



DEMOCRACY V. CONCENTRATED WEALTH

IN SEARCH OF A LOUIS D. BRANDEIS QUOTE

Peter Scott Campbell

In 1941, Supreme Court Justice Louis Brandeis made a prescient observation when he wrote: “We can have a democratic society or we can have the concentration of great wealth in the hands of a few. We cannot have both.”

– Ralph Nader¹

ON JUNE 25, 2000, RALPH NADER used a little known quote by Louis D. Brandeis in his acceptance statement for the Green Party presidential nomination. Nader was apparently so enamored of the quote that he proceeded to repeat it in nearly every subsequent speech he made on the campaign trail. History has yet to determine whether any of Nader’s other statements in his speeches will make any lasting impact, but the Brandeis quote has certainly caught on. Over the years since 2000, the quote has been repeated so often in books, in articles and on the Internet that it has arguably become Brandeis’ most well-known quote.

Unfortunately, there is no evidence he ever actually said it.

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¹ *Acceptance Statement of Ralph Nader*, 23 SYNTHESIS/REGENERATION, Fall 2000, www.greens.org/s-r/23/23-02.html.

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As the archivist of the Brandeis papers at the Louis D. Brandeis School of Law at the University of Louisville, I began to get requests for the original citation to the quote while Nader was campaigning for office, and the requests are still coming in. At first I was unable to find it in any of the sources I had at hand. This was a little embarrassing, but I was able to take solace in the fact that Melvin I. Urofsky, David W. Levy and Philippa Strum – all pre-eminent Brandeis scholars – had stated publicly that they had never found the original source either.² I began to believe at this point that the quote was apocryphal, and to prove it I set out to read every word Brandeis wrote.

After spending years on this project, I have been able to come up with an answer: He definitely did not say it. Or maybe he did.

One thing is certain: it definitely does not appear in any of his writings. It is not in any of the books or magazine articles he wrote. It does not appear in any of the speeches he gave that have been published. He did not use it in any of the opinions he wrote for the Supreme Court. It is not in any of the recorded testimony he gave to various legislative committees, nor could I find it in any surviving briefs he wrote for cases. It does not appear in any of the volumes of his letters published by Urofsky and Levy, nor in any of the unpublished letters I have consulted. Nor is it in any of the interviews he gave to magazines and newspapers that he pasted in the scrapbooks that are housed in our collection.

However, this is not definite proof that he did not say it. The quote could be a garbled rephrasing of something he wrote. In fact, there are two prime candidates for this scenario.

On May 4, 1905, Brandeis gave a speech to the Harvard Ethical Society that was titled “The Opportunity in the Law.” In it, he said:

There is felt today very widely the inconsistency in this condition of political democracy and industrial absolutism. The people are beginning to doubt whether in the long run

² On November 13, 2006, the Brandeis School of Law held a symposium in honor of the 150th anniversary of Brandeis’ birth. During the question and answer session, Urofsky, Levy and Strum stated that they had never found the original source for the quotation. In a March 21, 2013 email posted on the H-LAW listserv, Urofsky wrote that he still gets asked about the quote.

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democracy and absolutism can coexist in the same community; beginning to doubt whether there is a justification for the great inequalities in the distribution of wealth, for the rapid creation of fortunes, more mysterious than the deeds of Aladdin's lamp.³

He expressed a similar sentiment nearly thirty years later in a Supreme Court opinion:

There is a widespread belief that the existing unemployment is the result, in large part, of the gross inequality in the distribution of wealth and income which giant corporations have fostered . . . and that only through participation by the many in the responsibilities and determinations of business can Americans secure the moral and intellectual development which is essential to the maintenance of liberty.⁴

While these quotes are worded very differently from Nader's quote, the idea expressed by them is very similar.

There is, however, another possibility. If Brandeis did not write those words, it is possible that he might have spoken them in conversation. If this is what happened, the exact circumstances of the conversation are now lost. But a look at the history of the quote suggests that such a conversation might have taken place.

The only place where this quote appears during Brandeis' lifetime is in three unsigned editorials in a weekly newspaper for railroad workers' unions called *Labor*. The newspaper, which was based in Washington, DC, was edited by a former *Rocky Mountain News* editor and Colorado congressman named Edward Keating. Keating is a largely forgotten figure now, but in the early twentieth century he was a big name in Progressive circles, primarily for his support for workers' rights and for his sponsorship of the Keating-Owen Act which made the interstate transport of goods produced by child labor illegal. He was also thought to be a confidante of Louis D. Brandeis.

³ Louis D. Brandeis, *The Opportunity in the Law*, 39 AMERICAN LAW REVIEW 555, 562 (1905); also, Louis D. Brandeis, BUSINESS – A PROFESSION 326 (1914).

⁴ *Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 580 (1933).

The exact nature of the relationship between Keating and Brandeis is a little murky. There is no mention of Keating in any of the biographies of Brandeis, nor does Keating mention Brandeis in his own autobiography. There are no letters from or to Keating among Brandeis' papers and only a couple of inconsequential letters in Keating's papers at the University of Colorado at Boulder. However, Brandeis makes numerous references to having Keating over for dinner in his letters and once even describes Keating as a "good friend" in a letter to his brother Alfred,⁵ an appellation that is almost effusive by Brandeis' standards. Brandeis was known to have many of DC's brightest lights over at his apartment so he could pick their brains, and given their common interest in unions and workers' rights, it is no wonder that Keating was a repeat visitor.

The first time the quote appeared in Keating's newspaper was in a May 30, 1933 editorial titled "Stop the Concentration of Wealth":

Justice Brandeis declared some years ago that America, before long, must make a choice. We can have democracy, or we can have a horde of multi-millionaires. We cannot have both.

Although unsigned, the editorial was actually written by Keating, as were all of the other unsigned editorials that appeared in the paper.⁶ Seven months later, on December 19, 1933, Keating penned another unsigned editorial titled "Inherited Wealth vs. Democracy," in which the same sentiment was expressed, but in different words:

Justice Brandeis of the United States Supreme Court has warned the American people that they can keep their liberty, or they can let the wealth of the land pile up in vast fortunes – but they cannot do both.

On August 30, 1938, Keating used the quote once more – again with different wording – in an editorial titled "Billionaires or Democracy?":

⁵ Melvin I. Urofsky and David W. Levy, eds., *5 LETTERS OF LOUIS D. BRANDEIS* 266 (1978).

⁶ Edward Keating, *THE MAN FROM COLORADO* 4 (1964).

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Edward Keating (ca. 1916) represented Colorado in the U.S. House of Representatives from 1913 to 1919, and then stayed on in Washington, DC, where he edited the railroad union newspaper “Labor” until his retirement in 1953.

Justice Brandeis once said that Americans might have democracy as the “fathers” planned it, or wealth concentrated in a few hands, but they could not have both.

Note that in none of these three instances is there any mention as to where or when Brandeis allegedly made this statement, other than the vague reference “some years ago.”

There is one more notable instance of this quote in *Labor*. Keating would occasionally write a column for the editorial page under the pseudonym Raymond Lonergan.⁷ In the October 14, 1941 issue – just a few days after the death of Brandeis – “Lonergan” penned a eulogy for Brandeis in a column titled “A Steadfast Friend of Labor”:

“We must make our choice,” he once said to a younger friend, who appreciated the opportunity to sit at the feet of

⁷ Edward Keating, *THE MAN FROM COLORADO* 179 (1964).

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this modern Gamaliel. “We may have democracy, or we may have wealth concentrated in the hands of a few, but we can’t have both.

Here, finally, is the quote in the form as it is known today.⁸ This instance is notable also because it gives a clue as to the circumstances at which Brandeis supposedly uttered these words: in a conversation with a “younger friend.”

It is impossible to determine with any kind of certainty just who the recipient of this *mot juste* was. But given his penchant for anonymous and pseudonymous writing, his admiration for Brandeis, and the difference between their ages, the “younger friend” prostrated at the feet of Brandeis was likely Keating himself, who was eighteen years Brandeis’ junior.

There is, of course, no way of knowing for certain. If the conversation did in fact take place and Keating was not the person Brandeis was addressing, Keating was almost certainly present when it occurred. There are no other references to this conversation published anywhere else; Keating seems to be the only person to have written about it.

There is also the possibility that the conversation never happened. Keating could have taken the idea expressed in *The Opportunity in the Law* and imagined he heard it, or he could have created the conversation for literary effect. Given his trouble in remembering the exact quote, this is not out of the realm of possibility.

Whatever the circumstances and whatever the exact wording, the quote rings true. While there is no positive proof Brandeis ever said these exact words, he expressed a similar sentiment numerous times. If it is not a Brandeis quote, it is at least a Brandeisian one.



⁸ The column was reprinted in its entirety in Irving Dilliard, ed., MR. JUSTICE BRANDEIS: GREAT AMERICAN 42-45 (1941). It is this book that gets cited most often as the source of the quote.