

THE UNDEVELOPED STRENGTH OF AMERICAN DEMOCRACY

ADDRESS

by

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In a world that is moving so fast, prophesy is dangerous, and it is too early to draw more than tentative and contingent inferences as to the future. But prudence requires us to consider the possibility that after this war our nation will find itself in a reordered and less friendly environment. Unless we are to adopt a policy of non-resistance and comfort ourselves with the theory that virtue is its own reward, we cannot ignore the possibility that some decisive test of military strength may be forced upon us. Or we may face a long period of narrowing encirclement, accompanied by steady reduction of our friendly buffer states. In that event our trial, instead of being one of sudden striking power in war, may be a test of sustained staying power in peace. In either case the United States will run great risks if it cannot muster its maximum collective strength to meet any supreme challenge to its survival.

In appraising any country's strength for the long pull, it is folly to measure military strength merely by such factors as numbers of tanks, speed of airplanes, or naval power ratings. The potency of weapons still depends ultimately upon the judgment, the courage, and the devotion of the men who wield them. And the economic machine which supplies an army and the social system which backs its morale are most vital parts of any defense system.

The characteristic strength of the totalitarian systems is that they overcome an inferiority of resources by a better utilization of them. They hurl themselves with great impact because they are so closely organized. Their effective power is great because they have eliminated lost motion,

debating time, and friction by meshing their political system, their military power, their cultural institutions and their economic system into one total machine. Quick decision, an external appearance of unity because dissent is suppressed, and rapid execution of orders is a characteristic strength of dictatorship. Its characteristic weakness is the slowly disappearing individual initiative which results from ruthless suppressions and regimentation.

The characteristic weakness of a democracy in contrast, however, shows up at the very beginning. It is confusion of tongues, conflict in objectives and methods, and lack of unity. Even if freedom does develop men of greater individual initiative and strength, if they forever pull in opposite directions, there is no collective strength. Two strong men who cancel each other are not equal to two dumb men who pull together. It is only after a free government has time to collect itself, to let events lead to a voluntary unification of purposes and opinions that democracy can put forth its latent power. In speed it is always doomed to defeat - in endurance it has generally won.

But it is plain that the democracies of the world need something more than victory if they are to survive. Only twenty years ago they had victory in full measure. In two decades the fruits of victory have vanished. It is not a happy prospect if all the sacrifice of a world war will buy peace for only part of a generation. This failure to keep advantages so lately won gives dictators and their American sycophants an opportunity to revive the old monarchial sneers at democracy, Napoleon's wisecrack about "government by chatter" and the philosophy that democracy is a "Cult of Incompetence".

The question that concerns America is not whether our democracy has been inefficient, wasteful, and negligent - but whether it must continue to be so. The power - at least on a sudden trial - of totalitarianism lies in the pattern of its organization. Can we, without sacrificing our essentially democratic qualities, achieve a pattern of organization that will get from free men and free enterprise an efficiency roughly equivalent to that which totalitarians achieve by compulsion?

I am one who believes that our representative democracy can be made vastly more efficient than it is without sacrificing its essential and basic liberties. I also believe that the only way we can remain democratic is to achieve a greater effectiveness. Moreover, I believe we have laid some solid foundation for such a program in the last three years.

## II.

This faith forces me to take issue with those who now are proclaiming that government has become too big, too powerful, and too concentrated, and who now are proposing a program of reducing governmental ability to control and regulate the business enterprises which flourish under its protection.

In some quarters it is claimed that the strengthening of our economy cannot be helped by governmental action at all, but that it must be done only on the initiative of those in private industry. For generations we have proceeded on the assumption that the energies of a free people could be divided into thousands of self-directed ventures,

and that somehow these would add up to a public good. No large business enterprise can succeed if it is not well planned, but there are those who insist that our total economy must be allowed to run with no planning for the good of the whole. It is precisely this anarchy among the democracies which has been their weakness.

Certainly democracy must utilize the profit motive to produce initiative for private enterprise. But it cannot accept a doctrine that anything is allowable if only it produces someone a profit. For example, we cannot tolerate even a profitable traffic in scrap iron or oil or machine tools to arm a potential enemy. We cannot safely allow private enterprise for profit's sake to centralize essential industries into targets for potential enemies such as the rubber industry at Akron, an automobile industry in Detroit, a steel industry at Pittsburgh, or a brass industry at Bridgeport. The private profit opportunity must yield to a defense motive and, as Dorothy Thompson and Henry Luce have pointed out, the tendency of private business to do whatever is profitable has been affirmatively counted on by Hitler as a weakness of democracy.

It seems, therefore, to me elementary that if democracy is to rearm and at the same time is to avoid the depression of its basic standards of living, it must consciously, to a much greater degree than heretofore, plan its economic order. It must eliminate unnecessary luxuries - and among them the luxury of friction, unnecessary service, and ineptitude. It must keep the profit motive as a reward for service to society.

Business itself cannot perfect this organization, because no private enterprise can be entrusted with the power to coerce minorities. And in any more effective organization of industry, some dissenting minorities must be brought into line, some conduct which interferes with the accomplishment of the objective must be punished, and some freedoms prevented. These powers can only be left to a democratically chosen government.

If we are to strengthen the organization of democracy, it seems obvious that we in America can do so only through the Federal government. Forty-eight separate state organizations - no one of which is an economic unit, each of which is more or less in competition with every other - cannot be the means to a strengthened American organization.

The strongest opposition to this necessary centralization of governmental power is proceeding largely from those who have been assiduously piling private corporation on top of private corporation to build nation-wide empires of concentrated wealth within our democracy. If capital is to collectivise itself into great integrated industries and into great holding company systems, and if labor is to join itself into powerful nation-wide organizations, then clearly government, if it is to govern effectively, must be bigger than any of the governed. I do not propose any degree of governmental concentration that is not made necessary by the concentrations in the economy which underlies the government. But the greatest power in any country must be its government, and no people can ever present a united front unless the government is greater than any of its parts.

III.

How are we to preserve liberty if we strengthen authority, you may rightly ask? How shall we reconcile greater power with our freedoms?

The essence of democracy, it seems to me, is not the absence of effective government. The essence of democracy is the control of government by the consent and will of the governed as expressed by its majorities. In order to preserve the reality of that consent and to provide it a basis for intelligent decision, a minority must continue to have the right to struggle to become a majority, to offer its ideas in competition, to debate, to question the government, to propagandize through speech and print, and the right to assemble and petition government. And our machinery for the registration of the consent, that is, our elections, must always remain free, and the results must be accepted. All of this takes time. All of it produces an impression of a divided people. All of it emphasizes our differences of opinion and objectives and all of its steps are capable of abuse both at the hands of temporary majorities and at the hands of extreme and intemperate minorities. But it is an indispensable condition of free government that the process of opinion-making remain free and uncontrolled by either public government or private power. Hence we cannot really strengthen the hand of government unless we preserve these liberties which give it vitality. Any plan which strikes at these freedoms would not strengthen democracy but would abandon it.

Where then can we strengthen democracy? Once a decision is democratically arrived at, I see no reason why it would not be consistent with democracy to provide means to execute that decision with as much

expedition and efficiency as the decision of a dictator. After we have preserved the democratic way in which opinion may form and Congress and the President settle its policy, I do not see the wisdom of allowing a multitude of ways in which private vested interest may stall its execution.

A deadly and endless legalism has been the weapon by which private interests have kept the power of a democratic leadership tied up. The Democratic Gulliver has been tied to the ground with legal red tape in the hands of a multitude of minor private interests. Witness the efforts of a sovereign democracy to fix utility rates! The most conspicuous example of legalism is the Kansas City Stockyard case in which the Secretary of Agriculture was authorized by statute to fix the rates of commission men. He did so in 1933. For seven years since the case has been in the courts, four times heard in district court and four times argued in the Supreme Court, and never yet has there been a decision by that Court in anything except questions of how to proceed. And the case is on its way there again. The way we lawyers stall everything while we debate how to proceed reminds me of the old verse

"The centipede was happy quite  
Until the frog for fun  
Said 'Pray which foot comes after which'  
Which wrought his mind to such a pitch  
He lay distracted in the ditch  
Considering how to run."

So the government is always thrown into the ditch by lawyers asking which foot comes after which - only they don't ask it for fun.

We started out on a plan of National Industrial Recovery and it took two years of litigation to find out it was all legally wrong.



We started out to aid agriculture and after three years learned that too was all legally wrong.

We passed a law to enable debt-ridden tax districts to reorganize their debt, as private corporations have long been allowed to do. It took a few years' litigation to learn it was all-legally wrong and a few years more to learn it was all legally right.

We began in 1935 to organize the demoralized bituminous coal industry and only last month got a final decision sustaining constitutional power to do so.

I could go on indefinitely to recite the steps by which a whole recovery and reform program, supported by the people at the polls as no other program ever was, has been battered to pieces or delayed for years by legal proceedings. And this at a period when Hitler was teaching the bitter lesson of the value of time.

I am not proposing that we deny "due process of law" to persons or to property. That too is an essential of government by law. But we cannot afford to stall the administration of important policies while private interests obtain "undue process of law".

#### IV.

I do not think there is present need to add to the constitutional powers of the Federal Government. Reasonably interpreted there is at present adequate constitutional power, at least until administrative and legislative experience catches up with the concept embodied in recent court decisions. In 1933 we were not a nation --

that is judicially speaking -- we were forty-eight nations and our Federal power has been interpreted away until the Constitution was but little stronger than the old Articles of Confederation which our forefathers found inadequate a century and a half ago. The restoration of Federal power is a subject on which I speak with some assurance for it has been my special task.

Our representative democracy has been made a nation in the last four years. If it is able to organize its economy to support its defense today, it is in no small measure due to the greater liberty of action won in little-publicized court decisions too technical perhaps for complete public understanding. The National Government has won its long fight to free itself of unwarranted limitations which gave an unwholesome dominance to the vested private interest as against the public welfare.

Let us hastily review the implications of these steps.

1. We have replaced the old doctrine of dual federalism with the doctrine of co-operative federalism. This was accomplished by the unemployment compensation decision. The old school insisted that the Federal Government and state governments could not enter into a combination by which the Federal Government furnished the protection of its taxing power and the state the advantages of its local administration in carrying out a common purpose to relieve unemployment. Counsel for the old order correctly anticipated the effect of the contentions of the Government when he exclaimed to the Court: "If this is constitutional then no more will the clash of sovereignties ring out." But the Court

didn't seem to think there was any purpose in having a clash of sovereignties ringing out, and it expressly approved the practice of a new co-operative federalism. Also, after it had once refused to do so, it finally approved the municipal bankruptcy law by which the Federal Government extended the aid of Federal courts and of the Federal bankruptcy power to debt-ridden municipalities, a relief which had long been extended to private corporations. But the old school thought its aid should not be extended to subdivisions of the states, for it held that state and nation were sentenced to perpetual antagonism. By grants in aid of financially weak localities it has been possible to keep our economic and social system on a fairly uniform policy and capacity to handle problems of relief, unemployment, health, and social service. Thus we have today the greatest degree of power in the history of the country to co-operate, and are carrying out the greatest practical plans of co-operation between municipality, state and nation. This is of great significance in any plan for strengthening our defenses and unifying our efforts.

2. We have also sustained the right to develop in peace time American defense resources, without waiting for war. You remember the war-time development of Muscle Shoals and the building of Wilson Dam, one of the country's great power projects, to aid production of adequate war materials. When peace came, a long struggle of private interests to obtain possession of this power development began. When this administration began its public power program, private power interests, although purchasing power from that source, denied the right of the Government to

sell power created at Wilson Dam direct to consumers. They lost, but returned to the attack, because under the Tennessee Valley Authority other hydropower developments had been built, but not in war time, and the utilities challenged the right of the Government to make these projects self-sustaining in whole or in part by selling the resulting power to the public. Here, again, they were defeated, and the Federal power sustained. Today this nation may develop its power resources, and may extend its system of flood control. It is not obliged to wait until war is upon us to exercise war powers to create an adequate source of cheap energy for Federal defense or industrial purposes. No person who is anxious about American defense today can doubt the importance of the victory over the private interests that sought to deny the right of the Government to develop and place in use America's water power resources.

3. We have restored the taxing power of the Federal Government, on which had been engrafted special privileges of an insidious kind. Property made a long and successful fight to prevent progressive income taxation. Finally the people adopted the Sixteenth Amendment to assure the Nation power to tax income "from whatever source derived." But in spite of this constitutional mandate, the courts held that public officers of the states were immune from the Federal tax, and Federal officers were immune from the state tax, and Federal judges were immune from both taxes.

The immunity of public officers did not have great economic importance, but it was the mask behind whose principles the whole tax

exemption to interest on public bonds lurked. Back of the politicians' immunity was the immunity of the millionaire. Vast amounts of wealth took shelter in tax-exempt securities, and is still permitted to escape all burdens of protecting itself. We have struck down the tax immunity to public officers and to judges, and the Court has announced the principle that a tax on income is not a tax on the source of that income. The way is thereby opened for a defense program to tax vast reservoirs of hitherto untaxed wealth. It only awaits the action of Congress.

4. The power over interstate commerce has been restored and invigorated. This is one of the most litigated clauses of the Constitution and it was expansive when it denied state power and terribly feeble when the nation tried to rely on it. But through a series of recent constitutional victories we today have established Federal authority to organize a demoralized industry, like bituminous coal, or to protect agriculture from the depressing effects of marketing surpluses. And the protection of interstate commerce includes the power to prevent labor disputes growing out of unfair labor practices, and includes the right to prescribe wages and hours, and to use the interstate commerce power to discourage evils like prison-made goods or child labor or other menaces to public health or social well-being. This power is also now held to authorize regulation of aggregations of capital such as the public utility holding companies which contended that they were constitutionally immune from regulation by both state and nation.

5. The general welfare as an object for constitutional taxation may be said to have been discovered within the last four years so far

as the Supreme Court is concerned. In our constitutional taxing power the forefathers joined together the "common defense" and the "general welfare", but a selfish generation had put them asunder. The philosophy had grown up that the Federal Government had nothing to do with the welfare of the people -- except of course it could adopt such measures as subsidies and tariffs to aid industries. As late as 1936 the Supreme Court remarked that it had never been obliged to settle the meaning of the general welfare clause. One of the reasons was that it had been so little used. It was in the Social Security cases that we won from the Court its first interpretation which gave a broad sweep to the general welfare power and held that this nation may bring to each fireside and workbench protection against the insecurities that seem inherent in our industrial order.

These are things which make us intellectually and politically a different nation in 1940 than we were in 1936. These new powers bring with them new responsibilities, but they also bring to the American people of 1940 new possibilities for a program of democracy. The past seven years have witnessed a struggle to reeducate our people in their concept of our representative democracy. In 1932 the predominant belief was that our democracy was identical with the status quo -- a "strange amalgam of legalism and money power." Anything which would disturb the privileges of property, the advantages of the vested interest, or which would place new social burdens -- or even burdens of government upon them -- was anti-democratic and generally unconstitutional. Those who were comfortably established in the existing order sincerely believed that -- many of them still do.

That false concept of our democracy has passed away except in a few dark corners. Democratic government is designed, not to prevent change, but to bring about change in orderly and considered fashion. Its purpose is not to entrench an existing policy, but to call it up at periodic elections for reconsideration. Its intent is to prevent violent and revolutionary changes by keeping open a peaceful way to make constant readjustments within the constitutional area, in the rules, the relationships, and the institutions of our social order. This was certainly the teaching of the great philosopher of democracy in whose shadow we meet tonight.

We have restored the vitality of a free government on which a narrow legalism was inflicting a kind of rigor mortis. Now we think of our democracy as a living and dynamic force. The bitter fight to give it virility to combat economic demoralization at home gives it strength to organize against any threat from abroad.

The lines of future liberal policy are clear. We must move at accelerated pace, not merely in equipping naval and military and air power. We must also evolve a greatly improved pattern for economic organization to support both our social system and our military establishments. We must conserve our resources, eliminate our endless wastes and duplications, and bring our scattered and often conflicting energies to the support of common objectives. We have won for peacetime programs powers that in 1917 were felt could be used only in war emergency. Now democracy may under its great charter, not by dis-regarding it, proceed to place its house in order.

And this task is one that can be accomplished neither by reactionaries nor by revolutionists. It is a task for men who realize, and are glad, that they live in a changing world, but who believe that there is in us enough intelligence to plan our destiny and enough self-sacrifice to achieve it.