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The Kingly Prerogative

Situation In Colorado

The conduct of the supreme court of Colorado is attracting the attention of the lawyers both in this country and in Europe. It has appeared from time to time in the news dispatches that the Colorado supreme court has constituted itself, as it were, a returning board to canvass the Denver election returns; and, in connection therewith, to ferret out and punish frauds on the franchise. But just how the court got into this extraordinary position is not generally known, and should be a matter of interest to all American citizens, as it certainly is to lawyers.

The action of the Colorado court is only the logical outcome of the new assumption of authority by the judges, popularly known as "government by injunction," and will end in the complete transformation of our government. It began with Cleveland and the work of the courts in the Deb's case, and has grown with what it fed upon ever since. Sometimes it rises to a threat against the defenses set up in the constitution to preserve the liberties of the people, and sometimes descends to the ridiculous, as in the case recently reported in the newspaper where a judge issued an injunction against a woman to prevent her talking too much.

In this Colorado case, where the supreme court has constituted itself a returning board, created hundreds of offices not known to the law or the constitution of the state, and appointed many men to these offices, paying them large salaries, under the name of watchers for the Supreme Court, the whole thing is based on an injunction. A lawyer went before the supreme court asking an injunction and the following is the argument that he made:

"The king when his prerogatives

were assailed, could direct his chancellor to use any or all the machinery of his court to protect those prerogatives. So the people of Colorado, not as a political corporation having property rights to protect, but as a political sovereign having prerogatives to conserve, can come into the supreme court, as a tribunal of original jurisdiction invested by the constitution with the power, among other things, to grant injunctions, and demand an injunction, not for the protection of a candidate in any property right he may have in the office, nor for the protection of state property of any kind or in any way, nor because there is no other adequate relief; but solely for the conservation of the kingly prerogatives which American states derive from the common law of England—and this without regard to the fact that the act enjoined may be a crime. Upon the plea, then, that the debauching and falsification of the suffrage is destructive of the prerogatives of the people of a state entitled to a republican form of government."

A bill in equity was presented to the court and an injunction was granted, based on the principles set forth in that argument. When a court in these United States claims for itself all the prerogatives of an unlimited monarch—the prerogatives of a king of feudal times—it has only extended the principle of government by injunction one step farther. If the principle is right the action of the Colorado court is logical.

This action of the court brings under it and subject to its control the co-ordinated branches of the government. It can issue injunctions commanding the obedience of the executive and legislative branches of the government. The court with its "kingly prerogatives" will be the real government. Elections will be legal formal-

ties and over them the court has assumed absolute control. There can be no appeal from the supreme court. If it sends a man to jail without trial by jury, fines him or imprisons him in the penitentiary, that is final. There is no way to escape from such a government except by force and armed revolution. The court will count the ballots if another election is held, throw out such ballots as it pleases, declare who is elected, and those so elected will get down and lick the feet of the power that has placed them in office, just as men have in all ages of the world.

This talk of armed resistance of such a program in Colorado is the necessary result of such action by the supreme court of the state. If a man who has received on the returns of the regular officers appointed or elected to supervise elections over 10,000 majority can, by the action of the court from which there is no legal and peaceful appeal, be deprived of the office, then as in all the ages past where such injustice has been done, there will naturally be an appeal to arms.

Such a result has been continually indicated as the outcome of "government by injunction" ever since the courts started on that line. Every lawyer knows that the whole procedure of the courts has been changed in the last few years. Whoever heard before the advent of the Grover Cleveland invasion of Chicago of a court issuing an injunction forbidding a man to commit a crime? The law was on the statute book and every man was presumed to know the law. If he violated it he could be arrested. He was presumed to be innocent until he was proved to be guilty. He had a right to a trial by jury. The court was not allowed to say that he was guilty. Twelve good men had to be convinced that the man was guilty beyond a rea-

sonable doubt. His punishment was fixed within narrow limits by another body of men—the legislators.

All that, the courts changed. The judge could make a thing a crime that was not so declared on the statute books. The man could be presumed to be a criminal before he had ever been hauled before the court and the judge could issue an order forbidding him to do certain things that had not been made crimes by the lawmakers. If the man did those things, he could be arrested without a warrant and without an indictment and brought before the judge. There he could be tried by the judge without a jury and the judge could inflict any punishment he saw fit. No law maker had prescribed or limited the punishment. The judge exercised the "prerogative of a king" and he inflicted such punishment as he saw fit.

The old rule was that an injunction could not issue where there was a remedy at law. If a man committed a crime there was a remedy in the criminal law. Exercising this "prerogative of a king" the courts have forbidden men to preach the gospel, to distribute bread to the hungry, to walk on the public highway and now have taken charge of the election returns and are counting the ballots themselves.

If we are to have a king, let us have one. Do not let us have a triumvirate of corporation lawyers who have been elevated to the bench assuming "kingly prerogatives."

The situation in Colorado is only a warning of what is coming. If that court does what the newspapers say it intends to do, it only presages what is in store for the people of this country; submission to the "kingly prerogative" or armed resistance.

"Coming events cast their shadows before."

Old Guard of Populism

Editor Independent: Today (December 5) is the first anniversary of the old guard of populism enrollment. One year ago today I mailed out 960 circular letters explaining the objects of the enrollment, to a selected list of names, and awaited results. My cash book shows three enrollments on December 8, with \$1.25 in contributions; the next day seven enrolled and gave \$2.85; December 10, nineteen enrolled and contributed \$7. In one week I had \$23.77 from fifty contributors. And so on. I need not go all over this now, as it was reported in detail in The Independent each week for many weeks.

That selected list of names was not secured by picking out the major generals of populism. I had been for nearly a year keeping a list of populists who had sufficient "spunk" to write about populism to The Independent, the Missouri World, the Southern Mercury and one or two smaller papers. I figured that a man interested enough to write for publication to his favorite paper would be interested enough to answer an inquiry looking toward the revival of his party—and that was one time I guessed right. But I included also in the list the members of the "Butler" national committee—and I guessed wrong that time, for very few of them answered, and the ones who did growled a good deal.

The printing and postage on that first 960 letters cost \$32. My record shows that the enrollment was self-sustaining after the third week; that is, by counting my own time as nothing. In other words, I could get enough from day to day to pay printing bills and buy postage stamps, if I did all the work myself; but I never could bring it to the point of paying clerk hire. Possibly, however, I was a little too "old-maidish" about the work—it was to be a permanent record and I wanted it well done. A cheap clerk couldn't do the work as I thought it ought to be done—and I couldn't afford to hire a competent clerk. So I sat up nights with the Old Guard of

Populism, adding to the profits of the Standard Oil trust.

Many of those who sent in their names for enrollment, and have since done valiant service in behalf of populism, never really seemed to understand the real object of the enrollment. Perhaps these can better understand it now, when I say that the cards made for the Old Guard of Populism now form the backbone of our national committee records. I had that in mind at the time and have worked all along upon the same line, with the same end in view. Considerable experience with committee work, both national and state, had taught me that the record-book, sheets of paper, method of keeping names is a great waste of time and energy. As soon as a new campaign is on a new set of books, sheets and blanks is necessary, and much time is wasted comparing the old with the new. In any event, considerable duplication of names comes in—perhaps a given populist is a member of the county committee, of the state committee, perhaps of the national committee; he may be a candidate for public office; he may even then be holding a public office. Under the old system his name will appear on several different sheets or lists. Under the card index system, one card does the work; all his different titles appear on it.

Up to the present time our system of filing is as follows:

(a) Guide cards for the states, arranged alphabetically, followed by the territories; (b) Guide cards for the counties, arranged alphabetically, under each state; (c) individual cards for each enrolled populist, arranged alphabetically by surnames, under each county. Whenever the enrollment for any county gets large enough to warrant it, guide cards for the election precincts will be inserted and the individual cards re-arranged. Here is where the great advantage lies in the readjustment of the files to meet emergencies and permit growth. Typewritten lists will bear but little interlineation, and it is always difficult to keep any semblance of alphabetical order; but the card may be arranged and re-

arranged as often as necessity requires. A little care will bring them all in place.

Upon the back of each individual's card is noted every cent contributed by him to the national committee, giving date and our receipt number, if any; also any other important data. Where we send out numbered letters (and nearly all go that way now), the number is placed on the individual's card. When his reply comes in, a small check mark is made after the proper number. Accordingly, when the work is all up to date, a glance at the cards will show what populists are likely to answer important letters and what ones are not. It is not a matter of guess work—but of record. We know the populists who pay no attention to letters sent from national headquarters and those who do—and we have it all down in "black and white," so our successors will not need to waste much postage finding out what we have already learned.

This system enabled us to do a larger amount of work with less money than any other national committee. Chairman Ferriss is authority for the statement that the socialists expended a hundred thousand dollars and received about six hundred thousand votes—a cost of over 16 cents to the voter. The prohibitionists expended about 20 cents for each voter. And the republicans and democrats each paid out more than a dollar for every vote cast for Roosevelt or Parker. Assuming that Watson and Tibbles received 200,000 votes (and I believe they did), our entire campaign, including the unpaid bills at headquarters, cost less than 1½ cents to each voter. Mr. Watson's own expenses were paid by himself—something like three thousand dollars more. Hence, counting both together, we got along with three cents, where the socialists spent 16, the prohibitionists 20, and the republicans and democrats over a dollar each.

The work of card indexing is going right along. We have all the state and county guide cards in place. Each card shows the vote cast for president in 1900 and will show the vote cast in 1904, as soon as we can get the official returns. It will be possible then to take up a given county, analyze the result, and determine whether it is worth

while to spend much time trying to organize it. While we do not intend to abandon any locality, yet our object will be to develop most in the localities where we can make our strength felt. Wherever populist clubs can be organized, this should be done. But clubs will not do well in all places, and in these we must look after the individual and get him enrolled at headquarters. The church, the fraternal lodge, and other organizations have the right-of-way in some places to the exclusion of the newer circles, and in these localities it will be difficult to make headway with a populist club.

To keep the work going, we should have something like \$300 to \$400 each month for postage, printing and clerical work. This is more than one or two—or half a dozen men—should be called upon to pay; but if every populist who now holds one of our numbered envelopes would enclose a dollar bill to aid in the new work, we would have plenty to clear up our old indebtedness and keep the work going all winter. The socialists and prohibitionists paid practically all their campaign funds themselves; so did the populists; but everybody was compelled to help pay for the republican and democratic campaigns, by paying tribute to the trusts who furnished the cash directly.

Long live the Old Guard of Populism! In this campaign nearly all the effective work, the good, true, lasting work, was done by those who were early to enroll. I could name them by the hundreds, but it is not necessary now. A year ago we started with nothing. Our card list, when it is all arranged for the new work, will contain nearly 30,000 names; a year from now we want it to have at least a hundred thousand—a hundred thousand radicals who will keep on fighting until the victory is finally won.

CHARLES Q. DE FRANCE.

Joliet, Ill.

Watson Vote in New York City

Editor Independent: Watson vote in New York city, official count, just completed, 4,910. Will write fully when entire state count is completed.

M. G. PALLISER.

New York, N. Y.