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Charles H. Thompson

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Freedom and the Law †

By HON. CHARLES H. THOMPSON *

We are gathered here this evening under entirely different circumstances and conditions in which we found ourselves at a similar meeting a year ago.

We were in a great struggle then for our very existence and the thought of the awful sacrifices being made was a restraining influence in the enjoyment of the occasion. Since that date we have been successful in a great war and for this victory we are a grateful people.

We, of course, can never repay for the sacrifices made by the noble sons of America. They can only be repaid by their own satisfaction that they have measured up as fighting men to the glorious record of their forefathers. This to them, and to their loved ones, will always remain as a sacred memory of devotion to their country.

If we ask ourselves the question, "Why have we always been victorious in war?" the answer might be in a few words, "As a freedom-loving people we have always believed in the principles of a free government and of human liberty."

We have never believed in imperialism, nor have we coveted the territory of any other nation. This, in my judgment, is a fundamental principle of our success.

A foundation built on territorial aggrandizement cannot hope to succeed. A clear and striking example of the fallacy of this foundation in government is found in the rise and fall of the Japanese empire. Few nations in human history have moved as far forward in such a short time.

Before our recent conflict with Japan she was heavily indebted to us. It was American loans that built her industries. It was American purchases of raw silk that stabilized her industries and commerce; but this meant little to Japan when friendship stood in the way of territorial ambitions. Prosperity could not offset the desire for the territory of helpless neighbors or for the equality with the United States.

In my judgment, Japan, in her struggle for supremacy, failed to appreciate the importance of a free people.

Freedom which prevails in America, and by the help of divine power shall always prevail, is a dynamic liberating force. Under our freedom not only have we been successful in war, but five generations of our people have leaped through stages of progress to achieve standards that have astonished the world.

Our form of government, which gives us freedom, has created a light that

†Reprinted by permission from the Illinois Bar Journal, December, 1945. Response on behalf of Supreme Court of Illinois at dinner tendered in his honor November 30, 1945, Chicago.

*Chief Justice of the Supreme Court of Illinois.

ever burns brightly as a guide in a world dark with monarchy, imperialism, communism and a desire for territorial expansion.

Ours has been a development through governmental power with a minimum of laws and a maximum of individual endeavor with no desire to profit at the expense of our neighbors. The demand for equal justice for all has been met by our institutions. Freedom and Americanism are synonymous.

A problem now confronts this nation as to returning to the people the rights which they had before the war and in returning to peacetime endeavors, we should renew our allegiance to our government as it operates without wartime restrictions.

So long as we continue to operate through three branches of government, the executive, legislative and judicial, each separate in their functions, we will have a government of the people, and so long as we have a government of the people, our profession, which fits into this scheme of government, will survive and flourish.

To maintain such government the legal profession must take no little part in its preservation, for by their example the laymen follow in their footsteps.

That the legal profession will meet this responsibility in this respect, I have no doubt. The great trust confided to it, with the power it has to direct public sentiment, taken as a whole, it represents a body that is typically American, and has contributed to the progress and security of the people equal to the achievements of any other class or group.

Lawyers are called upon to protect the rights and liberties of our people. They have in their hands the responsibility of seeing that the personal and property rights of the people are protected from those who might, through power or unlawful attempts, seek to destroy the rights of their neighbor for their own personal gain.

In upholding these things the lawyer is supporting the basis on which a free government rests. The public has a right to expect more than just oratory on the part of the lawyer. Sometimes oratory only leads to confusion.

When I was a young man I became a member of the Illinois State Senate. I recall, on the first day, there was a fiery discussion and debate. I turned around to the Hon. Richard J. Barr, who is yet a member of the state senate, and who is one of the oldest state senators in point of service, and inquired of him if this went on all the time. He answered, "Well, the senate is not as bad now as it was when I first came many years ago. On my first day I inquired of a gentleman if he was a member of the senate and he said, "Yes, but don't tell Mother. She thinks I am tending bar down in Missouri."

I will not, at this time, give you my impression of the Supreme Court on my first day; however, I soon found there was considerable discussion there.

The lawyer must be a student of the constitution in carrying out his

professional duties. In order to emphasize the importance of our basic liberties, the period from December 8 to 15 has been set aside as "Bill of Rights Week." It was on December 15, 1791, that the first ten amendments to the Federal constitution were adopted.

The inclusion of the Bill of Rights was a memorable land mark in the history of human liberty, frequently referred to as the "soul of the constitution."

The Bill of Rights stands today as a bulwark against tyranny—as a protection of the individual in those liberties for which he has struggled from time immemorial.

We must admit the constitution has been tilted a bit but it is too big to be turned over by men who are smaller than those who wrote it.

In my judgment, when it comes to an interpretation of the constitutional restraints and restrictions, all necessary changes can be made without destroying the smallest stone in that foundation; and while the bar is called upon to perform its functions within that foundation, there is a greater duty upon the courts to adhere to its provisions as a guide to the profession in carrying out their duties.

Of course, we do not have to be as technical as the old gentleman who resided in the only shack left, in one of the mountainous sections of the west when a tourist stopped and inquired as to where he could find Silver City, replied, "Stranger, don't move an inch."

But the bar is entitled, when presenting matters to the Supreme Court, to have its cases decided within reasonable constitutional restraints and restrictions. The bar has a right, also, to have its cases determined, in my judgment, under the doctrine of *stare decisis*, which doctrine has been adhered to and has received proper development in Illinois.

This doctrine gives assurance to the legal profession to the extent that it is able, with a reasonable degree of certainty, to explain to clients what will likely be the legal result from investigation of the facts and can be assured that such advice will be supported should it be necessary to appeal for redress.

The bar certainly is entitled to a better determination than some language I saw used in an opinion a number of years ago which read like this:

"But if, after all, it be said with any assurance that we have held to the contrary of our present decision, it can be said with the same assurance that we have as often held the other way."

Stare decisis offers the necessary stability in any legal system. Blackstone gave as the reason for the rule of precedents the desire "to keep the scale of justice even and steady and not liable to waiver with every new Judge's opinion."

We feel that the Supreme Court of Illinois is a constitutional court, and that it is a court adhering to the doctrine of *stare decisis* and that the lawyers of the State of Illinois may be reassured in their advice to their clients in this respect.