



Department of Justice



"GOVERNMENT UNDER LAW IN A DYNAMIC AGE"

ADDRESS

BY

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Along Constitution Avenue, just one block from the Department of Justice in Washington, stands a granite pillared building called the National Archives. Enshrined there, under glass, for all to see, are our Constitution and Declaration of Independence. Thousands view them each week.

On the other side of the world, the body of a man named Lenin lies preserved under glass in a tomb in Moscow and thousands pass through that shrine also.

In 1955, when I visited Moscow, Joseph Stalin was there under glass with Lenin. But now Stalin has been removed.

It would be sort of like us removing the Constitution but leaving the Declaration of Independence.

To me it seems that this is one of the most vivid illustrations of the Rule of Law v. The Rule of Man. It is as though each nation had enshrined the source of its law.

The National Archives is today's example of what Bracton summed up centuries ago with the single phrase: "Not under man, but under God and law."

It is this essential difference between our Government and that of a communist dictatorship that I suggest to you this afternoon. I think it is good to keep this difference clearly in mind, and the Law Day celebrated this past Wednesday serves that purpose.

For as lawyers, as officers of the court, you and I have special and unique responsibilities. To us more than any other group goes the responsibility of preserving the law, of making it work for the benefit, safety and well-being and liberty of our fellow citizens.

In coming here to be with you today, I would like to discuss two of the problems directly related to our continuing Government under the Rule of Law. One is related to the operation of democratic government in a meaningful way; the other to the preservation of democratic government itself.

First, our forefathers believed and history has shown that if a government is to be truly democratic, it must be based on the active representative participation of the people.

This is part of our constitutional heritage. More than 40 state constitutions make apportionment according to population or qualified voters the basic principle for choosing at least one branch of the legislature.

But over the years many states had disregarded the clear mandates of their own constitutions. Seats in state legislatures had not been reapportioned as the states themselves had undergone tremendous growth and sweeping change.

Majorities, even large majorities, in some states found that they could not make their voices heard in the legislative halls of their own states. One person's vote would be worth, ten, twenty, a hundred votes of a fellow citizen elsewhere in the state.

There was an effective disenfranchisement of many; there was failure to cope with modern problems and majority needs, especially in burgeoning suburban areas where the growth of the last 20 years was concentrated.

This was one of the practical problems of democracy--even under a Rule of Law. It was a bad situation getting steadily worse. It bred public cynicism, disillusionment and loss of confidence.

It carried with it a weakening of state's power as cities went directly to the Federal Government for assistance.

Then, just a little over a year ago, the Supreme Court of the United States decided Baker v. Carr, the Tennessee reapportionment case.

The decision held that individual citizens might bring suit to protect their right to vote and to enforce the right to a fair and rational apportionment under the "equal protection" clause of the Fourteenth Amendment.

This was the first simple step in solving the problem of malapportionment but the results of the decision were immediate and far-reaching.

Court cases were filed in 36 states challenging legislative apportionment. In 31 of these states, cases are still pending. Cases from seven states, including Virginia, are currently on appeal in the Supreme Court of the United States.

There have been state court decisions in 25 cases and in 19 of these the apportionment plans for one or both bodies of the state legislatures have been found unconstitutional.

New reapportionment plans have passed in 15 states--Virginia included--and early passage of reapportionment statutes in 11 more states now seems likely.

Thus, just after its first anniversary, Baker v. Carr is widely recognized as a landmark case. Its effects have only begun to be felt. By the peaceful process of legislative and judicial action under the Rule of Law, it is changing a majority of state governments across the nation.

And these changes must be for the better. As state governments become more representative, they must become stronger and more vigorous.

But it may be that in political development--as in physics--there is a rule that for every action there is an equal and opposite reaction.

At any rate, it is interesting to note the emergence and progress of a proposed Constitutional Amendment which would erase the effect of Baker v. Carr.

This Amendment would provide that nothing in the Constitution shall restrict or limit any state in the apportionment of representation in its legislature. It would add that no Federal Court shall have power to hear any reapportionment case.

Observers have noted that if the Amendment means what it says, it is perhaps the most drastic change yet proposed to the United States Constitution.

By its literal words, representation could be drawn from or excluded from any group designated by the state legislature. This would be true whether the group were based on geography, religion, race or political or social affiliation. The religious or social bar would be only one step beyond the gerrymander.

The surprising thing about the Amendment, however, is not that it should have been proposed, but that it should have been approved by 10 states in the past several months.

All of this has been accomplished with little or no discussion, with practically no critical examination of the Amendment and its possible effects.

Were this Constitutional Amendment be adopted, it could constitute a dangerous withdrawal of guarantees of liberty, justice and equality now contained in the Constitution. It would at the barest minimum, throw away the gains we have begun to make at the beginning of this era that started with Baker v. Carr--this era of improving the representative quality of our democracy.

The second point I would make today is that freedom and the Rule of Law may flourish, our democracy may continue to adjust to new problems and improve, only so long as we are strong enough to defend ourselves.

No one really questions the necessity of this. It is, however, important to recognize how high a price we pay to satisfy this necessity.

Just as we remind ourselves of the importance of freedom under law and the importance of improving our democracy, I think we should remind ourselves of the cold hard facts of life in government. These subjects are not separate; they are entwined and interdependent.

We cannot long appreciate our freedom or exercise it if we do not pay the bill--but the bill must be realistic and we must approach it critically and responsibly.

Before closing today, I would like to take a few moments to talk with you about our current bill. I believe it can stand critical and responsible analysis.

It is interesting to look at just one dollar of the current Federal budget and see where that dollar will go.

Fifty-nine cents goes for national defense and our space program.

We have doubled our minuteman missiles, we have increased our Polaris submarines by 50%. We have increased our combat-ready army and marine divisions from 14 to 19; six times the number of troops are studying guerrilla and counter-insurgency warfare than there were two years ago. We have done these things and more but they have cost money.

We'll spend ten cents to pay the interest on the national debt (80% of which was incurred in the two World Wars and Korea) and an additional six cents for veterans benefits.

That is seventy-five cents so far. And four cents goes to strengthen the military, security and economic growth of other nations important to our security. These programs together account for seventy-nine cents out of every dollar.

That leaves only twenty-one cents with which the Government provides every other service and function included in the Federal budget. And of this twenty-one cents, only fourteen is used for Federal expenditures; the remaining seven cents is turned over to states and localities to help them provide better public services.

It may also be of interest to you to know how much of the Federal budget not just of the seven cents--but all Federal expenditures--is spent in this state. Over a recent three-year period, it averaged nearly \$2.8 billion, almost double the Federal revenues derived from Virginia during the same period.

Finally, now I would like you to join me in thinking for a moment about whether the Federal Government is spending too much.

It is true, of course, that the budget is larger in this year, 1963, than it was in 1943, 1953, or even last year. But we are a different nation than we were in any of those years--and our rapid growth continues. President Eisenhower recognized this. He spent 100 billion dollars more than President Truman did during the previous eight years.

Between last year and next year, the number of tax returns will rise 2.5%; the volume of mail will grow 6.4%; visitors to our national parks will increase 7%; the number of veterans or survivors on pension will rise 10%; aircraft landings and takeoffs under Federal facilities will go up 11%; 20% more patents and 25% more passports will have been issued.

And consider what is happening to our population. I have been talking about the budget for Fiscal Year 1964. By the end of that year, there will be 10,000,000 more Americans than when President Kennedy took office. Ten million people--that is more than half the population of Canada.

It is not only our population that is growing. Our gross national product has increased more than fivefold since 1939 and has increased 57% in the last decade alone.

Apart from defense expenditures, Federal expenditures appear conservative when compared with almost any relevant standard. As a percentage of gross national product, non-defense expenditures are substantially lower today at 7% than they were before the war in 1939 at 9% or after the war in 1949 at 10%.

Twenty-five years ago non-defense expenditures in the Federal budget were just about equal to total state and local expenditure. Today they are only about 60% of state and local expenditures.

Of the more than 9 million civilian Government employees in the United States today, about 7 million are employed by state and local governments and only about 2.5 million by the Federal Government.

Since 1948, state and local employment has risen by 81% while Federal civilian employment has risen by only 22%--less than the rate of growth in the population as a whole.

As a matter of fact, if the Departments of Defense and Post Office and the Veterans Administration are excluded, everything else in the Federal Government is accomplished by 650,000 people--a number substantially smaller than the total employment in the telephone industry.

By every measurable standard, Federal Government increases in spending, debt and total employees have been only a fraction of comparable state increases.

Between 1942 and 1961, for example, general expenditures of the Federal Government increased 2-1/2 times; but the general expenditures of the State of Virginia increased more than five-fold over the same period.

Over the period of the past ten years, the number of Federal civilian employees actually declined while the number of state and local government employees in the State of Virginia has increased by more than 50%.

I just give Virginia as an example but there are comparable figures in virtually every state of the Union.

All of these considerations lead to the conclusion that our expenditures have increased moderately. Even conservatively, in an era of swift change and rapid growth.

The responsibilities of the Federal Government have not changed basically over the years. In essence they are three:

- to uphold the Rule of Law and protect our basic rights;
- to maintain our military strength and defend our security;
- to stimulate the well being and prosperity of our people.

This is what every Administration attempts to do and what we are trying to do now. We ask your help and your participation.

In 1789 in Hartford, Connecticut, the skies at noon turned one day from blue to gray, and by midafternoon the city had darkened over so that in that religious age men fell on their knees and begged a final blessing before the end came.

The Connecticut House of Representatives was in session, and many of the members clamored for an immediate adjournment. The Speaker of the House, one Colonel Davenport, came to his feet, and he silenced the din with these words:

"The Day of Judgment is either approaching or it is not. If it is not, there is no cause for adjournment. If it is, I choose to be found doing my duty. I wish, therefore, that candles be brought."

I hope all of you will bring candles to help light our Country's Way.