

The American Bar Center:

A Testimony to Our Faith in the Rule of Law

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■ In his address at the laying of the cornerstone of the new American Bar Center on November 2, Mr. Justice Jackson compared the Western ideal of the rule of law with the barbarian's reliance upon force, recently revived in the modern totalitarian states. The latter part of his address took the form of a legal creed that may well survive the building whose erection it marked.

■ Cornerstones are commonplace unless they gain distinction from the vision and faith of those who lay them. Our vision today is of an American Bar Center which will focus the influence and pilot the activities of the largest association of lawyers in the world. This influence literally saturates American intellectual life. Generally, in each community its members are among the most respected and articulate leaders in every field of thought and action.

The special competence and responsibility of the Bar is in the administration of justice under law, because the private law office is the very cornerstone of that system. Only through it can the citizen learn the increasingly complicated rules which bear upon his peculiar rights or obtain effective access to any except minor courts. To these offices each day come countless men and women in grief or greed, in anger or distress. While the Bar is not free from that low cunning which gives it the reputation of promoting strife for its own profit, as a whole it carries to litigation few of the cases it is offered,

and our law offices settle many times the number of controversies that are settled by the courts.

But there are occasions when the lawyer will be false to his client and his profession if he is not ready to risk his own standing on a hard and perhaps unpromising contest. Rights, whether given by constitution, statute or common law, are but scraps of paper unless a lawyer will go into the courtroom and there give concrete effect to the abstract word. Von Jhering goes so far as to say, "All the law in the world has been obtained by strife." And he adds that "Every legal right—the legal rights of a whole nation as well as those of individuals—supposes a continual readiness to assert and defend it." Thus the Bar has a considerable part in lawmaking, and the prestige and authority of law as a social force at any time is very much what the lawyers make it.

Today it weighs heavily upon the hearts of men who love their profession that many conditions conspire to frustrate achievement of an effective rule of law. The events which

have made the deepest impression upon the thought of the first half of our twentieth century are two world wars which distorted or extinguished more lives through scientific slaughter of combatants and calculated killing and torture of civilian populations than any wars of history. Our era has seen probably as many as six million men, women and children put to death for no offense but having been born of a different race. It has reintroduced forced labor, on a scale never before witnessed, as a device of dictatorship. It made the concentration camp, whose scientific cruelty puts the ancient torture chamber to shame, one of the most populous institutions of our time. These evils in a large part of the world are still carried on in the second half of our century.

Paradoxical as it may seem, in this age of general education our nation is plagued with unprecedented juvenile delinquency, gangsterism and shocking crimes followed only by long-delayed punishment or by none. The administration of our criminal law, from one cause or another, is a humiliation and a discredit to our profession and our country. And even civil justice is still delayed or denied, and often beyond the reach of deserving men and women. We cannot fairly disagree that specific laws in many fields are inadequate or obsolete, that lawyers oftentimes

fail to live up to their professional standards and courts do not measure up to their responsibilities. The lay public is quite justified in viewing these conditions as a challenge to the leadership of the Bar.

But what seems to me more ominous is the tendency to skepticism as to whether a struggle for improvement in the law is worth while, the doubt that reliance can be placed upon any law for the control of force or the determination of conflicts. Indeed, there is a cult which thinks meanly of our calling and tutors youth that "realistically" there is no law except the will of those in authority, that judgments of the courts express nothing deeper than the personal preference of the judge, and his opinions merely manipulate words and symbols to rationalize or dissemble his predilections. Our people, appalled by the magnitude and stubbornness of the manifestations of lawlessness, tend to sink into a suicidal fatalism that accepts violence, crime, injustice and misgovernment as part of the natural and changeless order of things.

The most revealing symptom of a declining faith in reason and legitimacy as power in the world is evidenced by the zeal with which people everywhere are turning their minds to accumulating instruments of physical power. The titanic struggle for military superiority now being waged between nations is on the assumption that material, not moral, force will determine their destinies. No nation is more forceminded today than our own. The people are burdened and unhappy under it, but they do not know how to withdraw because the stakes seem to be so high that the dreadful game must be played on to fortune or ruin. And within each nation the internal struggle for power between classes, creeds, races and ideologies tends to take on the same uncompromising character.

Faith in the Law Is Our Last Best Hope

The question we face today is whether the profession which we envision

as centering here will have any saving faith to offer to an anxious and bewildered people. I think it has. A matter-of-fact and practical profession has courage and idealism to assert its belief in law and in the rule of law as the last best hope for an orderly and tranquil nation and for a peaceful world.

When we speak thus of law, we are not concerned with the merits or defects of any particular statutes, regulations, decisions or procedures. We are speaking of a reasoned and intelligible system of thought about the adjustment of life's relationships between man and his neighbor growing out of his family, his state, his land, his personalty, his contracts, his injuries. The general ideas of law that lie back of all detailed laws comprise a system of legal philosophy older and more profound than legislation, on which we base an ever growing body of legal learning which approaches a science of civilized life. Foundations for this law were laid long ago by men of our calling who waged their contests in the Roman Forum or in Westminster Hall.

This Western law rejects the teachings of fatalism and presupposes that normal men have free wills and, since they may choose, that they may be held responsible for the results of their choice. It always has been fundamentally irreconcilable with any theory of determinism, economic or otherwise. The concepts of free will and responsibility are the premises on which we have built our entire doctrine of duties and liabilities, of law and its sanctions.

The ground for our confidence in the rule of law is its history through fifteen centuries since Justinian's great series of compilations which preserved Roman law for posterity. While long dormant, its influence since the eleventh century in moulding intellectual, social and political life on this planet would be hard to overestimate. Despite endless modification of component rules and doctrines, it has retained its distinctly Roman character and been the groundwork of contemporary civil law. It furnished the main principles

for Napoleon's Civil Code, a "combination of fruitful innovation and ancient usage" which became the most widely copied legal work since Justinian. Thus Rome furnished a fundamental philosophy for the law today being administered in France and Holland and their possessions, and in Germany, Italy, Scotland, Switzerland, Quebec, South Africa, all of Latin America and our own Louisiana.

The common law, I need not remind you, had a later origin. Nurtured by our parent profession in England, it spread with the mother tongue to the United States, British Canada, Australia, India and New Zealand. Little aided by legislation, it flourished as a consensus of experienced judicial opinion and made its way because of its reasonableness and workability in settling the ever-present conflicts in society.

At times, the integrity of both systems has been threatened by the extravagance of revolution and by the distortions of despotism. But it is reassuring that each not only survived but actually continued to shape the underlying structure of society during the very regimes which threatened it. The common law, although yielding on important matters, as a system continued to rule England during Stuart absolutism, a Cromwellian Protectorate, a Restoration, and a limited monarchy. Carried to this country, it flourished during a Colonial period, a Revolution, a Confederation, a chaos of separate states, and a Union. Civil law has undergone even greater vicissitudes. It served a Louis XIV, endured the French Revolution, emerged as a dominant influence in Napoleonic codification, and adapted itself to both Teutonic and Latin tradition. Such history is convincing that our two great Western legal systems do protect ultimate values which meet the natural needs of society, that they answer some deeper need than expediency and utility, and by inherent worth can hold society together by ruling the hearts and minds of men.

Law, in this sense, must not be confused with the activities and interests which it permeates. Law is not government nor is it politics, though it is closely related to political science and receives particular "positive" rules from legislation. Our law is not religion, although many of its finest precepts are drawn from religious teachings. Law is not economics, though it is deeply involved with economic problems; nor is it sociology, though its chief concern is with the welfare, health and well-being of society.

When we consider the body of substantive principles we call law in this separate sense, what stands out is not differences but similarities between the systems. We must except public law, which is more influenced by the regime of the hour, and procedure, on which any two lawyers from the same school are certain to disagree. But basic ideas of just dealing and civilized living are so strikingly alike that we may foresee a mutual understanding and co-operation between the professions of the Western world greater than has existed in the past. And if a peaceful and stable international order ever is reached, it is not rash to predict that it will result from acceptance by the professions of all nations of an international rule of law as a curb on lawless power in control of great states.

Power Always Resists the Restraints of Law

It is the nature of power always to resist and evade restraints by law, just as it is the essential nature of law, as we know it, always to curb power. Our Bill of Rights signifies victory of law over power. Perhaps the decisive difference between Communist legal philosophy and that of the West is that our law puts rational restraints upon the use of coercive power by those in authority, while, as Vyshinsky points out, Soviet law is only "expressing the will of the dominant class", to be enforced upon all by the "compulsive force of the state". Thus their law, instead of controlling the prevailing authority,

is merely another implement—mainly, we may believe, a propaganda implement in the hands of the authorities.

The conception of law as a brake on power is one of the chief contributions to civilization made by our profession, which has exerted more than its proportionate influence in constitutional conventions, legislative bodies and executive departments, as well as in courts. But it is largely due to these lawyers that all three branches of our government have been conducted on the same assumption that they exercise power under, not above, the law. Thus, these lawyers have contributed mightily to a cohesion and moderation in our federation without which it is doubtful if our system of dispersion of powers would prove workable.

May we not today usefully summarize our creed? It must, of course, be a statement of ideals which, like all ideals, can be approached only slowly and never reached, yet are nearly enough attainable to enlist and inspire a profession of practical and sophisticated men of the world.

We believe in law as an intellectual discipline capable of directing the thought and action of law-trained men and, through their leadership, of guiding men and masses away from violence, vengeance and force and toward submission of all grievances to settlement by fair legal procedures. We believe in it as an authority to which the just judge, so far as humanly possible, will yield his personal prepossessions, passions and interests.

We believe in law as a growing and progressive science of civilized life, not as a closed doctrine like the law of the Medes and Persians. Our profession is duty-bound to supply bold and imaginative leadership to bring and keep justice within the reach of persons in every condition of life, to devise processes better to secure men against false accusation and society against crime and violence, and to preserve not merely the forms of constitutional government but the spirit of liberty under law as embodied in our Constitution.

We believe that the only permissible use of coercive force is under the law. No device of compulsion by public authority or private advantage is tolerable unless authorized by the law of the land and executed by procedures that conform to strict concepts of due process of law.

We believe in a strong and independent judiciary charged with adjusting and applying law to conditions of our time, with balancing the values of continuity against those of improvement, certainty against adaptability, liberty against authority. By independence of the judge we mean more than freedom from subservience to other branches of government; we mean the largest freedom humanly attainable from his own partisanship, class-interest, political bias or group pressures. We maintain our right respectfully to criticize what we may think errors of honest judgment by our courts and judges, but we can show no leniency toward judicial partisanship, faithlessness, carelessness or irresponsibility.

We believe in an independent Bar, free not only from government control, but intellectually independent of client control. In the client-and-attorney relation the client is not a master, the lawyer is not a mere hired hand—he is an officer of the court, with a duty of independent judgment in the performance of his professional service and under a duty to serve all sorts and conditions of men.

We believe it a duty to champion all fundamental rights under the law, but we recognize a special trust and competence to safeguard every man's right to fair trial, on which every other right is dependent. We cannot approve any use of official powers or position to prejudice, injure or condemn a person in liberty, property or good name which does not inform him of the source and substance of the charge and give a timely and open-minded hearing as to its truth, safeguards without which no judgment can have a sound foundation. We cannot condone any use of publicity to stir either hatred or sympathy for those on trial, or to

arouse public opinion upon the basis of rumor or statements not verified by oath and tested by cross-examination.

We believe respect and understanding are due systems of law other than our own, however different. We recognize them as the efforts of dedicated men under other conditions and influences to reach justice as a goal. We welcome opportunity for conference, comparison of experience and doctrine, and the fullest intercourse and fraternity with our professional brethren in other lands. We approach them and their work in a spirit of humility and awareness of our own failures and short-

comings and not as crusaders for uniformity or standardization in disregard of the differing traditions, cultures and conditions of peoples and nations.

We believe that the great purpose of achieving a peaceful world is best approached through a strengthening and extending of international law and international legal institutions along the lines of their development in the West. We believe the legal processes of adjudication and arbitration offer an honorable and effective alternative to war as a means for correction of just international grievances.

It is in support of these ideals that

this American Bar Center will marshal the united wisdom and influence of our numerous and powerful profession.

A story that I have often told seems especially apt today. A visitor at a cathedral under construction questioned three workmen as to what they thought they were doing. The first muttered, "I am making a living." The second gave the uninspired reply, "I am laying this stone." The third one looked up toward the sky and his face was lighted up by his faith as he said, "I am building a cathedral."

What are we doing today? We are building a cathedral to testify to our faith in the rule of law.