

AN ADDRESS

Delivered at the Ninetieth Commencement of the
Albany Law School

BY

ROBERT H. JACKSON

Attorney-General of the United States

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Graduates of Albany Law School:

It was a generation ago when the Albany Law School charitably honored me with a diploma of graduation. The school was then housed in an ancient State Street building, reputed once to have been consecrated as a church. Its façade suggested a piety that was not fully sustained by the student body. It is a matter of pride to us, who will always remain in debt to the Albany Law School, that its intervening years have been marked by steadily improving facilities and advancing standards.

The greatest difference between you young men on the threshold of the legal profession tonight and those of us who crossed it a generation ago, is, I think, to be found in our respective attitudes toward international affairs. You, I am sure, have been preoccupied, even to the detriment of academic work, with the ominous march of foreign events and their implications in terms of the future of your country and of your own lives. A bigoted and revolutionary national socialism is waging a war of aggression, the tensions and pressures of which may considerably modify the kind of law you will practice, and the kind of atmosphere in which you will spend your lives.

But in 1912 we graduates thought we had a very different kind of world by the tail. There had been long peace between the great powers, and quick intervention to end wars between lesser powers. President Theodore Roosevelt's success in bringing about the Peace of Portsmouth between Russia and Japan, the Algeciras settlement of the Moroccan controversy between Germany and France, together with the Hague Conferences, had confirmed us in the belief that, except for short and local wars, differences between the great powers would be composed by negotiation or determined by arbitration. We never doubted that law, the philosophy to which we were dedicating our life work, had really subdued violence. But this world that we dreamed we were living in gave us little intellectual preparation for the kind of world we soon waked up in.

Our disillusionment as to the supremacy of law over the physical forces of the world came in August, 1914, came most bluntly and unmistakably when the Imperial German Chancellor, Von Bethmann-Hollweg, addressed these words to the Reichstag: "Gentlemen, we are now in a state of necessity, and necessity knows no law. Our troops have occupied Luxembourg; perhaps they have already entered Belgian territory. Gentlemen, this violates the rules of international law." But he — unlike his present day successors — paid lip service to legal principles, for he continued: "The wrong — I speak openly — the wrong that we now do, we will try to make good again, as soon as our military ends have been reached."

I suppose Von Bethmann-Hollweg could plead that his promise of reparations never matured — for the condition precedent was never fulfilled — their military ends were

never reached. Reparations which would indemnify mankind for this cynical destruction of slowly advancing foundations for a peaceful international society could not be paid — or even estimated.

You know the series of world catastrophies, dating from that fatal day, that afflicted my generation. A world war, an illusory peace, a debauch of post-war inflation, a hangover of depression, a resolve to reform, and back again to another and bigger world war. Our school days were not clouded with any forecast of this. You, on the contrary, have no illusions about the state of your world and the grim aspect of its future. Moreover, you know what we did not — that you cannot isolate America from the impact of blows struck against all civilization.

We in America have struggled toward a culture and way of life that borrowed from all cultures but was distinct from each. We have fostered a social order relatively free from barriers to opportunity and class distinctions. We have fostered a respect for the dignity of the individual, have associated certain inalienable rights with the human personality, and in spite of many deficiencies have steadily marched toward a greater measure of economic security and social justice.

Our kind of life and destiny can only be fulfilled in a world where peace is the normal condition, where we are not kept in perpetual fear of war, where we are not surrounded by powers who seek to force upon the world an order that would throw us back before Magna Charta. The rise and menace of Germany, both in the World War days and today, is the great destroyer of our insularity. If I were an "isolationist" I would see in Germany the

great enemy of all that isolation at its best could promise. Pressure from her aggressiveness has already carried us into an expanding nationalism and her success would end isolation forever and force us to play the game of power politics for dear life. It seems to me that America's hope of leading the kind of life we have known in the past, pursuing our own distinctive democratic ideals, is inseparably dependent upon the defeat of Germany in her Battle of the Atlantic.

This war will decide whether our next door neighbor on the Atlantic side will continue to be England or will, for some decades at least, be Germany. Those who are trying to persuade the American people that they need have no concern over such a change, point out that we have had grave and repeated disagreements with England.

However, it is the very intensity and number of the differences that we have had with England which gives such point to the fact that for over a century we have been able to settle the gravest differences by negotiation or by arbitration. England has not always been a compliant neighbor, but she has been a civilized neighbor. We have known differences and conflict, but we two English-speaking people do not lightly pitch our sons into battle or lightly imperil civilization. We have had an abiding confidence that this custom of peaceful settlement of the most vexing differences has ripened into the common law of our relationship, that is why we have dared to live upon shores almost without coast defense and along Great Lakes and rivers without an armed ship and to have a boundary line without a fort.

After the World War, the German navy was sunk at Scapa Flow and Great Britain was the surviving rival of

our own Atlantic sea power. With Germany out of the picture, we English-speaking people feared each other so little that we both proceeded to reduce our armaments, somewhat by agreement and even more by neglect. If the British navy shall sink and we face surviving Nazi sea power, does anyone think we would dare scrap or neglect any part of our armament? The answer to that question sums up our estimate of these two belligerents.

It is not necessary to exaggerate the war-like tendencies of Germany to demonstrate that she does not fit into any pattern of arbitration of differences or peaceful settlement of conflicts. The values that the Nazi prizes are not our values. We prize too much for them the lives of our young men. We do shrink from war. Hitler does not. We do have confidence in legal processes. Hitler does not. Do we dare rely on Germany to shrink from war if tension comes? Has there been a moment in her modern history when she was not governed by the old frontier doctrine that if a dispute seems likely she should get the advantage of being the first to draw? Dare we rely on her pledged word? The fate of those impeccably neutral countries which did, answers that question. If Germany moves into our neighborhood it would multiply the probability of conflict and at the same time sweep away our tradition of peaceful adjustments of them. We will have to live by day and by night with our finger on the trigger.

Not only would German success make force instead of principle the law of our external relations, but it would require us to become a militarized nation — militarized mentally; militarized economically, and militarized legally. The race for armament that would follow defeat of England would have only the sky as a limit. The most modest

defense plans include a hemisphere and most of a couple of oceans. Such a development would greatly affect our culture and way of life and our legal institutions. But our alternative to complete preparedness would be to live meanly as well as precariously — like a bug in a bottle.

Much of our success with democratic government is due to the fact that we could rely on the peaceful intention of the powers nearest us, and that they insulated us from those we could not so trust. Because of that we could cultivate the luxury of the democratic process, its long debates, the somewhat capricious operation of our checks and balances, the inefficiency of our separation of powers. All these helped insure internal liberties but they do not allow for the quick decisions that would be required of a nation surrounded by hair trigger war makers. We have dared to foster freedoms, freedom of speech, of press, of assembly, because there was no nation that was able to press home any advantage because of our domestic dissension.

When we speak of danger to our freedom from Nazi success, I for one do not mean that we would or could become slaves of Nazi masters or subject to German control. The great danger is that we will become slaves to our own necessities — to armaments, to militarization. The economic measures necessary to deal with her would be far-reaching. Mounting burdens would depress living standards and breed unrest. Unrest challenges suppression. Thus, freedom may easily be ground between the upper millstone of foreign menace and the nether millstone of defensive militarization.

None of the special departments of learning is so certain to be affected by the mere existence of the war as is jurisprudence. We cannot hope that the ever progressing evolution of our substantive rules and procedures can remain wholly aloof when our whole society is stirred by a great purpose and effort. The history of our law shows that some of the most decisive legal changes have been made under the urgency of war effort.

And certainly no one of the arts or sciences stands to lose so much from the onrush of Nazi power. The laws of physical science are not one thing in Berlin and another in London. Technologies and mechanics, physics and chemistry may be neutral. But the law of human relations is something very different in Berlin and in London. The Nazi holds the individual in different relation to the state than do we — a degraded relation in which he has neither property rights nor the dignity of an inviolable personality, such as are guaranteed by our Bill of Rights. We cannot view inroads made by such a doctrine upon peoples who have cultivated concepts of legal relations similar to our own with composure.

As a consequence of the war we are pretty certain to witness the greatest reshuffle of power cards since the fall of Napoleon. Any workable peace will have to take account of new problems of security of small nations which regain their freedoms and of new protections for minorities which may not. We cannot again lapse into the stupor of a false "normalcy" and see lost in peace whatever may be gained in war.

The severe shaking up of world war also unsettles the status quo within nations including our own. New inter-

ests appear, new techniques evolve, new prestige is won. It is all very disturbing to your elders who have woven themselves into the pattern of the existing order. But it is not likely to be so vexing to alert young men and women who have yet to win their place in our order.

The fact is that the reconstruction of a peacetime society, both within our country and the world, will be the test and the opportunity of the legal profession. The very considerable prestige of the lawyer in this country is not because he knows how to collect bills and notes — sometimes. The prestige of the bar in this hemisphere stems from the work of great lawyers in the field of constructive statesmanship. Beginning with the early struggle for liberty, continuing in the Constitutional Convention and the contest for ratification, and exemplified in a century and a half of interpretation and application to problems of increasing range and complexity, the legal profession has supplied much of the leadership that has made our American system what it is.

In no single field is this more evident than in the field of international relations. I do not know by what technique the world will try to re-establish working relationships between nations. But it is difficult to conceive of any escape from the rule of force, or any method adjusting international grievances that would not basically be a mere extension and adaptation of techniques familiar to lawyers. It may proceed by the contractual method, and negotiate treaties and agreements that re-establish a basis of peace. Or it may follow more legislative procedures through setting up some representative body to work out, by political methods, a reconciliation of interests. Or it may proceed through some adjudicative method to take up

points of controversy—some perhaps never before thought to be justifiable—and arbitrate them according to legal principles. Or it may invoke a combination of some or all of these. But however the world tackles its great unfinished task of world organization to substitute reason for force, it will take up some device in which competent men of our profession will have had experience, learning and skill.

The efficacy of measures which may be taken to establish legal processes in place of war will depend largely upon the imagination, courage and wisdom of men learned in the law. They must yield enough of their preoccupation with private affairs to give the best technical competence in our profession to the tasks of world organization and the best of advocacy towards its obtaining acceptance of its principle.

In spite of the apparent lapse of the world into lawlessness, the task may not be so impossible. A great writer on international law once observed "Times in which international law has been seriously disregarded have been followed by periods in which the European conscience has done penance by putting itself under straighter obligations than those which it before acknowledged."

If this test proves true we are due for a great renaissance of international law and organization for peace. In her hour of penance, if one comes, Europe may well ponder upon the product of our own American legal culture, as setting forth the most hopeful example, even if not a perfectly adaptable one, for world organization. I cannot escape the conviction that in making our own federated democracy function well we are providing a body of ex-

perience upon which any plan for permanent world peace must draw heavily. A hasty view of our accomplishments in solving for our states problems of international organization is enough to show its significance.

Like the European states, our several states needed a central authority strong enough to repel a common enemy and to exercise functions that if left to the states might be the cause of discrimination, discord and strife. This central authority was created by the device of federation.

Like any European nation the several states wanted to remain sovereign over their local concerns. This was achieved by delegating only limited powers, in a written instrument, to be interpreted by a Supreme Court.

As in any international society, there was need for protection of rights of individuals and minorities, against both the central and the local governments. This, too, we have achieved by the Bill of Rights and later amendments, and through their enforcement by the Supreme Court.

As any successful international organization must do, the states recognized that their organization could not be a mere freezing of a status quo, it must yield to events, take account of changing times and within the constitutional limitation respond to popular control. For this purpose, periodic election of representatives was devised, thus providing a peaceful means to overthrow an administration of government without overthrowing government itself. It insured a continuity of institutions with the opportunity freely to make orderly revolutions in personnel.

Of course our constitutional system is no ready-made garment for peoples of different stature and station. There

is a culture and habit of the constitution among our people quite as vital to stability and freedom as the written law of the Constitution. We lawyers must maintain not alone the integrity of the system but the integrity of the public opinion and understanding which supports the constitutional system.

But none of our experience in achieving freedom under law can be translated into international understandings if the predominant powers do not share with us some similarity of outlook as to the foundation of society. The Nazis recognize and frankly proclaim that they have no viewpoint in common with us. They do not, nor do their allies — Japan, Russia, Italy — and part of Islam — share with us today any basic concept of the legal position of property, of labor, of the individual citizen, the family, the state, or the family of nations. Their revolt against Christian civilization is total. Their cultural separation from us is complete. A concert among nations to keep peace will be possible only if those countries with some similarity of aspiration and of method, and some similar concept of the place of law in society, remain alive.

We shall remain alive. Our way of life will conquer and flourish. Of that I am convinced. The next few years may look grim and drab to the men of my generation. But you must have the eyes to see the world that lies beyond these difficult times, a world in which nothing — absolutely nothing — will be impossible of achievement. You must look twenty and thirty years ahead to the time when we shall have completed our mastery of the technics of our machine civilization. You must see on the horizon a world in which there will flourish that science and art which is

peculiarly American, the science and art of civilized men to live peaceably and comfortably together in a society of law and dignity.

May you never falter in the faith that a better world order can be established and that the philosophy of the law can lead the way to it.