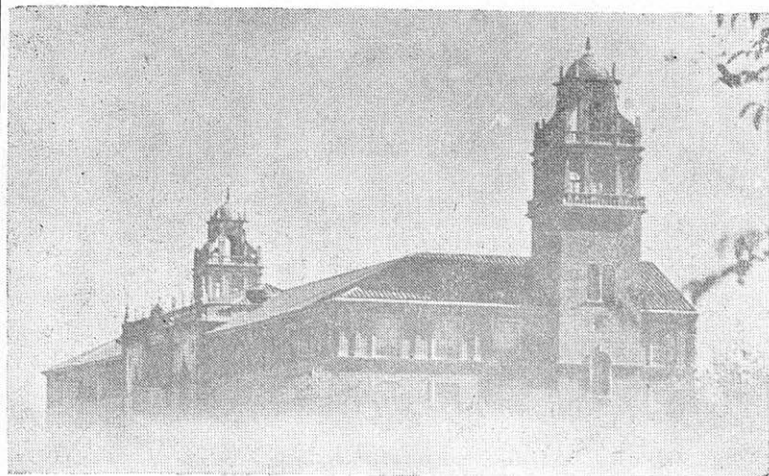


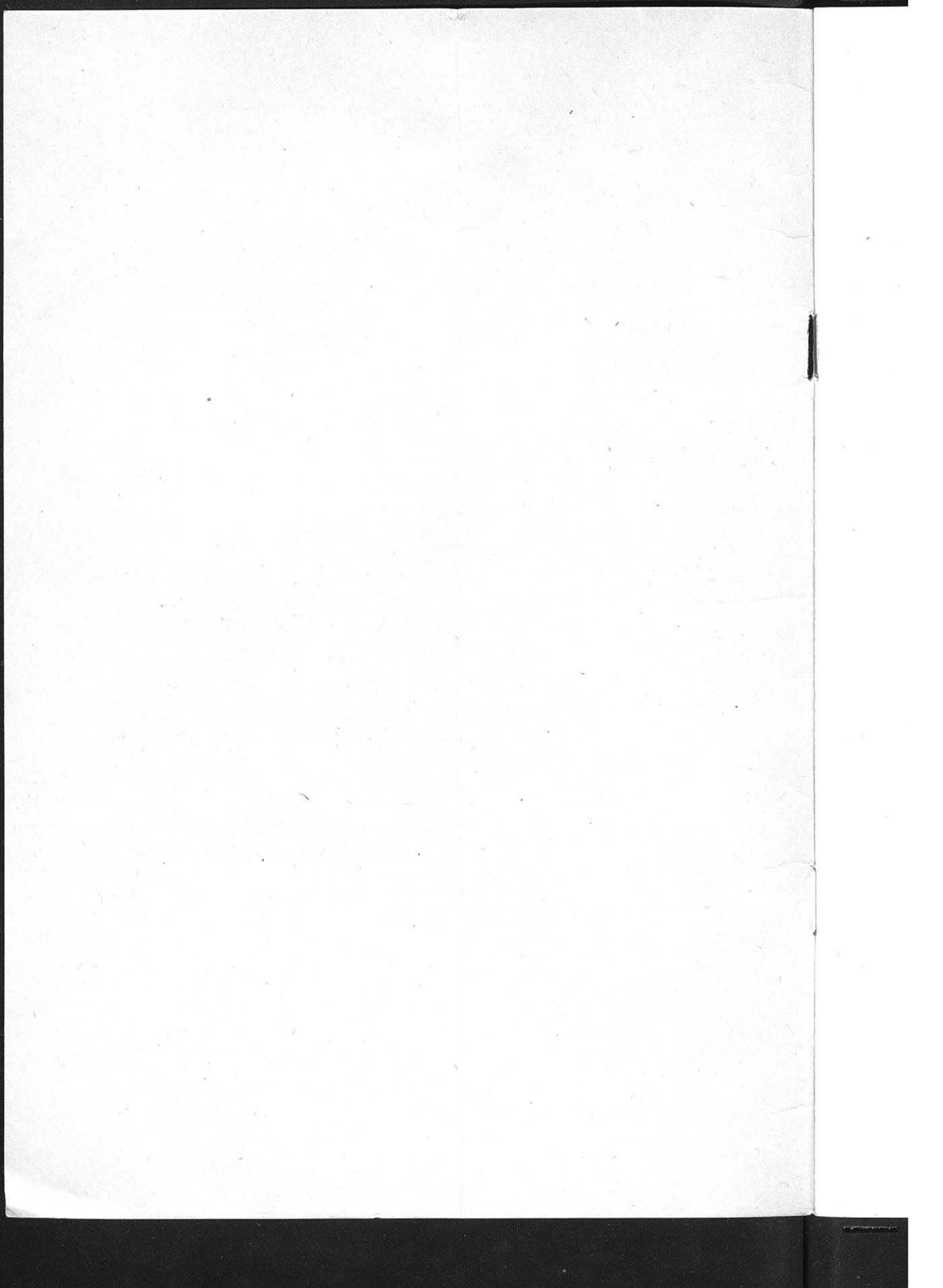
GRADUATION EXERCISES

1944



Texas Technological College
at Lubbock, Texas

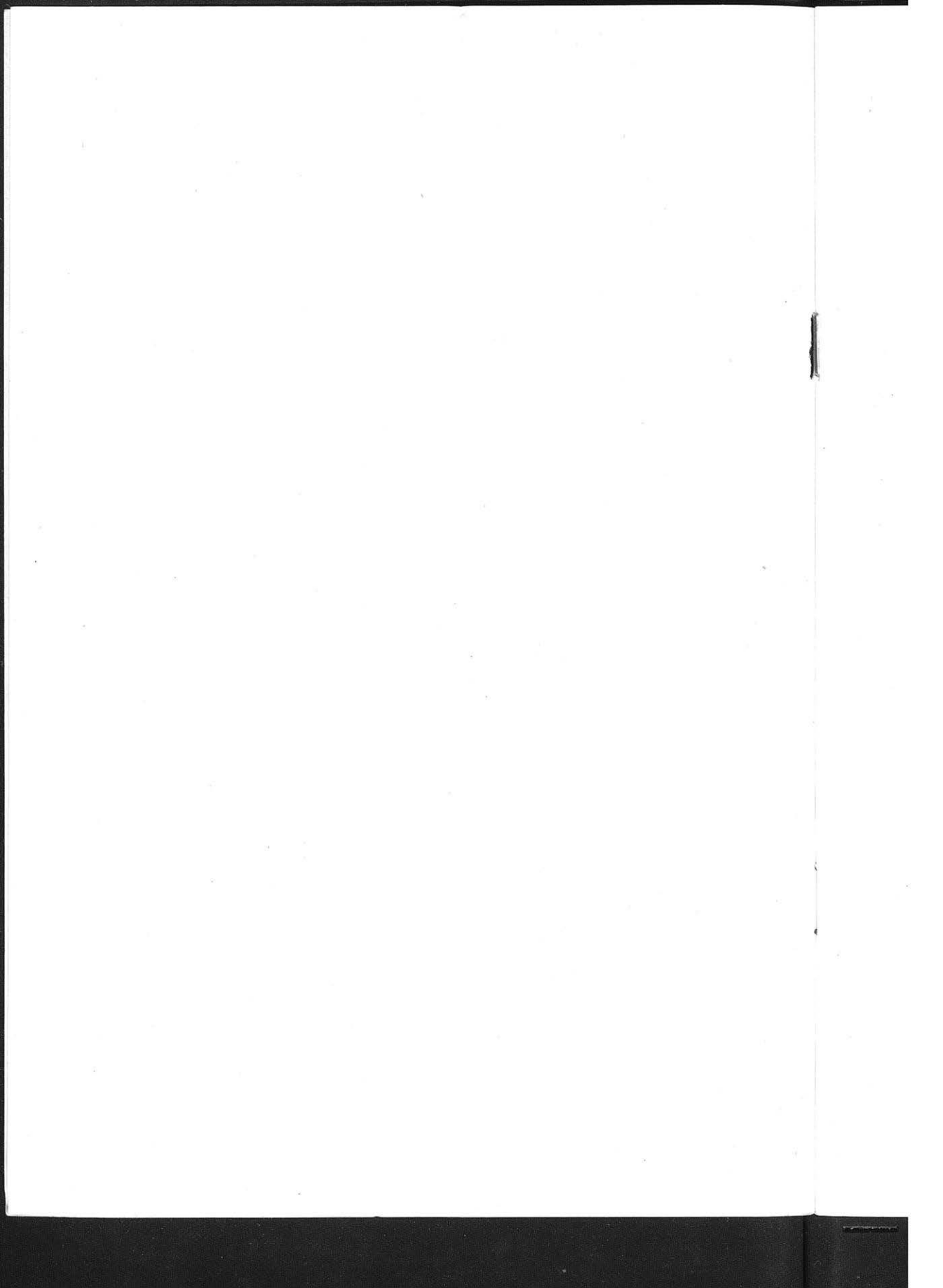
Address of Judge T. Whitfield Davidson



Dr. Jones, under the touch of your inspiring hand, this institution has developed an atmosphere peculiarly Texan. Today upon a hundred fields of battle the shades of a Houston, a Travis, a Lamar, a Roberts, radiate the Texas spirit to each individual soldier: Victory! Victory!

Yours is a great school, measured by any standard, but I rather like the Texas yardstick. In a factory we make machines; here you make men.

(Judge Davidson's preliminary to the graduation address.)



SOVEREIGNTY

SOVEREIGNTY: That supreme power by which a state is governed. It is the power to preserve the peace at home, and the power to make war abroad.

For almost a century after the organization of this government it limited its activity to the realm of sovereignty. When Solomon held the child in his hand between the two contending mothers and drew the sword to divide it, he was exercising an act of sovereignty. When Xerxes led his armies to the Hellespont and viewed his marching hordes over the plains and back up the hillsides of Asia, and saw his fleets in endless numbers out upon the waves of the sea, this was an act of sovereignty looking to the conquest not only of Greece, but of Europe.

In a smaller way, if a policeman chasing a criminal should accidentally strike you and run over you, his would be an act of sovereignty and you cannot sue the sovereign. On the other hand, if the water wagon, or its plumber's cart should strike you, the city is liable in damages because in these fields of endeavor there is not the act of sovereignty.

The primary purpose of government is justice at home and protection against enemies from abroad.

On the Fourth of July, 1776, the American colonies renounced the sovereignty of Great Britain. Until the adoption of the Constitution some thirteen years later, the sovereignty that had formerly been that of Great Britain was not transferred to any constituted authority. Each of the several colonies, or states, retained to itself the powers that had been once conferred upon it by the crown of England. There was no national sovereignty; there was no President; there was no Supreme Court; in fact, no United States Senate. United by the common fear of an enemy, the thirteen states acted together in unison. Released from that fear, they acted separately, so that it was said of them: "We are thirteen nations today and one tomorrow."

Serious controversies arose between these states because of the absence of any definite sovereign. The people knew not which way to turn to someone who had the last word in government. In such a situation, Washington was offered the crown. The true patriot was shocked, but was not blind to the danger facing the American colonies.

The Greek states for centuries fought among themselves, and while they might have been spreading their culture and democratic ideals, they were engaged in the Peloponnesian War, or Demosthenes was denouncing Philip. The repetition of this long tragedy seemed imminent among the thirteen American colonies. On October 7, 1785, Washington wrote James Warren:

"The wheels of government are clogged, and we are descending into a vale of confusion and darkness."

On November 5, 1786, he wrote James Madison:

"No day was ever darker and more clouded than the present. We are fast verging to anarchy and confusion. How melancholy is the reflection!"

On December 26, 1786, he wrote Henry Knox:

"I feel, my dear General, infinitely more than I can express to you, the disorders which have arisen in these states. Good God, who could have foreseen or predicted them!"

Washington was not only first in war, but very truly was he, in fact, first in peace. He set about to avoid the threatened catastrophe. New York and Connecticut, New York and New Jersey, were at dagger points. Maryland and Virginia had a controversy, and something similar was throughout the whole thirteen colonies. In Massachusetts there was an open insurrection against government. When a more perfect union had been formed, when a Constitution had been written that took over and established national sovereignty so as to make the states a nation, Washington was so happy over the event that he issued a proclamation of thanksgiving and prayer, the first national Thanksgiving Day. When he laid out the national capitol, he named one of its driveways "Constitution Avenue." One of the great ships of the navy, indeed, was called "The Constitution."

To appreciate the difficulty of the situation, there must be borne in mind the different origins of these thirteen colonies. Virginia was settled by English gentlemen, true to the estab-

lished church and loyal always to the king and the bishop. However, Maryland, just across the Potomac, was settled by Roman Catholics who had been persecuted in England by the very type of men who were settling Virginia. Massachusetts, Connecticut and New Hampshire were settled by the Puritans, who had been persecuted in England by the state, at the behest of the adopted Church of England. Likewise had Pennsylvania been settled by the Quakers, also persecuted, not only by the Church of England, but by the Puritan church of Massachusetts. Then there were the Baptists that were persecuted by the Puritans of Massachusetts and who founded the colony of Rhode Island on land given them by the Chief of the Narragansett Indians. In the South there came that magnificent group of settlers from France, some of them high in the social and military status of that nation, but persecuted because of their protestant religion. These were called the Huguenots. And then there came the poor from the jails of England, who were colonized in Georgia. They had not been in jail because of crime, but because of the prevailing law that those unable to pay their debts might be put in jail. Virginia had upon her statutes as a colony and later as a state the law that she had brought from England, whereby the debtor could be put in jail. This very situation the Georgian had come to America to escape.

Thus when the colonies counselled together to form a more perfect union, you can see the distrust that would come from such a background.

The work of the Constitutional Convention was not only to preserve the best from English law, but to improve upon it so that there would be no repetition of the abuses of which these colonies so lately complained, and of which they might so soon be called upon to complain of each other.

This Constitution secured the Georgian by providing for a national bankruptcy law. It secured men from political imprisonment by the establishment of an independent judiciary whose decisions may not be reviewed by the executive or legislative branches of government. The sovereignty therefore exercised by the executive head of government in handling offenders was placed in the hands of the third branch of government, independent of the other two branches. The judiciary was given control over the lives and liberties of men. The executive

of this state, Governor Stevenson, cannot put you in jail; the President of the United States cannot put you in prison. This is a function of sovereignty that can be exercised under the Constitution only by the judiciary, as a branch of government independent of the other two. In this way there is guaranteed to men security of person, security of property, freedom of speech, and freedom of conscience.

The great English statesman, William E. Gladstone, a hundred years later described this Constitution as the greatest document ever to fall from the hand of man at one time. There are those who complain against the restraints of the Constitution. They are usually those who wish to impose some new innovation upon society. They look upon the Constitution as something old and antiquated, something that interferes with them in an emergency which perhaps is only an imaginary emergency, something that interferes with them in installing an Utopian dream.

Eight of the Ten Commandments say "Thou shalt not." The Constitution of the United States, like the Ten Commandments, says all powers not conferred by the states upon Congress are expressly reserved to the states and to the people. These limitations bring forth those wise old maxims of "Think before you speak," and "Look before you leap;" "'Tis better not to do a momentous act, than to do it in haste." This Constitution provides for the "Four Freedoms," that of person, of property, of conscience, and speech, and also for the guarantee that man and his effects may be disposed of only by due process of law.

The Mosaic Constitution, as more fully defined by Josephus and followed on down by Christian theology into the concepts and consciences of the men who drafted our laws and Constitution, was based upon the theory that men are rewarded for industry and good living, and punished for indolence and crime—nature punishes them for indolence and the law punishes them for crime.

"Let us found a government wherein we may say to every man: 'With the gifts that God has given you, your brain, your brawn, your energy, work out your own fortunes under a just government and an equal jurisprudence.'" (Thomas Jefferson)

CENTRALIZED AUTHORITY:

It was the purpose of those who wrote the basic law to confer only such powers upon the national government as were necessary to its successful operation, and all others were expressly reserved to the states and to the people.

It has been said of old that "where your treasures are, there will your heart be also," and certainly there would be your thought. In recent years the functions of government have been coming from a centralized source, from the national government, until the structure is becoming top-heavy, and must eventually become unwieldy to the point of destroying the independent activities of local government.

This is illustrated, for instance, by a comparison of the federal and state payrolls in the various states. The State of Ohio employs approximately 25,000 people in the operation of its state government. Within the confines of the State of Ohio the federal establishments, exclusive of the military branches, employ 90,000 full-time persons on the federal payroll. In Massachusetts there are 21,000 state employees, as compared with 129,000 federal employees. So it runs through all the states, and in a single Texas county you may find the number of federal employees supervising various agricultural activities alone will reach into large numbers. These are not necessarily a part of the war effort. The employees on our federal payrolls now for non-military purposes have reached well above 3,000,000 souls.

The viewpoint at which we see these facts is always of interest. A former Governor of New York, who has since become President of the United States, very aptly discussed this matter, although the tendency was then in its infancy compared with its present magnitude. On such occasion he said:

"A fundamental of American democracy rests on the right of the locality to manage its own local affairs. The tendency to encourage concentration of power at the top of a governmental structure is alien to our system and more closely akin to a dictatorship or the central committee of a Communist regime. We have met difficulties before this, and have solved them in accordance with the basic theories of representative democracy. Let us not now pursue the easy road of centralization of authority, lest some day we discover too late that our liberties have disappeared."

At this point allow me to digress, not as a means of criticizing before this body pending legislation in our Congress, but simply as an illustration of the trend toward centralization of authority, and discuss a measure now being championed by the Bureau of Prisons in Washington, known as House Bill 2140. This proposed measure provides that hereafter when a Judge of a United States Court shall sentence a prisoner, that instead of giving him the time to serve which he feels that the law provides, in the light of justice and mercy, that he give the prisoner the maximum penalty that may be assessed for the given offense; that then, after the prisoner has been inducted into the penitentiary, the question of his sentence be referred to a new bureau to be created in Washington, composed of ten members with appropriate salaries; that this board, or bureau, would then take up separately the case of each prisoner in the United States and assess to him the sentence that the bureau feels that the Judge might have properly assessed in the beginning. There are some 21,000 felony cases tried each year wherein defendants are convicted. It would be a physical impossibility for this bureau of ten men to intelligently review these cases. If they reviewed them in their offices at the seat of government, they would lose that most essential element that the trial judges or the bureau should have, that of seeing the defendant at the time of his trial, hearing him talk, seeing his accuser, and taking into consideration his attitude at the time of his conviction. The bureau would be very much in the situation of a doctor practicing medicine by mail.

But, it is insisted, this bureau would make a personal call into the territory where the defendant was convicted. In such event it would become impossible for the board to make such calls; various clerks and deputies would have to conduct these hearings. We would thus have a trial by a defendant by a court of justice, and then a second trial by an executive bureau to determine what the punishment should be. It is to this cumbersome extent of endless "red tape" that government must arrive when it undertakes to conduct all of its activities through bureaus and agencies so far from the central government. When a state or nation, from its central government, begins the exercise of vast authority in numerous fields, this authority calls for more and more service at the top, and more service calls for more and more authority, or supervision, until we reach that pyramid where everything is directed from centralized authority. Solon of Athens said that such authority was a fair field, but it had no outlet.

Every rule or regulation prescribed by a bureau or commission taking the form of law and regulating the conduct of men is to that extent an encroachment upon the legislative authority of the nation and transferring such from the legislative to the executive branch. Every hearing or trial or disposition of any controversy by a bureau or commission involving the rights of man disposed of by such board of bureau is an encroachment upon the power of the judiciary, and transfers that much more power into the hands of the executive branch of government. If all power should be transferred from these two branches to the executive branch, then we would have traveled the cycle around again to an absolute government.

PLANNED ECONOMY:

Life itself is not without its obligations. One may be willing to abdicate responsibility, he may look for the easy way of the planned economist, where others think and do for him, but there are forces of nature that cannot be ignored.

"There is no royal road to Geometry"—Honest toil is as necessary to the development of a human character as sunshine and rain to the trees of the forest. You can't abolish it.

The ancient democracy of Athens brought forth the individual statesman, while Sparta brought forth a regimented authority. The little territory of Attica, no larger than two Texas counties, allowing its citizens freedom of thought and action, gave to the world more statesmen, more philosophers, more historians than any other like people in the history of the earth, Colonial Virginia coming second only.

In Sparta, on the other hand, the child was born, not for himself or his parents, but for the state. It was just the reverse of Athens. The Spartan child was taken from his parents into government custody while yet of tender years, and there he was taught what the government wanted him to know. He was made tough and hard, to be a soldier to fight the nation's battles in his youth and strength, and to direct the nation's many slaves in his maturity.

Sparta could not have existed as a totalitarian state but for the slavery which these masters directed, and every system of planned economy not based upon individual initiative and free enterprise must be based upon some form of involuntary servitude, call it slavery or sweeten it by some other title.

The advocates of all this tell us that Hitler, Mussolini and the dictators of Europe will go, but that the system which they have erected will stand. In other words, they consider the totalitarian system, or national socialism of Germany, as sound and worthy of our emulation. General McArthur has well observed that we may destroy these totalitarian powers and erect one for ourselves.

From Constantine in 324 to 1776 and the establishment of constitutional government in America, the authority of church and state was blended. This was also true in Mohammedan countries. A man in his religious views, as shown by history, often becomes fanatical, and those who disagree with him are regulated or punished by law. This not only brings injustice to the minorities but sometimes brings great inconvenience to the churchmen themselves. The Church of England in 1776 had its ministers in the colonies. In most cases these ministers came from England. They were not only ministers, but in a sense were employees and agents of the British government. Upon the breaking of war they left the colonies for Nova Scotia and England. There were a few native priests but the majority, perhaps, were gone. Many congregations were without a minister. These could not be supplied because there were no bishops in America to ordain them. No bishops could be consecrated except by authority of the Archbishop of England. The Archbishop, when appealed to, could not consecrate bishops in America until he was authorized by Parliament. The church of Washington and Madison thus had to go a long way around to get itself a preacher. The English Parliament eventually granted the Archbishop a permit to consecrate bishops in the United States, then James Madison, of William and Mary College, and two others were consecrated as bishops and the church could start business in the United States. Almost twenty years had gone by. This illustrates the inconvenience of having government, even in the church, too far away from home, and the evil of having it blended with the state, where one cannot act without the other.

THE GINNERS' CASE:

In about 1934 and 1935 a government agency loaned money to farmers in financing the production of their crops. In the Lubbock territory, in particular, it was necessary to be further financed to have their crop picked, because the grower, by reason of improved machinery, might grow many times as much as he could gather; he needed cotton pickers. Formerly he had gone to individuals and to banks for this money, but his crop was now mortgaged to the government agency, the Commodity Credit Corporation, we will say. When he appealed to the Commodity Credit Corporation for an additional loan for that very necessary purpose, they told him they had no authority to make this class of loans. Manifestly it would take a long time to get the authority from Washington—the process was slow and the distance was great. The agent, however, took a common sense, commercial view, and told the farmers to sell their cotton, pay for the picking, pay for the ginning, and pay the balance on their mortgage which they had given to the agency in the spring. Most of them did so, but several kept the money. Some four years later, however, our government sued the buyers of this cotton, which in most cases were the ginner, and compelled them to pay for the cotton a second time, taking the position that the agent had no authority to authorize the grower to sell the cotton. If the agent had been acting for a bank or acting for the individual land owner, he would have had such authority, but the government assumed, improperly we think, that it was acting in its sovereign capacity in making these loans and thus it put itself in a different class from the landowner or the banker. The ginner had to pay the second time. We take the position that the government should at all times be as fair in business transactions as it requires one of its citizens to be in his transactions with another. It doesn't do this when it claims the right of sovereignty in one hand and enters into business with the other.

THE SUPERMAN:

Some individualist has said: "I am the master of my fate; I am the captain of my soul." The theory of national socialism which leads to centralized government is that there is a superior intellect, a superman who knows exactly how things should

be done and who has been trained to tell the rest of us how to do it. He is supposed to be able to do it better than you or I because he is an expert. Thus, before we should initiate things, we should consult this expert as to what is best for us. It is a part of the "Managerial Revolution" of Dr. Frank Ingram. To make the plan work, the individual must not run counter to the program of the superman, the expert, the planner, but the individual must fit into the planned economy of the nation. Before he engages in business, he must get a permit and before he can get a permit he must agree to conduct his business according to the plan. This idea is fraught with great danger. Who is to select this superman? Who will outline the plan, and who will decide where you should fit in? We may reasonably infer that the manager will be selected by the fuehrer or leader from among those who were his adherents, in other words, his political henchmen.

The American Yankee inventive genius would be curbed, and instead of working out his own fortunes under a just government and an equal jurisprudence, he must work them out in a planned economy directed by a manager, and here we meet one of the sad consequences of such conditions.

Ability, power and greatness can only develop under the burden of responsibility. Where a person is sheltered, like a plant growing under a heavy hedge, he never reaches maturity.

The beauty of the flower is dwarfed like the plant; it never comes forth. The muscle, the intellect, and all of those elements of physical, mental and moral stamina can only come into their own when left with sufficient responsibility to battle their way to success or to some given achievement.

Wealth earned is a source of joy; wealth bestowed by gift is often a curse.

There are things in life that no one can do for us. We must do, we must learn, we must be ourselves, and ourselves must be somebody, and not a cog in the machine.

GOVERNMENT IN BUSINESS:

I listened a few evenings since to a very highly educated gentleman lecturing upon the nation's social security program, setting forth its desirable qualities and its ultimate benefits and greatness. He said that each child would receive a large monthly sum to insure it against want in case of disaster. He illustrated how the benefits of social security would extend to the man who works for a salary by comparing the salaried manager of a chain store with the individual owner of a private store. The profits of the latter might equal the salary of the former, they might serve the same community and be living side by side, in fact they might go fishing together. If the boat went down and both were drowned, the family of the salaried man would receive, according to the proposed plan, \$16,000 from social security, whereas the family of the individual owner would receive nothing. He recognized the inequalities of such a set-up, and to cure this he advocated that every man employ himself, if necessary, for a given salary, and come under the provisions of social security.

He pointed out further that one section of the nation might be industrial and another agricultural. Thus in a region like Texas the average benefit from social security per capita might be a given sum, whereas in an industrial area like Rhode Island the percapita benefit from social security would be approximately four times as great, and thus the flow of money from the central government to the industrial district would, under social security, be like the tariff of the past and present—the man in agriculture would be left to bear the burden. To obviate this he felt that farmers should also come under social security and everybody be put on an equal footing.

When he had pictured the possibilities he predicted that social security benefits would be twenty times the sum that is now being paid to its beneficiaries. The idea of getting a bargain, or better still, getting something for nothing, appeals to most of us, but we could not but wonder from whence the money would come to do these things, and we were constrained to ask the speaker if, when this objective had been reached, there would be any further need or any field for the ordinary forms of life insurance, and if life insurance companies would not automatically cease to exist. Whenever a child receives from the benefits of social security sufficient to prevent want, will the charitable arm of the churches and the fraternal side of

the Masons and Odd Fellows and other fraternities have any excuse for future activity or existence?

There were five wise virgins in the famous parable who laid by in store for themselves. Some advocates of this Utopia now insist that these five virgins should not have laid by for themselves, but that the government, through some form of social security, should have given them a manager to do it for them. We are not saying that social security may not be a valuable service, but we are directing attention to the unlimited fields to which those who believe in a socialized state would carry it.

Justice, through the sovereignty of government, must not be confused with profits derived through channels of business and commerce. When the sovereignty of government undertakes to direct a planned economy for our social and economic well-being, this government descends from its throne and mingles in the strife of commercial activities. When Nero appeared as a contender in the Olympian games, he won the laurels because the private contender dared not compete with sovereignty in the race course. Our churches through the years, sometimes swayed by fanatical impulses, have often taken the reins of government and put the sovereign in religion's trail. That which the church has done, when John Bunyan was thrown in prison, and when the Inquisition flourished, and witches were burned, may be done again by a similar group of would-be economists, parading as experts and supermen, seeking to direct their fellows.

The epitaph on the tomb of Thomas Jefferson mentions, not that he had been President of the United States, but proudly proclaims that he was the author of the statute of religious liberty for the State of Virginia. When a state is dominated by religious fervor, justice is subordinated to sentiment. Under the planned economy of national socialism, the same old overshadowing contest confronts you. The sovereign can scarcely be just when he enters the contest of business with his subjects—the match is unequal.

Agriculture, the first of our industries to be regimented by planned directors, has not prospered as it did during World War No. 1. Few beautiful homes have been built with earnings from the farm. Few of the old homes have been so much as repaired. On the plains improved machinery may stay the day of disaster, but in the timbered belt throughout the old South the farmer under regimentation is in infinitely worse condition than when he was buying victory bonds in 1918.

Socialized medicine will restrain and dwarf the many advances made by the medical profession, and the individual may then have to accept a doctor not of his selection.

My young friends, democracy is not merely the expression of the majority. If such were true, then Christ, who was crucified at the behest of the mob, had a trial at the hands of democracy. Hitler would be the head of a great democracy, if this were true, because the German people voted for him more than 90 per cent.

Democracy connotes justice and fair play between men. It embraces an equality of opportunity; you have the same privilege of fighting your way to the top as the young man next to you.

When Caesar is your competitor, you do not have this equal chance. If the race of life would be fair and the trophy just, Caesar must keep out of the chase.

