

Brewer in his address to the graduating class of the Yale Law School in 1891. "The wisdom of government is not in protecting power, but weakness; not so much in sustaining the ruler, as in securing the rights of the ruled. The true end of government is protection to the individual, the majority can take care of itself."

Set up as a defense of the individual against the majority, the constitutional limitations have had a steady fight with the old tendency. The old bottles would not hold the new wine. That the omnipotent people, state, government, should not be able to do a good thing when they wanted to do it, because of the rights of an individual, is as foreign to the idea of government held by many of our public men and some of our judges, as it would have been to Peter the Great. The fine expression I have quoted from Justice Brewer does not appeal to them. Their idea would be expressed somewhat thus: "It is a weak government that admits limitations upon its own power. It is dangerous to take away from the powers of the government in the interest of an individual."

This persistent old tendency works its way out by taking a large, we might say an exaggerated view of what is called the police power, "that power by which the state provides for the public health and public morals and promotes the general welfare." By making this broad enough we can get rid of the constitutional limitations altogether. We can realize Secretary Root's plan. If the state wants to violate the reserved rights of the individual, all it has to do is to say that its action is in the interest of the public welfare, and therefore an exercise of the Police Power.

We miss the simplicity of the old Bill of Attainder, but we accomplish the same result and on the same principle. Our courts, in the same zeal for the public welfare that led to the use of Bill of Attainder in earlier days, are gradually recovering for the state this valuable attribute of sovereignty relinquished by our constitution. Let me here again quote from the address of Justice Brewer: "It (the Police Power) is the refuge of timid judges to escape the obligation of denouncing a wrong, in a case