

YALE UNIVERSITY
DEPARTMENT OF THE SOCIAL SCIENCES
NEW HAVEN, CONNECTICUT

June 5, 1935.

Hon. Justice L. Brandeis,
Supreme Court of the United States,
Washington, D. C.

Dear Justice Brandeis:

Thinking back to the opportunity I missed on the historical Monday when the Supreme Court handed down its momentous decision against the NRA, I feel deep regret and remorse that I was unable to go down to Washington and make use of your kind invitation. I was prevented from leaving New Haven at that time, and so I missed also the opportunity of renewing my acquaintance with you and Mrs. Brandeis. I will not fail, however, to come to Washington next Winter for this purpose.

To comment on the decision of the Court would be utterly improper for me, but I might mention that I have been fighting during this last year against many friends at Yale, and especially against most of my students, in favor of the maintenance of the American Constitution and against the infringement of the legislative power by boundless delegation such as we have witnessed to the detriment of the common weal in Europe, and especially in my own country.

It seems to me that the Supreme Court has rendered a historical service to the Nation by this declaration of unconstitutionality, not so much because the President's social program must be supported by every reasonable man, but for the reason that the coming events in this country might probably warrant the necessity of a stronger emphasis on constitutional principles.

In my opinion, it might be that one of the next elections can bring in majorities to the Congress which are selected not on a rational but on emotional grounds, and then the mere existence of a fundamental law which sets limits to the unfettered rule of the majority might prove extremely beneficial to the further development. I have been fighting during the last years in Germany against the violations of the constitution which the then moderate German Government had committed, because I foresaw that the precedent of a deviation from constitutional principles would serve as the best pretext for later emotional governments, and, in fact, the arguments of the Hitler government were drawn chiefly from the former practice of the violation of the constitution perpetrated by the former so-called democratic governments. If the German Supreme Court had had the courage and the wisdom to bar such unconstitutionality when deciding the famous occupation of the Prussian Ministries by the Reich, the trend of Germany's history would probably have taken a different turn.

These observations of a lawyer have, of course, nothing to do with the generally admitted fact that social progress, and especially the protection of Labor interests, is necessary in a modern State.

It is against my former intention to comment on the decision, and I hope you will not consider my remarks as immodest.

Mrs. Loewenstein and I wish you and Mrs. Brandeis a good vacation, and we again express our hope of having the privilege of meeting you both next Winter.

Sincerely yours,

Dr. Karl Loewenstein.

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