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## THE JUSTICE OF OUR CAUSE\*

GEORGE RICHARDSON, JR.\*\*

THE constitution imposes upon your president a mandate to address the next annual meeting following his election upon "matters of special interest to the people of this state, arising upon legislation enacted and decisions rendered, or other kindred topics of a professional character."<sup>1</sup> Within the year the one decision rendered of transcending importance is that we shall dedicate our all, "without stint or limit" to the annihilation of those aggressive forces now rampant in the world and all too obviously bent upon the destruction of our very existence. So compelling are the implications of that decision that it would be idle even to attempt focussing thought upon any other subject. And indeed until that task is done no other subject is worthy of our attention.

The other day Sir Walter Monckton, of the English bar, addressing at Detroit a joint session of the Canadian and American Bar Associations, said—borrowing his metaphor, I believe, from one of the sonorous sentences of our own great Webster—"Justice is the tendon which holds together the bone and sinew of the Allied effort." We, my brethren, who are laborers in the temple of justice, can appreciate the profundity of that observation and the evangelical vitality of the concept. It presupposes that justice underlies and actuates the Allied effort and defines its objective. It silhouettes the injustice against which we contend. And it supplies a stated aim at once idealistic and so utterly practical that its pursuit has kindled the courage and sustained the fortitude of all good men since long before the ancient Prophet of Tekoa identified justice with righteousness.

There have been innumerable definitions of the term. Aristotle said "Justice is to give every man his own." And Justinian wrote into the Institutes<sup>2</sup> that justice is "The constant desire and effort to render every man his due". To Vattel is ascribed the statement that: "Justice is the basis of a state; a sure bond of all commerce. Human society, far from being an intercourse of assistance and

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\* Address of the President of the West Virginia Bar Association, delivered at the fifty-eighth meeting of that Association at White Sulphur Springs, West Virginia, on October 8, 1942.

\*\* President of the West Virginia Bar Association 1941-42; member of the Bluefield bar.

<sup>1</sup> W. Va. Bar Ass'n Const. and By-Laws, § 9.

<sup>2</sup> Book 1, tit. 1.

good offices, would no longer be anything but a vast scene of robbery if there were no respect of this virtue which secures to everyone his own." The always practical Penn said: "Justice is the insurance we have on our lives and property, and obedience to the law is the premium we pay for it." The impassioned Burke said: "Justice is itself the great standing policy of civil society; and any departure from it under any circumstances lies under the suspicion of being no policy at all"; and, on another occasion: "Whenever a separation is made between liberty and justice, neither in my opinion, is safe." Alexander Hamilton, in *The Federalist*<sup>3</sup> proclaimed: "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

Voltaire observed that "The sentiment of justice is so natural and so universally acquired by all mankind, that it seems to be independent of all law, all party, all religion". And Dean Wigmore in his panoramic survey of the world's legal systems demonstrates the universality of effort to attain justice, albeit according to varying standards and sometimes by devious, not to say dubious means.

To establish justice and preserve our liberty was the primal purpose of our own Constitution as declared in its preamble. And Mr. Chief Justice Waite, speaking for the Supreme Court,<sup>4</sup> has said that, "The obligation to do justice rests upon all persons, natural or artificial", a proposition to which our own Supreme Court of Appeals has subscribed.<sup>5</sup>

It thus appears that through the ages men have esteemed justice a cardinal virtue, have set its attainment as an ideal and have striven for its enjoyment in the practical fields of politics and commerce. But while all men subscribe to the ideal of justice they have differed terribly in its expression as applied to given conditions and cases. Justinian would give to every man his due, but if he were not born to the privileged class of Roman citizenship or had not in some way attained to that status, then by accepted standards he was due very little.

Then came into the world the inspiring revelation or conception of man made in the image of his Creator, brother to all other men, and entitled merely in virtue of his manhood to whatever his

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<sup>3</sup> Chapter 51, page 241.

<sup>4</sup> *Louisiana v. Wood*, 102 U. S. 294, 26 L. Ed. 153 (1880).

<sup>5</sup> *Goshorn's Ex'rs v. County Court*, 42 W. Va. 735, 26 S. E. 452 (1896).

brother was due. But this principle has been slow to find practical application. Those who had power formulated codes or standards by which to determine what was just. Justice trickled down in a thin anaemic stream instead of welling up redblooded and strong in the life of the people.

But by little and little standards of justice were elevated. Came tribal meetings and trial by jury, both democratic determination to achieve justice as the people themselves felt it. Then by concerted demand assurances or charters were exacted. We call these landmarks along the anfractuous way by which the recognized desert of the common man has steadily progressed to higher levels. And it is a most interesting digression to reflect upon the economic origin of those particular documents. The vast expenditures of Richard about the Crusades made the exactions of John intolerable and in consequence came the meeting at Runnymede and the Great Charter. The profligate extravagance of the Stuarts and impoverishment of the people produced the Bill of Rights which was made a condition to the accession of William and Mary. And our own Constitution was the direct product of our national poverty plus the many obstacles placed in the way of inter-colony commerce.

The great purpose of those charters was to crystallize into institutional form in order that they might be preserved and enforced those concepts of legal justice which experience had demonstrated were essential to man's well-being. The same purpose nurtured and developed the common law, whose changing life, was so ably presented to us last year. All of these things, charters, acts of parliament and the common law fall within Mr. Woodrow Wilson's classic definition of Law: "An institutional expression of the changing life of society." And all of these things together constituted the Rights of Englishmen, which was the great heritage brought with them to these shores by the early colonists.

It was to protect precisely those rights that the War of the American Revolution was fought. The colonists did not resort to war to establish a new government. There was no element of revolt in that war as begun. It was merely protest in force against the invasion and violation of rights which had come to be recognized and established wherever Englishmen lived and the violation of which was manifest injustice. It was a struggle against excessive executive power arbitrarily exercised. During the progress of the war the idea of complete independence had its birth yonder in North

Carolina, in Virginia and in Massachusetts and thereafter colored the conduct of the struggle which of course eventuated in the establishment of a new government for a free and independent people. But the war was fought for the maintenance of justice according to recognized standards. Political independence was added as an objective only in order that justice so vindicated might be established and preserved upon this continent.

The Declaration of Independence and the Constitution proclaim that purpose. These American charters draw upon the wisdom of the ages, the hard and costly struggle of men for justice and liberty, the most enlightened philosophy of the day and—above all—the Rights of Englishmen, and provide the fullest measure of justice and liberty under law ever conceived for the government of men. Nor can it be repeated too often that the core of that concept is the right, the dignity of the individual. Today we hear much of the rights of minorities, but you will search the Constitution in vain for a definition of such. The citizen owes his all and every loyalty to the nation and by the same token its every right and resource is dedicated to the preservation of liberty and justice for the individual citizen.

Upon such a framework we have built the structure of our government. We have added enactments in multitude and decisions without number. With rare exceptions those laws and those decisions represent sincere and studied effort to improve and perfect the pattern of American justice and liberty under law. Of course there have been the widest possible and most intense differences among our people on occasion. We even came to the point of a terrible fratricidal war, but now we know there was justice and right on each side. The differences were essentially a matter of emphasis and application of mutually recognized principles to conditions none too well known or understood.

More recently and in our own day there have been enactments and decisions of vastly varying import according to the viewpoint. The shifting lines of party politics have, as always in that arena, driven individuals and groups far apart and have engendered strong antagonisms. Many utterances by influential citizens, if taken at face value, would have justified the belief that our Constitution was torn to shreds. But who is there to say that these efforts too have not been in good faith furtherance of the great design of American justice and liberty under law? Our Bill of Rights still stands inviolate, and under its protecting aegis the in-

dividual American still knows and enjoys in every-day life for himself and his family incomparably the highest measure of ordered liberty and justice — political, economic and social — ever achieved by men at any time or place. And he enjoys it not in virtue of what he has or does but, as beautifully expressed by Alice Duer Miller in *The White Cliffs*, according to

“The Englishman’s code of taking and giving  
Rights and privileges preordained,  
Based since English life began  
On the prime importance of being a man.”

These things we lawyers know so well that almost with apology have I related them. They are a part of the perspective that comes with long continued study of the laws as a system. But not so well known are they to the masses of our people who, hearing us vigorously decry what in our eyes tends to mar or debase the system, might suppose we think there is little left. And this added to not infrequent individual disappointments makes fairly rife throughout the country casual conversational reference to injustice, denial of rights, governmental abuse and even to bad government. Such reaction in members of a self-governing group is normally wholesome and good, but there is in it an ominous element at a time when a ferment of unrest disturbs the world — a definite danger when our entire system and all that it has secured for us is perilously at issue.

And our scheme of things, our system of laws, our American way are in peril. We certainly may not assume that we are immune to those ideologies which in the past two decades have swept the world. The war may hold in check such currents of thought, but does not eradicate them. Indeed in war time, and particularly if things should be going badly, there is a very especial danger on that score. And in actual conflict we are challenged on every hand by powerful forces which would destroy not only our way of life but ourselves as well.

Let me pause here to pay our respects in words of solemn sincerity to the more than one hundred and fifty West Virginia lawyers who already have answered the call to the colors and have dedicated their all to the defense and preservation of those principles and institutions which claim our first allegiance. To them: More power, and still more fortitude, and good fortune!

Now there are in the world, Napoleon said, two powers — the

sword and the spirit. And it was his observation that the spirit has always vanquished the sword. It will be so in this conflict as well. But the spirit of democracy must be aroused to meet the fanatical zeal of those converts to the new order who worship the state all powerful and despise a government which must consult the will of its people. Our country must be brought to realize fully that the justice of our cause is the spirit of justice itself — that what we struggle to maintain is the principle of justice, practical justice for the individual citizen in the ordinary affairs of life — justice perhaps not yet perfected in its application but full flowered into the nearest approach to perfection man has yet achieved — and freedom to develop and maintain that justice.

And therein is defined the field of the lawyer's work for the duration — and beyond. It is for us to realize that it's more difficult to sustain morale at home than with the soldiers in contact with the enemy; that battles — even wars — can be lost on the home front; that morale is high when men understand and are devoted to the cause they are fighting for, and then to address ourselves with increasing consecration to the great task of improving the popular understanding of the principles for which we contend and arousing a more vital devotion to our cause. Our knowledge and experience enable us to see with clear-eyed realism the grandeur and beauty of our objectives as well as the almost incomprehensible catastrophe that would follow in the wake of failure. And seeing, we have not only the privilege but the very definite duty to tell those of our countrymen whose perception is less clear and complete.

Go back to your homes, if you please, and in the name of justice whose servants we are help the people to visualize more clearly the vital issues at stake; help them to understand — not in vague generalities, but in work-a-day words, what American and English justice — essentially, one and the same — as conceived, developed and applied here and now means to the individual citizen in his ordinary affairs, and in contrast how hideous is the alternative. You will not do this by talking only with your intimates who already share your knowledge, nor even by making an occasional speech, fine though that be. You will not do it completely by devoting yourself to accomplishing a just issue of those causes which fall to your professional lot. You will not do it by remaining in the dignified retreat of your professional position — still less by

confining your activities to concerns in which you have only a professional or self interest.

The mark of nobility today is service. There is no dignity in inaction. The cause is vital and the need critical. The challenge to the bar is definite and unequivocal. Meet it affirmatively. Rededicate yourselves, your powers, your resources to the cause of justice. Get closer to the life of your community — the clubs, the churches, the lodges, the schools, the markets, the shops and the highways — and help the people to understand. Let them feel and share your own enthusiasm for the English-American system which exalts to the highest pinnacle justice for the humblest citizen. Show them, as Emerson said, that

“Not gold but only men can make  
A nation great and strong;  
Men who for truth and honor’s sake  
Stand fast and suffer long.”