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A GOVERNMENT OF LAWS OR A GOVERNMENT BY MEN

By O. R. McGuire*

Land hungry pioneers from Virginia, Kentucky, North Carolina, and Pennsylvania came into this territory, now the great State of Indiana, down the Ohio river on flatboats or across the mountains afoot, by horseback, or in covered wagons, determined to beat back the red savage and to carve for themselves homes in the wilderness. They were seeking greater individual freedom from governmental restraints and greater opportunities than were available to them in the more settled regions along the Atlantic seaboard. The trek of

*Address delivered February 5, 1938, in Indianapolis before the Indiana State Bar Association, by O. R. McGuire, of Washington, D. C., counsel of the comptroller general of the United States, and Chairman of the Special Committee on Administrative Law of the American Bar Association.

Editor's Note.—Since the above address was delivered, the Special Committee on Administrative Law of the American Bar Association met in Washington, Dean Roscoe Pound, chairman, presiding, and this Committee approved the bill drafted by the said Committee last year which was printed as an appendix to the report submitted at Kansas City. The Committee of this year substituted the United States Court of Appeals for the District of Columbia as the reviewing tribunal in section 2 of the draft in lieu of the Court of Claims. The approved draft was placed before the Board of Governors at its May meeting in Washington and was approved by said Board with a few minor changes. After such approval, Dean Pound testified before the Senate Committee on the Judiciary in support thereof.
these pioneers has been immortalized in the painter's art on
the walls of the magnificent Memorial which a grateful Na-
tion and State jointly have reared on the banks of the Wabash
to commemorate for ages yet to come the daring deeds of
George Rogers Clark and his small band of Kentucky rifle-
men in wresting this veritable empire of the Northwest Terri-
tory from the English king and his Indian allies, a territory
which Virginia magnanimously ceded to the United States in
order to remove any fear on the part of the smaller of the
Thirteen States that she would dominate the councils of any
Union which might be formed to preserve the independence
so gloriously won by Washington and his troops. Nearby
that splendid Memorial on the Wabash are the camping
grounds of Tecumseh, whose scourge of war was ended by
the hand of Colonel Johnson of Kentucky at the River
Raisin. Between the Memorial and the camping grounds
stands today the home of another Virginian, William Henry
Harrison, who completely identified himself with this land,
who was its first Territorial governor, who became Presi-
dent of these United States, and whose Hoosier grandson,
Benjamin Harrison, was not only one of the greatest of
American lawyers but shared with his grandfather the high
honor of becoming the Chief Magistrate of this Nation. As
a son of Kentucky and a resident of Virginia, I feel quite at
home among you.

The splendid hospitality you have extended to me is in
keeping with the best traditions of both these Common-
wealths.

We have met in perilous times. Strenuous forces are roam-
ing the world today and within the past twenty years govern-
ments have fallen before them as the leaves at Vallambrosa.
Dictators and their janizaries ride booted and spurred across
the horizons of many lands which once knew the blessings of
self-government; the public organs of some of these dictators
openly deride our democratic processes; and a short time ago
the American Legion in convention assembled demanded that
the power of our government be invoked to stop in this coun-
try the tramp of feet to alien rhythms. Unquestionably demo-
ocratic governments are on serious trial and at such a time as this, it seems that we may well forget for a day the "wilderness of single instances" and direct our attention to broad fundamentals proven by the experiences of the ages. I feel sure that if there is any place in the world today where the mind of men may be invited to a few fundamentals, it is here in Indianapolis, on the soil of what was once a part of Virginia, and among men whose pioneer ancestors so splendidly placed the foundation stones of this great Commonwealth.

Land has entered into the bone and tissue of men, into their minds and souls. We came from the soil and in God's own good time to it we shall all return. History tends to run in cycles—and it has almost completed the cycle in this state—owing to the steady, unchanging character of the land and its influence on man. Within this state was soil as fertile as any in the valley of the Nile and there was the freedom of distant horizons. The overwhelming of the small British garrisons and their savage allies by the men from east of the Allegheny mountains was not unlike the overwhelming of the lowlands of Eurasia and Africa by successive waves of invaders from the less favored lands of the Old World. The Indians who roamed these hills and hunted the grasslands of what is now the State of Indiana could no more withstand the imperious sons and daughters from east of the Alleghenies than could the inhabitants of the valleys of the Hoangho, Indus, Ganges, Tigris, Euphrates, Nile, Volga, and the Danube withstand the imperious invading hordes. Then, as now, when population pressed too hard on the available means of subsistence, the people went forth on missions of conquest, seeking abundance on the more fertile lands of their neighbors—even as the Japanese today are doing in the ancestral lands of China. After having conquered the Indians and the wilderness, many of these men grew restless and moved on, as did Daniel Boone from the Kentucky Bluegrass to the banks of the Mississippi, and as did Abraham Lincoln from Kentucky to Indiana and thence to Illinois, but from the loins of those who remained, there sprung some remarkable men, including Benjamin Harrison, Oliver P. Morton, Schuyler Colfax, Daniel W. Voor-
hees, the Tall Sycamore of the Wabash, Charles W. Fairbanks, Thomas R. Marshall, Albert J. Beveridge, and the Hoosier Poet, James Whitcomb Riley, whose words are a daily joy to the hearts of American childhood.

The ancient Roman Consul in far-away Britain assumed an independence of judgment and of action unknown to the provincial governors of Gaul while many centuries later, Roman Catholicism maintained a similar independence towards the Holy See, both facts having their cause in the remoteness of Britain from the center of Roman political and ecclesiastical power. This independence was duplicated later by the attitude of the Thirteen Colonies towards England and was again repeated by the headstrong self-reliance and independence of Federal authority which characterized Indiana and other Trans-Allegheny commonwealths in their aggressive Indian policy, their flirtation with the Spanish authorities holding the mouth of the Mississippi river, and their hostility towards the English holding the fur trading posts in the region of the Great Lakes.

It was knowledge of these centrifugal forces which led George Washington to greatly encourage the building of canals to more closely link the Trans-Allegheny commonwealths with the eastern seaboard; which spurred Thomas Jefferson on to the purchase of the Louisiana Territory notwithstanding his conviction that such purchase was unconstitutional; which urged James Madison to seek a constitutional amendment for the purpose of enabling the Federal government to build roads; and which led James Monroe to subordinate his views of constitutionalism to the pressing need for roads, a task made easier by the young statesmen from the Trans-Allegheny States—particularly by Henry Clay who brought his American system to fruition by joining with New Englanders in support of their tariff policy in return for their support of appropriations for internal improvements. The few hundred thousands of dollars appropriated in those days for public roads were the forerunners of the golden stream which has poured from the Federal treasury during the past two decades for the same purpose.
But however that may be, the lack of means of ready communication during the period Indiana was in swaddling clothes prevented both Federal and territorial, later State officials from shifting to Washington the responsibility for decisions which had to be made or for action which had to be taken. Such responsibility either makes or breaks men and that it made men west of the Alleghenies is proven by the fact that many of our greatest leaders for years before and during the Civil War were descendants of the pioneer stock in the tier of States between the Allegheny mountains and the Mississippi river. Any call of the roll must include such outstanding men as Jackson and Benton, Lincoln and Davis, Grant and Albert Sidney Johnson, Oliver P. Morton and Voorhees, and the two Shermans—the General and the Senator—as well as scores of others who would be counted great in any period of the world’s history. These strong individualistic men were not accidents; they were the product of both their ancestry and their environment.

But the time came when the Indians had been pushed beyond the Mississippi; when the forests were cleared and the grasslands awakened to the plow; when the smoke from Indiana firesides mingled east and west, north and south; and when clustered homes had developed into cities, towns and villages. This gradual concentration of people in Indiana gave rise to problems unknown to the early pioneers. The answer to such problems was sought by men schooled by both environment and tradition in individualism. They sought to reconcile here the most difficult problem of human institutions—the protection of the group and the preservation of the liberties of the individual. “Man is at once a social being and therefore cooperative, and an individual personality and therefore competitive.” Then, as now, there was necessarily a weighing of the advantages and disadvantages and here, as elsewhere, the leaders of the people at first tried the powers of their local governments. We read in the charter granted to the City of Richmond, Indiana, on January 31, 1834, or slightly more than one hundred and four years ago, that the town council should have power:
"*  *  * to appoint a board of health, erect street lamps, hire night watchmen, approve weights and measures, regulate auctions, license theatres, shows, saloons, restrain gambling, to declare the weight of loaves of bread, the size of bricks, regulate the cordage of wood and declare whether such wood was of merchantable quality, appoint wood corders, fix their fees, regulate party walls, build and own a market, regulate the sale of horses and the sweeping of chimneys, erect and mend a pump, appoint inspectors of liquor, flour, salted meats, lumber, weigh hay, lime, coal, and grain, superintend the storage of gunpowder, law and collect fines on harborers of dogs, and erect a prison."

Two years later, or approximately one hundred and two years ago, the Michigan City charter contained thirty-one specific grants of power, including the power to prevent forestalling and regrating—evils which troubled good Queen Elizabeth; to regulate the time and place of bathing; to prevent the bringing of carcasses into the city or rolling hoops in the streets; to compel people to remove the snow, ice and dirt from their sidewalks; and to regulate the quality of bread. It would be instructive, if time permitted, to compare these regulations of the individual with the regulations of two centuries or more earlier or prior to the Industrial Revolution when popes, emperors, kings, barons and guilds regulated and controlled the social and economic life of the people. It would be equally instructive to compare the conditions of the arts of agriculture and industry prior to the Industrial Revolution with such conditions in Indiana at the time there was being developed a considerable measure of governmental regulation and control over individual initiative.

It will be remembered that in 1834 to 1836—when the city charters I have mentioned were granted—there were few and indifferent wagon roads in Indiana; no Federal snag boats patrolled the rivers ahead of the crafts carrying the produce of the State to the markets in New Orleans; there were no great factories belching their smoke to the Heavens from South Bend to Jeffersonville; there were no electric light or gas plants, no railroads, no telephone and telegraph lines; and there were no automobiles, radios, airplanes, gasoline stations, and such a nuisance as the hot dog stand was yet in the womb of the future. In other words, the Indiana of that period
was a rural State and the people who found it necessary to adopt such control over private initiative as prescribing the weight and quality of loaves of bread, the rolling of hoops in the streets, and the time and place of bathing were a homogeneous people—they were yesterday's immigrants or descendants of immigrants from the eastern seaboard and largely of English, Scotch and Irish ancestry with individualistic and self-reliant traditions. Only men who emulated the French coureurs de bois of an earlier century and followed the wild turkey, the deer, the buffalo, and the fur-bearing animals beyond the borders of the State—and beyond the setting sun—were free from some measure of governmental regulation and control—and their freedom in this respect resulted in an almost total destruction of wildlife and would have resulted in the destruction of the hunters and trappers had they not been able to adapt themselves to other means of earning a livelihood. As a matter of fact, some wildlife has been preserved due to stringent State and Federal regulation, including international cooperation in the case of migratory birds and seals. However, this development came so late that the pigeon roosts on the Indiana side of the Ohio river are as lacking in pigeons as the former camping ground of Tecumseh is lacking in Indians.

As time went on, municipal regulation and control proved ineffective as to many social and economic problems. The isolation of the municipalities was swept away with the development of means of transportation and communication. The building of the railroads in Indiana in the 1850's made it possible and profitable to ship wheat, corn and hogs to market rather than flour, whiskey, and pork. Household manufacturing industries languished and died. It became necessary to purchase elsewhere products formerly manufactured at home. Both males and females were released from the Indiana farms and villages and they had to seek employment elsewhere. While this development was taking place, wave after wave of foreign immigration came down the Ohio river valley seeking homes and employment in the former Northwest Territory. However, the problems did not become acute
immediately for the reason that the Civil War intervened
to take more than 200,000 men from Indiana alone and many
of them did not return. During the four long years they were
in the Armies, from Gettysburg to the Wilderness and from
Shiloh to Atlanta, they were heavy consumers rather than
producers of farm products. The great demand and high
prices for farm products as well as the shortage of labor
resulted in the introduction of improved farming equipment
with more intensive farm methods and increased production
of farm products.

The returning soldiers in 1865, found their jobs taken by
the drills, reapers, and threshers. Wholesalers and jobbers
had found employment and profit in the purchase of farm
products and their shipment to the larger cities where they
were manufactured or processed. Many of the ex-soldiers
followed these products of the soil into the cities and be-
came factory workers, swelling the population of such cities
and intensifying the social and economic problems, not only
in Indiana but in other States. Others took up the trek of
their forefathers into the Trans-Mississippi regions and
produced wheat, corn, and hogs to compete in the world mar-
kets with the wheat, corn and hogs from Indiana while other
sons and daughters of Indiana crossed the Rocky Mountains,
built their homes within the roar of the waves of the Pacific,
and cast longing eyes across that great body of water to a
civilization which was old when Marco Polo was young.

The sudden stoppage of destruction on the battlefields of
the Civil war, the increased production of farm products com-
peting for consumers, and the over supply of labor resulted
in a break in agricultural prices similar to the break which
occurred within our memories following the close of the
World War. Mortgage foreclosures became the order of
the day while the inability of the farmers to purchase the pro-
ducts of the factories resulted in greater unemployment, the
whole moving in a vicious circle. The problems had outgrown
the municipalities and it was then sought to invoke the powers
of the State government to correct the situation but within a
very few years, the people of Indiana as well as the people
in other States realized that many of these problems transcended State boundaries and that the States were powerless to correct them. Also, such regulation and control was no longer that of the baker and the size or quality of his loaf of bread; or of the chimney sweep; or of an individual as to the time and place of his taking a bath. The great corporations had entered the field and some of the entrepreneurs directing the destinies of such corporations were as heedless of human rights as the pirates who swept the seas in search of Spanish gold.

While neither the farms nor factories, following the Civil War, could sell their products except at ruinous losses, the railroads continued to maintain their pre-depression rates and the railroads became the whipping boy of that period. Many of them deserved it to the fullest extent and States as far apart as Illinois and Vermont proceeded to pass laws in an attempt to force reductions in railroad rates but such action was no more successful than would have been any attempt on the part of Indianapolis to protect the pigeon roosts on the Ohio river. As early as 1879, the Indiana General Assembly adopted a joint resolution urging the Congress of the United States to enact legislation for the regulation and control of the railroads engaged in interstate commerce and this action seems to have been taken in response to demands of the members of the Grange. However, Congress was reluctant to act and it was not until 1887 that the Interstate Commerce Commission was established with rather weak and ineffective control over the interstate activities of the railroads. It was not until many year later that the Shreveport and the Minnesota Rate cases were decided by the Supreme Court of the United States and it was found that such Commission had virtually complete control over the rates of the railroads. The statutory power of that Commission has been increased from time to time until it is now said that without its permission no railroad may add an additional tail light to a caboose. Today, the railroads, shippers, chambers of commerce, and cities in Indiana, as well as in other States, are required to present their petitions to the Interstate Commerce Commission in
Washington if they would secure a change in any railroad rate, either in interstate commerce or which affects interstate commerce. Within the past year that doctrine has been applied to sustain the National Labor Relations Board in its adjustment of disputes between employer and employee.

Again, Indiana farmers ship cattle and hogs to the great packing center in Chicago while farmers elsewhere ship livestock to the markets in Kansas City, Tulsa, and other packing centers. The States within which the stockyards for these markets are located either would not, or could not regulate the charges of such stockyards with the result that shippers in other States were believed to be at the mercy of the small groups owning such stockyards. In response to similar demands, the Congress provided in the Packers and Stockyards Act for their regulation and control, including rates which could be charged for the service rendered. The movement which brought about this intervention of Federal power was similar to that which brought about the establishment of the Interstate Commerce Commission.

Further, with its vast natural resources, there were few wage earners in Indiana from the days of its conquest to 1850. It has been estimated that in the latter year there were three wage earners in every two hundred of the population. Today the wage earners of Gary or South Bend, Indiana, approximate the wage earners in the entire State even as late as 1878. More men now daily go to the factories in Indiana than all of the soldiers from the State who entered the Civil War. Instead of being a predominantly agricultural State with comparatively simple social and domestic economy, Indiana has become one of the great industrial States of the Union, with the consequence that the social and economic problems resulting from this union of steam and steel, first attempted successfully by John Fitch while the Constitution was being written, has resulted in problems undreamed of at that time. Both municipal and State governmental powers have been found ineffective as to some of these problems with the result that organized minorities in this State have joined with organized minorities in other States in their demands
that the Federal government leap forward to storm what are said to be the citadels of the Princes of Privilege.

For example, as early as 1881 the General Assembly of Indiana passed, and the Governor approved a law limiting a day's work in the cotton mills of the State to ten hours for every person under eighteen years of age and as early as 1897, all manufacturing plants in the State were subjected to the same rigorous degree of factory inspection as had been applied to the mines in the State for at least a decade. In 1915, the General Assembly passed and the Governor approved a State Workmen's Compensation statute but this statute was ineffective to protect the sons and daughters of the State who were employed upon its navigable waters. These and other humane rules and regulations applied by the laws of Indiana to manufacturers and other employers of labor within the State made it difficult if not impossible to compete in the markets of the world with manufacturers from other states who were not subject to such rules and regulations. In these, and many other respects, the State of Indiana has found it as impossible to regulate and control matters affecting the people of the State as its municipalities found it impossible seventy-five to one hundred years ago to similarly protect its citizens. As a matter of fact, one of your native sons, Eugene V. Debs, with his organization of railroad workers demonstrated that even the right to earn one's bread by the sweat of his brow demands the protection of the Federal government in certain instances.

May I express the hope I have made it too clear for serious argument that notwithstanding the individualistic pioneer history of this Commonwealth, the changing social and economic conditions within its borders have made it necessary for the people to invoke the powers of government for the protection of society as a whole against individual members thereof and that as the population has increased, as industrialism has developed, and as problems have arisen the people have tried first their municipal government, then their State governments, and finally their National government in attempts to secure that measure of protection and control
which they have deemed necessary and desirable. In a democratic form of government, that has been their right and privilege and in the vanguard there have been Indiana leaders from Daniel W. Voorhees to the present. There is this seemingly unnoted difference that while the municipal councils and State officials administering the municipal and State regulatory laws were, and are elected by their neighbors, but one man—the President—in the administrative branch of the Federal government is so elected. I trust, also, that I have made it quite clear that this regulatory movement has not been due to any one political party; that these changes have taken place under Whig, Republican, and Democratic administrations. If there should be any one who doubts my statements, I invite his reference to the open pages of Federal and State history. I affirm that as silently as a thief in the night and as resistlessly as the waves of the sea, the situation in which we find ourselves today has come about during the past century and that no one political party could have stayed its development any more than King Canute could have rolled back the waves of the sea. The issue presented is not a political one. It should be met by men of all parties.

What has all of this done to the Federal government? Those of you who have carefully studied Madison's report of the debates in the Constitutional Convention or Elliott's Debates in the State Ratifying Conventions or the Federalist Papers know that grave concern was expressed by the founders of our government whether the States would not grow in such strength and power at the expense of the Federal government that the centrifugal pull would result in the destruction of the Federal government. While the members of the Constitutional Convention adjourned in a body to witness the experiment of John Fitch on the Delaware River, they dismissed it as a mere toy, little dreaming that within the course of a century that union of steam and steel would bring forth such problems of government that the people of the States would almost invariably turn to the Federal government for regulation and control. Whether we like it or not is immaterial. The fact is that the resistless economic and social forces have
been such that the Federal government has almost reduced the State governments to police provinces—and the States have not been any too successful in that field of government. Last year, for instance, the Federal government spent nearly five millions of dollars for the maintenance of the G-men of the Department of Justice and some of such men lost their lives on the soil of Indiana in gun battles with bank robbers and kidnappers of this State. Also, we have in the field, some with headquarters here in Indianapolis, secret service forces of the Postoffice Department and secret service agents of the Treasury such as narcotic agents, customs agents, tax agents, and another group of men concerned with crimes against the money of the United States such as counterfeiting, forgery, etc. In fact, the amount of taxes now required to support the Department of Justice and the Federal judiciary, alone, is far greater than the aggregate expenses of the Federal government for any year prior to 1848.

The multiplying demands that the Federal government assume more and more regulatory functions have resulted in a tremendous growth of the administrative branch of that government. When we commenced to do business under the Constitution, we created the Department of Foreign Affairs, now the State Department and Thomas Jefferson had but two clerks. We created the Treasury Department and Alexander Hamilton, our first Secretary of the Treasury, had but a few clerks. The War Department of that period included our infant Navy. The Postmaster General was continued with approximately the same powers he had under the Articles of the Confederation but he did not have a seat in the Cabinet until the Administration of President Andrew Jackson. The Attorney General of the United States was without a department portfolio until 1870 and he did not even have a clerk until after 1817 when William Wirt became Attorney General. When the Federal government was removed from Philadelphia to the banks of the Potomac in 1800, there were but a few dozen employees of the United States and a small number of packing boxes sufficed for all of its records. Today, we have over 850,060 civilian officers and employees of
the Federal government and some 130-odd governmental agencies and the annual expenses of one of the departments is greater than the combined expenses of the entire Federal government prior to the Civil War.

Not only has that government grown in size but it has grown in complexity. President Roosevelt in his message of January 12, 1937, to the Congress stated that:

"The Committee on Administrative Management points out that no enterprise can operate effectively if set up as is the Government today. There are over 100 separate departments, boards, commissions, corporations, authorities, agencies and activities through which the work of the Government is being carried on. Neither the President nor the Congress can exercise effective supervision and direction over such a chaos of establishments nor can overlapping, duplication, and contradictory policies be avoided."

The fact of the matter is that we are struggling along with an outmoded machinery for the administration of the laws and that while great advancement has been made in the technique of business organizations, the administrative machinery of the government which was created prior to 1887—and much of that attached to the older departments of the government which has been created since that time to perform additional functions of government—continues to operate largely as did the Treasury Department of 1790 under Alexander Hamilton or the War Department of the same period under General Knox. That technique of handling public business is unable to efficiently and effectively carry the load placed upon it and there seems to be a naive opinion abroad in some quarters that in event of a dispute with some official of the Federal government which can not be adjusted administratively, the matter can be, or should be taken into a Federal court and there adjusted as a dispute would be adjusted between two private parties. This is a grave mistake for the reason that no suit can be maintained against the United States in any class of actions unless express consent to that effect has been given by statute. Also, unless the dispute is such that a definite judgment may be entered therein, jurisdiction may not be conferred on the constitutional courts to hear and determine such
a case. Furthermore, as will be hereafter shown the common law technique and procedures of the regular courts are unsuited to many problems arising in the administration of the Federal regulatory laws.

I fear that too few lawyers understand these facts or the further fact as to the comparative number of cases decided by the Federal courts and by the administrative departments, etc., of the Federal government. On the quantitative side, the Judicial Conference held October 3, 1936, composed of the Senior circuit judges of the ten United States Circuit Courts of Appeal and the Chief Justice of the District of Columbia Circuit Court of Appeals, with the Chief Justice of the Supreme Court of the United States as the presiding officer, reported that there were commenced during the preceding fiscal year in all of the Federal district courts a total of 39,227 civil cases, including both Government and private civil cases, and that these district courts terminated an aggregate of 41,384 civil cases during that period, including 14,395 civil cases to which the United States was a party. During this period these district courts terminated a total of 141,167 cases of all kinds. At the beginning of the same period the eleven United States Circuit Courts of Appeal commenced their work with a total of 1,674 pending cases and during that period there were filed 3,521 additional cases. The eleven Circuit Courts of Appeal terminated 3,526 cases, including 1,198 Federal civil cases. Incidentally the Circuit Courts of Appeal reversed the district courts in 880 civil cases out of the total of 3,526 terminated or in approximately one-fourth of the cases. During the preceding fiscal year the Supreme Court of the United States received a total of 1,076 cases and 986 were disposed of by denial of writs of certiorari. That court heard arguments in 210 cases and 107 of these were Federal government cases, or more than one-half. That court wrote opinions in 185 cases and of these 96, or again more than half, were government cases.

If we may add all of the Federal civil cases terminated by the district courts, the eleven Federal Circuit Courts of Appeal and all of the cases—both civil and criminal—term-
inated by the Supreme Court of the United States during 1935, we have an aggregate of 16,669 cases. These figures are not strictly accurate for the reason that the denial of a petition for certiorari in 986 cases by the Supreme Court of the United States is not equivalent to the decision of that many cases and we do not know how many of the total of 1,076 cases before that court were Federal civil cases. However, to be on the safe side, I have treated them in this computation as if they were all Federal civil cases. If we add the 473 cases terminated by the Court of Claims and the approximately 3,500 opinions by all of the nine judges of the Customs Court, terminating some 71,492 cases, we have an aggregate of 20,642 Federal civil cases decided by all of the courts of the United States for a one year period.

Now if we compare with this total of 16,669 Federal civil cases decided by all of the Federal Constitutional courts during a one year period or the 20,642 cases decided by both the Federal constitutional and legislative courts with the number of cases decided by the administrative officers and tribunals of the Federal government what do we find? The statistics have not been collected for the some 100-odd governmental agencies in the Executive branch of the Government as they have been by the Department of Justice for the constitutional and legislative courts but the select Committee of the Senate on Investigation of the Executive Agencies of the Federal government sent letters to these various agencies and some statistics are available on the basis of the administrative replies.

The Secretary of the Treasury reported in a letter of August 3, 1937, that a total of 603,246 cases had arisen in the operation of his department alone during the fiscal year 1936; that 92,185 of such cases had been appealed to higher authority within the department; that 2,847 cases were taken to the Court of Claims, and the Federal district courts; that 699 cases had been taken to the Circuit Courts of Appeal; and that during said period the latter courts had decided 601 cases in favor of the administrative action and 692 cases against such action. That is to say, of the 603,246 cases
arising in the Treasury Department during the fiscal year 1936, only 92,185 were appealed to higher authority within the department, and only 3,546 were taken to the courts. It should be stated, however, that of the 603,246 cases arising in the Treasury, 75,174 were customs cases and 63,425 of them were taken to the customs court wherein approximately 3,500 opinions served to dispose of them with appeal of 103 to the Court of Customs and Patent Appeals, both of which courts are legislative courts. The Treasury report did not include the number of claims involving closed banks under the supervision of the Comptroller of the Currency, the report stating that if these cases were taken into consideration the number of claims "would run into the hundreds of thousands."

Thus the Treasury alone decided more cases than all of the Federal constitutional and legislative courts. In fact the Treasury had far more intradepartmental appeals than the number of Federal cases brought before, or decided by, all of the Federal courts—the comparative number being 92,185 cases on administrative appeal in the Treasury as compared with 16,669 Federal civil cases in the constitutional courts and 20,642 cases decided by both the constitutional and legislative courts.

Let no one suggest that these were perfunctory matters. I cite one, the Huntington case, that required thirteen months of actual trial time and the conclusion finally reached was within three per centum of the amount reached administratively.

The Federal Trade Commission, during a corresponding period, approved a total of 624 stipulations to cease and desist in unfair methods of competition which it had necessarily investigated prior to approving such stipulations; in 296 cases the Commission served upon respondents cease and desist orders; and during the same period the Commission had under investigation a total of 2,100 particular cases and was making a number of other investigations for the President and the Congress. Of all the cases taken to the courts—appeal being limited to the Circuit Courts of Appeal—the Commission was sustained in 18 and reversed in none, including
one mandamus proceedings in a Federal district court. In other words, the Commission actually closed 920 cases—or 278 less than all of the Federal civil cases decided by the eleven Circuit Courts of Appeal—to say nothing of the time and energy expended on the 2,100 cases under active investigation.

The Department of Labor, as we all know, is the youngest and one of the smallest of the executive departments of the Government. During the fiscal year 1936, it had 34,601 controversies—or approximately twice as many as all of the Federal civil cases concluded by all of the Federal constitutional courts—and 3,075 of these were appealed to higher authority within the department, which compares favorably in number with the total of 3,526 terminated during that period by the eleven United States Circuit Courts of Appeal. Of the 3,075 cases appealed within the Department of Labor, some 251 of them were taken to the courts and the courts sustained the administrative action in 279 cases and disagreed in 49 of them, leaving a few cases pending in the courts at the end of the year. In fairness it should be said that the scope of review in such cases is a narrow one.

The very small Inland Waterways Corporation, a wholly government-owned corporation, engaged in water transportation on the Mississippi river and some of its tributaries, had 6,595 cases to arise during the fiscal year 1936 and only four of these cases were taken to the courts—one being decided in favor of the corporation, one compromised while pending in court, one dismissed and one pending at the end of the year. That is to say, the Inland Waterways Corporation received and settled more cases during the fiscal year 1936, than were filed and decided by the eleven United States Circuit Courts of Appeal and the Supreme Court of the United States.

The Secretary of War has reported that 3,606 cases arose in the operation of his department, with its far flung activities during the fiscal year 1936 and that all were administratively settled except 61 which resulted in suits against the Government. The Secretary of the Navy reported 1,456 cases arising in the operation of the Navy Department with only seven
being taken to the courts. Eliminating the various and sundry regulatory laws being administered by the Department of Agriculture, as to which I do not have the statistics, that department had 1,556 cases to arise with only fifteen finding their way to the courts and with judgments in favor of the administrative action in nine of them.

These are but few of the many departments, independent establishments, boards, commission, agencies, and government owned corporations but I have cited enough figures to show beyond doubt that the volume of cases decided administratively is far in excess of the total output of the courts and that comparatively speaking, there are fewer appeals from the administrative settlements than are taken from the district courts or the Court of Claims with their common law procedure and technique but with a comparatively greater number of appeals than were taken from the Customs Courts there being but some 103 out of the 3,500 separate opinions.

Also, these figures indicate the vast amount of work which the administrative branch of the Federal government is now performing and they demonstrate that the number of cases arising in the administration of the Federal laws would swamp any court system unless the number be greatly reduced by some method of administrative review. To throw these cases into the courts as soon as there was disagreement with an administrative officer would place the courts in a far worse condition than they were in when the prohibition amendment to the Constitution was repealed. It is a matter of common knowledge that when such repeal took place, the district courts and even the circuit courts of appeal were hopelessly behind with their dockets by reason of prohibition cases coming from but one bureau of the Federal government.

On the qualitative side, it must be observed that we inherited the common law, admiralty and equity, from England. Such law was developed in that country by the courts in deciding suits between individuals. We have similarly adapted such laws in this country in suits between private parties to meet our peculiar conditions which were unlike those in England and the great period of this development took place prior to
the Civil War, though even then the various state legislatures did not hesitate to supplement, modify, or set aside the common law and equity. Whatever the change which may have taken place in this country through statutory modifications, the fact remains that the technique of our Federal courts is essentially the technique of these early days. A suit at law in the courts between private parties is a contest between private parties—each seeking to win a verdict from the jury with the state courts reduced in most instances to the status of umpires. The pleadings, technical rules of evidence, delays, and the enforced rule that there must be proven to the courts matters within the intelligence of most reasonable men but emphasizes the fact that too often a suit between private parties is a trial by battle—the judgment not necessarily being in accordance with justice in the case.

The common law technique can not be successfully applied in a civil contest between the Federal government and its citizens. There was, of course, no procedure for bringing the United States before the Courts as a defendant in civil cases or equity or admiralty until 1855 when the Court of Claims was established with limited jurisdiction. During the interval between 1789 and 1855, the United States had been before the Federal courts as a party plaintiff in a limited class of cases, principally in suits against disbursing officers and their sureties and against defaulting contractors. Elsewhere, as in Indiana, the people of the States were trying to adjust their social and economic problems through local or State administrative machinery and the United States government had not entered that field. Also, there had been developed during this period a procedure for suits as at common law against collectors of internal revenue and against collectors of customs for refund of taxes paid under protest but while such suits against collectors of customs long since have been abolished, that early procedure continues to exist for suits against collectors of internal revenue. During this same period the trial courts of the District of Columbia, tracing the inheritance of their jurisdiction through the Colonial courts of Maryland to the Chancery Court in England,
developed a procedure for issuance of writs of mandamus and injunctions against Federal officers located at the seat of Government.

In 1855 when the Court of Claims was established and general permission was given to sue the United States in limited classes of actions there was unknown to the Federal law any procedure whereby the courts could entertain a direct appeal from the decision of an administrative officer of the government and in fact this procedure of direct appeal from an administrative decision did not appear until after the Federal Trade Commission was established in 1914. It was not in the Interstate Commerce Act of 1887. So when the Court of Claims was given jurisdiction to enter judgments against the United States on the basis of pleadings filed in said court and evidence taken de novo, the procedure was in accordance with the common law or admiralty as the case might be. No change was made in this respect in the Tucker Act giving the Federal district courts jurisdiction concurrent with that of the Court of Claims in a more limited class of controversies and in fact no substantial change in that respect has been made to this day. The Attorney General has reported that for the fiscal year 1936 the Court of Claims, consisting of five judges with a corps of six commissioners to take the evidence and make findings of fact, disposed of 473 cases while during the same period the nine judges of the Customs Court, with no commissioners but with very informal procedure, not based on common law technique, wrote some 3,500 opinions disposing of 71,492 cases.

The application of concepts of the common law in suits against the United States has likewise led to curious results. For instance, at early common law the courts refused to uphold a stipulation in a contract for some third party to determine disputes arising thereunder, the reason given being that such stipulations ousted the courts of their jurisdiction. During subsequent years the volume of cases coming before the courts became such that they finally concluded such a stipulation was legal and would be upheld as determinations of the third party relating to disputed questions of fact. Thereupon
the United States formulated contracts containing stipulations that the contracting officer should determine disputed questions of facts arising under the contracts and that his decision should be final and conclusive on the parties to the contracts. Standard forms of government contracts today contain such stipulations, and unlike the situation between two private parties, who may negotiate as to the stipulations which shall be contained in their contracts, a government contractor has no alternative except to sign such a so-called contract or to refuse to do business with the United States.

Both the Court of Claims and the Supreme Court of the United States have sustained findings of fact made by contracting officers under such forms of contracts as final and conclusive and an examination of the early cases will show that the courts cited as their authority other cases at common law where the courts had upheld similar authority exercised by third persons not parties to the contracts. The contracting officer is, in fact, the other party to the contract. His relationship to the contractor is direct. The contracting officer was probably, in part if not entirely, responsible for the specifications forming a part of the contract. He has to supervise the construction work or inspect the supplies delivered. He may, and sometimes does, become prejudiced for or against a contractor and yet the contracting officer has been given authority to decide all disputed questions of fact arising under the contracts. I have been informed by a large number of government contractors that such a one-sided stipulation in government contracts, enforced by the courts, required the inclusion in the contract price of a sufficient amount for contingencies to take care of any reasonable probabilities of unfair or mistaken decisions. While appeals on questions of fact may be taken to heads of the respective departments, I should mention at this point, for later development, that such heads of departments ordinarily have no machinery to determine what are the facts in such cases and the opinion is quite prevalent that they generally approve decisions prepared by intermediate officers which are based on reports from the men from whose decisions the appeals have been filed. There is really no contract in such
cases as these based on a common meeting of the minds. The contract form is more in the nature of an administrative regulation to which the so-called contractor is required to consent.

The concepts of the common law can not be successfully used in determining civil controversies between the United States and its citizens—whether the United States be acting in its Sovereign or proprietary capacity and a contest between the United States and one of its citizens can not be compared to a contest between two private parties. Something more than winning a judgment is necessary for the government in suits between it and its citizens. A judgment between private parties is ordinarily of little moment except to the parties. A judgment between the United States and one of its citizens—whether the judgment be obtained for or against the Government acting in its sovereign or proprietary capacity—may be of great moment not only to the public treasury and its contributing taxpayers but such judgments may continue to be of much concern—as in the contract illustration I have cited—and, furthermore, the rule established by the judgment may affect thousands of others in the years to come. As Dean Landis of the Harvard Law School has said:

“If one turns to the legislation that delegates the fashioning of industrial and business policy to the administrative as distinguished from the judicial process we seem, perhaps, to be in a different realm. In a degree this is true. We are in the presence of agencies charged with continuous examination of the problems of an industry or the evolution of an industrial philosophy. As contrasted with the judge, who has been grudgingly awarded by the Congress one law clerk and some secretarial help, research staffs of men trained in every relevant field are at the disposal of the administrative for consultation and investigation. Procedures of an elastic character permit the presentation of materials relevant to the solution of the problem that time and rules may well exclude from the record built up in court proceedings. The impact of particular claims can be judged in advance, so that investigation of the broad field can precede adjudication of particular claims.

“The process, however, is subjected by traditional and constitutional requirements to appellate review of its dispositions by courts. To the correction of error achieved by such review, to insistence that there
shall be no deprivation of the rights of claimants to an adequate presentation of their case, no objection can reasonably be urged."

Mr. Justice Stone has invited attention to the losing opposition of the common law courts to the rise of equity and has said with respect to administrative agencies that:

"These warnings should be turned to account, not in futile resistance to the inevitable, or in efforts to restrict to needlessly narrow limits activities which administrative officers can perform better than the courts, but as inspiration to the performance of the creative service which the bar and the courts are privileged to render in bringing into our law the undoubted advantages of these new agencies as efficient working implements of government, surrounded, at the same time, with every needful guarantee against abuse."

The new agencies of government created after 1887, in the form of boards or commissions for the administration of laws relating to the regulation and control of economic and social problems in the sovereign capacity of the United States have been generally equipped with sufficient statutory authority to make investigations, hold hearings, and entertain arguments on both the law and the facts so as to reach a correct conclusion before invoking the aid of the courts, if need be, to enforce their decisions or which could be reviewed in the courts at the instance of the private party. All of these appeals have been to the United States Circuit Courts of Appeal on the record made administratively except in a few instances, such as the Interstate Commerce Commission where attempts to set aside orders not involving reparations are before a three judge district court, consisting of two district judges and one judge of a circuit court of appeals and except as to the Longshoremen and Harbor Workers' Act where the appeal from the commission is to a district court. Very generally the scope of discretionary review of the facts by the United States Circuit Courts of Appeal is narrow and might well be extended in the improvement of justice in the particular cases and in the improvement of the particular tribunals.

In some instances where new Federal regulatory authority has been conferred upon one of the older departments, headed
by one individual as a secretary in the cabinet or by an administrator who has no seat in the cabinet, the law has likewise provided for a direct appeal on the administrative record to the courts. There has been no uniformity in this respect but whether the decision is made by a commission of three or more men or by a department, there seems to have been no particular difference as to the administrative decisions standing the tests of judicial review. In a few instances, statutory provisions have provided for the setting up of intradepartmental boards, as the processing board of tax appeals in the Treasury department, any member of which board may hear and determine a case from which an appeal lies on the administrative record to the appropriate Circuit Court of Appeals. In other instances, one official of the department has been given similar statutory authority. However, in all of these instances the independent board or commission, the intradepartmental board, or the official has statutory authority to summon witnesses, subpoena documents, hear evidence, permit cross examination of witnesses, hear arguments on the law and the facts, and otherwise conduct the proceedings for the administrative record—which goes to the appellate court in event of appeal or for enforcement of the order—as such proceedings would have been conducted by a trial court, except that the proceedings are much more informal. Here is one of the main reasons why an intradepartmental board or an independent commission is able to dispose of so many more cases than the courts and speed is of prime importance in the administration of Federal regulatory laws.

However, the departments, such as Treasury, State, War, Navy, Interior, Agriculture, Post Office, Commerce, and Labor departments as well as such independent establishments as the Veterans Administration have not been given such statutory authority except as to particular statutes though some of these departments have a number of intradepartmental boards existing under regulations for the purpose of deciding various classes of controversies arising in the administration of the laws made the responsibility of the particular department. Yet none of these boards created by
regulation has any authority to build a record as does the Federal Trade Commission or the Processing Board of Tax Appeals.

The technical procedure today in the older agencies of adjusting a controversy between the Government and the citizen arising under any statute is substantially the procedure followed in the earlier days when the public business was small. In substance, that procedure was, and is, for the aggrieved party to send a written statement to the particular department here in Washington; for some subordinate employee to refer that letter to the official or employee with whom the controversy arose; for such an official or employee to make a written report admitting or controverting the statements made in the complaint; and for some departmental employee or board of employees to prepare a decision on these ex parte statements for some higher official or the head of the particular agency to sign after it has been reviewed by some intermediate officer or employee.

Under such a procedure, the complainant does not know what is contained in the report made by the subordinate in the field; the complainant has no opportunity to summon witnesses, place his testimony in the record, and to cross examine the Government witnesses. The deciding officer is deprived of the benefit which would accrue from such a record and he is generally deprived of the benefit of any brief or argument by the complainant or his attorney on the law and the facts. As one department of the government today has 603,000 such cases, the head of that department could not even sign the decisions much less read the records. It is a fact that it is quite infrequent for the head of a department to even know that such cases are pending in his department, much less attempt to personally determine any considerable number of them. All of this work is assigned to subordinates in the departmental service as it necessarily must be. That was the system in the early days and that is the system today after nearly one hundred and fifty years of operation. As I have stated, none of these employees are elected by the people and some of them develop a Messiah complex after many
years of uncontrolled discretion. There should be no employee of any government in America whose decisions and acts may not be reviewed, if need be, in the courts, when he has arbitrarily exercised governmental power.

There is no direct appeal procedure as to the controversies decided administratively in the vast majority of instances in the departments, establishments, boards, government-owned corporations and authorities of the Federal government. In those instances where the controversy may be taken into the courts, all of the evidence assembled and all of the work done administratively is disregarded for a trial *de novo* in accordance with the common law technique, concepts and procedures. The slowing up of the work of deciding the cases is illustrated by the fact to which I have above referred that the Court of Claims, consisting of five judges and six commissioners, disposed of 473 cases in 1936 while the customs court, consisting of nine judges but with its informal procedure wrote some 3,500 opinions disposing of more than 61,000 cases. The fault is not in the court but in the procedure it is required by law to follow. I may add that the Customs Bar is so well satisfied that it jealously guards the Customs Courts.

The Special Committee on Administrative Law has recommended, and the House of Delegates of the American Bar Association has approved in principle, the establishment of such numbers of intradepartmental boards, consisting of three employees with a chairman a lawyer, as the head of department or other agency may deem necessary; that these boards shall be equipped with statutory authority to summon witness, hear examination and cross-examination of witnesses, and otherwise conduct their proceedings much as the so-called independent commissions now conduct their proceedings, except that these boards will have no examiners. These boards are for the purpose of improving the administrative service. They are to determine appeals from the operating administrative officers—and the record will be made as it is now made before an examiner of the Interstate Commerce Commission or the Federal Trade Commission. There may be argument before the decision if requested by the aggrieved party or his attor-
ney. The board would be required to make findings of fact and conclusions of law separately; that is, the facts and law may not be run together though it is not proposed that each member of the board make his own findings of fact and state his conclusions of law separately from the other two members unless, in fact, he should dissent.

These boards are to be established from time to time both in the departments in Washington and in the field services and to exist only so long as they are needed—the personnel of the boards being drawn from the administrative personnel of that particular department but not from personnel engaged in the particular controversy which is to be heard. When the case or cases are determined, the personnel is to be returned to their regular departmental or field duties. There is to be no such thing as a continuing membership on any intradepartmental board—it being the intention that these men shall continue to keep abreast of the departmental work and that men will be selected from time to time for particular cases in accordance with their training and experience. The Treasury might have a dozen such three men boards or it might have one, depending upon the discretion of the head of the department in that respect and the volume of administrative appeals.

Naturally with such a number of boards operating both in a departmental and in a field service of that department, there are bound to arise instances where two or more boards reach different conclusions of law in substantially similar cases, being in that respect similar to the district courts or even the Circuit Courts of Appeal in reaching diverse conclusions on substantially the same state of facts. The conflicts in the court decisions are now being adjusted to some extent by finally getting the cases to the Supreme Court of the United States. Instead of taking the cases from the intradepartmental boards to the courts to harmonize the conclusions of law, we have suggested that the findings of fact and conclusions of law reached by each board must be approved by the head of the department concerned or by his authorized representative—thus forcing all of such cases through a departmental funnel
as they are, in fact, administrative determinations. However, if the head of department or his representative should disagree with the findings of fact and conclusions of law reached by the board, such head of department or his representative must place his own findings of fact and conclusions of law in the record along with the board’s findings of fact and conclusions, these documents and the evidence in the record are to constitute the record before the Circuit Courts of Appeal in event of an appeal. Under the appeal section which is applicable to both intradepartmental boards and the independent boards not excepted therefrom, the Circuit Courts of Appeal are given the broadest possible jurisdiction under the Constitution so that such courts shall have discretionary power but not mandatory requirement to see whether the administrative findings of fact are in accordance with the record evidence. That is to say, the courts will have mandatory jurisdiction to review the law and discretionary jurisdiction to review the findings of fact in the light of the record evidence. The scope of review of the intradepartmental boards may thus be broader than the scope of existing review of the so-called independent boards and commissions and it is proposed to make the reviews of both types of administrative decisions identical in so far as the independent boards and commissions are included in the proposal of the Committee on Administrative Law. The reviewing court would have the authority to remand a case for further evidence as is now the situation with respect to the Board of Tax Appeals or the Federal Communications Commission, for instance.

The subject of administrative tribunals and administrative law are as broad as the Federal government and I have given but a summary statement of a part of the resolution in this respect which was offered at Kansas City last September and approved in its entirety as to part and in principle as to the balance. I wish I had more time to go further at length in this proposal but the report of the Special Committee on Administrative Law is in print and may be studied by those who are sufficiently interested to do so. As you have no doubt noticed, I have been more concerned in reminding you
that this growth in government has extended over many, many years and that such growth has come about by reason of the changes in our economic and social life incident to concentration of population and the development of an industrialized Nation with the rise of problems knowing no State boundaries. I need not urge upon a body of lawyers that it is necessary to first understand the problem before we commence a search for means of solving it. There may be differences of opinion as to the detailed mechanism necessary for such solution but after more than six years of study, a majority of the Special Committee on Administrative Law offered a solution in September, 1937, and while that solution has met with some opposition the opposition has been one of negation. No one has offered a substitute and I am confident that an inexpensive, expeditious, and satisfactory substitute will be difficult to find.

However, if there be among you a Daniel come to judgment who can work out a more satisfactory solution from both the public and individual standpoints than that which we proposed then he should by all means shout his proposed solution from the house tops so that it may be given careful consideration in the light of the tremendous problems before the Federal Administrative service.

As men of more than average learning and experience, I appeal to you to cast aside your prejudices, if any, against administrative agencies and tribunals and throw the weight of both your intelligence and numbers into the scale of bringing about legal control over them. As I have stated, whether we like it or not, these administrative agencies are here to stay and from a purely selfish standpoint of prospective fees, if nothing else, the lawyers should see to it that such agencies function in accordance with a yardstick stated in the law. There is no possibility of persuading the Congress or the country that our traditional courts can meet point by point the advantages of administrative tribunals—even if this were true, which it is not—and this entirely aside from the fact that the Supreme Court of the United States has decided in a number of cases that administrative duties can not be
constitutionally conferred on the constitutional courts. The Constitution of the United States has conferred on the traditional courts jurisdiction at law, in equity, and in admiralty but it has not conferred on such courts any administrative jurisdiction and it is because of this fact that the traditional courts are unable to review administrative decisions on the facts as in equity or admiralty cases.

We should be practical men. The country has grown since this State was admitted into the Union and with that growth have come tremendous problems of an industrial and commercial age. Even if the volume of administrative controversies did not make it impracticable, every sign of the past twenty-five years has pointed to a further growth of administrative agencies and tribunals with little or no judicial review. By united and intelligent action, we can secure a reasonable measure of judicial review—sufficient to protect individual rights but not enough to stop the wheels of government. The lawyer of the future must be equally adept at trying a case before an administrative tribunal or before the traditional courts. May I remind you that shortly before he was elected President of the United States, Abraham Lincoln participated in the trial of a patent case in Cincinnati before the United States Court where for the first time he came into contact with men more learned in the law than the men he met on the Illinois circuits and with intricate problems of patents as to which he was not informed. Lincoln returned to Springfield with his unused argument in his saddle bags and advised his friends that he had determined to study law in earnest in order to compete with lawyers who had learned their law elsewhere than from a casual volume of Blackstone. All is grist which comes to the lawyer's mill even if he must learn economics, the use of statistical data, and the other tools required before administrative tribunals.

The time has come to stop this drifting. By the plan proposed, we may try these administrative controversies before trained government men in our localities and attempt to settle the matters at home. If unable to do so we may prosecute appeals to our own circuit courts of appeal instead of being
compelled to travel to Washington and present the case there to some official or board which has no authority to summon witnesses, and otherwise conduct a legal hearing and with no judicial review whatever as is now the situation in so many classes of cases. The bar has been fulminating against the existing situation for the past fifteen or twenty years, but until 1937 no workable plan was suggested and in the meanwhile the Congresses, Democratic and Republican, passed law after law with no, or inadequate, provisions for a full and fair hearing before an administrative tribunal and with no—or inadequate—method of judicial review of the conclusion finally reached. The lawyers have insisted that in the final analysis the administrative discretion should be exercised by the courts and for reasons which I have stated this is impossible in practice.

While I do not think that the legal profession is going to have the final determination in this matter, I do think that our profession may contribute greatly to the solution if we will but “let our minds be bold”, to use a phrase of Mr. Justice Brandeis. I have detained you too long this afternoon, but in closing may I remind you of the Hoosier Poet’s lines inquiring as to the quest of our forefathers as they left their homes in the Old World; as they sailed the wintry sea to Plymouth Rock; and as they silently knelt in prayer upon landing. Riley answers his own question in these words:

“For, lo! they were close on the trail they sought:—
In the sacred soil of the rights of men
They marked where the Master-hand had wrought;
And there they garnered and sowed again—
Their land—then ours, as today it is,
With its flag of heaven’s own light designed,
And God’s vast love o’er all... And this
Is what our Forefathers were trying to find.”

We cannot turn back the hands of the clock of time, but a simple, expeditious, inexpensive, and fair procedure of determining conflicts with Federal bureaucracy greatly will contribute to our peace and happiness in the land which our fore-
fathers found and left for us, and which we must leave to our children—with, I hope, a government of laws and not a government of men. As I understand it, the difference is that between a Republican form of government and a dictatorship. As Heraclitus said five hundred years before Christ: "The people ought to fight in defense of its law as they do of their city wall."