

Garden of Thought**Judge Learned Hand Evokes the Spirit of Liberty**

“The spirit of liberty is the spirit which is not too sure that it is right....”

The influential jurist with the unlikely but appropriate name Learned Hand served as presiding judge of the Second Circuit Court of Appeals from 1939 to 1951, and as senior judge for a decade after. Though never appointed to the Supreme Court, he was able, through his two thousand decisions, to uphold the liberty of the individual and to show that the written and the spoken word did not need the most august forum to have an impact on the law.

Toward the end of World War II, Judge Hand spoke at an “I Am an American Day” ceremony in New York City’s Central Park. Instead of a rousing, patriotic address, he delivered a thoughtful credo that profoundly moved the audience; when his “Spirit of Liberty” speech was widely reprinted, the judge took care to add a footnote crediting historian H. G. Wells for a thought on which he bottomed the line about how Jesus “taught mankind a lesson it has never learned, but has never quite forgotten”; the Wells phrasing was “whose pitiless and difficult doctrine of self abandonment and self-forgetfulness we can neither disregard nor yet bring ourselves to obey.” Such scrupulous attribution of an idea is rare, but it was characteristic of Judge Hand, who was careful about not stealing anything.

The following year, on May 20, 1945, he spoke again at the same occasion. The two talks fit together nicely in reverse order, and I’ve taken the liberty of so arranging them; the 1944 section begins, “We have gathered here to affirm a faith....”

The Spirit of Liberty

B. Learned Hand*

WE MEET ONCE more to attest our loyalty, and pledge our allegiance.... As we renew our mutual fealty, it is fitting that we should pause, and seek to take account of the meaning of our cost and suffering. Was not the issue this: whether mankind

* Billings Learned Hand(1872-1961), American jurist and judge, known for his philosophical skepticism.

should be divided between those who command and those who serve; between those who use others at their will and those who must submit; whether the measure of a man's power to shape his own destiny should be the force at his disposal? Our nation was founded upon an answer to those questions, and we have fought this war to make good that answer. For ourselves and for the present, we are safe; our immediate peril is past. But for how long are we safe, and how far have we removed our peril? If our nation could not itself exist half slave and half free, are we sure that it can exist in a world half slave and half free? Is the same conflict less irrepressible when worldwide than it was eighty years ago when it was only nationwide? Right knows no boundaries, and justice no frontiers; the brotherhood of man is not a domestic institution.

No, our job will not end with the sound of the guns. Even in our own interest we must have an eye to the interests of others; a nation which lives only to itself will in the end perish; false to the faith, it will shrivel and pass to that oblivion which is its proper receptacle. We may not stop until we have done our part to fashion a world in which there shall be some share of fellowship; which shall be better than a den of thieves. Let us not disguise the difficulties; and, above all, let us not content ourselves with noble aspirations, counsels of perfection, and self-righteous advice to others. We shall need the wisdom of the serpent; we shall have to be content with short steps; we shall be obliged to give and take: we shall face the strongest passions of mankind—our own not the least; and in the end we shall have fabricated an imperfect instrument. But we shall not have wholly failed; we shall have gone forward, if we bring to our task a pure and chastened spirit, patience, understanding, sympathy, forbearance, generosity, fortitude, and, above all, an inflexible determination. The history of man has just begun: in the aeons which lie before him lie limitless hope or limitless despair. The choice is his; the present choice is ours: it is worth the trial....

We have gathered here to affirm a faith, a faith in a common purpose, a common conviction, a common devotion. Some of us have chosen America as the land of our adoption; the rest have come from those who did the same. For this reason we have some right to consider ourselves a picked group, a group of those who had the courage to break from the past and brave the dangers and the loneliness of a strange land. What was the object that nerved us, or those who went before us, to this choice? We sought liberty—freedom from oppression, freedom from want, freedom to be ourselves. This we then sought; this we now believe that we are by way of winning. What do we mean when we say that first of all we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the

hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a savage few—as we have learned to our sorrow.

What, then, is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of him who, near two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten—that there may be a kingdom where the least shall be heard and considered side by side with the greatest. And now in that spirit, that spirit of an America which has never been, and which may never be—nay, which never will be except as the conscience and courage of Americans create it—yet in the spirit of that America which lies hidden in some form in the aspirations of us all; in the spirit of that America for which our young men are at this moment fighting and dying; in that spirit of liberty and of America so prosperous, and safe, and contented, we shall have failed to grasp its meaning, and shall have been truant to its promise, except as we strive to make it a signal, a beacon, a standard, to which the best hopes of mankind will ever turn. In confidence that you share that belief, I now ask you to raise your hands and repeat with me this pledge: I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands—one nation, indivisible, with liberty and justice for all.

Excerpt from *Lend Me Your Ears: Great Speeches in History*, selected and introduced by William Safire