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### Law Day 1959

T.S. Candler  
*Georgia Supreme Court*

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ADDRESS BY JUSTICE T. S. CANDLER, UNIVERSITY OF GEORGIA ANNUAL  
LAW DAY, MAY 2, 1959

President Eisenhower designated yesterday (May 1, 1959) as Law Day throughout the United States. By his proclamation the lawyers of this country were in effect asked to publicly argue the case of Government under Law versus Government by Men. The response to that call was gratifying and those arguments, if properly publicized, should have a wholesome effect in this country and in others. Liberty and security under law has been man's chief desire as far back as we have either history or tradition of him. Many governments have been formed for the stated purpose of giving man such protection under law but for different reasons their purpose failed and man suffered his set-backs. Soon after this continent was discovered and during the early part of the eighteenth century several small groups of men and women, tired of unreasonable restraints on their right of citizenship, came here to establish a government under which they and their children and future generations might have and enjoy the blessings of liberty under law and the right to worship God in their own way. They organized themselves into thirteen separate colonies and each colony operated independently of the other. No thought of a union between them was considered until they decided they were being oppressed by the mother country. After much debate and considerable reluctance, they declared their independence by an instrument they jointly and courageously signed on July 4, 1776. They united themselves together under loosely drawn articles of confederation and under those articles, they fought a war which resulted in establishing their independence. In the spring of 1787 delegates from the thirteen newly created states met in Philadelphia to consider measures which they deemed necessary to strengthen the

Articles of Confederation. Lyman Hall, Button Gwinnett and George Walton were the delegates from this State and they carried with them a copy of our Constitution of 1777 which created our three coordinate departments of government. While debating the purpose for which they had met, the delegates decided that it might be best to form a more perfect union between the States, but the delegation from neither state was willing to surrender the sovereignty of its state to any union of the states. They were far more concerned about the sovereignty of their respective state than they were about a union between them. The delegates during the course of their deliberations agreed unanimously that only those powers which were to be expressly given to the union or the central government should ever be exercised by it and that all other powers would be reserved to the states, respectively, or to the people. It was not thereafter difficult for the delegates to agree on matters pertaining to the formation of a federal government and on September 17, 1787, by unanimous consent of the States present, our first and only Federal Constitution was adopted. After examining it closely, Gladstone, a great English statesman and a legal giant, referred to it as the greatest work ever accomplished in any given period of time by the mind and purpose of man, and it has remained of force and effect longer than the constitution of any other country.

It would, of course, be presumptuous on my part to call your attention to its provisions since you know them and also know that they are definite, unambiguous and create three coordinate departments of government.

Guided and controlled by that instrument and the statutes the Congress has passed pursuant thereto, we have, as a nation, made remarkable and astounding progress - a progress unequaled by that of any other nation during any period of time. The framers provided a method for changing our Constitution and by

that prescribed manner we have amended it only 22 times and one of those amendments ~~repealed~~ another, the 18th. Every public officer, and more especially every Judge, is sworn to support and defend it and to do so he must give it the meaning which the framers intended for it to have when it was adopted in 1787, except as that meaning has been changed by subsequent amendments, and to use a common law maxim, one who does not strictly and conscientiously comply with his oath of office in all respects, is no more to be respected than the sweat from the blanket of an ass. The Constitution placed all law-making power in the Legislative Department and that provision has not been changed in any respect by any amendment and for a long time we were regulated only by statutes which the Congress passed pursuant thereto but in recent years, there has been a radical departure from this and Congress has, as many eminent lawyers contend, unconstitutionally delegated its law-making power to various boards, bureaus, commissions and authorities and as a result of such delegation, we now have more than 70,000 pages of rules and regulations which have the force and effect of law, and about which neither the lawyer nor the layman has much opportunity to inform himself. Nearly every act we perform must be done according to some federal regulation and the more you regulate the average man's conduct, the more he becomes inclined to disregard and disrespect the regulating processes. As the salmon swims up the Columbia River to spawn and die, she passes under the supervision of 12 different federal boards, and I imagine she had rather die than return and be subjected to such regulations.

The Judicial Department of our federal government is the guardian of the Constitution of the United States. It has power to strike down as null and void any act of any person who exercises any of the powers of the other two coordinate departments which violates it in any way and from its final decision,

there is no appeal. Its only function, however, is to construe the law and constitutionally there is and necessarily can be no court-made law, and it is my humble opinion that this government will not survive that day when the American people lose faith in the integrity of the courts and respect for their judgments and decrees. The courts of necessity must be operated under strict rules of practice and procedure and those rules are not "technicalities" and should never be referred to as such, especially by lawyers. The trial of a law suit is like a ball game - depart from or relax the rules and the sport of the game is lost, and when I attend a game and see the umpire calling the balls exactly like he sees them, I say he is a good judge.

In 1932 the Justices of the Supreme Court of the United States were ripe and experienced lawyers and judges. They were, however, referred to by the President as the "Nine old Men." During that year legislation was introduced in the Congress to reorganize the membership of the Court by authorizing the President to appoint another Justice for each one who had reached or should reach seventy years, until the total number should be 15. Neither the Congress nor the people would back this, and such proposal was generally referred to as a plan to "pack the court." But by 1945, the personnel of the Court had completely changed and many decisions of long standing were set aside and reversed, about 50, I believe, in ten years. By those decisions, the Court assumed the right and duty by strained construction to change not only statutes but even the meaning of the Constitution itself to attain things it thought desirable. And this was done contrary to the very first sentence in the Constitution which declares that "All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives." The Supreme Court

has, of course, no constitutional authority to make or change a federal law and no greater consideration should be given to an unconstitutional decision of the Court than is given to an unconstitutional order of the President or an unconstitutional act of the Congress. By those several decisions, the powers of the court were stretched to an unheard of reach and when the Chief Justices from the Supreme Courts of 36 of the States, and the House of Delegates of the American Bar Association by an almost unanimous vote, suggested to the Court that it should re-examine the soundness of some of its recent decisions, it would seem appropriate for it to have done so.

Federal judges, including the Justices of the Supreme Court of the United States, must, before entering upon a discharge of their duties, take an oath obligating them to support and defend the Constitution of the United States, but a State Judge, before entering upon a discharge of his duties, must take an oath obligating him to support and defend both the Constitution of the United States and the constitution of his state. Since my graduation from this law school in 1915 and my admission to the Bar of Georgia, I have several times taken an oath to support and defend the Constitution of the United States and the Constitution of the State of Georgia, and to the best of my limited ability, I have tried to comply with its obligation and I intend to do so in the future as best I can. On all questions respecting those powers which the Constitution expressly delegated to the federal government, I will follow the decisions of the Supreme Court of the United States, however, it is hard to follow a court which you may meet coming back - Dr. Sylvanus Morris and my other teachers omitted to instruct me on the art of turning judicial somersaults; but as to those powers not so expressly delegated and where there is an attempt to interfere with them by any person connected in any way with any one

of the three coordinate branches of the federal government, including the Supreme Court of the United States, I will support, defend and follow the Constitution of our State and in my effort to do so I will neither ask nor permit Professor Gunnar Karl Myrdal, or any other person who thinks like him, to tell me what it means or what I should do. Under my oath of office, it is as much my duty to support and defend the Constitution of our State as it is my duty to support and defend the Constitution of the United States, one relates to the powers reserved by our sovereign State, the other to those powers expressly delegated to the federal government and to those powers only. The Constitution of Georgia undertakes in an exceptionally fine way to define and protect those sovereign powers not expressly delegated to the federal government, and respecting those powers, Georgia's Constitution is the "law of the land" in this sovereign state.

Our dual system of government is indeed unique, and to remain a strong nation the several States, now 50, must continue to support the system wholeheartedly and to the end that there may be no discord between us and no infringement upon State powers, the federal government should and must not interfere with the internal affairs of the States nor encroach in any way on their reserved sovereign powers. That question was definitely settled and put to rest in Philadelphia during the summer of 1787; and as thus settled, it should be conclusive as to all and respected by all.

This Nation stands virtually alone in its effort to protect and preserve the dignity of man and his security under law. There are but few nations and a relatively small number of people in the world who are sincerely in accord and sympathy with the principles of our democracy. The terrible misfortunes which are presently being visited on man are the result, I am afraid, of a dangerous deterioration of personal and national conduct. We must have a revival of religious fervor, a renewed humility before God in support of wholehearted adherence to high standards

of individual and group behavior. We are no longer an isolated nation. Modern means of communication and transportation have made those nations most remote from us our neighbors. Their problems are indirectly our problems and they threaten and imperil the very existence of our people. As neighbors, we must necessarily assist in a solution of them, both by friendly advice and by continued financial aid. For the preservation of our own form of government - yes, for our own existence, it is imperatively necessary that we continue in every possible way to convince other nations and other people that our representative form of government offers them the only avenue of escape from tyranny. Among the principal nations of the world alarming changes in governmental philosophy have occurred in the last 25 years. England by a radical departure from her long-established form of government is no longer the powerful force in the affairs of the world she once was. France by internal discord, confusion and frequent changes in leadership is now a weak and unpredictable nation. Germany by her desire to dominate the world is now a defeated and divided nation with but little, if any, influence or power left. Japan by her treacherous assault on this Country at Pearl Harbor has been conquered and virtually destroyed. China, until recently a sleeping giant, has accepted communism and become a direct threat to the peace of the world. And Russia would have all nations accept her form of government and thereby destroy every semblance of liberty and security under law and law itself.

I am a great believer in Isaiah's prophecy that some time in the future - a date known only to God - man will beat his sword into plow shears and his spear into pruning hooks and sit down under his own vine and fig tree and have and enjoy peace. As a Christian people - as a people ruled by law and not by men-



we must so discharge the duties of American citizenship that we may be worthy of the precious heritage we have received from our illustrious fathers.