

FOURTEENTH ANNUAL LAW DAY ADDRESS

By MR. JUSTICE CARLTON MOBLEY*

There are two great forces facing each other in the world today, one representing atheism and dictatorship, as embodied in the philosophy of communism, and the other representing religion, morality, and the inherent rights of the individual, enjoying the privileges of self-government under law.

Throughout history self-government—government under law—has been the exception rather than the rule. From the beginning of time, men have been the enslaved subjects of dictators, kings, emperors, and the like, enjoying only such rights and privileges as the rulers wished them to have. Even today, the vast majority of the people of the world are ruled by dictators, whose whims and fancies are the laws their subjects must obey. Their theory is that man is born for the benefit of the State; that he has only such rights as the ruling power allows him to have. He must be suppressed to the good of the State, and the State has not only the right but the duty to control all the activities of his life. That is a frightening philosophy of government and is an ominous cloud which hangs heavily as a threat over the world.

On the other hand, ours is a government under law, based upon a written Constitution—a republic under which our people enjoy individual freedoms, privileges, and opportunities to a greater degree than any people in the history of the world have ever known. Our founding fathers, and we, for nearly 200 years, cherished the spiritual concept that the rights of man are personal to him from the Creator, not from the State. This is the very foundation of our government. It was written in the Declaration of Independence and embodied in the Constitution.

This concept has guided us not only to a life of human dignity, but to material abundance. This material abundance we enjoy not because our land is more fertile, or filled with more minerals, or contains greater natural resources, but because we enjoy self-government under laws made, interpreted, and executed by representatives of the people, and because we are a free people—free from physical restraint;

*In keeping with a new editorial policy, which it is hoped will ripen into a tradition, the principal address of the fourteenth annual Law Day of the Walter F. George School of Law is printed as the lead article to this issue of the Mercer Law Review. It was delivered by the Honorable William Carlton Mobley, Associate Justice of the Supreme Court of Georgia, on May 18, 1962, at Mercer University, Macon, Georgia.

free from the illusion that rulers have infinite wisdom; free in the belief that government is the servant, not the master, of the people; free to work out our own destiny with our own minds and our own hands in our own way, subject only to the rule that would prevent us from interfering with the freedom of others. This freedom has released in our society a driving force, an individual initiative, an accomplishment previously unknown in the history of mankind.

We are a free people, first, because, after winning the war of the Revolution, the Colonies became thirteen free, independent, sovereign nations, and the people, seeing the need of a central government to perform certain duties, adopted the Constitution of the United States, creating the Federal government, delegating to it certain powers, and limiting its powers to those delegated. The purpose of the framers was not only to create a central government, they also wanted to be certain that they retained control of that government. This is indicated by the statement made by Jefferson when he said "Let no more be said of confidence in man but bind him down by the chains of the constitution." James Madison, the father of the Constitution, expressed it this way: "If men were angels, no government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on government; but experience has taught mankind the necessity of auxiliary precautions." The colonists were concerned with two fears, each of which was incompatible with the other—a fear of government and a fear of lack of government. Of one thing they were certain—man must protect himself from government. They thought the Constitution afforded them this protection from the Federal government.

Secondly, we have remained free because our people have had the character, the wisdom, the ability, the will, and determination to make a success of government under law. They have done that in the face of the fact that a democracy is the most difficult of all forms of government to maintain. A dictator can move quickly, ruthlessly, and without regard to the wishes of his people, while a democracy must move with the will and support of its people, which usually moves slowly. We have made a success of government under law because the laws express the thinking and will of the people. Our country has demonstrated that men are capable of establishing good government from reflection and choice, and are not destined to govern.

ment by accident or force, as has been true in so many countries of the world.

We have had a glorious past, yet we must face reality—constitutional government in this country is under serious attack. Government by the people, under laws of their making, is the foundation of our free enterprise system and of our individual liberty. While the superstructure of free enterprise has grown higher and higher, the strength of its foundation, our constitutional government, has not increased correspondingly. We are not only failing to increase the strength of our republic, but we are digging from that foundation some of its vital parts.

The disturbing thing is the similarity of our attitude and conduct to those of peoples of other times who have moved with closed eyes and deafened ears to their own destruction. They would not look or listen. The warnings of history, the admonition of common sense, they would not heed. Sometimes they were aroused and turned back before it was too late; at other times, they tried to turn back but it was too late.

If we could be aroused to the point that we would open our eyes and look, we would see that it is happening to us, to our republic, to our government under law, and with a rapidity and a completeness unequalled in the history of the rise and fall of those democracies which no longer exist. It would be apparent to us that the great French historian, Montesquieu, was so right when he said, "The deterioration of every government begins with the decay of the principles on which it was founded."

We would see that we are destroying our States—the only agencies of general democratic government in our system—by taking from them by usurpation and surrender, legislative enactment, and judicial construction, those powers and responsibilities which are indispensable elements of governmental sovereignty, and by tapping sources of necessary state revenue, channeling the money into the Federal treasury, and sending a part of it back to the states loaded with Federal power. We would see that Federal power is not limited to the money returned to the states, but extends even to state appropriations also. Senator Talmadge in a recent speech declared that a dire prophesy of a political observer of the Colonial times would be fulfilled unless local governmental control is restored to the people. Professor A. F. Tytler, he recounted, predicted that a democracy would last only until the citizens found out that they could vote themselves lavish public handouts and thus invite dictatorship. The people can govern successfully only if they are informed. They can be informed if government is kept close to them.

We would see that at the same time, by shifting these powers and responsibilities to the Federal government, we are so overloading its governmental machinery and overburdening its elected officials that the Federal government is ceasing to be a dependable agency of democratic government within the scope of the powers and responsibilities delegated exclusively to it by the provisions of the Federal Constitution. The "chains of the constitution" are being broken. The people are losing control of their government.

We would see, as an inevitable result, another shift taking place—the final, fatal shifting in the life of our democracy—as vast governmental powers, including policy-determining and legislative powers of the Congress, and such vital responsibilities as those having to do with war and peace, and far-reaching governmental powers over the people, and control over the expenditure of billions of dollars of their money, are being shifted to bureaucratic organizations, impossible of effective supervision by anybody whom the people may elect to represent them. The only Federal officials elected by the people are the President and the Vice-President and the Congress of the United States. Every other official and employee of the Federal government is appointed, some for life. In the administration of the laws made by Congress and the exercise of the privilege of making rules and regulations that have the effect of law, they control practically every facet of life in our country today—something never contemplated or authorized by the Constitution.

We would see, as a result of all this, that the distinctive characteristic of our system of government is changing from that of a republic to a great centralized Federal Bureaucracy and that a corresponding fundamental change even more important is taking place within ourselves. We would see that as a people we are losing our love for liberty, our pride in independence, our self-reliance, our self-respect, even our willingness to govern ourselves through democratic processes, and we are becoming more concerned to get immediate advantages through bureaucratic processes than to be worthy citizens of a great democracy, determined at whatever cost to preserve it.

I bring this message to you lawyers and future lawyers for in my considered judgment, government under law—under the Constitution as written—is seriously threatened. More serious even than that, our people are oblivious to the danger, and it is with the people that the fate of our republic rests. Woodrow Wilson once observed, "That the nations are renewed from the bottom, not from the top, that the genius which springs up from the ranks of unknown men is the genius which renews the youth and energy of the people; . . . the real wisdom

of human life is compounded out of the experience of ordinary men. The utility, the vitality, the fruitage of life does not come from the top to the bottom; it comes, like the natural growth of a great tree, from the soil, up through the trunk into the branches to the foliage and the fruit. . . . A nation is great, and only as great, as her rank and file."

While lawyers serve as wise counsellors to men, usually in a great crisis in their lives, as the skilled advocate, trained in the prosecution and defense of his clients, as a member of the organized bar, with a duty to help improve his profession, the courts, and the law, probably the greatest of his functions and certainly one of the prime responsibilities of the lawyer is that of acting as an intelligent, unselfish leader of public opinion, and as a servant of the people in the field of government. The lawyer's is the responsibility of leadership—to inform, to lead, and to inspire others to follow.

The American people have in the past demonstrated the greatest capacity for self-government of any people in the world. I am not afraid of what the present generation will do if given the facts. They will rally to the defense of constitutional government if they are only furnished bold, honest, and faithful leadership and given the truth.

Lest we forget, be reminded that American freedom as we know it has existed less than 200 years out of the 5,000 years of recorded history. The survival of our nation means everything to each one of us. All we have and hope for depends upon that. We must concern ourselves with its preservation.

Let us here and now resolve that we will not sit idly by and let the great heritage which is ours slip from us, but that we shall fight to maintain constitutional government in this country by standing firm for those principles upon which our country was founded.

Let us make it known that the freedom we stand for is not freedom from something, but freedom for something—freedom to work out our own destiny in our own way; that we value opportunity more than security; that we want to stand on our own feet in order that we may enjoy the full rewards of our own work; and that what we want is to enjoy fully the privilege of the pursuit of happiness—to roll up our sleeves and work and fight for happiness.

Let us catch the spirit of those patriots who uttered these noble words:

"I have just begun to fight."

"I only regret that I have but one life to lose for my country."

"Give me liberty or give me death."

"Eternal vigilance is the price of liberty."

"Right makes might."

Let us realize that the true greatness of this nation does not lie in its high standard of living, as nice as that is, but in its high standard of life—the standard of life handed down to us by generations of Americans who counted their worth not in terms of what they had but in terms of what they were.

May we face without flinching our present danger from the mortal struggle in which we are engaged—the struggle between our ideals of freedom under God and the degrading atheistic philosophy of communism which seeks to reduce humanity to the level of the beast.

Let us prove that a free people can continue to accomplish more than the regimented society of the Soviet Union. They require people who can be managed, while our free society requires people who are capable of managing themselves.

Let us not allow our desire for comfort and convenience to cause us to fail to protect our way of life.

May we possess good old-fashioned courage—the courage to have convictions and to defend them. Let us not be the moral coward whose motto is “don’t stick your chin out,” but the courageous person who when convinced of the righteousness of his cause stands firm, no matter what the cost. We must stand without compromise upon the principles which have made this nation great.

In short, let each one of us measure up to the high benchmarks of character, courage, and dedication to the principles which were established so long ago by our founding fathers and which have made this nation the greatest nation on earth.