Wise and Unwise Extension of Federal Power

By William Howard Taft[1]

Washington was the President of the Convention of 1787 which framed our present Constitution. The sketchy and laconic journals do not show that he took much part in the deliberations of the body, but they do show that he was very constant in his attendance, and his correspondence indicates that he followed closely the proceedings. We cannot doubt that, with his commanding influence, his well-balanced judgment, and his high patriotism, he was a power for good in securing the wonderfully wise compromises of that remarkable instrument of government, and that his title to credit in the ultimate result cannot be overestimated. This great charter from the people of the United States, organizing a national government, is in nothing more exceptional than in its preservation down to the present moment substantially as it was when it was ordained by the people one hundred and twenty-eight years ago.

The first ten amendments were practically contemporary with the Constitution itself. They comprised the Bill of Rights against abuses of the national government and two rules of construction, and were adopted in fulfillment of an informal condition of ratification exacted by the State conventions. The eleventh amendment was a mere reversal of a Supreme Court decision at variance with the construction promised in the Federalist as to the non-suability of states by private individuals, and the twelfth amendment was a mere reframing of an awkward and clumsy method of selecting the President. The thirteenth, fourteenth, and fifteenth amendments seventy years later were the result of the war, and were adopted to protect the emancipated slaves and to readjust conditions to their freedom. For a moment, until the "Slaughter House cases," it seemed as if the balance up to that time carefully maintained in the Constitution between the local self-government of the states and the national powers of the government might be disturbed; but that decision so limited the operation of the fourteenth amendment that the danger passed. By the fourteenth amendment, the short Bill of Rights contained in the original Constitution, to secure persons within state jurisdiction from abuses of the state government, was extended to forbid state laws taking life, liberty, or property without due process of law, or depriving a person of the equal protection of the laws. Practically this has not expanded congressional or federal executive powers, but has only brought within the power and duty of the Supreme Court the enforcement of these guaranties in respect of state legislation. In the sixteenth amendment, the taxing powers of Congress are enlarged, but not beyond their actual exercise during the Civil War; and by the seventeenth amendment the mode of selecting Senators in the state, trans-

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ferred from the legislatures to the people, has not enlarged or diminished state powers.

The plan of Washington and his associates was to create a nation to consist of a central government and state governments. The central government was to have the power over foreign relations without interference by the states, complete power over war and peace, independent power to tax and raise money, and the absolute power over commerce, foreign and national. The states retained the wide field of local government. To this balance of authority is due the permanence of our Republic. An attempt to govern from Washington the home affairs of the people in forty-eight different states by acts of Congress and executive order would have severed the union into its parts. An attempt to give the national government power to brush the doorsteps of the people of a state in parochial matters and in a local atmosphere which must be breathed in order to be understood, would have created a dissatisfaction and a fatal gnawing at the bond between the states. Confederations like ours have usually gone to destruction either through the expansion of the national authority into an arbitrary and tactless exercise of power, or through the paralyzing of needed national strength by the encroachment of the constituent states. Our Constitution has maintained its balance, and that is why we are stronger to-day than we ever were in our history.

This statement will not meet the concurrence of many who insist that the power of the national government has vastly increased as compared with that exercised by the states. Their view is not inconsistent with mine when the facts upon which they rely are analyzed. The national government exercises a much greater volume of power that it ever did in the history of the country. But the increase is within those fields of jurisdiction which have always under our Constitution belonged to the federal government, and the increase that we see to-day over what it was in Washington's day and in Jefferson's day is due not to a change of the original plan, but to two circumstances. One is that Congress did not see fit at once to exercise all its powers and allowed them to lie dormant until long after the Civil War. No one will deny, for instance, that Congress always had power over interstate commerce, but not until 1887 did it attempt to exercise direct control by an Interstate Commerce Commission. This is only one instance of many. The second circumstance is that in the growth and settlement of the country and expansion of its industries and business and the change effected by the use of steam and electricity in transportation, by which distance has been minimized and the country has been made compact, the volume of commerce of national and international character has greatly increased in proportion to that confined within the individual states. In Washington's day the total commerce within the states was 75 per cent. of all the commerce of the country. To-day the commerce within the limits of the states is 25 per cent. only of all the commerce of the country, and the proportion is dim-

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inishing. This of course affects the volume of national power in regulating the interstate and foreign commerce as compared with that exercised by the states, without in any degree changing the principle upon which the two jurisdictions are divided.

The time has not come when our Constitution should be amended to change that line of division. But the time is here when Congress, within the field of its acknowledged jurisdiction, should assert more power than it has heretofore done, and meet a condition of affairs resembling much that which really prompted the making of the Constitution itself. The chaos in the commerce of the country before our present national union, by the obstruction to its free flow between the states caused by state jealousies, state greed, and state busy-body legislation, brought about the calling of a convention at Annapolis. That convention failed for lack of attendance, but it led directly to the call of the convention, the framing of the Constitution, and its ratification. There were other causes in abundance for the Convention of 1787, but the most acute, and the one with respect to whose remedy there was practically no difference of opinion, was the necessity for the taking over of the control of interstate and foreign commerce by a central power which should exclude state interference. When the actual state of our national transportation facilities to-day is examined and analyzed, measures of relief seem as imperative as they were in 1787. Needed action may be had without any constitutional amendment or change in the structural plan of our government. It is within the conceded power of Congress.

The inadequacy of our railroad system to meet the demands of our rapidly increasing population and the volume of transportation that our foreign trade demands, and to meet the requirements of a state of war which we face, is startling. We have had many warnings from railroad men as to what would occur under conditions like the present. Their warnings are now being vindicated. The embargoes which the railroads have been obliged to impose on legitimate shipments are a mathematical demonstration of how far short is our arterial system of interstate commerce.

In the year ending June 30, 1916, although we had the greatest business prosperity in our history, only 700 miles of new railroad line were constructed. With the exception of the first year of the Civil War, this new mileage is less than any year since 1848. Down to 1907, our new annual railroad construction averaged nearly 5,000 miles. One-sixth of our total railroad mileage is owned by bankrupt companies and is in the hands of receivers. The total capitalization of those companies amounts to $2,250,000,000. State legislation has interfered with the railroads in securing money enough properly to maintain and improve their equipment. Nineteen states have laws regulating the issue of securities with railroads doing business in the state. This has led to the imposition of unreasonable fees for the issuing of stock and to the burdening of loans and readjustments needed in order properly to finance the roads with a view to in-

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creasing their capacity. Not only that, but in many cases railroads are helpless under state legislation to secure loans at all. The evidence before Congress indicates that at least five billions of dollars should be borrowed to supply the railroads of the country with side tracks, warehouses, and terminal facilities, and other improvements needed to give capacity adequate to do the business of the country. Since January, 1916, when our prosperity has been beyond anything in our history, not a single share of new railroad stock has been listed on the New York Stock Exchange, and the common stock of not more than a dozen American railroads is being sold on the New York Stock Exchange above par. Most railroads cannot float long-time bonds, and must depend on short-time notes to raise the money for maintenance and equipment of their present capacity. There is no possible hope under present conditions that five billions can be raised to increase railroad capacity, although capital is abundant, interest rates are moderate, and good investments are sought.

The cause of this condition is to be found in over-regulation, over-restriction, unfair taxation, and a general public attitude of hostility to railroads, especially in state legislation. The reason for this is easy to find. There was a time in the history of the country when legislatures and Congress were only too eager to encourage the construction of railroads and their operation, and then there were extended them privileges and votes of direct assistance that were over-generous. The managers of railroads took advantage of this favorable attitude, forgot their duty under the common law, and granted outrageous discriminations among shippers and as between localities. They exercised great and necessarily corrupting influences in our politics, and with other great corporate organizations they created a danger in this country of plutocracy which the people finally realized and then took radical steps to prevent. This popular fear caused the passage of the interstate commerce law, and its stiffening amendments through twenty years were forced by the flouting resistance of the railroad managements. It caused the passage of the anti-trust act and it created a great reform by driving corporate organizations out of politics. But the indignation of the people was not restrained. They are a leviathan which cannot be aroused to only a moderate remedy, and they have carried the measures of reform to an excess which now must itself be reformed. Politicians and demagogues in various states have found their way to power through continued nagging of the railroads, and, with the history of railroad abuses, they have been able to continue this campaign and profit by it personally down to the present day. The railroads drove Congress into the law of 1910, by which complete control over interstate railroads is given to that body, and even that body has probably not been as generous and as just, due to this popular feeling, as it ought to have been in the treatment of the railroads. Justice to the railroads of itself requires a change in this condition. They have sinned in the past, but they have been punished sufficiently in the loss of their

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revenues and in the difficulties of their operation. Far beyond the question of justice to them and their stockholders is the question of the life of the nation and the need there is for relieving the circulation of the blood in our national body from the obstructions that are inflicting necessary evil upon our people.

The same cause that led to the creation of the Interstate Commerce Commission and the stiffening of its powers led to the creation of some forty-eight different state railroad commissions. Sometimes they were appointed and sometimes elected, but the office of Railroad Commissioner too frequently became a stepping-stone to higher political powers. Thus the local hostility against the railroads manifested itself in the harsh measures of the state commissions against the railroads.

Again, railroad commissions in some states have been tempted to make rates favorable to business points in the state and unfavorable to those of other states. It is a fight for business between the states exactly analogous to that which took place between the states before the Constitution. It greatly interferes with the symmetry of the system of rates fixed by the Interstate Commerce Commission, and the Supreme Court has spoken in no uncertain terms of the power of Congress to remedy such interference.

State laws affecting equipment and operation are another burden upon interstate railroads. Thirty-seven states have divers laws regulating locomotive bells; thirty-five have laws about whistles; thirty-two have head-light laws. States are generally content with two-wheeled trucks on cabooses, but fifteen require four-wheeled trucks. The length and constructive weight of cabooses, too, is the subject of legislation in thirteen states. One state requires cuspidors between every two seats in a car, and another forbids them. One requires screens in the windows of passenger coaches, and another forbids them. There is just as much burden in the laws affecting operation as in those of equipment. The requirement as to extra brakemen and the full-crew laws all increase the cost of operating the railroads and injure instead of aiding efficiency. Fifteen states have laws designed to secure preferential treatment for their freight by prescribing a daily movement for freight cars. Though under the federal law there is no demurrage penalty for failure to furnish cars to a shipper, several states have penalties running from one dollar to five dollars per car per day. The result is that the railroads are compelled to discriminate against interstate commerce and against commerce in the states that have no demurrage penalties.

In ten years, while the gross receipts of the railroads have increased only 50 per cent., the number of general office clerks has increased 87 per cent., with an increase of 120 per cent. or over forty millions of dollars in the annual wages paid them. The taxes upon railroads by the states have grown apace and every device adopted to avoid the Federal Constitution and heap a burden upon these instruments of interstate commerce. In the fiscal year of 1915 the railroads were compelled

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to furnish to the national and state commissions and other bodies over two millions of separate reports. If the duplicates are included, the total is swelled to three millions. The cost of state regulation to the railroads, to the shippers, and to the public generally runs into hundreds of millions of dollars a year, while the expense of maintaining the various state railroad commissions approximates fifty millions. These facts and figures I have taken from an article by Mr. Harold Kellock in the "Century Magazine" for February, and I have reason to believe that they are trustworthy, and, even if only part be true, they disclose a most serious condition.

The facts furnish some explanation of why we are having food famine and coal famine in New York and Chicago and elsewhere, when we are the richest country in the world, with the greatest productive capacity and are enjoying the greatest prosperity. Other causes doubtless co-operate to create such an anomaly, but the breakdown of our interstate transportation system is one of the most important. We have starved our railroads into a state where they live only from hand to mouth. We have frightened capital from them by our hostile and unwise measures, prompted by a just but unmeasured indignation. What is the remedy? It is to take the interstate commerce of the country entirely out of reach of the hostile blundering, greed, and jealousy of state legislatures. Can this be done? It seems to me that the path leading to such an end is clear, if Congress has the foresight and courage to take it. It will cause a great deal of local opposition by the enormous machinery that has now been created for the intra-state regulation. The state railroad commissioners and their subordinates who are now drawing substantial salaries and who are looking to such offices as a means of stepping into further political prominence will swarm about Congress to prevent such action. The state commissioners have already organized with a view to protection of their jurisdiction. But I submit that the present conditions ought to make their objections of little weight. Of course we must have a fairer treatment of railroads by the Interstate Commerce Commission and greater dispatch in giving them advanced rates where circumstances justify. The Interstate Commerce Commission has so wide a jurisdiction that it is impossible for it to dispose of all the business before it without additional force. A bill has been pending before Congress for this purpose, but it does not command the attention or the action which bills of less merit do. We may, however, count on the improvement in the machinery of the Interstate Commerce Commission, a possible division of the country into districts with subordinate tribunals to pass on the great volume of issues, and with appellate or review proceedings in the most important cases to be disposed of by the Commission itself. This is the only plan of organization that we have found possible in the administration of justice, and, as the hearings are analogous to those in court, the same system seems to be required.

But the great change which should be had is the complete taking over of

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the interstate commerce business of the country into the regulation of the Interstate Commerce Commission. This should be done, first, by requiring that every railroad participating in interstate commerce should only be permitted to continue to do so upon its taking out within a certain time a federal charter of incorporation. This would cover practically all the railroads of the country, for there is no railroad which is not and must not be engaged in interstate commerce business. Since the great decision of Chief Justice Marshall in McCullough against Maryland, I presume that there can be no doubt of the power of Congress to pass a law for the federal incorporation of railroads engaged in interstate commerce. This is certainly an appropriate means of providing for the regulation of the flow of the lifeblood of the country.

Such federal incorporation would afford an easy means of excluding state interference except as it might be permitted by approval of the Interstate Commerce Commission. As the federal government has protected national banks against unjust taxation, so it might provide in respect to the railroads that no greater taxation should be imposed upon the property of railroads than is imposed upon the property owned by individuals or corporations in the states. The intra-state rates to be fixed by the state railroad commissions could be made completely subject to the supervision and rejection of the Interstate Commerce Commission, as essential to the symmetry of the regulation of interstate commerce. The limitations upon the power of railroads to borrow money could all be vested in the Interstate Commerce Commission and taken altogether out of the now unwise control of state legislatures and state commissions. The substitution of one master for forty-nine, the reduction in actual expense for responding to inquisitorial and often useless demands, the assurance of reasonable protection, would restore railroad property to its proper place in the confidence of the investing public, and the funds needed for material expansion of our transportation facilities would be at once forthcoming. Nor would the action taken be the slightest departure from the structural plan of government framed at the birth of our Republic. The power of Congress on this head could not be set out more comprehensively than by Mr. Justice Hughes, in the case of Houston, East & West Texas Railway Company against the United States (234 U. S., 342), as follows:

"Congress is empowered to regulate. that is, to provide the law for the government of interstate commerce; to enact all appropriate legislation for its protection and advancement; to adopt measures to promote its growth and insure its safety; to foster, protect, control, and restrain. Its authority, extending to these interstate carriers as instruments of interstate commerce. necessarily embraces the right to control their operation in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which in-

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terstate commerce may be conducted upon fair terms and without molestation or hindrance. As it is competent for Congress to legislate to these ends, unquestionably it may seek their attainment by requiring that the agencies of intra-state commerce shall not be used in such manner as to cripple, retard, or destroy it. The fact that carriers are instruments of intra-state commerce, as well as of interstate commerce, does not derogate from the complete and paramount authority of Congress over the latter or preclude the federal power from being exerted to prevent the intra-state operations of such carriers from being made a means of injury to that which has been confided to federal care. Wherever the interstate and intra-state transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority, and the state, and not the nation, would be supreme within the national field."

But unwise extensions of federal power over interstate commerce are sought, which will improperly interfere with state independence in the field of local government. It should be observed from Justice Hughes' language, just quoted, that the power of Congress to control interstate and foreign commerce is vested in it in order to promote that commerce and to prevent its use for improper or unwise purposes. It is certainly within the function of Congress to adopt all measures to make it as efficient an instrument as possible, and to prevent its being made a vehicle for the carriage of merchandise or communications detrimental to the welfare of the public who are the recipients or the objects of such commerce. Thus the restriction upon the transportation of impure foods, of impure drugs, and of improper or diseased meat from one state to another is plainly within the regulatory power of Congress to prevent the use of commerce for injurious purposes. So we have the law forbidding the transportation by express companies and otherwise of lottery tickets which would make interstate commerce a vehicle for the spread of the gambling vice and bring evil to those who are to be reached by such commerce and are to be the object of its vicious purpose. But now Congress has made a radical change in the use of its control over interstate commerce, which, whether constitutional or not (and the question will soon be pending in the courts), is in its essential character an abuse of the power of Congress. It would form a precedent for indirectly transferring from the states to the central government control of the police power of the states which it has been the purpose of the Constitution to vest in the states.

I refer to the child-labor law. By this law it is made unlawful to carry in interstate commerce merchandise the result of manufacturing in which children of less than a certain age have participated. Its purpose is plainly to require the states, at the expense of losing participation in interstate commerce in many important manufactures, to enact child-labor laws of a cer-

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tain kind. This bill finds its support in two motives. During the last two decades we have seen the growth of a most worthy and commendable interest in measures for uplifting the lowly and oppressed and protecting them against their weaknesses and the cupidity of employers and capital. It has shown itself in safety-appliance acts, in tenement-house acts, in health laws, in factory acts, in workmen's compensation acts, in hours of labor acts, and in child-labor acts in various states. I would be the last one to place any obstruction in the progress of such work in general or of the protection of children in particular. It is a paternalism in government, most of which is wise. That it should have excesses which have not helped the cause is to be expected in a movement of this kind, and we may hope that such excesses will be moderated as experience demonstrates their futility. The zeal of many generates impatience on their part at the slowness of some states to adopt measures that they deem necessary. They also grow restless under the lack of effective enforcement of the laws which they find in state governments. Appreciating the effectiveness of the national government, with a single executive, removed from the obstructing influence of local politics, they struggle to secure the aid of the federal arm in remedying the wrongs their eyes are focussed on. They feel themselves charged with no responsibility in the maintenance of the balance of powers between the state and the federal government. The disturbance of that balance has not the slightest weight to restrain their effort to secure the abatement of the evil against which their whole energies are directed.

The second motive for the child-labor bill is selfish and affects those whose business is conducted in states where such a child-labor law is rigorously enforced, and who believe their power of competition is injuriously affected by the absence of a child-labor law or its lax administration in states of their competitors. Nor are they restrained in their advocacy of such a measure by any concern over the disturbance of the constitutional balance of power between the states and the federal government.

To students of history and to those who take a broad, impartial, statesmanlike view, the use by Congress of the power of interstate commerce as a club to control the states, in the character of the police measures that they shall adopt in their own internal affairs, is a departure from its previous course that may well give great concern. If, by the interdiction of goods made by children under a certain age, Congress can compel states to enact laws such as Congress desires on the subject of child labor, it may extend its control in unlimited directions, and the state governments will merely become the satellites of Congress and lose the independence in their control of home matters that has heretofore given the popular and solid strength to our political existence. It may be that the Supreme Court will hold that it may not look into the motive of Congress in enacting such legislation, and that, because it is regulatory of interstate commerce, it is within congressional discretion to enact it, although the language

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of Chief Justice Marshall in McCullough against Maryland would seem to fit the case: "Should Congress, under pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

As this act is not for the purpose of promoting or limiting commerce as a vehicle to proper objects, but is for the purpose of putting the states under duress to adopt a police policy in matters over which they have by the Constitution complete control, there is strong reason why the court might hold the law invalid. But whether it does or not, Congress ought to observe the balance which our forefathers intended between the federal and the state power, and ought not under pretext of exercising a federal power to seize a state power.

There is only one subject further which I should like in a summary way to consider. An amendment to the Constitution is seriously proposed which would vitally affect the balance of power between the state and national goernments. It is the "national prohibition amendment," so called. Of all laws that are local and of home application, those of a sumptuary character are the purest type. They concern the intimate life of the people and are affected by their local customs, prejudices, tastes, and predilections. Their effectiveness and the possibility of their enforcement are entirely dependent on local sympathy with them. This is shown in the widespread use of the local option system. They are therefore peculiarly within the class of laws which it was the intention of our forefathers, in framing our plan of government, to confide to the discretion of the states. I am not here to attack prohibition as a principle. I approve fully the local option system. I agree that it is not too much to ask one individual to forego the use of intoxicating liquors, though he use them however so moderately, in order to take away from his neighbor the temptation to use them in excess. They are not of such a necessity to one man that in the general interest they may not properly be denied to him and his liberty of action be thus restricted. How much good is accomplished by such laws, local option or state prohibition, may admit of question. There has been great improvement among the intelligent classes of the community in the consumption of liquor and in a lessening of its evil effects. This has been aided in a marked way by the industrial and business advantage of temperance among employees engaged in work in which attention and fidelity are of high importance. Public opinion has changed widely on the subject, and the loss of reputation among his fellows that a man now suffers by his over-indulgence has worked great reform. In communities where a majority favor total abstinence, the operation of prohibition laws, I doubt not, whether local or state, has removed temptation from the weaker members of society and has driven out the dives and saloons that were centers of evil influence. The feeling against the saloon evil has been intensified by the egregious audacity

and political effrontery of saloon keepers' and liquor dealers' organizations in every state of the Union, and the feeling for prohibition is often as much stimulated by indignation at the outrageous assumption and exercise of political power by the liquor interests as by a desire to mitigate the drink evil

The movement for national prohibition has been encouraged by what has been supposed to be the success of foreign governments in interdicting the manufacture and sale of liquor. The action of Russia as a war measure has approved itself to the advocates of prohibition of this country as an instance of what the United States could do. It goes without saying that the question of how practical Russia's order is is yet to be determined. Russia's intimate and searching control of the life of every individual in her vast empire, moreover, presents a very different situation from that which the United States would have in dealing with her population of 100,000,000.

As with all enthusiasts in one cause whose eyes are fastened on a particular evil and whose constant study of the evil destroys their sense of proportion, the wisdom of maintaining the safe structural plan of our government has no weight whatever with the advocates of national prohibition. Heretofore there has been some ground for seeking relief from the national government in the interference with state prohibition laws because of the immunity which interstate commerce in liquor has enjoyed in dry states. But the decision of the Supreme Court holding the Webb-Kenyon bill to be constitutional has swept away that ground, and now the "bone-dry liquor bill," so called, has made it a federal offense to carry liquor into a prohibition state. There is, therefore, no reason, except the inherent difficulty, why a state within the limits of its boundaries may not completely enforce any prohibition law which its legislature shall enact. Why not, therefore, allow the states to work out the problem and show how much good legislative restriction can accomplish in this sumptuary field? But no, the advocates of prohibition must have a wider and a stronger power. They must have the aid of that single executive, with that large organization directly subordinate, managed from Washington, which works without regard to local influence. The people of one state who do not wish prohibition, and who do not believe in its efficacy, must be made to accept a law regulating their doorsteps and their intimate habits of life because other states desire them to. This, I submit, is a wide departure from the nice balance of state and national powers and its useful results. Such a sumptuary law as this, especially in the large cities (and it is generally in the states which have large cities that prohibition has not prevailed), will require for its enforcement the closest police inspection. Nothing is so easily evaded as a sumptuary law among a people who do not sympathize with it. A perfect army of federal officials, therefore, will be required to carry out such a law in the states a majority of whose people do not approve it. This horde of federal employees, policemen, and detectives, will be managed directly from Washington. They will have to deal with

and prosecute those engaged in the forbidden trade from the Atlantic to the Pacific Ocean, and from the Canada line to the Gulf. The passage of such a law will not drive all the men out of the business now engaged in it, but it will render them a quasi-criminal class. So great will be the difficulty of enforcement that in many cities and in many states the law will not be enforced except intermittently as it may be stimulated by spasmodic efforts of its leading advocates. Nothing is so demoralizing in a political way as the intermittent enforcement of such a law. Those engaged in the illegal traffic will be completely at the beck and call of those engaged in suppressing their business. The political instrument that such a vast machine and army of office-holders will constitute in the hands of a sinister manipulator of national politics, it is most discouraging to contemplate. Nothing is so demoralizing to the effectiveness and prestige of a government as the failure to enforce important laws. I do not wish to put myself at all in opposition to prohibition in states where a majority of the people favor it. It is their responsibility and they can work out the problem; but I do think it fair to cite the instances of failure in this regard in some parts of such states as an *a fortiori* argument to show the failure and the demoralizing failure that must attend an attempt by the national government to enforce prohibition in what are now non-prohibition states. No one who has been familiar with the working of the conservation system in the West can be unacquainted with the difficulty that has arisen from Washington management of matters that are really of a local nature. The fortuitous circumstance that the national government was the proprietary owner of the public land through the West, of the mineral resources, and of the streams and water-power sites, has imposed upon Washington the business of determining what should be the disposition and regulation of them. Ordinarily such matters would be, and under our general system ought to be, within the control of the state governments. The bitterness of feeling that has been created in the western states against the sound Washington policy of conservation is a good indication of the unrest, impatience, and disgust with the extension of national power to sumptuary matters which this national prohibition amendment would arouse. Those who long for the maintenance of our national government and of our state governments in their pristine strength should pray that the thoughtless zeal of good, sincere, earnest enthusiasts may be defeated in an unwise effort to make one state good by the vote of another.

I believe that in what I have ventured to say on the state of our Constitution, on the improvements that might be made by legislation, and on the dangers that might arise from unwise amendment, I am only reflecting the views which the patriotism, the wise foresight, and the balanced genius of common sense of the man whose birthday we celebrate would approve.

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