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# Why Due Process

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LAW DAY 1961:**WHY DUE PROCESS?\***

Louis E. Goodman\*\*

The purpose of Law Day, as you no doubt know, is to reassert the principle of government under law. We reaffirm and rededicate ourselves to the doctrine of the supremacy of law for the preservation of the fundamental rights of individuals. This is good therapy for all of us, young and old. For in times of strife and din when the words are often bitter, and the shouting is loud, and the solution seems obscure, it is wise to restate the fundamentals, and to reiterate the too oft-forgotten old and sacred doctrines.

Over the years it has been my pleasant duty to have admitted over thirty-five thousand aliens to American citizenship. I have found myself pledging allegiance to the flag, and joining with the new citizens in the oath of allegiance, and each time, despite the repetitious process, there is a tingle in the spine and a blurring of the eyes.

Why should an old, and presumably crotchety judge wax sentimental in the process of pledging allegiance to our system of government under law? It is because there is something awe-inspiring in the simple concept of pledging adherence to a system of law. Those who founded our government thought of it as a noble experiment. The founding fathers had in their hearts a deep passion to establish here, in what was the New World, a new kind of government; a government that would be just, and, above all, a government that would be based upon the consent of those who were to be governed. They felt that they were spawning new stars in the heavens. Indeed, the nobility of their experiment was enshrined in their hearts when they formally announced their separation from the mother country and their independence. In the Continental Congress a resolution was adopted providing for a flag for the embryo nation. In poetic language, it was resolved that "The flag of the United States shall be thirteen stripes, red and white alternate; the Union shall be thirteen stars, white on a blue field, representing a new constellation."

**NATURAL RIGHTS OF MAN**

The poetic concept that the thirteen states were to be a new constellation in the heavens had to be translated into the reality of a political creed. This was accomplished, as you all know, by Thomas Jefferson in the Declaration of Independence. In that document it was announced to the world that God had endowed men with unalienable rights of life, liberty, and the pursuit of happiness, and that it was the abiding purpose of government to preserve and protect these rights. As time has passed, this purpose of government has grown stronger and more and more immutable in our hearts. We have grown to recognize and dedicate ourselves through trial, strife, and adversity, to the fundamental creed that life is precious, that liberty is of the spirit, and that we must hold fast to the greatest of God-given rights, the right to have individual happiness. This means in its essence, the right of men and women to love, to marry, to beget children, to establish homes, and to live there in peace and in security.

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\*From an address given in the Campbell Lecture Series, before the student body of the University of Santa Clara School of Law on March 2, 1961.

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So it was that the time came to formulate a law of government that would best preserve and safeguard these inherent rights. The Constitution of the United States with its first amendments, the Bill of Rights, was that law. It is not an extravagance, nor an exaggeration to say that there is not a single provision of the Constitution or Bill of Rights which does not directly, or indirectly, bear upon your life, or your liberty, or your right of happiness.

Hence it is that we assume that those of us who are born in the United States are, by virtue thereof, attached to the principles of the Constitution. Likewise, we require that those who seek citizenship must be attached to those same principles. We require no allegiance to any person, be he officer, prince or potentate. The allegiance we prescribe is an unequivocal fealty to a principle—a doctrine. Absent that allegiance, a person is unready for American citizenship. The idea that a person may become a member of our society by pledging his allegiance to a principle of law is almost terrifyingly simple. But its very simplicity has made it unique in the whole history of human relations.

Simple as the concept of the three inherent and natural rights is, its appeal to people all over the world in the last one hundred and seventy years has been potent, and indeed awe-inspiring. For a century and three-quarters, the people of the United States have lived and prospered under the law of a constitution made by the people themselves. It has outlived kings and dictators. There must, therefore, be some pristine virtue inherent in a form of society which rests upon the consent of the governed. It is a virtue which has called here millions from foreign lands, who come because of their dissatisfaction with the forms of government and society of their native countries. Our system of law has survived not because of the kind of people who made up our first generation nor because of the kind and the innumerable types of people who emigrated here. Our law, and heritage of liberty, justice and equality before the law, has made it possible for men and women of all faiths and nationalities to live and build together. Certainly the people who have come here, as well as those who were born here, have not been, and are not of themselves, superior to all other people. In their physical characteristics, their hopes, their fears, their passions, their virtues, people are not too dissimilar all over the world. What, therefore, is the inherent virtue of our law of government that has made us so free and so happy? Fundamentally, it preserves and protects individual freedom and justice. And this explains the force of our moral leadership throughout the world.

### THE RULE OF LAW

Moral leadership depends upon something beyond mere strength or force. How did it come to pass that people of so many different nationalities, of all walks of life, rich and poor, high and low, the patrician and the humble tiller of the soil, could "melt in the pot" together and create such an inspiring collective moral force? Devotion to a human leader, a despot or a prince may produce the fanatic, but never the moral force sired by fealty to a principle of law alone.

If you believe, as I think you should, in the fundamental doctrine that our system of law in the constitutional sense is good because it dedicates itself to the protection and safeguarding of individual life, liberty, and happiness, then what are the duties you should assume to further your devotion? In the first place, I think you should put upon yourself a firm obligation to affirmatively support the cause of our law.

Indifference or passive acquiescence will never suffice. Too many native-born citizens take too much for granted. Long years of contact with the naturalization process have convinced me that the naturalized citizen, almost without exception, has a deeper awareness of the solemnity and seriousness of his citizenship obligation and oath. Not only that, but he has studied and familiarized himself with the principles and formulae of our government to gain knowledge that is unfortunately absent among so many of our native born.

Inroads into, and shortcuts around our basic laws safeguarding individual rights, are too easily accepted—due to indifference, or callousness, or to too quick yielding to the clamor of those who seek to glorify an end, no matter what the means. Shortcuts around the law protecting individual rights are nostalgic of our early school days. Someone first cut across the empty lot to avoid the longer paved way around. At first the shortcut was rough, and impeded with stones and vegetation. But gradually, as more and more followed the path, it became wider, firmer, and easier. Finally, it took the place of the main road. In his famous play *The Devil's Disciple*, George Bernard Shaw describes a scene in which General Burgoyne, King George III's representative in America, was discussing with his aide the disposition to be made of Richard Dudgeon, a captured American patriot. General Burgoyne says: "You have committed us to hanging him; and the sooner he is hanged, the better." To which Swindon, his aid, replies: "General, we have arranged the hanging for twelve o'clock. Nothing remains to be done except to try him." This was indeed a shortcut of the early days.

To proceed step by step in every process which affects life or liberty is, at times a tiresome and tedious procedure. The temptation to the short cuts I have mentioned is often strong. The hysteria and clamor of the moment are distracting. Temporary acclaim and momentary grandeur are very tempting fruits.

#### A FUNDAMENTAL SAFEGUARD

The process of our law in the preservation and protection of individual rights and liberties is often slow and ponderous. We sometimes grow impatient with it. You have read, and will continue to read in the press and elsewhere, evidence of this impatience. Columnists, writers, legislators and politicians frequently urge the short-cutting of these processes and immediate action to accomplish the ends desired. In recent times, for example, there have been bitter outcries against the long delays and repetitious processes in our criminal proceedings. In some sensational cases, the day of final judgment appears to have been prolonged year after year through appeals, and more appeals. The critics proclaim that our system of justice is failing, that due processes of the law and the full day in court should be shelved in favor of immediate and summary sentence and judgment. Because there are a few of these sensational cases which make the headlines does not mean that we are engaged in the daily business of frustrating and delaying judgment. Nor should we, because of them, be so easily and glibly beguiled into abandoning the orderly process which is the cornerstone of our constitutional guaranties.

By some of the modernists, this may be considered "old fashioned." But even so, it is a good thing to be "old fashioned," when life or liberty or property is at stake.

Orderly process, simply defined, means to proceed in all matters affecting life, liberty, or property in accordance with the firm principles of the Constitution. Orderly process means that first things to be done must be done

first. The end to be reached does not come first. Adherence to orderly process entails a certain amount of drudgery and repetitious effort. Day after day, in long procession, defendants in criminal cases are brought before the court for arraignment, for pleas, or for judgment. The court is required to, and does, on each occasion, meticulously advise each defendant of his rights, particularly his right to counsel. This process is repeated day after day, in case after case. I don't know how many times, perhaps hundreds or thousands, I myself have gone through this process. How easy it would be to overlook saying the familiar words! Yet, they must be said. There can be no departure from this process without yielding indispensable protection for individual rights.

There is no more worthy goal for your achievement than to work and fight for the dominance of law, a law like our own worthy one, for the preservation, safety, and happiness of all peoples. It is a law so inherently good for human freedom that even those who are building the opposing system of tyranny and slavery cannot forever conceal from themselves, and from those whom they rule, the vast extent of its achievement. It is a law so dynamic in its power that it neither abandons freedom or justice, nor promotes belligerence or aggressive force. Your vision should be to make our law victorious in the minds and hearts of men everywhere. That will be a victory that will require not the sword, nor the bomb, but the same old weapon, mightier than all, the pen.

I have an abiding conviction, that if you build up in your hearts a passionate belief in the doctrine that life, liberty, and human happiness are natural inherent rights to be protected and preserved by law, you will forever bask in the warmth of God's countenance.

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## WHAT LAW DAY MEANS TO ME\*

Lois P. Mitchell \*\*

What does Law Day mean to me? From its inception, the venerable practice of law has been man's finest effort to arbitrate those differences to which our human frailties subject us. It is no respecter of persons in its jealous guardianship over the right of freedom, justice and equality for all. It speaks in a clear strong voice in its advocacy of the perpetuation of these rights as our national purpose. It firmly cautions us to turn our efforts away from a gigantic, grim race to monopolize the nation's wealth. It administers justice from a rich history when it chastises those inherent base motives which, if left unchecked, weaken and destroy our higher principles.

What does law day mean to me? Who is "me?" In this instance it is an average married woman, mother of three adolescent sons, who began the study of law on her fortieth birthday. The decision to study law was the cumulative result of those prior years. The study and practice of law appears to me to be the most effective means of safe-guarding the national birthright and heritage which will pass from my generation to that of my three sons.

What does law day mean to me? Simply the conscious realization of the vital part the law takes in assuring and insuring the perpetual American legacy.

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\* Awarded first place in statewide and first runner-up in national competition; Law Day Essay contest, National Association of Women Lawyers.

\*\* First-year student, University of Santa Clara School of Law.