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The Spirit of Liberty

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Annotation: Learned Hand is often considered the greatest American judge to never sit on the Supreme Court. For more than 50 years, he served as a federal judge, most of the time on the U.S. Court of Appeals for the Second Circuit in New York. Three times presidents considered nominating Hand for the Supreme Court. But each time they picked someone else.

Hand gained public acclaim for a speech on "The Spirit of Liberty" given during World War II. Hand delivered this address in 1944 in New York's Central Park, where 1.5 million people gathered for an event billed as "I Am an American Day." Hand aimed his remarks at 150,000 newly naturalized citizens.

Hand told his listeners that immigrants came to America in search of liberty. He informed them that the essence of liberty was not to be found in constitutions, laws, or courthouses but "in the hearts of men and women." What then, he asked, is the spirit of liberty? "The spirit of liberty is the spirit that is not too sure it is right." What Hand meant is that Americans needed to avoid dogmatism and remain open-minded.

Hand was an early opponent of Hitler and a critic of anti-semitism and as a judge, Hand defended freedom of expression and civil liberties. But he also committed to judicial restraint and believed that the courts should avoid second-guessing the decisions of legislatures. During the Cold War, he was known as a voice of moderation who spoke out publicly against McCarthyism, the obsessive pursuit of communists in government.

With his busy eyebrows, his penetrating eyes, and his stern countenance, Hand fit the popular ideal of a judge. He was often called the Supreme Court's tenth Justice. But he was skeptical about the law's ability to resolve conflicts efficiently and to protect peoples' liberties. In a famous phrase, he said that his years on the bench convinced him that "I should dread a law suit beyond almost anything else short of sickness and death."

Document: We have gathered here to affirm a faith, a faith in a common purpose, a common conviction, a common devotion. Some of us have chosen America as the land of our adoption; the rest have come from those who did the same. For this reason we have some right to consider ourselves a picked group, a group of those who had the courage to break from the past and brave the dangers and the loneliness of a strange land. What was the object that nerved us, or those who went before us, to this choice? We sought liberty; freedom from oppression, freedom from want, freedom to be ourselves. This we then sought; this we now believe that we are by way of winning. What do we mean when we say that first of all we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a savage few; as we have learned to our sorrow.

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the mind of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never learned but never

quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest. And now in that spirit, that spirit of an America which has never been, and which may never be; nay, which never will be except as the conscience and courage of Americans create it; yet in the spirit of that America which lies hidden in some form in the aspirations of us all; in the spirit of that America for which our young men are at this moment fighting and dying; in that spirit of liberty and of America I ask you to rise and with me pledge our faith in the glorious destiny of our beloved country.

Source: Learned Hand, *The Spirit of Liberty*, 1944.

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