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JUSTICE IN AMERICA: THE DREAM AND THE REALITY

What message does one bring to America on our 200th birthday?

Much of what will be said around the country today will be self-congratulatory, as befits birthdays. However, Fourth of July oratory has, over all the years of our history, become a special kind of rhetoric, easily produced and as quickly forgotten.

The one exception is the Fourth of July speech of an escaped slave, Frederick Douglass, in Rochester, New York, in 1852. He began, "What to the American slave is your Fourth of July? I answer, a day that reveals to him more than all other days of the year, the gross injustice and cruelty to which he is a constant victim." I spare you the rest of the speech, but it does set the stage for what I have to say today, because much has happened in America during the past 124 years since the Douglass speech.

Today is a very special occasion and we should not indulge in empty rhetoric. As one who has participated in a good many Bicentennial celebrations this year, mainly in university and religious settings, I have been impressed by the conflicting reactions to our 200th anniversary. There has been a curious mix of optimism and pessimism, both somewhat overdone, I believe. I would prefer to spend these few moments speaking quietly and honestly with you about what I believe to be the central and continuing message of America, to itself and to the world. The message

will involve, I trust, optimism without undue pride, and pessimism without despair or utter frustration. Both too much optimism and too much pessimism paralyze us as a nation and impede all future progress.

Rather, I want to give you an honest appraisal of how far we have come and how far we have yet to go. But I say it with the firm hope that if we are true to our original dream, God will give us the grace to go farther than any nation ever has, along the high road of freedom and justice under the law. That is the direction in which we were pointed at our beginning. Lincoln put our national destiny so well in his second inaugural: "With malice towards none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in."

The primal law that gave us birth in the Declaration of Independence was an ideal expression that spoke to the heart of justice and human rights as never before in the history of man, if one excludes the transcendental law of the Gospel, "Love your neighbor as yourself." I must insist here that the Declaration of 1776 spoke; it did not effect the ideal that it proclaimed. What it proclaimed, though, really addressed humanity's deepest hopes and aspirations: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness."

It was an additional stroke of genius that instead of saying "property" after life and liberty in the fashion of the earlier Colonial

statements, Jefferson changed "property" to "the pursuit of happiness." By this one new addition, the vision of justice in America was broadened immeasurably. What a magnificent dream that all Americans should not only have the just right to life and liberty under law, but also to the pursuit of happiness, not happiness as the super-sensate hedonism of our day, but a right to all those basic human and spiritual endeavors by which we can seek to be happy in a very unhappy and unsettled world: the right to hope and to pray, to grow more each day as human persons, to have our inherent human dignity respected by others, to have equal opportunity to be educated, to earn a living, to provide for one's family, to acquire property, to have a decent home, to partake in the political process by voting and standing for election to public office, and, finally, to have the law and the courts protect these rights, even to enlarge them.

I have said that all this was proclaimed in that pregnant phrase of the Declaration, "the pursuit of happiness," but it immediately added "that to secure these rights, governments are instituted among men," not to give these rights, but to secure them, for they are inherent (Jefferson's original wording) and unalienable.

It is difficult to recapture, 200 years later, the human situation that existed at the time that these words first electrified the world. Suffice it to say that Jefferson and the signers of the Declaration laid out an almost impossible task for America in all the years ahead, if America was to be ever more true to this original promise in all of its full meaning. I would submit to you today that the most central and

exciting reality of America's history during the 200 years that followed was the ever-fuller realization of this enlarged view of human justice, dignity, and rights under an ever-widening circle of laws and governmental action, inside and outside the courts, always aimed at greater justice. The path was always uphill, sometimes we slipped backwards, but in the long run we always moved forward to enlarge the law of justice for all.

The fundamental law, of course, was the Constitution which was written to establish the new government to secure these rights. It took more than a dozen years after the Declaration to get the Constitution written and approved by two-thirds of the thirteen original States. One of the several reasons given for the Constitution in its Preamble, the most important in my view, was "to establish justice."

As you may know, Jefferson was not present at the Constitutional Convention, since he was Minister to France at that time. Jefferson was mainly pleased when he saw the new Constitution with its unique system of the balance of the three powers of government: Executive, a President to lead the country; Legislative, a Congress to balance the President and to enact the laws; and, finally, Judicial, a Supreme Court to watch both the President and the Congress, and to measure the validity of their actions against the Constitution.

Jefferson acknowledged the imaginative genius of this new instrument to create a new nation in unity and diversity. However, Jefferson said that the Constitution was not enough because it failed to specify those human rights for which all of them had pledged their

lives, fortunes, and sacred honor in signing the Declaration. Unless there were an additional provision for a Bill of Rights, Jefferson said he would oppose the Constitution. So great was Jefferson's prestige that the first Ten Amendments were soon passed to include the rights he proposed, and ingeniously allowing for future Amendments to enlarge the rights then provided.

I am not sure that our Constitution or our nation would have perdured without this provision of the Bill of Rights and future Amendments, despite a Constitution that even Gladstone, the dean of British Prime Ministers, called: "the most wonderful work ever struck off at a given time by the brain and purpose of man."

Let me give you the reason why I say that the Amendments were so important. Despite the great universal ideal expressed in the Declaration, "all men are created equal," the fact is that this just equality applied in reality at that time only to propertied and free white Anglo-Saxon males. Women and young adults couldn't even vote. We had to correct this by two new Amendments enacted in this century, one only a few years ago. But more importantly, the new nation was afflicted by a near-fatal flaw -- slavery.

It is difficult to imagine that slaves were listed in Colonial law not as persons, but as real estate. By the same law, no slave could leave his owner's plantation without a pass. No slave could carry a club, staff, or other weapon. No slave could own a horse, hog, or cow. No slave was to run away. No slave was to resist his owner when he administered correction. No slave was to lift his or

her hand in opposition to a Christian, except if that Christian were a negro, mulatto, or Indian. No slave was to prepare or administer medicine (fear of poisoning). No slave was to meet with four or more other slaves. No slave was even to attend a religious service, except with his or her white owners.

There were also provisions for punishing violations of this legal code, ranging from whipping to castration and to death. These statutes were those of Jefferson's Virginia where half of the more than 600,000 slaves dwelt.

The legislature provided that these statutes be read at the door of each parish church twice a year, so that no slave, even though newly arrived and not understanding English, could plead ignorance of the law. As chattel property, slaves had no rights since they were not even classified in the law as human persons.

It was proposed, in vain, that slavery be abolished, both in the Declaration and in the Constitution. Northern slave traders and Southern slave owners opposed the provisions. Even after England had abolished slavery, Jefferson, in rewriting Virginia's Statutes, still declared that no one was a slave unless born a slave, which said in legal jargon that no black was born free in America unless his parents were freed, which few were.

By a kind of ironic retribution for this near-fatal flaw which even Jefferson did not dare to change, despite the brave words of the Declaration and the Constitution, his best friend and law professor, George Wythe, Chancellor of the Commonwealth, signer of the Declaration,

Speaker of the Revolutionary Assembly, was later murdered by his favorite grandnephew and namesake who sought to quicken his inheritance thereby. The murderer went scot-free because the only witness, a black slave woman, was forbidden by Virginia law, largely fashioned by Wythe and Jefferson, to testify against a white man.

Ladies and gentlemen, that is how far back we began in the establishment of justice in America. It was actually further back than I have indicated because, unlike the modern soap operas, I have left out all of the more sordid details, such as Jefferson's wife's half-sister being a slave in his house and legally liable to be sold at auction at his death -- no provision otherwise being made in Jefferson's will. Jefferson, it should be said, knew that all of this was wrong. But he also said that the people wouldn't tolerate a change. Anyway, that's where we began -- good reason for pessimism -- and a long way to go for freedom and justice.

Almost a century passed before a bloody, fratricidal Civil War addressed this near-fatal flaw in our national quest for justice. Even the great Lincoln was ambiguous about slavery, although one gets a glimpse of his vision of America when the campaign oratory was ended and he declared America's purpose in his first inaugural, "to lift artificial weights from all shoulders; to clear the paths of laudable pursuit for all; to afford all an unfettered start and a fair chance in the race of life."

Personally, I think the moral issue of justice finally confronted Lincoln at the lowest ebb of the Civil War when he had to declare himself

decisively. He wrote the Emancipation Proclamation, presented it to his Cabinet, all of whom voted nay. He then voted aye and declared, "The ayes have it." We had three more Amendments, the 13th, 14th, and 15th, following the war, to buttress the Proclamation, but, even then, victory for justice was not to be. President Rutherford B. Hayes won, with fewer popular votes, a contested Presidency against Samuel J. Tilden by selling out the blacks to win the electoral votes of the South. The Reconstruction ended ignominiously, shortly after it began. Shamefully, the Supreme Court assured the nation of another half-century of apartheid by declaring as constitutional, "separate but equal," a phony legal fiction, in Plessy-Ferguson. It was a sad day for the uphill struggle for equal justice in America. The great English historian, Arnold Toynbee, said in his Study of History, that he could not understand why the blacks in America did not really become bitter, revolutionary, or Communist. Instead, their spirituals always spoke of hope. They were better Christians than we were.

Now I can speak of the days many of us have lived through and seen. During the war, Franklin Roosevelt and Winston Churchill spoke of the Four Freedoms that victory would provide. Blacks still fought that war in a segregated Armed Forces.

To Truman's eternal credit, this lowly Missourian Army Captain become President, removed that hypocrisy by desegregating the Armed Forces after World War II. Now the drama of America finally achieving its ideal and curing once and for all the near-fatal flaw, began in earnest, with all the branches of government, Executive, Legislative,

and Judicial, making crucial contributions at critical moments. We must first credit the Supreme Court, under Chief Justice Earl Warren, for the undoing of the Court's previous baneful error in Plessy-Ferguson. In 1954, Warren wrote the landmark decision in Brown-vs-the Board of Education of Topeka, declaring once and for all, at long last, that separate and equal was substantially separate and unequal, ordering the desegregation of schools, then legally segregated, with all deliberate speed.

The speed was certainly deliberate because in the next decade only three per cent of the de jure segregated school systems in the South were desegregated. Then the Executive and Legislative branches of government moved in to supplement the Judiciary. Following the assassination of President Kennedy, President Johnson, a Southerner, addressed a joint session of Congress on the need for strong civil rights legislation and concluded his appeal with the famous words of the hymn of the Freedom Riders, "We shall overcome." Such an act of courageous leadership, doing in the 1960's what Jefferson felt he could not do in the 1780's, gave us the great civil rights laws of 1964, 1965, and 1968.

Before the 1964 act, blacks in many parts of America faced every day the indignity of not being welcome at hotels, restaurants, water fountains, rest rooms, snack bars, beaches, churches, even, God save us, cemeteries. In one day, thanks to the 1964 omnibus civil rights act, all of this was changed, and the mores of centuries, dating back to the first days of slavery, were abandoned overnight. It was done

by federal law and almost everyone accepted the change as right and just and long overdue.

I would like to pause here for a moment to underline what this meant for America. We have a national motto, in Latin, e pluribus unum, on our coins and currency, which says that we are one nation made up of many different people. Have you ever thought what this really means? We have more black Americans than there are Canadians in Canada, more Spanish-speaking Americans than all the Australians in Australia. Twice as many Jews as Israel. More Indians than when Columbus discovered America. A quarter of the Irish nation came here after the Potato Famine. More Italians by far than the combined populations of Rome, Florence, and Milan, with Naples thrown in as well. I could say equal things of Germans, Russians, Poles, French, Austrians, Belgians, Greeks, Mexicans, Koreans, Japanese, Chinese, and, most recently, Vietnamese. During the first two decades of this century, 14 million people from almost every nation on earth came to our shores, following the invitation on our Statue of Liberty, "Send me your tired, your poor, your huddled masses yearning to be free." They arrived mostly with bundles and the \$25. required, illiterate, not knowing English, poor, beaten, but full of hope for a better life in this blessed America. Their hopes were mainly realized, even though with great difficulty. They were our grandparents and great grandparents. They found freedom and justice here. We are now being asked to grant equal justice to all yet denied it. That will happen because whater our faults, Americans are preeminently fair.

I have tarried, overly you might think, on the black experience, because I believe that it is here that America really will make the worldwide breakthrough for justice and freedom. While most races and nationalities have faced prejudice in coming to our originally Anglo-Saxon America, especially Jews and Irish and Italians and Slavs and Orientals and, today, Mexican-Americans, I believe that beginning poor is nothing compared to beginning as slaves with no human rights whatever. Color is also, I believe, all across the world, a greater source of prejudice than race.

I have heard all of the responses, particularly, "We worked hard to achieve what we have." Of course you have. Everyone in America has had to work hard for justice, but I say to all of you that justice has come harder for our black citizens because whatever the disadvantage of our immigrant forebears, black Americans started further back and have faced more persistent problems as freedom and justice were expanded for almost everyone during the past 200 years.

Having said some nasty things about the South, may I say that they are now out-performing the North in achieving the ideal of e pluribus unum. I would here like to pay tribute to courageous Southern judges, school boards, mayors, police chiefs, and governors who have declared that times have changed and that, at long last, equality of opportunity is the order of the day, whatever the sad heritage of slavery.

What I really want to say to America today is that we have truly come a long way since Jefferson, that the moral imperative of human dignity and human rights has finally come of age in America, the

microcosm of all the world, with a population that truly represents every nationality, religion, color, and culture on earth. If we can achieve freedom and justice for all here, then maybe there is hope for the rest of the world. This is our greatest Bicentennial message to mankind everywhere.

Earlier, I said that after having come all this distance, many today, even on our 200th birthday, seem filled with pessimism about America's future. There seem to be two simple reasons for this pessimism: Vietnam and Watergate. Again, I would submit that what America did to achieve liberty and justice for all in the 1960's far outweighs the sad reality of Vietnam and Watergate. After all, it was a small group of people who took the decisions to involve America in Vietnam, while it was millions of Americans, especially young Americans, the hope of the future, who demanded an end to Vietnam. Even fewer Americans, several dozen, were involved in Watergate and, again, we ourselves, our media, our Congress, and our courts, exposed the cancer of that unconstitutional action and corrected it through the proper Constitutional processes.

On the other hand, in the 1960's, every American was involved, over 200 million of them, in accepting an end to a segregated society in schools, jobs, neighborhoods, in all places of public accommodations, and, especially, in voting and holding political office. There are still and will be in America sad pockets of prejudice and violence and un-American denials of freedom and justice. But today we are

arguing mainly about the means of attaining equality of opportunity for all. Few would admit that they oppose the goal for which America has striven so long and so hard, with so many martyrs and so much heartache. Peaks and valleys there have been, but the historical move was always upward towards greater justice.

I believe that whatever the persistent conflicts among our citizens, whether about busing, or abortion, or neighborhoods, or drugs, or crime, any nation that could put several of its citizens on the moon and bring them back safely should be able to find imaginative and creative solutions to all our current problems. They are really small when compared to what America faced at its beginning: thirteen small, poor, and weak colonies, badly divided, up against the strongest of opponents, yet boldly declaring freedom and justice for all, for all the world to hear; boldly devising a new form of government and making it work for 200 years. America took the poorest and most oppressed and gave them the chance to be free and prosperous. America granted freedom of religion to all and has been tolerant of all, whatever the religious differences among us. America took the most illiterate and made them the most educated. In a world where billions of people live on \$100 to \$500 a year, our poverty level is \$5,000. Even so, we rightly declare that in the most affluent nation on earth there should be no unemployment for those seeking work and no poverty for those who really want to better themselves and their families.

One of the wisest observers of America was the Frenchman,
Alexis de Tocqueville, who wrote after his American tour in 1831,
145 years ago:

"I sought for the greatness and genius of America
in fertile fields and boundless forests; it was not there
I sought for it in her free schools and her
institutions of learning; it was not there
I sought for it in her matchless constitution and
democratic congress; it was not there
Not until I went to the churches and temples of
America and found them aflame with righteousness
did I understand the greatness and genius of America
America is great because America is good
When America ceases to be good, America will cease to be great."

We have indeed been blessed by God with abundance of good land and good people. Our greatest problem today is to re-examine our values. Not many people realize that 1976 is also the 1500th anniversary of the fall of the Roman Empire in 476, an empire which fell mainly because it lost the virtues and values that once made it great. We Americans must ponder this event in our own perspective. Becoming rich in body, we have in many areas of our national and personal lives become poor in spirit, lax in integrity, forgetful of the central fact that freedom and justice must be regained, re-established, and won each day. We have often been unmindful of the fact that when one American suffers injustice, each of us and our great nation are diminished and wasted, yes, even threatened. The one lesson we should learn today is that freedom and justice are not dead ashes to be revered, but a living flame to be fed by our continual dedication and effort. Each day, each one of us is present at the creation of America, because America, our America, is being created anew by each one of us, each day.

What then should be our stance today as we face the next century and celebrate the two centuries just passed? First, gratitude to God for the free blessings of great land, great leaders, great people, great visions, and the will to expand yet more the freedom and justice that launched the American experience. Puny dreams, low aspirations, half-hearted efforts are unworthy of us, both as a people and as a nation. We have come too far to falter now, or to lose heart. We

are a people who have already done what was never done before: to declare equality of opportunity and to make it work for everyone.

Second, let us accept ourselves as we are. Nations, like people, are an amalgam of good and evil, but they grow or decline as they strive or relax in their efforts to be better and to eliminate all that is unworthy and dishonest in their personal and national lives. May we ask God today to forgive the injustices that still exist among us as we try to balance the scales of justice better in the days ahead.

Thirdly, just as an infant America thrilled the tired world of the Eighteenth Century with a Declaration of Independence, of freedom and justice for all, should not a mature America in today's interdependent world say again to all the world that we will work for justice on behalf of all suffering injustice anywhere, for greater prosperity for those around the world who are so miserably poor that their inherent human dignity becomes a travesty, a bad dream, a nightmare. We can help them help themselves, and we should.

Lincoln once said that we Americans were an "almost chosen people." We still are. Manifest or not, we do have a very special destiny. Governor John Winthrop of the Massachusetts Bay Colony said that his little group of colonists should be a city shining on a hill for all to see. A nation can be overly Messianic if it does so selfishly and imperialistically. But America should ask for nothing else in the world of the Twenty-first Century than to do better what it has already done, sometimes haltingly, sometimes

brilliantly, for its own people and now, hopefully, for the people of all the world: to serve justice and to enlarge freedom for all.

May God bless America this day, and in all the days to come, in the fulfillment of this exalted mission. Happy Birthday, America.