Jackson on Independence Day
(1941 and 1945)

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On the evening of July 4, 1941, Attorney General and then-pending Supreme Court nominee Robert H. Jackson was scheduled to speak to a large crowd at the Washington Monument. Jackson's speech was to be the centerpiece of the Office of Civilian Defense's national holiday observance program—his speech was scheduled to lead right into the culminating fireworks display. Those events were cancelled due to rain, however, so Jackson actually gave his speech, which was broadcast nationwide on the Mutual network, in a Washington radio studio. The weather was better on July 5th, and it seems that a recording of Jackson's speech was played that night for the large crowd that attended the rescheduled holiday observance on the national Mall.

Jackson's speech, which you can find below, has never been published. It is an important lesson in our national history, a bold explication of the Declaration of Independence and a powerful statement about democracy as a universal ideal. Although he of course was addressing the summer 1941 international situation and the coming United States involvement in a world war with fascism, many of Jackson's words are timeless and connect directly to today's issues.

On Monday, July 7, 1941, the United States Senate confirmed by voice vote Jackson's appointment to the Supreme Court. He received his commission from FDR and took his judicial oath at the White House on Friday, July 11th.

Two other July 4th moments involving Jackson and his colleagues have obvious, and multiple, contemporary connections:

- In spring of that same year, 1941, Chief Justice Charles Evans Hughes announced on June 2nd that he was retiring effective July

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1st. President Franklin D. Roosevelt on June 12th nominated Associate Justice Harlan Fiske Stone to succeed Hughes as Chief Justice of the United States (and Attorney General Jackson to succeed Stone as Associate Justice), and the Senate confirmed Stone by voice vote on June 27th. On July 3rd, Stone, who was vacationing in Colorado's Rocky Mountain National Park, became chief justice when he took his oath of allegiance, and then his judicial oath, in a log cabin. On the next day, July 4th, following FDR's brief radio address to the nation from his home in Hyde Park, New York, Chief Justice Stone, standing with four World War veterans in front of a huge American flag at the Stanley Hotel in Estes Park, Colorado, recited the Pledge of Allegiance over nationwide radio for millions who bowed their heads and repeated the Pledge with him. After the microphone was off, Chief Justice Stone recited the Pledge again with his immediate audience in Estes Park.

- Four years later, in the summer of 1945, Justice Jackson was working by appointment of President Truman as United States chief of counsel to bring about the trial of suspected Nazi war criminals. In July 1945, Jackson was in London, negotiating with British, Soviet and French allies to create an international military tribunal and define crimes and legal procedures that would make it possible actually to conduct such trials. By early July, the negotiations had been underway for some time and were not going well. On July 4th, after a difficult morning meeting at Westminster's Church House, focusing on issues that included the possibility of holding trials in Nuremberg, Germany, and the process by which these national representatives should try to draft a potential agreement, Jackson suddenly asked to be excused for the remainder of the day. He explained that "the fourth day of July is a day on which we annually revive our historic hostility toward the British"[1]—a remark that drew the first Soviet smiles of the negotiations. Over the next few weeks, through hard talks, complex issues and near breakdown of the process, the allies reached the London Agreement of August 1945 that made possible and structured the ensuing international trial of surviving Nazi leaders at Nuremberg.

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[1] U.S. DEPARTMENT OF STATE, INTERNATIONAL CONFERENCE ON MILITARY TRIALS, LONDON, 1945, at 162 (Publication 3080, released Feb. 1949).

Independence Day address

By Robert H. Jackson
Attorney General of the United States

Washington, D.C.
July 4, 1941

For nearly two years now many of us have been bewildered by the headlong course of events in Europe and not a few of us have been confused as to the course of wisdom at home. We have seen a nation which twenty years ago had been vanquished, rise up with a ferocity seldom seen in the history of mankind. We have seen vaunted armies smashed as if they were so much paper. We have seen Europe overrun and England placed in grave danger. We have seen the dictator idea spread in the world. At first its two principal proponents, communism and fascism, appeared to be mortal enemies. Then, one day, they turned up as partners. Now they battle each other.

For nearly two years Americans have been asking each other which way safety and security lie. We have pondered the problem weighing risk against risk and danger against danger. Now at last, on this Fourth of July in 1941, the truth of our situation is coming home with increasing clarity to all Americans. We are learning the overwhelming fact that now, as in 1776, our nation, together with our sister Republics on this hemisphere, faces a preponderantly hostile and undemocratic world. Now, as in 1776, we can turn to the Declaration of Independence for the principles which should guide our action.

You are lifted and inspired, like generations before you, by the majestic cadence of the boldest, the noblest, and best known of all American writings. The Declaration of Independence speaks strong doctrine in plain words. It is the world's master indictment of oppression. The fervor of its denunciation haunts and challenges dictators everywhere and in every field of life.

But the Declaration of Independence does not stop with mere denials and negations. It sets forth great affirmations as to the

permissible foundations of power and political leadership among free men. It lays down a fighting faith in the rights of man — merely as man — a faith to die by if need be, or even more bravely to live by. It impresses upon all political power the high obligation of trusteeship. It established an accountability by the governing few to the governed many. That is why men abroad who wield dictatorial powers over subject peoples would silence the reading of the Declaration of Independence, would tear all mention of it from the record, and torture all recollection of it out of the minds of men. Even at home there are some who hope it will not be read too loudly.

But the masses of warm-hearted people are reared on its strong doctrines of equality and human rights. It has exceeded every other modern pronouncement in its profound influence upon our lives, our culture, and our relations to the world. When the Constitution of the United States was adopted, its foundations were laid in the democratic idealism of the Declaration. It has been the inspiration for every later recognition of broadened human rights and for the extension of justice and security to all men. We do not claim to have reached a perfect fulfillment of its high principles. But we have achieved the nearest approach among all the nations to a classless society, to equality of rights, and to a fair distribution of opportunity and prosperity. Whenever we reproach our own imperfections, as we ought often to do, we must not forget that our shortcomings are visible only when measured against our ideals, never when put beside the practical living conditions of the rest of the world. We have by Constitution, by legislation, and by judicial decision translated the Declaration out of the language of abstract philosophy into the idiom of everyday living. We have validated democratic principles by our success.

America's position in the society of nations is unavoidably that of a champion of the freedoms. The reason is aptly stated by Carl Becker, who says:

> In the Declaration the foundation of the United States is indissolubly associated with a theory of politics, a

philosophy of human rights, which is valid, if at all, not for Americans only, but for all men.[2]

When our national success demonstrated that freedom is an attainable goal, we made it the ultimate goal of all people everywhere. The four freedoms are not local or transient incidents; they are universal and timeless principles if they are valid at all. A blow against their existence in Europe is a blow at their validity everywhere. On the other hand, the example of a great and powerful people governed by their own consent through lawmakers of their free choice is a standing incitement to overturn tyranny anywhere. Malevolent conquests by dictators are silently undermined by our confession of faith in democracy as stated in the Declaration. That carries hope to subject peoples in whom there would otherwise be a noble, but unavailing, fortitude. Overridden countries find a bid to insurrection in its assertion of the right of the people to alter or abolish an existing government that is destructive of life, liberty, and happiness. They read words of invitation in its statement of their right to "institute new Government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." No wonder the Declaration of Independence is the nightmare of conquerors.

Some will say that the decision faced by the patriots of 1776 was an easier one than ours, since they had nothing to lose but their intolerable situation. Our task, some will argue, is to protect rather than to win our freedom and that for that reason we should be cautious.

But if the patriots of 1776 risked little by action, we risk much by indifference. Today we risk the loss of a physical, cultural and spiritual heritage of freedom far beyond the most inspired visions of the leaders of '76. And the more of the world that ceases to be democratic, the greater our risk will be. We do not need to be imprudent or foolhardy, but we should recognize that no amount of cautious behavior, no amount of polite talk will earn for us the friendship and goodwill of dictator systems. Ultimately we must

[2] CARL L. BECKER, THE DECLARATION OF INDEPENDENCE: A STUDY IN THE HISTORY OF POLITICAL IDEAS 225 (1922). Becker was an eminent professor of history at Cornell University from 1917 until 1941, when he became professor emeritus and university historian. In 1942, following United States entry into World War II, Becker reissued, with a new introduction, his book on the Declaration. He died on April 10, 1945.

come to the day when we shall face their threats and their enmity for no other reason than that we persist in living the kind of life we live.

One fact emerges clear above all others. We Americans cannot cease to be the kind of people we are, we cannot cease to live the kind of life we live. We are not the kind of people the dictators will ever want in the world. They will never have any use for our kind of life, nor we for theirs.

Every American knows now, as he knew it in 1776, that there is nothing for him in that way of life.

There are those who shrink from the risks of standing for a forthright, practical application of democracy. They point to the striking power and efficiency of foes abroad. But the enemies of American democracy today cannot begin to assemble a force so relatively powerful and so encircling as were its foes that day when the signers of the Declaration pledged their lives, their fortunes, and their sacred honor in its support. The most strategic points in our own country were then in possession of the King's armies. Canada was a base for his operations. Florida, Cuba, Puerto Rico, and the mouth of the Mississippi were occupied by forces of Spanish monarchy — no lover of democracy. And the unsolved problem of the colonies along their whole precarious frontier was the Indian. American democracy then had no navy, only an empty treasury. Its army was composed of untrained volunteer backwoodsmen who could not get shoes, clothing, or substantial arms to fight the invading British regulars. There was no national unity. There were cabals against Washington, a fifth column of Royalists was powerful and respectable, and the states were jealous rivals who did not act, nor even think, as a unit. But in such an hour our forefathers who believed in freedom did not fear to stand alone and to become, as they continued for many years to be, the world's only real democracy. But the American forces had power — the unseen power of the earnest individual — the individual with what Mr. Justice Holmes called "fire in his belly."[3] Only when these fires go out need we fear the lawless forces of dictatorship. Democracy's strength is in man-to-man measure. None other draws such

[3] Letter from Oliver Wendell Holmes, Jr. to Felix Frankfurter, July 5, 1915, *published in* HOLMES & FRANKFURTER: THEIR CORRESPONDENCE, 1912-1934, at 210 (Robert M. Mennel & Christine L. Compston, eds., 1996).

initiative from its way of life, none invents, and none had so generally and fully mastered in its daily life the technique of handling modern machine transport and production. And we dwell among resources as incredible as acres of diamonds.

But there is at home and abroad an anti-democratic influence, even more cynical and sinister and dangerous than Hitler, Mussolini, and Stalin combined. I refer to those who think democracy is a fair weather ideal — to guide us in soft times — but that when the going is tough we cannot save it without losing it. This doctrine has every base quality of fascism without either its candor or courage. Let us in America never forget that liberties trampled by conquest may be regained, but liberties abandoned by an indifferent people are never recovered. Nor are they deserved.

Let us not forget the example of our forefathers. They, too, heard the argument that time of external danger was no time to advance freedoms. But their answer was to give liberty a new birth not only in the midst of a war but in the very darkest hours of that war, because they knew that what wins struggles are the last ounces of endurance and the reserves of power that come to the common run of men on fire for a cause. Such men do not count costs nor watch the clock. We must keep our freedoms, keep them in face of foreign dangers even more tenaciously and jealously than in calmer times — keep them because it is our liberty that lifts our cause above material ends and anchors our efforts in timeless things. We know that in the unfolding book of destiny, just as in the closed book of history, it is written that tyranny and oppression bring forth their own downfall and that the irresistible moral forces of the world march always on the side of resolute men when freedom is their goal. We know that the spiritual strength and the moral power of our democratic tradition, authenticated by a century and a half of progress, will not long yield the field anywhere in the world despite

the temporary devastations by enemies of the fundamental philosophy of our Declaration of Independence. As Kipling has said:

> Though all we knew depart,
> The old commandments stand: -
> "In courage keep your heart,
> In strength lift up your hand."[4]

[4] Rudyard Kipling, "For All We Have and Are" (1914).