the prosecutor. The reporter wants the information from the prosecutor which he can give,

and the prosecutor wants the publicity which the reporter can give. Is it any wonder we have trial by newspaper? Now the judge could stop most of this by the process of contempt, but he is a political officer too and publicity is of no small consequence to him. Naturally, he will hesitate to alienate the press by a very free use of such power. **RESULT:** Reporters staging the show, cameras and flashlights, clicking of telegraph instruments, strutting public officials, and sometimes funny pictures in the papers. When these things happen, however, it should be remembered that the individuals involved are not so much to blame as the system that is back of them.

The abuses of machine politics have eventually led to attempted reforms. One of these is the primary. The old elective system for judicial officers was bad enough, but the primary made it worse. The judge must now conduct a personal campaign. The election of judicial officers is not a test of merit at all, but a test of popularity, and the very attributes that tend to make an individual popular may be in direct conflict with his proper qualifications as a fit judicial officer.

But perhaps more than enough has been said in criticism. Let me summarize by saying that to the influence of politics can confidently be ascribed most of the chronic evils in our system of law enforcement. In the long category might be mentioned the corruption of police methods; the degeneration of trial by jury; the abuses of such procedural steps as bail, continuances, dismissal and habeas corpus; the perversion of probation, suspended sentences and pardons; the selection of unfit judges, prosecutors and police officers; and finally all the mischief that flows from the relations of these officers with the press. Some of these evils might occasionally arise under a non-political regime of law enforcement, but they would be sporadic and unrelated; under the existing regime they are endemic,—a natural and inevitable product.

These are some of the effects of practical modern politics on local judicial administration. From them I leave it to your imagination as to what the result would be if the Supreme Court should fall into the same situation.

New attacks upon individual rights in many forms and under many pretexts are being made and others heard of, and to be looked for in an increasing measure. The accursed warfare of classes is the danger that appears chiefly to threaten the future. It requires little prescience to perceive that the burden of constitutional administration by the Supreme Court will involve the protection of property, of contracts and of personal rights. But the best assurance that the court will be found equal to the emergencies that are to come, whatever they may prove to be, is seen in the success with which it has encountered those of the past, and that success is most clearly shown by the public confidence it has inspired. Notwithstanding the attacks made upon it in the past, nor overlooking the last unsuccessful attack upon it with all the forces of the greatest political machine the country has ever seen, still the people throughout the century and a half of its existence have learned to have faith and pride in it. Elevated, and in a measure isolated as it is, they still feel it to be their own. Many a plain man has never seen it, nor ever expects to see it. He cannot discriminate its jurisdiction nor understand its procedure. The principles of its jurisprudence are not for his comprehension, but he sleeps with a more confident security under the roof his industry has raised and enjoys with a better assurance the liberty that has made him free, because he knows there is a limit which oppression cannot transgress; that no agency of power can go upon him or send upon him, but by the judgment of his peers and the law of the land; and he believes that if the worst should come to the worst and wrong and outrage should be found intolerable and yet without other redress, there is still laid up for him a remedy under the Constitution of his country, to be based in some way or other in the Supreme Court of the United States.

May that faith continue for upon it rests the future of America as we know it. But public confidence is a sensitive plant. No form of government, however perfect, may continue to endure above the general level of the integrity, interest, intelligence and character of the great mass of people

it governs. Sooner or later they will pull it down to their own level. Sooner or later they will have by and large the kind of government they deserve. They who do not appreciate liberty will not long possess it. The forms of free government are only for those who are worthy of it. So it behooves those who see the dangers of the period through which we are passing to enlighten those who fail to appreciate them. The organization under whose auspices I speak realizes this situation and presents you these programs with that purpose in mind.

I close with this admonition: there can be no genuine improvement in the administration of justice in America unless the judiciary be made truly independent. There can be no genuine independence of judiciary unless politics be divorced from judicial administration.

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