

OUR GOAL: WORLD PEACE THROUGH LAW

It is equally an honor and a pleasure to join with you in this celebration of the adoption of your constitution. This is particularly so because I speak to you tonight under the auspices of the Philippine Constitution Association dedicated to the defense and preservation of your constitution and the leader in the never ending crusade for the respect of the rule of law. The contribution of this association is not only working toward law and order in the Philippines; it is also making a real contribution to peace through law throughout the world. For, we know that wars settle little. We must realize by now that peace will only come through law. World peace through law must become the goal for all freedom loving people. Our two countries have so much in common that I will talk to you tonight about

the development of our constitutional form of government in the hope that it will give you ideas for the preservation and improvement of yours.

It has been said that "The Past is Prologue." In our country we look to our great immortal documents: the Declaration of Independence and our Constitution.

They are certainly remarkable in the sense that we have managed to endure for nearly two hundred years as an independent constitutional republic — far longer, I suspect, than the framers dared hope. They were, after all, fully aware that they were launching an experiment in *statecraft* on radically new and untried principles — which the collective wisdom of the old world regarded as fundamentally misguided and destined for failure. It is easy for us to forget just how novel and

how radical the plans of the framers were. In those days every right-thinking Englishman knew, for example, that the power of sovereignty must be undivided and unlimited. As Blackstone wrote in his *Commentaries*: "There is and must be in all forms of government/a supreme irresistible, absolute, uncontrolled authority, which*** the right of sovereignty reside." Yet the framers conceived a plan of government in which governmental powers were not only carefully limited, but also divided up among the branches of government and dispersed among the components of a federal system. Then, too, everyone in those days knew that liberty and stability could be successfully maintained only in a state in which the respective virtues of monarchy, aristocracy and democracy were skillfully combined and balanced on the model of the British constitution. That was the learning of the ages; it was propounded as gospel by such liberal thinkers as *Montesquieu*.

Yet the Americans hope-

fully, though perhaps with trepidation, gambled on the notion that they could dispense with King and nobles and that liberty and order could be maintained without the mediating power of a privileged social class. Indeed, they called into question the whole time honored system of distinctions based on caste, class and birth.

These shocking and unprecedented ideas, forged in the years leading up to the Revolution and the Constitution, have, of course, become part of the fabric of our national life. And that leads me to suggest a second respect in which those old documents in the Archives are remarkable. Not only did they launch our government on dangerously new principles, but they continue to bespeak, after all these years, a conception of society which continues to challenge us, which continues to hold out unfulfilled promises and unrealized aspirations. Nearly two centuries have not exhausted their capacity to demand re-examination of the status quo and to summon

the energies of reform. Somehow those documents were molded out of elements which set off a chain reaction in the minds of men which has persisted down to this day and continues to stir all who can perceive the discrepancies between the promise and the reality of American life.

I think it is very clear in Washington today — in the Congress and the Executive and, not the least, the Supreme Court — that activity and change are being promoted by the transforming logic of principles which were first glimpsed here as colonists thought their way to independence. Nor are these stirrings confined to Washington. Throughout the country, wherever the disenfranchised are being registered to vote, wherever schools are being desegregated, wherever election districts are being more fairly apportioned, wherever indigents are being afforded counsel to secure their rights, in a hundred polling places and a hundred court rooms, those ideas are on the march. And so I think that if we want to

know what is happening and where we are and where we are going, we do well to recall where we started. What is past is prologue.

A few decades ago it was the fashion among American historians to see the events of the period leading up to the Revolution and the Constitutional convention as the result of the struggle of classes and economic forces in which ideas and ideals played a subordinate role — largely as camouflage for what was really going on. More recent scholarship has focused anew on what men said and have rediscovered the extent to which things were swept along by the force of ideas.¹ Once embarked on the problem of rationalizing their relationship with Great Britain, the Americans found themselves led, step by step, to reexamine and reject most of the received, accepted, orthodox principles of social organization and to fashion new principles for a new society. Not all the implications of those new principles were seen at once, or being seen were acted on. Indeed, they were so radical, so pregnant with

change, that we are still finding new implications, new applications, and new aspects of life are being subjected to their transforming power. After all these years, some of the reasonable inferences to be drawn from such notions as the equality of man continue to take a lot of people by surprise. Again and again throughout our history, principles which seemed as familiar as platitudes have turned out to battle cries.

Let me give you a few examples of what I mean. When the Americans became concerned with the problem of taxes levied by Parliament in which they had no voice, they were told what every good Englishman knew, that Parliament represented all citizens — not actually, but “virtually” — and that Americans were virtually represented in the same way as were the inhabitants of Manchester and Birmingham, who also had no vote and elected no representatives. This of course led to analysis of the nature of representative government, and to the conclusion that if Manchester and Bir-

mingham were not actually represented, they ought to be; that the capacity to represent and legislate arises only from the election of those represented; that a legislature should be “in miniature and exact portrait of the people at large” and that “equal interests among the people should have equal interests in it *** increas/ing/ or decreas/ing/ with the number of inhabitants.”² That thought, published in Philadelphia by John Adams, is translated in our time as “one man — one vote,” and serves as the impulse underlying *Baker v. Carr*³ and *Sims*⁴ and the whole drive for legislative reapportionment. That radical novelty has been lurking all these years in the history books we give to children. Sooner or later someone was bound to read it.

It has been said, of course, that whatever the merits of redistricting, it is no business of the courts. The colonists had been over that ground. Faced with an omniscient Parliament, they had said that there was, or ought to be, a law superior to Parliament. And from

there they proceeded to argue, as one lawyer did as early as 1761, not only that an act of Parliament "against the constitution is void" but that it was the duty of the courts to "pass such acts into disuse."⁶ Judicial review by an independent judiciary was soon seen as the *sine qua non* of constitutional government, and in a few years they were to list among their grievances against the King that "He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."

Let me give you another example. While pursuing their problems with England, the Americans began to stumble over the largely local problem of religious establishments, supported, maintained, and sanctioned with varying force in each of the colonies. Could men properly be taxed to support churches to which they did not belong? Was it consistent to demand political liberty from England while denying liberty of conscience to dissenters at home? Did a government of limited po-

wers have any business legislating on man's relationship to his Maker? And shortly John Adams, a pillar of the established church of Massachusetts, concluded that no legislature has "power to enact articles of doctrine or forms of discipline or modes of worship."⁶ Do you catch an intimation that perhaps the New York Board of Regents has no business drafting prayers for school children?

Established religion was not the only institution which came under scrutiny. Emanations of the new thinking spread out, unexpectedly, in all directions. Once it had been suggested to Parliament that all men are born free, the embarrassing discrepancy between the professed principle of freedom and the reality of a half-million Negro slaves could not readily be overlooked. The incompatibility of slavery and freedom did not go unnoticed. In the decade before the revolution, the institution of slavery and the laws which upheld it came under increasingly forceful attack. A citizen of Philadelphia, Richard

Wells demanded of his fellow citizens: How can we "reconcile our exercise of slavery with our profession of freedom."⁸ He could find no basis for harmonizing the two, and neither could anyone else. In the early 1770's several of the future states prohibited the importation of slaves; some ruled that any slaves imported should automatically become free; and in April 1776 Congress proscribed further importation of slaves into any of the colonies. Of course, tragically for the future of the nation, slavery was not disposed of. There was compromise and backsliding. The Constitution recognized and protected slave-holding. But the incongruity of slavery in a nation conceived in liberty and dedicated to the equality of all men had been perceived, and that perception floated through our history like an iceberg — awaiting the inevitable collision. And not only slavery, but also the caste system which was eventually substituted for it stood condemned — not by the Supreme Court or by Congress but, from the outset, by the very princi-

ples on which the nation was launched. And so as we struggle to cut the knots tied by the long years of bondage, of cradle-to-grave segregation, of disfranchisement, of unequal protection of the law, we are still reaching out for the first principles of our national life. And it is those principles, which we dare not deny, which point the way to *Brown v. Board of Education*⁹ and the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

In this and in other areas of concern, it is because those principles still give drive and direction that I am not troubled by the much criticized so-called activism of the Supreme Court. It seems clear to me that the Court has been doing what it is supposed to be doing. It is trying, as it must, to bring law into congruity with the constituent assumptions of our society. It is undeniable that in recent years the Court has worked far-reaching and, for some, disturbing changes in the patterns of our communal life. But those who are dismayed by these fast-moving developments and have taken

issue with the Court have mistaken the source of their distress. But I think that we have tended to forget or to overlook the extent to which a demanding, and potentially transforming, idealism was laid down as the very cornerstone of our constitutional system. If that fact is grasped, change is less surprising. If you set out on a voyage of discovery, you will probably put in at unexpected ports.

We have not come to the end of the road; it is not even in sight. Do we deny the equality of all men before the law when many lack effective representation by counsel? Do we perpetuate distinctions of birth when many children are condemned to grow up in slums? Do we obstruct the pursuit of happiness when many are denied an opportunity for an adequate education? I could go on; and we will go on.

The Past is Prologue. If we take the experience of the past of our country and combine this with the experience under your Constitution, I am sure we can face the future with confidence. One thing we know, neither

Constitution is perfect. Neither Constitution will ever be perfect until all of us shoulder our responsibility to make them work. We cannot wait for each citizen to do this. Rather, we shall work with those who are willing. *PHILCONSA is leading the good example.* If we have more organizations like PHILCONSA throughout the world we would be much closer to our goal of World Peace Through Law.

What we need more than anything else is faith in our own governments — faith in our own Constitutions — faith in our own laws. Secondly, we need determination and willingness to work within these laws. We must insist on government of laws — not government of men. Thirdly, we must realize that true democracy, a lasting peace requires hard work by all peoples.

So, I close with two final admonitions. One is an old true statement: "Eternal Vigilance is the price of Peace." And another old but true statement repeated by President Johnson just a
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luxury devotes much of its energy. Group discussion sections should not be a remedial program for those who routinely cut the lectures and do not bother to read the material. The discussions should be the digestive system of the course. Tutors with no authority to compel students to keep appointments will inevitably end up playing pinochle among themselves.

OUR GOAL . . .

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week ago: "No Country and no man ever stands as tall as when he falls on his

Yes, after a year at Parsons, even after a year at Parsons, I do believe in a second-chance college. But the college I believe in does not yet exist, and will only appear as the result of honesty, humility, idealism, and a deep belief in the value of knowledge itself. It will have to be a better college than the "first-chance" ones. — Robert G. Collins in *The Journal of Higher Education*.

knees before God." — Thurgood Marshall, *Justice of the U.S. Supreme Court, speech before the Philippine Constitution Association*.