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# JOHN JOHNSTON PARKER 1885-1958\*

JUDGE HAROLD R. MEDINA†

Mr. President, Mr. Chancellor, members of the Board of Trustees, students, alumni and friends of the University of North Carolina:

It is a great honor and I esteem it a privilege of the highest order to have been selected to address you on the occasion of the unveiling of the portrait of a great American patriot here in the University he loved so well.

The heroic proportions of John Johnston Parker as a jurist and indefatigable worker in the vineyard of the law have been described by his life-long friends and others at a special session of the United States Court of Appeals for the Fourth Circuit at the Court House in Richmond, Virginia, on April 22, 1958. I shall not repeat what was said on that occasion, except perhaps in the course of interpretation. For this reason I shall make no more than this passing reference to his many honorary degrees, to the award to him in 1943 of the American Bar Association Medal for conspicuous service in the cause of American Jurisprudence, to his advocacy of adherence to procedural safeguards and due process of law as an alternate member of the International Military Tribunal in 1945, and to the many citations and honors conferred upon him that speak so eloquently of his exalted position as one of the ablest and most distinguished American jurists of our generation.

Instead, it seems altogether fitting that I should speak of the humanity of Judge Parker, of Judge Parker the man, in an attempt to reconstruct his sense of values and how they came to be such. Perchance this may help each of us to profit by his example. In order to accomplish this purpose I shall now drop a tiny seed, in the hope that as we proceed this seed may germinate and grow. And the seed is this thought: the dynamics of Western Civilization, the sources from which it derives its vitality and its strength are the classical tradition and the Christian religion. We shall see these reflected in the life of him whom we honor today.

Once upon a time, in the fall of 1903, a young man started out from Monroe, in the Piedmont section of North Carolina to go to college. Samuel Johnston, a great federalist and a governor of the state elected by the people after the Revolution, one of John's forbears, was a nephew of Gabriel Johnston, a colonial governor under the King of England.

\* Delivered at ceremonies on the occasion of the unveiling of the portrait of Judge Parker at the University of North Carolina on February 18, 1960.

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John was also a collateral relation of James Iredell, one of the two Supreme Court Justices from North Carolina. But the wheel of fortune had turned and the descendant of Samuel Johnston who was destined to become our hero's mother moved to Monroe where she became an expert telegrapher and in due time married a substantial Monroe merchant.

While John helped pay his expenses by acting as agent for a Baltimore clothing house, it was not long before this lowly freshman began to make his presence felt. He organized an insurgent non-fraternity student democracy of the University of North Carolina as he thought the fraternities and all other secret societies were undemocratic; he even refused to be tapped for Golden Fleece in his senior year, only to be re-tapped and taken in some fifteen years later. The fact that he was the brightest boy in the class did not seem to work the way it usually does and he was elected president of the class as a freshman and again as a senior. In the course of time he won prizes as a debater and in Greek and in just about everything else, winding up as President of Phi Beta Kappa with the highest scholastic standing in the class. He was a born leader and a born fighter. He was against hazing and organized a group to protect the freshmen. The only poor mark he ever got was a C in Philosophy and Dr. Horace Williams, who taught the course and who later became one of John's closest friends, admitted that he and John fought like tigers from the first day of the course, as John "accepted no thought unless it was made part of his own thinking." The lame excuse for the C was "My A's are saved for that person who is interested in philosophy as a professional matter," which John wasn't. Perhaps, in his zeal to train professional philosophers Dr. Williams was unaware of the fact that he was in the process of performing with conspicuous success the noblest function of a college professor by training an adolescent to think for himself; and thus he may have failed to give his just due to the student who under his aegis and instruction, and by the very tools Dr. Williams taught him to use, was in the process of independently arriving at conclusions, some of which were not the same as those so dear to the professor.

To those of us who are interested in the Liberal Arts the courses John took are illuminating: English, Mathematics, Physics, Chemistry, Latin, Greek, French, Philosophy, Economics and History. None of this modern chasing yourself around the stump with a miscellany of attractive looking digressions called electives. In those days we got the fundamentals. The Greek made such an impression that John taught the elementary course in Greek in the college while he was attending the law school. The influence of Dr. Eben Alexander and Professor

William Stanley Bernard was a great character builder. This is the same Dr. Alexander who was United States Minister to Greece and who helped to revive the Olympic Games. One of John's fellow students has told me of the never-to-be-forgotten effect of the recital of Homer's hexameters by Professor Bernard. The majesty, the timelessness of the *Iliad* and the *Odyssey* give a person at least a fleeting glimpse of the eternal verities, of what life is about and how it can be lived after the manner of the Gods.

In one of the Greek courses John studied New Testament grammar and diction and came to read the Acts of the Apostles in the original Greek. To this he returned again and again in later years. He did not carry a copy of the Greek testament around in his hip pocket as someone I know does; he read it alone in his study and his faith grew and he waxed strong in body and soul.

At this point let us pause and make an intermediate inventory of what we have: surely there is intelligence and a disciplined and inquiring mind; there is independence and courage; there is good will and a merciful and understanding heart. But there is the budding of so much more. He now is beginning to see that the freedom and the democratic ways that so appeal to his sense of what is right are truly patterned after the teachings of Christ. Many of those present here now will remember how often he referred to the "sovereignty of the individual soul," to good will and tolerance and the brotherhood of all men, to our duty to love our neighbors as ourselves or, as Christ once said, "[L]ove thy neighbor as I love you." Thus these hallowed halls gave birth to a champion of freedom who from thenceforth entered the lists and fought as did the knights of chivalry, dealing many a mighty blow but without cunning or guile, and without rancor when his blows were parried. He had discovered freedom as a spiritual force.

And so John prospered. He was a success as a lawyer. He was made a trustee of the University in 1921. The consolidation that laid the foundation for the broad development of the University and the enhancement of its prestige and usefulness in later years was brought about in no small measure through his efforts. Dr. Frank P. Graham himself has told me that when he was President of the University John was one of his most stalwart and loyal supporters in stormy times.

From the very beginning of his career he was a Republican in politics, probably not just to be different, although this might have been true without his realizing it, as he was above all an individualist and never ran with the pack. Perhaps he did not like the way the Democrats were running things. The fact that there were miscellaneous advantages which might accrue to Democrats rather than to Republicans

in North Carolina did not make a particle of difference to him; and he must have known that he was renouncing the hope of speedy advancement as a member of the opposite party in a town and county "where the majority of people vote the straight Democratic ticket almost as a religious duty." He was the nominee of his party for Congress from the seventh district in 1910, for State Attorney General in 1916, and for Governor in 1920. In the last campaign he ran against Cameron Morrison and, although defeated, polled 230,000 votes, which was 63,000 more votes than any other candidate of either party for Governor had ever received prior to that time. He served for a time as a special assistant to the Attorney General of the United States; and on October 3, 1927 by appointment of President Coolidge he became a United States Circuit Judge on the Court of Appeals for the Fourth Circuit.

As I grow older some of the things I had long forgotten come back to mind. On several occasions I have referred to part of what I said to my last class at Columbia Law School, after twenty-five years of teaching there. It was a very important day for me and I wanted to tell those young men and women some of the things I had learned, or thought I had, that it might be useful for them to remember. I did not say anything about law as such. One of the things I mentioned, and it had slipped from my memory until I was preparing this address, was: "Be a good loser." As a guide to living this is more important than one might suspect. We all know so many bad losers; they blame the judge, call their adversary a shyster, say the jury system has gone to pot and so on. People admire the man who takes his licking and goes about his business. They are likely to trust such a man too. And I will tell you why this is so, just as I told my students at Columbia back in 1940, twenty years ago. It is because there is a certain deflation of the ego involved in being a good loser, and deflation of the ego is another way of expressing one of the greatest of all human qualities, humility. When we realize that someone else is running the universe, we are on our way. Then we can grow and then only can we fulfil our destiny on this earth. Again remember the words of Christ: "[L]ove thy God with all thy heart and all thy soul and all thy mind. This is the first and great commandment." If we love Him we must bow to His will, and at the same time thank Him for His mercies. I once heard Woodrow Wilson say it was the most difficult thing in the world to be a true Christian, but that the reward was a spiritual strength with which one could move mountains.

In 1930 the first blow fell. In his forty-fifth year he was appointed to the Supreme Court by President Hoover and the Senate failed to confirm the appointment. The change of a single vote would have

brought about a different result. The heartbreaking part of it was that the opposition was based upon a complete misunderstanding of the facts. One of the two men in the United States best qualified in every way for membership on the Court had been rejected. The other, Learned Hand, never received the appointment. Before many years he suffered another great sorrow in the loss of his beloved son and namesake, his pride and joy, who was fast following in his father's footsteps. No summary of John Parker's life could do him justice if it failed to note the way his faith in God and his steadfastness in the path of duty enabled him to carry on and so grow in stature and accomplishment as to approach the very ideal of what a man of law can be.

It may be interesting, however, to note how the course of American history might well have been changed had Judge Parker become a member of the Supreme Court. After his rejection Justice Roberts took the place he was to fill as the successor to Justice Edward T. Sanford. In 1930 the economic forces that led to the great depression were already in operation. In 1935 a number of major cases were decided by the Supreme Court which were deemed by many, including the President, to be likely to deprive both the federal and the state governments of power effectively to deal with the depression. Judge Stone, whose point of view was strikingly similar to that of Judge Parker, both on the subject of the power of the government to deal with economic threats and the power of the courts to safeguard the rights of individuals vis-a-vis the government, dissented again and again. Indeed, after the failure of the court packing scheme and the change of position by key members of the Court, it was Stone's view that prevailed and that is probably how he came to be appointed Chief Justice of the United States. Roberts voted consistently with the majority and one after another of the legislative props to the New Deal were held offensive to the Constitution. In *Railroad Retirement Board v. Alton R.R.*, 295 U.S. 330, a five-to-four majority, with Roberts writing for the Court, invalidated the Railroad Retirement Act of 1934 and the opinion contained intimations that the Social Security Act would be held unconstitutional. In *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587, the New York Minimum Wage Law was invalidated, again by a five-to-four vote with Roberts joining the majority. Had Judge Parker been on the Court instead of Roberts it seems not unlikely that he would have voted with Stone.

Thus in at least two critical cases a "liberal" vote by Parker in place of the "conservative" vote by Roberts would have altered the result. *Alton* is significant not so much for its decision as for the hint it gave that the Social Security Act, a crucial part of the New Deal program, might fall. *Morehead* indicated that, in addition to holding the

federal government powerless to fight the depression, usually through a restrictive interpretation of the Commerce Clause, the states might also be held equally powerless by way of the Fourteenth Amendment. If these two decisions had gone the other way, to say nothing of a number of others that I have not thought it necessary to discuss, it does not seem improbable that President Franklin D. Roosevelt would not have felt so frustrated by the apparently unswerving hostility of the Court and his ill-advised court packing plan might never have seen the light of day. Thus the history of this period would very likely have been materially changed.

But all this was not to be. Instead, the rare talents of Judge Parker served the nation and especially the Fourth Circuit in a myriad of ways. It is the old story of the First Psalm about the "tree planted by the rivers of water, that brings forth his fruit in his season." God's ways are best. As Chairman of the Section of Judicial Administration of the American Bar Association Judge Parker launched and implemented and fought for the greatest program for improving the administration of justice this country has ever seen. He was famous as a speaker and lecturer and he always spoke for a better, purer justice. As an administrator in the hierarchy of the judiciary, he showed how false can be the dictum of the cynic that a great administrator is a great delegator, with a genius of piling on the work for the other fellow, by piling it on to himself. In the Judicial Conference of the United States he was a tower of strength. He was Chairman of the Committee on Court Reporting, Chairman of the Committee on Jurisdiction and Venue, Chairman of the Committee on Habeas Corpus, Chairman of the Committee to Give Study to Changes in the Rules With Reference to the Method of Trial of the Question of Just Compensation in Condemnation Cases, Chairman of the Committee on Ways and Means of Economy in the Operation of the Federal Courts, Chairman of the Committee on Appeals From Interlocutory Orders of the District Courts, and Chairman of the Committees on the Administration of the Criminal Law and on Punishment for Crime. I could go on and on.

I have saved for the end what he did for the people of the States of Maryland, Virginia, West Virginia, North Carolina and South Carolina in the Fourth Circuit. He often said a man does not cease to be a man and a citizen when he becomes a judge, and after he ascended the bench he continued to play his full part as a leader in our democracy, in the organized bar, on the boards of educational, charitable and religious organizations and on public occasions where his wisdom and guidance were needed by the people. But I would chiefly emphasize his influence on his brothers who were judges on the federal and state courts in the

Fourth Circuit, and on the lawyers, as I think here we shall find manifest proof of the qualities that met with his favor, those in which are reflected his sense of spiritual values; for in the end he was a tower of spiritual strength.

A few years ago he asked me to come and make an address at the banquet of the Fourth Circuit Judicial Conference. When we arrived at Asheville, North Carolina, there he was at the desk of the hotel welcoming the judges and the lawyers and their wives as they came in. He was smiling and happy and it took me only a moment or two to realize that I was in the midst of an unforgettable experience. The love and affection for this man that were in evidence on all sides were a sight to behold. I had never witnessed anything like it, nor do I hope ever again to do so, and it has been my fortunate privilege to have attended many judicial conferences and meetings of judges and lawyers. He had what Cicero used to call *auctoritas*, the prestige and influence that are the reward of a pure and untarnished life of public service, but over and above all this the people loved him and it was their joy to do his bidding in all things large and small. He had solved the great riddle of life, so simple and yet so veiled from the view of most of us. Unselfish devotion to the welfare and needs of others in all things brought him the only true happiness to be attained in human existence—the love of his colleagues throughout the Fourth Circuit, and of the lawyers in and out of court, and of the people generally, and of his dear ones at home.

He once said: "An understanding heart was the gift of God asked by the ancient king; and it is the gift above all others that the judge should pray for." Let me call to mind one or two illustrations of his great, understanding heart. I am told that when a new federal District Judge was commissioned in the Fourth Circuit it was Judge Parker's custom to invite him at once to sit with the judges in the Court of Appeals, to ease the way for the new judge, to give him confidence and to let the good will of the Circuit Judges play about him for a time. He always kept his finger on the pulse, as Judge Soper once said, and was quick to relieve a judge who became overburdened. All the judges sought his advice on all sorts of subjects and he was never inattentive or indifferent to their problems. He always had the knack of putting himself in the other fellow's shoes. In the thick of many a controversy his life was never sullied by a mean or unworthy thought or deed.

Probably many here today will remember the words of Horace:

Non omnis moriar multaque pars mei  
vitabit Libitinam. Usque ego postera  
crescam, laude, recens.



[I shall not wholly die and much of what  
is I shall escape the goddess of the fu-  
neral pyre. I shall grow in fame from  
generation to generation, ever fresh.]

Will the fame of John Johnston Parker stand the test of time? His writings do not have that piquancy of style, that pepper and salt and pungent turn of phrase that so helped to spread the fame of Holmes and Cardozo and Learned Hand. No mystery hovered about his pronouncements of the law. He was no Delphic oracle who spoke only to those within the sacred circle. The hallmarks of his style are logic and clarity. No one ever doubted what Judge Parker meant to say. He leaves a massive record of sound law. Even so the opinions of most judges, even the greatest of them slowly become submerged in the vast and ever changing organism of the law.

But his spirit and his idealism and his love of freedom will live on and on, through this great University, into the fabric of which is woven so much of his life's work, through the law that he has done so much to improve and enrich, and in the hearts of the multitude of his friends and those whose lives he has touched, who will hand down to their children's children and beyond the tradition of what John Johnston Parker has said and done.