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Department of Justice

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ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE BOSTON COLLEGE BICENTENNIAL CONVOCATION

3:00 P.M.
SUNDAY, SEPTEMBER 28, 1975
BOSTON COLLEGE RECREATION CENTER
BOSTON, MASSACHUSETTS

We are nearing 200 years as a nation. It is fitting that a celebration of that anniversary should convene here; appropriate, also, that your general theme should concern "The University and the City." Our civilization, for better or worse, finds expression in our cities. In some measure, as history is apt to be recorded, this always has been the case. "Civilization," Professor Darlington has written, "is the mode of activity created by cities and it is through the cities of the Roman Empire that its civilization was preserved and passed on to the present day." This characterization is only partly the artifice of a definition. Cities concentrate diversity. Diversity has a special vitality. Ideas are built out of exchanges and differences and in response to the opportunities and necessities of close communities. The works of the mind and of the hand do not only grow out of city life. But even when they do not, they are likely to find their reflection and remembrance in these centers. A city is always a challenge to a university--to sift that which is important to the human condition out of the every day, thus to understand change, to reappraise and give meaning to inherited values, and to continue the search for truth when the requirements of the practical are so demanding. As a matter of fact, almost always, universities, despite the image of the secluded campus, have been created out of this challenge. Seclusion, itself, is a reaction which still seeks to be near the problems and to be near the vitality.

Universities have a particular role when a national

bicentennial celebration attempts to evoke the past. In our day the writing and thus the rediscovery of history is largely the keepsake and the captive of institutions of higher learning and scholarship. The chronology naturally has been written many ways. The words and events then come to us with a gloss of cycles of interpretation. There is a richness in our history-- an articulate call to a shared culture, which is an extraordinary inheritance. From the beginning the American nation was seen as an experiment in education. Education was the way of progress, and education was thought of broadly. Society was to engage-- and indeed was to govern itself-- by a process in which judgments would be formed through continued discussion and inquiry. Out of this, new discoveries of the mind and of government would come. An anniversary such as ours gives the incentive to look again at what was said at important times in our past, a useful venture, not because these words are timeless, if that is to mean they were not in reaction to particular events, but because our own are time-bound, and the more so, apparently, because of the gross ease of communication which is both the achievement and the burden of our day. These words, theirs and ours, are part of a dialogue which began long ago.

In this dialogue we need not give way to indifference because all the words have been spoken and all ideas set forth. It is in the understanding of them, as well as through reflection

on the experience of the events which come to us, that we will continue the tradition of a government consciously fashioned to safeguard the rights of "We, the People of the United States." This was the great attribute of the young Founders of this republic of republics. The Founders were well acquainted with the writings of western political thought. Thus they related what they did, as any university must, to the best in a long tradition which preceded them. They put within this tradition the innovations which their own experience and necessity suggested to them. Since they were conscious of being engaged in a unique experiment of self-government, they looked ahead. Their writings discussed fundamental questions.

It is correct that toward the beginning of the 200 years, they described themselves somewhat differently than we would describe ourselves. "Providence," Jay wrote, in words frequently echoed, "has been pleased to give this one connected country to one united people--a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs..." Today we would be more apt to emphasize our differences. But the Founders expected diversity of interests; they were concerned about factions. They intended to create a structure which would be responsive, would mediate, and would be effective. Mankind, they knew, could easily be inflamed with mutual animosity. But the science of politics, they thought, had received great improvement. Among

the new inventions were the idea of a confederacy of republics, yet one nation, the regular distribution of powers into distinct departments, the introduction of legislative balances and checks. These do not now carry for us the ring of "wholly new discoveries," which Hamilton claimed for them. Here we approach the words with a background Hamilton did not have.

But some of the words still carry an interesting edge. They add a different voice. Writing for the Federalist Papers, that collection of serious essays which helped to win the ratification of the Constitution, and from which I have just quoted, Hamilton asks: "To what purpose separate the executive or the judiciary from the legislature, if both are so constituted to be at the absolute devotion of the legislative?" "The representatives of the people, in a popular assembly," Hamilton goes on to comment, "seem to fancy that they are the people themselves, and betray strong symptoms of impatience and disgust at the least sign of opposition from any other quarter; as if the exercise of its rights, by either the executive or judiciary, were a breach of their privilege and an outrage to their dignity." As for the executive, Hamilton finds that "decision, activity, secrecy and despatch" are necessary attributes for that energy required for good government. The language leaves no doubt as to the vigor of Hamilton's position and reminds us, first, that he really did mean the separation of powers, and checks and balances, and second, that the dialogue is not closed as it never

will be.

If it is our condition that we are condemned to repeat history, or perhaps our good fortune to be able to do so, then the reading of history is likely to have this double aspect--no matter how much we try to avoid it or criticize the mixture--of being a look not only at other times but at ourselves. I am prepared to assume that this violates the principles of this most professionally minded of the scholarly professions. But then let it be said "this assuages--as I fear it will not--that perhaps I am speaking less of history, and more particularly of those documents which are intended to speak to the human spirit, out of the conditions of their time, and beyond.

The task of giving these documents a central place in the conscious learning of our culture is not an easy one, although it has been done better than we now do it. Most of us, although not all, remain foreigners in our own tradition. One thinks of the irritation expressed by James Joyce's character, Stephen Daedalus, bridling at an English heritage we share with him, commenting upon a conversation with an Englishman this way: "The language in which we are speaking is his before it is mine. How different are the words home, Christ, ale, master, on his lips and mine! ... His language, so familiar and so foreign will always be for me an acquired speech. I have not made or accepted its words...My soul frets in the shadow of his language." But this is true in some degree for all of us.

In our time, the heritage of government by discussion places great importance upon the university. This is the role which universities have always fulfilled. To some degree, they are the creators of it. The responsibility is greater and more difficult today for several reasons. The change might be thought to mark the singular success of our institutions of higher learning, as well as the fruits of technological advancement. I do not doubt that more people can be heard to take part in the discussion than ever before, although to many of them it may not appear that way. One reason making for and resulting from the difference is that the universities and colleges have preempted more time of more people than ever before. The role of the amateur or of the self-taught has been reduced, or changed in direction, or has tended to be linked to the work of the universities. Then, the environment for teaching has changed, particularly the teaching of commonalities, because other institutions whose guidance is important have changed. Modern communication emphasizes the immediate event which can be seen; it tends to make of discussions the declaration of opinions in a form to be quickly understood, suggesting that the complexity of a problem is always the result of inefficiency or bad motives. One can join to this the influence of widespread dissemination of the professional sampling of how people say they feel. At any time the ideal of reasoned discussion is hard to approximate. It seems to be harder now, even though there should be a greater chance for it in spite of the obvious

barriers which perhaps will turn out to be supportive in the long run. Voltaire once observed that the real scourge of mankind has not been ignorance but rather the "pretense of knowledge." Today there may be more pretense of knowledge, a vice which most of us share, because there are more bits of knowledge widely distributed.

The idea of a bicentennial assumes a shared actual or vicarious experience. We are a country of many heritages. Jay spoke of those "who, by their joint counsels, arms, and efforts, fighting side by side throughout a long and bloody war, have nobly established general liberty and independence." Washington in his farewell address repeated this theme to his friends and fellow citizens. "You gave in a common cause, fought and triumphed together. The independence and liberty you possess are the work of joint councils and joint efforts, of common dangers, sufferings and success." A larger, older nation perhaps can never relive the excitement of its birth. Yet the unity of our diversity is perhaps just as extraordinary and just as difficult to achieve. A free society, a government by discussion, requires mutual respect. It requires mutual understanding. It requires a culture held in common--a culture not unitary but composed of many differences. The base for understanding must be built and rebuilt over time.

How hard it is to achieve this understanding and this culture meeting the demanding requirements of a free self governing nation! The Federalist Papers, themselves, are an extraordinary example of a part of the continuing effort required. The essays were designed to help people separate passion from argument, though none of the writers thought the separation would be complete. The problem is a familiar one for universities which must establish a culture for themselves, and which contribute so greatly to the perception of quality and values in the larger society. The atmosphere of a university, intellectual, appreciative, value-laden, is, as we know, more important than any individual course. The problems of communication within a university across disciplinary lines are not easy. Yet it is the common tradition which Universities share, which gives them their strength and their protection. It is a tradition which emphasizes continuity, discovery, the value of the individual, and a civility which comes from and makes possible the trust among scholars so that they can learn from each other, disagree, admit error, and even be right without crushing arrogance. In this tradition it is important to separate passion from reasoned argument. It is important also that the nature of knowledge beyond the field of specialization be reasonably accessible. If universities and colleges do not accomplish this task, the citizenry is further divided; their judgments are distorted; a free society suffers.

One of the institutions which has an influence is the university. A university's emphasis on free discussion, and on the importance of reason and understanding, underscores our most cherished values. These have not always been easy to maintain in universities. Universities among other institutions are also necessarily involved in the view which our society takes of the very question of morality--a question central to the relationship between law and individual action. There is a belief, in my view too common in our day, that what the law may not prohibit may on that account wear the masquerade of responsible choice. The claim is often made, for example, that self restraint in the dramatic publication of destructive aberrations is worse than censorship or that the limits for responsible presentation of violence on television are whatever the law allows. I know of no theory of jurisprudence which supports such a position. These examples suffer, of course, from being matters of immediate concern, but I use them as illustrations that an understanding of how our society works--upon which the universities have done so much research and teaching--is exceedingly important.

Having gone this far on dangerous ground, let me say that the freedom of the university is essential. It is a freedom or liberty to be maintained against forces from without and those from within. The university is not a complete sanctuary, but it is partly so--a sanctuary which our society needs.

The tradition of the universities is older than that of any nation. It has in fact been made possible through a disciplined search for truth and a desire to hand on the understanding achieved. It tracks the rise of humankind, and is an essential place for the thought which in the long run can make the most difference. The thought may be unsettling. It often is. John Adams in a despairing mood in 1798 wrote, "I really begin to think, or rather to suspect, that learned academies, not under the immediate inspection and control of government, have disorganized the world and are incompatible with social order." That, too, is part of the dialogue. Wisely, but sometimes with difficulty and heroism, and aided by our fundamental charter, we have made the contrary choice.

Yet the university is part of society. The university's present task is enormous. The growth of knowledge requires more synthesis. It makes understanding harder to accomplish. The opening of the horizons enriches the work requiring the appreciation of other civilizations and cultures when we do not know our own. The shape of the world demands this. The problems of the cities reflect the modern human condition and the advances in invention and in aspirations not met before. The increased numbers who have come and wish to learn, and to some degree those who do not, represent a new world in education. But the task for our time is essentially the same as it was before. New problems have been substituted for old ones, but the effort to enrich the human spirit and the human mind remains.

I am told that for a proper historian, the history always has a beginning and an end. But this bicentennial is not an end. Carlyle has observed that history is a book that all men write and read and try to understand, and in which they, too, are written. So today at this place of learning we celebrate one volume of that book--the wisdom that it embodies and that we bring to it--before we return to the infinite task of completing the text.