

Back, Basics, Buffalo (1942)

*John Q. Barrett**

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On February 23, 1942, Justice Robert H. Jackson, half way through his first year on the United States Supreme Court and just twelve weeks after Japan's attack on Pearl Harbor, delivered a major address at the University of Buffalo's mid-year convocation.

Twenty-four years earlier, when Jackson had been not much older than the UB graduates he addressed that morning, he had lived and practiced law in Buffalo. Ever since, including after his 1930s move to Washington to serve in the Roosevelt Administration, he had remained deeply connected to western New York, including Buffalo and its lawyers, judges, businessmen, educators, civic leaders and great university.

In this lecture, entitled "Youth Faces 'The New Order,'" Jackson spoke very candidly as a high official of a country at war.¹ He described a U.S. facing uncertain, perhaps bleak, prospects for the future. But he closed with an optimistic account of how the American people would engage and defeat their enemies:

We, too, battle for a "new order" and for a peace that can be founded only on democracy—a virile and militant democracy growing outwardly to embrace peoples who have never known it and growing inwardly among the nations that profess it. It would apply reason and concepts of justice, instead of the torch and the firing squad, to the cure of the world's ills. The state is conceived to be the instrumentality of the people, not their master, and men are held to have

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For an archive of selected Jackson List posts, many of which have document images attached, visit www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju.

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¹ See, e.g., *U.S. Needs Virile Democracy To Win, Jackson Says at U.B.*, BUFFALO NEWS, Feb. 23, 1942.

inviolable personal freedoms of soul and mind and expression. Material resources are appropriated to the decencies and comforts of the masses of men under modern living conditions and are not consumed merely in feeding the mills of destruction.

We arm our people to win this world order with the franchise, with individual dignity and civil rights—weapons that the Axis dares not put into the hands of its subjects. Through such weapons the old order can be reshaped, and we ultimately can realize all that the Axis promises to its people, and freedom and peace besides.

This understanding of our purpose, and of our armament for it, will mend our defensive attitudes, liberate our energies and let go our common passion for the job ahead. American earnestness and ardor and singleness of purpose will be able to retrieve what seems lost and to establish the mastery of an order of reason and freedom over the threatened one of force and tyranny.²

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On February 23, 1942, Justice Jackson did double duty in Buffalo. Following UB's convocation, Jackson was honored, at Buffalo's Hotel Statler, at the annual dinner of the Bar Association of Erie County. And he gave the principal speech to the 400 judges and lawyers who were present.

Jackson apparently spoke extemporaneously—his archived papers in the Library of Congress contain no prepared text or notes. But newspaper accounts preserve (and paraphrase) many of his words,³ which were interesting, personal, amusing, local, proud, far-sighted and heartening:

- “I have not yet become accustomed to living in the clouded metaphors surrounding the Supreme Court,” which litigating attorneys have referred to as an “ancient tower,” a “bed rock,” “the bulwark of private property,”

² *Id.*

³ See, e.g., *Luck Helped Him to Top, Justice Jackson Admits*, BUFFALO COURIER-EXPRESS, Feb. 24, 1942.

“the Palladium of Liberty,” “the Rock of Ages” and “the balance wheel of the Republic”.

- The term “country lawyer” came Jackson’s way when a newspaper columnist, who was not trying to be funny, termed Jackson ““just a country lawyer.””
- “Cases are as well tried in this Eighth Judicial District [of New York State⁴] as anywhere in the country. Nowhere are cases better prepared and nowhere are they tried with more ability and better sportsmanship than right here. Not only are the cases well tried, but it has been astonishing to me to see lawyers come before the highest court, where presumably the highest fees are involved, with preparations that would make them a laughing stock in our county courts.”
- “During my practice in the Eighth Judicial District I have never had occasion to feel that any decision had been colored against me for any political reason. That is one of the things that makes for a bench that has repute among the people.”
- I tried cases “for fun” when I could not get a fee.
- I feel I have had the best luck of any country lawyer who has gone to Washington. All men must admit the element that luck has played in their careers.
- The job of Solicitor General of the United States is the most pleasant one to have from the standpoint of a lawyer.
- “There is a vast number of constitutional questions on which there is as yet no interpretation and this is especially true in dealing with war powers. In spite of the fact that we have had 150 years of federal jurisprudence

⁴ For a map showing the eight counties, including Buffalo’s Erie County, that are located in the Eighth Judicial District, see www.nycourts.gov/courts/8jd/.

we still have many great questions in the life of the nation that have not been settled.”

- There has been a constant battle over the powers of the Supreme Court since its establishment, and its functions have been an object of controversy through many administrations, including the present one. But “[n]o one [administration] has ever captured [the Court]. It has continued to exercise its functions despite controversy.”
- One of the most vital issues of the war is whether we are to be permitted to have the kind of society that wants courts to settle controversies. I speak of courts in the true sense of that term; we see some courts functioning abroad only under the name of courts.
- “We face the most earnest and critical trial of our national existence. We all know the realities. We realize the disappointments we have had and we realize those in front of us before we can take sides on the offensive and shape the war as we would have it. But I am not discouraged about it.”
- It is vital for the legal profession to carry on and discharge the functions of leadership. It is vital for young men approaching the bar to be prepared to carry on the functions of democratic society after the war. There can be no conception of a world that does not submit the problem of man to man to some kind of legal tribunal.

On this 1942 visit to Buffalo, Jackson left the next day. He returned often, and he continued to advance these ideas for the rest of his life.