

Speaking of Government, and Fixing the Roof, at Randolph-Macon (1938)

*John Q. Barrett**

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In late April 1938, Washington, D.C., lawyer E. Barrett Prettyman wrote to his friend Robert H. Jackson, then the Solicitor General of the United States. Prettyman transmitted and echoed a request from the president of his *alma mater*, Randolph-Macon College in Ashland, Virginia, that Jackson speak at its commencement that June.¹

Jackson accepted. “[I]n spite of my resolution not to take on additional work during the spring and summer seasons,” he wrote to the president, “I have yielded to the persuasion of Mr. Prettyman and the attractions of Randolph-Macon College.”²

In May, as Jackson prepared to write his speech, he wrote first to Prettyman, asking for information on the College and his ideas for the speech.³

In response, Prettyman wrote Jackson a long letter. Prettyman described in detail Randolph-Macon’s history, qualities and leadership. Then, turning to speech ideas, he gave Jackson some flattering and thoughtful guidance:

You are generous in suggesting that I suggest in this regard. Even so, I hesitate to take advantage of the courtesy.

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¹ See Letter from E. Barrett Prettyman to Hon. Robert H. Jackson, Apr. 25, 1938, enclosing Letter from R.E. Blackwell to Hon. Robert Jackson, Apr. 19, 1938, both in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. (“RHJL”), Box 36.

² Letter from Robert H. Jackson to R.E. Blackwell, Apr. 29, 1938, in RHJL Box 36.

³ Letter from Robert H. Jackson to E. Barrett Prettyman, May 3, 1938, in RHJL Box 36.

But I do have in mind one or two things about the speech. Speaking plainly, I would like to see you make a speech that will plant the name of Robert H. Jackson in the minds and hearts of Southern people for many years to come.

...

....You are an outstanding national figure in the more progressive, liberal element of the thoughtful people of the country. How about a speech on the topic—"What of the Future of Our Government?" Not too long—twenty or twenty five minutes. Too long a speech is not quotable. A basic declaration of the ability of the American system of government to meet new economic and social conditions. The flexibility and life in the Constitution. This is familiar ground to you. The makers of the Constitution visualized a period many generations yet in the future. Conditions change but basic principles do not. ...

... You see, I have in mind a fundamental declaration, quotable and usable in 1940!⁴

* * *

It seems that Jackson and his wife Irene drove from Washington to Ashland on Monday, June 13, 1938. I suspect that they met up with Prettyman at Randolph-Macon. As a member of the College's board of trustees, he probably attended all of its commencement events, which had begun two days earlier and included his father, the Reverend Doctor Forrest J. Prettyman of Rockville, Maryland, preaching the Sunday baccalaureate sermon in the College's Duncan Memorial Church auditorium.⁵

⁴ Letter from E. Barrett Prettyman to Hon. Robert H. Jackson, May 5, 1938, at 2, 3-4, in RHJL Box 36. An image of this letter is attached at the end of this file.

⁵ See *Coming Commencement Events in the Colleges of the Eastern States and Near-By South*, WASH. POST, May 29, 1938, at 19 (reporting Prettyman's scheduled Baccalaureate sermon and Jackson's scheduled commencement address). At the opening program on Saturday morning, June 11th, the lead speaker was Randolph-Macon alumnus and Philadelphia assistant district attorney Hugh D. Scott, Jr. (who later became a Member of the U.S. Congress and, from 1969-77, House Minority Leader). See *Ten From Hanover Get R.-M. Diplomas*, THE HERALD-PROGRESS, June 16, 1938, at 1.

Late that Monday morning, Jackson delivered, in Randolph-Macon's Alumni Gymnasium, a commencement address to the College's administration and faculty, its fifty graduates, and their guests.

Jackson's speech, reproduced in full below, covered a range of topics. One, as Prettyman had suggested, was the place of government. Jackson stated his hopeful and practical view of government as follows:

Perhaps there is no more severe test of a people's capacity for upkeep and improvement of their whole culture than the way in which they deal with the[] most powerful and inclusive organization of their culture—their government. That institution not only reveals the level of thought and spirit of a people, but reacts upon, and with great force influences, the civilization of which it is a product. Where people neglect it, we find corruption; where the people forsake its leadership, we find weakness and division; where they use it in passion or fear, we find oppression. Only where the people are diligent to support a strong but reasonable and tolerant government [do] we find social peace and orderly and happy lives. Strong governments always respect liberties. It is only weak and fear-ridden governments or officials who try to deny freedom to their critics or to their adversaries. Arrogance, whether of officialdom or of wealth, is always the unconscious confession of fear.

In keeping government to the pattern our American ideals have designed, men divide in method much as they do in the treatment of their houses. Some hold to the old in such detail that they make no amendments and allow their houses to become uninhabitable. Others swing to the other extreme, and hack away at some parts, and stick on grotesque additions elsewhere[,] until the symmetry of the house is gone and a thing of beauty becomes a nightmare. But there are others who keep the design and harmony of the whole, but do not hesitate to tear off a leaky roof and put on a new [one], or to buttress a weakened wall, or to put in a heating plant or other improvement to bring comforts of this day to its inhabitants. And this last is the kind of housekeeping I would hope to see in government. A wise conservatism

toward the harmony and plan of the whole and a readiness within it to make improvements, is the best assurance of long and useful life to our government structure.

Jackson's speech was well-received at Randolph-Macon. It also was broadcast on Richmond, Virginia, radio (WRVA)⁶ and received some prominent newspaper coverage.⁷

Alas, the speech turned out not to be relevant in 1940. Jackson did not run for president that year because the Democratic Party found, in the end, a strong candidate—the President, Franklin D. Roosevelt—who was willing to run again.

Jackson's speech was relevant, however, to the rest of his life. It turns out to be a fair summary of fundamental ideas that characterize his subsequent work as Attorney General, U.S. Supreme Court justice and Nuremberg chief prosecutor.

Barrett Prettyman, who in 1945 became a U.S. Circuit Court Judge in Washington, remained a close Jackson friend until the end of his life. And Prettyman's son, who was thirteen years old in June 1938, became, fifteen years later, Justice Jackson's final law clerk at the Supreme Court.

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⁶ *See id.*

⁷ *See, e.g.,* Associated Press report, *Jackson Urges 'Middle Road' on Graduates*, WASH. POST, June 14, 1938, at 28.

Commencement Address

Robert H. Jackson
Solicitor General of the United States

Randolph-Macon College
Ashland, Virginia
June 13, 1938
11:00 A.M.

Randolph-Macon College is an example of intellectual liberalism in honoring me, a Northerner and a non-college man, with its invitation to speak on this occasion. The story of this College, which for over a century has upheld the finest instincts and proudest cultural traditions of the South, is in itself an inspiration to a speaker. Randolph-Macon has had the courage dauntlessly to hold to the things which count with the souls of men, both during the ruin and honorable poverty that followed war, and later through the gaudy era when acquisitiveness seemed, in many circles, to supersede all other virtues. It has offered a sanctuary to gentleness and spiritual nobility when fierce and vindictive passions laid a heavy and victorious hand upon this land. Misunderstanding and misrepresentation no longer prevail; that they have been overcome is due in no small degree to the devotion of Southern people to high ideals of self discipline, nourished in institutions such as this. You have met the test of Confucius, who said: "The superior man is exacting of himself; the common man is exacting of others." So the congratulations, which I have the honor to extend to the class graduated today, are not without a little envy of the richness of your preparation for the tasks that lie ahead.

You, who are graduated today, have made your way into a small and privileged group which is charged with the keeping, and with the extension, of our American culture.

I say your group is small, because it is estimated that only about 11% of those between eighteen and twenty-one years of age are attending college, while of those between fourteen and seventeen years of age, about 63% are attending public or private high schools. It is apparent that between these periods of life a severe selection takes place which eliminates from the higher educational level over 50% of those who might qualify. You are thus among the relatively few fortunate ones who have survived this somewhat cruel elimination.

I say, also, that your group is privileged, because the college opportunity is one not wholly made by yourselves; it comes to some who do not earn it, and it is denied by circumstances to others who do deserve it, and is therefore somewhat accidental. President [James Bryant] Conant of Harvard has recently asked the disturbing question, "In spite of our much vaunted democracy of opportunity and education for all, can anyone doubt that of the 89% who do not go to college at least 5% of high ability have failed to proceed for economic reasons?" and whether "the accidental interplay of social and economic forces has resulted in the selection of the right 11% of our youth for college work[?]" However these questions may be answered, you are receivers of a privileged position in life—and that implies acceptance of responsibilities not borne by less privileged men.

To become a college man is equal to being nominated for leadership. You may never be chosen, but you are in the running in spite of yourselves. Leaders will not all come from the colleges, of course, but the proportion will be very large. While those who have not obtained college educations need not despair, they are obviously disadvantaged and must supply by self – directed effort their deficiencies in formal training. It is this 11% of your generation to which you belong that, by college degree, has the outward and visible sign of qualification to maintain the scientific inquiry, the intellectual inspiration, the spiritual insight, and the legal, social, and political progress of the future.

But do not imagine that you can be secure in any undeserved admission to this group from which leaders are expected to come. Those who coast into college degrees on advantages provided by no merit of their own soon coast on into obscurity. There is ahead of you the tough practical test of your right to leadership.

Woodrow Wilson has told of speaking at a school where he looked upon almost all the young men with a great deal of pity because they were the sons of very rich people. He told them bluntly that most of them were doomed to obscurity while some man who had been "up against it," some man who had come out of the crowd, somebody who had had the whip of necessity laid upon his back, would emerge out of the crowd and would stand up and lead them.

In its broad terms the high obligation that falls upon each generation is no less than that[,] first, of saving, and then, of improving, the world's stock of cultural and educational goods. We too often think of our

civilization as a fixed and permanent thing, hardy and self renewing like life itself. Will Durant almost shocks us with the reminder that:

Civilization is not something inborn, or imperishable; it must be acquired anew by every generation, and any serious interruption in its financing or its transmission may bring it to an end. Man differs from the beast only by education, which may be defined as the technique of transmitting civilization.

[A]nd James Harvey Robinson warned that “the mere upkeep of our present complicated culture must depend upon a very trifling percentage of the population.” You are now part of this trifling percentage.

Perhaps there is no more severe test of a people’s capacity for upkeep and improvement of their whole culture than the way in which they deal with the[] most powerful and inclusive organization of their culture—their government. That institution not only reveals the level of thought and spirit of a people, but reacts upon, and with great force influences, the civilization of which it is a product. Where people neglect it, we find corruption; where the people forsake its leadership, we find weakness and division; where they use it in passion or fear, we find oppression. Only where the people are diligent to support a strong but reasonable and tolerant government [do] we find social peace and orderly and happy lives. Strong governments always respect liberties. It is only weak and fear-ridden governments or officials who try to deny freedom to their critics or to their adversaries. Arrogance, whether of officialdom or of wealth, is always the unconscious confession of fear.

In keeping government to the pattern our American ideals have designed, men divide in method much as they do in the treatment of their houses. Some hold to the old in such detail that they make no amendments and allow their houses to become uninhabitable. Others swing to the other extreme, and hack away at some parts, and stick on grotesque additions elsewhere[,] until the symmetry of the house is gone and a thing of beauty becomes a nightmare. But there are others who keep the design and harmony of the whole, but do not hesitate to tear off a leaky roof and put on a new [one], or to buttress a weakened wall, or to put in a heating plant or other improvement to bring comforts of this day to its inhabitants. And this last is the kind of housekeeping I would hope to see in government. A wise conservatism toward the harmony and plan of the whole and a

readiness within it to make improvements, is the best assurance of long and useful life to our government structure.

I have never found the attitude which men of understanding take towards government more satisfactorily defined than by Virginia's great statesman-educator, Thomas Jefferson, who in 1816, wrote:

Some men look at constitutions with sanctimonious reverence, and deem them like the Ark of the Covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for reckless and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also that laws and constitutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. ... One generation is ... as capable as another of taking care of itself, and ordering its own affairs.

I recommend this reasonable but undramatic middle of the road attitude to you, but not with any thought that it will save you from attack or misrepresentation. Today, as in Jefferson's time, the holder of liberal but moderate views must defend himself from extremists, both right and left.

A government, to perform even a minimum of service to its people, must take steps to repress avarice, to strike down privately built up schemes of economic exploitation or oppression, to uproot privilege and to assure social justice and economic opportunity to the masses.

Whenever such necessities suggest need for repair of the governmental structure, we find even men of good will—apart from their interests—dividing in policy as do the householders we spoke of. There will be one group of extremists who will say the house isn't worth fixing, it better be burned, or at least torn down to the foundations.

Then there will be an equally extreme group who insist that not even the leaky roof should be repaired. When it isn't raining, they will say, "You can see that it really isn't leaking." When it rains they will say, "You can't do it economically in such bad weather" and that the only thing needed is more "confidence" in the old roof and less "attitude of hostility" to it.

And between, like Jefferson, stand the great majority of the American people[,] saying, "We will bear with moderate imperfections, but we are capable of ordering our own affairs in our own time, and our institutions must advance with the times."

The true usefulness to our society of the educated man is not in resisting all change but in anticipating and controlling conditions which will compel change[,] and in guiding the change itself into channels consistent with our American institutions and traditions. He knows that if events get out of hand they will ride roughshod over the most humane of theories, and that is what has happened abroad.

There is an accumulated wisdom of the past which teaches an educated man that excessive economic and social pressures will produce explosions just as certainly as will excessive steam pressures, and that the same forces that furnish motive power to run our democratic institutions, [if] uncontrolled and overdone, may shatter them.

Do you [graduates] think that today in our American life[,] social and economic pressures upon large portions of our population are approaching the unbearable point? You who are looking out at the world in quest of a chance to make a living can answer that question as well as I. If the more fortunate 11% of our youth who have college opportunities find their hopes low and their ambitions frustrated, what must the pressure be on the others—especially on the disadvantaged 11% of youth at the low end of opportunity's scale? And, if you find that these pressures are reaching danger points—that, then, is a challenge to the educated man of today.

It is my own clear conviction that we can reduce these excessive economic pressures, can equalize opportunity, can at least minimize social injustice, within the framework of our existing political Constitution and our economic system—if we give both a chance.

I hope you will judge charitably my generation's failure to deal adequately and in time with many of these problems, in remembrance that, by reason of constitutional interpretation, we have considered ourselves prohibited from dealing at all with many problems, such as inadequate wages, oppressive hours, unemployment, old age dependency, industrial strife, maladjustment and injustice. And do not forget, in appraising the opportunity of your generation, that in the last two years many of these disabilities have been removed by Supreme Court decision, and that your government will have a freedom to put safety valves on our system that has been denied heretofore. And these measures for the protection of all men, even though they restrain the avarice and rapacity of a few, are in nowise inconsistent with our tradition or our institutions. As Judge John J. Parker, of your own Federal Circuit Court of Appeals, so well said at Chapel Hill a few days ago:

There is nothing in the principle of fundamental rights of the individual or in the Constitution which forbids the proper extension of governmental powers in furtherance of the general welfare.

The individual liberty which the Constitution guarantees is liberty under law, not mere freedom from restraint; and it is no violation of the constitutional principle that with the increasing complexity of our social relationships, the powers of government should be extended into new fields and the freedom of action of the individual proportionately restrained.

As your generation guides government into wider fields, as it is sure to do, its leaders need to grow in competence, in self-restraint, and in sympathy. The narrow view, good enough for a narrow field of governmental activity, will not do in the future. Much is left to you. Our forefathers never thought they had solved the social and economic problems of all time to come in the forty-five hundred words of the original Constitution.

Randolph Macon, today, writes your name on the list from which the future may pick competent, instructed, and educated leaders. But that is not all that a vexed and harried people will look for in its leaders. They will look for courage—courage that dares to take chances with one's own future and to risk one's own "face" in support of convictions. If one is conscious of his own competence, as every educated man should be, he faces change without fear. He is cautious and deliberate about it, weighs its value with care, but his teeth do not chatter. He knows that he can keep his own balance if change does come and can take care of himself in a shake-up.

But a democratic people demands more than competence and courage in its leaders. A democratic people mistrusts mere cold learning. Its leaders must not only know how technically to run government, but they must convince people that they have that broader sympathy with uncounted men so that they know how understandingly to run government. And I can find you ten able men to one understanding man. "With all thy getting, get understanding."

Some other countries have allowed class lines to become fixed, and to become barriers to the rise of humble people. Men there can not easily break through and, whatever their merit, their aspiration to grow must be unfulfilled. Hence the class takes up the struggle that is hopeless for the individual.

It has been our American tradition to suffer no sharp divisions, but to let the worthy and ambitious individual seek his own level. But we cannot doubt that in recent times opportunity has been narrowed and that we have witnessed the growth of the opposing extremes of poverty and of fortune. And class consciousness is as frequent and as unlovely in dress suits as in overalls—without the excuse of the overalls.

This separateness of the extremes can only be bridged in our American life by the imaginative understanding and broad sympathy of an educated leadership whose minds are not possessed by an interest or mortgaged to financial success. Only they will dare to risk themselves in the advance guard of forward-moving American culture.

When I say to you that I hope to see our colleges and universities turn out men who are fearless enough to face the problems of their own day with their own remedies, I do not mean that it would be any part of wisdom

to underestimate the achievements of the past or to undervalue our political and social heritage. But I do not have so low an opinion of the institutions of my country that I fear to have them critically and boldly analyzed. The merits of our institutions will win your reverence without any conspiracy of silence about their defects and shortcomings.

But when you take care faithfully to preserve our cultural heritage and to transmit our institutions, your work is but half finished. The other half of your mission is to pioneer beyond the present frontiers of our learning, our customs and our laws. Henry Adams complained that he was educated in one century and lived in the next. Once pioneers went into strange country—now we pioneer in strange times. In a very real sense—if we will substitute change of times for change of scenery—we are all bound for strange environment, and will see unaccustomed manners and new orders of things.

You set forth with a patrician heritage from this College and with a high inspiration in the life of Dr. [R.E.] Blackwell[, Randolph-Macon's president]. I hope you have captured something of the amplitude and fertility of his intellect, something of his noble indignation at wrongs, something of his calm confidence in the ultimate triumph of right and tolerance, something of his example of the power and worth of a sober, industrious and self-disciplined life. If so, you cannot fail to be worthy of the high tradition of your College and of the opportunity which is yours—to direct the destiny of your generation of men.^[8]

⁸ A typescript copy of Jackson's prepared speech, marked for release to the press upon delivery, is in RHJL Box 36.

HEWES PRETTYMAN AWALT AND SMIDDY

WASHINGTON, D. C. HARTFORD, CONN.

THOMAS HEWES
E. BARRETT PRETTYMAN
F. GLOYD AWALT
CHARLES L. SMIDDY
HENRY L. SHEPHERD, PH. D.
ECONOMIST

May 5, 1938.

WASHINGTON OFFICE
822 CONNECTICUT AVENUE

Hon. Robert H. Jackson,
The Solicitor General of the United States,
Washington, D. C.

Dear Bob:

Yours of the 3rd at hand.

First - Randolph-Macon.

Is a small Southern men's college, 106 years old. Now has 300 students. When I was there we had 125. It has never had any money, has never gone in for commercial athletics, its professors are poorly paid, it has no millionaire students, and no fancy equipment. BUT, among educational authorities, no small college is rated higher scholastically, the majority of its graduates go on to university work and thence into professional life; AND, so far as I know, it has always found a way to give any poor boy a college education if he wanted it bad enough. I tell you all this as background for your audience. There will be a graduating class of about 30 boys (maybe one or two girls), most of whom will eventually be teachers, preachers, lawyers, doctors or journalists. In addition, the college chapel will be packed with a mixed grown-up audience of students, professors, parents, and visitors.

The College is part of the Randolph-Macon System, which used to have five schools, all in Virginia and all under the same Board of Trustees - a girls' preparatory school at Danville, two boys' preparatory schools at Bedford City and Front Royal, a Woman's College at Lynchburg,

Hon. Robert H. Jackson--2.

and the men's college (to which you are going) at Ashland. Small, church colleges such as this one were responsible for the revival of interest in learning in the South after the War. They were the liberal, forward-looking element in that period of agony in the South. The Randolph-Macon Woman's College was the first institution of higher learning for women in the South. The idea was to give equal education to the sexes - but separately. Two of the preparatory schools have been closed. The system is supported financially and controlled indirectly by the Southern Methodist Church (now about to be merged with all other branches into one big Methodist Church).

Dr. Blackwell, President of the College, is as close to a living example of what we know as a Southern Gentleman as could possibly be outside of a book. Many Presidents have known and loved him. If I recall correctly, he addresses Mr. Roosevelt as "Frank" - Dr. Blackwell being now in his 82nd year and still going strong!

Walter Hines Page was a graduate. You will be in the home county of Patrick Henry, who fought so bitterly for Independence and just as bitterly against the adoption of the Constitution!

Second - the speech.

You are generous in suggesting that I suggest in this regard. Even so, I hesitate to take advantage of the courtesy. But I do have in mind one or two things about the speech. Speaking plainly, I would like to see you make a speech that will plant the name of Robert H. Jackson in the minds and hearts of Southern people for many years to come.

The backbone of what is called the "South" is not the feudalists. Neither is it the backward groups which borderline economically

Hon. Robert H. Jackson--3.

and socially on the negro. It is a vast mass of plain people, well-educated on the whole, well-bred, emotional, unbelievably proud, who have a passionate devotion to certain abstract principles. Don't let anybody persuade you that the South is ultra-conservative; it is when it comes to destroying that in which it believes, but not when it comes to building or moving forward. A tempestuous mode of thinking and acting is what gets them into most of their trouble. Among these abstract ideas none is more deeply rooted in their devotion than what they consider the American system of government. They fought a war because they felt that a fundamental principle of that system was about to be destroyed. (That freedom of the slaves was the basis of the War, from the Southern point of view, is the bunk.)

Next - the great question before every on-coming graduate in this country is "What of the future?" What economically? What sociologically? What governmentally? Must we - should we - have a new system?

So we come to the speech. You are an outstanding national figure in the more progressive, liberal element of thoughtful people in this country. How about a speech on the topic - "What of the Future of Our Government?" Not too long - twenty or twenty-five minutes. Too long a speech is not quotable. A basic declaration of the ability of the American system of government to meet new economic and social conditions. The flexibility and life in the Constitution. This is familiar ground to you. The makers of the Constitution visualized a period many generations yet in the future. Conditions change but basic principles do not.

Hon. Robert H. Jackson--4.

Mass education, for example, has created an entirely new type of electorate. But we believe in mass education; we wanted it - in fact, Virginia's Jefferson was one of its first great exponents. Now that we have it, we are not afraid of it. We are not going to destroy or abandon our fundamentals because of it. We are going to use it, to strengthen what we believe is right and to go on with it to a still better civilization. That's what we wanted it for. So, too, with our new industrial world, our new physical world of radio and automobiles. We are not entering an era of destruction. We are entering an era of creation. Ours (those of us in our forties) is the first generation of complete mass education! Likewise we are the first to face the problem of instantaneous communication, and almost instantaneous transportation! What a responsibility! What an opportunity!

I do not agree with the statement made at the Club at supper the other night that the next generation will abandon all pretext of justification for whatever it may desire at the moment to do, or that the next twenty-five years will witness the transition of all our thought to a complete and unmodified cynicism. I gathered that you did not agree with it either. We might as well begin to combat it. There is nobody better able than you.

This has been too long, but you tempted me too much. You see, I have in mind a fundamental declaration, quotable and usable in 1940!

Regards, as always.

Sincerely,



E. Barrett Prettyman.