

January 1940

## The Spirit of Remonstrance

John Lord O'Brian

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

John Lord O'Brian, The Spirit of Remonstrance, 17 Dicta 140 (1940).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

## The Spirit of Remonstrance

# ***The Spirit of Remonstrance***

By JOHN LORD O'BRIAN\*

No serious minded man in these days can reflect upon the passing events without being acutely conscious and apprehensive over the tragic happenings daily transpiring in Europe and in the Far East, and without trying to formulate in his own mind what should be his individual attitude toward those tragedies. Confronted with the spectacle of a war waged against all traditional forms of religion and with a resurgence of brutal oppression and calculated horror to an extent unknown for centuries, some of us have become seriously disturbed by the activities of those leaders of public opinion who in increasing numbers are urging that these matters are no concern of the Americans, that expressions of resentment are both futile and dangerous and that any widespread discussion of these happenings might lead to dangerous states of emotion.

It is because as a class we are the true realists that these matters have a special concern for lawyers. We know better than other men that willingness to discuss is the necessary corollary of the right of free speech. When Trevelyan said that, commencing with the thirteenth century, the rise of the common law lawyer was almost as important as that of the parliament man, he was thinking of the lawyers in every generation as the remonstrants, the protestants and the active defenders of individual right. That has always been true of the lawyers in America. During the sweeping changes which have been taking place within the last ten years, certainly no group has been more active, or may I say more vociferous, than the lawyers. In all our domestic affairs we have been watchful, critical and outspoken; yet, when it comes to discussion of what is now going on abroad, we seem chilled by the same blanket of doubt and moral fog that affects so many of our fellow citizens. This paradox is the more puzzling because we are the most realistic of all professions, the most sensitive to invasion of individual right and in the past our predecessors have been the most resolute and most uncompromising defenders of that right to express opinion freely and of the right of protest, which are the essence of human freedom.

Whatever the cause it is undeniable that on all sides influences are at work tending to discourage full discussion of those events abroad which in the long twilight ahead cannot fail to have a deep significance for us.

This subject is a delicate one. To avoid misunderstanding may I say that I am not now speaking of national policy, or as an isolationist

---

\*Of Buffalo, New York. Member of the New York Bar.

or as an interventionist. Those like myself are opposed to America actively participating in the wars now being waged. But like the great majority of Americans, at present without articulate leadership, we are opposed to any policy which would deaden the sense of individual responsibility of the citizen, or which would have a smothering effect upon his instinctive resentment or discourage expression of his sense of moral indignation. The way to secure peace and make it a lasting peace is to face frankly and to discuss freely disagreeable and tragic realities. To some of us it seems that we will make little progress by adopting methods of indirection, by affecting an attitude of unconcern or by countenancing any course which tends to obscure the grave moral issues or encourage our people into an attitude of indifference. The fact that the present attitude of unconcern will weaken and may destroy the position of American moral leadership in the world is now a matter of much less concern than the disastrous effect which these teachings will have upon the moral fiber of the American people themselves.

In recent conversations with leaders of some of our great universities, I was startled to learn that a majority of our young college people seem indifferent to what is going on in Europe, that many of them are actually convinced that America was carried into the last war chiefly by the machinations of selfish businessmen and by the hysteria of a superficial emotion, and further that a number believe that it would have been just as well if Germany had won the last war. These views, if typical, are disappointing and annoying; but a better understanding of history will surely correct these exaggerations. What is more depressing is that like many of their elders, many of these young people seem vastly more stirred up over Mr. Browder and the abstract right of free speech than they are by the spectacle of the heroism in Finland where Thermopylae's were daily being re-enacted before our very eyes. The generous ardor and spirit of adventure that we associate with youth seems, temporarily at least, to be in a state of eclipse. But as lawyers we should be more concerned with the great number of mature citizens who hold some of these same views and who are busily trying to persuade their fellow-men that their safety depends upon closing their eyes to what is going on abroad.

The baleful word "propaganda" seems to have become a sort of national slogan of alibi and escape. On all sides, even the best intentioned men resort to it in order to escape the necessity of meeting ideas with ideas, of relying upon the power of persuasion. False propaganda only makes it more difficult to get at the facts; but the facts are there just the same. Our experience in the Great War showed that the intelligence and native shrewdness of the average American made ineffectual the best devised foreign propaganda. Despite this experience, it is no exaggera-

tion to say that today the constantly reiterated warnings against propaganda are actually producing a new type of intellectual cowardice. Those who constantly repeat these warnings are in reality saying that our individual citizens are incapable of distinguishing between truth and falsehood or between right and wrong and are incapable of controlling their emotions. What a reflection upon the integrity of our citizens and what a travesty on our professed confidence in the intelligence of our people! Nevertheless this constantly expressed fear of propaganda is everywhere interfering with and hampering that public discussion so necessary for an informed and wise public opinion.

Our anxiety over these sinister influences is increased by the conflict between these attitudes and the historical American tradition of individual freedom and individual responsibility. Cannot we lawyers make it clear that willingness to discuss and readiness to meet with ideas the challenge of other ideas is the most fundamental of all attributes of our political philosophy? Our entire system of free public education is based upon it and out of it has developed the American type of government of public opinion. Our people from the earliest days, unconsciously perhaps, have been demonstrating in every generation their faith in the doctrine that the test of truth is its "ability to get itself accepted" in the marketplace of ideas. Any departure now from this attitude brings danger. No one knows as well as the lawyer trained in the tradition of the common law that the disintegrating forces in society never cease to operate; that the safety of the state rests always on the sense of right of the individual, upon his sense of personal obligation and upon his readiness to do his duty.

The American political philosophy is not for the timid or the weaklings. All through our history we have been characterized by a willingness to take the risk incident to expressions of conscientious conviction and to live dangerously if occasion demands. For, as Senator Root once said, there can never be any sovereignty superior to the law of morals. It is over 600 years since the earliest of the guarantees of individual liberty were made in the Magna Carta. Ever since that time men of our type, in the drab and wearisome atmosphere of the courts, have been defending the right of the common man to live his own life. As lawyers we must never forget and we must never let our fellow citizens forget that the right to live in freedom carries with it the duty of remonstrance in times of crisis.

Lord Acton, the most erudite historian of the growth of human freedom, and Abraham Lincoln, with a wisdom born only of his own amplitude of understanding, came to the same view in the end. They were alike in their belief that the one ultimate consideration upon which all men ought to agree was respect for the sanctity, the worth and the

possible dignity of the individual human life. For they saw the individual human being as the embodiment of an invincible spirit of aspiration. John Morley once quoted Cromwell's saying, "What liberty and what prosperity depend upon are the souls of men and the spirits which are the man," adding as his own comment, "Yes, and the historic epochs that men are most eager to keep in living and inspiring memory are the epochs where the mind that is the man approved itself unconquerable by force." The words of that old Victorian Liberal seem singularly apposite today. We sometimes forget that this respect for the life of the individual was the essence of the common law and it has been up to now the fundamental basis of our own civilization. At the present day we need more than anything else to remind ourselves that that same respect for the worth and dignity of human life must be the basis for any enduring form of government, for any permanent condition of peace.

In sharp contrast with these fundamental beliefs of ours are the cautionary teachings at present so much in evidence. When we were discussing the modification of our so-called Neutrality statute, a pall of obscurity was thrown over the whole discussion by appeals to fears of war. Free expression of opinion was constantly discouraged by false issues and in particular by the assertion that one side or the other were war-mongers. Only a few days ago the press reported that the author of a popular drama refused to permit a benefit performance to be given in aid of Finnish relief because such action "might create war emotion." In Washington we frequently hear assertions that it is dangerous for Americans to discuss, much less protest, against the brutal tragedies which are exterminating multitudes of innocent people.

But it is our belief that any teaching which, in the guise of expediency, or domestic policy, or foreign policy, tends to smother the expression of common instincts of humanity brings danger to the American people. For whether men attempt to decry it by calling it emotionalism, or sentimentality, or humanitarianism, it is a stubborn fact that, men and women alike, the vast majority of Americans adhere to strong moral standards and are distinctly resentful against wrong. Any person in this country who today can look at the horrors being inflicted upon the innocent human beings in Europe or in the Far East without deeply feeling that typical American sense of resentment, is in spirit already a dead American. Too many of our cautious, well-meaning friends are confusing what they call emotions with the most profound and moving convictions of our people.

That this danger is a real one was vividly shown by the lack of adequate expressions of resentment at the time of the murder of our fellow citizens on the *Athenia* and again during the time of the ghastly

events in Poland and Finland. At times it seemed as if many of our people were bystanders silently watching a film spectacle. In times of crisis the expression of moral resentment becomes more than a right, it becomes a duty, and any public policy which ignores that truth is an inadequate policy.

The same cry of caution, born of expediency, was heard recently when the leaders of this administration protested against the infamies being perpetrated in Poland. But here our leaders rose above partisan considerations of policy and they spoke the authentic voice of the real America. They correctly interpreted the conscience of those great silent masses of our people who, chastened by the discipline of daily toil, have always been the first to distinguish right from wrong in public policy. For the whole American structure is built on the premise that the ordinary man may be trusted to judge of fair play and to make his own decision between right and wrong.

Most, if not all, of us approve the action of our Government in withdrawing our ships from the war zones abroad and of preventing our citizens from exposing themselves to the same dangers. But our moral frontiers are another matter. They must never be withdrawn and we must never appear to acquiesce in the action of those brutal powers which have brought such inhumanity into the civilized world. To those forces we are eternally opposed and we can never express too often or too forcibly our hostility to the spread of their influence. This is said not in criticism of any action of our national administration for we are in full accord with it in its foreign policy up to this time. On the contrary, speaking in the tradition of those lawyers of the common law who defended individual freedom, we are seeking to strengthen the support of those leaders at Washington who believe that the safest foreign policy as well as the safest domestic policy is a policy determined on the basis of the sense of right and wrong held by the average American. For the self-respect of America is identical with the requirements for self-respect in the individual. There must be some way short of participating in war by which our citizens can make clear their sense of moral indignation and whatever happens, let us see to it that we do not stultify ourselves. American distinctive achievements in the field of foreign policy in the past have frequently been the result of independent as well as courageous action. For many of us, the highest aspiration of America in the field of foreign policy was expressed in the protest which Secretary Stimson made against the action of Japan in Manchuria. At the time many decried this as a futile gesture; but who can now deny that the present moral collapse of the world is due in part to the fact that leaders of other nations put aside that sense of moral conviction which was so clear to every truly patriotic American and adopted in its place measures based only on expediency?

Those of us who hold these views have no dogma to assert, have no panacea to suggest, have no foreign policy to dictate. We need give no advice to foreign nations. There has been too much of that. Our concern is only with the moral values and moral sense of America. Whether or not our individual expressions of resentment and protest be immediately effective is not the question. The enduring life of this nation depends, above all things, upon a willingness to discuss and a willingness to express courageously our resentment against wrongs perpetrated on helpless humanity. As has often been said, America is not an abstract formula of government and it is something more than a place. It is a moral tradition and there is in that American moral tradition nothing of neutrality as between right and wrong.

Every true lawyer lives in the hope that when his career comes to an end man will say of him, in homely old fashioned phrase, that he lived in the "great tradition." To be a part of that tradition does not require success in professional achievement. Many leaders of lost causes are there immortalized. The only test is whether one had made a distinctive contribution to his time. In bygone generations those who truly earned this distinction were in every instance men sensitive to wrong and ready to defend the unfortunate under all circumstances. Are we now a part of this tradition?

I suggest, my fellow lawyers, that in these difficult days our supreme duty is to show a willingness to discuss what is going on in the world, to cut away from the shibboleths and cliches, to get down to the underlying moral issues. In doing this we shall be reminding our fellow Americans that in this country individual conscience is the basis of the state and that the only way to help to bring about a lasting Peace is to proceed in accord with the free and willing expression of the conscientious convictions of our citizens.

And the world at large will know with definiteness and have no excuse for misunderstanding the true spirit of the American people.

---

### Junior Bar Meets

The Junior Bar Conference held a regional meeting in Denver on Sunday, May 26th. Approximately 100 younger members of the bar were present. The morning sessions were devoted to committee work.

Following a luncheon at the Albany Hotel, the conference heard the reports of the Committees and outlined a program for the remainder of the year. Several of the Committees intend to present formal requests to the Colorado Bar Association for action, according to Hubert D. Henry of Denver, Chairman of the Conference.