

THE DREAM AND REALITY OF JUSTICE IN AMERICA

As we read the newspapers and watch the nightly news broadcasts, we are appalled by what is taking place in South Africa. We find it impossible to imagine how a policy as inhuman as apartheid could be tolerated, or how human beings could treat other human beings with so little respect, refusing to recognize their rights as men and women. We demand an end to apartheid, and we take pride in the fact that in the United States all people are recognized as equal, and all share in the rights and privileges of our nation.

Before all of us feel too virtuous, too quickly, we should remind ourselves that the United States practiced apartheid for 250 years, dating from the arrival of the first slave. Apartheid, United States style, was just as pervasive, just as evil, just as inhuman as is apartheid in South Africa. We should also remind ourselves that it was only 22 years ago, in the year 1964, that we outlawed apartheid in this country. It is important to remember what a black in the Southern states could not do before 1964. He or she could not purchase a Coke and drink it at a lunch counter, could not enter most restaurants and order a good meal, could not register at a decent hotel, could not enter a bus and sit down in the front, could not go to a movie except possibly in the high balcony, could not drink out of a drinking fountain unless it was marked "Colored," could not go to the public restrooms, could not enter the store and try on a dress or a suit, could not swim at a public beach, could not get a haircut where they pleased, could not go to a white church on Sunday, and could not even be buried in a cemetery if white people were buried there.

Those are some of the things that many black Americans could not do in 1964, and these prohibitions were backed up by law in thirteen Southern states. And even though it was not the law in the North, blacks experienced much of the same prejudice and limitations there, and could not do such things in many places in the North as well.

America is most unique of all of the nations of the world. Most countries are reasonably homogeneous in their populations, whereas America is the greatest melting pot in the world for all races, religions, colors, and nationalities. In fact, as a growing nation, we encouraged this. "Give me your tired, your poor..." is boldly inscribed on the Statue of Liberty whose 100th anniversary we celebrate this year. By and large, it should be said that this human mixture has enriched American life. But despite all of its success, the melting pot did not function as it should in one crucial area. Religions and nationalities, however different, generally learned to live and grow together in America. But color was another matter. We murdered red people like wild animals. Yellows were characterized as a peril and incarcerated en masse for really no good reason during World War II. Brown people continue to be abused as the new slave labor on farms. The blacks, who did not come here willingly, more than a century after their emancipation by Lincoln, continued to suffer a host of slavelike inequalities.

Certainly, there have been dramatic changes in this country since its birth over two hundred years ago. I believe that it is most evident in matters involving race during the past twenty years

or so. And throughout all of these changes, we have been governed by the same Constitution as a basis for how we live together and govern each other as the American people. One cannot review what has happened in the area of civil rights without recognizing that our Constitution is a living document that reflects the changing social and ethical mores of the American people.

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 humanity, if one excludes the transcendental law of the Gospel, "Love your neighbor as yourself." However, the Declaration of Independence 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 inalienable rights, that among these are life, liberty, and the pursuit of happiness." But this Declaration was drafted and signed by men who owned black people as slaves.

The fundamental law, of course, is the Constitution which was written to establish the new government to secure the rights that were declared in 1776. 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, and the most important in my view, was "to establish justice." Furthermore, the Fifth Amendment adopted in 1791 declares: "No person shall...be deprived of life, liberty, or property, without due process of law..." But this Constitution was also drafted by slave owners.

Despite the great universal ideal of equality expressed in the Declaration of Independence and the Constitution, the fact is that this just equality applied in reality at the time the documents were written only to the propertied and free white Anglo-Saxon males. Women and young adults could not even vote. We had to correct this by two new amendments enacted in this country, one only a few years ago.

It is difficult to recapture, some 200 years later, the human situation that existed at the time that the words of the declaration of Independence and the new Constitution first electrified Americans, and the world. Suffice it to say that Jefferson and the signers of these documents laid out an almost impossible task for America in all the years that would lie ahead, if America was to be ever true to its original promise in all of its meaning. I would submit to you that the most central and exciting reality of America's history over the last two centuries has been the ever fuller realization of an 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 has always been uphill, sometimes we slipped backwards, but in the long run we always moved forward to enlarge the law of justice for all.

In interpreting the only Constitution that this country has ever had, the Supreme Court's decisions have reflected an ever-widening awareness on the Court's part of its responsibility to promote and protect the human rights that the founding documents of

this country guaranteed for its citizens. The Court began with the position in the Dred Scott decision that slaves were property, and thus not protected under the Constitution. In 1896, the Plessy v. Ferguson decision established in law the dismal principle of "separate but equal" which gave us more than half a century of de jure segregated education from kindergarten through graduate and professional schools throughout the South. In the North, the segregation was de facto and not much better for blacks. Finally, in 1954, Chief Justice Earl Warren wrote the landmark decision in Brown v. Board of Education, declaring once and for all, at long last, that separate and equal was substantially separate and unequal, and declared a mandate to end educational discrimination "with all deliberate speed."

Furthermore, when the Eighth Amendment was adopted in 1791, its drafters most certainly reflected the position of the people of their day. Execution as sentence for a crime was not looked upon as "cruel and unusual punishment." People were hung for stealing property, and other non-violent crimes. Yet, 180 years later in Furman v. Georgia, the Supreme Court would take a close look at the question of capital punishment and would discuss and dictate in a lengthy decision containing much statistical and sociological data, as well as separate opinions by each of the nine justices, that, because of the discrepancies in the imposition of the death sentence on poor and black people as compared with rich and white people, the death sentence as practiced in most of this country was "cruel and unusual punishment," and in violation of the Constitution. As a result, the death penalty is imposed much differently, and in a much

more restricted manner, than it was less than twenty years ago.

Thus, our court opinions over the years serve as a mirror to reflect the evolution of our standards of decency and morality as our society matures and develops. I believe that this reflection can best be seen in our changing recognition of the rights of all American people to the plentitude and blessings of this land. The impact of the Brown decision was pivotal, for it ushered in an important development in the efforts of black Americans to gain what was rightfully theirs. Although, the black man had been guaranteed his freedom in the constitutional amendments ratified after the Civil War, these rights were rendered hollow by the Supreme Court decisions in the Civil Rights Cases of 1883 and Plessy v. Ferguson. It took nearly ninety years from the birth of this nation to declare that black people were free. It took nearly another ninety years to give meaning to that declaration. The day the Warren Court handed down the Brown decision was the day the very best of America stood up and said that the time had come to stop pretending that we were a country of equals when in fact it was not so. By overruling the Plessy "separate but equal" doctrine, the Court in Brown promised that the law would no longer tolerate the perpetuation of an inferior status for black Americans.

But, it is too simple to say that the Brown decision was the single most important event in the civil rights movement, or that the rest of the movement evolved entirely from its impetus. More accurately, Brown's role was one of creating opportunities and generating responses. It was an early guidepost that marked the

road the American people would be travelling. Following the decision, a new atmosphere was created in the land, and important things began to happen. In 1957, the United States Commission on Civil Rights was created to ascertain the condition of civil rights in America, and to advise the President and Congress regarding corrective action that needed to be taken. Little had changed since the Brown decision three years earlier, and the creation of the Commission was the first attempt in over eighty years to legislate federally for civil rights.

The impetus begun by the Brown decision, and by the heroism of people like Rosa Parks, James Meredith, Martin Luther King, Jr., and Medgar Evers eventually led to the passing of legislation that permanently changed this country. Genuine changes were spurred by the passage of the omnibus Civil Rights Act of 1964, the Voting Act of 1965, and the Fair Housing Act of 1968. But most importantly, with all of the advances came the parallel growth of our national conscience. A country that only a few years ago tolerated apartheid can be confident that this sort of disgrace will not happen in the nation again. Never again will we as a nation tolerate lynchings, police brutality, cunning devices to keep black people from voting, or laws and practices that keep black people in separate facilities.

I am not suggesting that all of the problems of the black people have been solved in this country, nor am I suggesting that discrimination is a thing of the past. We still have a long way to go on this. But we have every reason to be optimistic. Our history justifies our confidence in the basic goodness of the American people and the maturation of their collective conscience. Our

judicial and legislative action are reflections of that maturation. And our Constitution provides us with the basis for guaranteeing the rights of all of our people. All that is needed in addition to these bulwarks is our own personal efforts to create an atmosphere of ever expanding equal opportunity for all Americans.

I would briefly like to reflect upon the special role that lawyers and the law must play in our society. Our history is replete with illustrations of how the American legal system has responded when faced with injustice. Brown and Furman are but two examples. In the Constitution, the people of this country promised justice to all of its citizens, but it was not until the second half of this century that the Court and the Congress called for the concrete fulfillment of this promise. It goes without saying that lawyers dedicated to the cause of justice played key roles in bringing the plight of the black people to the courtrooms of our land, in passing the legislation that would officially rid this country of discriminatory and unethical practices, and in moving this country and its people forward in the development and maturation of our common sense of decency and fairness. Unfortunately, both the lawyers and their critics too often tend to forget the role that they have played in the past, and that they must play in the future in making our Constitution a living document that serves all of the citizenry of this nation.

As we face the years ahead we should be grateful 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. Half-hearted efforts are

unworthy of us, both as a people and as a nation. 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.

However, we should also recognize ourselves as we are. Nations, like people are an amalgam of good and evil, but they grow and 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 to forgive the injustices that still exist among us today as we try to balance the scales of justice better in the years ahead.

Finally, we as a mature America in today's inter-dependent world should say again to all the world that we will work for justice on behalf of all who are 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. America should ask for nothing else in the world of the 21st century than to do better what it has already done, sometimes haltingly, sometimes brilliantly: to serve justice and to enlarge freedom for all.

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