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COMMENTS ON THE DEDICATION OF THE CHARLES EVANS HUGHES RESIDENCE CENTER*

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I am honored to participate in the dedication of this splendid new building of the Cornell Law School. Its spacious accommodations for residence as well as dining will add appreciably to the already outstanding facilities of this Institution. And, parenthetically, I do not underestimate the educational importance of dining. At the Inns of Court, England's time-honored legal training bodies, the discussions about law which occur at the dinner table have over the centuries been a very significant part of a young barrister's education.

But not merely because this is a very handsome structure am I gratified to participate in these ceremonies. That this building bears the name of one of my distinguished predecessors, Chief Justice Charles Evans Hughes, adds lustre to the occasion.

Hughes had a relatively short but inspiring association with this Law School, having been a full professor here from 1891 to 1893 and a special lecturer for two years thereafter. He came when he was only twenty-nine years old. At that time, for health reasons, he left (temporarily, as it turned out) a promising law practice in New York. There he had been associated with his father-in-law, Walter Carter. Mr. Carter was not a bit happy about the departure from his firm of young Hughes, on whose legal talents he placed a high premium. "I felt, when you first spoke to me of going to Cornell, that you were making a very big mistake," Mr. Carter complained in an amusing letter to his son-in-law. Then, to add insult to injury, he added: "time has only served to strengthen that conviction." Fortunately, however, Hughes did not share these sentiments. Many years later, in a message which he sent to the Cornell Law Quar-

* An address delivered on the occasion of the dedication of the Charles Evans Hughes Residence Center of the Cornell Law School.

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terly, he thus characterized his stay here: "While my association with the School was for a brief period, and long ago, the memory of it is very vivid and I count that experience as one of the happiest of my life." It is interesting to note in the same communication that Hughes described the physical facilities of the Cornell Law School at the time he came here to teach as being "pitifully meager." If he could only have seen the building which we are dedicating today!

Charles Evans Hughes was a man of many parts and of manifold accomplishments. When I think of the numerous important offices in which he served his country, his State, and the community in which he lived, comparison is compelled with the full and versatile lives of many of the Founding Fathers. Today, when specialization seems to be ever increasing as knowledge (if not always wisdom) grows apace, it is especially refreshing to reflect upon the fulness of the life which Hughes led. His rich career has been likened to that of John Jay, who was our first Chief Justice. Like Jay, it has been noted, Hughes occupied an astounding variety of both legal and political positions. Following the rewarding years at Cornell, he became a leading corporate lawyer, and during the time he served at the bar he played vital roles in the conduct of investigations which were models of thoroughness and fairness and led to significant reforms. Then he became Governor of New York, Associate Justice of the Supreme Court, Presidential candidate, Secretary of State, member of The Hague Tribunal and Judge of the Permanent Court of International Justice, and, finally, Chief Justice of the United States. Nor does this bare recital by any means complete the record.

Hughes' full and varied life—I was about to say lives—uniquely equipped him for the demanding role of Chief Justice. Few people comprehend the enormously complex business of the Supreme Court. I have had occasion in the past to observe that it is unending; it cannot be slighted; it cannot be delegated; it cannot be put off. Such was the case, too, when Charles Evans Hughes occupied the position of Chief Justice. He assumed that post at one of the most difficult periods in the Court's history. It was a time when depression, disillusion, and want followed in the wake of an unreal and unstable prosperity. Demands for legislation at both the national and state levels were insistent, and the legislatures answered such demands with statutes, often hastily drawn, which went beyond the usual spheres of legislation and, accordingly, were without familiar precedent. Yet no one was more equal to the challenge than he.

This year marks the one hundred and seventy-fifth anniversary of the establishment of the Supreme Court. Over this substantial period that the Court has been functioning, there have been various cycles and phases

that have characterized its work and the types of problems which have confronted it. During the period of more than thirty-four years that John Marshall presided over the Court as Chief Justice, the supremacy of the National Government was established. What has been termed the "passionate issues" of the Taney and Chase Courts were the problems of slavery and reconstruction. Recognizing that generalizations are always inadequate, one can still safely say that economic regulation and social welfare were the predominant issues when Hughes was Chief Justice. And I believe that the legal historian will readily conclude that the overriding problem of this generation, and, therefore, of our Court, has been the civil and political rights of individuals.

These and other issues have presented difficult questions. There are some who believe, and believe quite sincerely, that the Court "reaches out" for thorny issues, issues that somehow can be avoided; that can be left to another day; that can be swept under the rug. But the cases which the Court decides involve questions which we cannot sidestep or avoid. The Court does not seek them out; it does not invite them; but it does not avoid them. After all, the problems that come to us are problems that confront the Nation. They are almost always difficult; and reasonable minds can differ as to how they should be dealt with. Often the questions which we get are highly controversial and generate deep feeling. But they must nevertheless be solved. This is true of social, economic, racial, and political problems. The eminent Frenchman Tocqueville quite correctly observed many years ago that in this country "scarcely any political question arises . . . that is not resolved, sooner or later, into a judicial question."¹ This comment remains true today and applies with equal force to many other aspects of the broad spectrum of our national life.

Though each period of the Court's history can be roughly characterized by its prevailing problem, it also contains the germinations of problems and solutions which develop more fully at a later date. I mentioned that economic regulation and social welfare were the issues which primarily confronted the Court when Charles Evans Hughes was Chief Justice. But at the same time vital issues of individual rights arose during that period and Hughes, both as Associate Justice and later as Chief Justice, was the author of some landmark opinions in this field. Through these opinions we can see Hughes as a forerunner of this era, as one who saw and in their earlier stages dealt with some of the problems which preoccupy us today. Many of his opinions have aided appreciably in the resolution of problems that have confronted the Court over which I have the honor to preside. In the time available, I can mention only a few.

¹ 1 De Tocqueville, *Democracy in America* 280 (1948 ed.).

Shortly after Hughes took the oath of office as Associate Justice, a case was argued involving a Negro by the name of Bailey who had contracted with his employer in Alabama to work for \$12 a month for a year, and he received \$15 as an advance. He worked for a little more than a month and left without paying back the money. He was thereafter apprehended, tried, and convicted under an Alabama statute making it a crime for any person with intent to injure or defraud to contract in writing to perform service and thereby receive money from his employer and with similar intent to fail to perform the service. Though other evidence was permitted, the law did not permit the employee to testify that he had not intended to defraud. *Bailey v. Alabama*² was the third opinion written by Hughes after joining the Court as Associate Justice. Speaking for a majority, he held that the Alabama statute was simply a means to compel an employee in debt to his employer to work off the debt and thus violated the thirteenth amendment. In his opinion for the Court, Justice Hughes wrote that the statute was "an instrument of compulsion peculiarly effective as against the poor and ignorant, its most likely victims. There is no more important concern," the opinion continued, "than to safeguard the freedom of labor upon which alone can enduring prosperity be based. The provisions designed to secure it would soon become a barren form if it were possible to hold over the heads of laborers the threat of punishment for crime, under the name of fraud but merely upon evidence of failure to work out their debts."³

I would like to mention another example of Hughes' forward-looking position where important individual rights were at issue. Many years after the *Bailey* decision, when he was Chief Justice, Hughes wrote an opinion that remains a bulwark to this day when encroachments threaten a free press. This was the case of *Near v. Minnesota*⁴ involving a publication in Minneapolis which was accused of having defamed various public officials. Proceedings were brought against the owner and others, and the publication was enjoined under a state statute as a "nuisance." Characterizing the statute as "the essence of censorship," the Chief Justice's opinion for the Court held that it was unconstitutional under the fourteenth amendment insofar as it authorized the proceedings in that action. There is a wonderfully durable quality to Hughes' words:

The fact that for approximately one hundred and fifty years there has been almost an entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officers is significant

² 219 U.S. 219 (1911).

³ *Id.* at 245.

⁴ 283 U.S. 697 (1931).

of the deep-seated conviction that such restraints would violate constitutional right.⁵

And again:

The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy, consistent with constitutional privilege.⁶

There were many more opinions written by Hughes in the field of individual rights, such as *Mitchell v. United States*,⁷ outlawing racial discrimination in interstate rail travel; *Missouri ex rel. Gaines v. Canada*,⁸ holding it a denial of equal protection of the laws for a State not to furnish a Negro within its borders with a legal education substantially equal to that given white persons; and *De Jonge v. Oregon*,⁹ wherein he spoke out against the wholly un-American doctrine of guilt by association. In these and many other decisions which Hughes wrote while on the Supreme Court, he showed his deep concern for making meaningful the Bill of Rights. For the rich legacy of the opinions which he left us in this vital area of the law, we are his grateful beneficiaries.

I should like to turn to another, but not unrelated, aspect of Hughes' character which we do well to recall these days—days which too often have borne witness to the tragic effects of hatred and bitterness. Hughes was an implacable foe of bigotry.

Over fifty years ago in the course of some lectures which he gave at Yale, he observed:

The true citizen will endeavour to understand the different racial viewpoints of the various elements which enter into our population. He will seek to divest himself of antipathy or prejudice toward any of those who have come to us from foreign lands, and he will try, by happy illustration in his own conduct, to hasten appreciation of the American ideal. For him "American" will ever be a word of the spirit and not of the flesh. Difference in custom or religion will not be permitted to obscure the common human worth, nor will bigotry of creed or relation prevent a just appraisalment.¹⁰

Though these words were delivered in a college lecture, they were not mere academic phrases. Hughes did not live in an ivory tower. Some years later this was made clear in a dramatic and courageous fashion by what he had termed in that lecture at Yale the "true citizen's . . . happy

⁵ Id. at 718.

⁶ Id. at 720.

⁷ 313 U.S. 80 (1941).

⁸ 305 U.S. 337 (1938).

⁹ 299 U.S. 353 (1937).

¹⁰ Hughes, *Conditions of Progress in Democratic Government* 11-12 (1910).

illustration in his own conduct." The "true citizen" in this case happened to be Charles Evans Hughes.

Following the First World War a wave of hysteria engulfed the country. In more recent times we can ruefully recall a similar period when this country was infected by the virus of suspicion, when guilt was imputed by association, and doubt was cast upon the loyalty of some simply because they did not conform to the majority's image of itself. And thus it was in the early 1920's. The fever of intolerance manifested itself at one point in this State, when the New York Assembly suddenly decided to suspend its five Socialist members merely because they were Socialists. Their beliefs were far from popular, but the party was legally recognized in New York and the men had been duly elected. After the organization of the Assembly, these five men had been summoned to the bar of the House, and, after a lecture by the Speaker, had been denied their seats pending an investigation. Hughes, then a leading member of the bar, protested this shocking abridgment of the right of the people to select their own representatives. Try as he would, however, his efforts and those of his associates proved unavailing, and the Socialists were not seated. But Hughes filed a brief in their behalf which, if it did not succeed in getting the Legislature to change its mind, did arouse the conscience of the country. In that brief, Hughes wrote indignantly that "if a majority can exclude the whole or a part of the minority because it deems the political views entertained by them hurtful, then free government is at an end."¹¹

There were to be other occasions, too—many of them—when Hughes was to act and speak out against bigotry and intolerance. It is interesting in this connection to recall that it was he, along with Newton D. Baker and others, who organized the National Conference of Christians and Jews. His words at the time of its founding are as meaningful today as they were then, when he characterized rancor and bigotry, racial animosities and intolerance as "the deadly enemies of true democracy, more dangerous than any external force because they undermine the very foundations of democratic effort."¹² When later he was President of the American Bar Association, he did not hesitate to criticize the reactionary viewpoint that had prompted the State of Nebraska to forbid teaching German. He also had little patience with Tennessee's suppression of the evolution doctrine. "The most ominous sign of our time," he stated, "is the indication of the growth of the intolerant spirit.

¹¹ Hughes' brief, pp. 23-32, quoted in part in 1 Pusey, Charles Evans Hughes 392 (1951).

¹² Address to National Conference of Christians and Jews, 1940, quoted in 2 Pusey, *supra* note 11, at 622.

It is the more dangerous when armed, as it usually is, with sincere conviction."¹³

I have spoken at some length of Hughes' deep-seated feeling, made manifest throughout his life, for the rights of the individual and of his animus against intolerance and bias. I have necessarily had to neglect other fine attributes of his richly endowed personality. They were many and varied; and in the end Hughes was a man who defied classification. Both the terms liberal and conservative did not fit. I recall that when he was named as an Associate Justice a few criticized him as being too far to the left. When he was later named to be Chief Justice, a formidable group opposed him as being too conservative. But no one could disagree that everything he said or did bore the hallmark of integrity. "You might differ with him as radically as you choose," Judge Learned Hand once observed, "but to question the sincerity and purity of his motives betrayed either that you had not understood what he was after, or that your own standards needed scrutiny. If any society is to prosper," he continued, "it must be staffed with servants of such stuff; indeed, if any society is to endure, it must not be without them."¹⁴

"Each man begins with his own world to conquer," Hughes once said, "and his education is the measure of his conquest."¹⁵ You at the Cornell Law School have great advantages in the pursuit of this goal. With these advantages go responsibilities. To yourselves you owe the responsibility of making the most of the opportunities provided by an excellent faculty and, as this building which we dedicate today eloquently testifies, wonderful facilities. You likewise have the responsibility to call upon the experience of the past and to correlate law with history, economics, and the social sciences in the solution of the problems which confront our country and the world. There are over 50,000 young people in our law schools today. But numbers alone mean little unless the quality of those who are called to the bar measures up to the increasingly high demands of our profession in government service and in private practice. May you make the most of your days at Cornell.

There is so much to be learned and so much to be done by the legal profession—not merely about the law as it exists and the cases interpreting it; but about the progress and development of the law. The law must be in consonance with our times. It must meet the problems of the

¹³ Address to American Bar Association in Detroit, September 2, 1925, quoted in 2 Pusey, *supra* note 11, at 620.

¹⁴ Hand, "Charles Evans Hughes," in *The Spirit of Liberty, Papers and Addresses of Learned Hand* 222 (Dillard ed. 1952).

¹⁵ Address to Brown alumni, February 1, 1929, quoted in 1 Pusey, *supra* note 11, at 43.

day. It should be the preoccupation of our profession—of lawyers, judges, scholars, teachers and students—to see that it measures up to this requirement. If they do not do so, who will?

It is fair to say, however, that a large percentage of the bar gives scant consideration to the law in the framework of the problems of those who are not their individual clients. It is fair to say that some law schools deal almost exclusively in the bread-and-butter facets of the law. It is also fair to say that in many parts of our country—though the doors of our courthouses are open to all people—the eyes of justice are closed to the poor, the unpopular, and minority groups. I speak not of one area of our country but of many where defendants are shuffled off to the penitentiaries with the benefit of no legal advice at all or at most inadequate advice. I speak of communities where the poor have no opportunity to learn of their legal rights, much less to litigate for them. I also speak of places where there are at least two standards of justice, depending upon the color of one's skin. Nonetheless, where such conditions exist, the profession by and large accepts them.

Our Supreme Court Building bears the words "Equal Justice Under Law," a motto, incidentally, which Chief Justice Hughes specifically approved for inscription over the entrance when the building was being constructed. We proclaim to the world our dedication to the Rule of Law. Yet, if we are honest, we must acknowledge these woeful deficiencies. I like to think that remedying these deficiencies is the responsibility of our profession. I like to think that we should be willing to accept it as a privilege and an opportunity and not as a burden. I would also like to think that in discharging this responsibility we are not acting merely as mechanics or technicians, but that we are acting as architects and builders of the law.

I also like to believe that in our law schools there will always be a clash of minds between teacher and student and between student and student, and that sparks will be struck to light the way to an administration of law that recognizes no distinction of wealth, power, color, creed or political view. If and when this becomes a reality, and not until then, will our profession be the acknowledged leader of a truly free society.

I am well aware that our shortcomings, whatever they are, cannot be cured in a month or a year, or perhaps even in our lifetimes. Nevertheless, in the words of our late and beloved President Kennedy, spoken at his Inauguration almost four years ago, "But let us begin."