ADDRESS

of

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It is an obvious fact that the one thing responsible for our assembly here tonight is devotion to the Law School. That fact is easy enough to state; the thought it implies, however, is complex. When one ponders the origins of this devotion, the sources seem at first so many that one is tempted not to pursue them. But I wonder if this is really true. Each of us, of course, thinks in terms of the Law School of his day. But I would wager that none of us think of those years at Harvard as years merely of pleasant, care-free languor. Work rather than play dominates our reminiscences.

But surely the fact that we thought we worked hard isn't the source of our devotion. Nor is it our admiration for some of the faculty who then graced the School. Even in the days before the post-war boom with its increased student body, its new massive buildings - yes, and its new massive mortgage - the privilege of really knowing the faculty was limited to the select few, and yet we know that devotion to the School is not the monopoly of the A men. True, even without intimately knowing the members of the faculty, there were those that we admired from afar and their teaching and their spirit still pervade us. But other men in college and since have also touched our intellects and our imagination. No, the devotion that we feel has in

my mind other and deeper causes.

Of these, two seem to me the principal ones. The first is that those three years were to most of us the period when we first found ourselves intellectually. No statute of limitations can run against the thrill of being forced in our thinking to rid ourselves of shallow learning and retreat to primary sources for the beginning of knowledge, to question, seemingly eternally to question, and so to continue shovelling away the loose earth of imparted information until finally one felt that here was bed-rock upon which a foundation could be laid. Then, of course, came the building process, and (to follow the analogy for the moment) the choosing of materials, the study of stresses and strains, the sudden recognition that some material employed proved to be too weak, that it was only superficially what was really needed, and had to be replaced. Finally, there came the gradual dawning that what the traditions of the School demanded were not uniform structures, architecturally commonplace like those rows of houses jerry-built for men poor in spirit; but that instead those traditions had room for the classical, the Georgian, the colonial - yes, even the modernistic - provided only that, whatever the type, the structure stood the test of beauty of line, symmetry of style, and utility of purpose.

Those years in which we found ourselves intellectually gave most of us the knowledge that we could be creative in our thinking, not merely parroting the information that someone else had placed before us. Relevancy of thought, at first a harsh discipline, became a principle of our intellectual life; questioning, a source not of irritation but a duty.

The second chief cause to which I ascribe our devotion was the origin of a new loyalty - a loyalty to something we called the law. Just what constituted this thing we thought of as "the law" was quite uncertain for a while. It certainly was not a body of doctrine that caught us. To the principle of consideration in contracts, to the right to embody an anticipatory replication in an original declaration, to the doctrine of unconscious possession, to the rule in Price v. Neal or Haddock v. Haddock, we surely had no particular loyalty. Nor even was our loyalty to the law conditioned upon a particular view of Hammer v. Dagenhart (the first Child Labor case), or, shall we say, National Labor Relations Board v. Jones and Laughlin Steel Company. Nor do I think this emotion derived from the fact that we knew good grades might land us in a large New York firm, where, after sufficient slavery a partnership might some day come our way. Neither possible prominence at the bar nor

the rewards of such successful practice were its content.

Something of this concept of what the law might mean occasionally flashed upon us as we stumbled across an opinion by Holmes, an essay by Ames, or even a dictum by Mansfield. Words such as "justice", "freedom", "social order", seemed to have something to do with it. It was there in the Year Books just as much as in the latest Supreme Court decision. It touched upon almost every field of human knowledge, economics, politics, history, occasionally art and the theatre. Slowly we realized that we were being admitted to the heritage of a great profession, that stretched behind and before us, eternally mediating human affairs.

That somehow was "the law", and that was the end towards which this process of education was moving. It needed for its realization no particular form of environment. It envisaged no subordination to one particular political or social theory, less so to one particular client or class of clients. All ways of life were open to it, and no man was big enough or wise enough to say finally I have now attained its mastery and nothing more remains.

This, indefinitely and poorly expressed, is what I believe is largely the cause for our devotion to the School - the fact that its teaching offered each of us the means to find a way of life which none of us could say was not challenging enough for his attainments, his ideals. Some of us re-

tain that loyalty, thinking of the School as a spring from which it can be refreshed. Some of us, in the eagerness to gain other things, have foregone it, remembering it only as an idyl of youth, but nevertheless devoted to the School because it is still cherished there.

These things, it seems to me, are really why we are here. They explain not only our presence here, but the past of a great law school. And, if the causes that today make for devotion created past greatness, causes that will tomorrow make for devotion will equally make for tomorrow's greatness.

These loyalties of the past, and of tomorrow, I can only discuss broadly because it is only broadly that they lie in my mind. But first let me digress a moment for a word as to techniques.

I need hardly dwell upon the drill and the discipline that are the pathways to intellectual independence. These are so much a part of our tradition that they are intrinsic to us. True, changes in technique occur, but not even a Dadaistic conception of the law would eliminate the ability to read a case, the need for relevancy of thought, and the development through logic of principles of decision. This emphasis one cannot take for granted. The revolt that has been brewing against a mechanistic and conceptual theory

of the law has at times mistaken its objective and carried the revolt against techniques of instruction because they happened to emphasize these qualities. That these methods of thinking may not always be employed is, of course, no reason for being ignorant of them. Knowledge of the nature of a weapon makes for its use under circumstances where it can be profitably used; it also makes for its sheathing when the fight is at too close quarters to permit its employment.

My real concern tonight, however, lies not with method or technique but with the conceptions that underlie our loyalty to the law - an attitude towards law which seems indispensable if we wish it to satisfy desires. To think of law as consisting merely of a body of doctrine and an ability to apply accepted techniques, is to make of it a game and not a way of life, a game whose players are craftsmen and not lawyers. The need, again and again, is to relate it and its processes to the conduct of human affairs in the concrete and not, as the Chief Justice remarked only last Monday, to deal with it in an "intellectual vacuum." Where the law and lawyers suffer today in public esteem is from the want of just such an emphasis, just such consciousness that our concern is with flesh and blood and not intellectualism.

Let me illustrate my meaning. A month ago I took the occasion to comment upon the necessity of law schools

pioneering in the law, in the sense that it was their function to consider the relationship between our present legal order and the new claims being made by groups and classes of our society. I was taken to task by certain critics including some alumni of the School for suggesting that an appropriate evaluation of these claims might lead, as it has led in the past, to changes in the economic concept of industrial corporate property. The idea that it was heresy even to think along these lines never occurred to me, and despite the suggestion of these kind friends, I am still unconvinced. When the cry of heresy is sufficient to stop intellectual exploration, we have, of course, a civilization different from that we now cherish. But within that month, to go to my illustration, that concept of property has suffered two extraordinary changes and these at the hands of the constitutional guardian of property - the Supreme Court of the United States.

With less forthrightness than some would have wished, the Court recognized first the claim that industrial property can be required to be burdened with the duty of providing its employees a living wage, and secondly that the possessors of such property can be required not to discriminate against employees on the ground of union affiliations and to assume the duty of conferring and negotiating with their authorized representatives for the purpose of settling a labor dispute.

These changes as such are significant. More important, however, is the manner of the change. Unless one assumes, as some commentators are openly implying, that political considerations animated the change, the moving factor underlying such decisions is the impact of fact. The Chief Justice's recognition of the integrated character of our national economy, and the grave national consequences that could attend a strike in steel contrast strongly with the insistence of relentlessly pursuing in an intellectual vacuum the logic of cases such as Adair v. United States and Coppage v. Kansas, - cases which seem now to be in that dangerous comatose situation described by Chief Justice Taft as being overruled sub silentio.

For the purpose of the illustration, the result is unimportant, the manner of reaching it all important - the creation of law in the light of social need as one may be given to see the social need. The conception of law handled in such a fashion is what we caught a glimpse of at the School. We envisioned ourselves as participants in a profession upon which the responsibility for adequate social ordering rested, when in the processes of litigation we could present to the tribunals entrusted with decision the content of a client's claim both with regard to its historical legal setting and with regard to what we conceived might be its intrinsic ethical and social value, and thus its place in the pattern of modern life.

Something akin to this conception of the legal process underlay the beginning of our loyalty to the law, gave us a respect for its capacity to bring about social ordering. As such the profession had more magnificence in our eyes than even the medical profession, for where their task lay with the alleviation of physical disorder, ours was the broader concern of the alleviation of social disorder. Some callowness may now attend that loyalty as the world of hard fact may have partly overwhelmed us, but were you to essay teaching, would the tenor of your mood be callowness or the instillation of what you hope may be an abiding loyalty to the essence of the law?

On one thing, I trust you will not mistake me. It is the method of approach in the large sense that is the concern, not viewpoint. Conservatism need yield no whit to liberalism in such a concept of loyalty to the law. Both attitudes can with equal intellectual power conceive of law in terms of social need; it is only their estimate as to what the need may be as of a given moment that varies. My conception of lawyers is insistence upon leadership in approach wholly irrespective of allegiance to one side or another.

If this be one of the true causes of our devotion to the School, its pathway becomes clear. The continued attainment in an effective manner of such an end, however, presents its problems. If both private and public law

need constant measurement in terms of the needs that they serve or fail to serve, analysis of these needs is an ever-pressing demand. Today the social forces which play upon the law seem infinitely more complex, more varied than those of a generation ago. The challenge thus thrust upon those who would assume to teach the law becomes thereby the greater, the more difficult to meet. Wisdom with regard to the world in which we live is of the essence and to lay claim to some portion of that is not easy.

It is considerations such as these that I think ought to govern us in the moulding of a curriculum, in the choice of faculty, and in the creation of the atmosphere in which we move. How to do so without scattering our resources, without sacrificing the focussing of energies upon law is the problem of the future. From the standpoint of the student body, it becomes essential to give them the awareness of what one may call the flesh and blood of a living law rather than the dry bones of something already bleaching in the sun. The medium of contact is, of course, a faculty which must be rich in experience and imagination, keeping itself in constant touch with the realities outside its walls, outside the law reports. To suggest to you just how to achieve such an aim would border on the fault of prescription without inquiry. But might I offer merely as a hope the concept of peripatetics

as applied to law teaching and research, the vision of men on the one hand leaving teaching for the moment to enjoy a worthwhile experience in private or public service, and, on the other, men leaving the routine of practice for a period to engage in the spiritual endeavor of research. Such an ebb and flow between practice and teaching would mean not only that each would refresh itself from experience with the other, but it would also mean the knitting together of practice and theory into a unity of law.

I speak of such a problem only in a casual manner. My own contacts with teaching have these past few years been enforcedly at a minimum. All I really have is a belief that both law and law teaching stand in need of further enrichment, but no patent formula for the accomplishment of such a result. I see, as you see, the dissatisfaction voiced far and wide with both the law and its practitioners; yet, on the other hand, I have seen at close hand how effectively it can be made the handmaiden of civilized progress and how in such an effort it will bring forth the allegiance of armies of men.

Perhaps this is what Holmes had in mind when he spoke of practising law in the grand manner. Perhaps this is what we mean by teaching law in the grand manner. At least it gives to teaching and practice the direction of endless effort. It has in the past, as I see it, been the

source of the greatness of the School. It is today the mainspring of your devotion, of your loyalty to the law. To the men of today and tomorrow following you as students, it will be the reagent of their attitude towards the law, the quality that will make for loyalty and in turn continue a devotion to an institution that opened for them a way of life.

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