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ADDRESS

DELIVERED BEFORE

THE LAW CLASS

OF THE

University of Maryland

AT THE

Annual Commencement of the Law Department



BY HON. W. PORCHER MILES,

OF VIRGINIA.

PRINTED FOR THE

LAW FACULTY AND THE GRADUATES,
BY GUGGENHEIMER & WEIL, STATIONERS & PRINTERS,
BALTIMORE.

1875.

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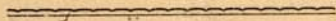
AT THE

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JUNE 1st, 1875,

BY HON. W. PORCHER MILES,

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UNIVERSITY OF MARYLAND.

S. TEACKLE WALLIS, L. L. D., PROVOST.

LAW DEPARTMENT.

Board of Instruction.

HON. JOHN A. INGLIS, LL.D.

JOHN P. POE, Esq.

RICHARD M. VENABLE, Esq.

GRADUATES OF 1875.

BEVANS, EDGAR S.....	BALTIMORE.
CAREY, JAMES JR.....	BALTIMORE COUNTY.
DYER, H. PAGE.....	BALTIMORE.
GORDON, RANDOLPH H.....	BALTIMORE.
HACK, A. RIEMAN.....	BALTIMORE.
HARMAN, SAMUEL J.....	BALTIMORE.
KEYES, LAURIE D.....	BALTIMORE.
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McHENRY, JAMES A.....	CUMBERLAND, MD.
PITTS, JOHN GLENN.....	BALTIMORE.
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WHELAN, THOMAS A.....	BALTIMORE.
WINTER, HARRY.....	HOWARD COUNTY.
WHITELOCK, GEORGE.....	BALTIMORE COUNTY.

ADDRESS.

While profoundly appreciating, Gentlemen, the honor which has been done me in inviting me to address you on the present occasion, it is with no affectation of diffidence that I approach the task. Not only may I fail to meet the expectations of the distinguished Faculty who have selected me, fail to present anything likely to instruct or edify you who have just enjoyed their faithful teaching, but there is a further consideration that may well fill me with nervous apprehension. Not only have I never been a practitioner at the Bar, though for a time a somewhat diligent student of Law, but I follow, in this my first essay before a legal audience, some of the most distinguished members of your profession. I cannot forget that I succeed in my present position such men as Reverdy Johnson, Teackle Wallis, and Pinkney Whyte, men of the highest eminence at the Bar and in the Senate, conspicuous for learning, for scholarship and literary culture.

But to follow such men is honor enough; to compete with them would be presumptuous; to rival them would be hopeless.

A mere layman, how can I offer you advice or instruction for the prosecution of your career? Under the guidance of experienced lawyers, and able Judges, you have doubtless familiarized yourselves with the works of the standard legal writers; and it is fair to presume that the most illy prepared among you knows more law than I ever knew.

In this dilemma it seems to me better, in commenting upon the duties and responsibilities of the Advocate, to fortify what I may say by the highest authorities of the profession; and I shall not hesitate therefore to quote them freely. My duty is to present something which may benefit *you*, not to display or present *myself*. And feebly and imperfectly as I may discharge my task it may at least interest you more than if I were to attempt—and probably fail in the attempt—to elaborate something profound and philosophical on the eternal, underlying principles of jurisprudence, or the causal origin or ultimate idea of all Law.

There has always been a certain popular prejudice against the Legal profession. We are all familiar with stereotyped jokes and sneers at the "unscrupulousness of lawyers," and their readiness, "for a consideration"—to make the worse appear the better reason. They cannot all be summed up stronger than in the diatribe of Swift where he makes Gulliver give the Houyhnhmn an account of the English science of Law. "There is" says he a society of men among us, bred up "from their youth in the art of proving, by words multiplied for the purpose, that white is black and black is white, according as they are paid. For example if my neighbor has a mind to my cow, he hires a lawyer to prove that he ought to have my cow from me, I must then hire another to defend my right, it being against all rules of law that any man should be allowed to speak for himself. Now in this case I, who am the right owner, lie under two great disadvantages; first, my lawyer, being practiced almost from his cradle in defending falsehood, is quite out of his element when he would be an advocate for justice, which is an unnatural office he always attempts with great awkwardness if not with ill-will. The second disadvantage is, that my lawyer must proceed with great caution, or else he will be reprimanded by the Judges, and abhorred by his brethren as one who would lessen the practice of the law. It is a maxim among these lawyers that whatever has been done before may be done again; and therefore they take special care to record all the decisions formerly made against common justice and the general reason of mankind. These under the name of precedents, they produce as authorities to justify the most iniquitous opinions; and the Judges never fail of directing accordingly. In pleading they studiously avoid entering into the merits of the cause; but are loud, violent and tedious in dwelling upon all the circumstances that are not to the purpose. For instance in the case already mentioned; they never desire to know what claim or title my adversary has to my cow; but whether the said cow were red or black; whether the said cow's legs were long or short; whether the field I graze the said cow in be round or square; whether the said cow was milked at home or abroad; what diseases the said cow was subject to, if any, and the like; after which they consult "precedents," adjourn the cause from time to time, and in ten, twenty or thirty years come to an issue."

Now this is certainly amusing and witty, "admirable fooling." But it comes with an ill-grace, we cannot but remark, in passing, from him of whom it was frequently said,

"He might a Bishop be in time,
Did he believe in God—"

from him on whom even the infamous Duke of Wharton remarked, "O my Lord! we must not prefer or countenance these fellows;—we have not character enough *ourselves*:" from the lover of Vanessa and the husband of poor Stella! But whatever shafts malignity or flippancy have hurled against the profession of the Law, it stands, and must ever stand, in the impartial judgment of History one of the noblest monuments of human genius, one of the grandest bulwarks of Constitutional Liberty, the great safe guard of life and property, the defender of social morals and purity, the champion of innocence and succor of the oppressed.

Compare Swift's caricature with the eulogy of D'Agnesseau—"the Great Chancellor." "An order as ancient as the Magistracy, as noble as Virtue, as necessary as Justice!" and his eloquent address to the Bar. "Never pride yourselves on the miserable honour of having thrown obscurity over Truth, and more sensitive to the interests of Justice than the desire of vain reputation, seek rather to make the goodness of your cause, than the greatness of your genius appear. Let the zeal which you bring to the defence of your clients be incapable of making you the ministers of their passions, or the organs of their secret malignity."

"The true advocate" says Quintillian "will never throw open the harbour of his eloquence as a port of refuge to pirates!"

But it is not necessary for me to vindicate your profession, Gentlemen, from the aspersions of ignorance or malice, either by the citation of great authorities, or by any feeble defence that I could offer. A calling may well afford to despise all attempts to traduce it, which can boast in ancient times of Isocrates and Demosthenes,—of Cicero and Hortensius;—in more modern times of De Thou and Pasquier and D'Agnesseau, in the palmy period of the French Bar;—in England of men like Sir Matthew Hale and Somers and Hardwick and Mansfield and Erskine;—in America of Marshall and Pinkney and Story and Kent and Taney;—and which is adorned in our own day by a Charles O'Connor—a William Evarts and a Reverdy Johnson

It would indeed be in vain for the most enthusiastic champion of the profession to deny its many imperfections and frequent failures to attain its very end and object, perfect justice. Nor can we shut our eyes to the fact that it has many ignorant, incompetent and unworthy members. But it only shares in these regards the fortune of the other professions. If law does not always secure or obtain for us that to which we are justly entitled;—sometimes fails to protect the right and to punish the wrong; even sometimes fails to save the innocent life,

we must remember, that its sister profession Medicine quite as often fails in its beneficent purposes. Practiced by the most skillful hands, it cannot always cure disease or save the life of the patient. Before some diseases indeed it stands confessedly powerless. And so we have flippant jests and sneers about the Physician, as "the Sexton's Adjutant" &c. And Johnson described Medicine as "the art of prescribing drugs, of which we know little, for diseases of which we know less."

Nor does the other of the learned professions always succeed in attaining its infinitely higher objects. Sin still riots rampant in the world. The glorious Gospel still wages a half baffled fight; and the ablest Divines do not always succeed in rehabilitating the wavering faith, upset or shaken by "the potency and promise", of Professor Tyndale's matter.

So too, as to the personal character of members of the three great professions, we must admit that in all of them may be found, those whose practice brings opprobrium upon their callings in the popular estimation. If we see petty-foggers and rogues at the Bar, we see empirics and charlatans in Medicine and hypocrites and libertines among the Clergy. But such men do not really reflect their own disgrace upon their professions— They only intensify it by the contrast which their disreputable practices make with the just requirements of their noble callings.

And with regard to the inherent defects and imperfections of your profession, Gentlemen,—such as are inseparable from all human works—you must ever bear in mind that Law, like other Sciences, if it yet can with us be called a Science, is progressive, and it is to be made to approximate nearer and nearer to perfection by the genius and labours of its followers, and by the love and pursuit of truth and justice by all of its practitioners.

One matter is a good deal dwelt upon at present, as defective in our administration of justice. The Jury system frequently brings about absurd and unjust results. And it does seem preposterous that a single pig-headed ignoramus or corrupt knave on a jury may defeat the right however clearly demonstrated by evidence and argument. And some ardent reformers would even abolish it, and leave all matters, whether of fact or law, to the decision of the Judges. Yet we may well pause before departing from "the wisdom of our ancestors," in this, as in many other matters. Without entering upon the discussion of so large a theme, let me ask you to remember that the two greatest nations of antiquity had a somewhat similar system. The

Dicasts of Athens were Jurymen—though exercising the functions of judges as well;—and so were the Judices selected by the Praetors at Rome, from the Centumviri, for the trial of almost all causes. Whatever be the defects of the system which we have inherited from our English forefathers, they certainly are less than those inherent in the Greek and Roman systems. Better our plan of separating the functions of Judge and Jury than theirs of making every jurymen a judge. Think of a panel of five hundred, sometimes a thousand or more, Dicasts, deciding absolutely and without appeal every question of law or fact! And at Rome the Judices were seldom fewer than sixty or seventy. Such large bodies for the calm investigation of either law or facts are out of the question. For such purpose they are practically mobs. And “a mob” says Burke “has no heart.” The result of a trial upon a great arraignment at Athens was as uncertain as a popular election, and indeed partook of the nature of one, with all its attendant flattery, cajolery and bribery. Many and memorable and sad are the instances recorded in the history of that exquisitely cultivated and refined but “unbridled Democracy.” And at Rome, if their system was less productive of glaring injustice (though of this we have instances enough), it was because they were a more self-contained and conservative people, and a people born to rule and to make and enforce law.

Yet these were great and highly civilized nations; one with the most penetrating subtlety and at the same time profundity of thought that the world has ever seen, and the other with a practical sagacity and common sense, and a genius for legislation that has commanded the admiration of all ages. The defects in their legal systems may therefore somewhat reconcile us to the defects of our own. With all its failures indeed we must still regard trial by Jury, as it exists in England and this country, as the best system that has yet been devised to meet the various exigences incidental to the administration of laws among a free people. Nor must we forget how often it has proved itself, as in the celebrated trial of the seven Bishops in James the Seconds’ time, the jealous guardian of Constitutional freedom, and an impassable barrier to arbitrary power.

But I repeat, the most ardent admirer of the Law will not deny its many imperfections, or attempt to palliate its blunders and short comings.

“Hard fate of Law,” says Dalrymple in his charming treatise on Feudal Tenures, “in which, from a continual fluctuation of circumstances, the best laws are but remedies to bad ones; and all that

posterity can hope for, is, to amend their forefathers defects and doing so, to leave defects for those who come after them to amend!"

Perhaps for all the Law's tedious slowness and cost and uncertainty, we ought to derive some consolation from the reflection of Montesquieu that the trouble, expense, delays and even dangers of judiciary proceeding are the price which every subject pays for his liberty.

Of course the first duty, which you owe to your profession and the community, is thorough study and preparation for your pursuit. And upon this point any suggestion from me might seem not only presumptuous but superfluous. We may suppose that you have gone through the usual course of reading from Blackstone, "that good, gentleman's law book clear, but not deep" as Horne Tooke calls it; and Fearn, as clear as he is deep, and though not of great practical value with us, yet from his compact logic and lucid style, an admirable exercise in legal reasoning; to Grotius, a work, says Sir James McIntosh "which we now indeed justly deem imperfect, but which is, perhaps, the most complete that the world has owed, at so early a stage of any science, to the genius and learning of one man." And all your reading has been supplemented by the oral instruction of a Corps of Professors unsurpassed by that of any Law School in the country.

I will venture however to express the regret that more attention is not paid to the study of the Civil Law in our preparation for the Bar. The beautiful panegyric of D'Agnesseau deserves to be quoted. "The work of that people, whom heaven seems to have formed to govern men, everything in it breathes that high wisdom, that deep sense, and, to sum up all in one word, the gift of that spirit of legislation which was the peculiar and distinguishing characteristic of the masters of the world. As if the mighty destinies of Rome were not yet fulfilled, she reigns throughout the whole earth by her reason, after having ceased to reign by her authority. Laws of a jurisdiction not less extensive than durable, all nations, even now, refer to them, as to an oracle, and receive from them responses of eternal truth. It is for them but small praise to have interpreted the XII Tables or the Edicts of the Praetors; they are the surest interpreters, even of *our* laws; they lend, so to express it, their wisdom to our usages, their reason to our customs, and, by the principles which they furnish us, they serve as a guide, even when we walk in ways that were unknown to them."

And we should remember that, though the Civil Law is so generally ignored by English and American lawyers, both Mansfield and Story drank freely from its deep fountains of Reason and Philosophy. But I hasten to leave ground upon which it hardly becomes me to tread.

We will suppose you then thoroughly trained and disciplined for the professional warfare you are to wage, your weapons sharpened and burnished for the conflict, your armory well supplied with all the fixed ammunition of forms and precedents and cases. Let us now consider briefly some of the duties which your position as practitioners at the Bar, devolves upon you. I am not sure but that I ought to inculcate as a duty, that meets you on the very threshold, *patience*. Long may you have to wait before an opportunity is afforded you of shivering a lance or locking shields or fleshing your maiden sword—or, in more prosaic language, making your first, great (of course,) maiden argument. And your hearts may often grow sick with hope deferred. But strive to possess your souls in patience, remembering how the greatest members of your profession have gone through the same trying ordeal before you. Let the ultimate triumph that they have achieved give you fortitude to endure what they too have endured “When I was called to the bar” said Lord Elden—“Bessie and I “thought all our troubles were over, business was to pour in, and we “were to be rich almost immediately. So I made a bargain with her that “during the following year all the money I should receive in the first “eleven months should be mine, and whatever I should get in the twelfth “month should be hers. That was our agreement and how do you think “it turned out? In the twelfth month I received half a guinea. “Eighteen pence went for charity” [make a note of that] “and Bessie “got nine shillings. In the other eleven months I got one shilling.” In a very few years he was making from \$40,000 to \$60,000 per annum.

Above all never permit your eager, and natural desire to get practice to betray you in resorting to any unworthy arts. The true professional man will not thrust himself before the public and solicit custom like a hackney coachman. In this age of clap-trap and charlatanry and self-advertizing, even many good people will tell you, that you “must bring yourself forward;”—that the world is too busy to notice you unless you “put yourself in its way” &c. But rest assured that in the long run, the able lawyer like the skillful physician, will attain the coveted goal of reputation and success. The empty, and noisy, and self-asserting, may sometimes *seem* to reach it at a bound. But let not their ephemeral triumph stir up your envy against them nor your bitterness against a world that can be so easily humbugged. They will all, with a few exceptional cases, only enough to prove the rule, soon vanish like mist. They are but “shoddy” material, their reputation will not stand washing or wear; they soon fade and grow

threadbare. They are, to vary the metaphor, like weeds that spring up rapidly, flourish rankly for a little while, and then wither and die as quickly as they rose. While true reputation, based upon real merit, is, like the oak, a plant of slow growth; but, when once rooted in the soil, the puffs of envy can scarcely disturb its foliage, and even the storms of malice and detraction struggle with its massive trunk in vain.

The first and most important duty of the lawyer to his client, is to tell him the truth in his case, as he believes it, and to give him true advice. The good lawyer, like the good man, ought to desire, not to stir up, but to compose strife. Yet this is very far from the popular notion. A lawyer is thought to make his living by the quarrels of men. This to a certain extent is true, and will so continue as long as the profession lasts and human nature remains unchanged. But it by no means follows that the lawyer should instigate or fan such quarrels. "It needs must be that offences come." The conflicting interests and passions of men create the necessity for laws in a great measure; and the real, or seeming conflict of laws themselves, and the ambiguity arising from the imperfection of language, would alone create the necessity for a profession to study and expound them. We may fairly assume the truth of the axiom, that "there are two sides to every case," as specially applicable to a case at law. But it does not follow that everything that a client desires to have done furnishes a case at all. He may aim at something which the law does not sanction or cannot effect. And for counsel, who *knows* this, to induce his client to incur the expense, and vexation, and ultimate discomfiture, of litigation, is a gross violation of moral as well as of professional duty. The client usually confides in the opinion of his lawyer almost as implicitly as the patient does in that of his physician. "No man," says Pepper Arden, (afterward Lord Alvanley,) "would be such a—fool as to go to a lawyer for advice who knows how to get on without it."

But suppose that a fair legal case is presented by the client, but one in which counsel entertains the conviction that the law is against him and with the other side. What does his duty here require? Is he to defend error and combat the truth? It seems to me there is no difficulty here. Of course, as I have already said he must deal with perfect frankness with his client and not conceal his doubt or his conviction. He must not "give forked counsel, take provoking gold." He must prepare his client for failure; but he may honestly and conscientiously struggle for success. In the first place he cannot be certain that his opinion as to the legal merits of the question (and we are not now considering one in which the morality is concerned) is

true. The counsel on the other side may, possibly, be in the same predicament as himself, and may think otherwise. He may have overlooked or be ignorant of the authorities that would change his conviction or at least transform it into doubt. The decision must rest with the court. That is a judicial function and not the function of the advocate. His duty is plain and his position unembarrassed. He must present all the arguments, produce all the authorities, furnish all the material, favorable to his side and rest there. The Judge may be convinced by arguments not convincing to himself: or, knowing more of the law than himself, as he ought to do, may adduce additional authorities and arguments that may establish his position beyond all doubt.

So in defending a criminal arraigned for an offence of which his counsel may believe him to be guilty, there ought to be no stumbling block in the way of the most sensitive conscience. As to his counsel's individual opinion of his guilt, the views just presented will apply with additional force. For the evidence of guilt may fail to convince the jury who are the sole constitutional tribunal to condemn or acquit; and in the sifting of that evidence on the trial, the counsel himself may be led to change his opinion. And even should he remain convinced of the guilt of him whom he defends, he may yet honestly rejoice in his escape, knowing the fallibility of his own judgment, of all human reason; and the probability that twelve men are more likely to come to a correct conclusion on a question of fact than one man. But suppose he *knows*, as from the confession of the party himself, the guilt of his client, can he conscientiously appear for him and strive for his acquittal? This to the popular mind often seems a nice question of casuistry. But no true lawyer ought to hesitate, as a question of professional duty, to undertake the defence, especially in a case involving life. Is it not right that the accused should be tried and convicted according to law? The interest of society demand it. What may be hastily and illegally accomplished in a clear case, may be drawn into precedent in a doubtful one. Something may be done in the conviction of a guilty wretch that may hereafter hang an innocent victim. Who will find fault with the beneficent maxim that it is better than ten guilty should go free than that one innocent should suffer?

"From the moment," says Erskine, that any advocate can be permitted to say, that he *will* or will *not* stand between the crown and the subject arraigned in the court where he daily sits to practice, from that moment the liberties of England are at an end. If the advocate refuses to defend, from what *he may think* of the charge, or of the

defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favor the benevolent principle of English law makes all presumptions, and commands the very judge to be his counsel."

Indeed the cases will be very rare, in the ordinary run of professional practice, in which an honorable lawyer may not appear on either side. But whether, in his private judgment, on the right side or the wrong, no high toned advocate will resort to dishonourable expedients, or unprofessional practices, or distort the truth or affirm a conviction that he does not feel. This may be frequently difficult, but the career of many of the purest members of the profession has shown that it is not impossible. Sir Matthew Hale says "I never thought my profession should either necessitate a man to use his eloquence, by extenuation or aggravation, to make anything worse or better than it deserves, or could justify a man in it to prostitute my elocution or rhetoric in such a way I ever held to be most basely mercenary, and that it was below the worth of a man, much more of a christian, to do so." And a high living authority, Lord Langdale, Master of the Rolls, declares "No counsel supposes himself to be the mere advocate or agent of his client, to gain a victory, if he can, on a particular occasion. The zeal and the arguments of every counsel, knowing what is due to himself and his honourable profession, are qualified not only by considerations affecting his own character as a man of honour, experience and learning, but also by considerations affecting the general interests of justice."

No true Advocate, Gentlemen, will ever make himself the mere mouth-piece and hireling of another or forget that if there are duties which he owes to his clients and to his profession, there are still higher duties which he owes to himself, to Society and to God.

But time would fail me were I to attempt to bring before you even a summary of the high and delicate duties which the various relations of your profession involve. In the drawing of wills, the adjustment of matters of property, the settlement of estates, necessitating frequently the most delicate fiduciary relations, the trusted legal adviser occupies a position of confidence not unlike that of the family physician. Grave secrets are often entrusted to his keeping, and his good judgement, discretion and perfect honour are not unfrequently of as much consequence to the interests of his client as his legal learning and professional ability.

As I have inculcated patience, however, in the beginning, as one of the minor duties or virtues, I will venture to commend *good temper* as another, through all the trials and ordeals of your career. Not only as a matter of professional courtesy and gentlemanly breeding, due to the Bench, to your brethren of the Bar, to witnesses standing at such a disadvantage before you, but as a matter of good sense and sound expediency. Hear the quaint warning given to the young advocate in the Assizes of Jerusalem ;" "Let him guard against too much anger or emotion, which are apt to cause a man to talk nonsense and take from him his wit and knowledge." And the advice of Lord Bacon ; "Let not the counsel at the Bar chop with the judge, nor wind himself into the handling of the cause anew' after the Judge hath declared his opinion." I must not omit to glance at the valuable training and healthy influences which the profession confers upon individual character. Many are the virtues which the daily experiences of legal practice will teach a nature, wise and noble enough to learn them.

The over ruling of your firmest convictions, by the highest tribunals to which you can appeal, will teach you self-discipline and inculcate humility. It will check over-weening self confidence and show you that truth is many sided and cannot always be grasped in its entirety by any single intellect. Such disappointments moreover are wholesome in purifying and strengthening the moral nature and nourish robustness and manliness of character. So too, the sharp attrition and keen encounters with your adversaries will teach you charity and forbearance ; because finding that they are as often right as you are, you will hesitate to characterize their zeal and earnestness as any more simulated or less real than your own. The friendships of lawyers are among the strongest in the world because of the exceptional opportunities they have of learning each others real qualities and innermost natures. The attachment of Cicero and Hortensius is a beautiful example of the firmest friendship co-existent with the keenest professional rivalry.

One who aims at something higher than mere professional success and emolument at the Bar, will not be content with mastering the purely practical and technical part of his profession. He will familiarize himself not only with the charts and currents by which he must steer his course for a successful voyage, but will explore the sources and springs from which those currents have derived their first impetus and direction. He will endeavour to penetrate to the great underlying principles of all law. He will study its philosophy in the

nature of man ; the genius of different races ; their forms of civilization ; their arts, pursuits and industries. History, Science, Language and Philosophy, the Fine Arts, all will contribute their aid and unfold their inner treasures to the mind that can truly understand and assimilate their teachings. "The science of Jurisprudence," Cicero tells us, "ought to be drawn not from the edicts of the Praetor, as is usual now-a-days, nor from the XII Tables, as was formerly the practice, but out of the very depths of philosophy"—*penitus ex intima philosophia*. The *homo unius libri* may be exact, but must, in our day, be extremely superficial. Savigny and Sir William Jones will teach you how immense and varied erudition may be made to pour a flood of light upon what, without its aid, would be dark and unintelligible. You will gradually learn that law in its ultimate analysis is the application of universal morals to social relations and individual rights in every condition of society at all organized. You will learn to trace the development of society whereby a system of laws is gradually evolved. In a more limited investigation you will see how English Law, of which our own is the direct off-spring, has been formulated out of empirical and institutional elements, which have given us a system of Common and Statute law, not scientifically organized, (yet admitting of a certain logical organization,) which harmonizes the Rights, Duties and Relations of the State, of Corporate bodies and of individuals, embodying them all in a well-balanced whole. Finally you will learn by such studies that the high moral calling of the Advocate is, while respecting traditional decrees and precedents, to aim always at resting back upon, urging upon the Courts, seeking to give prominence to, ultimate, first principles of social morals, and universal equity and striving to have them embodied in the legislation of the country.

If law be, according to Cicero, the recorded morality of a nation, if its function be something more than that of the policeman, to protect life and guard property, if it involves social as well as civic duty, if it be the consecration of good faith and pure morals, if it be the official seal of a people to stamp their public acts and private contracts alike with the impress of the eternal principles of Truth, of Virtue and of Justice, then how grandly do the high duties and responsibilities of the Advocate expand before us ! And in no other country are they as great and important as in our own. In no other country do members of the Legal profession wield so great an influence as they do with us. They constitute the bulk of our public men and shape and form to a larger extent, than any other class of the community, the

principles and policy of Political parties. In our state assemblies and in the halls of Congress they form perhaps the majority of our legislators. How grave then are their responsibilities, how important their duties, as citizens, as members of society, as powerful component elements of the body politic. To the profound lawyer and eloquent advocate, who can realize them in their fullness, what a noble career of usefulness and honour lies open! Look at the condition of this, physically, wonderful and magnificent country. With an area and a fertility of soil, capable of sustaining the united populations of Western Europe, with a still almost limitless wealth of forest, an as yet, unmeasured, wealth of metals and coals, with its unequalled rivers, its unsurpassed harbours, its almost numberless rail roads, canals, facilities of transportation. With a people whose energy, skill, ingenuity, perseverance and daring readiness to grapple with any and all difficulties, are the wonder, the admiration and the envy of the world. What imagination can set bounds to the grandeur of the proportions it may attain among the nations of the earth, its power, dignity and influence abroad, its strength, security and happiness at home, if only it be wisely governed and its inner life be nourished and sustained by wholesome and just and upright laws! But alas! how often must its most ardent well wisher abroad and its most devoted patriot at home, have reason to doubt and tremble for its future! How often must the most sanguine believer in Republican government and Universal Suffrage have misgivings as to the final result of an experiment which we are trying upon a scale so gigantic and under conditions so unprecedented!

With a population more heterogenous in origin than that of any other country, continually and largely recruited by the influx of foreign elements, we have superadded to our difficulties the sudden enfranchisement of an inferior, and, throughout their whole history, servile race. Nor is this all. The inevitable passions and prejudices of recent civil strife enter as large disturbing elements into the politico-social mixture and prevent its settling and clarifying by the law of political and social gravitation. Immensity of boundary necessitates sparsely populated territories. Yet, such is our passion for political organization, that these handfuls of citizens, with political principles often crude and unsafe, soon clamour to be erected into States. (As if a body politic could be created by a sort of Algebraic formula!) And party exigency hastens to place them on the roll with the original thirteen and their legitimate off-spring, the Anglo-Saxon lineage of Hampden and Sydney, the inheritors of Anglo-Saxon traditions, of

Anglo-Saxon ideas of Liberty and Law, and from whose loins sprang the mighty founders and builders of the Republic! Wealth is pursued with an eagerness and absorbing devotion unparalleled in any other age or country. Its accumulation is regarded by vast numbers, if not the majority, as the one great end and object in life, as the chief, if not the sole means, of happiness, distinction and influence: Learning, Science, Art, intellectual culture, if not made palpably and immediately subservient to this end, are by the masses, but slightly respected, if not contemptuously ignored. They are regarded as drops, as dust in the balance, weighed against gold and bonds and stocks and first class mortgages and "collaterals." Were the great Apostle of the Gentiles to proclaim to day from Change, or in the Gold room, or from the portico of the Capital, that "The love of money is the root of all evil," he would be greeted only with inextinguishable laughter or derisive cheers! We have found by the light of a newer Gospel that the love of money is the lever that raises mighty investments; moves gigantic enterprizes; opens wide the portals of social recognition and influence; and wrenches to its purposes the very legislation of the country. This fever in the blood breeds the canker of corruption. It dries up the fresh fountains of charity and kindness and generosity, of mercy, benevolence and often justice itself; withers up or checks and represses the growth of natural love and home affection; and burns on in the veins, with sleepless restlessness, without pause, without cessation, until at last it transforms its victims into mummified personifications of hard, concentrated, desiccated selfishness. And in the bony grasp of these grim mummies their sycophants and flatterers place the sceptre, and on their rigid brows the crown; and prostrate themselves in the dust before them and cry "All Hail! Great and wise and noble, worthy of all honour and reverence, compellers of men and masters of all things!" And were there a modern Midas they would rear altars and temples to his glory and worship him as a God! Is this bitter? Alas! Is it *true*? Without inquiring into the truth of it in its social aspect, look at the notorious corruption which prevails in the highest legislative assemblies. Great Corporations, industries with their immense combined capital, wealthy contractors, "rings", lobbies, forcing through measures for their selfish purposes, or schemes of shameless plunder, by the silent arguments, but unanswerable logic of the "almighty dollar" Then laugh, if you can, at the noble aphorism of St Paul. Do we not see here the contagion creeping from the individual and poisoning the whole body politic? What even do good laws avail when the spirit that inspired them is dead? "*Quid vanae leges sine moribus*

proficiunt?" But what must be the final condition of a nation when its legislation is corrupted at its source?

But this inordinate love of money, this hastening to be rich as to the one supreme goal, this almost awful reverence and bowing down to the "great millionaire" and almost contempt for mere intellect and character in the poor man, (unless he has a profound appreciation of the value of money and knows how to make it, in some degree at least,) with its sapping and humiliating effect upon individual and national life, is only one of the evils that gives the true patriot and moralist concern. Before leaving this topic, however, let me not be misunderstood. I am not so poor a political economist as not to recognize the fact that national wealth is to a great extent the aggregate of individual wealth, not such an abstractionist as not to know that money is power, and am too conservative to wish to divest property of its legitimate weight as an essential element in the body politic. Nor am I insensible to the blessings which great wealth may confer upon society and mankind, in its refining influences, its ability to foster letters and science and art, to ameliorate the condition of the poor, to elevate and sweeten and purify the humble homes of labour and toil, and hand in hand with Religion herself to help spread the light of the Gospel over the world. To these beneficent and glorious uses we have seen it applied in our own country and in our own time by the noble munificence of a Peabody, a Corcoran and a Hopkins. The great charities and institutions, which they have founded with wealth acquired by indomitable energy and industry, will enbalm their memories to the remotest posterity and be to them indeed monuments, *aere perennius*. It is not the accumulation of wealth but the worship of it, and the subserviency to it, which is so enervating and deteriorating. And many a millionaire himself secretly scorns and despises the adulation of his sycophants, and laughs in his sleeves at the delicate cajolery of his flatterers, and inwardly turns up his nose at the sickening incense of his worshippers.

But there is another King besides Mammon, an allied Sovereign often, who rules us with an iron, if not a golden rod. His name is King Caucus. And his lictors are a partisan press who scourge us if we refuse to bend the knee to his behests. His ministers, who "shape the whisper of the throne," and have power to "mould a mighty states decrees," are the party hacks and wire-pullers, the professional politicians, the greedy office holders, who quartered upon the people would dragoon them into submission. In the eyes of all these the recalcitrant member of the party who may kick out of the traces

when the party load becomes too heavy to drag, or when the whip of the unmerciful driver touches the raw, is a rebel who deserves the halter. In their category "loyalty" to party, party allegiance, blind, unhesitating, is the chiefest of human virtues. In carrying out its decrees "he who dallies is a bastard and he who doubts is damned." The cost of disobedience is political death. But thanks to the awakening of an indignant people from too long a lethargy, this usurping Monarch with his army of mercenaries has been recently discomfited in more than one pitched battle. The country is rising in arms as it did at Lexington a hundred years ago, and he and his minions will soon be routed horse, foot and dragoons.

But there are other dangers and difficulties that environ us. And here I am tempted to quote some pregnant reflections, (adhering to the plan I have pursued of not hesitating to give you the benefit of better thoughts than my own,) uttered many years ago by one who was never what we used to call "a States Rights man," nor a Democrat and who indeed hated the Democratic party with a most cordial hatred. I refer to Hugh S. Legare, the learned and eloquent Advocate, the profound as well as elegant scholar, the high-bred and accomplished gentleman. May I not be pardoned a momentary sigh in passing when I recall those brighter days when qualities of intellect and character like his commanded an honor, respect and social influence which all the wealth of Croesus, unsupported by higher claims, could never have purchased, days when Webster and Clay and Calhoun, led their legions in honourable, intellectual warfare, when seats in the Senate were not mere partisan rewards or the prizes of political tricksters, and when the bare suspicion of corrupt influences in that, then august body, would have sent a thrill of horror through the land!

One examining carefully, "will find" says Legare, "that the government has been fundamentally altered by the progress of opinion, that instead of being any longer one of enumerated powers and a circumscribed sphere, as it was beyond all doubt intended to be, it knows absolutely no bounds but the will of a majority of Congress, that instead of confining itself in time of peace to the diplomatic and commercial relations of the country, it is seeking out employment for itself by interfering in the domestic concerns of society, and threatens in the course of a very few years, to control, in the most offensive and despotic manner, all the pursuits, the interest, the opinions, and the conduct of men. He will find that this extraordinary revolution has been brought about, in a good degree, by the Supreme Court of the

United States, which has applied to the Constitution, very innocently, no doubt, and with commanding ability in argument, and thus given authority and currency to, such canons of interpretation, as necessarily lead to these extravagant results. Above all, he will be perfectly satisfied that that high tribunal affords, by its own showing, no barrier whatever against the usurpations of Congress, and that the rights of the weaker part of this Confederacy may, to any extent, be wantonly and tyrannically violated, under colour of law, the most grievous shape of oppression, by men neither interested in its destiny nor subject to its control, without any means of redress being left it, except such as are inconsistent with all idea of order and government. He will confess Congress to be, to all intents and purposes, omnipotent in theory, and that if, in practice, it prefer moderate counsels, and a just and impartial policy, it will be owing not to any check in the constitution, but altogether to the vigilance, the evidence and the firmness of a free people."

Does not this sound as if it might have been written yesterday? But genius has sometimes the insight of the seer and the prophet.

In considering the condition of the country we must observe that there are and ever will be two great parties which control and shape its destinies. Pardon me; I do not mean Republicans and Democrats. This is not the fit occasion for a political speech in any party sense. The parties to which I refer have wider limits. They are what may be termed, in contradistinction, the party of Progression and the party of Conservation. The one is for opening new roads to greatness; the other is for following the old paths. The one is for trying bold experiments; the other is for adhering to safe precedents. The one is eager for movement; the other is anxious for stability.

In their methods of procedure, one is for effecting everything by governmental agencies; the other would leave more to individual effort. The one is for ever formulating new laws; the other believes that the world is governed too much. The one believes in banishing vice and evil, objectively by the statute book; the other has more faith in the subjective influences of morality and religion and the Book of Books.

So two in the spirit, in which they advance upon their subjects, they are still contrasted. The one, (if I may use a military metaphor,) is for charging the defences of error with the light horse of sentiment and enthusiasm; the other for reducing them with the heavy artillery of principle and reason. The tactics of the one is to storm; of the other to advance safely by regular approaches. The cry of one side is '*Perge*;' the motto of the other '*Festina Lente*.' The one often errs from exces-

sive order; the other sometimes fails from undue caution. To one or other of these two classes we all belong. The first is composed of very diverse materials, and numbers in its ranks all sorts and conditions of men, educated and uneducated, though the former are apt to be theorists, specialists and dreamers, men (and women) carried away by every wind of doctrine and every new fangled *ism* as it arises. To this class belong your professed philanthropist, and so called, "philanthropical statesman," of whom in our own day we have had some mischievous examples.

The second class is made up largely of men of learning and culture, scholars, scientific men, professional men of the best standing, of men of practical business capacity, men who cannot be persuaded that two and two make five, who must be moved by arguments addressed to the understanding, not by pictures portrayed to the imagination. To these we may add the bulk, perhaps of men of property and substance, acquired legitimately, either by inheritance or their own industry, rather than by risky speculations, men not unaptly termed solid "men." To this second class, Gentlemen, you naturally belong, and in their ranks you must wage the great life-battle for Justice, for truth and for right.

As private citizens you may accomplish much, for no brave and honest life is ever lived in vain. As members of a profession essential to society you can, by realizing the true nobleness of your calling, make yourself more conspicuous exemplars of some of the highest duties which man owes to man. It may become the part of some of you to help frame the laws as well as to expound them. And then as legislators and statesmen you may have a still wider field of honour and usefulness, of responsibility and duty, opened before you. I cannot therefore think that I have been traveling out of the record in passing in review before you the condition of things as they now exist in our country. The great political leaders with us have, with rare exceptions, been lawyers. They are so now; though few are those, if any, who tower among us like the giants of former days. Who is there, Saul like, head shoulders above his fellows, a King among men? The walls even of the Senate that once echoed the calm reasoning, the ripe wisdom, the convincing logic, the majestic eloquence of dignified statesmen, defending or attacking great schemes of national policy, now too often resound with the strident rattle of the blatant demagogue, urging with passionate fury, schemes of party malevolence and hate. Is this, too, too bitter? Too highly colored? Would that I could think so. Would that you could think so, and regard me as one, to whom the raging

years may accord the privilege of being *laudator temporis acti*. But we all know that it is true. And I have the consolation of thinking that here, even "the great capitalists" and those who exalt money above everything else will agree with me, though they may not have forgiven me for railing at King Plutus, and——agreeing with St. Paul.

Should you be called then to that larger and higher sphere of action, in addition to the exercise of your profession, let the training which you have derived from that profession, both mental and moral, the power it has given you to investigate and discover truth, to sift out and eliminate falsehood, to arrange and combine harmoniously what seems scattered and disconnected, to render clear what seems obscure, to disentangle what is perplexed, to present logically what others would confound in the handling, stand you in stead, and show your fellow-citizens that you can do something more than draw pleas for John Doe and Richard Roe, and argue a point of Law. Show that you can also draw pleas for national Justice and Equity and Honour, and argue them before the great tribunal of your countrymen. You may perform a nobler role than Cicero arraigning Verres before the Senatorial Judges in the name of an oppressed and plundered province. You may defend oppressed and plundered States, reduced to the condition of provinces, before their oppressors themselves, the Senators and Representatives of a common country.

And whatever be the public part you are called to play, let the clear lustre of unimpeached professional honor incline even your opponents to confide in your political integrity. Let the weight of private character go into the scale when your public acts are estimated. If public opinion at the present day be the great lever of the world, individual influence is often the power applied at the handle. The little finger of the pure and upright statesmen is stronger than the loins of mere intriguing diplomatists. The true word bravely spoken by him not unfrequently cuts the knot which their cunning fingers are unable to untie or are striving perhaps to render more knotty. His honest directness often rends the meshes which unscrupulous power thinks it has woven so artful and so strong.

England forcibly illustrates the influence wielded by the personal character of her statesmen. The genius and eloquence of Pitt, his skill and finance, his inflexibility of will and over-mastery in debate, did not do more to give him his undisputed supremacy and long lease of power, than did the conviction his countrymen entertained of the perfect integrity of his character and the purity of his private life.

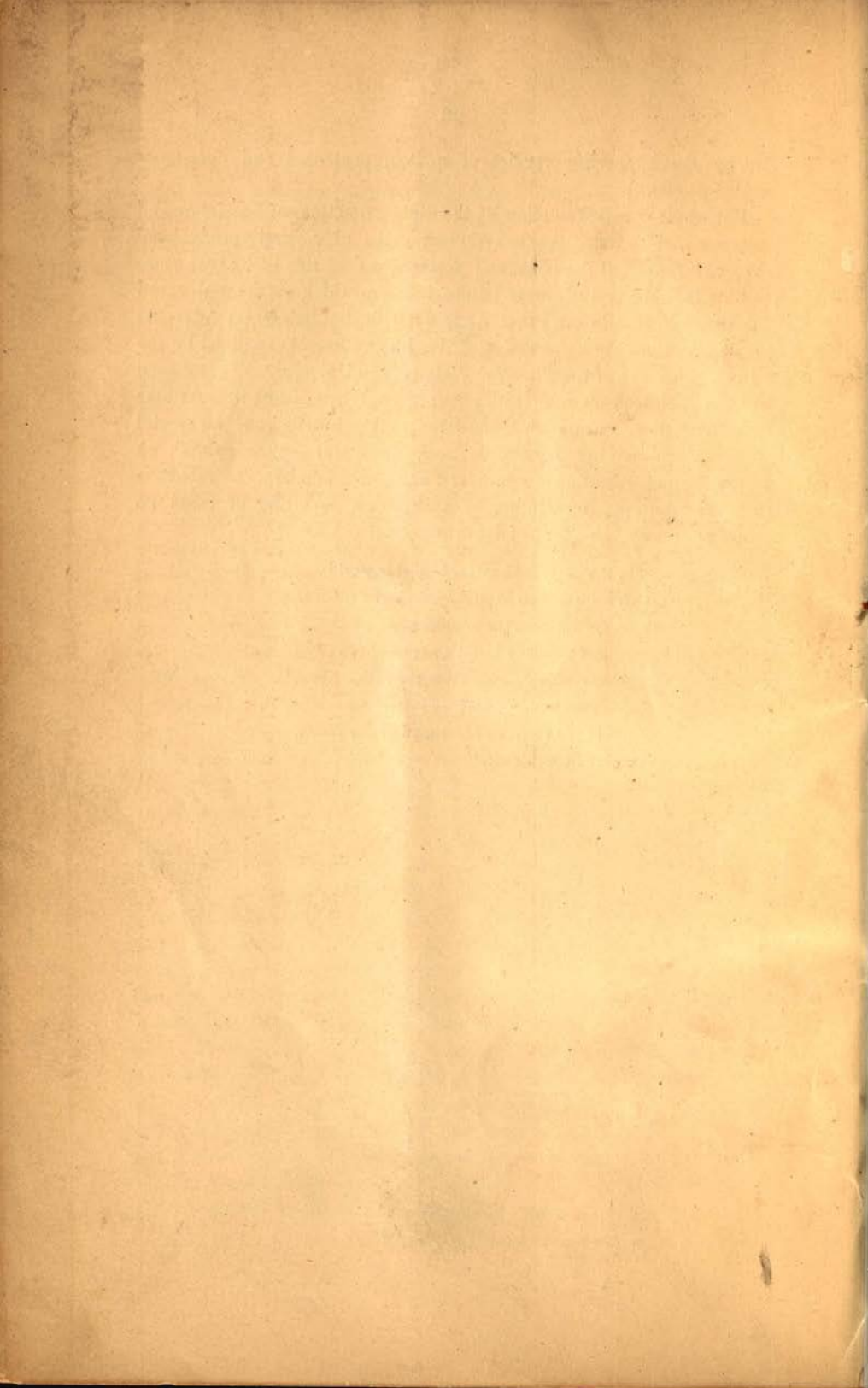
His great rival Fox, his equal often in eloquence and argument, his superior in variety and depth of knowledge, especially of continental policies and affairs, never could have possessed or retained such influence. Look at Sheridan! with a versatility and brilliancy of genius absolutely marvellous, distinguished in letters, versed in men and affairs, ready and able to measure swords in debate with the readiest and the ablest, with a power of statement and reasoning and a copious and splendid eloquence that on the trial of Warren Hastings produced a speech pronounced by the first critics who heard it "the greatest speech since the time of Demosthes," what influence did he exert? What position of power or responsibility could *he* have held?

It would be a trite and stereotyped instance of the immense power of personal character in our own country, were I to dwell upon the oft quoted example of Washington. How even amid the great and good and pure men of that day did he tower above and overshadow them all in elevation of soul, and abnegation of self and absolute loyalty to duty. It would be a delicate, if not an invidious task, to point you to examples in more recent times. And if of late the want of purity and moral elevation in our public men has humiliated us at home and brought discredit upon us abroad, if corruption has stridden through our legislative assemblies with unabashed and almost defiant front, still I have hopes in the love of the great mass of the American people for truth and justice and their respect for personal integrity and genuine worth. If I did not I would despair of the Republic. But the signs of the times are encouraging to every true patriot. The murky horizon is brightening. The baleful clouds are lifting. That great disinfectant, the ballot box, is expelling the noxious elements that have so long tainted the political atmosphere and we begin to breathe a purer air. The attorneys of the people are serving ejectments upon the trespassers who cannot show the clear title deeds of popular approval. In these causes, sooner or later, you may all hold briefs. Your clients will be the true and honest men of all political parties. Your forum the whole country, North and South and East and West. Your Jury will be drawn not from the vicinage but from every section of the Union. And its members cannot be challenged or set aside. The authority upon which you will rely will be the grand Constitution of our fathers, and your precedents the usages of the best days of the Republic. Should your fellow-citizens call you to appear for them in this high court, let all your pleadings be true and just and your arguments free from either sophistry or partisan bitterness. So may your efforts be crowned not only by the cordial "well done" of those whose retainers you hold,

but by the approving verdict of a free, contented and once more united people.

But whether called to exercise the higher functions of legislators and statesmen, or to tread the less thorny paths of a purely professional career, through all the trials and temptations of this life, never cease to bear in mind that ultimate tribunal before which we must all stand arraigned as Men at the Final Assizes ; with but one Great Advocate for us all, when the witnesses will be human hearts examined by the all-searching eye of the Supreme Judge of the Universe. No stubborn lips can then lock up the truth ; no perjured lips distort it. At that dread Bar there will be no demurrers to the jurisdiction, no special pleading, no cunning *suppressio veri*, no artful *suggestio falsi*, no traversing the record, no rejoinders and sur-rejoinders, no rebutters and sur-rebutters, no quoting of authorities, no citing of cases no eloquent oratory, no exhaustive arguments.

“In the corrupted currents of this world
 Offence's gilded hand may shove by justice,
 And oft 'tis seen the wicked prize itself
 Buys out the law : but 'tis not so above ;
 There is no shuffling, there the action lies
 In his true nature ; and we ourselves compell'd,
 Even to the teeth and forehead of our faults,
 To give in evidence.”



UNIVERSITY OF MARYLAND
SCHOOL OF LAW

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June 5th, 1925.

Mrs. Ruth Lee Briscoe, Librarian,
University of Maryland, City.

Dear Mrs. Briscoe:-

I thank you for sending me copy of the address of Hon.

W. Porcher Miles to the Class of '75 of the University of Maryland.