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JUSTICE

An Address

by

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at

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JUSTICE

On the Western elevation of the Department of Justice building in Washington are inscribed these words of Daniel Webster: "Justice is the great interest of man on earth. Wherever her temple stands ***** there is a foundation for social security, general happiness and the improvement and progress of our race."

Numberless words have been written about justice, its nature and its functions, but this we know - it is the bed rock on which every sound social system rests.

No problem of government is so difficult or so fascinating as the attempt to establish a true balance amongst the rights and duties, both individual and collective, which in the end determine the scope and the operation of justice.

In this imperfect world we cannot hope for perfect justice nor can we know precisely what it is. Yet, if reason fails to tell us what justice is, we realize, by a certain sort of intuition, what injustice is; and are moved accordingly. If, today, society is experiencing a sense of moral frustration, if the springs of needed faith run low, it is because men feel that somehow common justice is not functioning as it should. For the moment, society has become more aware of its weaknesses than of its strength, more conscious of its outgrowths of human injustice than of its lasting foundations of organic truth.

Let us not be disturbed because men are resentful of wrongs and inequalities, or sometimes seek to redress them by futile or fantastic means. If justice is to thrive and find itself, these are necessary fer-

ments. One can be tolerant even of the mistaken efforts of those who yearn for a tabula rasa and a world remade. Living institutions are never at rest. Always we are in periods of flux and flow.

Nearly a hundred years ago a well-beloved poet said:

"The old order changeth, yielding place to new,

And God fulfills Himself in many ways,

Lest one good custom should corrupt the world!"

If, today, men everywhere are questioning their traditional theories of government, and are exploring for new canons of right, new ethical criteria of distribution and co-operation, new standards of social values and economic controls, who shall say that these are not manifestations which should inspire all lovers of justice with hope instead of fear?

Justice in the modern state is a fabric of intricate pattern. To realize this, one need but note its adjectival classifications. We are inclined to think of justice as a simple absolute but, actually, we distinguish many forms: legal, executive, legislative; political, economic, social; criminal, preventive, retributive; commutative, substantial, relative. All these terms, and many others, we apply to justice in an attempt to grasp or define its elusive significance and its complex manifestations.

In our fault-findings we are disposed to think of injustice as due largely to defects of legal justice. "There ought to be a law" is the cry that follows the discovery or exposure of every wrong. The truth is that while legal justice may be imperfect its operation is, in fact, more practical and more effective than that of many other institutions

within the range of our social system. Its principles, standards, and techniques are well established. These are the priceless fruits of endless years of trial and error, and, moreover, offer dependable guarantees of substantial fairness. So in our Government, under its wise division of powers into legislative, executive and judicial, the technical standards and rules of action are well defined. But the vast and ever-continuing changes which the years have wrought in the nature of human society have disclosed many areas of our common life in which something more than mere legal justice must function. It is especially in these areas that justice takes on new and various aspects. It is here that Government, in its wider sense, must often guide by canons summoned from deeper sources than the letter of the law.

The primary purposes and obligations of Government are, of course, to preserve peace, to maintain order, to secure harmony, to establish security, and to promote liberty and happiness. In its definitions and applications of power, and in its interpretations and enforcements of rights and obligations, it is bound by the provisions of its constitutions, its laws and its bills of right. Manifestly, however, most forms of justice are not self-executing and the affirmative use of governmental power thus becomes both necessary and inescapable. While Alexander Hamilton's dictum is true that the first duty of government is to control the governed and its next duty is to control itself, nevertheless the ultimate source of guidance must be sought not merely in the written word, but in even deeper fountains of right. Somehow, in some fashion, it should be the function of Government, not alone to fulfill its primary duties, but to bring into just balance the rights and obligations which constitute

the spirit and body of our political faith. In the presence of chaos, disaster, or economic breakdown, justice will not tolerate the futile plea "it cannot be done." Government must be guided, to be sure, by established principles of procedure - but it must act.

If it is the duty of Government to strive for justice and not merely to execute the law as it finds it, may I not carry the argument further and say that it would be strange, indeed, if all the marvelous advancements in human thought and living, all the striving and planning, all the lavish spending for public education, had not brought into being new ideas and new alignments, as well as more enlightened ideals of social relationships, social betterment and social needs which must be taken into account? All the progress in the arts and sciences, in business and industry, has come from the courage to make experiments and substitute the new for the old. Must not this, too, be the spirit of modern government? Where time, as it inevitably will, brings into the social order the unexpected discords springing from human frailty and the accretions of ignorance and greed, is it not a duty of Government, seeking to do justice, to seek, also, for new definitions of Justice?

While, I imagine, we all agree as to the existence of this duty, we are not so apt to concur as to the method of its discharge. There are those who would let unhampered nature work the cure. Others seem to believe that our ancient definitions of legal and political rights and of so-called economic laws have proved such infallible guides in the past that to question them now is subversive of sound government. Such persons visualize rights and principles and economic laws as static or unchangeable;

and think of the betterment of human society by governmental effort as essentially impossible, because, it is asserted, human relationships do not change. They refuse to recognize that the primal law of life is change - that human nature itself changes. There is no fallacy more pathetic or more misleading than that which assumes the unchangeableness of living things. It is barely more than three hundred generations back to our savage ancestors, who lived in caves and fought with clubs, and scarcely knew how to light a fire. In the equation of social life we cannot afford to think of humanity as unchangeable, or of legal and political principles as absolute, any more than we can think of justice as something static.

Imagine justice as absolute and logic carries us to impossible utopias; think of human nature as unchangeable and our hope of progress is lost in a stagnant pool of ultra-conservatism.

No living institution is ever finished; nor is there any limit to knowledge nor any law of progress which says "thus far shalt thou go and no farther." The teachings of history repeatedly admonish us that what one period regards as radical another comes to consider as conservative. The equity stirring today becomes the law of tomorrow. Justice in the modern state, if it becomes set in fixed formulas, terminates in injustice.

No little of our confusion of thought is due to mistaken notions as to the inherent nature of rights per se. Since at least as long ago as the Greek philosophers, legal and political thought has wrestled with the idea that back of all human law is a natural law giving birth to natural rights. This idea still persists in juristic science and, to a greater degree, in common thought. It is the major premise in that recalcitrant

individualism which resists so many promising efforts to further what is called social justice. It explains many of our difficulties in reconciling liberty with responsibility; and power with justice. If it is true in the spiritual world that "he that loseth his life shall find it," it is equally true that for individualism to find itself the individual must give that he may get. This, it seems to me, is of the essence of both liberty and justice; and lies at the heart of all rights.

In our industrialized civilization we are, I imagine, more acutely conscious of the play of justice and injustice in the domain of economics than in the realm of law and politics. When we come to balance rights, and especially economic ones, we discover that every individual right is, in truth, a bundle of relative rights, and that there are no absolutes to guide us.

To add to our confusion of thought we attempt to fit into our patterns of economic justice various concepts from our political ideology, like those of equality, impartiality, individualism, government of laws instead of men, freedom of enterprise and initiative and the like, -- concepts which do not always, in terms of practical justice, have the same validity in the economic realm that they had in the political.

What is the duty of Government in the premises? If it is bound to be functional and to serve the common good, must it not endeavor to balance and reconcile these discordant forces and ideas? Can it sit as audience at an academic debate as to what is too great or too little a use of its powers? The legal boundaries within which it must operate, to be sure, are well-defined, but within these limitations must it not see itself

as an indispensable agent of justice in every field of human activity? The courts protect and vindicate legal rights and strive, by established rule and technique, to do justice in man's conflicts with his fellows and with society; but must not Government, seen as a whole, strive to protect and vindicate justice in the wider terms of the common good? Even legal justice tries to do as much. "Is it not the duty," says the Supreme Court, ". . . . to decide in accordance with present day standards of wisdom and justice rather than in accordance with some out-worn and antiquated rule of the past?" For it was ever "a characteristic principle of the common law," to quote the Supreme Court once more, "to draw its inspiration from every fountain of justice."

These considerations have intrigued the world's greatest thinkers from the beginning of history, though probably no one ever penetrated deeper into the mystery of what justice is than did the humble Carpenter of Nazareth whose Divine teachings so many of us venerate and so few of us follow. I dare say there is truth in all the various theories that have been formulated as to the nature and origin of justice -- from Divine revelation to categorical imperatives, utilitarianism, hedonism, harmony, the greatest good of the greatest number, and, perhaps, even in the concept that justice is an ethical and social convention born more of custom and experience than of reason or revelation. Practical government, however, is empirical in approach and must leave such speculations to the philosophers.

Nevertheless, it seems reasonable to believe that if a theory of justice must be formulated, the most dependable one, at least from the viewpoint of government, is that which takes for its major and minor

premises the public welfare and the common good. Justice, implicitly and actually, puts every assertion of individual right and every act of government to this acid test. What other unifying principle can justice in the modern State set up, or on what other theory should it proceed? Within what other framework can a free State work out permissible programs of governmental relief and economic planning, or find sanctions for necessary controls and enforceable social cooperations? The vital spark in human progress unquestionably is individual liberty, with all that means in the way of free initiative and the right to pursue our happiness and our adventures in our own way; but liberty without subordination to the rights of others and to the common welfare can be either anarchy or tyranny or both. All sound criteria of justice are human. Even economic justice must root and flower in the prevailing spirit of common justice and in the willingness of the individual to do as he would be done by. No man can live to himself alone. The origin of his rights and the measure of his duties are found in the complex mechanisms and relationships of society. Its welfare is his, and the same justice which gives him the right to share in it, imposes the duty to contribute to it.

The natural impulse is to allocate the blame for injustice to bad laws, or to the want to laws, or to defects of administration. We complain bitterly of our wrongs and act as if we thought that justice emanates from government. Believe me, my friends, it does not. It springs from the hearts of men. Government should, indeed, be an agency of justice, but the essential cure for most of the wrongs of which we complain must be sought in the simple, elemental working of justice in the life of the individual and the soul of the people.

The exigent need of the present hour, therefore, lies more in the stimulation of a nobler spirit of right in the individual than in the improvement of legal institutions or in the most enlightened social or economic planning of which government is capable. We might say that to know justice one must feel it. Certainly we cannot regard it merely as a symbol. It must become a vital and moving impulse in our lives. Talk as we may of the instrumentalities of justice and their deficiencies, or about the manifest inequities of our social and economic order, the search for cause and cure should begin with the individual. He is the unit of our common life.

This sounds like saying nothing, yet it says all. Debate as we may of change, of the old and the new, of legal or political or economic principles, the basis of justice must be sought in the inner and the better life of man, in his common honesty, good-will, and forbearance; in his saner conceptions of social and individual values, in clearer thinking and in loftier purposes. These attributes of human character are more powerful than the most imperative statute, for without them justice must remain an ideal which the wisest government cannot hope to realize.