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CHIEF JUSTICE JOHN A. DIXON, JR.

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DEDICATION

CHIEF JUSTICE JOHN DIXON: TWENTY YEARS IN RETROSPECT*

PAUL R. BAIER**

[K]nowing that when one's work is done, generally there is someone, sooner or later, who sees the aim and judges the success.¹

There is a glimpse of the universal in the particular of John

* [Editors' note: John A. Dixon, Jr., a distinguished graduate of Tulane Law School, retired as Chief Justice of the Louisiana Supreme Court on April 8, 1990. His twenty years of service on the Louisiana Supreme Court have been a model of judicial courage, integrity, wisdom, and quiet achievement. Chief Justice Dixon has brought great stature to Louisiana's judiciary. When he announced his retirement, the Louisiana Bar Association insisted on paying tribute to Chief Justice Dixon—over his self-effacing protest—by public ceremonies conducted in the Louisiana Supreme Court on March 27, 1990. One of the speakers, Professor Paul R. Baier, spoke for Louisiana's legal academic community, and sketched Chief Justice Dixon's determined quest for justice under law. Professor Baier's annotated remarks are presented here. The *Tulane Law Review* proudly dedicates this issue to Chief Justice Dixon. His simplicity of living and strong sense of justice are an inspiration to all of us.]

** Professor of Law, Paul M. Hebert Law Center, Louisiana State University, and Scholar in Residence, Louisiana Bar Foundation. J.D. 1969, Harvard Law School; Judicial Fellow, Supreme Court of the United States, 1975-1976. The author wishes to thank Mrs. Caroleen Hodges for her swift management of the manuscript and years of devoted service to the LSU Law Center.

1. O.W. HOLMES, *Twenty Years in Retrospect*, in *THE OCCASIONAL SPEECHES OF JUSTICE OLIVER WENDELL HOLMES* 154, 157 (M. Howe ed. 1962).

Dixon's life—both as a man and as a judge. Beauty in life and truth in law achieve a measure of objectivity through the spartan example of Louisiana's great and good chief justice and son, John Allen Dixon, Jr.,² running aside his life's companion Imogene in the rosy dawn of the French Quarter, later struggling in chambers "to infuse justice in the relationship between the State . . . and the private person."³

As a ninth grader at Fair Park High School in Shreveport, John Dixon worked with his hands and measuring tools to square a block of walnut—"Six inches long, four inches wide, one inch thick." He experienced "the sweet smell of fresh wood being worked"—these are his own words—and learned the lesson of working with one's hands. "If a man who works with his hands is injured, he goes hungry," the Judge told me in chambers. "I approach a workman's compensation case from the point of view of a man who has been injured." I hear an echo of Mr. Berry's shop class in Justice Dixon's opinion for this Court, restoring money damages insensitively cut by a lower court from a man who had lost an eye. The case is *Walker v. Champion*.⁴ Listen to the voice of Justice Dixon and hear the echo for yourself:

Plaintiff dropped out of school when he finished the ninth grade. . . .

. . . .

. . . Terry Davis' employability is now limited because of the loss of his eye. It is even more limited because he is suited only for unskilled labor. . . .

. . . .

The inconvenience of an artificial eye is no small matter.

2. Born in Orange, Texas, April 8, 1920, son of John A. and Louella Stark Dixon. Family moved to Haynesville, Louisiana, and thence to Shreveport. Student reporter, *The Powwow*, Fair Park High School, Shreveport, Louisiana. B.A. 1940, Centenary College. History teacher and basketball coach, Tallulah High School, 1940-1942. Enlisted U.S. Army, 505th Parachute Infantry Regiment, 1942. Captured in Sicily, prisoner of war for 21 months, discharged Staff Sergeant, October 1945. Married Imogene Shipley of Hindsville, Arkansas, October 20, 1945. LL.B. 1947, Tulane University. Assistant District Attorney of Shreveport, 1947-1957. District Judge of the First Judicial District, 1957-1968. Court of Appeal Judge in the Second Circuit of the State of Louisiana, 1968-1971. Associate Justice of the Louisiana Supreme Court, 1971-1980. Chief Justice of Louisiana, March 1, 1980 to April 8, 1990. Hobbies: running (Boston Marathon, 1982), woodworking, golf. Three children: Stella, Diana, and Jeannette. Five grandchildren: John, Lester, Samuel, Luke, and Iris.

3. Board of Comm'rs v. Splendour Shipping & Enters. Co., 273 So. 2d 19, 25 (La. 1973).

4. 288 So. 2d 44 (La. 1973).

It must be removed each morning and washed to remove the body fluids that accumulate on it.⁵

Only a judge of supreme sympathy for the common man and of the leanest prose could write these lines. Thus the rough edges of life are smoothed down by the plane of the law in the hands of a judge who likes woodworking.

The other day Mrs. Dixon showed me the Judge's workbench of mahogany, cherry, walnut—whatever was around. "He made it himself," she said with pride. And she pointed my eye to a sturdy mahogany plane made by the Judge on the weekend. "He likes to make his own tools," I was told.

I shall have more to say in a moment of the relationship between John Dixon as woodcrafter at home and his quest to do justice as a judge in chambers. There are common elements I believe. I will end with a reference to the hearth of their family home on St. Ann Street—a simple fireside facing the Shaker table on which John Dixon breaks Imogene's freshly baked, high protein, daily bread. The Judge built the table himself because he could find none that would fit perfectly behind their sofa. "It fits," the Judge told me laconically when I asked about it.

Cicero in his essay "On Old Age," *De Senectute* in the Latin, speaks of the arms best adapted to old age:

the attainment and practice of the virtues; if cultivated at every period of life these produce wonderful fruits when you reach old age, not only because they never fail—though that too is an important consideration—but also because the consciousness of a life well spent and the recollection of many virtuous deeds afford great satisfaction.⁶

John Dixon read these lines a half century ago in his Latin course at Centenary College.⁷ And more: "Care must be bestowed upon health; moderate exercise should be taken; food and drink should be sufficient to recruit, not overburden, our strength. . . . Whereas overexertion weighs the body down with fatigue, exercise makes the mind buoyant."⁸

I'm told the Judge eats a sandwich and a snack out of a

5. *Id.* at 46-47.

6. M. CICERO, *On Old Age*, in *THE BASIC WORKS OF CICERO* 125, 130 (M. Hadas ed. 1951).

7. His Centenary College record for 1936-1937 shows six semester hours earned in Latin 103-104. As a student, Chief Justice Dixon read selections from Vergil's *Aeneid* and Cicero's *De Senectute*.

8. M. CICERO, *supra* note 6, at 139.

brown paper bag after a round of golf with Imo, while others retire to the country club for heavier intake. Our Chief's running is legend.⁹ It relieves the tension of his high office. I think of the picture in the *American Bar Association Journal* of lean John Dixon running a marathon.¹⁰ That picture made me proud to be a member of Louisiana's legal profession.

At seventy, Chief Justice Dixon is a paradigm of wisdom two thousand years old. "It is the subdued and unemotional style that best becomes [old age], and the calm and mild discourse of a veteran often wins itself a hearing,"¹¹ says Cicero. "What is more charming than an old age surrounded by the enthusiasm of youth? Shall we not concede old age even strength to teach the young, to train and equip them for the duties of life? What can be nobler?"¹²

Judge Dixon's family of law clerks comes immediately to mind. He was a wise father to each. On the eve of retirement Chief Justice Dixon revisited Cicero and re-read *De Senectute* in English translation.¹³ I offer one additional selection as a measure of beauty in John Dixon's life: "what a blessing it is for the soul to be with itself, to live, as the phrase is, apart, discharged from the service of lust, ambition, strife, enmities, and all pas-

9. John Dixon completed his first Boston Marathon in 1982, two years after becoming Chief Justice. He collapsed across the finish line. Characteristically, however, he finished what he set out to do: run 26 miles, 385 yards. In 1983, he broke the state record in the sixty-and-over bracket in the Mardi Gras Marathon across the Lake Pontchartrain Causeway.

10. See Middleton, *Judge on the Run*, 69 A.B.A. J. 433, 433 (1983). The article noted that Chief Justice Dixon, at age 63, ran six marathons in three years:

Dixon didn't, at first, have his sights set on becoming a marathon runner. But when he became chief justice he found the new demands of the job prevented him from getting any exercise. "A combination of things led to insomnia," he said, so he decided to try running.

He and his wife, who live in New Orleans' French Quarter, began a routine 5:30 a.m. outing. While she progressed to about two miles per run, he began averaging closer to 70 miles a week, qualifying him for the Boston Marathon.

Id.

11. M. CICERO, *supra* note 6, at 137.

12. *Id.*

13. Judge Dixon's reading Cicero at 70 is reminiscent of Justice Holmes's reading Plato at 90. As Holmes explained to President Roosevelt: "You see I am reading now for the day of Judgment, so as not to dead [flunk] if I am called up on some book that every gentleman is expected to have read." O. WISTER, *ROOSEVELT: THE STORY OF A FRIENDSHIP* 133 (1930), *quoted in* E. BANDER, *JUSTICE HOLMES EX CATHEDRA* 209 (1966). Chief Justice Dixon did not find what he was looking for in re-reading *De Senectute*: "You get more practical advice in the bulletin of the A.A.R.P. [American Association of Retired Persons]," the Judge said to me with a smile.

sions!"¹⁴ I once asked Justice Dixon what was his first thought when he drove home from Shreveport after his last election. His answer: "I'm free."

We reach truth in law. What is the judge's essential function? What is the nature of the judicial process at the supreme level of its practice? Is justice the soul of the law?

These are timeless questions. Unlike the art of woodcrafting, the art of judgment is less measured, less certain, less exact. The law deals with words, with ideas, with abstractions.¹⁵ It is easier, John Dixon would tell you, to build a ladder from a picture than to render judgment from real life. Both are challenges that the Judge enjoys, although he calls a ladder he made "a fool's ladder," since it took countless hours to make by hand what you could buy for thirty dollars. True enough, but no ladder bought at a hardware store tells you much about the character of its owner.

Common-law judges make law, but out of what? All judges interpret statutes, civilian jurists their codes, and The Nine in Washington our Constitution, but how? A good judge struggles to find answers to these questions. "Some of the most difficult cases have been those in which one of my brothers would remind me: 'The law is hard, but it is the law.' It seems to me that this is a good sign of injustice,"¹⁶ says Justice Dixon. "Is the law meant to be harsh? Does the lawmaker ever intend to be unjust? Does a civilized society demand this pound of flesh? If we judges could understand better ways to solve cases, we might not hear so often, 'Lex dur, sed lex.'"¹⁷

Given brains and time—twenty years and a thousand cases are about enough—a great judge will make a contribution.¹⁸

14. M. CICERO, *supra* note 6, at 145.

15. Cf. Fallon, *Of Speakable Ethics and Constitutional Law*, 56 U. CHI. L. REV. 1523, 1527 ("If moral values 'exist,' as surely they do in some senses of that term, they plainly do not exist in the same physical way 'in the fabric of the world'—as chairs, for example, do.") (footnote omitted).

16. Dixon, *Judicial Method in Interpretation of Law in Louisiana*, 42 LA. L. REV. 1661, 1677 (1982).

17. *Id.*

18. In one of his first important decisions, *State v. Moore*, 278 So. 2d 781 (La. 1973) (on rehearing), Justice Dixon struggled with the meaning of LA. REV. STAT. ANN. § 15:435 (West 1981): "The evidence must be relevant to the material issue." Justice Dixon pondered "the impact of this bland little sentence" upon proffered evidence of prior crimes as proof of guilt in criminal cases. *Moore*, 278 So. 2d at 785. The ultimate result was the formulation of Louisiana's restrictive prior crimes rule, with Justice Dixon reasoning:

Cardozo's *Nature of the Judicial Process*¹⁹ comes to mind. Our own Judge Tate's *The Justice Function of the Judge* exposes the heart of the matter.²⁰ If I were to point you to an example of Justice Dixon's judicial mastery, I would point first to *Splendour Shipping*,²¹ where the Judge lifted Louisiana out of the dark ages of sovereign immunity by the tool of his pen:

Here the Board sues, and when Splendour reconvenes on a claim arising from the same accident, the Board cries, "King's X! You can't sue me." Not even the Board claims that its

Evidence of previous criminal activity does affect the opinion of those who sit in judgment. In fact, evidence of prior criminal activity has such a strong influence on the finders of fact, reasonable or unreasonable, logical or illogical, that such evidence, for this reason and this reason alone, may be "too prejudicial." If the identity of the accused rapist is in doubt, it is too easy to believe that if he had committed such an offense before he would do so again. Rape is a horrible crime, committed by bad men. If the defendant committed such an offense before, it is too easy to believe that he is a bad man, and capable of the act with which he stands accused.

Id. at 787. Moore's conviction was reversed: "The evidence of defendant's guilt of the rape of September 14 does not tend to show that he is the one who committed the rape of September 18." *Id.* at 788.

One keen student of Justice Dixon's opinions, James F. Shuey, writing in a criminal justice seminar conducted by Professor Pugh, said of *Moore*:

Justice Dixon thus recognized that human failings will prevent the workings of justice from ever being ideal. But because of this, justice demands that every step be taken to reduce the potential for human error. The system of law must compensate for the failings of men, and the law itself must be a vital force.

J. Shuey, John A. Dixon, Jr.—How a Justice Judges 22 (Spring 1980) (unpublished manuscript on file with Professor George Pugh, LSU Law Center). Mr. Shuey's conclusion is as comprehending as his survey is comprehensive:

to the extent that Justice Dixon has defied ready characterization, he has succeeded as a judge. His fair and reasonable approach to cases, coupled with his seeming impatience towards legal sophistry, is directed to the perfection of a law that is plain and unadorned, and understood by the citizens whose lives it affects.

Id. at 24 (quoted by permission). I am indebted to Mr. Shuey's research and to Professor Pugh's guidance in the preparation of this speech.

19. B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921).

20. Tate, *The Justice Function of the Judge*, 1 SO. U.L. REV. 250, 250 (1975).

The adjudication in each case must result not only from an application of legal rule but, also, in what the judge feels to be a result that is as fair as possible to the individual interests concerned. Because of this concern for a just result as well as a just process, sometimes the judge makes a choice or modification of the legal rules available for his decision. . . . As the trend toward a bureaucratized mass society continues, this justice function of the judge will, I predict, assume an even greater importance.

Judge Tate cautions, however, that "[t]he performance of the justice function does not and should not involve judicial impressionism. The judge is not to apply what is merely his subjective preference rather than some objective rule of law." *Id.* at 253.

21. Board of Comm'rs v. Splendour Shipping & Enters. Co., 273 So. 2d 19 (La. 1973).

immunity is fair and just—only legal and traditional. . . . But when an unfair doctrine does not function for the public good, but only for the administrative convenience of a State agency, the court should do whatever it can to infuse justice in the relationship between the State agency and the private person.²²

And then there is the *Baumgartner* rule in tort, the “humanitarian doctrine” as it is called, which saves a tipsy pedestrian stepping off a curb from the onslaught of a negligent motorist.²³ In the hands of lesser judges, Baumgartner’s contributory negligence would have barred recovery. Not in Justice Dixon’s hands:

Since the operator of a motor vehicle is aware that he could meet many emergencies in which pedestrians will not always act prudently and will sometimes be found in perilous situations, he should have the added burden of keeping the roads safe even for those who are negligently caught off their guard.²⁴

John Dixon had a great friend and companion in Al Tate and it moves me deeply to see their photograph, with Claire and Imo in view, in the retrospective exhibit put up by Librarian Billings and friends behind the Chief’s back. John Dixon learned much about judging from Al Tate;²⁵ both believe in doing justice as a judge—never mind the skeptic who doubts his own soul.²⁶ But I sense that the tension between governing rule and right result, between judicial freedom and judicial con-

22. *Id.* at 25.

23. *Baumgartner v. State Farm Mutual Auto. Ins. Co.*, 356 So. 2d 400, 405 n.6 (La. 1978). As Justice Dixon explained,

By that doctrine the last clear chance rule was extended by charging the operator of a dangerous instrumentality with knowledge of a pedestrian’s peril, whether he actually saw it or should have seen it. Thus, the motorist must exercise the highest degree of care rather than ordinary care, as is the usual case. The doctrine, in its original conception, represented an attempt to stress the greater importance of human safety over the convenience and financial interest of defendants. . . . We approve of the doctrine in its application to pedestrian-motorist cases.

Id. (citations omitted). *Baumgartner* has since been superseded by statute. *Turner v. New Orleans Public Serv., Inc.*, 471 So. 2d 709, 714 (La. 1985) (Dixon, C.J.).

24. *Baumgartner*, 356 So. 2d at 405.

25. “Al was a great leader, and a great teacher.” Dixon, *In Memoriam: Honorable Albert Tate, Jr.*, 61 TUL. L. REV. 711, 712 (1987).

26. Of his friend and companion on the bench Al Tate, Justice Dixon said: “His single-minded purpose in office was . . . to decide cases in a manner generally acceptable, according to law, with justice and compassion.” *Id.* at 712. As for his own judicial method, Chief Justice Dixon has said, “insofar as I could understand justice, I tried to render a just decision.” Dixon, *supra* note 16, at 1677.

straint, was harder for Judge Dixon than for Judge Tate.²⁷ Bothered by self-scrutiny and supremely honest, only Judge Dixon could describe the leap from selection of relevant facts—and here was a master judicial reporter—and application of appropriate law to the just result as “bumbling, struggling, stumbling, muddling, trying one solution and then another until one seemed right.”²⁸ This from Justice Dixon’s *Louisiana Law Review* article *Judicial Method in Interpretation of Law in Louisiana*,²⁹ which he calls in his wry way “a non-treatise by a non-scholar on a non-subject.”³⁰

Here I must mention my dear colleague Julio Cueto-Rua’s vital contribution to Judge Dixon’s thinking, which has sparked a strong friendship between them, as well as understanding. Goethe says that two wise men can tell each other all they know in a couple of days.³¹ Julio’s system of axiology—the study of the nature and types of value judgment—as an aid to judicial interpretation puts into words what great judges sense instinctively.³² After studying Cueto-Rua’s book *Judicial Methods of*

27. For a “hard case” that divides Dixon and Tate, JJ., see *Cates v. Beauregard Elec. Coop.*, 328 So. 2d 367 (La. 1976), in which Justice Dixon, writing for the court, held that a youth’s contributory negligence barred a tort recovery for injuries received when he climbed a utility pole and cut an electric wire under the mistaken assumption that there were no live wires:

By either subjective or objective standard, Larry’s fault is clear. A reasonable person should have known the risk involved in shinnying up a pole to cut an electric wire. Larry knew something about electricity. He was reminded of the danger by his companion as he climbed the pole, but apparently assumed that there were no live wires on the pole. He was not entitled to such an assumption.

Id. at 370.

Judge Tate dissented from entry of summary judgment in favor of the utility company: “The majority errs in finding that there is no issue of fact with regard to the contributory negligence of Larry Cates, the sixteen-year old minor for whose injuries recovery is sought.” *Id.* at 371 (Tate, J., dissenting).

See also *Danos v. St. Pierre*, 402 So. 2d 633 (La. 1981) (on rehearing), in which the majority, per Lemmon, J., departed from precedent to create a wrongful death action for prenatal injury to a fetus subsequently born dead. Said Chief Justice Dixon in dissent: “In the civil law, our code has provided a consistent and symmetrical concept for the relationships of persons with unborn children, with no indication that an exception should be made in the case of the wrongful death of a fetus.” *Id.* at 639 (Dixon, C.J., dissenting).

28. Dixon, *supra* note 16, at 1677.

29. Dixon, *supra* note 16.

30. *Id.* at 1667.

31. Holmes, *supra* note 1, at 154.

32. “I have never consciously decided a case by following the method described by Cueto-Rua.” Dixon, *supra* note 16, at 1676. Chief Justice Dixon adds:

lawyers are not born judges, and judges are seldom taught how to decide cases. Our efforts to balance the legitimate interests of society are usually crude,

Interpretation of the Law, Chief Justice Dixon was moved to say in its Preface: "Every judge should be aware of the reality of justice."³³

If I may add a word of my own about value judgment in the life of the law, I would say that order and freedom are weighed differently by different men. Cueto-Rua is an enthusiast of objective justice, objectively achieved.³⁴ Judge Dixon is wise to remain doubtful: "It is almost a contradiction in terms to speak of the thought and action of a human being as 'objective.' A man's thoughtful decisions are a product of his whole life and his whole environment,"³⁵ says Justice Dixon. I have no doubt that paratrooper John Dixon's capture in Sicily, his attempted escape, and his imprisonment for twenty-one months put freedom above order in his world of juridical values. The roots of *State v. Saia*³⁶ run deep. I quote: "The 'right to be let alone,' as Justice Brandeis phrased it, is of the utmost importance in a free society. The police cannot interfere with this right unless specifically authorized by a judicial officer or under narrowly drawn exceptions to the warrant requirement of the Fourth Amendment."³⁷ Justice Dixon has been a watchful guardian of freedom on this court. Measured by his own standards, he has succeeded magnificently: "I'd like to do my part to keep this a free country. Too many people are frightened, too many people place a much greater value on security than upon freedom and liberty."³⁸

A word about Justice Dixon's style and I reach my conclusion.

Buffon, the pre-eminent French theorist of style, teaches

elemental and narrow, because axiology—the study of the nature and types of value judgments—is foreign to us.

For this reason the good judge will never cease his efforts to understand the juridical values at work in the cases before him. Cueto-Rua's description of those values, the relationships among them and their part in the judicial process is an essential aid to the judge seeking a solution to the hard case.

Dixon, *Preface* to J. CUETO-RUA, *JUDICIAL METHODS OF INTERPRETATION OF THE LAW* at x (1981) [hereinafter Dixon, *Preface*].

33. Dixon, *Preface*, *supra* note 32, at x.

34. "The one best solution to the case before the judge is the one that will realize all the positive juridical values in a properly balanced way. This best solution, says the author, is an objective solution, made so by the process. Justice, then, is done." *Id.*

35. Dixon, *supra* note 16, at 1677.

36. 302 So. 2d 869 (La. 1974).

37. *Id.* at 873.

38. Roberts, *Everything You Always Wanted to Know About the Supremes*, *Gris Gris*, May 1-7, 1978, at 15, col. 3.

that "style is the man himself": "*le style est de l'homme même*."³⁹ John Dixon is an ascetic, as Justice Brandeis was an ascetic. He lives plainly; he gives all his might to his judicial duty. His office is unadorned, almost bare, except for stacks of writ applications and draft opinions within arm's reach on his right. There are a few court pictures on the wall opposite his desk. Above them is a larger photograph of Imogene and the girls. On his left, a bookcase contains Strunk and White's *The Elements of Style*, with its rule 17 ("Omit needless words! Omit needless words! Omit needless words!"⁴⁰) and Bruce and William Catton's *The Bold and Magnificent Dream*,⁴¹ Doubleday's basic history of the United States. I peeked into this book with the help of Mrs. Dandridge, the Judge's secretary, when the Judge was out of his office. You can size up a man from what he underlines in a book.⁴² Here is one passage that caught Judge Dixon's eye:

For in America the idea was that the sky was the limit—that a society of free people in a new, untrammelled land could in fact do and be anything it chose—did not seem farfetched in

39. "*Ces choses sont hors de l'homme, le style est de l'homme même*." G. BUFFON, *Discours de Réception à l'Académie* (Paris 1753), quoted in J. GENUNG, *THE WORKING PRINCIPLES OF RHETORIC* 19 n.1 (1900). For a general treatment of the style element in judicial opinions, see P. BAIER, *THE IDEA OF STYLE IN APPELLATE JUDICIAL OPINIONS* (2d tent. ed. 1977).

40. W. STRUNK & E.B. WHITE, *THE ELEMENTS OF STYLE* at xiii (3d ed. 1979).

41. B. CATTON & W. CATTON, *THE BOLD AND MAGNIFICENT DREAM* (1978).

42. What one reads is also a clue to character. On the eve of retirement, Chief Justice Dixon completed a thick essay by Professor Richard Fallon, *Of Speakable Ethics and Constitutional Law*, 56 U. CHI. L. REV. 1523 (1989), a review of Michael Perry's *MORALITY, POLITICS, AND LAW* (1988). A copy of Professor Fallon's article was on Chief Justice Dixon's desk at the time I surveyed his office. The Fallon article addresses "Hard Questions":

What is morality? Is it objective or subjective? Does it make sense to talk about moral "truth"? If so, by virtue of what are moral truths true? How should the Court discover moral truth? And, if the Justices can discover truth, how should they bring it to bear on constitutional cases in which factors such as constitutional text, history, and precedent are also relevant?

Fallon, *supra*, at 1525. That Chief Justice Dixon should ponder these questions a few days before retiring, suggests an extraordinary mind. One is reminded of Justice Brandeis's inquiring mind and workways as a judge: "Knowledge is essential to understanding, and understanding should precede judging." *Burns Baking Co. v. Bryan*, 264 U.S. 504, 520 (1924) (Brandeis, J., dissenting).

Justice Pascal Calogero, who succeeded John Dixon as chief justice, spoke for the court at the retirement proceedings, saying: "John would always teach us the things of the world so that we could better understand the things before us." Finch, *La. Chief Justice Praised as Man of Ideas, Heart*, Times-Picayune (New Orleans), Mar. 28, 1990, at B3, col. 3.

the late eighteenth century. In America, realist and visionary were one and inseparable because the loftiest of visions had enough of reality in it to seem plausible.

Here lay the basis of a faith that could move mountains. The course of human events had reached one of its decisive turning points, and a great deal of human history for the next two centuries (and beyond) was going to be different because the men of 1776 had first enunciated the dream, in phrases that still contain fire—liberty, equality, pursuit of happiness, unalienable human rights—and had then proceeded to show that it just might work.⁴³

Justice Dixon is a tall exponent of this same faith. He rejects the rule: "Do what others do, because they do it; do what one is told—standard actions, standard rules, little experimentation; no expansion in life, no flexibility."⁴⁴ As a judge on this court, John Dixon has stressed that "individualization is essential and that each individual has a right to his own hopes and dreams."⁴⁵

As for Judge Dixon's judicial opinions, they are as plain as the Shaker table from which he eats. "He says what he has to say, and that's it," says Mrs. Dandridge, his long-time secretary. Justice Dixon writes opinions as he builds furniture. Both are functional; both work. His opinions, especially his dissents, are elegant and powerful because of their simplicity.⁴⁶

I can pay Justice Dixon no higher tribute than to compare his writing favorably to Justice Hugo Black's. Both are judges of deep conviction, not afraid to enforce absolutes against Govern-

43. B. CATTON & W. CATTON, *THE BOLD AND MAGNIFICENT DREAM: AMERICA'S FOUNDING YEARS 1492-1815*, at 309 (1978).

44. Dixon, *supra* note 16, at 1673.

45. *Id.*

46. *E.g.*, "'Serious literary, artistic, political or scientific value' is not an acceptable standard by which to measure criminal conduct in Louisiana." *State v. Amato*, 343 So. 2d 698, 705 (La. 1977) (Dixon, J., dissenting). "There can be no knowing and intelligent waiver of a constitutional right by such a psychotic retardate as this defendant." *State v. Trudell*, 350 So. 2d 658, 664 (La. 1977) (Dixon, J., dissenting), *overruled sub nom.* *State v. Williams*, 383 So. 2d 369 (La. 1980). "The record is clear that defendant did not know the difference between right and wrong at the time of the offense. A civilized people should not ascribe legal responsibility to such an insane person even if he kills a Catholic priest." *State v. Abercrombie*, 375 So. 2d 1170, 1179 (La. 1979) (Dixon, J., dissenting). "The opinion says the police may stop one whom they 'reasonably suspect.' It is not a quibble to note that 'to suspect' is not 'to believe.'" *State v. Belton*, 441 So. 2d 1195, 1200 (La. 1983) (Dixon, C.J., dissenting).

I owe the *Abercrombie* reference to my colleague George Pugh, a long-time friend and admirer of Chief Justice Dixon, who mentioned *Abercrombie* as an example of Dixon's mastery in dissent.

ment. In *Bartkus v. Illinois*,⁴⁷ Justice Black thought the rule that allows two sovereigns to try a man twice for the same conduct an outrage and said so loudly in his dissent. I quote:

If double punishment is what is feared, it hurts no less for two "Sovereigns" to inflict it than for one. If danger to the innocent is emphasized, that danger is surely no less when the power of the State and Federal Governments is brought to bear on one man in two trials, than when one of these "Sovereigns" proceeds alone. In each case, inescapably, a man is forced to face danger twice for the same conduct.⁴⁸

Justice Dixon's dissent in a case involving the same issue is equally plain, equally strong:

All the reasons which support the prohibition against double jeopardy are applicable when a defendant is prosecuted in the state system and federal system for the same offense. Only the fiction of dual sovereignty supports the majority holding.

A genuine adherence to the constitutional guarantee against double jeopardy would prevent this dual prosecution.⁴⁹

Justice Dixon is not afraid to dissent alone when conviction requires it. I like that in a judge. In one case, he answered the majority in one stark sentence: "All it would take to make this search legal is a warrant."⁵⁰ On certiorari the United States Supreme Court reversed the Louisiana Supreme Court, paying Chief Justice Dixon the high tribute of quoting his Shaker sentence—in its exquisite entirety.⁵¹

I reach my conclusion.

If I may judge his service, Chief Justice Dixon has contributed mightily to this court's stature. We are fortunate to have had him as our chief justice. I have no doubt that he will be remembered as he would wish: "hard-working, intellectually honest, a humanitarian." This is how he answered when I asked the question. I would add that he will be recalled as a great judge because of "his integrity, his strength of character, his wisdom, the knowledge of his wisdom"—this is how Hugo Black described power in a man.⁵² As Louisiana's chief justice, John

47. 359 U.S. 121 (1959).

48. *Id.* at 155 (Black, J., dissenting).

49. *State v. Smith*, 359 So. 2d 160, 163 (La. 1978) (Dixon, C.J., dissenting).

50. *State v. Thompson*, 448 So. 2d 666, 673 (La.) (Dixon, C.J., dissenting), *rev'd*, 469 U.S. 17 (1984).

51. *Thompson v. Louisiana*, 469 U.S. 17, 21 n.2 (1984).

52. *Justice Black and the Bill of Rights* (CBS News television broadcast, Dec. 3,

Dixon fits this description. He also measures up to his own rigorous standards: "A man recognized for his knowledge, experience, courage and wisdom has power. He not only commands, he persuades. He is a leader."⁵³

Those of you who know Dickens's *Cricket on the Hearth*⁵⁴ will see much of the cricket spirit in John Dixon the man. The book's subtitle, to paraphrase it only slightly to fit this occasion, is "A Family Tale of Home." It tells the story of a father who pictured to his blind daughter whom he so much loved his envi-

1968). The transcript of the television broadcast is printed in 9 SW. U.L. REV. 937 (1977), and an uncut, three-hour recording is on file with the author. The hour-long actual broadcast was the first television interview with a sitting Supreme Court Justice. *Id.* at 937; see Baier, *Introduction to Hugo Black: A Memorial Portrait*, 1982 SUP. CT. HIST. SOC'Y Y.B. 72, 73 n.15.

53. Dixon, *supra* note 16, at 1672.

On learning of Chief Justice Dixon's pending retirement, Professor Cueto-Rua wrote him a letter. It stated:

Dear Chief Justice:

I read in the local newspaper that you are going to retire. To tell you the truth, the news caused mixed feelings. I was glad because you have completed an important stage of your life, surrounded by the admiration and recognition of your people, and the Bench's and the Bar's. I was sorry because a man of experience, knowledge and devotion to the performance of his duties as the highest judicial officer of the State, was to put an end to his activities.

Please, accept the congratulations of an Argentine lawyer who had the privilege of your cooperation and guidance, and the hopes of a law professor, who expects that a clear mind, as yours, will continue to advance the cause of a better understanding among human beings.

Letter from Julio Cueto-Rua to John A. Dixon, Jr. (Mar. 6, 1990) (on file with the *Tulane Law Review*) (quoted with permission).

Chief Justice Dixon's handwritten response is telling. It speaks of the anticipation of retirement and the reality of justice learned over time:

Dear Julio,

Thank you for the very kind letter of March 6. This last month has been busy & unexpectedly pleasant. Many years ago I became reconciled to retirement at age 70 because of the mandatory retirement provision of Ar[t]. 5 § 23B (La Const of 1974). My brothers on this court decided (erroneously) that it did not apply to judges in office when the new constitution went into effect. [*Giepert v. Wingerter*, 531 So. 2d 754 (La. 1988).] As time passed reconciliation became anticipation. I could hardly wait until 8 April.

Now I can spend more time with children & grandchildren, and regain control over my own time.

To you, [P]rofessor, I have a profound debt. You introduced me to a system of thinking about "Justice" in deciding cases that I would not have found on my own. It has helped me in my work and has made "justice" more of a reality & less of a mere ideal. I leave this office with a greater respect for law and the judicial system than I had when I entered, thanks largely to you.

Letter from John A. Dixon, Jr., to Julio Cueto-Rua (Apr. 4, 1990) (on file with the *Tulane Law Review*) (quoted with permission).

54. C. DICKENS, *THE CRICKET ON THE HEARTH: A FAIRY TALE OF HOME* (London 1846).

ronment as one of prosperity and affluence. I will end my sprig of laurel by saying of Louisiana's Chief Justice John Allen Dixon, Jr., what I said of Edward Douglass White, Chief Justice of the United States, on an earlier occasion:⁵⁵

And all was Caleb's doing; all the doing of her simple father! But he too had a Cricket on his Hearth For all the Cricket Tribe are potent Spirits, even though the people who hold converse with them do not know it (which is frequently the case); and there are not in the Unseen World, Voices more gentle and more true; that may be so implicitly relied on, or that are so certain to give none but tenderest counsel; as the Voices in which the Spirits of the Fireside and the Hearth, address themselves to human kind.⁵⁶

Judge Dixon, my fervent hope is that the proceedings today, the exhibit in the Law Library, and these few words spoken from my heart will add gold to the sunset.

55. Baier, *Edward Douglass White: Frame for a Portrait*, 43 LA. L. REV. 1001 (1983) (oration for the unveiling of the Rosenthal portrait of E.D. White, before the Louisiana Supreme Court, Oct. 29, 1982).

56. C. DICKENS, *supra* note 54, at 57, substantially quoted in Baier, *supra* note 55, at 1016-17.