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Freedom is Not Free

Robert K. Puglia*

The cataclysmic events of our century have caused many to lose faith in the survivability of a society governed by the rule of law. Some skeptics believe that a government organized on that principle is too antiquated and cumbersome to meet the challenges of modern times. Fortunately, most of us disagree with these doomsayers. But it is important that we publicly renew and witness our faith in the system that has served us so well for 200 years and will certainly endure indefinitely.

More than anything else, the rule of law is what sets us apart from the rest of the world. It has played a significant part in all that is good about America, in all our successes as a nation, and in the creation of a way of life that is the envy of the world. And it bears no responsibility for the undeniable dark side of our less than perfect national life. In fact, some of our national shortcomings can reasonably be ascribed to our sometime inability to abide by the rule of law. But it cannot be gainsaid that America under the rule of law is a beacon to troubled, suffering humanity the world over, encouraging, where possible, the emulation of our form of government, and beckoning many to our shores.

Every day we reap the benefits of our constitutionally guaranteed freedoms of speech, religion, assembly and association, and freedom from unreasonable and arbitrary government actions against our persons and property. These freedoms are all enshrined in our basic charters, the Bill of Rights of the federal Constitution and parallel provisions in our state Constitution. Though solemnly guaranteed in writing, these freedoms depend for their continuing viability upon the rule of law. Without that, they are not worth the paper they are printed on—they are no more valuable than the showpiece constitution of the late, unlamented Soviet Union, which contained similar guarantees that, in the event, were consistently flouted and ignored.

In Washington, D.C., on the mall near the Lincoln and the Vietnam War memorials, is a new memorial dedicated two years ago to the Americans who fought in the Korean War. Inscribed prominently on the granite wall at the center of the memorial are these words: "Freedom is not free." Thus are we reminded the blood and treasure we expended in that conflict are inextricably bound up with who we are and what we stand for as a nation.

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These remarks are adapted from a speech delivered to the San Joaquin County Bar Association, on Law Day, 1998. It was Justice Puglia's last major public address.

Unhappily, the Korean War was not an isolated threat to our freedoms. Four times in this century, the United States has sallied forth from its insular sanctuary to confront armed enemies that presented a direct threat to everything we hold dear. I recognize that not everyone will agree the very integrity of our nation was imminently threatened in each of those conflicts. Nevertheless, for much of this century, as the world was being rapidly shrunk by modern technology, freedom and tyranny engaged each other in a winner-take-all, global struggle. Our recent success in that struggle should not lull us into a false sense of security. The game is not over. In fact, *this* game is never over. It has been said the price of liberty is *eternal* vigilance.

One may reasonably ask, if we have vanquished all external enemies who threatened our existence, against whom or what must we remain vigilant?

I maintain there are internal conditions that constitute a greater potential threat to our freedoms than any foreign enemy we have faced or are likely to face. History teaches that great civilizations are usually dispatched to the dustbin by contradictions from within. The *coup de grâce* may have been administered from without, as for example when Alaric and the Visigoths brought down the Roman Empire. But the Empire had already been rendered helpless by the rampant corruption of its rulers and the alienation of its people. To ignore the internal threat is to fiddle while Rome burns.

If the internal threats to our system are ever arraigned for judgment, they will acknowledge their true names are ignorance, apathy and cynicism.

How can it be then that so many of our fellow citizens are ignorant of or take for granted the rule of law? They do so at their peril. The history of this country demonstrates the rule of law is no stronger than the willingness of Americans to fight for it.

I'll venture that few who read this have not heard of at least one random poll of citizens in which a majority of those asked declared that, if given the choice, they would not adopt some of the basic freedoms that are already their birthright. Were it not so dispiriting, this might make hilarious grist for late night talk show monologues.

In a republican system such as ours, ultimate sovereignty resides in the people, who are either directly responsible for or only one step removed from truly fateful decisions.

A properly functioning democracy requires not only the formal education of its citizens but continuing education on the emerging issues of the day.

How confident can we be that we are educating the coming generation to assume this crucial role or, indeed, that those who educated the present generation—us—did such a great job?

It has become increasingly difficult to acquire the necessary basic knowledge from a media obsessed with sensationalism, and partisan reporting. Even so, ignorance can be overcome by putting the mind to the task.

The apathetic present yet another problem. They must somehow be invigorated with an appreciation that what happens in their government and community matters to them, and an understanding that what they do or do not do about it will affect what happens next. To paraphrase Senator Phil Gramm, who applied the epigram in another context, it's time the apathetic stop riding in the wagon and get out and start pulling it.

Then there are the cynics who are neither ignorant nor, like the apathetic, deadened in spirit, but whose spirits instead are warped and whose eyes are jaundiced. To the cynic, the system and everyone associated with it is either feckless or corrupt or both, and there is nothing that can or should be done about it because that is simply the way the world works. Thus the cynic remains utterly indifferent to real incompetence and corruption. The cynic's world view is a warped one that will yield only to proof that his or her assumptions are false.

Those assumptions are utterly inconsistent with a society governed by the rule of law. In its truest form, the rule of law is the destroyer of special privilege and class distinctions, the passport to the social, economic and spiritual good life.

To the litany of ignorance, apathy and cynicism, let me add another dynamic that has the foreboding potential to shape our national destiny: powerlessness. I do not refer to disenfranchisement. Powerlessness can affect those who have the right to vote, who are neither ignorant, apathetic nor cynical, but who honestly perceive that their vote is meaningless—meaningless because many of the decisions properly confided to the electorate have been co-opted by non-political elites. For those who are unfamiliar with this coded reference, non-political elites are the politically unaccountable parts of government—the judiciary and bureaucracy. If there is still anyone who doubts the capacity of bureaucracies to abuse power, I remind you of the one-liner most likely to evoke a knowing snicker: "I'm from the government and I'm here to help."

Like the extensive bureaucracy, the judiciary is frequently accused of co-opting political issues which are uniquely the province of the people and their representatives. Some judges willfully usurp the people's prerogatives by assimilating these issues to constitutional doctrine and relying on the province of the judiciary to interpret the Constitution.

The judiciary in a democratic system must be independent and it must interpret the law as handed down by the legislative body or the framers of the Constitution. The judiciary is not a policy making body. Policy is the exclusive role of the legislative branch.

We all recognize there are some judicial activists on the bench. The problem is we are not in total agreement as to who they are. It has been said that a judicial activist is a judge who decides a case contrary to the way you would have decided it. Yet, however defined, judicial activism can contribute to a sense of

powerlessness, which leads to alienation and, ultimately, to withdrawal from the political process.

The freedoms in the Bill of Rights were bequeathed by the Founders to their posterity. They have been maintained intact by our forebears, and it is our solemn obligation to pass them on unsullied to those who succeed us. Keeping them intact requires eternal vigilance, an ethic of informed citizen participation in public affairs and, on occasion, the expenditure of blood and treasure.

Thomas Jefferson said: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants." A few hundred yards from the Jefferson Memorial in our nation's capital the same sentiment is expressed somewhat less starkly: "Freedom is not free." The freedoms of which we speak are guaranteed by the Bill of Rights. They are limitations on the power of *government*. If we are not to descend into anarchy, we must live under government. But government represents concentrated power and, if government is to respect our freedoms, it must be subject to some check. The check on government is, of course, an independent judiciary which implements the rule of law.

The rule of law relies on a fragile consensus, which remarkably has endured and allowed us, uniquely among the nations of the world, to live as free people for more than 200 years. It is the guarantor of our freedoms. It emits the glow that illuminates the shining city on the hill, the glow that is never so brilliant as when contrasted to the ominous shadows cast by the brutal tyrannies which have threatened our national existence in this century. More than anything else, the rule of law is at the heart of American exceptionalism. That is the unique place that America occupies among the community of nations.

**Late Presiding Justice
Robert K. Puglia**



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