



Department of Justice

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ADDRESS
BY
ATTORNEY GENERAL ROBERT F. KENNEDY
AT THE
LAW DAY CEREMONIES
OF THE
VIRGINIA STATE BAR

ROANOKE, VIRGINIA

It gives me particular pleasure to take part in this annual observance of Law Day in Virginia. I am not only a resident of Virginia, but I came here 14 years ago as a student--and I hold Mr. Jefferson's university at Charlottesville largely responsible for any gaps or lapses in my knowledge of the law.

Above all, I am glad to be here because, like every American, I am in the debt of those great Virginians who, from Washington, Jefferson and John Marshall, have taught us the role in a free society.

The state of which I am a native has also made its contributions to our national traditions of justice. John Adams in the original draft of the Massachusetts Constitution spoke of "a government of laws, and not of men."

If the members of this Bar will forgive me, I fear that from time to time in our history we have tended to construe this as meaning a government of lawyers and not of men. Yet the law, after all, cannot exist without lawyers. And, de Tocqueville said, the legal profession, when it is faithful to its highest ideals, is "the only aristocracy that can exist in a democracy without doing violence to its nature."

It is surely significant that so many of the Founding Fathers of this Republic were lawyers. It is significant, too, that the men in Virginia and Massachusetts and the other colonies who led the Revolution in 1776 were the same men who wrote the Constitution in 1787.

That generation was acutely aware that liberty and law are inseparable and that liberty under law, freedom with justice, is the highest goal of our society. Today we inherit that insight as it has been tested and strengthened in the cruel history of our own century.

The struggles and the passions of the first half century have left their mark; but they are behind us. A new society has taken form, developed and been shaped by the leaders of both of our major political parties. It is a society loyal to the Revolutionary concepts of Jefferson, Madison and Washington--concepts based on the importance of the individual--and it is a society which believes that government has positive responsibility to make individual freedom more than a legal

fiction. It is a society which has an inherent belief in justice.

"Justice," said Daniel Webster, "is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together."

As the law officer of the United States Government, I have a particular responsibility in the field of justice. And yet, in the last analysis, my responsibility is no greater than that of any other citizen of our democracy. As the inscription on the Department of Justice building in Washington puts it: "Justice in the Life and Conduct of the State Is Possible Only As It First Resides in the Hearts and Souls of the Citizens."

The ultimate relationship between justice and law will be an eternal subject for speculation and analysis. But it may be said that in a democratic society law is the form which free men give to justice. The glory of justice and the majesty of law are created not just by the Constitution--nor by the courts--nor by the officers of the law--nor by the lawyers--but by the men and women who constitute our society--who are the protectors of the law as they are themselves protected by the law.

Justice, in short, is everybody's business--and the breakdown of justice is everybody's business too. The defiance of law, the violation of law, are infectious. Those who challenge the law in one or another of its aspects weaken the whole legal structure of society. For one man to disobey a law he does not like is to invite others to disobey another law which he may regard as indispensable to his own livelihood--or life.

We all know these things in the abstract. In the last few years the question of the rule of law has become to many a new and concrete concern, in part because of the Supreme Court's decision in the case of Brown v. Board of Education.

This decision represented an interpretation by a unanimous Supreme Court of the meaning of the American Constitution. At the same time, it called for substantial changes in customs and practices in particular parts of the country--and, therefore, it has raised questions and roused protests.

Some of the protest has been addressed to the role of the Supreme Court itself as the final arbiter of our constitutional system. This is a powerful role--but let no one suppose that it came about lightly or by accident. It was a role foreseen by the authors of the Constitution, and this role of the Supreme Court was established by one of the greatest of all Virginians, John Marshall.

Because no constitution is self-expounding, there must be some agency to expound it. And the job of exposition is not that of citing a rigid and unchanging set of theorems, like repeating a mathematical table.

"We must never forget," said Marshall, "that it is a constitution we are expounding...intended to endure for ages to come and consequently to be adapted to the various crises of human affairs."

In following Marshall's injunction, the Supreme Court has acted as the conscience of the nation. It has been one great means by which our constitutional framework has responded to the ethical imperatives of our people.

In doing its work, the Court has roused protest through our history. Not a word has been said in criticism of the Court in the last eight years which was not said often before in our national past.

This, of course, is precisely why we have a Supreme Court--to adjudicate disputes laden with concern and emotion. The American Constitution would indeed be a sterile document if the Court in its labors did not recognize the truth so well stated by Justice Cardozo:

"The great generalities of the Constitution have a content and a significance that vary from age to age."

The 1954 decision placed a great and exacting responsibility upon the federal judges. I think it is appropriate on Law Day to pay tribute to the skill, devotion and courage with which they have met this responsibility.

They have had to consider cases in an atmosphere of perplexity, pressure and sometimes panic. They have confronted complex issues with conscience and candor. In many cases, they have handled down decisions which were unpopular among their neighbors. In some cases, their rulings may have been contrary to their personal views. But they have faithfully recognized that their obligation is not to express private or local preferences but to record the law of the land.

When people criticize the courts for invading spheres of action which supposedly belong to other parts of our constitutional system, they often overlook the fact that the courts must act precisely because the other organs of government have failed to fulfill their own responsibilities.

This surely is the moral of the recent decision in Baker v. Carr the Tennessee reapportionment case. For half a century the urban voters of Tennessee had been systematically underrepresented in the state legislature--and for half a century political and legislative remedies had proved inadequate to reestablish the substance of democratic equity. And the same unfair situation exists in many other states.

In Baker v. Carr, the Supreme Court held that a system of apportionment could be so unfair and irrational as to require judicial cognizance under the 14th Amendment. Exactly what judicial standards will emerge no one can say as yet; but, if legislatures continue to evade their primary responsibility, there can be no alternative but to work these standards out, as so many of our constitutional principles have been worked out, on a case-by-case basis.

The responsibility for maintaining the rule of law, in short, is not just the responsibility of the courts alone. In fact, the courts by themselves never can be effective enough to enforce the law in a free society. If the rule of law is to survive in a democracy, it must have other and deeper wellsprings. It must be recognized by the common consent of our people--and it must be carried out by the other agencies of government, federal, state and local, as well as by all our citizens in their daily lives.

Historic decisions like Brown v. Board of Education and Baker v. Carr should not be accepted grudgingly for they offer opportunity as well as imposing obligations.

The obligations are to respect and execute the law.

The opportunity is for individual citizens and state and local governments to identify law and liberty as a living reality. If this is done, states' rights will not be eroded. They will be strengthened. If states solve their problems and difficulties within the framework of our Constitution, states' rights will be given new vitality.

And, in the last analysis, if this is done, the opportunity to rise to the full potentiality of our democracy will be grasped by all people, and the rule of law will be made a common undertaking--not only here in the United States--but among free men all around the world.

I know of nothing more important, for as the President said at the United Nations last September, what we are striving for in these very difficult times is a world in which all nations will live under the rule of law.

But in order to have other countries follow our leadership in important fields, we are going to have to abide by the rule of law here in the United States. We are going to have to live by the rule of law, and we are going to have to do it in our day-by-day lives and in our relationships with our fellowmen.

Some people in the world today do not see law as the instrument of freedom and justice. Too frequently the whole tradition of stare decisis appears to tie the law to the status quo; and a written constitution means little to a man who cannot remember his last meal and does not know where his next one is coming from.

I recently returned from some weeks in Asia where I had ample opportunity to discuss the world with young men and women for whom hunger and poverty have been familiar realities. These talks reminded me again of the extent to which emphasis on law, as such, and constitutionalism as such, often seem the self-righteous excuse used by those who have to justify their exploitation of those who have not.

I found much greater misunderstanding about our system of government and the real aspirations and motivations of the American people than I had expected. In some countries, articulate, disciplined communists have been able to seize on weaknesses or inconsistencies in our system and distort or magnify them out of all proportion, with the result that great misconceptions about American go virtually unanswered.

In Indonesia and Japan, for example, I found bright, alert young leaders accepting communist descriptions of the United States which were 75 and 100 years out of date.

In Africa, Asia and South America, the number of educated young men and women is increasing dramatically. Education is equipping these young people to fill leadership roles in their countries and they will be the leaders of the 1970's and the 1980's. In Japan today there are more than 600,000 college students. In Indonesia there are approximately 30,000, where before the war there were only a few hundred.

There is a great deal that we can do to convince them that freedom is the way of the future. We can and must do better in making available to them the facts about us and our way of life--to make it clear that we will not accept the status

quo; that we are not a selfish people interested only in ourselves and our pocket-books; but that we are tough, industrious people who are interested in our fellow citizens and in advancing the cause of freedom.

We must impress upon them that our system of government has made great progress in the last sixty years; that our way of life is far different from what Marx described 100 years ago, and that this progress has been made under the banner of freedom.

If we do not meet this problem head on - if we are not ourselves imaginative, dedicated, willing and self-sacrificing - the struggle for the minds of the leaders of tomorrow will not be won by the communists, but lost by us.

As we act to meet this challenge, let us resolve here not to do so only to convince people across the seas, but because we are dedicated to the proposition that liberty and law are inseparable; that we truly believe social progress strengthens and enlarges freedom.

Let us never forget that we are the descendants of the greatest revolutionaries the world has ever known--men who succeeded in this country by overthrowing a more powerful nation rules and in establishing this nation because they were more aware of their goals, more vigorous in pursuing them, more tightly bound together and more combative in spirit.

And, finally, let us do so because ours is the better road--the road of law applied to immediate problems, gradually altered as the ways of life change, enforced by courts of law open to the public with the blinding glare of the free press upon those who judge and are judged.

We do not say that our courts are perfect; that our judges all possess the wisdom of Solomon, or that our prosecutors are all without selfish interests or even malice. But what we must be able to say is that, on the whole, our judicial system does provide justice and does recognize equality under the law.

The travail of freedom and justice is not easy; but nothing serious and important in life is easy. The history of humanity has been a continuing struggle against temptation and tyranny--and very little worthwhile has ever been achieved without pain.

So, as we unite on this May 1 to celebrate the rule of law--while men and women in remote parts of the world march in disciplined ranks to celebrate the rule of arbitrary power--let us with courage and confidence rededicate ourselves to the vision of John Marshall--the vision of a free republic in which free men freely use law and government as the means of solving problems within a framework of equity and justice.

And let us be constantly aware that what we do here in the United States--first remaining militarily prepared so that there can be no doubt about our ability to defend ourselves; second, making social progress in such domestic areas as employment, health and civil rights; and third, remaining true to our ideals of justice under the law--how well we do in all of these areas in the next ten years--may well determine our future position in the world for many years thereafter.