



JULIAN WILLIAM MACK

1866-1943

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By HORACE M. KALLEN

NO ONE person's recollection, no, nor the rememberings of the thousands whose lives touched the life of Julian Mack can ever approach the substance of this high-minded being or recapture the zest for life or the impartiality that was yet all sympathy, which his presence communicated. From 1911 to 1941—during thirty years—a judge on the federal bench, by universal consent one of the most hard-working, competent and judicious of his time, he refused to imprison the citizen in the judge, or to let the bench contain him. He went all out for applied democracy in one or another field of community life, and there is hardly a major social cause which he did not illumine and defend.

Born in San Francisco, grown to manhood in Cincinnati, he came to be known and cherished not only in those cities and in Chicago, New York, Washington and Miami, but at Versailles and Vienna and Geneva and Jerusalem. His life and works are an outstanding testimony of how freedom releases Jewish men and women to put distinguished powers and unyielding democratic faith into the common hopper of the American way. His story provides an outstanding testimony of how championing equal liberty for the Jew as Jew inevitably calls for strengthening the civil liberties of every human being.

The outer man, especially to those who knew Judge Mack only from his public appearances, gave little hint of the inner spirit. A stocky figure, short and stout, whose voice had in later years become a little plaintive and a little strident, he gave, in his prime, an impression of great drive and vital force. Chief Justice Stone of the United States Supreme

Court writes of him as he was in 1917: "He had great intellectual vigor and physical endurance. He was a practical-minded man because of his long experience in the courts. He had a good understanding of human psychology. While he was not a man who could be easily taken in he was a man of broad sympathies, high intelligence, and was tolerant enough to know that men could be conscientious in beliefs which were wholly foreign to his own." Later, and especially as deafness crept up on him, he appeared inattentive, often seeming unconscionably to sleep while others were talking. But when it came to dealing with issues, people who counted on these appearances speedily found how deceitful they could be. There are many who have reason to remember his outraged roar, and more who still must smile as they recall the mighty ring of his laughter.

It is true, however, that Judge Mack exercised upon people seeing or hearing him for the first time no particular attraction. It is in working with him that they came to admire and to love him. In fact, his smile, his zest, his directness, his outgivingness, made him one of the most engaging persons in public life. Not by any means an orator, Julian Mack held his own at meetings, in conferences, in committees, against masters of all the rhetorical tricks, by the extraordinary lucidity of his thinking, the sincerity and force of his spirit. People discovered in a very brief time how rare were their fellow-worker's qualities of mind and heart. Justice Stone, who served with him on President Wilson's Board of Inquiry on Conscientious Objectors writes, "his vitality and vigor, his lively interest in everything worth thinking about, and his enlightened intelligence, attracted me from the start." No one else could find the dynamic core of a problem so rapidly, or expound its nature and implications so simply, with such unusual clearness, and with such justice and sympathetic understanding for the aspects to which he himself might be even passionately opposed. Because of this generosity of spirit—which is commoner in science than in law, and is indeed the point of departure of scientific method—one felt Judge Mack's own views to be all the more

compelling. "The great thing about him," writes his colleague, Judge Augustus N. Hand, "was his ability to act with judgment and detachment whenever he had to resolve contested issues in the courts, plus a kindly nature and warm heart that were guided by a high intelligence." These are the attributes of a just mind, that held it to be a part of the sportsmanship or equity, which legal justice achieves at its best, never to leave anyone in doubt what its own views were. Though he presided over many great trials—notably those of Harry M. Daugherty, Attorney-General during the Harding Administration, and Col. Thomas W. Miller, Alien Property Custodian of World War I—often involving much prejudice and the most complicated and confusing issues, he never once lost the confidence of the Bar and the respect and affection of the Bench. In 1935, when he sat in the case of the reorganization of the notorious Associated Gas and Electric Company, counsel for this holding concern took recourse to charging Julian Mack, then the oldest Federal judge in the District, with personal bias and prejudice. Judge Mack at once asked Robert P. Patterson, the youngest judge, to pass on the charges, volunteering, although the final decision was lawfully his own, to accept Patterson's opinion without question. Patterson found the charges false. He declared in his memorandum: "There is not a trace of bias or prejudice against the debtor in any of these [Judge Mack's] remarks or rulings." And he dismissed the complaint as "frivolous."

And what else, indeed, could the finding have been? Unfairness was as foreign as obscurity to the spirit of Julian Mack. Whether in the practice of the law, the judgment of the court, or the handling of the problems that came before him from the various causes of human freedom and human welfare that he served, he invariably transformed the most confused and obfuscated matter into an issue simple and clear, with its scientific and ethical bearings unmistakable. Judge Mack was roused to anger not so much by ill-will as by deceit and hypocrisy. These traits would bring forth his roars; on these he would crack down with righteous indigna-

tion. Nevertheless his bitterest foes and most obstinate opponents—and his life-long service to the welfare and freedom of men brought him many such—fought him without hatred and opposed him without rancor. Insisting that he was wrong, they also conceded that he was generous and just. Many who opposed him, as I can testify, loved him.

The causes to which Julian Mack gave himself are extraordinarily varied, yet extraordinarily consistent with one another. His career as a liberal jurist and a democratic humanist began with the conventional participation of a not poor young man blessed with a social conscience in the charities of Chicago, the city where he chose to make his home. He had gone from his high school in Cincinnati straight to the Harvard Law School, and thence, with his degree of Bachelor of Laws and the Parker Fellowship, to the Universities of Berlin and Leipzig, where he spent three years in graduate study. When he returned in 1890, at the age of twenty-four, he took his bar examinations and settled in Chicago to practice law. Within five years he became professor of law at Northwestern University, and seven years after was called to the University of Chicago. In the interim he had married his lovely and charming cousin, Jessie Fox of Cincinnati; he had been drawn into the service of the Jewish Charities of Chicago; he had begun to concern himself with the social implications of the law and the moral implications of municipal government. In 1903 he served for five months on Chicago's Civil Service Commission. The same year he ran for election to a Circuit Court judgeship of Cook County, Illinois. He was elected, and thus began a career on the bench of city, state and nation which stopped only with his retirement in 1941.

Judge Mack served on the Circuit Court of Cook County for eight years. Three of those, from 1904 to 1907, he presided over Chicago's famous Juvenile Court. Although Denver, with her unique Ben Lindsey, disputes its priority, this Court and the law which established it signalize a new vision and a new method in the treatment of youthful "lawbreakers"

which, initiated by Americans in Chicago, have been imitated and emulated everywhere in the world. They owe their creation to the persistent social conscience of the members of the Chicago Woman's Club. Lawyers and clergymen everywhere were well aware that the population of the prisons of the world averaged under twenty-five years of age. With the common law, they were content to attribute this fact to original sin, to natural perversity, to deficiency in grace; they looked upon the "juvenile delinquent" with a hostile eye; they were concerned not to save but to punish. So, in England, children of nine used to be hanged.

But the members of the Woman's Club looked at the matter differently. They felt that family, church, and State as well, might be accessories to delinquency before the event, and that the State could at least supplement and, where necessary, replace, family and church where they fail. From 1883 the clubwomen labored to implement this view, drawing to their side jurists and politicians, until at last the Juvenile Court Law was framed and passed and the Court established. Judges were assigned to it annually from among the members of the Cook County Circuit Court, on the basis, in part at least, of the recommendation of the Club's Juvenile Court Committee. Among the male collaborators of these humane and wise women had been Julian Mack. He had served on the Circuit Court but a year, when they asked him to go on the Juvenile Court. "He gave up," says Mrs. Joseph T. Bowen, describing the early days of the Juvenile Court in 1927, "most complicated and interesting legal work in order that he might help with the Children's Court. How well he did it! We look back with the greatest pleasure and thrill of pride not only to his decisions but to the educational campaign which he conducted at the time in order that the Juvenile Court might be interpreted to the people." As an instrument of this campaign he organized the Juvenile Protective Association which in 1907 absorbed the Woman's Club Committee. He helped secure the collaboration with the Court, of Chicago's Psychopathic Institute. He insisted that for the community the question regarding any child is

not *Are you guilty?* but *How and why have you become as you are? What can best be done to save you from ever being brought to court at all?*

Among Judge Mack's fellow-workers were Jane Addams, Julia C. Lathrop, Graham Taylor, Florence Kelley and other Chicagoans who were laboring to make the democratic way more effective in the Middle West. Mack held court on Halsted Street, across the way from Hull House. The children who came before him were never charged with crime. He handled them as wards of the state under his powers of Chancery. He brought to bear on their problems the then new working conceptions of the psychologist and psychiatrist, of public health, of probation and of education. The precedents he set endure, and, in spite of much obstruction, his tradition grows.

Concurrently, he carried his share of the load as a member of the Jewish community of Chicago. A member of Temple Sinai, thinking of Jewish life and Judaism in the manner of its brilliant and temperamental rabbi, Emil G. Hirsch, he listened to sermons and served on charitable boards. Nor was his service limited to the Jewish needy and the Jewish immigrant. It embraced the entire miscellany which was pouring into Chicago. He helped Grace Abbott found her Immigrants' Protective League and was its president while he remained in Chicago, and at its call always thereafter. To the newly-formed profession of social worker his leadership was encouragement and inspiration; in 1912 he was chosen president of their National Conference. He was a founder of the Survey Associates, a board member since their organization, and the board's chairman from 1927 to his death.

But perforce the Jewish tragedy in Europe gave the Jewish need there and at home a special urgency. Jewish social workers formed a National Conference of their own and made Judge Mack president of that. In 1906, when, following the pogroms of Kishineff and Gomel, the American Jewish Committee was organized, Judge Mack was among the original fifty, who elected him vice president, and thus a member of the Executive Committee of fifteen. During the

twelve years of his membership on the Executive Committee, he participated in all the major undertakings of the Committee,—its legal and educational work in favor of a liberal immigration policy, its diplomatic efforts to safeguard equal rights for all Americans regardless of race or religion; its studies of the general condition of the emancipation; its endeavors at the Peace Conference to achieve “full rights for the Jews in all lands and the abrogation of all laws discriminating against them.”

His studies of the situation of Jews tended to shift the direction of his thought, and gradually to bring his sense of the meaning of democracy away from the prevailing assimilationist conception of Reform Judaism to that of the older, somewhat overlaid one of which Thomas Jefferson was the avatar. This led him to Zionism. The symbolic expression for the Judaist conception was “the melting pot”; the symbolic expression for the Jeffersonian one became “cultural pluralism.” As was the case with Louis Brandeis, it was no more Julian Mack’s sympathy for the Jews as pitiful victims of injustice than his revision of his idea of democracy that made a Zionist of him as well. “We ask no more” he told the peacemakers at Versailles, “for the Jew than we do for any one else.” Nor, as a loyal servant of freedom and justice, would he stop with less. To his conversion to Zionism, Judge Mack’s intimate friendship with that brave, romantic Palestinian man of science, Aaron Aaronsohn, was an important contributing factor. Others were the ideas and example of Louis Brandeis, discussion with Felix Frankfurter.

When Julian Mack felt persuaded that instead of a “melting pot,” democracy consists in the cooperative union of the different on equal terms, that a civilization is free and fertile in the degree that differences are neither suppressed nor penalized, but liberated, encouraged, and pooled in the common enterprise of the community, whether local or worldwide, he gave himself to Zionism with the same unflinching, lucid and realistic devotion as to his other causes. He labored to apply the rule of *e pluribus unum* to the special tasks

which, with the coming of the first World War, fell to the Jews of America, as Jews. During a considerable part of that period as a member of the governing bodies of both the American Jewish Committee and the Zionist Organization of America, he labored to harmonize the two sets of opposed interests. After the Balfour Declaration, because of his efforts (seconded by those of Louis Marshall and Cyrus Adler), the American Jewish Committee called a special meeting and adopted a resolution welcoming the opportunity "to aid in the realization of the British Declaration, under such protectorate or suzerainty as the Peace Congress may determine, and, to that end, to cooperate with those who, attracted by religious or historic associations, shall seek to establish in Palestine a center for Judaism, for the stimulation of our faith, for the pursuit and development of literature, science and art in a Jewish environment, and for the rehabilitation of the land." In the first American Jewish Congress which resulted at last from the efforts at unity, Judge Mack sat as one of the delegates from the American Jewish Committee as well as President of the Zionist Organization. A unanimous vote designated him as one of the seven spokesmen of American Jewry at Versailles. There he was the choice for chairman of the *Comité des Délégations Juives auprès de la Conférence de la Paix*, and Louis Marshall took over when Judge Mack had to return to the United States.

At home, during World War I, his duties had been diverse and heavy. Early in 1917 he had been called by the Committee on Labor of the Council for National Defense to serve as chairman of the Section on Compensation and Insurance for Soldiers, Sailors and Their Dependents. The plans he worked out and put in force were a new departure in the method of paying the state's debt to the citizen soldier, fundamentally more democratic, more regardful of the self-respect of the citizen, than the pension system. In face of potential industrial disputes dangerous to the war effort, he was also assigned the task of umpire for the War Labor Board, as an arbitrator acceptable to workers and managements alike.

But his most signal task was his assignment, with Dean (now Chief Justice) Harlan F. Stone and Major Richard C. Stoddard, to review the treatment of conscientious objectors. For this there had been no provision in the Articles of War, the Draft Act, or by other Congressional action. The treatment of the conscientious objector had, until then, often been characterized by blindness, brutality and stupidity. President Wilson's directive to the Board, of which he appointed Judge Mack chairman, was to sift the bona fide objectors from the dubious ones, and to assign them to non-combatant service if they would accept it, or to "farm-furlough." The tasks called for visits to all the Army camps, for interviewing all the objectors, and distinguishing the true from the untrue. Later, the President requested the Board to examine the court martial records of all conscientious objectors who had been tried. "For the successful prosecution of this important work," writes Justice Stone, "there could not have been a more ideal man than Judge Mack." The principles developed and the policies initiated by the Board, experimental and tentative as they were, represented a concrete step forward in the realization of the "democracy" men were then fighting to make the world safe for. Without its precedent, the decenter mode of dealing with the few conscientious objectors of World War II could hardly have been implemented.

Julian Mack's labors in the Zionist Organization, in the American Jewish Committee, and in all the other societies, philanthropic, educational and humanistic, which drew upon his generous spirit, were neither stopped nor diminished by this public service. He made time for everything and did five men's work. In 1918, when it became clear to him that the democratic unity he sought for American Jewry was unattainable, he resigned from the Executive of the American Jewish Committee, but retained his membership in the general body. With Louis Brandeis, Nathan Straus, Felix Frankfurter, Stephen Wise, he was the dynamic center of the American Zionist enterprise. He became the organization's president during its critical years. He was still its president

when, in 1921, "the Mack-Brandeis group" resigned in a body from the executive of the Zionist Organization of America over a fundamental issue of *method* in developing the National Home in Palestine under the terms of the Balfour Declaration. Taking as its directive Louis Brandeis' statement of 1920—"the whole of politics is to proceed efficiently in the building up of Palestine"—this group, led by Judge Mack, proceeded to the formation of the Palestine Development Council, the Palestine Cooperative Company, the Palestine Endowment Funds. He gave great sympathy and understanding to the second American Jewish Congress after it was formed. He was Honorary President of the World Jewish Congress from its organization to the day of his death.

Judge Mack's service on the Chicago Juvenile Court had brought home to him the central import of the problems of education. They remained one of his deepest concerns the rest of his life. When, for his fiftieth birthday, his friends insisted on making him a special gift, and he finally agreed, he asked that it consist of a fund on which he might draw for loans or stipends to able but needy students working their way through college. It is a fund that ought to be kept up in his memory. The philosophy of education that had come out of his thinking and doing on this subject was the progressive one identified with John Dewey, and it governed his attitudes and actions whether as a Trustee of the Hebrew University in Jerusalem, as staunch supporter of the New School for Social Research from the very first, as a founder and later Chairman of the Board of the Jewish Institute of Religion, or as a thrice-chosen member of the Board of Overseers at Harvard College. To this last post, it is significant that he was twice nominated on petition circulated by the members of the Harvard Liberal Club,—first in 1927 and again in 1937. In 1927 he got a majority of the votes cast and the largest vote of any candidate. In 1937 Charles Francis Adams and George Peabody Gardner, Jr., polled not many more votes. Julian Mack's service to the University in his capacity as Overseer was varied. He was on the Visiting Committee for the Law School, the Germanic

Museum, the German Department, and the Semitic Department. He helped largely in the establishment of the Kuno Francke professorship in Germanic Art and Culture, and the Nathan Littauer Professorship in Jewish Literature and Philosophy. But to Harvard liberals his most significant service to their Alma Mater lay in the stand he took in 1922 against President A. Lawrence Lowell's proposal to set up a *numerus clausus* for Jewish students. Without his sharp intervention, this expression of snobism and prejudice might have won out by default.

Perhaps the most characteristic, the most expressive fact of Julian Mack's conception of education is the one Palestinian institution to which he expressly gave his name. This is the Julian W. Mack School and Workshops in Jerusalem. It owes its birth, its growth, and its survival to Judge Mack who, in 1920, arranged that an American educator bring to the service of the children of Jerusalem what was most functionally democratic in the American theory and practice of education. The school was first known as "The School of the Parents' Education Association." It was a cooperative undertaking which brought together Jewish children of all classes, sects and origins, and sought, by adapting progressive methods of education to the vital needs of Palestine, to unify their diversity into a free, harmonious Palestinian Jewish type. It employed what Henrietta Szold describes as "an ethical method of acquiring knowledge," and the hope and wish of the school's principal, of Judge Mack, and of the people who joined him in its support was to extend its type of service to all the underprivileged and marginal children of Jewish Palestine. It was seventeen years before this could be undertaken in Jerusalem alone, and when it was, Julian Mack gave it his name, and the Julian W. Mack School and Workshops in Palestine stand as the unique symbol of his first and most lasting interest in education.

Take the record of Julian Mack's achievement as a lawyer and a judge, take the tale of his services as a democrat, a public servant, a humanitarian, a Jew and a humanist, and

you have a record large enough for half a dozen lives, not only one. Yet throughout the days of his maturity Julian Mack was not a well man. With the most discriminating taste in food and drink, with a knowledgeable zest unusual even in a gourmet, he had to follow a diabetic's regimen, and once or twice suffered illnesses that brought him close to death. Nobody would have known it from him. His life was, through its long last illness, right up to its contracted last moment, one brave, willing affirmation. He took what he had to take, and he stood up, without flinching, saying *Yes* to life. Thinking of him, one thinks of the words of another great Jew, Baruch Spinoza: "A free man thinks of nothing less than death, and his wisdom is not a meditation upon death but upon life." Julian Mack was a free man.