

PROCEEDINGS HELD AT THE
TWENTY-FIFTH ANNIVERSARY DINNER
OF THE FOUNDING OF
THE COLUMBIA LAW REVIEW

April 5th, 1926



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ADDRESSES DELIVERED AT DINNER TO
COMMEMORATE THE TWENTY-FIFTH
ANNIVERSARY OF THE FOUNDING OF THE
COLUMBIA LAW REVIEW

Hotel Pennsylvania, New York City,
Monday Evening, April 5, 1926.

THE TOASTMASTER: (Edwin P. Grosvenor): As this is in part an academic function, the committee had asked Dean Jervey to act as Toastmaster. Unfortunately, the Dean is detained in a hospital. Just this moment the following telegram was handed to me from Rochester, Minnesota:

"Columbia Alumni Dinner, Pennsylvania Hotel. Would much rather associate with lawyers than with doctors. Regret more than I can say my inability to be with you tonight. According to the prescriptions of my present diet, I am one of the most practiced toastmasters in existence. My warm congratulations to the editors and ex-editors of the Review. Sincere greetings to our distinguished guests and hearty thanks to the Alumni who are paying this tribute to the Review and to the School. The Review has well earned the tribute by a quarter century of fine performance. May it long continue its notable contribution to legal scholarship. Huger W. Jervey."

(Applause).

A motion will be considered made and passed to the effect that the Secretary of the Association answer this telegram expressing the sincere sympathy of the Association to Dean Jervey who, during his brief term of office, has greatly endeared himself to the members of the Association as well as to the law students of the University.

I know I voice the feeling of all of you in thanking the Dinner Committee for the work they have done. As you are all lawyers and as lawyers generally run the affairs of their communities, you have all been on committees of this sort and know the amount of labor involved. The Committee has done the work well.

Each of you found beside his plate, a pamphlet which at first glance appeared to be a fresh number of the *Columbia Law Review* but in fact is a booklet, the gift to you of two former editors of the *Review*, one, the real founder of the *Review*, John M. Woolsey, and the other, Mr. Garrard Glenn, who has contributed many articles to the *Review*.

You will find that this pamphlet contains much information of historical interest including, among other things, a complete list of the

editors of the *Review*. This is the first list that has ever been published. An edition of three thousand has been printed, and a copy will be sent to each subscriber of the *Review*, so that it may be bound at the end of the 26th volume.

In the first page of the *Review* printed 25 years ago, acknowledgment was given to the *Harvard Law Review*, to the editors past and present of that *Review*, for the kindly suggestion and encouragement given to our *Review*. That encouragement and friendship has continued during these 25 years, and it is proper, therefore, that one of the founders of the *Harvard Law Review* is present here tonight and sits at the head table. I refer to his Honor, now U. S. Circuit Judge Julian W. Mack. (Applause).

As you look at the honorable founder of the *Harvard Law Review*, you will not believe that the *Harvard Law Review* is in fact thirteen years older than our own *Review*.

I have the following telegram from another older brother of our *Review*:

"New Haven, Connecticut. Columbia Law Review, Pennsylvania Hotel, New York. Congratulations and best wishes for continued success to you and your founder John M. Woolsey, Yale '98 on this your twenty-fifth Anniversary."

Those are the two only older brothers of our *Review*. We have some thirty odd younger members. One of those brothers is represented tonight, very appropriately, by the Dean of the Cornell Law School, who is not only a former editor of our *Review*, but is the son of one of Columbia's most beloved professors, Francis M. Burdick, and his son is Charles K. Burdick, also seated at the head table.

I will read another telegram which comes from Albany. You know, the Court of Appeals is sitting tomorrow, and the Judges were not able to be present. We have here perhaps, excluding the Judges of the Court of Appeals, the largest assembly of the Judiciary that has attended any dinner of any law association in New York City:

"John M. Woolsey, Pennsylvania Hotel. Congratulations to our brethren of the Columbia Law School upon the service which has been rendered by the editors past and present of the Columbia Law Review to the development of the law and to scientific jurisprudence. Frank H. Hitchcock, Benjamin N. Cardozo, Frederick E. Crane, William S. Andrews, Irving Lehman."

(Applause).

We are also delighted to have with us tonight, the past editors of the *Columbia Law Review* as the guests of the Association. When the

Review started, there were ten editors. This soon increased to fifteen. Now there are thirty editors, fifteen from the second year class and fifteen from the third year class. They are headed tonight by their Chief, Mr. Arthur H. Schwartz, a graduate of Columbia College, the retiring editor-in-chief and Mr. Downey—I have not had the pleasure of meeting him, but Mr. Downey, who is the incoming editor-in-chief, is a graduate of Fordham College.

For twenty-five years the *Review* has exercised almost concurrent jurisdiction with the highest courts. (Laughter). They have felt free to comment, approve and criticize and perhaps amend the decisions of any court. These young men are worthily carrying out the traditions of the past. You will all recall that in one respect the power of the editor-in-chief of the *Columbia Law Review* or any other Law Review exceeds that of a presiding justice of any Appellate Court, for though the Boards of the Reviews dissent and differ among each other, the same as do the Judges of any Appellate Court, the opinion of the minority goes into the waste paper basket of the editor-in-chief. (Laughter).

His Honor, the U. S. Circuit Judge of this circuit, has done us great honor in coming here tonight to address you. A graduate of Dartmouth, he commenced the practice of the law in Philadelphia, but early, preferring a more active sphere, he moved to New York in the early eighties. (Laughter and applause). In 1906, he relinquished the leadership of the Admiralty Bar to accept an appointment as United States District Judge. After ten years of distinguished service, he became a member of the Circuit Court of Appeals. After twenty years of honorable and exceptional service on the Federal Bench we all revere Judge Hough and welcome him here tonight. (Applause).

HON. CHARLES MERRILL HOUGH: When a thing has been done and well done, we generally find that a very few men have done it, a somewhat larger number have probably contributed with thoughts or with money, but the overwhelming majority look on and admire. So far as University Law Schools and their Review are concerned, I emphatically belong to the last class. In mitigation I can only plead that the schools turned their attention to the maintenance of Law Reviews only after I was at least nominally a member of the Bar. Thus I raise my voice from the side lines, and if it were not for my antiquity, I should claim to be recognized on behalf of the Law Schools as a rooter.

Your committee has taken, as Mr. Grosvenor has reminded you, from the first number of the *Review* its salutatory editorial,—it lies before you,—almost the only editorial that the *Review* has ever printed.

This in itself is a sign of health; successive editors have not been called upon often to praise their own wares.

But in the beginning the students of that day, now comparative oldsters said that they had "undertaken a task which may prove to be beyond our powers." The event has amply proved that they were happily mistaken; the lads of a quarter century back and their successors have been able to do the work, and I am glad to be permitted to speak from and for the bleachers, and express an opinion as to why the undertaking has succeeded, and why the result is an institution.

Not only the *Columbia Review*, but other and more or less similar university publications, have succeeded because of two things, neither unimportant to our profession. First, each advancing Law School wanted an organ, and, second, they collectively became toward the end of the last century so professionally influential, that each larger university could support its own organ, and some could reasonably hope for additional support beyond the circle of their own alumni.

The youngsters of 1901 did not, however, put it this way. Corrigan, Woolsey *et al.* appealed to the oldsters, and succeeded, if the contemporary repute of the first professional contributors be proof of success. That first number, doubtless watched over with almost more than maternal solicitude, contained articles by Julian T. Davies, Paul Fuller, Albert Stickney, James L. Bishop and Everett P. Wheeler,—assuredly a strong representation of the literate bar a generation back. The bench, contemporary and prospective, stepped forward in even greater proportionate numbers and Alfred C. Coxe, Dennis O'Brien, Simeon E. Baldwin, Edward W. Hatch, Edward B. Whitney and Robert Ludlow Fowler showed their interest by writing. That was what was hoped for, and the memorial pamphlet before you shows that the editorial salutory declared that for such "material we shall look entirely to members of the bar, encouraged by the cordial aid already given."

But I am quite sure that had the success of the Columbia publication or any other of the University law journals permanently depended upon the contributions of the bench and bar, university pride and alumni support might have kept the thing going, but it would not have differed in kind from the legal periodicals like the *American Law Review* or *Central Law Journal*, which arose in this country about 1840, and have now been either supplanted by the university publications or only live by legal advertising.

That for a generation or so the University Law Schools have been strong enough to support organs would not, however, have converted any organ into an institution more important than is an alumni bulletin;

and what really makes the University Law Review of today a power, and a power for good in the profession is one thing mentioned in your salutatory editorial, and another even more important not mentioned, and perhaps not then thought out, although it had been, I think, thought of.

The one thing most modestly mentioned in the editorial is the digest and criticism of recent cases to be conducted wholly by undergraduates, and the one not mentioned is the publication of articles of legal interest and legal learning by the academic staff not only of the publishing University but from all over the world.—Professors Burdick and Keener, and Sir Frederick Pollock being examples of what I mean in the first number of the *Columbia Review*. If it were not for criticisms by the boys of current cases, and the more mature reflections of their teachers, the *Columbia Review* and its sister publications during the last forty years or thereabouts would in all probability have gone the way of the *American Themis*, *Hall's Journal of Jurisprudence*, and *The City Hall Reporter*,—that is, they might have lasted a few short years, unless maintained by alumni pride.

Student comment on current decisions is, so far as I have learned by reading, a purely American contribution to the study and growth of legal science; and in some respects an even more original contribution than the celebrated so-called Case-System. It has a serious and a humorous side, and both tend to increase and democratize the vogue of the review. Most seriously do these comments interest the students themselves, and aid their studies; they are always examined by the graduate readers, who feel their youth renewed by reading the work of their successors, and who are sure, and rightly sure, that the boys will instinctively choose for comment what they call "live stuff," something that seems to them nearest what they regard as professional life. Often, indeed almost always, unless the facts are technical beyond their experience of affairs, the comment is acute, and sometimes searching; it is invariably smart.

It has long seemed to me that, since the commentators are generally bachelors with a successful college career just behind them, there is no collection of writings anywhere to be found so plainly showing what clever, confident and candid young America is thinking about its expected lifework,—as the case comment of the university law reviews of this country.

After reading I know not how many comments on cases that I ought to have thoroughly known, and on not a few in which I myself wrote, I have rarely laid down the review without a feeling of informa-

tion received which would have done me good a little earlier in the game. (Applause).

Of course legal, like all other criticism has its pitfalls; and the critic sometimes encounters a counter blast like Byron hurled at Scotch tronizing, omniscient. Being nowadays somewhat stiff in my literary comment suitable (*mutatis mutandis*) for any case, and I shall favor you with the case and the comment.

Monopolies-Contracts: Defendant agreed with plaintiff to sell a quantity of Lunar Green Cheese, deliverable upon April 1st. On the Ides of the preceding month plaintiff having acquired control of all Lunar products, materially changed the color of the same, whereupon defendant tendered Stellar cheese of the same hue, plaintiff refused the tender, and brought suit. Plea, that plaintiff's violation of the Sherman-Clayton-Donnelly Act had validated the tender as substantial performance. The case will be found in *Nemo v. Zero*, 275 N. Y. 1.

This summary I have procured as a disciple of Einstein,—merely reversing the process so well described in a recent limerick respecting the methods of a young lady who

“started out merry and bright,
Travelled all of the day
In a relative way
And arrived on the previous night.”

To verify the facts of my case you will have to wait until some forty volumes of New York reports have come to earth from Heaven or Albany.

Now for the patent inside comment:

This well written decision re-examines in a modern way a difficult subject. It frankly overrules several earlier decisions of the same court (an excellent procedure) and while flatly opposed to the Supreme Court of the United States in *Doe v. Roe*, 360 U. S. 1001, is in accord with the more recent decision of the same court in *Roe v. Doe*, 361 U. S. 1002. There are a few States which still refuse to apply the doctrine, but this decision falls squarely in line with the majority view, which is best expressed in *Dives v. Lazarus*, 5 New Zealand 25, and more recently set forth in *Pharaoh v. Moses*, 2 Palestine 1. The English rule is somewhat stricter, drawing unwarranted distinctions between Stellar and Lunar; but the general tendency in this country is toward liberality in all tender matters. There can be no monopoly in tenderness. Doubt

should always be resolved in favor of freedom of exchange. (Citations from Arizona, Alaska and Hawaii reports.) The principal case is well reasoned and seems to be correctly decided.

I submit, gentlemen, that with no greater variations than will occur to a man of reasonably active mind, a comment of this kind can be made on any case without undue expenditure of grey matter; but while asserting that some comments have this flavor, I consider that they are very few. Judges are by etiquette debarred from comment on cases in which they have recently participated, and lawyers rarely want to comment unless they have a very special bone to pick, so the boys are left, and they do it very cleverly. I think the editors of *Columbia Law Review*, Vol. 1 did not quite see how popular, important and valuable student comment was and would continue to be; and perhaps the first board, being, so far as I know it, men of an almost shrinking modesty, did not see how much of a tin god of criticism each particular editor might become. But nowadays I not only submit but assert that the student comment of the University Law Review contributes extraordinarily to that very simple thing, so concisely and easily called by Mr. Justice Holmes, the osmosis of understanding. (Laughter).

But what the salutatory editorial does not mention at all, and what in my opinion has differentiated the university law periodical from all other legal ephemerides, is that the faculties, the specialized teachers, are afforded a rostrum from which they can speak to an increasingly large audience on professional subjects; they are given a clinic where they can take the professional pulse, and minister to professional ills.

It has long been the opinion, especially I think of oldsters like myself who never attended any law school, that the meta-centre (to use an admiralty term) of our profession is no longer on the bench but in the lecture rooms and studies of the law school faculties.

Few are so willing to admit this as some, at any rate, of the Judges. I do not venture to put myself forward as an example of this humility, but produce as a witness my colleague Judge Learned Hand, who told his creed last December to the Association of American Law Schools in Chicago (and let it be printed in the *Michigan Law Review*). He informed the assembled pundits that he would "rest his case" for the importance of the law school upon "the necessarily superficial scholarship of both bench and bar; for with the rarest exceptions, the conditions of our calling preclude us from gaining a systematic understanding of the law or even of keeping up with its course. We are *predetermined sciolists*, compelled to maintain some working acquaintance with the whole field and consequently incapable of thorough knowledge in any part."

When a man calls me a *predetermined sciolist*, I am much impressed, (laughter) and I like to study the matter; and I have concluded that my learned friend did this for much the same reason that in a current play that has been with us only a slightly shorter time than has the *Columbia Law Review*, the Jewish merchant of defective historical training calls the Irishman an "A.P.A.," because as he lucidly explains, though he does not know what that means, it seems to make him mad. (Laughter). But personally I am of gentle mind, and I have refused to get heated, but waited to see what came next.

Again (for my learned friend Judge Hand is nothing if not thorough) I read, "The number of practitioners who can or will keep up with current legal discussion is extremely small. Indeed in my own city the best minds of the profession are scarcely lawyers at all; they may be something much better or much worse, but they are not that; with courts they have no dealings whatever, and would hardly know what to do in one if they came there."

"Yet," says he, "we know that common opinion is not generated simultaneously in the minds of many who are reflecting on the same facts. It arises in a directing group, small enough to have genuine interchange of ideas and common interests." And he proceeds to demonstrate that the "*directing group*" is nowadays the collective professorate of our law schools.

Worms turn, but much good it does them, when such heavy boots as these are treading, for I am compelled to agree as to the importance of the faculty. I will call the older men in this room as witnesses, and ask when we were young, who had written the legal treatises then in the greatest repute. Without going to the English classics, the American writers were Story and Kent, Cooley and Redfield, and a then recent book on Municipal Corporations by Judge Dillon. Those Judges have left successors; the Courts in which they sat are still extremely busy, perhaps too busy, but do those successors now contribute to the systematic statement of the law? Who are the men that have during the last twenty-five years put forth the philosophical books on law that really count in this country? The question answers itself. The judicial commentator has gone, the practicing commentator is going, although I am informed some of them are still technically putting out second editions having employed the junior law professors so to do. But the books that really count from Wigmore and Williston as a center in an ever-increasing circle of professional agitation are products of the law schools, the results of the work of the professors in the law schools, of their special labors on the special subjects to which they devote their

lives and themselves as it should be. And the places where these men (as may be seen in the annual indices of legal periodicals) try out their theories, ventilate their views, invite comment, and skirmish with each other (for they are lawyers too), are the pages of the university law periodicals.

It is a great function, one upon which it is a temptation to dwell, but it is enough, having stated my theorem, to say that I am glad to have had the chance tonight of telling the founders and friends of the *Columbia Law Review* my very sincere admiration for the legal work in which your *Review* is one of the leaders in this whole country. (Applause).

THE TOASTMASTER: The average class in our law school contains the graduates, the honor graduates from 60 to 100 colleges. If the roll call of American colleges were called tonight, every college would answer "present" by one of the graduates of the Law School, for our Law School is as cosmopolitan as to college as New York City is as to race.

About a generation or so ago, one of those colleges located in New England, was about like all the others, except that it differed perhaps from some in the respect that attendance at chapel in the morning was expected, in fact, required, and it was known as compulsory chapel. And so in the early morning the College poured into the pretty chapel on the hill. The freshmen filled the gallery which ranged around three sides of the hall and looked down upon the three other classes which occupied the main body.

About that time among the seniors who occupied the first benches were seen three men who occupied and completely filled one bench. They were the big men in the College. Their names all began with "S." They are all distinguished today. The biggest of the three was football guard on a victorious team that defeated the college from which the last speaker graduated. He was one of the officers of his class, being a popular man; he was on the first choice of Phi Beta Kappa, and a commencement orator. He was a Fellow in history and economics and he was one of the two prize debaters in his class.

And so as the freshmen looked down from the gallery and saw him beneath them, they really believed that he was a proper hero of the college world. Those freshmen have followed that senior with more than admiration through his successive stages—teacher, law student, teacher of the law, dean of teachers of the law, practicing at the Bar in this City, attorney-general and then Justice of the Supreme Court of the United States, delivering wonderful opinions—always a devoted friend of the *Law Review*; always ready from his scholarship to con-

tribute learned articles, or to encourage a younger writer to contribute to the *Review*, or to use his influence to get a more distinguished man than a younger writer to lend his authority to the pages of the *Review*; the most loyal and the best friend the *Late Review* ever had. I present to you his Honor, Mr. Justice Stone of the Supreme Court of the United States. (Applause).

HON. HARLAN FISKE STONE: Mr. Chairman and Gentlemen: You may not believe it, but when I go back to Washington tomorrow, I am going to wear just the same hat as when I came over, and I suppose the only reason that it will be possible for me to do so is that I realize perfectly in this interesting fairy tale to which you have listened, all the vices of amiable exaggeration.

I am especially charged this evening with the duty of giving you a message from a friend and an associate of mine, Mr. Justice Sanford. As you doubtless know, he was one of the first Board of Editors of the *Harvard Law Review*, and he was greatly interested in this event. He had gladly accepted an invitation to be present here this evening. I had looked forward to greeting him. But in our little world man and associate justices propose, and the Chief Justice disposes.

It so happened that after our last conference, there was such a large number of opinions assigned, that he felt it was not possible, in justice to his work, to be present here this evening. He asked me to extend his greetings and good wishes to the *Review*, and all those who are interested in its career.

I am perfectly aware that in presenting this very reasonable excuse of Mr. Justice Sanford for not being present, I am convicting myself of a most unconscionable neglect of duty in being present myself, for when the opinions are assigned no justice is overlooked, and especially that is the case if he happens to be the infant member of the Bench. I have only two pleas to that indictment by way of confession and avoidance, one of them is that I am impelled to be here by a perfectly sane but nevertheless irresistible impulse to answer "present" on this occasion.

Then, too, notwithstanding however much I might fail to live up to that ideal, I know that I could never convince most of you that a man who had survived being Dean of Columbia Law School for fourteen years could not, with perfect ease, write opinions with one hand and learned addresses with another, and making a few amusing remarks on how to use his leisure time. (Laughter).

At any rate, I am quite sure whatever opinion you might have now, when you see the number of opinions that I will probably produce, if

I convince my brethren next Monday when the Court assembles, you will at least recall with some leniency, such remarks as I may make this evening.

One of the impenetrable mysteries of life is the flight of time and the man's relationship with it. I am beginning to realize that I am becoming one of the grandfathers of the Law School, and when I see all of these boys around here whom I have known so long, you must excuse me if I make sounds which seem like those of the Dean of the Law School.

At any rate, even though I am a grandfather of the Law School, I have not had any experience which would enable me to say that one thousand years was as but yesterday. Nevertheless, I can say from personal observation, that the twenty-five years which have elapsed since that day when a group of earnest students under the leadership of Dean Keener produced the first *Columbia Law Review* has passed with incredible swiftness. The philosophers tell us that the illusion of the swiftness of the passage of time which has gone is due to the fact that with advancing years and change in our physical and mental organization, we gradually regard the present passing of time as going with increasing swiftness, and that we judge the past by the standards of the present.

There are those who lament that, but those who are fortunate enough to be lawyers and who love their profession—the thought I had in mind has gone from me for the moment, but it will return to me presently.

But the thought which I had in mind was this, that notwithstanding—I think I ought to convert this into a law lecture. (Applause). You see the difficulty is that in coming over on the train I made some hasty notes and I find very great difficulty in reading them. (Laughter).

But the thought which I had in mind was this, that although time seems to fly more rapidly with advancing years, that phenomenon brings with it its compensations, when we come to apply it to our experience as lawyers. Each year seems to us more worth while than any which have gone before, because we find it enriched with the fruits of gathered experience and our interest in it enlarged and stimulated by the contacts which come with experience and with intellectual growth.

I believe that thought may be transferred from human life and applied to the life of institutions like the *Columbia Law Review*. Certain it is that as we look back over its vicissitudes and achievements of its twenty-five years of existence, and recall all that it has achieved,

each year seems to have brought to its credit something greater of achievement and to have enlarged its influence and its usefulness.

Of these matters relating to the *Columbia Law Review*, I can speak with some authority, for not only did I participate and officiate in a minor capacity at the birth of the *Columbia Law Review*, but I have had more personal relationship with it, more long-continued and more continuous service with it than that of any other individual. I was an instructor in the Law School when the *Review* was established. Dean Keener was then the leader of the Law School. The University and the *Law Review* owe him a debt of gratitude which, in the nature of things, could not be repaid, but I make bold to say that it has never been adequately recognized.

As Dean of the School, he made a great contribution to it as a teacher; he reorganized its faculty; he reorganized its instruction; but of superlative importance in his contributions to the Law School was the germ of an idea which he planted there. It is the idea which has furnished the vital inspiration for the development of the *Law Review* and the inspiration for its scholarship and for the scientific investigation of legal problems which it has carried on year after year. That idea was that no important legal problem, however it might be hedged in by authority or by legislative enactment, could ever be settled by authority alone.

Gentlemen, I have no right to take your time and attention. I made the fatal mistake which I ought not to have attempted to make, of trying to complete an enormous burden of judicial labor and come here to make something in the nature of a formal address upon this occasion. Only the very great urge of my love for Columbia and my desire to be present on this evening led me to do it. There was really no opportunity to prepare any formal address, and therefore I think it is much better to abandon the thought of a formal address which I had more or less in mind before I came here this evening, but much of which seems to have gone from me, but to say only the few words which occur to me with respect to this very splendid and wonderful institution.

Twenty-five years ago the thought of the kind of criticism which now comes from the Law Journal and from the University Law School would have been most abhorrent, I think, to most judges. I recall very well early in my teaching career the receipt of a letter from a member of the Court of Appeals, a man of eminence and distinction, in which he called my attention somewhat reluctantly, it appeared, to the fact that rumors were going about that judicial opinions were being criticized in

the Law School; and he rather intimated that if the Court of Appeals has said it, that was sufficient, and it was not necessary for the Law School to say anything more about it.

It so happened that only a year before he had written a very important and a very interesting dissenting opinion. It dealt with a borderline question and according as the majority view prevailed or the minority view prevailed, it affected the development of the law not only in the State of New York, but in every other large jurisdiction.

I had given that dissenting opinion to my students for discussion and so I wrote the Judge and said to him, "I thought this question which you have discussed in that opinion was an interesting and important one, and so I decided to turn it over to my students. They read it with much interest and discussed it and inevitably they were drawn into a discussion of the points in the prevailing opinion."

In a very few days I received a letter from him in reply to my inquiry as to whether he thought it was proper for me to make use of that opinion, and he thought it was, and upon reflection he came to the conclusion that after all there was some good in criticism of judicial opinions even in a law school. (Laughter).

Of course, today we know what the fate would be of any law school or of any law journal which inhibited the critical spirit. It would inevitably be like that of the Scotchman who, in an incautious moment, wanted to leave in a pay-as-you-leave car. He died there. (Laughter). Of course, Judges no longer regard the law reviews or the law journals as unfriendly critics. They realize that with the multiplicity of precedence, with the enormous burden of judicial duties, and with the oftentimes imperfect presentation of questions in court, that the real friends of the court are the law reviews and the law schools, and there are few of them who do not on occasion resort to the notes in the law reviews in order to aid them in the settlement of some perplexing problem.

Nevertheless, there are some appropriate limits to the criticism, as the previous speaker suggested, of law reviews, and of the heights to which the critics can soar. I am extremely glad that I have never yet observed in the *Columbia Law Review* a disposition to follow that practice which some of its competitors from time to time follow, of reading into a judicial opinion something which the Judge who wrote it never thought of, only for the purpose, the obvious purpose, of performing a perfectly useless surgical operation upon it.

I suppose that it would take at least 25 years more experience as a hardened critic on the part of the *Columbia Law Review* to reach that lofty plane from which one of its competitors bestows its approval upon

the learned opinions of some of the Judges of the highest Appellate Courts by such phrases as "This decision is sound"; "The result here reached is plainly correct."

But we should not permit these foibles to obscure the fact that the law journals and the law schools more than any other group of publications of the English-speaking world has promoted the interest of legal scholarships and furthered the scientific investigations of legal problems. We should not forget that the law reviews in all the law schools have been most important instrumentalities for carrying on their educational work.

As the Dean of the Law School, my first interest in the school was in its educational work, and my chief interest in the *Law Review* was the function which it performed as an instrumentality in the educational enterprise which the law school was carrying on. Before the *Law Review* was established there was no rallying point outside of the classroom to which the intellectual interests of the law school were attracted; there was no medium for the expression of its aims and aspirations; there was no instrumentality by which the students could receive any special training in the art of research and in the art of legal writing.

With the establishment of the *Review* and the gathering together of an important group of the principal students of the school, carrying on in close co-operation the work of editing the *Review*, those needs were satisfied and the University acquired an important permanent addition to its educational equipment.

As I look over this list of the 25 separate boards of editors who have carried on the work of the *Review* during these years, and I realize what an important contribution they have made to the professional and business life of the nation; as I realize how they have spread abroad the gospel of legal education, I realize anew what an important agency it has been in the educational work of the University, how important it has been not only to the University and to the Law School, but to the profession at large.

We realize, too, during the dark ages of the war the value of it as an educational institution when, through rising costs of publication and the danger of a complete loss of the student body, we were in danger of losing the *Review* itself. That it survived was due to the support which it received from the President of the University and from the Trustees, and to the financial and personal aid which was given to it by the great body of its editors.

The twenty-five years of life of the *Columbia Law Review*, even though it has passed as but a single day, has nevertheless been long

enough to produce some very notable changes in our attitude toward our own profession, and toward the law itself.

In the last 10 or 15 years we have witnessed the beginning of a country-wide movement toward assuming responsibility long neglected for the membership and the character of the membership and its training for the profession by the Bar at large. That movement is one of great importance to the profession. The influence which the Bar as a whole will have, the character of the administration of justice, will depend in large measure, upon the outcome of that movement. We can not yet see just what its end will be but whatever it may be we at least who are connected with law schools, may take some pride in the fact that that movement originated largely in the better law schools. There has been some rather interesting and significant changes of emphasis in the teaching of law and the study of it and in the judicial exposition of it.

Twenty-five years ago, when the *Review* was founded, we had reached the culmination of the period of historical emphasis in the judgment and determination of all legal questions. There was a disposition then to believe that history could give the right answer to every legal problem. We were more prone certainly then than we are now to justify the present by the past. Since then we have witnessed the growth of a tendency toward a more realistic treatment and conception of law.

In the application of law and in forming our judgment of it, we have been disposed to pay more attention to the data of economic and social experience than we have to logic or to history. Out of that change in attitude, whatever view we may take of it as a whole, there has come as a consequence in judicial and legal reasoning, less artificiality, less resort to metaphysics. We have been disposed to rely less upon fictions and more upon realities. That has brought us, I think, a little nearer, has brought the law a little nearer to the facts of human experience, and has brought it a little nearer to the realization of the ideal of all law, in justice and utility. I venture to suggest that we need not be too certain that our disdainful attitude toward history is the correct one.

After all, law has made its progress in the past through the perpetual struggle to adjust its rules and its processes which did not become more or less fixed and rigid to a changing social order. History reveals how that progress has been brought about and the agencies and instrumentalities it has resorted to to bring it about, and it suggests how it may be brought about in the future.

And so I say that is the interesting story and the valuable story

which history has to tell us in the study and application of law. And so I venture to suggest that a diligent and attentive reading of history as applied to law may still prove to be most profitable.

In my capacity as grandfather of the Law School, I think I might be permitted to utter at least one note of warning. Modern methods and the critical spirit in law school teaching and exposition tends to make us of course unafraid of new ideas, and it should do so. There is no reason why we should be afraid in the teaching and exposition of law of new ideas. Most of the useful things of life at one time or another represented some new thought. Even those new ideas which are not useful do us no particular harm if we are able to make intelligent use of them.

And so I think the thing to be afraid of, to give us concern in legal education, is not new ideas, but whether we are properly equipped in legal education to make good use of them. No useful reform, no wise reform, has ever been brought about except by a careful study of the institution to be reformed, and that is peculiarly true of the law. Whatever new ideas are made use of for the improvement of the law must be brought into relationship with the law itself.

And so I say to those who are engaged in teaching the law, in studying it, in criticizing it, reform the law as much as you like or as much as you can but whatever you hope to accomplish, your actual accomplishment will fall far short of what you hope; it will probably fall short of what actually ought to be done, but my word of warning is this, that whatever you do in the way of reform, let it be founded upon a profound and sympathetic knowledge of the common law and of the English equity system. Let your foundation rest upon that and then build as noble a structure as you will.

There are undoubtedly in this room many who will be present at the celebration of the 50th Anniversary of the *Columbia Law Review*. It is perhaps not too much to expect that in the next 25 years you will see changes more interesting and more significant than those which we have witnessed in the last 25. Certainly, if you build wisely on the foundation which has been laid in the last 25 years, you may hope to see more progress in the world than has been witnessed in the last 100 years. I hope that I may be present on that occasion. (Applause). If I am alive, and I am summoned, I shall come. (Applause).

At the present moment my thought is that I shall probably not deliver any speech unless at least I have time to reduce it to written form, but at any rate I hope that I shall be there, and that I shall greet as many of you as it is humanly possible to expect to greet on that occasion. (Applause).

THE TOASTMASTER: Mr. Justice Stone has given us exactly what we hoped he would give us, reminiscence and talk from the heart, a description of the problems of the *Law Review* during the past two decades, and if Mr. Justice Stone does as well as his honorable and revered father who lived to a good old age in Amherst, Massachusetts, he will be here at the 50th Anniversary of the founding of the *Law Review*. (Applause).

Gentlemen, it is good of our President to come here tonight. He has had a long busy day filled with imperative engagements entered into long before this dinner was scheduled. We, the Law School, form only one province of the numerous provinces that make up the broad empire of Columbia University over which he presides. We, the Law Association, have always been his loyal and devoted followers for we love his creative imagination and his vision.

As we lawyers struggle against the flood of decisions and statutes which threaten to overwhelm us, we are content if we can dimly perceive the law of the present. We seldom have strength or eyesight to look into the future. As we compare the Columbia University of today with the Columbia of 25 years ago, and as we contemplate the plans for the Columbia University of 25 years hence, we appreciate that our wonderful President has lived his life in the future, always building ahead for the coming generations of Columbia's men.

The President of the University. (Applause).

PRESIDENT NICHOLAS MURRAY BUTLER: Mr. Chairman, your Honors, and Gentlemen: I have come in somewhat rapid succession from a very important meeting of the trustees of Columbia University, and from the annual meeting of the Lotus Club, and this gathering impresses me as a trifle solemn. (Laughter). I assume that these Judges who are your guests, would not feel at home without the presence of a defendant, and that I am produced in that capacity.

May I say that I am able technically to qualify, as I think I am the only person present, certainly the only one at this table, who has ever had the honor of being indicted by a Grand Jury in the County of New York. (Laughter).

A good many years ago I amiably referred to a public officer as a fine, old educational mastodon (Laughter) and he, not being familiar with the American Museum of Natural History, thought that was a reflection upon his character. Contumely and shame were brought upon him and he was made miserable in the sight of all men to the extent that thirteen members of a Grand Jury thought so too. (Laughter).

I have always been greatly pleased at that indictment. In fact, I

was so much pleased with it that I had it printed and circulated among my friends in several parts of the country. It is the most wonderful combination of literature and law that ever came to my notice. Unfortunately, my counsel insisted upon demurring to it. I could not see how anybody could demur to anything so good. (Laughter). It was really such a work of art, that to demur to it seemed to me to be almost sacrilege, but demur he did. And therefore I never had the pleasure of going on the stand as I wished to do.

The role of a defendant is no longer necessarily difficult. In the first place, if he be defended in a criminal process he has the entire sympathy of the public. His lightest word is appreciated with the eloquence of Demosthenes or Webster, and any casual act is heralded from ocean to ocean in the public press.

On this particular occasion, I should be very glad to be upon the witness stand for my function would be to defend the law school as it exists, as it works, and as it plans, and I think I should be able to convince the average jury that there was no reason for concern on their part.

First let me say a word about the Dean. I have a telegram from him today, a very personal telegram, assuring me that the doubts as to the particular trouble from which he is suffering, which existed here in New York, have been resolved, that the outlook is favorable, and that we may hope to have him back in between 3 or 4 weeks. (Applause).

I sincerely trust that that is true, for he is a most valuable Dean, and a tower of strength to the entire University. His broad and deep scholarship, his fine and ripe culture, and his zealous devotion to the Law School and the University and everything that concerns it, are an example and an inspiration.

Then, Dean Stone—I have not gotten used to calling him Justice Stone—and Dean Jervy together, have built up what I venture to think is a most remarkable body of teachers and scholars in the law. Fortunately, they are young and the next twenty years or thirty years perhaps, will be the period in which their best work will be done, their reputations securely made and the Law School adds to its reputation through them and by them and because of them.

They are eagerly developing scholarly research in every phase of the law, and the time is not far distant when instead of a small handful, there will be under their jurisdiction several dozens, perhaps, well-trained and eager investigators and advanced students of the law, its history, its philosophy, its comparative aspects, producing a literature

that will be an ornament to the publications in that field in our language.

The example notably and splendidly set by Maitland is contagious and here and there throughout England and this country there are young and eager students of the law who have caught something of Maitland's zeal and fire, and who are trying to do each in his way some bit of the work which he pointed to as so important, so full of information, and in the large sense of the word, so practical.

It has always seemed to me—referring to a remark which Justice Stone made just now about history—it has always seemed to me a great misfortune for any generation of men, most of all any generation of academic students, to grow up without the aegis and inspiration of a great tradition.

There comes to me a sentence so beautiful in the French that I hesitate almost to put it into English, a sentence of Renan, who said somewhere that the true leader of progress was he whose point of departure was a profound respect for the experience of the past.

We have at the moment a series of traditions and sentiments and legends that must have their effect upon the mind and the spirit of the growing generation of the students of the law. They do their professional work and study in a building which carries the name of the great Chancellor Kent. After this summer, they are going to occupy as their hall of residence, a building which bears the name of Chancellor Livingston, and they are going to have their social life and their meals in a building which bears the name of the first Chief Justice, John Jay.

What must it mean, what may it mean to a young American of the 20th Century to live in association with the names of Kent and Livingston and Jay? To ask himself who they are, what they did, for what their names stand, and then to get from these younger and eager teachers that knowledge and that training which will carry them out into their chosen profession with every conceivable armament for vigorous and effective use.

It interests me to hear lawyers talk about legal education, and it interests me to hear doctors talk about medical education, and it interests me to hear engineers talk about engineering education. They would all save a great deal of time if they talked with each other about their common problem. Nothing is more striking than the way in which precisely the same educational and administrative problem turns up in law that turned up a little while ago in medicine, that turned up a little while ago in engineering, and that is going to turn up a little while hence in medicine again, and go the cycle.

The great problems of professional education are common to all

the organized professions, and they are very interesting to us, and it seems sometimes they are wasteful, that they do not learn more from each other's experience.

I have seen a medical faculty start with the utmost zeal and confidence and conviction, with their feet on the lower rung of a ladder that led absolutely nowhere, and which their engineering colleagues could have told them by experience ended in a vacuum, but academic bodies, like children, have to learn each by its own experience, that fire is hot. They may be told about it, they may read about it, but they do not believe fire is hot to them until it burns their own fingers. We keep going around in these circles and cycles year after year because the lawyer thinks his problem is peculiar to him, but it is not; the physician thinks his is peculiar to him, but it is not; and the engineer thinks it is peculiar to him, but it is not.

There are two of these problems of which I will say just a word because they are perpetual in their recurrence and they are common to them all. The first is the tendency of all professional schools and professional teachers to try to make their pupils masters of an elaborate technique which changes, rather than masters of a group of principles which control the technique and adapt the technique to their current need. That has happened time and time and time again.

An engineer will be trained in a certain metallurgical process. He will go out to a smelter in Colorado or Arizona or Montana, and he will there be told that that process has not been used in five years, and unless he has a hold on the principles that underlie those techniques, he is not able to make a new technique for himself. In other words, unless you are very careful, the laboratory is out yonder where the profession is being practiced, and it may be there that the new technique, the new process, is being developed, and you can not possibly teach it all to everybody, but you can give him the knowledge of that great fundamental body of principles which constitute the foundation of a profession, and which enables the possessor of that knowledge to create his own technique at demand.

The other point is this, and this is a growing tendency of today, to try to make every graduate of a professional school the equal in detailed knowledge of his father with an experience of forty years at the Bar, in the hospital, or at the mine. It can not be done. Practical experience, the ripened judgment, the wisdom which grows out of knowledge, all those things take time, but the professional school of today is nine times out of ten anxious and uncertain unless it feels that the boy who goes out knows everything that there is to know. He must not only know

something about law, but all about law; he must not only know something about medicine, but all about medicine; he must not only know something about engineering, but all about engineering; and it can not be done.

The problem of professional education is a perfectly distinct and easily recognizable problem. It has its own changing content as the years pass, but its form remains pretty much the same. My memory of Columbia goes back pretty much over the whole history of the period when the Law School has been in a state of growth and development.

I remember very well when as a boy, Professor Burgess came there with his theories of public law, and when Professor Mayo Smith came there with his theories of economics, and they urged and taught that law students should be grounded in the principles of public law, that they should know something of economics, and I very well remember that one of the discussions 35 years ago at President Lowe's house, when we were laying the foundation of Columbia University, and Professor Dwight speaking for the Law School said, that to attempt to introduce public law and economics into the studies of the law student, would be to plant a upas tree in the very center of the University, and Professor Goodnow, now President of John Hopkins University, who showed a lamentable lack of acquaintance with the old testament, leaned over and said "What the deuce is a upas tree?" (Laughter).

From that day to this the problem has been not only to give to these young men a knowledge of the principles and major divisions of the law today, but to give them that framework, that background of the principles of rules and laws which are governing society and which are controlling conduct, which are making nations, which are bringing about wars, which are developing peace and institutions for peace—that great series of phenomena that you may call, if you please, public law, from another point of view, economics, from another point of view, sociology, all of which is part today of the necessary mental furniture of the man who would attempt wisely to guide the legislation of his fellows, or to construe it and pass upon it in terms of final decision and application.

These are great and splendid and inviting topics. The mind plays with them with pleasure and it seizes the opportunity to examine them, to apply them, to develop them, and out of all that comes the history and development of the law school and of the university.

And this *Law Review*, which has gone through its quarter century, has been a very interesting and a very helpful change in this entire process. The years pass very fast. I well remember when Professor Keener came and talked to me about this proposition. He said "What I am

afraid of is that there will not be material support for it; there will not be money; there will not be subscribers, and then if it should fall below the high standard, think of how humiliated we would all be; or if we would have to give it up, if it failed," but the history—and the admirable articles by Mr. Woolsey and Mr. Glenn—the history of it all is one of the most heartening and cheering episodes of the last quarter century in the history of the Law School and the history of the University.

A law school or a medical school or a school of engineering, which is part of a great humane institution known as a university, starts with an immense advantage over any similar professional school which is isolated and apart. It begins with the assistance of a great series of supporting intellectual buttresses—the languages, the sciences, history, in all its parts and phases, every one of a thousand human interests. They are all there. There are the contacts, the suggestions, the helpfulness, the personal relations of men, the intermingling of teachers, and the talk, the breaking down of the narrow borders of avocation and the stepping out into the bright wide vista of a really learned profession.

It is a splendid thing to have an opportunity to study a learned profession, with a great history, a splendid place, and an almost immeasurable future under the guidance of eager, learned and devoted scholars, and under auspices where good will, kindness and encouragement are to be found on every side. That is why, gentlemen, this is but the first of very many celebrations of 25-year periods. (Applause).

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