

older than our legal system—as old as human nature. It is the perennial enemy of the pure law.

An established right in the individual is a limitation upon the power of the majority. People are willing to leave an individual his rights so long as they have no value. When they assume a value, the tendency is to appropriate them. So far as the law has endeavoured to curb this tendency, it has had a hard fight. That the individual should have any rights as against the public interest, as against the state or the government, is a modern conception. It would have been inconceivable to many of the best men of an earlier day. We are shocked when we find Machiavelli, one of the most patriotic men of his time, calmly discussing the occasions when assassination and similar methods should be used. But the avowed view of Italian statesmen in his day was that the public interest was so paramount that a public man must not be limited by the moral restrictions that govern a private man.

The same feeling, lurking, persistent, often unconscious, that the rights of the individual must give way when there is any strong public interest opposed to them, governs the decisions of many of our judges. An interesting example of this tendency is found in the disposition of some of our courts to get rid of the constitutional limitations of our organic law by elastic definitions of the police power. Many of us felt a rather quaking sensation when so great a lawyer as Elihu Root lent all the force of his great name to the statement that the National Government needed greater powers, and that they must be secured by construing the constitution so as to give them.

The curbing of this tendency to ignore the rights of the individual was a prime object of those who framed our constitution. The constitutional limitations which they embodied therein are limitations which the people have set to their own hasty use of power. The people in their calmer mood set limits upon what they may do in moments of excitement. They are limitations upon what the majority may do to the individual. The principle upon which they were framed is finely stated by Mr. Justice