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DEMOCRACY AND CONSTITUTIONAL GOVERNMENT

By JOHN J. PARKER*

I have chosen to speak this evening on the subject "Democracy and Constitutional Government." I have done this for two reasons: In the first place, it seems fitting that a meeting of lawyers held in this sesqui-centennial year of the signing of the American Constitution should give consideration to the principles embodied in that instrument. In the second place, I conceive the greatest problem of our civilization, and one which peculiarly concerns lawyers, to be the preservation of democracy. This problem in America resolves itself into the problem of preserving the fundamental principles of our constitutional structure and applying them intelligently to the changed condition of the age in which we are living.

Democracy is more than a mere form of government. It is a philosophy of life—a philosophy based upon the reality and worth of the individual—which postulates that institutions exist for men—not men for institutions. Our nation came into existence proclaiming this philosophy as her confession of faith. "We hold these truths to be self evident," she said, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights Governments are instituted among Men, deriving their just powers from the consent of the governed." And we are coming, I think, to see that the real greatness of our country lies in this: that in her heart of hearts she has believed this philosophy and to a greater extent than any other nation that has ever existed has applied it in her life. America is great, not because of the strength of army or navy, not because of the wealth of field or forest, mine or factory, but because she has given to the average man the best chance that

* Address of Hon. John J. Parker, Judge of the United States Circuit Court of Appeals, Fourth Circuit, at the Annual Meeting of the Indiana State Bar Association, Sept. 16, 1938.

he has ever had—because she has stood for the open door of opportunity and the square deal to every man—because she has found reality, not in externals or in institutions, but in the soul of the individual.

I am interested in democracy not as a speculative theory but because of what it has meant to the progress of the race. When this nation was founded and democracy became for the first time a vital force in the life of the modern world, we had no railroads, no telegraphs, no daily newspapers. The cotton gin had not been invented, nor the power loom. The automobile, the aeroplane, the radio, had not been dreamed of. Men worked and lived very much as they had done when Caesar conquered Gaul or the blessed Savior walked the shores of Galilee. A hundred and fifty years are but a moment in the history of the race, but what a change has been wrought in this brief period in the world that we live in! Democracy, which was the keynote of the 19th century, unloosed the mighty forces locked up in the life of man and progress beyond the dreams of past ages was the result. Under the old dispensation, the aristocrat had opportunity but lacked incentive. The peasant had incentive but lacked opportunity. Democracy gave opportunity to the man with incentive and human life blossomed and flowered as it had never done before. At the end of the sixth century, it is estimated, the total population of Europe was barely 65,000,000 people. By 1800 it was only 180,000,000. But during the 19th century it increased to 460,000,000. During the same period the population of this country increased from 10,000,000 to approximately 100,000,000—figures which speak more eloquently than any language as to what the new philosophy of life was meaning to the progress of the race. As we came into the twentieth century we were beginning to dream of the universal triumph of democracy and of a new era in the life of mankind.

That was at the turn of the century. In 1917 President Wilson told us in deathless phrase that the great World War was a struggle to make the world safe for democracy. I believed him then. I believe him now. If we had lost the war, democracy would have been crushed beneath the absolutism

of the central empires. We won the war; but democracy is not safe. On the contrary it is in greater danger I think than at any time since the fall of Napoleon. In country after country it has been abandoned, and today most of the earth's surface is ruled by some form of dictatorship. This has come, I think, partly because of failure to understand the principles of democracy, partly because of failure to reinterpret those principles in terms of standards and laws and institutions to meet the changing conditions of life. It is well, therefore, in this sesqui-centennial year that we consider the relationship between democracy and the fundamental law of our country, in the light of the changed conditions in which we find ourselves.

Democracy as applied to government means a great deal more than majority rule. That is but one of its techniques. Democracy means the recognition of the rights of the individual in the life of the institution, and applied to government it involves three principles: (1) the protection of the rights of the individual against the power of the state; (2) popular sovereignty, or the right of the people to govern themselves in matters of social concern; and (3) the supremacy of the law based upon reason and justice. These principles are in no sense fortuitous or accidental; they inhere in the nature of free government. They must be embodied in proper laws and institutions to accord with the changing needs of the times; but the principles themselves do not change. They are as fundamental as the laws of nature or the laws of mathematics. Without them free government—political democracy—simply cannot exist. My thesis is that the Constitution of the United States is but the embodiment of these principles; and that the problem of statesmen, scholars and lawyers is to apply them properly to meet the changed conditions of the life of our country.

The first of these principles is the recognition of the rights of the individual—of the rights of man as man—which he may assert even as against the state itself. This concept with the fathers was a very practical matter. It was obtained, not by any process of theoretical reasoning, but

through hundreds of years of struggle and costly experience. Freedom of thought, freedom of speech, freedom of conscience—the right to be let alone by government so long as one was not disturbing his neighbors—the right to be secure in one's person and habitation from unreasonable searches and seizures—the right not to be condemned for an act which had not been forbidden as a crime when it was committed—the right to public trial by a jury of one's fellows and to be confronted by the accusing witness—the right not to be deprived of life, liberty or property but by the law of the land, the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial—these and other rights of which I need not speak in this presence had come to be regarded as the rights of the Englishman which he might assert against the power of the Crown. When we established our government here and looked to the people and not to a king as the source of power, we guaranteed these fundamental rights of the individual not merely against the power of the executive but against the entire power of the state, so that no public official, no legislative assembly, no popular majority might deny them to any individual, however poor, or humble or unpopular he might be. This, I think, was America's greatest contribution to the science of government. Without it, the rights of the individual would be subject to the whim of majorities and the tyranny of the demagogue, and democracy would perish here just as it perished in Athens and in all of the democracies of old. With us power is derived from the people and popular majorities represent the people's will; but we recognize that government must represent justice and righteousness as well as power; and we will not permit the power of the state to be used to do injustice to the individual—to deprive him of those fundamental rights which belong to him as a man.

There is nothing, however, in this principle or in the Constitution which forbids the proper extension of governmental powers in furtherance of the general welfare. The individual liberty which the Constitution guarantees is liberty under law, not mere freedom from restraint; and it is no violation of the

constitutional principle that, with the increasing complexity of our social relationships, the powers of government should be extended into new fields and the freedom of action of the individual proportionately restrained. A business which is perfectly proper in a sparsely settled community may properly be forbidden as a public nuisance in a great city; and a regulation of trade or employment which would be insufferable among a simple agricultural people may be essential to their general welfare after they have developed industry and commerce on a large scale.

The last half century has wrought an industrial and social revolution in the lives and habits of our people. Improved methods of transportation and communication, the invention of labor saving machinery, the adoption of new methods of corporate organization and financing—all of these have brought us face to face with new problems which call for greater regulation of national life by governmental power than the fathers ever dreamed of. Vast aggregations of capital have threatened a monopolization of industry with swollen fortunes for a few and economic serfdom for many. The tools with which labor works have passed into the hands of capital, and laboring men have suffered a loss of the sense of independence and security which was theirs in former days. Organization for the protection of their interests has resulted in industrial conflict, and shifts in industry have resulted in widespread unemployment. The ramifications of economic life have become so complex, that the misfortunes of one group of workers or producers may be the cause of nationwide calamity. Under such circumstances, it is idle to contend that the power of government should not be used for the proper regulation of economic life. Monopolies must be curbed. Unemployment must be relieved. Justice must be secured in the relations of capital and labor. Some measure of economic security must be provided by the state in the form of old age and unemployment insurance for those who are dependent upon industry which has come to have state-wide significance. And conditions must be fostered which will provide for the healthy growth of industry and for the just

division of the rewards of industry among those who are engaged in it. It is not my purpose to speak in detail of these and other governmental measures which the conditions of modern life demand. I mention them merely to say that such regulation on the part of government is not contrary to, but in accordance with, the spirit of individual liberty embodied in the Constitution. It is unreasonable violation of the rights of the individual which is forbidden to government, not reasonable regulation of matters which have come to be matters of social concern and which affect the life and future of the whole people.

There is no danger to democracy so long as the state confines its regulation to social relationships which affect the general welfare. The danger comes when, the state attempts to regulate those matters which are primarily the concern of the individual and which only indirectly affect the welfare of others. Nothing that the individual does probably affects the life of society so deeply as his religious activity; and for many centuries the regulation of religion was regarded as a proper function of the state. After centuries of struggle and bloodshed, however, we have come to recognize that religion is primarily an individual matter and that the state should not interfere with it unless in its exercise a man makes a public nuisance of himself. The same thing is true of making a living. After the social aspects of employment have been regulated, so as to provide healthy industrial conditions, industry will produce more and those engaged in it will be happier, if the government allows every man to proceed in his own way so long as he does not injure his neighbors by so doing; and, in my humble judgment, there is no danger which threatens modern civilization that is comparable to the danger presented by the philosophy of the authoritarian or totalitarian state with its regimentation of life and its crushing of individual initiative and enterprise. I have for that statement no less an authority than Ortega, the great liberal philosopher and metaphysician of the University of Madrid. In his *Revolt of the Masses*, he says:

"This is the gravest danger that today threatens civilization: State intervention; the absorption of all spontaneous social effort by the State, that is to say, of spontaneous historical action, which in the long run sustains, nourishes, and impels human destinies. When the mass suffers any ill-fortune or simply feels some strong appetite, its great temptation is that permanent, sure possibility of obtaining everything—without effort, struggle, doubt, or risk—merely by touching a button and setting the mighty machine in motion.* * *

The result of this tendency will be fatal. Spontaneous social action will be broken over and over again by state intervention; no new seed will be able to fructify. Society will have to live *for* the State, man *for* the governmental machine. And as, after all, it is only a machine whose existence and maintenance depend on the vital supports around it, the State, after sucking out the very marrow of society, will be left bloodless, a skeleton, dead with that rusty death of machinery, more gruesome than the death of a living organism.

Such was the lamentable fate of ancient civilization. No doubt the imperial State created by the Julii and the Claudii was an admirable machine, incomparably superior as a mere structure to the old republican State of the patrician families. But, by a curious coincidence, hardly had it reached full development when the social body began to decay."

Those who imagine that state absolutism is in the interest of even the economic welfare of the people, need only compare this country with the totalitarian states of Europe to see the refutation of their theories; but I shall not dwell upon this aspect of the matter. What I desire to call attention to is that the totalitarian economy has invariably meant the end of individual freedom. It is not merely that there is insufferable regulation of private affairs by public officials with all the hateful snooping and espionage which such regulation invariably entails, but that such a system inevitably leads to dictatorship and undermines the basic liberties, such as free speech and public trial, upon the importance of which all right thinking men are agreed. Without centralization of authority in some one with dictatorial powers, the planned economy of the totalitarian state will not work; and so, under the guise of necessity, the dictatorship is established. The state, to enforce its policies, must have the support of the press; and so a censorship is established and the freedom of

the press goes overboard. Freedom of speech goes in the same way. Soon it is discovered that the church is interfering with state policy, and freedom of conscience goes. Then a purge of those deemed enemies of the state because not in sympathy with the rulers is deemed necessary, and public trial goes with the rest. It is not a mere matter of chance that there is not free speech, a free press, or a free pulpit in any of the totalitarian states of Europe, and that in many of them the administration of justice is a mere mockery.

There is need for us to remember that the state exists for man and not man for the state, that the ends of government are life and liberty and the pursuit of happiness, and that all three of these center in liberty, since, without liberty, there can be no real happiness and life is not worth the living.

The second great principle of democracy which the Constitution incorporates is the principle of popular sovereignty, not merely with respect to national, but also with respect to local affairs. This is the meaning of our federal system, with its dual sovereignty and dual citizenship, under which the people of the nation control matters of national concern and the people of the several states control local matters. The people of New York have no voice in things which are solely the concern of the people of California; and the people of Florida have nothing to do with the local government of New York. All, however, participate in the control of the federal government in which all are concerned. The adoption of this principle has enabled us to solve one of the great problems of history, i. e., how to combine the strength of the great state with the freedom of the small state. Great states always develop a more splendid civilization than small states and afford to their people greater opportunities for wealth and achievement. They are subject, however, to two fatal weaknesses. In the first place, the concentration of great power at the seat of government tends to create despotism and crush popular liberty. In the second place, it is practically impossible to make unified political power operative over a wide expanse of territory among different people with differing ideas and ideals. Small states, on the other hand, are more

likely to have free and efficient government, principally because tyranny and inefficiency look uglier when seen near at hand than when viewed from a distance. But such states are unable to furnish to their citizens the opportunities that the great states afford and are too weak to protect the liberties which they cherish against the aggressions of powerful neighbors. By our federal system we have combined the strength of the great and the small state and eliminated the weaknesses of both. By giving to the federal government control of national affairs and to the states control of local matters, we have created a government stronger, I think, than any that has heretofore existed on the face of the earth; for with imperial size and grandeur, we have united the strength and purity of local self government.

There are other great advantages in our federal system. In the first place, as Lord Bryce pointed out, the states furnish laboratories, as it were, in which governmental experiments may be worked out without danger of ruin to the entire government if they fail. In the second place the division of the sovereign power among so many different units of government makes violent and sudden change a matter of practical impossibility. If the government at Washington should be destroyed or seized by revolutionists, we would still have forty-eight independent governments already set up and operating on the republican principle in the forty-eight states. On the other hand, the seizure of the government of one of the states or of one of the great cities would have but little permanent effect, because, with the power of the federal government and the other states unimpaired, orderly government on the republican principle would soon be restored to the people who had been deprived of it. The federal system gives to our national and state governments, therefore, a stability which no other governmental system within my knowledge has ever been able to attain.

The question which arises with peculiar force today is whether in the light of social progress any change in this federal system is demanded. We must look at life realistically. Undoubtedly, as our life has developed, some matters which

were formerly matters of purely local concern have become matters affecting the nation. Not only has interstate commerce grown, but certain phases of production have become so interwoven with interstate commerce that local governments are unable to exercise over them the control which the situation requires. It is clear, I think, that we must in some way give the general government a greater measure of control over these matters affecting the national welfare, either by revising our concept of the power possessed by the federal government under the commerce clause of the Constitution or by amendment of the Constitution to extend the power of the federal government to those phases of our life which have become of national significance. But, in doing this, we must exercise the greatest care not to destroy the right of self government in local matters possessed by the several states. It is easy to plan nation-wide reforms by national legislation; but experience has taught us the danger of exerting national power in local matters where local opinion does not support the exercise of such power. It is infinitely better that reforms should follow the slow process of gradual education and adoption than that they should be forced upon a people unprepared for or unwilling to accept them, or that the price of their attainment be the sacrifice of democracy. As said by President Wilson in his *Constitutional Government*:

“It would be fatal to our political vitality really to strip the States of their powers and transfer them to the Federal Government. It cannot be too often repeated that it has been the privilege of separate development secured to the several regions of the country by the Constitution, and not the privilege of separate development only, but also that other more fundamental privilege that lies back of it, the privilege of independent local opinion and individual conviction, which has given speed, facility, vigor, and certainty to the processes of our economic and political growth. To buy temporary ease and convenience for the performance of a few great tasks of the hour at the expense of that would be to pay too great a price and to cheat all generations for the sake of one.” (1908 ed., 170-2 and 191-2.)

The third great principle of democracy incorporated in our Constitution, and one which is the very *sine qua non* of

democracy's existence, is the supremacy of law. Other nations had dreamed of this but had failed to attain it, principally, I think, because they confused law and authority in their thinking. We have separated the two. Authority with us, i. e. sovereign power, resides in the people. Officers are not rulers possessing sovereign power but agents of the people, elected or appointed for the purpose of administering government according to law. And in order that they may do this and may not appropriate sovereign power to themselves, we have so framed our government that none of these agents of the people shall have in his hands at any time all of the powers of government. Aristotle saw more than two thousand years ago that these were threefold: the power of making laws, the power of enforcing laws and the power of judging. John Locke made practically the same classification. And Baron Montesquieu, in his *Spirit of Laws*, pointed out, so clearly that no thinking man has since doubted the proposition, that the preservation of popular liberty requires the separation of these powers and their exercise by different officers of the state. This division was accepted as axiomatic in the drafting of the federal Constitution. It is expressly required in the constitution of forty-two of the forty-eight states. The constitution of Massachusetts, adopted in 1776 and largely the work of sturdy old John Adams, not only requires the division but gives the reason for it, "To the end that the government may be one of laws and not of men." Under such a division men make the laws, men interpret the laws, men enforce the laws; but the law thus enforced is not the arbitrary will of any of them, but law founded upon reason after due deliberation and tested by the standards which the people have set up for the protection of their liberties.

Not only have we thus divided sovereign power among the three branches of government, but we have arranged such a system of checks and balances that no department is allowed to exercise the share of power allotted to it without the cooperation of the others. The people say to the Congress, "You can make laws; but, if the President vetoes them, they will become law only if you can muster two-thirds of both houses

of Congress in their support. You cannot execute or interpret the laws that you make or appoint men to execute or interpret them. The courts must interpret and the President must execute." They say to the President, "You can appoint men to execute the laws; but, except as to minor officials, your appointments must be confirmed by the Senate before the appointees can assume authority. Moreover, you cannot tax the people, to pay your appointees. Taxes must be raised by laws originating in the House of Representatives." They say to the judges, "Yours is the duty of interpreting the laws and rendering judgment in controversies which may arise respecting them, but you may not make laws or even enforce your own decrees. You cannot levy taxes or collect fees even to pay your salaries, but you must be paid out of the revenues raised by Congress. You cannot appoint your successors. They must be appointed by the President and confirmed by the Senate." And thus it results that so long as this division of powers and this system of checks and balances is preserved, it is impossible for any man or group of men to exercise the full power of sovereignty or to overthrow the liberties of the people, as has happened in so many of the countries of Europe and of South America.

The question recurs again whether, in the light of social progress, any change is required with respect to this division of sovereignty and system of checks and balances; and, as before, my answer is that the principle must be preserved but that it should be applied in such way as to meet modern conditions. One of the outstanding legal developments of recent years has been the growth in the executive department of administrative boards to which have been given certain quasi-legislative and quasi-judicial functions. The Interstate Commerce Commission, the Federal Power Commission, the Federal Trade Commission, the Board of Tax Appeals, the National Labor Relations Board, are illustrations of what I have in mind. To some of these, as for instance the Interstate Commerce Commission, quasi-legislative functions have been delegated as a matter of necessity, because it is simply out of the question for a large deliberative body like Congress

to deal with the details of rate making. To others, as for instance the Board of Tax Appeals or the Federal Trade Commission, quasi-judicial functions have been delegated because the courts have neither the time nor the facilities for making the technical inquiries necessary for proper settlement of the type of questions involved. There can be no doubt, I think, either as to the necessity for such administrative tribunals or as to the propriety of creating them. If the government is to exercise any adequate supervision over the conditions of our industrial and commercial life, this can only be done by some such administrative agency. The application of legislative policy by detailed regulations is essentially an administrative matter as is the determination of questions arising under the regulations; and, if full control of legislative policy is retained by the law making body, and full power of review over the exercise of quasi-judicial functions is preserved in the courts, no danger can arise from the apparent mingling of legislative, executive and judicial functions in the powers of these administrative bodies.

The ultimate separation of the three great powers, however, must be scrupulously maintained. Congress should not be permitted under the guise of delegation of administrative functions to abdicate its law making power in favor of the executive; nor should either Congress or the executive be allowed to trench upon the judicial function of the courts or in any way impair their independence or their power. The courts are, in truth, the very keystone of the arch of our constitutional structure. They must apply the Constitution as the fundamental law of the land, so as to prevent the government from destroying the rights of individuals, the states from encroaching upon the domain of the federal government, the federal government from invading the domain of the states, and the various departments of government from exercising powers which belong to the others. Without the exercise of this power by the courts our constitutional system simply will not work. Unless they have power to declare acts of Congress unconstitutional, Congress can absolutely destroy the states. Unless they have power to declare acts of state

legislatures unconstitutional, the states by discrimination against foreign corporations and burdens placed on interstate commerce can absolutely destroy the Union. The courts, therefore, must be kept independent of politics and of the other branches of government, and their power to perform the function intrusted to them must not be interfered with. In many of the states the judiciary has been rendered more or less impotent by unwise laws which have made the judicial office elective, which have stripped the judge of his common law powers in conducting trials, which have limited the jurisdiction in equity and which have imposed restrictions upon the power to protect and enforce constitutional rights. It is my deliberate judgment that, if the federal courts are thus stripped of their independence and power, our constitutional system cannot be preserved.

And this brings me to the real question confronting us with respect to the Constitution: Is it worth preserving, and do we wish to preserve it? The answer to that question depends upon whether we believe in democracy—in free government—or not. If with the communists we believe in the dictatorship of the proletariat—if with certain others we believe in the dictatorship of the well-to-do—if, in short, we believe that democracy has failed and that the only hope of efficient government is the iron hand of the dictator—then the answer is “no;” for the Constitution is the embodiment of democracy and an insuperable obstacle to dictatorship. But, if we believe, as I do, that democracy has not failed and that it is the one hope for the happiness of the human race—that what the world needs is not less democracy but a deeper application of democratic principles and the embodiment of those principles in laws and institutions which will meet modern conditions—if we believe that, then the Constitution is not only worth preserving, but it must be preserved at all costs.

Some well meaning people believe, in a general way, in constitutional principles, but seem to feel that we need no longer give them the force of fundamental law to be enforced by the courts. They have been so much disturbed by a few mistakes of the courts in applying the principles, that they

wish to take the whole matter out of the hands of the courts and leave the observance of the Constitution entirely to legislative bodies. Others, while not going this far, would emasculate the great general clauses of the Constitution such as the "due process" clause of the Fifth Amendment and the "due process" and "equal protection" clauses of the Fourteenth. I am satisfied that these persons do not understand what would be the deadly consequences of the course they advocate. Never was there greater need for constitutional protection of democratic principles than there is today. Less than a dozen years ago the Supreme Court had to invoke the due process clause of the Fourteenth Amendment to strike down a state statute which infringed upon religious freedom. Within the past three years the court invoked the same provision to hold invalid a state statute which infringed the freedom of the press. Two years ago it relied upon the same provision to set aside a conviction in the courts of a state which had been obtained upon a confession wrung from an accused by torture. And only last year it invoked the same provision to hold invalid the statute of another state which denied freedom of speech. We flatter ourselves too much if we think that we have progressed to the point where we no longer need to guard against tyranny in government.

As we look abroad in the world, we see even greater reason for holding fast to the constitutional landmarks. Not only has sovereignty been taken from the people and vested in dictators in country after country, but despotism has been established under which the most fundamental rights of men are not only violated but are brazenly denied and ridiculed. It is not a mere form of government, but the security of all that we hold dear in our civilization, that is endangered. As said by Professor McIlwain of Harvard a few months ago in the magazine *Foreign Affairs*:

"The one great issue that overshadows all others in the distracted world today is the issue between constitutionalism and arbitrary government. The most fundamental difference is not between monarchy and democracy, nor even between capitalism and socialism or communism, tremendous as these differences are. For even in any socialistic or com-

munistic regime, as now in every bourgeois democracy, there will be rights to be preserved and protected. Deeper than the problem whether we shall have a capitalistic system or some other enshrined in our law lies the question whether we shall be ruled by law at all, or only by arbitrary will."

One who understands the nature, the history and the problems of democracy and the dangers which confront it in the modern world will have no doubt either as to the necessity of preserving our constitutional system for the protection of liberty or as to the wisdom of applying its principles for the solution of the problems of modern life. But for those who are confused by the false philosophies born of the sufferings of war-torn Europe, let me answer their doubts and fears by the test given us from on high: "By their fruits ye shall know them." Men do not "gather grapes of thorns or figs of thistles." Prior to the birth of this country, philosophers told us that democracy as a form of government could have only a qualified success and that only in small and sheltered communities. You and I have lived to see democracy not only successful, but triumphant, not in a small and sheltered community but in a great nation whose bounds stretch from ocean to ocean and whose flag flies over distant islands of the seas. Why is this? The answer is that, under our Constitution, democracy for the first time in human history has been given true expression in the fundamental law of a people. For a hundred and fifty years under that Constitution the nation has gone onward and upward. From thirteen poverty stricken colonies fringing the Atlantic with a population less than half that of the present city of New York, she has grown from the Atlantic to the Pacific and one hundred and thirty million souls respond to her jurisdiction. Not only has she become the richest and most powerful nation on the face of the earth, but, what is infinitely more important, she has given to the average man the best chance that he has ever had in the history of the race. With all of our faults and imperfections, this much at least is true: there is more of opportunity, more of liberty and more of security for the average man beneath the flag of America than anywhere else under the sun.

But let us remember that democracy cannot stand still. We are summoned ever to the endless task of applying its principles to the problems of the moment. We must get a new vision of what life can be in a democracy. It is not enough that men be free. They must find in their freedom opportunity for security and happiness. I have faith that these can be found, and can only be found, in democracy. The curse of totalitarianism is that it sacrifices man to the state. The glory of democracy is that it finds the strength of the state in the dignity and happiness of the individual.

Let us, therefore, in this sesqui-centennial year of the signing of our charter of liberties, dedicate ourselves anew to the basic philosophy of our country. Where laws are needed to meet modern conditions, let them be enacted in the spirit of that philosophy and of our great charter of freedom which embodies it. Where any provision of that charter, by reason of change in conditions, conflicts with the true application of these principles, let it be corrected by orderly amendment. But let there be no departure from the principles themselves. Much has been said about the duty of the courts to preserve liberty, but liberty cannot be preserved by the courts alone. It must be preserved by all of us; for liberty resides, not in laws or institution, but in the hearts of the people. To the lawyers of America we look for leadership in its preservation; and to them I commend the eloquent words of the great Ben Hill of Georgia: "Who saves his country saves himself, saves all things, and all things saved do bless him. Who lets his country die lets all things die, dies himself ignobly and all things dying curse him."