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The Convocation Address

Earl Warren

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THE CONVOCATION ADDRESS †

THE HONORABLE EARL WARREN *

IT IS MOST GENEROUS of you to admit me to your University family and I shall always prize the association. The fact that you chose to admit me on such an important day in the life of the University makes me doubly appreciative of the honor. My one regret will always be that court duties deprived me of the opportunity of attending the first two of the three days of this celebration. A perusal of the program and the names of the participants shows that they, too, were days of dedication—reverent and intellectual days that will forever enrich life in this beautiful new building—Garey Hall—which is destined to play an important part in the future of your commonwealth and our nation.

In our country, the dedication of a school of law is always an occasion for rejoicing because it represents the American ideal of ordered liberty. It reflects our highest aspirations for the individual, our nation and the world. On this happy occasion, you very properly distill those aspirations into the words, "Concept of Peace." In a period of international disorder, like that through which we are passing, no theme should provoke more serious or wholesome thoughts than our concept of peace; for it is only through law that domestic and international peace can be achieved and made permanent.

The words, "law," "order," and "peace" are abstract words which have meaning only in the frames of our experiences and beliefs. There are those who seek to translate these terms into fixed concepts based upon what ideally they ought to mean. There are others who translate them to provide an expedient definition of what is currently desired. Unless we remember that these words can and do have different meanings to different people, all talk of law, order and peace is without meaning and susceptible to misuse. An analysis of totalitarian pronouncements show that the terms, "law," "order," and "peace" appear with greater frequency than in our own. The same words are used by both free and slave societies, and their mere repeated usage should not be mistaken for the actual existence of law, order and peace in a noble sense.

† Address given on April 27, 1957, at the convocation of Villanova University for the conferring of honorary degrees in connection with the dedication of Garey Hall, the building of the School of Law.

* Chief Justice of the United States.

Popular concepts of law reveal great differences of opinion both here and abroad. To the hoodlum, "the law" refers to the policeman on the corner. To the legislator, law is the grist of the legislative mill. To the beginning law student, law is a formidable pyramid of decided cases. To the litigant, law is the judge and the jury. In reality, law is all of these and more—it is the entire process of creating and applying moral or physical sanctions for the purpose of regulating the conduct of man. The democratic goal of such regulation is the creation of an orderly and peaceful existence, with a maximization of the values of individual dignity.

In the totalitarian state, law is the instrument by which the individual is subjected to the will of the state. There order is the obedience to a reign of fear. The concept of peace is the broken will of an enslaved nation. The terms law, order, and peace in such a society all mean the same thing—conformity and submission to the will of the dictatorship.

Much has been written concerning the difference in laws as they are written and laws as they are applied. The world is aware that a constitution does not make laws nor does it necessarily create freedom for a nation. The cleverest tyrants have taken the greatest pains to draft constitutions depicting individual freedom—but only for world consumption. Freedom through law is a total process involving all of the forces of government as well as the moral judgment of the citizen. Order and peace, in their true sense, depend upon fair rules of conduct, faithfully administered with equal application to each member of society.

These rules must always be in adjustment with economic, social, and political values. Law derives its vitality from looking forward as well as by looking backward to the huge pyramid of judicial precedent. It must keep pace with a dynamic social and economic order, and in so doing it must be tested against the moral judgment of the nation and of the world. Its strength or weakness depends upon its relationship to the society which it serves. It must not be regarded as a static factor of national morality, nor should precedent alone be substituted for the moral judgment of the present age. To say that everything that is not moral has been prohibited by law, and that everything not prohibited by law is an acceptable standard of conduct is a fallacy. The life of the law must be provided by the growing moral standards of the people of the nation and of the world.

In totalitarian societies there is no such growth. Order is produced by force, and conduct is governed by edict. Complete regimentation is made possible by a strict rule of law and order. While order

does exist, it does not provide the desired link with peace. There is an absence of respect for the individual, and freedom of choice is non-existent. This should serve as a constant reminder that law should not be substituted for moral judgments and that a government of laws can be a tyrannical force unless the laws are conceived and amended by the free processes of a government directed by the people.

We are living in a divided world today. Security is a continuing problem. So is that of preserving liberty. In providing for national security we must remember that our greatest strength flows from individual freedom of thought and action. This freedom must be preserved at all cost. Laws must, therefore, be written and applied with the greatest care in order to achieve that fine balance which will protect both national security and individual freedom.

The whole question of man's relation to his nation and to his fellow man will constantly be at issue. Each of the 462 words of our Bill of Rights, the most precious part of our legal heritage, will be tested and retested. The degree of our faithfulness to it must always be judged by the content we accord to it. There is no other standard of measurement. It came to us with one meaning. We will be judged by the meaning of it we pass on to our children.

Nor is there a different standard of justice to be applied to the individual, to a nation, or to the nations of the world. Nation and individual alike are concerned with security, respect, and an opportunity to grow. For both, the law should provide certainty, fairness, and continuity. We cannot expect law to produce either domestic or international peace without these attributes and without reflecting the morality of the peoples of the world. Law cannot prevent injustices where unjust practices are countenanced in everyday life. Law is no substitute for morality.

Living in a troubled world there is renewed realization of the importance of the rule of law. In 1955, the International Commission of Jurists convened a congress at Athens. One hundred lawyers from forty-eight nations considered "what minimum safeguards are necessary to ensure the use of the Rule of Law and the protection of individuals against arbitrary action of the State." These one hundred lawyers of freedom resolved in the "Act of Athens" that "the Rule of Law . . . springs from the rights of individuals developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly, and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all."

There are other examples of progress in the recognition of our special responsibilities as lawyers in the United Nations Charter, the Declaration and Covenant on Human Rights, and the European Convention on Human Rights. In spite of difficulties and diversities we find that honest efforts are being made to write a declaration of human rights worthy of people everywhere. In this striving, there is real hope for the realization of peace and order in a free world.

The training of young men in the law schools of today must indoctrinate them with the nature of their professional responsibility to furnish deliberate leadership in providing peace and order through law. They must realize that the rights of men can be advanced only through enlightened effort and continuous striving for improvement. The proud inscription on our Supreme Court Building—"Equal Justice Under Law"—remains our goal—yet to be achieved. There are defects to be overcome. These defects are not all of our own making; some are inherited; others just creep in. But justice, like freedom, needs constant vigilance.

By improving the administration of justice and strengthening liberty under law in our own country, we will make our greatest single contribution to the promotion of law elsewhere in the world. If our actions, as one of the leaders of the world, continuously testify to our belief in justice, and our practice of it, other free nations will be fortified in their pursuit of the same ideal.

Law, order and morality cannot be regarded as mere abstractions, but rather they must be given life through positive leadership and by faithful use in our personal, national and international lives. The common goal of a lasting peace depends upon a universal sensitiveness to justice—a sensitiveness which begins with the individual, spreads to the state, and finally permeates the conduct of international affairs. Only when this has been achieved can the world hope to find peace.

I have no doubt that in this splendid new building dedicated teachers and inspired students will make a significant contribution to this end, and to the glory of Villanova.