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Department of Justice

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ADDRESS OF

THE HONORABLE RICHARD G. KLEINDIENST
ATTORNEY GENERAL OF THE UNITED STATES

AT THE

LAW DAY CEREMONY

D. C. BAR ASSOCIATION

CEREMONIAL COURTROOM, U. S. COURTHOUSE

WASHINGTON, D. C.

MAY 1, 1973

In our observance of Law Day, I want to discuss with you a concept which is not explicitly mentioned in our Constitution, but nevertheless has been implicit in our American democracy from its beginnings. I refer to the phrase, "A government of laws and not of men," which we lawyers and would-be lawyers sometimes quote to each other, but which we seldom examine for its full meaning.

Actually, the concept is not American, or even English in origin, but is at least as old as democracy itself. Perhaps it is most graphically demonstrated at the moment when Socrates, condemned to death by his enemies through the exercise of Athenian law, was offered a chance to escape from prison. But Socrates replied that all his life he had taught that Athenians should live by the laws that they themselves had helped to create. To frustrate the justice process now, even though he believed himself wronged, would contradict all that he had stood for.

"Do you imagine," he asked, "that a State can subsist and not be overthrown, in which the decisions of law have no power, but are set aside and overthrown by individuals?"

And like other martyrs whom we have known since then, Socrates paid tribute to his principles with his life.

Although he seemed to be referring mainly to the citizen, Plato and Aristotle emphasized that the principle applied even more clearly to the rulers themselves. Much later, the long evolution of English parliamentary government was based on the concept that law must supersede the personal rule of kings. And it was John Adams who so eloquently stated the principle in this country when he put the phrase "a government of laws and not of men" in his draft of the Massachusetts Declaration of Rights.

Now, how does this principle affect the quality of American society, or any society?

First, we know from the human experience in other eras and other countries that progress cannot be promised under a government of men. When men usurp the law, then government is subject to their whims, their personalities, and their varying ethical standards. Uncertainty, and finally chaos, become the prevailing characteristic of society. No worthwhile venture can be risked, because the very stability of society is in question. Stagnation and degeneration must be the result.

But, under the rule of law, each citizen knows where he stands, and each group of citizens cooperating toward a worthy goal can be assured that its legitimate efforts may be rewarded. Trust of the government and trust among individuals creates a platform for progress.

This principle of a government of laws must be the guidepost for those of us in positions of public trust. It demands the most of us when, in making a difficult decision, we must ask, "What is the law? What does it empower us to do? What does it restrict us from doing?"

Genuine enforcement of the law includes the will to enforce the law. Laws are administered through decisions, and inaction represents a decision fully as much as action. A decision to do little or nothing can mean that the personal inclinations of men are being substituted for the clear mandate of the law.

The same error is made when administrators bend the law further than was intended in order to accomplish a good end. Rather than substitute a government of men by this approach, they should go to the legislative body--in our case the Congress--to try and get the law changed.

All of this has illustrated the homage which public officials must pay to the law, as emphasized by political philosophers from Plato to John Adams.

But, what about the homage of the citizen, which seemed to be the main concern of Socrates?

Beginning in the early 1960's, a wave of lawlessness swept across the United States. It showed itself in the increase of general crime, in mob disorders, and in such spectacular incidents as assassinations,

bombings and hijackings.

These trends showed that a relatively small but growing number of Americans, far from recognizing their duties as citizens, were putting themselves above the law. And this phenomenon was accompanied by a still more alarming one among a larger body of citizens--that of non-involvement, a withdrawal to strictly private concerns, and an abdication of public duties. We saw this most dramatically in cases where witnesses to a crime refused to testify because they did not want to become involved --even to the point where they would not even call the police while a crime was being committed.

In this development we saw the repudiation of a government of laws. In the doors locked against intruders, in the extra reliance on watchdogs and weapons to defend the home, we saw the opposite of the free and open society which had been the American promise. Instead we saw a reversion to the primitive attempts at security of feudal times--the castle, the draw-bridge, and the moat.

I am pleased to point out that we are witnessing a reversal of this alarming trend.

In 1972, for the first time in 17 years, crime in the United States decreased.

Again, by 1972 there were relatively few attempts at mob violence, and the rash of civil disorders had clearly subsided.

In short, what seemed to be the growing popularity of lawlessness, where Americans put themselves above or outside of the law, has been halted. In fact, in some communities we are even witnessing fewer cases in which our citizens turn their backs on a crime, and more cases in which our citizens come to the rescue of a victim or notify the police of a crime being committed.

Now, I would be the last to say that we are reaching the millennium so far as the rule of law is concerned. But I believe that the trend is once again in the right direction. And I would point out some additional developments that make me believe that the rule of law is not only being strengthened once again, but that it is fulfilling its destiny as the governing system which can best serve the interest of mankind.

There are many, of course, who take an essentially pessimistic view of man's development. They say that you can't change human nature --you can't legislate harmony, tolerance, and respect for others.

Now, it is true that the moral imperatives which have tried to elevate man have come more from religion and philosophy than from government and law. However, I believe we have long underestimated

the influence that law can have upon our citizens in terms of creating habits of mind and action. Ethics urge us to do right, but laws command. And there have been many changes in our attitude toward others which became part of our consciousness because the law pointed the way. And often it is the heated public discussion of proposed legislation which truly stirs the community conscience to reform its ways of thinking.

In fact, it is the possibility and the promise of peaceful change through law which encourages us to examine ourselves and our society, to face up to injustices, and to dare to make reforms. For where there is no means of change through legislation, the fear of change is dominant. This creates a resistance to change until conditions become so intolerable that change does come at last, but it comes through social upheaval.

In my view it is no coincidence that the astounding material progress that the world has witnessed in the past two centuries has coincided with the development of law--and by law I do not mean the personal decrees of an absolute monarch, but the legislation created by representatives elected by the people.

Neither do I refer so much to material progress created by government than to such progress created by individual or group action. It has been said--mistakenly, I think--that the object of government is the happiness of the people. In my view, the object of government is to

maintain a framework of law and justice within which people can seek and find happiness for themselves.

So it is, for example, that law provides not only for contracts between different parties, but provides for the enforcement of those contracts. Through this means we can have the confidence that the contracting parties will do what they say they will do. And on this basis of mutual trust, great risks can be taken, and great enterprises can be completed. Out of this framework of faith, coupled with the faith in the stability of government and of society itself which is promised by the rule of law, the people can build a whole edifice of economic endeavor. In our country this has brought us the greatest standard of living in the world, and as the rule of law created by the people themselves has developed in other countries, they have elevated themselves along this same path.

However, of even more importance is the social advancement facilitated by this same rule of law. Through this means we have attacked injustices and achieved firm levels of fairness and equity which, without law, might only be achieved through violence, and then only temporarily. In the past 20 years we have made enormous strides in the civil rights of all American citizens. We are now in the process of awakening ourselves to inequities that women have endured in the past and we are taking steps to correct them. And in a more specific step which affects

many in this audience, we recognized that the age of 21 was no magic number in achieving maturity, and that those who were old enough to risk their lives for their country were certainly old enough to vote.

It is for these reasons that I say, human nature is not the blind and immutable force that we associate with instinct. On the contrary, man is a remarkably flexible creature, and he is capable of elevating his attitudes, beliefs, and even his motivations. And, I submit, one of the primary, though by no means the only, means he has employed in this self-elevation is the rule of law.

Now, while I have referred to such law in secular terms, starting with the political philosophers of ancient Greece, I do not mean that this adherence to a law higher than the individual has been isolated from the larger spirit of man. Long before Socrates, man was groping to learn and obey what he called the law of God. And it was this frame of mind which enabled man, as he entered the long task of forming his political institutions, to accept the need for making his own laws, and then obeying them because he made them himself.

Among all of man's accomplishments--both material and spiritual--it is this government of law, and not of men, which provides the framework within which the others can flourish. Through it--assuming we will preserve

and use it--we have the machinery for solving the vast problems of world environment, of world economics, and of world peace, which are crowding upon us today. And in the process I believe we will uplift not only our condition, but ourselves.