

TRIBUTE TO LOUIS D. BRANDEIS, THE MAN

ADDRESS BY

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Ladies of Hadassah, and Friends:

The Supreme Court and the legal profession are deeply indebted to your organization for having generously presented to the Court a portrait of Mr. Justice Brandeis which keeps before us all his stern but kindly visage. It is a fitting sequel that you now present a copy of it to the Brandeis Center and School in Jerusalem to keep his memory as vividly as possible in the minds of the people of Israel, whose well-being was so close to his heart.

What shall one say of Justice Brandeis on such an occasion? His struggles and triumphs, his life and services play a dramatic part in recent American history already known to all informed Americans. His judicial work, his contributions to American jurisprudence are all matters of record and need no recital or elaboration here by me. The one cause that so deeply touched his later personal life and was so far removed from his judicial duties that he was willing to make public his views and visions while on the bench was Zionism. But it would indeed be carrying coals to Newcastle for me to tell you of his eloquent and far-sighted championship of that cause, or of the appeal which it has to us today. It is enough to say that perhaps nowhere is the loss of his constructive talent, his deep understanding of the processes of history and the roots of enduring institutions more missed today than in the counsels of those who held this cause dear.

With the record so detailed and ample, it seems presumptuous to think I can add much to your understanding of this unusual man. Yet, perhaps there is one area of knowledge to which I can make a slight contribution. Unless it be from the testimony of those whose lives overlapped his and who saw at first hand the workman at his tasks, it would be very hard for the upcoming generation to learn what manner of man he was. He did not write of himself. Perhaps it was too big a subject even for his pen. During his later life, he was so single-minded in devotion to judicial duties that he did not indulge the luxury of self-revelation by making speeches, delivering lectures, granting interviews or writing books or articles. Indeed, if I were wholly

faithful to his precept and example, I would not appear here tonight.

Perhaps we should begin by noting that his later writings were almost entirely legal opinions and, of all the kinds of literary production, judicial writing is, and ought to be, the least revealing of the author. The judge expresses himself in the technical language of the law and often, to the layman, that is as obscure as a dead language. Moreover, while legislators may act as they want to act and say what they want to say, judges often must act as the statutes tell them to act, and the judgments they render are the judgments which the law directs rather than the judges' personal preference. Then too, the judge usually pays much deference to the teachings of precedents. Justice Brandeis did not carry respect for the precedent to the point of intellectual abdication - but he did - as all judges should - accept certain traditional restraints on his personal judgment. He examined each relevant precedent with patience and understanding and followed it in the absence of grave reasons for departure. If he departed, as he never feared to do, he paid his profession the respect of giving a searching, candid and unequivocal opinion, setting forth his reasons.

In the great bulk of this impersonal kind of writing, from 1916 to 1939 he was leading the Court as its spokesman in difficult, complicated problems covering a wide range of issues. His was one of the clearest and most respected voices on the Court and he served during an almost quarter century when unprecedented things came to pass in this country. The greater number of his 528 opinions were written on behalf of the Court, to give concrete application to the abstract clauses of the Constitution, to pioneer in administrative law, to deal with the law of public utilities, patents, monopolies, restraint of trade, labor relations and civil rights. For this constructive type of work his career at the bar had peculiarly fitted him.

Many people have come to think of Brandeis as a "great dissenter," as if disagreement were the chief characteristic of his judicial life. He is distinguished within the profession, not for the frequency of his dissents, but for their strength - not for their number, but for their quality. He was not a captious or shallow dissenter. Except in matters of fundamental principle, he often deferred to the majority rather than divide the Court. His occasions for dissent were carefully chosen and then were marked by opinions showing a rare combination of the scholar and the practical man of the world.

Brandeis has been called a reformer and a crusader. Certainly he had that passion for betterment that lies at the root of reform, but always he counseled the impatient to seek for

betterment within the broad lines of our existing institutions. He never forsook the practicable to pursue the perfect. He tilted at no windmills.

This combination of the idealistic and the practical made Justice Brandeis a quiet but powerful influence upon many young men who came to know him in Washington during the time he was on the Supreme Court. In some way he managed to search out promising young men who came to cultivate his acquaintance by an invitation to come to his modest apartment on a Sunday afternoon. Such friendships knew no partisan, racial or religious lines, and one met there the most brilliant minds of all parties and faiths, and of none. Here the venerable jurist would mingle with the young guests, draw them into serious conversation, fortify their courage if he found it failing, and perhaps subdue their conceit if he found it too obtrusive. He had no time for the small talk of the conventional cocktail party. He was not a soft or sentimental man who encouraged others to whine over their bruises. He sought no easy way to lift men into position they had not earned. He did not hold out to every lad promise of great things, but he made them all feel they could do useful things. He wanted to see that they assumed responsibility, to devote themselves wholly to whatever task they had in hand, and, after enlarging their experiences and broadening their viewpoints in Washington, to go home and fill useful places in their own communities.

He did not favor centralization, even of brain power. I recall telling him, with some pride and hope for approval, that I had just helped to induce a young man that he knew and respected to leave an educational institution in his own community and come to the Department of Justice in Washington. Instead of approval, I kindly got a thorough scolding. He thought that this man was an important intellectual leader in his own community but that in Washington he would become another cog in a big machine. He did not like the tendency of us enthusiasts to drag all the talent of the country into Washington. What was as much needed, he said, was to raise the level of understanding of the Nation's problems in the outlying communities to provide popular, critical understanding of the work being done in Washington. As time has gone on, I have a growing appreciation of the wisdom of what he said.

It would take a much more gifted tongue than mine to convey to the young men and women of Israel who may stand before this portrait any real understanding of all that was felt and carried away by the American young men and women who were privileged to stand in his living presence. Doubtless some caught what others did not. But what I, much younger and with limited

acquaintance, caught was the source of life-long inspiration.

Brandeis was an example of the dedicated man, the man who has found in life some greater and than service of self to which he can be devoted with all his heart, all his soul and all his might. No man taking religious vows ever consecrated himself more unreservedly than he to his judicial office. To accept a place on the bench he gave up a law practice which was yielding him a fortune. To give himself earnestly, seriously and wholly to his office he forsook the pleasures of society and the worldly life. To protect his standing as a neutral, uncommitted and dispassionate judge he abstained from expressing himself on many subjects on which he felt deeply. His precepts and practice for the judicial office were austere and self-denying, in keeping with the precepts of his fathers.

Justice Brandeis' example should serve as a pillar of cloud by day and of fire by night, to be followed by all who strive for a more just world and believe that it can be brought about only by a rule of law. It rejects the cynicism which teaches that really there is no law, only a manipulation of words that are the whim of the judge and his opinion, symbols to rationalize his predilections. Of course, we know human judgment is fallible and the subconscious and even conscious preconceptions and rationalizations do sometimes play a part. But we also know that the place and purpose of law, as an intellectual discipline and a body of guiding authority is to confine the eccentricities of the judge to their minimum and to substitute so far as is humanly possible the impersonal standards of law. To hold that we cannot fully achieve this ideal is idealistic, to say that we should not strive for it is the counsel of base despair which denies all the better possibilities of man's nature. As Dr. Freund has so well demonstrated, Brandeis submitted himself to what he found to be the law so completely that he sometimes felt obliged to reach results he disliked, to defeat litigants he would have preferred to see win, to stand by doctrines he would have wished overthrown. The cynics cannot understand this.

But every youth, wherever he lives and whatever calling he may pursue, if he has the gift of comprehension can benefit from the great example of Justice Brandeis's life - that of complete dedication to the task that comes one's way to do. He consecrated himself with religious fervor to his work as a Justice of the Supreme Court, to the exclusion of every conflicting interest, ambition or activity. As a craftsman of the law he was intolerant of nothing except a second-rate piece of work.

His enmity was reserved for the shoddy and the false, the loose and intemperate. Surely if any man of our age can bring inspiration to those who dwell in the land of the phophets of old, it is Mr. Justice Brandeis.