**HE WALKS BY A FAITH JUSTIFIED BY LAW**

An address delivered by Professor Jacobus tenBroek
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Nearly a century ago, in a case that has become a landmark, the chief justice of a New York Court wrote as follows:

The streets and sidewalks are for the benefit of all conditions of people, and all have the right, in using them, to assume that they are in good condition, and to regulate their conduct upon that assumption. A person may walk or drive in the darkness of the night, relying upon the belief that the corporation has performed its duty and that the street or the walk is in a safe condition.  He walks by a faith justified by law, and if his faith is unfounded, and he suffers an injury, the party in fault must respond in damages. So, one whose sight is dimmed by age, or a nearsighted person whose range of vision was always imperfect, or one whose sight has been injured by disease, is each entitled to the same rights, and may act upon the same assumption. Each is, however, bound to know that prudence and care in turn are required of him, and that, if he fails in this respect, any injury he may suffer is without redress.  The blind have means of protection and sources of knowledge of which all are not aware.

This resounding opinion is notable today for two oddly different reasons. On the one side it stands as a monumental expression of the modern view that the infirm and the disabled have a right, like any others, freely to travel the public streets and sidewalks. On the other side it is a rather startling revelation of that pervasive prejudice of earlier times that the sightless are different from others not just in degree but in kind different even from those whose vision is imperfect or injured. It must have been a comforting thought in those not-so-innocent days of charity a thought not unlike that of the  nobility of poverty  that the blind were gifted by a kindly Providence with wondrous powers which somehow magically balanced the ledger and made it unnecessary to be greatly concerned about their welfare.

But while this curious residue of unconscious prejudice blurs its message, the real significance of this judicial opinion lies in its straightforward rejection of an age-old discrimination against the visually handicapped. This was the assumption that the blind man's place is in the home or in the asylum, that he takes to the streets and public places at his own risk and peril, and that in the common legal parlance of the day before yesterday he is automatically guilty of contributory negligence in any accident involving travel.

In effect, it was held by the courts that the blind were not only sightless but legally without legs to stand on. If they could not see, then they should not attempt to walk. In the eyes of the law, they were immobilized. Their right to be in public places, often conceded as a matter of doctrine, was stillborn.

That was not only the case a century ago; it was also very generally the case, despite the judicial opinion quoted above, as recently as a generation ago. It was exactly 30 years ago, in 1930, that the first legislative step was taken to free the blind from the rocking-chair in which the law still kept them shackled. For while the New York jurist of 1867 had granted the blind the right to walk abroad with the expectation that the streets and sidewalks would be kept in shape, nothing had been done since the advent of the automobile to enable the blind to leave those sidewalks and to cross those streets. It was expressly to provide a new right to be abroad in the new conditions of modern motorized traffic, that the white cane was inaugurated as a travel aid for the blind. This year we are celebrating, not only the 30th anniversary of that first step onto the highway, but the virtual completion of the campaign which it inaugurated. Today White Cane Laws are on the books of every state in the Union and for the first time in modern history, everywhere in the land, the blind person truly  walks by a faith justified by law.  The great and unique achievement of the White Cane Laws has been virtually to wipe out the automatic assumption of contributory negligence on the part of the blind pedestrian, and so to afford him a legal status in traffic, a protection not hitherto conferred.

The white cane is therefore a symbol of equality and still more clearly a sign of  mobility . Nothing characterizes our streamlined modern civilization so much as its atmosphere of rapid transit and jet propulsion. More than ever, in urbanized and automobilized America, the race is to the swift until it almost seems that even the pursuit of happiness takes place on wheels. In the routines of daily living, as at a deeper social level, the keynote of our way of life is  mobility : the capacity to get around, to move at a normal pace in step with the passing parade. In this race, until very recently, the blind were clearly lagging and falling ever farther behind. In terms of their physical mobility, as in the broader terms of economic and social mobility, this lag was long regarded as the permanent and inescapable handicap of blindness. But today the blind of America are catching up. Just as they are gaining social and economic mobility through the expansion of vocational horizons, so they are achieving a new freedom of physical mobility through the expansion of legal opportunities centering around the White Cane Laws.

For blind people everywhere, the white cane is not a badge of difference but a token of their equality and integration. For those who know its history and associations, the white cane is also something more: it is the tangible expression not only of mobility, but of a  movement . It is indeed peculiarly appropriate that the organized movement of the National Federation of the Blind should have as its hallmark this symbol of the white cane. Nor does this take away in any degree from the vital and continuing contributions to the White Cane Laws of the Lions Clubs of America. The Lions have been, and are, staunch allies in the movement of the blind and companions on the march which began a generation ago. During the decade following the introduction of the white cane, statewide organizations of the blind began to emerge in numbers across the country, in the first wave of a movement which was climaxed by the founding of the National Federation in 1940. Through the adoption of the White Cane Laws, the blind have gained the legal right to travel, the right of physical mobility. And at the same time, through the organization of their own national and state associations, the blind have gained the social right of movement and the rights of a social movement.

This is a striking parallel, and an instructive one. For the right to move about independently  within  the states, which the White Cane Laws have steadily won for the blind in the courts, is intimately bound up with the right of free movement across state boundaries, which the organized blind are steadily achieving through the reduction or outright abolishment of the residence requirements governing state programs of aid to the blind. In short, it is no empty phrase of rhetoric to say that the blind are on the move.  Thanks to the White Cane Laws, they now move freely and confidently not just on the sidewalks but across the streets. Thanks to the legislative reforms instigated by the Federation, they are moving also more freely than ever from state to state, as need and opportunity dictate; they are moving  upward, into new careers and callings; and they are moving  forward , into the main channels and thoroughfares of community life. The blind of America walk by a faith ever more justified by law.

I have said that the White Cane Laws enhance the freedom and confidence of the blind person by affording him a status of legal equality. But it is not, of course, the laws alone but the white cane itself which contributes to his confidence and self-sufficiency. This distinctive cane is several things at once: It is a tangible assist to the blind person in making his way; it is a visual signal to the sighted of the user's condition; and it is a symbol for all of a legal status and protection. Let us immediately concede, however, that the white cane is no magic wand or dowsing-rod, no substitute for sight, and no guarantee of immunity against disaster. The cane cannot read signs or distinguish lights; it cannot traverse all areas immediately ahead and above, and even where it does, it cannot make judgments for its user. In short, it is only a cane not a brain. And finally it is, of course, not always and universally recognized by the sighted as the legal device of a blind person, although such recognition is already wide and rapidly increasing.

Despite all these necessary and obvious reservations, it is or  should  be indisputable that the white cane is an extremely effective aid to blind people in their daily movements. In fact, however, this conclusion is still disputed and not by the sighted only but even by a few who are blind. No less a personage than General Melvin Maas, president of the Blinded Veterans Association and head of the National Committee on Employment of the Physically Handicapped, has now seen fit to speak out sweepingly against the white cane and all its works including the White Cane Laws and the whole principle of White Cane Week. The white cane, says the general, is utterly valueless as a signaling device unless it is elevated at least to the  horizontal  level,  which  would present a real hazard to oncoming pedestrians.  Apparently General Maas is suggesting that the blind person must point his cane horizontally ahead of him like a swordsman. What the laws provide, in terms of elevation, is rather that the cane be vertically raised and extended as far as arm's length. Again, according to the general, the cane would need to be of such size and shape as to be readily discernible by drivers of vehicles.  But this is surely no objection; obviously the cane ought to be as visible as possible, consistent with its portability and convenience. General Maas indeed goes so far in his opposition as to argue that  many cane users do not now use white canes, but use collapsible metallic ones.  What he does not say is that there is nothing about collapsible metal canes which prevents them from being colored white (like that which I am carrying today). Finally, the general clinches his case with the contention that  the volume and speed of traffic now makes dependence on the cane most hazardous.  There is no doubt, certainly, that traffic hazards are greater today, for everyone, than ever before. But what is the inference? Should the blind then retreat once more to the rocking chair and never venture forth? This is, to be sure, a viewpoint not yet dead among us; as witness the opinion of a Milwaukee district judge, just two years ago, that blind people should stay at home because they only endanger traffic by moving around by themselves. Would General Maas subscribe to that retrogressive doctrine? If, on the other hand, the blind are to be permitted to retain their hard-won right of independent travel, should they now be stripped of the paramount aid and legal protection they have gained?

There are two different questions to be settled here: one of fact and the other of right. The factual question is simply whether the white cane and White Cane Laws are, or are not, a genuine help to blind pedestrians and sighted motorists. On this score the evidence is clear and overwhelming. When, for example, the New York legislature was considering enactment of a state White Cane Law a few years ago, a questionnaire on the merits of the proposal was dispatched to several hundred chiefs of police, attorneys general and safety officers in other states. A very high proportion took the trouble to answer, and the verdict was that White Cane Laws, when properly publicized and administered, are a definite and powerful help to blind and sighted alike. No one, of course, proposed them as a substitute for prudence and common sense on either side; but all agreed that in the presence of ordinary caution and in the service of judgment the white cane is unmistakably a good thing.

Some of the efforts to improve the usefulness and efficiency of the white cane, and to define its proper handling, are fascinating (if not always edifying) to recount.

A Milwaukee city attorney, for example, has proposed that all white canes should fly a flag in traffic whether at full or half-mast is not revealed. A still more colorful suggestion has been made by a policeman who investigated the most recent traffic death involving a white cane. The carrier, he said, should be enabled upon entering traffic to press a button releasing a set of dangles, whose glitter would presumably attract the eye of the most inattentive motorist; when not in use, the dangles would politely recede into the shell of the cane. Still others have suggested that the white cane ought properly to be at least one and one-half inches thick to improve its visibility a suggestion which will, no doubt, be happily received by all sightless weight-lifters.

Meanwhile legal minds have labored long and hard over the meaning of the term raised or extended position set forth as a requirement by the White Cane Laws of most states. Does raised mean, as one city attorney has proclaimed, pointing upwards? Does extended mean, as General Maas appears to suggest, pointing forward? And does the requirement involve both raising and extending the cane, simultaneously or alternately, in the manner of a drum-major? (If the cane in these circumstances also flies a flag and trails dangles, nearly all the elements of a one-man parade would appear to be present.)

There has been no less argument concerning the sanctions most profitably to be included in the White Cane Laws. Some states impose only civil sanctions, thus making it easier to secure the conviction of sighted offenders. Others make allowance for penal sanctions, including jail sentences; but this approach, while apparently more effective, automatically grants to defendants all the protections of criminal law, and by its very severity renders juries reluctant to bring in convictions against negligent drivers. Then, too, there is the question of the right of way to be accorded the blind user of a white cane. In at least one state his rights would appear to be virtually unlimited even by such normal barriers as traffic signals. Illinois provides that  "Any blind person who is carrying in a raised or extended position a cane or walking stick which is white in color or white tipped with red, or who is being guided by a dog, shall have the right of way in crossing any street or highway, whether or not traffic on such street or highway is controlled by traffic signals. The driver of every vehicle approaching the place where a blind person, so carrying such a cane or walking stick or being so guided, is crossing a street or highway shall bring his vehicle to a full stop and proceeding shall take such precautions as may be necessary to avoid injury to the blind person."

At least six other states impose the full-stop requirement, universally insisting that non-blind pedestrians, as well as drivers, must heed the approach of a blind white caner and come to a stop when approaching or coming into contact with him. Such provisions as these would seem to make the blind pedestrian virtually all-conquering.

It should be clear that the legal symbol and physical helpmate of the white cane has not magically solved all the ambulatory problems of the blind. It cannot at a gesture convert a crazed motorist into a sane one; it cannot make the sea of traffic part at its command; above all, it cannot absolve the blind pedestrian from his civilized responsibility to move with prudence and ordinary caution: to  speak politely, while carrying a big stick.  Let us claim no more for the white cane and the White Cane Laws than is their due. The paramount right which they confer upon the blind pedestrian is not so much a right-of-way (for that is limited and contingent), nor even a guarantee of safe conduct, but simply a right of  passage  the right to travel independently in public places, to move in the thick of things, with the confidence of legal status and the reasonable assurance of recognition. Before the era of the white cane, the blind man everywhere ventured forth at his peril and proceeded at his own risk; today  he walks by a faith justified by law.

Nearly a hundred years ago an American writer, Obadiah Milton Conover, composed a short poem which no blind person could then have read with conviction. This year, as we celebrate the anniversary of the white cane and the newly found independence which it signifies, each of us may affirm the poet's boast:

 Alone I walk the peopled city,

Where each seems happy with his own;

O friends, I ask not for your pity.

I walk alone.

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