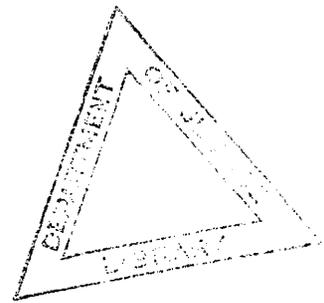


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ADDRESS

BY

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at

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The Chief Justice of the United States

and

The Judicial Conference

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I deem it a singular privilege to address the Federal Bar Association on this delightful occasion when we honor the distinguished Chief Justice who symbolizes the highest American tradition of our Judiciary and of consecrated public service and when we assemble as a tribute of esteem to the members of the Judicial Conference of the United States.

In this atmosphere of cordiality, there is a warmth of comradeship and brotherhood for we are united by triple bonds of our mutual friendship, our common service to the Federal Government and fealty to our jealous mistress: The Law.

Charles Lamb said that "Lawyers were children once."

Gibbon - that great historian - called law a mysterious science and a profitable trade.

A. Edward Newton, the late and revered book collector, remarked that he found three divisions of the law: "Common or garden law, which seems to be made rather by the sun and shade than by reasoning of man; Equity, which the learned John Selden said depended upon the length of the Lord Chancellor's foot; and international law, which is a device made of sand, painted to look like iron, but which invariably falls to pieces when subjected to the use for which it is designed."

Of course we recall Lord Coke's definition of the law as the perfection of reason - referring to the eternal principles which - when viewed in the abstract - remain as unvarying as the position of the North Star. Yet, throughout the ages, lawyers - like mariners - have found themselves often buffeted about by the winds and cross-currents of their respective eras.

If this period - in which we live - can be placed in any one category - it may be described by our children and by our successors at the bar as: The age of confusion.

Certainly confusion has reached into the law as into all else.

Judges are legislating; legislators constitute themselves law courts; and bureaucrats act both as legislators and judges.

It is refreshing to remember and to salute the wisdom of our founding fathers who, in framing the Constitution, vested legislative powers in the Congress, judicial powers in the courts, and Executive powers in the President. This separation of the powers of Government safeguarded not only the rights of citizens but insured the survival of the Republic.

The clarity of mind, - the firm logic - which formulated the Constitution, recedes into the dim and hazy past. We hear speakers on radio and television referring to "The Democracy" rather than to the Republic; and confusion is more confounding.

In the words of the old song:

"When everyone is somebodee

Then no one's anybody."

To paraphrase the couplet and to describe law in our time - we might say:

When someone is everybodee

Then no one's anybody.

Perhaps you wonder if you are hearing a voice from the far past - one reckless in refusing to follow the advice that Mr. Pickwick gave to his friend, Mr. Snodgrass - that it is the better part of wisdom to

shout with the mob. You recall that Mr. Snodgrass queried what he should do if there were two mobs. Mr. Pickwick's pragmatic and slightly ungrammatical answer was:

"Shout with the largest."

If you accuse me of bias - I shall admit the propriety of your charge, and if you call me a traditionalist, I shall confess that respect for tradition combines with personal experience to motivate my attitude. For it has been my privilege to serve in all three branches of the Federal Government - but consecutively and not concurrently.

It is not merely reverence for American traditions, however, which compels all of us today to be ever mindful of the principles enunciated by the founding fathers. Rather, it is our recognition that their ideals continue to be the living force, the soul of our Republic.

Nor can we, as Woodrow Wilson so wisely told us, merely go back as spectators to the deliberations of the framers of the Declaration of Independence, and of the Constitution, - or content ourselves with re-reading the annals of the first sessions of the Congress, because - "We live in another age and the circumstances are absolutely different; but let us be men of that kind; let us feel at every turn the compulsions of principle and of honor which they felt; let us free our vision from temporary circumstances and look abroad at the horizon and take into our lungs the great air of freedom which has blown through this country, \* \* \* let us remind ourselves that we are the custodians, in some degree, of the principles which have made men free and governments just."

It is readily acknowledged that from the time of the Revolution, lawyers, more than any other class of Americans - have been the custodians

of these principles. They have dominated the courts and all branches of American Government as well; and they have done so not merely by establishing the doctrine of judicial review through the famous opinion of Chief Justice Marshall in Marbury vs. Madison: The bar of early years and more recent ones has been heir to the English conception of the rule of law and the spirit of the common law; the English idea of "fundamental law" combined with the tradition of Magna Charta and the British Bill of Rights. Moreover in our young country the new form of law - the written Constitution - which embodied a complete system of government with separate spheres of power, while guaranteeing the positive rights of the individual - was the product of the American spirit, and child of the union of the English conception of law with the philosophy of Robert Bellarmine. Jefferson was a student of the learned Ballarmine - and Marshall became the interpreter of the American ideal of law - and the shaper of American destiny.

In a sense - John Marshall foreshadowed the influence of the lawyer upon the American community.

Marshall's legal learning was the scant result of the unguided reading of Blackstone before his service in the Revolution, and six weeks' attendance at the Wythe Law Lectures in William and Mary College thereafter. He never pretended to be learned in the law, but rather, he relied upon logic, his political ability, and his personal powers of persuasion during his entire public career. He was a member of the Virginia House of Delegates, of the Council of State, of the Virginia Constitutional Convention; and a member of the United States Congress.

While still serving as Secretary of State to President Adams, he entered upon his duties as Chief Justice of the Supreme Court - and held both offices during the final weeks of the Adams administration.

It would be difficult, indeed, to evaluate Marshall's influence on American life during his thirty-four years as Chief Justice. This much we can say: The institution of judicial review which he authored was to expand in after years and to be protector of the intentions of the founding fathers and of the Bill of Rights.

Marshall, the man; Marshall, the soldier; Marshall, the lawyer; Marshall, the politician; Marshall, the Chief Justice; - all are one; and in each role there was a foreshadowing of the part that every lawyer must play in his country's destiny; - and today - more than ever before.

Daniel Webster, in eloquent simplicity, once said:

"The law: It has honored us; may we honor it."

Certainly during every decade of our brief history - every community has been guided by its lawyers; - in government, in social advancement, in civic progress. The National scene has reflected the local scenes in the leadership entrusted to members of the legal profession. It might almost be said that no generation has reached greater heights than its lawyers.

There could therefore be more than a grain of truth in Clarence Darrow's laconic remark:

"The trouble with law and government is lawyers."

Certainly if there is an illness in the body politic - the fault may properly be traced to a lack in those lawyers who fail in their trust as officers of the court and leaders of their community.

"Where law ends, tyranny begins", said William Pitt; and where lawyers forget their duty of public service and keynoters of American idealism, then the tyranny of a Communistic or other alien creed begins to encroach upon our American way of life.

The American ideal of government represents development through the Greek, the Jewish and the Christian eras of civilization. The Greek perceived the reflection of the logos in the rational nature of man, and recognized that a creature endowed with reason had inalienable social and political rights - particularly the right to self-government. The Jewish tradition held that the Divine Image in man called forth from him real moral responsibility. The Hebrew belief joined with the Christian concept in the "free and lawful man" - whose individuality was recognized during medieval times by placing government itself under law - and in the centuries since was the central fact in the American doctrine of full political freedom and representative government.

Justice and liberty have reached almost full fruition in our Republic as presently constituted.

Yet the awe and satisfaction that should be ours remain strangely, ominously unexpressed by the traditional interpreters of Democracy. Some few of the Nation's lawyers have been false to their heritage and have allied themselves actively with the Communists. Certain others have permitted themselves to be used as the dupes of Communist-front organizations.

Considering the vast numbers of patriotic members of the bar - these unhappy instances cited constitute a few negative discordant notes in the tremendous symphony of the American legal profession.

Nevertheless one wonders if the bar itself as a whole is making itself felt sufficiently by affirmative and positive activity. Conditions of our world present a challenge to our profession - and sound a clarion call for the re-arming of the moral leadership of the bar - and the consequent re-awakening of contemporary America to the American idealism of our forefathers.

We can no longer be unaware that the words that fill our magazines and newspapers, that echo and re-echo on radio and television are in the language of materialism. We hear statistics and taxes, gossip and political corruption, wars and the rumors of war.

Meanwhile the Communists echo our self-criticism and enlarge upon it. They focus upon our weaknesses and over-emphasize them. They predict disastrous depressions; they point to the decadence and decline of western ideals, the hypocritical pretensions of western freedom, and the inevitability of western collapse.

These same Communists have stolen the spiritual language of liberty to describe Soviet achievements of purely material progress. We, of course, are conscious that even though Communism uses the words of freedom, - its unchanging direction returns men to the hopeless tyranny of antiquity and of primitive mankind.

There is a tremendous object lesson, however, showing forth from behind the Iron Curtain where we can glimpse the kind of society that results from the loss of God from the mind of man: a society which is systematically materialist and Godless abandons quickly the safeguards of freedom and human compassion. Science itself is perverted when the search for truth falls before the politically expedient.

No wonder then that our Nation's lawyers should look back to the founding fathers with gratitude and a new will to preserve "The glorious liberty of the sons of God". In days to come, America will hear again re-uttered the statement that God's authority is supreme and in the phrase of St. Thomas More: A man can be his country's "Good servant, but God's first."