Speech - Mr. Justice William O. Douglas
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A LAWYER'S EDUCATION

The Supreme Court of the United States has had fourteen Chief Justices. Our eleventh was Melville Weston Fuller of Chicago, Illinois, who was appointed by President Cleveland on April 30, 1888, and who served twenty-two years.

Cleveland's first choice had been John Scholfield of the Supreme Court of Illinois. Scholfield refused because he had a large family and thought that Washington, D. C. would be a poor place to raise children. And the talk was that his wife -- a frontier woman who went barefoot in the summertime -- would not find Washington society to her liking.

And so Fuller -- a slight, supple, and gracious man and a very efficient administrator -- came to head a Court of strong-minded, individualistic men, each of whom made an imprint on American law.

Fuller's Court is perhaps best known for its stormy decisions of the 1890s and early 1900s. U. S. v. E. C. Knight & Co., 156 U.S. 1, held that the Sugar Trust was not under the Antitrust laws, since it involved "manufacturing" not "commerce." On its heels came the Income Tax Cases, 157 U.S. 429, 158 U.S. 601, where the Court held a federal income tax unconstitutional. In re Debs, 158 U.S. 564, arose out of the famous Pullman strike. There the Court upheld a sweeping injunction against

strikers -- an injunction based not on any act of Congress but on the inherent power of the judiciary to prevent interference with interstate commerce and the movement of the mails.

Plessy v. Ferguson, 163 U.S. 537 followed. It upheld the segregation of Negroes on railroad trains and established the "separate but equal" doctrine. Then came United States v. Freight Assoc., 166 U.S. 290, holding the antitrust laws applied to all restraints of trade, whether or not reasonable. And after the turn of the century, the Fuller Court went on to hold that a New York statute which fixed the maximum hours of work in bakeries was unconstitutional. Lochner v. New York, 198 U.S. 45. That was soon followed by a decision holding that Congress had no power to outlaw the "yellow dog" contract, even in an interstate industry. Adair v. United States, 208 U.S. 161.

One has to read the periodicals and newspapers of that era to get a measure of the storm that gathered over the Court those days. There were those who were sounding the alarms of anarchists, socialists, and communists. To them the Court was doing heroically. Others of a more liberal view were denouncing the Court as a tool of the rich and an enemy of the poor. Class lines were drawn; and some placed the Court on the side of the few as against the many, the vested interests as against the proletariat.

The Fuller Court was not, of course, a solid phalanx. There were then, as now, divisions on the Court. Edward Douglass White of Louisiana, a former Confederate soldier, was an Associate Justice of the Court for 16 years and then served as Chief Justice for 11 years. White dissented in the Freight Association Case, 166 U.S. 290, maintaining that the antitrust laws forbade only unreasonable restraints, a position that soon was to become the law. Standard Oil Co. v. United States, 221 U.S. 1. White also dissented in the Income Tax Cases, stating that that decision made "invested wealth . . . a favored and protected class of property." Holmes had joined the Fuller Court in 1902. He and White, though on opposite sides during the Civil War, became close friends. Both dissented in the Lochner case, where Holmes uttered his historic dictum, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics."

It took the Sixteenth Amendment to get rid of the Income Tax Cases. And the influence of the Fuller Court in other areas remained a part of the law for almost six decades.

I mention the Fuller Court neither to criticize nor approve. It is far enough removed to be viewed dispassionately. It was composed of honest and strong-minded men, conscientiously construing the Constitution and the law. Yet they became the vortex of a great storm of protest that swept the country.

It is good for the lawyers once in a while to take this longer and larger view of the judicial process. Any Court that sits at the apex of a federal system and has the power to declare unconstitutional legislative and executive acts that impinge on the rights of citizens is certain to be a storm center. For a court in that important position deals with problems which divide communities. It adjudicates disputes on which people often have decided opinions, whether they have studied law or are ignorant of it.

Courts performing like functions in other countries also become storm centers. A recent example is the Supreme Court of India. That Court has the power to declare executive and legislative acts unconstitutional, a power dramatically illustrated in the area of eminent domain. Until 1955 Article 31(2) of the Indian Constitution authorized the taking of private property by the government for public purposes upon payment of compensation. Under this Article the Supreme Court held there were three justiciable questions: (1) Is there a taking? (2) Is the taking for a public purpose? and (3) Is the compensation just? See Shrinivas v. Sholapur Spinning & Weaving Co., 17 Sup. Ct. Jour. 175. The Court ruled that it had the final say on whether compensation for property taken was adequate by the constitutional test. See West Bengal v. Banerjee, 17 Sup. Ct. Jour. 95.

These decisions caused such a storm that Art. 31(2) was amended in 1955 to make it clear that the amount of compensation was no longer a justiciable question, but only one for the legislature to determine.

Some say that amendment raises the spectre of confiscation over India. Others say the legislature can be trusted to be fair with property owners whose lands or other property are taken.

The analogy to the role of the Fuller Court may seem remote. The Indian Supreme Court was, indeed, applying express language in the Constitution designed to protect private property from government confiscation. It was not using vague constitutional and statutory provisions to further a particular economic philosophy as the Fuller Court had done. The point is that a court which sits in judgment on the constitutionality of legislation is almost certain to be severely criticized. Popular feelings often run high when it comes to social legislation; and when courts determine the issue of constitutionality, those emotions are expended on judges and legislators alike.

Fuller was, I think, our first Chief Justice who had formal legal education. A law school education, now commonplace, entails responsibilities unheard of in Fuller's day. Recent decades have seen a flow of legislation that created new agencies and commissions, established codes of conduct for areas once left to private initiative, imposed regulations by government in fields held sacred and immune in Fuller's day. There was a

time when a man could read law in an office and aspire to the profession's heights. That day is gone. The complexity of modern law makes legal education a virtual necessity. But though law is widening in its scope, it is of necessity narrow in its applications. So it is that more and more legal specialists are appearing. The law is becoming departmentalized to such a degree that many law offices in the larger cities pretty much specialize in one branch of the law or another. It means that fewer members of our profession are on speaking terms with the broader reaches of the law. There are as a result fewer men sufficiently alive to developments in public branches of the law to have informed opinions on it. Lawyers have followed the doctors in becoming narrow specialists. In the case of the doctor it meant the production of a specialist who could treat the wrist, the elbow, and the shoulders but not the man. In the case of the lawyer, it meant a diminishing group acquainted with the main currents of public law.

It is important for the Bar to be conscious of the risks of specialization and the consequent lack of fulfillment of its broader functions. Taxes are so high, the chance of accumulating savings so slight that the need to put all one's effort into making a living looms large. So it is that the lawyers become more and more preoccupied with their own survival. Traditionally, they have served the states and the nation in public office in a conspicuous way. The modern pressures are

against that tradition. Public service is poorly paid and men with families have a hard time giving any of their time to it. As a result, the public service may be left more and more to the wealthy, to the adventurers, or to the mediocre -- to those who have no financial worries, to those who see in government a chance to capitalize on power and gain riches, to those who can make little of life on their own. Government cannot be representative if only sons of the rich are drawn to it. Nor can it be reliable if the adventurers move in. Nor will it survive in the hands of drones.

The lawyer of today faces a difficult choice. He must, I think, plan to give part of his life to his country in either the state or the federal service. Somehow, some way he must set aside some years for his community, his state, and his nation. This is, I think, one of the duties and responsibilities of citizenship.

Modern law is broader than the law which any of us ever practiced. All who practice tend to specialize to a degree. Each practitioner sees only a small part of the whole. Yet if we are to be intelligent participants in the great and sweeping movements taking place in our society, we must know about them and about the efforts being made to deal with them. That means we must be students during all our lives. The issues confronting the Congress, the Chief Executive, and the Judiciary in the years ahead will be as stormy, controversial, and bitter as any in our

history. Those in the law must somehow keep abreast of them and have an informed judgment as to what is involved. It is important that they do so. For the advice and counsel of lawyers will be critical. The ability to put a decision of a court in perspective may be crucially important. The lawyers must lead. To do so they must be informed and independent, familiar with the stream of history, knowledgeable in the origins of our doctrines, alert to the dangers of compromising with our principles.

The lawyer should be the articulate champion, the forceful advocate of our way of life. He is the one in the community to whom the people turn when there is discrimination or injustice. He should be the one to keep alive the basic principles of fair play, of equal justice under law, of the values implicit in our Bill of Rights. He should be an active participant in the political process -- standing for office, campaigning on the issues of the day, educating the people on the problems that often cause deep cleavages in our communities.

We must find a place of honor for the dissenter, the unorthodox. We must once more find our salvation in the free interplay of ideas. We must be bold and courageous enough to stand against the multitude.

At times it seems that civil liberties -- our most precious heritage -- have been relegated to a low estate. They have been so often downgraded that no one but the press seems interested in First Amendment rights. And the campaign of

On some issues lawyers are sometimes stymied. Many members of the Bar are too closely affiliated with one or two clients to be able to speak their own minds freely. Some are under compulsion or necessity to reflect their clients' views or else stay quiet. Moreover, most American men have been under numerous compulsions to conform to average, mediocre, non-controversial standards. The trend to conformity in thought and habit has been an alarming phenomenon in recent years. Our strength was always in the free play of ideas. Our power has always been in individualism. We sought our salvation in diversity of ideas. The trend to conformity has somewhat changed that. We have become less tolerant of unorthodox ideas. We have sought shelter in respectable slogans. We let the unpopular person shift for himself.

We lawyers, planning for the future, must take the calculated risk of changing that pattern. We must get rid of conformity and cultivate once again the traits of individuality. We must find a place of honor for the dissenter, the unorthodox. We must once more find our salvation in the free interplay of ideas. We must be bold and courageous enough to stand against the multitude.

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intolerance has been so mighty as to create in the public mind the impression that no one but the subversive is interested in the great rights under the Fourth, Fifth, Sixth and Seventh Amendments. In recent years critics of civil rights -- particularly the conservative elements of the press -- have caused them to be depreciated in the public eye. The lawyer, better than anyone, knows the blood, suffering, agony, and persecutions that are behind each clause in the Bill of Rights. He, before all others, knows that those civil rights are the true, distinctive mark of our society. The Bar should be the agency whereby civil rights are rejuvenated, public respect for them increased, an atmosphere of tolerance created. We must remember that Communism is evil not only for its crushing of human initiative and its confiscation of property. It is also evil for its suppression of civil rights, its denial of privacy and the right of conscience, its subordination of the liberty of the citizens to the prerogatives of the police. We only ape the Communists when we down-grade civil liberties.

Lawyers today must be more than good citizens. America is now a member of a world community that is filled with astounding diversities. It is different from anything we know in our experience. The people of the world are far more radical than we. Only 15 per cent of them make more than $450 a year. The income of the 400 million in India averages $60 a year. Other millions in Red China average $50 per year.

We live in close proximity to these new and poor neighbors. We have a growing dependency on each other. Discriminations in America are front page news items abroad. Coalitions, embargoes, trade agreements abroad have immediate repercussions here.

We occupy a small but strategic place in the world. We have some advantages in being insular. But that carries disadvantages as well. In the years ahead with the more radical nations making alliances of their own, we are apt to be left in lonely isolation. As the world sees us, we are the conservatives. We represent the mansion on the hill. Somehow or other we must come on friendly and understanding terms with those who live in the slums of the earth. We will need friends desperately as the battle goes on for the minds and hearts of the people of the world.

This is the setting of modern life. In law, in politics, in economics, and business, we must acquire and maintain a world viewpoint. We must live the role of a great power. We must show by the greatness of our deeds and by the application of our ideals that our faith in democracy is real. There are new nations being born in the world, some with great promise. We must come to know them, their people, and their problems. We need that knowledge before we can expect warm and enduring relations with other nations. We cannot help roll back the tide of Communism without these alliances.

Our education today is incomplete. It came somewhat as a shock to me to learn that a foreign language is studied by less than 15 per cent of our students; that while 10 million Russians are studying English, only 8,000 Americans are studying Russian. Yet these are the figures reported by LIFE magazine only the other day.

We think primarily in terms of giving financial aid to other nations. Some of that aid is necessary; but it's by no means our most important contribution. We must become great linguists to converse with the peoples of the earth on their terms. We must come to know their poetry and literature, their history and their religion, their governmental institutions and their traditions. We need competence in these cultural relations if we are to maintain a position of leadership in the world. Our education must be as broad as the horizons of the world.

We lawyers need to establish close bonds with foreign barristers and solicitors and to get to know the articles of faith in their constitutions. There are ringing declarations of freedom in the opinions of the courts of India and Burma. Problems of separation of church and state appear often in Turkish constitutional law. The rights of man to read, print, worship as he chooses are threads running through the decisions of the Supreme Court of Japan. We lawyers must seek to understand the struggles of other peoples. We must try to find common bonds with them. We need a close and intimate intellectual

nexus not only with Europe and South America, but with Asia and Africa as well.

To return to the Fuller Court. In the argument of the Income Tax Cases, there were frequent references to the invidious influence of socialists, anarchists, and communists who were descending on American society and seeking to wreck it. Many students feel that that spectre had an influence in shaping subconsciously that and other decisions. That influence is present again today.

Communism in the 1950s is certainly no mere spectre; it's an evil and ugly force in world affairs. Today we certainly need knowledge and understanding of communism, lest it be the undoing of the democratic world. Yet we also need knowledge and faith in the traditions of democracy and in its great strength.

Our advantage over the communist world is a moral one. It is our concept of morality that is going to keep the political balance in the world from moving into the Communist orbit. Our military might is plainly necessary to keep the Soviet armies at bay. But the rights of man state the moral creed that will win the people of the world. It is to those ideals that our lives must be dedicated. We must keep them strong and vital in their applications at home. Today the peoples of the world know us best by our guns, our money, and our physical

power. They must come to know us preeminently for our espousal of the rights of man.