

John Jay's Charge to the Grand Juries, April-May 1790

Whether any people can long govern themselves in an equal, uniform, and orderly manner, is a question which the advocates for free government justly consider as being exceedingly important to the cause of liberty. This question, like others whose solution depends on facts, can only be determined by experience. It is a question on which many think some room for doubt still remains. Men have had very few fair opportunities of making the experiment; and this is one reason why less progress has been made in the science of government than in almost any other. The far greater number of the constitutions and governments of which we are informed have originated in force or in fraud, having been either imposed by improper exertions of power, or introduced by the arts of designing individuals, whose apparent zeal for liberty and the public good enabled them to take advantage of the credulity and misplaced confidence of their fellow citizens.

Providence has been pleased to bless the people of this country with more perfect opportunities of choosing, and more effectual means of establishing their own government, than any other nation has hitherto enjoyed; and for the use we may make of these opportunities and of these means we shall be highly responsible to that Providence, as well as to mankind in general, and to our own posterity in particular. Our deliberations and proceedings being unawed and uninfluenced by power or corruption, domestic or foreign, are perfectly free; our citizens are generally and greatly enlightened, and our country is so extensive that the personal influence of popular individuals can rarely embrace large portions of it. The institution of general and State governments, their respective conveniences and defects in practice, and the subsequent alterations made in some of them, have operated as useful experiments, and conspired to promote our advancement in this interesting science. It is pleasing to observe that the present national government already affords advantages which the preceding one proved too feeble and ill-constructed to produce. How far it may be still distant from the degree of perfection to which it may possibly be carried, time only can decide. It is a consolation to reflect that the good-sense of the people will be enabled by experience to discover and correct its imperfections, especially while they continue to retain a proper confidence in themselves, and avoid those jealousies and dissensions which, often springing from the worst designs, frequently frustrate the best measures.

Wise and virtuous men have thought and reasoned very differently respecting government, but in this they have at length very unanimously agreed, viz., that its powers should be divided into three distinct, independent departments--the executive, legislative and judicial. But how to constitute and balance them in such a manner as best to guard against abuse and fluctuation, and preserve the Constitution from encroachments, are points on which there continues to be a great diversity of opinions, and on which we have all as yet much to learn. The Constitution of the United States has accordingly instituted these three departments, and much pains have been taken so to form and define them as that they may operate as checks one upon the other, and keep each within its proper limits; it being universally agreed to be of the last importance to a free people, that they who are vested with executive, legislative, and judicial powers should rest satisfied with their respective portions of power, and neither encroach on the

provinces of each other, nor suffer themselves to intermeddle with the rights reserved by the Constitution to the people. If, then, so much depends on our rightly improving the before-mentioned opportunities, if the most discerning and enlightened minds may be mistaken relative to theories unconfirmed by practice, if on such difficult questions men may differ in opinion and yet be patriots, and if the merits of our opinions can only be ascertained by experience, let us patiently abide the trial, and unite our endeavors to render it a fair and an impartial one.

These remarks may not appear very pertinent to the present occasion, and yet it will be readily admitted that occasions of promoting good-will, and good-temper, and the progress of useful truths among our fellow-citizens should not be omitted. These motives urge me further to observe, that a variety of local and other circumstances rendered the formation of the judicial department particularly difficult.

We had become a nation. As such we were responsible to others for the observance of the Laws of Nations; and as our national concerns were to be regulated by national laws, national tribunals became necessary for the interpretation and execution of them both. No tribunals of the like kind and extent had heretofore existed in this country. From such, therefore, no light of experience nor facilities of usage and habit were to be derived. Our jurisprudence varied in almost every State, and was accommodated to local, not general convenience; to partial, not national policy. This convenience and this policy were nevertheless to be regarded and tenderly treated. A judicial control, general and final, was indispensable; the manner of establishing it with powers neither too extensive nor too limited, rendering it properly independent, and yet properly amenable, involved questions of no little intricacy.

The expediency of carrying justice, as it were, to every man's door, was obvious; but how to do it in an expedient manner was far from being apparent. To provide against discord between national and State jurisdictions, to render them auxiliary instead of hostile to each other, and so to connect both as to leave each sufficiently independent, and yet sufficiently combined, was and will be arduous. Institutions formed under such circumstances should therefore be received with candor and tried with temper and prudence. It was under these embarrassing circumstances that the articles in the Constitution on this subject, as well as the act of Congress for establishing the judicial courts of the United States were made and passed. Under the authority of that act, this court now sits. Its jurisdiction is twofold, civil and criminal. To the exercise of the latter you, gentlemen, are necessary, and for that purpose are now convened.

The most perfect constitutions, the best governments, and the wisest laws are vain, unless well administered and well obeyed. Virtuous citizens will observe them from a sense of duty, but those of an opposite description can be restrained only by fear of disgrace and punishment. Such being the state of things, it is essential to the welfare of society, and to the protection of each member of it in the peaceable enjoyment of his rights, that offenders be punished. The end of punishment, however, is not to expiate for offences, but by the terror of example to deter men from the commission of them. To render these examples useful, policy as well as morality requires not only that punishment be proportionate to guilt, but that all proceedings

against persons accused or suspected, should be accompanied by the reflection that they may be innocent. Hence, therefore, it is proper that dispassionate and careful inquiry should precede these rigors which justice exacts, and which should always be tempered with as much humanity and benevolence as the nature of such cases may admit. Warm, partial, and precipitate prosecutions, and cruel and abominable executions, such as racks, embowelling, drawing, quartering, burning and the like, are no less impolitic than inhuman; they infuse into the public mind disgust at the barbarous severity of government, and fill it with pity and partiality for the sufferers. On the contrary, when offenders are prosecuted with temper and decency, when they are convicted after impartial trials, and punished in a manner becoming the dignity of public justice to prescribe, the feelings and sentiments of men will be on the side of government; and however disposed they may and ought to be, to regard suffering offenders with compassion, yet that compassion will never be unmixed with a due degree of indignation. We are happy that the genius of our laws is mild, and we have abundant reason to rejoice in possessing one of the best institutions that ever was devised for bringing offenders to justice without endangering the peace and security of the innocent. I mean that of Grand Juries. Greatly does it tend to promote order and good government that in every district there should frequently be assembled a number of the most discreet and respectable citizens in it, who on their oaths are bound to inquire into and present all offences committed against the laws in such districts, and greatly does it tend to the quiet and safety of good and peaceful citizens, that no man can be put in jeopardy for imputed crimes without such previous inquiry and presentment.

The extent of your district, gentlemen, which is commensurate with the State, necessarily extends your duty throughout every county in it, and demands proportionate diligence in your inquiries and circumspection in your presentments. The objects of your inquiry are all offences committed against the laws of the United States in this district, or on the high seas, by persons now in the district. You will recollect that the laws of nations make part of the laws of this and of every other civilized nation. They consist of those rules for regulating the conduct of nations towards each other which, resulting from right reason, receive their obligations from that principle and from general assent and practice. To this head also belong those rules or laws which by agreement become established between particular nations, and of this kind are treaties, conventions, and the like compacts; as in private life a fair and legal contract between two men cannot be annulled nor altered by either without the consent of the other, so neither can treaties between nations. States and legislatures may repeal their regulating statutes, but they cannot repeal their bargains. Hence it is that treaties fairly made and concluded are perfectly obligatory, and ought to be punctually observed. We are now a nation, and it equally becomes us to perform our duties as to assert our rights. The penal statutes of the United States are few, and principally respect the revenue. The right ordering and management of this important business is very essential to the credit, character, and prosperity of our country. On the citizens at large is placed the burthen of providing for the public exigencies; whoever, therefore, fraudulently withdraws his shoulder from that common burthen necessarily leaves his portion of the weight to be borne by the others, and thereby does injustice not only to the government but to them.

Direct your attention also to the conduct of the national officers, and let not any corruptions, frauds, extortions, or criminal negligences, with which you may find any of them justly chargeable, pass unnoticed. In a word, gentlemen, your province and your duty extend (as has been before observed) to the inquiry and presentment of all offences of every kind committed against the United States in this district or on the high seas by persons in it. If in the performance of your duty you should meet with difficulties, the court will be ready to afford you proper assistance.

It cannot be too strongly impressed on the minds of us all how greatly our individual prosperity depends on our national prosperity, and how greatly our national prosperity depends on a well organized, vigorous government, ruling by wise and equal laws, faithfully executed; nor is such a government un-friendly to liberty--to that liberty which is really inestimable; on the contrary, nothing but a strong government of laws irresistibly bearing down arbitrary power and licentiousness can defend it against those two formidable enemies. Let it be remembered that civil liberty consists not in a right to every man to do just what he pleases, but it consists in an equal right to all the citizens to have, enjoy, and to do, in peace, security, and without molestation, whatever the equal and constitutional laws of the country admit to be consistent with the public good. It is the duty and the interest, therefore, of all good citizens, in their several stations, to support the laws and the government which thus protect their rights and liberties.

I am persuaded, gentlemen, that you will cheerfully and faithfully perform the task now assigned you, and I forbear, by additional remarks, to detain you longer from it.

This document is endorsed: "The charges of Chief Justice Jay to the Grand Juries on the Eastern circuit at the circuit Courts held in the Districts of New York on the 4th, of Connecticut on the 22d days of April, of Massachusetts on the 4th, and of New Hampshire on the 20th days of May, 1790."

The Correspondence and Public Papers of John Jay, ed. Henry P. Johnston, A.M. (New York: G.P. Putnam's Sons, 1890-93). Vol. 3 (1782-1793).