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THE NEW CIVILIZATION AND THE LAWYER

HON. FREDERICK F. FAVILLE

Des Moines, Iowa

Ladies and Gentlemen: My friend, Governor Burke, has placed me under very great embarrassment. Notwithstanding his story, I think we still have a murderer or two left in Iowa. I confess that I am so very human that I like to have my Iowa friends say nice things about me, even though it be true that petitions for rehearing filed in cases which I have decided, have persuaded me that my friends are sometimes mistaken.

I am very happy to be with you. I come to you, as you know, from the state where the tall corn grows. It is a pleasure to come to this matchless commonwealth, where so many people have emigrated from Iowa. I have had the pleasure of seeing your boundless prairie panorama, and your limitless fields where the wheat locks the sunshine in its golden sheaf. It is a pleasure to meet you lawyers of this great commonwealth, which, like our commonwealth of Iowa, is peculiar in the fact that it is not dominated by any great city.

I think we are fortunate in the fact that the masses of our people live in small communities where we touch shoulders with each other, where we keep our feet upon the ground, and still lift our heads to the silent stars, and where we still maintain the choicest asset of our civilization, the simple common, American home.

I wish that it were within my power to supplement and add to the very delightful, instructive and inspiring address of your president, which I heard this morning. I said to him that he had left nothing for me to say, either about the new civilization, or the lawyer, as he covered the whole field in a matchless way.

But, gentlemen, out of the complexities of the struggle to make both ends meet, out of the important business of practicing law or administering it, I think we would do well to pause at these association meetings, and take our bearings a little to see just who we are, just where we are, and just what we are doing.

And so I am going to ask you to study with me for just a few moments this afternoon a little of our present civilization and of our position as lawyers in it. I think we are engaged in the most stupendous experiment of all the ages. I want to quote to you from an authority. You may not agree with all that he writes, but I think you will agree with this. It is none other than H. G. Wells who said:

“The great community of the United States is an altogether new thing in history. There have been great empires before with populations exceeding one hundred million but these were associations of divergent peoples; there has never been one single people on this scale before. We need a new term for this new thing. It is as different from a country as France or Holland is a country, as an auto from

a one-horse shay. The United States in scale and possibilities is halfway between an European state and a United States of all the world."

We are engaged in the stupendous undertaking of attempting to do what Wells says, namely to build a new kind of civilization for the race.

I am delighted that these young people have come to our meeting. They are studying the history of the past and learning the historic truths about the great civilization of the world. We know that these civilizations failed, and I think we can discover wherein lay the foundation of their failure.

We have all been reading in the papers in the last three years the accounts of the great discoveries in the Valley of the Kings in Egypt. For thirty-five hundred years the drifting sands of the desert hid the resting place of the old Pharaoh, and for thirty-five hundred years the wandering Bedouin traveled up and down the Valley of the Kings little dreaming that beneath his feet rested the evidences of a mighty civilization that had been buried for thirty-five hundred years.

These young people, I doubt not, are now studying the history of Rome, that nation which ruled the world, and was so proud of her might that she called herself the Eternal City; great, rich, powerful, imperial Rome, with a hundred million people and a territory stretching from the deserts of Africa to the North Sea. Still, the Roman civilization, with its power, failed and has gone down forever.

These young people are also studying the civilization of ancient Greece, with its marvelous culture, its beautiful art and architecture, so perfect that the broken fragments are now used as models by those who would excel. And yet the civilization of Greece has been gone for nearly two thousand years. And so, I might add, the civilizations of Assyria, Phoenicia, and Babylon, and others, all of which were great civilizations hundreds of years old and all of which have failed.

We are engaged right now, after only one hundred and fifty years of experimentation, in attempting to build a new kind of civilization for the world. Its conception began with comparatively recent times.

It was at a time after Spain, by the loss of her invincible Armada, had failed in her attempt to fasten a monarchical grip on Western Europe.

It was at a time after France had driven out the Huguenots and stained her history with the unspeakable horrors of St. Bartholomew's Day.

It was at a time when Russia, under the murderous rule of Catharine Second was preparing for the second time to dismember poor, helpless little Poland.

It was at a time when England, secure in her commanding position in Europe, had been ceded the great territories of Canada and Nova Scotia in a new world.

It was at a time after the Renaissance had swept over Europe, and brought its great transformation in politics, science, religion and art.

It was at a time after Luther had nailed his thesis to the door of the Wittenberg Chapel and had demanded the right of men to think and act for themselves.

It was at a time after the Pilgrim Fathers had set their sails on the Mayflower and turned its prow toward the setting sun, and in the little cabin of that storm-tossed boat had signed the immortal compact, as they declared, in the presence of God and of each other.

It was at a time after the Barons had wrung the Magna Charta from the unwilling fingers of King John upon the field of Runnymede, and after Cromwell had led his troops of Roundheads at Marston Moor.

It was at a time after our Yankee forefathers had declared to the world that all men have certain unalienable rights, and among these are life, liberty, and the pursuit of happiness.

It was at a time after Washington had received the sword of the broken-hearted Cornwallis beneath the elms and pines of Yorktown.

At such a time as this, after these ancient civilizations had all failed and the race had passed through these more modern experiments, that a little band of fifty-five men, thirty-one of whom were lawyers, announced to the world a new philosophy of government. From that time to this, in a period of about one hundred and fifty years, we have been building up this new kind of civilization for the race. We have led the world, until now, strange as it may seem, we are the oldest unchanged government in the world.

Our first great task, in this new civilization, was the heroic one of building an empire. My friend Governor Burke can certainly hark back to pioneer days in this great northwest.

I can remember as a boy in Iowa, in days long before the advent of the automobile or the express train, when there passed by my father's door scores of covered wagons, some of them bearing upon their sides the suggestive motto, "Dakota or bust." I can also recall seeing some of them return bearing the motto "busted." Our great undertaking as a nation was primarily the tremendous task of the pioneer.

I cannot but pay homage to the men and women who came into your state, as they did into mine, to not only wrest from the unbroken soil the necessities of life, but to do infinitely more, to lay here the foundations of this great civilization which we have today.

We summoned emigrants from other lands to come to this land of the free, where the door of opportunity is always open, and we have built this enormous wealth until we are now the richest nation on earth. We have made the desert to bloom as the rose, and now we have reached out until with our mighty commerce we are carrying the American ideals of civilization to every quarter of the world.

May I recount to you some of the things that we are doing, with the hope that you will pardon me even though it is hackneyed and trite? Today it is literally true that American cars run on American rails past the Great Wall of China, down the historic valley of the Nile, and across the great steppes of Russia.

The whistle of the American locomotive has disturbed the stillness which for six thousand years wrapped the sleeping Pharaoh in the Pyramid of Cheops and has awakened the echoes where sat the ancient palaces of the Incas.

Bread baked from American flour made from wheat grown in North Dakota is eaten today in the forests where the ancient Norseman held his rude, barbaric banquet, and in the very wilderness where the Children of Israel fed upon the manna and quail.

Typewriters of American manufacture are used by every people on earth who know enough to have an alphabet, and American telephones in countless lands transmit messages in every tongue.

The American automobile has literally replaced the camel in the caravans of Arabia.

An American boy puts two sandwiches into his pocket, steps into an American airplane, whirls out over the boundless stretches of the ocean, and drops down in Paris for breakfast.

Tonight the Eskimo within the Arctic Circle will listen with astonished ears to American jazz music brought to him by the mysterious American-made radio, while at the same time the Hottentot of South Africa can, if he chose, very appropriately dance his native dance to that same American-made jazz music.

What I am trying to make plain to you is that we have come into this new, complex, commercial era, but that our problem is still the problem of the pioneer.

It is to meet now, not the hardships of the undeveloped prairie, but it is to meet the wealth, the luxury, the desire for pleasure of this complex and marvelous age, and the same courage and fortitude and the patience and the sublime faith that marked the early pioneers is essential, if our civilization, so well-founded, is to be saved for the race.

Some forty years ago a great church official, Canon Farrar, uttered these words as a great panegyric:

"If America shall keep herself true to the principles upon which she was founded and to the awful virtues of the pilgrim sires, she will continue to be the enlightener of the nations, the beautiful pioneer in the vanguard of progress of the world. But if she spread a table to fortune and enshrine Mammon above her altars; if her courts become corrupt, her press debased, and her religion a mere twilight of willful and self-induced delusion, then she, in her turn, shall fall like Lucifer, son of the morning; and the double oceans which wash her illimitable shores shall only splash to future empires a more sad, a more desolate, a more unending dirge."

It is no small task that we are engaged in with the immense wealth that we possess. The civilizations of Greece and Rome failed, but they failed not because they did not have wealth, they failed because somewhere and somehow they did not learn how to administer justice between man and man. Can we take this immense wealth of America today, and, as the pioneer, save our civilization? If we can, we must build a civilization where justice is upheld.

May I say to you, also, that we will not save our civilization because of the fact that we are not only the richest, but the most powerful people in the world? That is not what will save it. It is a fact that we are the most powerful people on earth, and that in the parlance of the street, we can lick the world with one hand tied behind us. But our civilization will not be saved because of military power. Another great war means suicide for the race. We cannot hark back to the days of tooth and claw.

It should be a matter of pride to every American lawyer that we have seen the spectacle of the representatives of the nations of the earth gathered about the council table signing the treaty providing that the differences between nations shall be hereafter adjusted as are the differences between men, not by the arbitrament of the sword, but by the processes of the law.

We are perhaps at the dawning of the era of which the ancient Hebrew prophet dreamed, "When men shall beat their swords into plowshares and their spears into pruning hooks, and nation shall not lift up sword against nation, neither shall they learn war any more."

But there are those among us who say that our civilization shall be saved because we not only are rich and powerful, but because we are the best educated people on earth. Do not misunderstand me. I would not detract one iota from the great value of education in the building of this civilization. We have built a schoolhouse on every hilltop and a college or a university in nearly every city. It is a great glory to the American people.

I confess to you that it occurs to me that our educational system is not altogether perfect, and that it is apparently a far cry from Abraham Lincoln studying by the light of a pine torch in a Kentucky cabin to the scholastic achievements of Red Grange performing in a two million dollar stadium before eighty thousand football fans.

You know as well as I do that an educated brain can produce injustice and unfairness, and that mere education, although universal in extent, like the mere fact of wealth or physical power, cannot save our civilization.

We often hear someone say that there is one thing that will save our civilization and that other civilizations did not have, and that is religion. Recently the President of the United States said:

"The foundation of all progress, of all government, and all civilization, is religion. It is only in that direction that there is hope of solution of our economic and social problems. The strength of our country is the strength of its religious convictions. Whatever inspires and strengthens the religious

activity of the people, whatever ministers to their spiritual life, is of supreme importance. Without it all other efforts will fail. With it there lies the only hope of success."

I wish I could believe that, churchman as I am, but I say it with great humility and as a believer in all that the church stands for, that we may as well face the solemn fact that within the past decade the Christian Church of America has not progressed as much as other elements which make up our civilization.

We have not become so devoted to the precepts of the barefooted peasant of Galilee as to be a religious people, and while I believe that the foundation of a great civilization must be a religious sentiment on the part of the people, we face the solemn fact that the mere thing of preaching and teaching cannot alone save this civilization for the world.

If our civilization is not to be saved by our wealth and inventive genius; if great power and mighty armies and navies will not insure its perpetuity; if education even of the highest form is not the guaranty of its salvation; if religion is not a sufficient insurance of its survival, where then are we to find salvation for this civilization?

We must take all of these various forces and cement them all together by the one thing that makes our civilization different from the ancient civilizations, and that is by our endeavor to administer justice and equity between man and man. This is the one paramount thing that makes our civilization different from the other civilizations that the race has tried.

If we fail to administer justice between man and man, then our civilization will fail as have those that have preceded us.

I am not unmindful of the current criticism of courts and lawyers. This has been for so long a time that the memory of man runneth not to the contrary. Shakespeare puts into the mouth of one of his characters the statement: "The first thing we do, let's hang all the lawyers." Such criticism of the courts and lawyers is still a popular thing.

It is true that the Chief Justice of the United States has said that the administration of the criminal law in the United States is a disgrace to our civilization. Notwithstanding all that the newspapers say about it, the truth is that the fault for the lax administration of the criminal law in America rests not so much with the lawyers and the courts as it does with the people themselves.

Let me cite you to three particular instances which have been in the public mind. The papers throughout the country have been full of criticism of the alleged miscarriage of justice in the Doheny, Sinclair and Remus cases. Wherein did the courts fail in any of these cases? What errors of law were committed? These three outstanding cases have put every lawyer and every judge in America on the defensive. The real trouble, however, in my judgment, lay with twelve soft-hearted, and perhaps soft-headed jurors and not with the lawyers or the courts.

It is time that the American lawyer gave the world to understand that he does his bit in the administration of law and that he stands for justice and equity and law enforcement. I want to say to these

young people that this popular notion of criticizing the courts is a wrong way to start out with your conception of building a great civilization for the race.

But if the courts are pure and not corrupt, and if the lawyers live up to the ideals of their profession, our civilization will be saved. If the lawyers fail in their duty and if the courts become corrupt, if we break down at this particular point, no matter how great, or how rich, or how educated we may be, our civilization will join the civilizations of Rome, and Greece, and Babylon, and nothing can save it.

You might talk to me of the problem of the pioneer who faced the snow and the cold and the wild animals to establish a new civilization upon American soil, but he knew nothing of the mighty problems that confront the American people today. Twenty-five years from now these young people will be solving these great problems. The lawyer is to have a large part in their solution.

Twenty-five of our thirty presidents have been lawyers, and a great majority of the House and Senate of Congress are lawyers. Such men must be the great leaders in the nation. But I am speaking also for the lawyers in the little rural communities, the men who are really the pioneers on the outposts and who stand in their communities for the enforcement of law, for to them more than to any other individual is entrusted the responsibility of upholding justice and equity and right among the people.

I am not referring to any question of American politics. We Americans love to indulge in the quadrennial Saturnalia of a presidential election. We do not agree in our politics and it is well that it is so. That is not what I have in mind, but it is this: That the great principles of right and justice between men are the fundamental and basic things upon which our civilization must rest.

May I say parenthetically that notwithstanding all of the constitutional and statutory provisions, I firmly believe that the one great outstanding characteristic of our civilization is the flexibility and adaptability of our common law, so that through it we may meet the constantly changing conditions of our complex civilization. At the recent meeting of the American Bar Association in Seattle, President Strawn said:

“Every good citizen, particularly the lawyer who is sworn to do so, ought to support the Constitution and obey the laws of the land. Either the Constitution should be obeyed, or it should be amended as the people may determine. It must not be nullified. Respect for the Constitution and observance of the law must prevail in this country.”

We are engaged in the most gigantic struggle that has ever been given to any people since time began. As a nation we have been in existence less than one hundred and fifty years and our civilization is still in the experimental stage. We are confronted with rapidly changing conditions and through it all our great problem is to save this new kind of civilization for the race, and to do so by preserving justice and equity and right among men.

I call upon you, members to the Bar, to realize that in your state and in your nation you are priests in the Temple of Justice. If we lawyers fail, I care not how great may be the wealth piled in the

Banks of New York and Chicago, I care not how powerful may be our army and navy, I care not how many schoolhouses we build, or how many churches lift their spires toward the silent stars, we cannot have in America one law for the rich and one law for the poor, and if the members of our profession lose the vision and the idealism that law and justice and equity must prevail, then our civilization will break down.

What we need now is men who see the bigness of our great undertaking, men who have a vision of the days that are to be. Someone has written these lines, which express the message I am trying to bring to you:

"Give me men to match my mountains,
Men to match my upland plains;
Men with empires in their purpose,
Men with eras in their brains.
Give me men to match my prairies,
Men to match my inland seas,
Men whose thought shall pave a pathway
Up to ampler destinies."

This is the call of our great nation to the lawyer today; to grasp these tremendous things, to look above and beyond the narrow daily struggles to the broad conception of the sublime duty that rests upon the Bar of America.

We stand at the dawning of a new era, in whose growing light this Republic must lead all the nations of the earth in the mighty onward march for better civilization. The music of that march of the nations of the earth will, I hope, never again be the drumbeat of war: let it be the song of industry and the sweet and mellow chimes of Christianity.

May commerce and philanthropy, industry and education, opulence and benevolence, go hand in hand. May wealth and power and education and religion join hands with justice to save for the race and carry to its full fruition the best civilization the world has ever known.

I leave with you the thought of a great man, whom I regard as the greatest living American lawyer, and who by unanimous nomination has now been called to perform a great service to the world as a member of the World Court, the Honorable Charles E. Hughes. He says to the American lawyer:

"We are free citizens of a republic with an unprecedented opportunity for an orderly progress and for an ever wider diffusion of prosperity, which are impossible save as justice is adequately served. Let us arise to our opportunity and as guardians of the traditions which constitute the precious possession of our democracy, play our part in establishing and making secure the authority of law as the servant of liberty wisely conceived, as the expression of the righteousness which exalteth a nation."

This is not only the great opportunity, it is the bounden duty of the American Bar. In this great undertaking we cannot, we must not, and we will not fail.

I am very grateful to you for the kind attention you have given me.