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The Legal Profession in Wartime

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THE LEGAL PROFESSION IN WARTIME

ALBERT H. COLE*

I am deeply sensible of the honor proffered by the invitation to address our Association, at whose generous hands I have already received honors which I prize more highly than any others which I have ever received or may ever hope to attain.

The invitation came from your President in a letter, in which he graciously left me free to choose my subject, but suggested that something might be profitably said as to our responsibility to those members of the profession who have answered the call to arms, our duty to guard the field of our activity and to keep ever burning on the hearthstones of our jurisprudence those principles of government which we, of all others, should be able most clearly to discern.

Fully conscious of the fact that no innate talent, breadth of experience or exalted station qualifies me to offer either suggestions or advice upon such a subject, I nevertheless accept the assignment. Very humbly, and realizing that part of what I say does not accord with much of the current thought of the profession, I make bold, as one lawyer to other members of the bar, to suggest the role which, it seems to me, may be played by us in these tragic times.

We are proud of the part which lawyers have played in all of the Republic's wars. They have fought for the flag with the same courage and devotion with which they have maintained the cause of their clients. Benjamin Harrison,

* An address delivered at the Mid-winter meeting of the Association.

the first President of this Association, and perhaps the only man who was ever acclaimed the acknowledged leader of our Bar, was honorably discharged from the Army of the Great Rebellion wearing the stars of a Brigadier General.

To those members of our profession who at this hour hold the trenches of our battle lines in tropic jungles and on desert sands and tread the decks and man the battle stations on men of war in all the seven seas, we at home have a present responsibility, measured only by our duty to our country.

From perhaps no other avenue or path of civil life have so many men entered the service as have gone from the legal profession. It was estimated some time ago that more than 15,000 out of the 175,000 lawyers in the United States were then in the armed forces. For us there is no deferment. The practice of our profession is rightly regarded as not essential to the war effort, and every able-bodied lawyer of military age, whose earnings are not required for the support of his dependents, is by now in the military or naval forces. He has been there joined by many beyond the age of compulsory service and by many more who could ill be spared by those who were dependent upon them.

The young lawyers' section of this Association, admitted to our ranks by passing the rigid examinations of the Board of Law Examiners, has been transferred almost in its entirety to the armed forces of the country. They go with our best wishes for their safe return. Never in our State has there been a group of young lawyers, so well equipped by liberal and legal learning and so imbued with the highest ethics of the profession as these young men who have entered our ranks within the past twelve years. Some of them have, no doubt, before this made the supreme sacrifice. Others will give their lives as the months roll on. For others the service star in the windows of their homes and offices will remain blue until the hour of their return.

How, then, shall we keep the faith with those who die and fulfill in most abundant measure our obligation to those who will resume their places in our ranks when victory shall at last have rested on their banner?

It goes without saying that we shall take scrupulous care that we shall not profit by their going, that the sacrifice entailed by the loss of these important years, when they were destined to come into the full fruition of their power,

shall not be enhanced by any selfish act of ours, and that so far as it lies within our control they shall return to a calling which holds for them the utmost in opportunity for material reward and for distinction in their chosen field. To the question as to how best, throughout the days which lie before us, can we make that calling most worth while there is to me but one trite answer—by doing what we can to win this war.

As the past President of this Association well said in his annual address, the lawyers of America have a greater stake in this war than have men from any other profession or vocation. This war will be won or it will be lost. No compromise is possible. We are at death grips with the most powerful military nations which have ever sought to pillage and despoil. Nation after nation has fallen before their might and the lands which they have overrun are yet to be reconquered and redeemed. Apathy on the part of the people and error on the part of those entrusted with the direction of civil or military effort can even yet result in disaster and defeat. Make no mistake about the seriousness of the issue. Should our armies be vanquished and our fleets overpowered,—should a peace be dictated by a Japanese Admiral or an Austrian despot,—should the will of our enemies be imposed upon us, our lot would be no different from that of the peoples in Europe, in Asia and the South Seas, where liberty is now but a memory and law but the edict of a tyrant's whim. The farmer might continue to till his fields and feed his stock and gain his subsistence from the fruits of the soil. The miner might continue to dig the coal and the ore from the hills. Men might continue to toil in mills and work shops, and in the transportation of articles of commerce over the highways and the rails. Circumscribed opportunities might still exist for those whose technical skill might fit them for the supervision of these activities. The doctor might make his daily calls and even the parish priest and the pastor of the corner church might be permitted to teach the faith of their fathers. For our profession alone there could be no possible place. The books on our shelves, filled with maxims of equity and justice and illustrating the application of legal principles to myriads of situations in the lives of men would be but relics of a dead and soon to be forgotten code. There would be no demand for our services and no opportunity to serve our fellow men. No forum

would be open for a resort to remedies which had been denied for the enforcement of rights which had ceased to exist.

In tritely suggesting that our single purpose should be our utmost contribution to the war effort, I am not unmindful of the oft repeated thought that our energies should be primarily directed to preserving constitutional government at home, while we largely leave to others civilian contribution to the actual waging of this global war. There are those who see the snaky head of Communism arising from within, or discern inside our borders the forbidding front of despotism. To me, they fiddle while Rome burns. In this tragic hour the threat to our liberties lies in the dread chance that our troops may not be adequately supplied or be in sufficient numbers in the right place at the right time. Insure their victory and God have pity on the prophet of any New Order here who seeks to filch the liberty which they have fought to save.

Total war, of course, means concentration of authority. It means a certain surrender of our liberty of action. It was so a quarter of a century ago. The nation's food supply was then centered in the hands of a single food administrator. The very ingredients of our bread were fixed by governmental edict. The transportation system of the nation was under the direction of a single man; and yet when the victory was won all of this war-time authority melted, as it were, in the first rays of peace and the normal processes of civil government functioned as they had before.

Nor do I feel that our chief concern should now be as to the nature of the peace which shall arise from the ashes of this war. There lies before us now a single task — the winning of this war. The time for the discussion of the terms of peace is beyond a yet far distant horizon. As was said by Mr. Justice Roberts in his radio address from Philadelphia on July 5, last:

"In recent weeks, many have talked of the kind of world we consider worth fighting for. In the midst of the bloodshed and the tragedy we have talked of future peace.

"But, to attain that future peace we must win this war. Out of what we do today will come the orderly world of tomorrow. The way we fight our war now will control the way we build our peace later. One leads inexorably into the other. And if we fail now, we will have no chance to succeed later."

We may, perhaps, be inclined too much to wait for a call to some post of leadership in the civilian army. We are justly proud of the leadership of our profession throughout the history of the Republic. We boast of the preponderance of lawyers in the Constitutional Convention, in the membership of the National Congress and in the exalted stations in the Government of the Republic and its component States. We may be prone to feel that we are especially qualified as leaders of public thought and opinion and that as such we should make our contribution.

I am inclined to feel that we should enlist for service in the ranks and that any call to leadership should be a recognition of service performed in humbler stations. It is so with those of us who wear the uniform. There is no particular call for lawyers in the Army or the Navy or the Marine Corps. The need for officers in the Department of the Judge Advocate General is limited indeed. The 15,000 lawyers who have responded to the call to the colors, despite any capacity for leadership which they may possess by reason of their membership in our profession, have, for the most part, enlisted as Buck Privates. Their commissions and wings have been won by the same blood and toil and sweat and the same courage and service and sacrifice which have earned like rewards for their comrades in arms. We at home should undergo our boot training. We need not expect to direct the drives for the sale of bonds, for the raising of money for the USO, the Red Cross or the various other agencies organized to sustain the morale or relieve the suffering of those in service. We should rather welcome the opportunity to solicit from door to door to the end that efforts in behalf of these activities may be crowned with deserved success. There is no reason for us to remain aloof from the drives for the gathering of scrap metal so essential to the continued production of the instruments of war. We should welcome the opportunity, at each recurring call, to donate a little of our blood to save the lives of those who so lavishly spill their blood for us. It is our very service and our constant association with the men and women of our communities in every activity by which the war effort can be aided that we should rise to such positions of leadership as we may be called upon to fill.

I do not mean to suggest that there are not many fields in which we may be of special service. A little more than a

week ago the War Manpower Commission approved the program developed by the American Bar Association to afford a greater opportunity for service by the members of our profession. This program involves providing legal service to war workers, making individual lawyers available for war production and other war work and assisting in promoting public understanding of manpower problems. To a very considerable extent the bar has already generously contributed of its time and its talent to these objectives. We will hear this morning the report of the Special Committee which directs our efforts. We may, no doubt, look forward to increased service along the lines mentioned as a result of this cooperation between the War Manpower Commission and our National Association.

No concrete service, however, should deter us from utilizing in full measure such influence as we may possess toward directing public opinion in aid of the vigorous prosecution of the war. I know of no greater opportunity to aid in welding the unity of thought and purpose, which we recognize is so essential to the cause for which we fight, than to endeavor to see that no consideration of partisan advantage shall swerve us one hair's breadth from the position which our country's welfare demands that we assume.

Others may challenge our position of leadership in public thought but all must acknowledge that lawyers participate more generally in partisan politics than do men of any other calling. I believe we are more tolerant of the opinions of our political adversaries than those in other walks of life. The intimate contact which results from our daily association with each other in the court room, our presence together at meetings such as this, the very encounter of political combat enables us to see more clearly than do those whose lives are cloistered from partisan strife, that all capacity for administering the affairs of government is not found in the membership of a single party and that devotion to the welfare of the common man is not confined to those who mark their ballots within or beneath a particular party emblem. Party government must, of course, continue. The road to the polls must remain open and elections must be held as November biennially occurs. It is to preserve these democratic processes that American soldiers and sailors are dying on distant battle fronts and on far off seas. The right of honest criticism of those in places of public responsibility

must be preserved inviolate. In this fateful hour no man, much less a member of our profession, has any right, consciously or unconsciously, to conceal or cover up or explain away the mistakes and short-comings of those in authority, because disclosure may harm the fortunes of his party. Equally disloyal is any attempt to misrepresent, magnify or picture in false perspective the acts of those in power in order that any partisan advantage may be obtained. The one stifles the correction of things that are wrong and the other wantonly destroys confidence in those lawfully in command.

We can promote unity of thought within the confines of our own country and much may be done toward fostering unity with our allies. I can conceive nothing which tends more to discourage us in the winning of this war than veiled attacks upon our Russian allies, whose army so magnificently fights our fight,—queries as to whether this war is being waged to uphold or extend the Communistic system of government,—suggestions that we are fighting Britain's war or inquiries as to whether men are sent across the sea to preserve and perpetuate the British Empire. To the insidious and oft repeated question as to what and for whom we are fighting in this war, the lawyers of this land should make instant answer.

We are fighting in this war because on December 7, 1941, American sailors and soldiers and civilians, following their peaceful pursuits on American soil beneath the American flag, were killed without warning, and our planes and ships were bombed and fired and destroyed and sunk by the most cowardly and treacherous attack in the annals of recorded history. We are fighting to avenge that wrong. We are fighting this war because an alien flag flies at Kiska and Attu, where our flag was planted full three-quarters of a century ago. We are fighting this war to liberate thousands of American citizens, including soldiers and sailors of infinite courage, who became captives at Bataan and Corregidor after the most heroic defense of all time. We are fighting this war because the attack of the enemy continues and we could not do otherwise if we would. When you come to grips with a bandit who has slugged you in the night, snatched your purse and has his hand upon your throat and his automatic at your heart, you fight for your very life and give little thought as to whether his plea for probation should be

looked upon with favor after you have brought him manacled before the bar of justice.

I can conceive of no act more contemptible than to intimate to these young men as, flushed with patriotic ardor, they go forth to field or camp or ship or station, that doubt exists as to the justice of the holy cause for which they dare to shed their blood. I can think of no course more cruel than to suggest to the stern but sad faced mothers of this country that the war in which their sons enlist is a war in which we should not be engaged, and that the sacrifice they are called upon to make is a sacrifice that need never have been asked. This war was as inevitable as our cause is just. The black pages of the history of the last three years tell how futile to stay the attack would have been any policy of appeasement once the appointed hour had struck.

If we have it in our power to mold the public thought, our word and our example may do much to promote willing acquiescence in the inconveniences we are called upon to suffer and the sacrifices we are called upon to make.

The need for the conserving of tires and the rationing of food and oil and gas, as well as priorities for essential materials and supplies, is obvious to all who give the matter passing thought. The sources of rubber for us no longer exist. Food must be supplied in unstinted measure to our armed forces and shared with our allies. Motor fuel in unbelievable volume must be furnished for our planes and tanks and trucks. The demands upon our transport system make unavailable in many sections the oil which is required to heat our homes in luxurious warmth. Yet how pitifully insignificant are the sacrifices we are asked to make compared with the privations of those who fight for us or with the destitution which has come to the civil populations of conquered lands, to avoid which very lot is the supreme object of all our efforts. In the face of these facts what right have we to suggest that the need for rationing or priorities does not exist? What right have we to complain of the "red tape" incidental to their administration or the "bureaucrats" who administer them, knowing all the while *full* well that questionnaires and forms and an extensive personnel, by whatever names we call them, are obviously essential to the carrying on of so vast an undertaking? Face to face with rising costs and the dire consequences of inflation which has so often followed in the wake of war and engulfed the eco-

conomic systems of so many countries, what right have we to object that the control of rents and prices prevents the accumulation of wealth out of the tragedy of war. We should welcome intelligent and unselfish effort to improve the system or lessen the cost of the administration of these vast activities, but let there be no encouragement from our profession toward those who oppose these obviously necessary measures, because their appetites are not wholly satisfied, or they are denied some comfort or convenience they are accustomed to enjoy.

By a single minded devotion to our country's welfare, untainted by any thought of personal advantage or party gain; by an unselfish example of patriotic effort in every activity which bids fair to speed the day of victory; by submerging every other consideration to the winning of this war—thus can we discharge our responsibility to lawyers in the service and preserve for them a calling worth their while.

