

English-speaking world did take him away forever from a judicial career in the State of New York. The Bench of the State of New York has possibly lost a great judge, but the legal profession, the Bench and Bar of New York, still claim Robert Jackson as its own son.

And so today I will not introduce to you Mr. Justice Jackson, but I will call upon our own Bob Jackson. (Rising applause.)

Justice Robert H. Jackson:

Judge Lehman and fellow-members of the Judicial Section of the New York State Bar Association: The reminiscences which Judge Lehman has given lead me to say that I struck out of my speech today what Judge Cardozo told me once about the difference between the New York Court of Appeals and the United States Supreme Court. I struck it out because I was fearful that in the present discussions about the court, it might be misunderstood and that would not be just to the man whose permission I cannot get to quote him. But I know that he loved the New York Court of Appeals because he thought it was a great common law court. He did not care particularly about statutory construction as a lifetime job. He urged me very strongly to interest myself in the courts of New York. Of course, there was a time in my life when I was something of a threat to every vacancy. And it was about at that time that he urged me strongly that the great court for a lawyer was the common law court.

I promptly accepted the invitation to speak to the Judicial Section for the pleasure of meeting with fellow judges who in the main also are old friends. Not until I attempted to prepare a speech did I appreciate, as always I do when it is too late, the dilemma that faces a judge when he faces an audience. It is not fair to such a group nor to himself to make an insignificant speech. And a judge can hardly attempt a significant one without being unfair to his Bench. But perhaps in these days when we are satiated with the sensational a few commonplace observations will be acceptable.

Shortly before going upon the Bench I participated as Attorney General of the United States in the observance by the United States Supreme Court of its 150th anniversary. I indulged in this bit of prophecy: "However well the court and its

Bar may discharge their tasks, the destiny of this court is inseparably linked to the fate of our democratic system of representative government. Judicial functions, as we have evolved them, can be discharged only in that kind of society which is willing to submit its conflicts to adjudication and to subordinate power to reason. The future of the court may depend more upon the competence of the executive and the legislative branches of government to solve their problems adequately and in time than upon the merit which is its own. There seems no likelihood that the tensions and conflicts in our society are to decrease. * * * I see no reason to doubt that the problems of the next half century will test the wisdom and courage of this court as severely as any half century of its existence."

Over the next half century I cannot foresee, of course, the kind of world that will surround us at our work. We know that courts do not function well in an atmosphere of pressure and tumult and passion. Some people are voicing fears, or hopes, that the post-war world will move sharply to the right; and others think, to the left. There are indications that each prediction may be partly fulfilled. It seems to me likely that those who have all the time been looking wistfully toward the right are going to move to the right, and perhaps do so recklessly and ruthlessly; and those who have been looking hopefully to the left will move further to the left, and possibly extremely and lawlessly.

Such tendencies create wider separations between hopes and aspirations and interests of our people. They precipitate an increasing number of class or group conflicts and these oppositions become more difficult to reconcile in legislative halls and in courts. They foretell that the democratic method of government, which is essentially a method of compromise, of government in which extremes of opinion are moderated in action because government is controlled by the average opinion of people, will be subjected to greater strains and tensions.

Lord Balfour described what to me is the condition in which our form of government most successfully functions, if indeed it can function in any other. He said of England: "Our alternating cabinets, though belonging to different parties, have never differed about the foundations of society. And it is evident that our whole political machinery presupposes a people

so fundamentally at one that they can afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict."

Laski, whose political philosophy is quite different, nevertheless quotes Balfour with approval and interprets, "There was, that is, a kindred outlook upon large issues; and since fighting was confined to matters of comparative detail, men were prepared to let reason have its sway in the realm of conflict."

I wonder if this holds true today. If I read the signs of the times aright, we are coming more and more to differ about the fundamental structure of society. Of course, the world war is caused by the struggle for power between irreconcilable philosophies of political and social organization. Can we in America say with assurance that our own people, in numbers that begin to be significant, do not entertain much the same divergent and almost uncompromisable outlooks upon life?

The conventional and always present division between the "right" and the "left" is becoming an increasingly wide one, whether expressed in terms of class interests or in terms of philosophies. There also is evident a further subdivision of groups, the significance of which I do not know. Conservative thought seems to be split between those who merely stand pat and those who would aggressively bulwark conservatism by fascist or totalitarian measures. On the other hand, the liberal movement suffers paralysis. Many liberals have drifted into collectivist or communist philosophies and affiliations, while others react by leaning toward indifference or conservatism. It is a commonplace observation that religions are becoming more aggressive and sharp in their oppositions, that both of our political parties are badly divided, and that racial animosities and competitions are assuming a more ominous and sullen aspect. Wounds of this kind in our society are hard to heal. Even measures to promote tolerance tend to drift into attacks on someone else for intolerance. The effect of arousing peoples' concern about a problem often is to make them increasingly certain of propositions as to which they formerly had been doubtful and increasingly hot where they had been indifferent.

It is not surprising when group attitudes do not yield readily to persuasion or to argument. But it is more rare and more sinister to find that so many recent animosities are also imper-

vious to experience. I have talked with intelligent persons who express an unfavorable opinion in general of a race, a class, or a political or religious group. They will generally admit that every one of the group known to them personally is loyal, honorable, and safe, individually. But those, they will insist, are exceptions; and their good opinion of those they know does not change or mitigate their fear or dislike of the unknown mass of the group as a group. That is a hard attitude to cope with.

But ever more sinister is this: for the first time in my life I am aware of organized groups which primarily are interested in harming someone else rather than in benefiting themselves. This policy of organizing to do something to some other group has been the source of tensions and conflicts in Europe which have produced such bitter fruit.

"Well," some may say, "what are these matters to the judge?" They are important to the politician, to the peace officer, to the legislator; but the judge, if he attends to his business, will know them not." I wish it could be so. But apart from the fact that judges cannot escape breathing the general atmosphere nor wholly shed the impressions made on them by their past environments these tendencies complicate the task even of the most conscientious and detached judge. These social problems walk right into the courtroom and address the court, sometimes openly, sometimes in veiled terms, and sometimes such issues are properly and inescapably involved in legal controversies. I do not need to remind you of the unprecedented number of decisions in the last few years that have their roots in religious controversy and strife. I do not need to remind you of the unprecedented number of cases which come up to us from the struggle between labor and capital, between employer and employee. Nor need I mention the multiplication of cases that originate in strained racial relations. The group interests in these controversies endow such disagreements with a new stubbornness. Many of them are presented with admirable candor and restraint; but in the papers filed with us, in a small but what seems to be an increasing number of cases, racial, political, or religious attacks are made which in another day would have been considered unprofessional and would not have been tolerated. The problem now is whether to pass such

unprofessional conduct unrebuked or to take action which may give it greater notoriety and importance.

It has never seemed to me that it is the function of the judiciary, notwithstanding the immense grant of power to it under our system, to try to determine what the philosophy or policy of our organized society shall be. That must be decided at the polls. In the nature of things great movements and currents of economic or political life will not, and should not, submit to judicial control. We must be careful not to obstruct or discredit the legitimate and constitutional exercise of the legislative and executive power, if for no better reason, because our judicial power is no substitute for that of the legislature or executive in dealing with matters that now threaten us. On the other hand, since Lord Chief Justice Coke bluntly told King James that while the King was under no man, he was under God and the law, we of common-law tradition have believed that not only government itself but every other group must function within the law, that transgression should be impartially punished and aggressions outside the law restrained. If these duties pose problems of difficulty in normal times, they throw up almost insoluble ones in times like these. We can only do our best from day to day, humble in the certainty that time will prove us in many things to have been wrong.

If we are to perform our functions acceptably in the days ahead, it calls for uncomfortably rigid devotion to the principle that a judge may never trifle with his office. I know too well from experience that human nature does not shed its frailty when one goes upon the Bench. But our nobler natures may draw strength from the great tradition of our courts, from the pride that our profession takes in us when we do workmanlike jobs, from the eagerness with which young men look to our work for instruction in the principles of social organization, from the confidence our fellow men show in trusting to us such large powers and discretions.

I have always found a measure of professional pride and inspiration in the example of Lord Alverstone, which I have before called to the attention of the New York State Bar. In the Alaskan Boundary dispute between the United States and Great Britain, an arbitration commission was set up, consisting of an equal number of nationals of each. Of all the forces that

might seek to distort judicial judgment I should think the interests of one's country the most respectable. But Lord Alverstone, named to the Commission by Great Britain, joined in an award against his own country. The storm of criticism was not unexpected, nor was it mild. Alverstone is said to have answered simply—and with dramatic simplicity—"If when any kind of arbitration is set up they don't want a decision based on the law and the evidence, they must not put a British judge on the Commission."

Many of you are judges of much longer experience than I, and many already have won the regard of the Bar for an attitude as uncompromisingly judicial as was Lord Alverston's. Others of us have yet to prove ourselves. But I can think of nothing more important to the prestige of the judicial function in the troubled times ahead than that it hold to the ideal that if they don't want a decision on the law and the evidence, they must not get into an American court.

(Rising applause.)

Chief Judge Irving Lehman:

Gentlemen, that concludes our activities for this year. I hope that when we meet next year we will have achieved victory in the war and will have also won the peace.

(Standing applause.)

Adjourned at 3:15 P. M.