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ADDRESS TO THE GRADUATING LAW STUDENTS OF THE UNIVERSITY OF WISCONSIN, 1873

Gentlemen of the Law School:

I obey your invitation to address you, on the occasion of your taking your degree in the University, and assuming your place in the profession to which society intrusts the administration of its laws. I salute you members of our ancient and honorable body. I welcome you to no tranquil life, no cultured ease. I welcome you to a calling of incessant labor, high duty and grave responsibility. If our profession be, as I believe, the most honorable, it is also the most arduous of all secular professions. Duty is the condition of all dignity.

Law, in its highest sense, is the will of God. None other has inherent authority. All else are derivatives of that. And the will of God is over all things and sufficient for all things. Nothing is so great as to be above, nothing so small as to be below, nothing is so fixed as to be beyond, His universal law. Nature endures no outlaw. In all that we know of nature, animate and inanimate, rational and irrational, all things are appointed to fulfill a law of their creation. In every second of time, since time began, all things in nature have been obeying or disobeying their appointed law. There is no respite of the law; no abeyance of the duty. It is obedience or disobedience, of every creature, in every instant, through all time. From the foundation of the worlds, the senseless matter which composes them has its ceaseless law, and has obeyed it. The natural forces hidden within the spheres, have been incessantly at work, and the spheres have traveled their endless paths, in obedience to the law given to them at their creation. The grass of the field and trees of the forest have sprouted and grown and withered and died, and renewed themselves again and again, to grow and wither and die, according to the law appointed for them in the beginning. The beasts who tenant the earth with man, and the fishes who possess the water under the earth, and the birds who hold the air above the earth, every insect and every reptile, have followed the instincts of their being, each after its kind, in obedience to the law of their

creation. So will it be, through the ages to come, to the end. These know not the law-giver, but obey the law. So man too has done and suffered, lived and died, from generation to generation, according to the law of life appointed for him. But as man has a higher nature, so is a higher law given to him. The mere law of animal life and reproduction suffices the brutes, not man. Man alone, in our nature, is rational. Man alone, therefore, is responsible. To man alone, therefore, has God given a moral law. Matter obeys its law insensibly. The brutes obey their law instinctively. Man's obedience to His moral law is voluntary. Man alone knows God and man alone disobeys His law. Matter and brutes are the slaves of nature, and therefore irresponsible. Man is the subject of nature, and therefore responsible to its law. For man was created with reason and will. And a law was given to him for the guidance of his reason and the government of his will. He, therefore, has the option of obedience or disobedience, at his peril. He was created a free agent, subject to the law, responsible for his freedom. Like all things else in our nature, he too has his duty; but unlike theirs, his duty rests in his will. In him only is obedience reluctant or disobedience alluring. This is an essential of his nature; perhaps an essential of the moral law given to him. It is the condition of his reason; the price of his dignity; the penalty of his freedom. True freedom rests upon intelligence. So liberty alone is responsible, and it is essentially responsible. Liberty, not responsible, would be vicious license, and there is none such in nature. Freedom and accountability are correlative. This is the law of God, in all His works, from the beginning. Man is free, because he is rational; and responsible, because he is free. Voluntary obedience to law is his whole duty on earth.

The brutes have a single nature, purely sensual. But the nature of man is essentially dual; the animal nature of the body, and the reasonable nature of the soul. For reason is the attribute and manifestation of the human soul. Purely animal life is essentially irrational. A higher and truer philosophy, a philosophy graver and more reverential, less flippant and superficial, than is now common amongst us, teaches us that our reason is not an incident of our animal life, but the quality of a life within us, distinct from the life of the body. One philosophy teaches us that we are mere bodies, without

soul; another that we are mere souls without body. Common sense, the sense of all nations, in all time, the universal and unerring instinct of nature, teach us that we have both body and soul. We credit our senses for our body, and we credit our reason for our soul. Philosophy may sometimes bewilder our pride of intellect and sense bewitch our perception of truth; but it is the lesson of all patient and faithful self-observation, that we have a double life, sensual and intellectual; a mortal body and an immortal soul. This pre-supposes creation and Creator; and rescues us from the monstrous superstition, that senseless dust has the power of self-organization into animal life, and animal life the power of self-evolution into rational man. There are passages in all our lives, perhaps, when we are wholly given up to one or other member of our double nature; and for the time, are wholly spiritual or wholly sensual. But such are exceptional; and we are commonly conscious, the higher our culture and the purer our lives—the more we are conscious, of the dual life within us; of our composite nature, in which the animal and intellectual are opposing forces within us, for the mastery of our lives. And this is not two separate natures, but one combined nature; so perfectly combined, that it is not always possible to distinguish the influences of sense and of spirit. Indeed, each affects the other largely. The soul has a tendency to refine and sublime the animal instincts, the sensual passions, with somewhat of its own spiritual tone. And the animal nature has power to imbrute the soul, and dim its intelligence, and blunt its sensibilities, with the glamour of sense. The condition of this dual nature, the influence of intellect upon passion and passion upon intellect, of will upon conscience and conscience upon will, of spirit upon flesh and flesh upon spirit, are active in every hour of our lives; and yet constitute an inscrutable mystery within us, which philosophy cannot penetrate nor metaphysics define. And so, with knowledge of good and evil, with choice of good and evil, the dual nature of man has an innate propensity for both; a conflicting disposition; an organization discordant within itself; and is apt to confound good and evil, not only in his outer life, but even in his inner consciousness. So, human life is often an inconsistency, and human character always a mystery. Free will is never constant; it habitually vacillates between right and wrong.

And the whole race may often cry out, with the sensual Roman,

*Video meliora proboque,
Deteriora sequor.*

And thus it is that man only, in our nature, disobeys the law of his being; that his obedience is never perfect, always uncertain, often reluctant.

Matter is perfect in nature, subject to its own inevitable law of change. Vegetation is perfect in nature, subject to its own law of seed time and harvest. Brutes are perfect in nature, subject to their own law of life and reproduction. Man may indeed evoke latent forces of matter, develop vegetation, educate and modify brutes. But these are their involuntary changes, appertaining to the progress of man. Of themselves, they are complete by nature. Man only is an incomplete creation. Man only is imperfect in nature. He only has power of voluntary change. This is incident to his reason and will. This is essential to his dual life. He may, by disobedience, fall to the lowest condition of his animal nature. He may, by obedience, rise to the highest dignity of his spiritual nature. Of his own free choice he may scale the heaven of good or sink into the hell of evil. He has vast undeveloped faculties. He has capacities of knowledge and power, far beyond his indigenous state. These he may develop or forego to sensual sloth. These he may develop, for good or for evil. He is born for self-culture. That is an essential duty of his nature and his liberty. And not the individual man only; mankind, from generation to generation, has the capacity of progress through all time. For to man only in our nature, are given ancestral memory, inherited experience, and history. A great deal is said of human progress. Men boast of progressive civilization, as if it came of some creative force of man. True progress rests absolutely in man's obedience to the law appointed for him. True civilization is submission to the will of God. It is God's reward for the obedience of man. In the exercise of man's free will, choosing between obedience and disobedience of the law of his being, it is the will of God that his condition between the extremes of his dual nature, between the brute instincts of the body and the spiritual aspirations of the soul, should be the wages of his life, his own voluntary self-accomplishment. His duty, his dignity and his

happiness rest alike on his observance of the law appointed for him. Obedience to law is the sole condition of human good.

Thus constituted, man was not created in society, but he was created for society. He is here for self-discipline, self-culture; for the progressive accomplishment of what is called civilization, by observance of the law of his being. This he cannot do alone. This he can do only in society. Outside of society, there is little self-culture to be achieved by individuals; there is no civilization to be achieved by the race. Man, therefore, was made essentially gregarious and social. In entering into society, man obeyed the law of his being, and made his first step in civilization. And society is not the creature of his will. It is the order of nature. The figment of a social contract; the cant that society came from the intelligence of man, and rests in his will are frightful heresy against nature. The mere will of man was inadequate to found it, is incompetent to dissolve it. It rests in the law of his being. Man indeed organized society, but God ordained it. God made it essential to humanity. God himself instituted the family, and the family is the germ of all society. It is the initial form of society. As man multiplied, kindred families combined and founded septs or clans. As septs multiplied, they combined in turn and founded nations. Families are segregate society. Communities are aggregate society. The state is the outgrowth of the family. The state rests in the necessities of nature. Its authority rests on the law of God.

There is no incompleteness or insufficiency, no *casus omisus*, in the Divine law. It needs no revision, no office of construction. From the beginning, it is always the same, with no variableness neither shadow of turning. It is adequate to all conditions, all changes. It is all sufficient for the government of human society. The problems of society and its troubles, spring not from insufficiency of the law, but from disregard of the law. The law is adequate to all the exigencies of society, all its chances and changes; but obedience to the law is essential to the order of society.

It is not necessary to discuss here the philosophy of man's disobedience or God's sufferance of it; nor to consider the terrible problem of man's reaping to himself, generation after generation, such harvests of suffering and sorrow and shame, from the seed of disobedience of the law appointed for his

welfare. It is an awful mystery, the apparent conflict between the providence of God, and the free will which He has given to man. We know that free man sets the divine law at naught, and substitutes his own devices for the order of God. But we know that the eternal will accomplishes its own ends, in its own way, in its own time. We read God's law visibly written in the history of the world. And we stand in reverential awe before the dread mystery, that, while God suffers man to apostatize from nature, and to rebel against law, His providence evolves its own inevitable order, according to His own inscrutable plan, in the career of the rebellious race. Events may be accidental, but history is no blind chance. There is a law to govern it. It registers the blunders and failures of man, his follies and his crimes; but it also bears witness to the overruling providence of God, directing its course and controlling its destinies, from age to age. Civilization is the work of man; but it is his work according to the law, and under the guidance of God.

From the foundation of human society, its welfare has always waited on the law appointed for it. But, in society, as in nature, man is free to obey or disobey the law of his being. And society itself, but the aggregate of men, is infected with the individual proneness to overlook the law given to it. Indeed society, developing new relations, restraints and duties, new wants, temptations and vices, has a tendency to aggravate the common propensity to disobey. And thus, while the end of man's life cannot be attained out of society, the social condition renders the personal submission of man a greater strain upon his will; and tends to make less certain and more imperfect his observance of the law, on which the end of his being depends. The sins of man, in society, are not merely personal, they are social; and tend, not only to his own injury, but to the disorder of society. The law is sufficient, but the observance of the law is necessary to society. Man's natural election between obedience and disobedience of the law, essential to his personal freedom, is incompatible with the welfare of society. The free will of men would make society anarchy; the anarchy of fraud and wrong; in the words of the Vulgate, describing hell, *ubi nullus ordo, sed sempiternus horror inhabitat*. The law alone will not suffice. There must be power to enforce obedience of the law. It is the providence of God to suffer man to work out his own good or evil, of his own volun-

tary action. God gave the law, but does not administer the law. He never directly compels obedience, and rarely directly punishes disobedience. His rule is general, not particular. History discloses some conception of His rule in the past; but His present rule is hidden in the inscrutable darkness which veils His presence from the eyes of sense. He leaves to man the direct control of human will. He leaves society to find its own order. So society needs more than the law; it needs administration of the law. The law alone will not suffice. Society needs government under the law. God leaves society to self-government. He therefore delegates to society authority, in its own behalf, to enforce obedience to His law, and to punish disobedience. This is the subrogated power of society. This is the authority of the state; the source and scope of all its power, legislative, executive and judicial.

We speak, fluently enough, of the law of nature, but we do not always comprehend it; never fully. Finite reason is incompetent to the full appreciation of infinite intelligence. And sense often dazzles reason, or blinds it to the perception of divine truth. It is the duty of man, in all time, to strive humbly and earnestly for knowledge of God's law. But human study of divine wisdom is always fitful, often vain and sometimes arrogant. Man is prone to the presumption of looking inward for the comprehension of God and of his law. Many a pompous philosopher, who questions divine law, or assumes to measure divine economy with a foot-rule, is only a sort of theological Narcissus, worshipping his own reflection and beholding the infinite wisdom of the Creator in the foolish conceit of the creature. Without the light of revelation, man, at his best, gropes painfully in the dark, and sees dim and shadowy visions of the divine order; phantoms of truth, rather than truth itself. With all the light of revelation, man has so far acquired but indistinct glimpses of divine truth. It is weak blasphemy to prate that man has outgrown revelation. He has not risen to its comprehension, his civilization does not qualify him to appreciate it. And so our knowledge of divine law is still elementary. The duty to study it remains with us all, always. We are here in this world-school, in our pupillage of time, to learn its lessons. But, from generation to generation, we discern its letter, we appreciate its spirit, with slow and blundering and laborious progress. And as our study of God's moral law reveals to us principles rather than pro-

visions; and as the governing law of society must depend on particular provisions for all social exigencies; it has become a necessity of society, from time to time, to formulate its comprehension of divine law. This is the foundation of all civil law.

In the primitive form of society, the patriarchal, man probably undertook to administer the law of God, without human formula. The father of the family, the chief of the sept, gave and enforced the law, as he comprehended it. And it was in his conscience to judge, in his will to execute justice. And as clans combined into nations, this was perhaps the earliest form of national government; the father ruling his family, the chief his clan, the central chief or monarch, the nation; each according to his own conscience, under the divine law. This was pure despotism, because all the authority of society was vested in a single will; and it was left to a single conscience to announce the law of God, a right equivalent to our sovereign power of legislation, to adjudge its duties and restraints, and to execute the judgment so rendered. The vice of this system lay in the liability of the single conscience to err, in the proneness of the single will to oppress. For power inclines, not only to abuse, but to self-deceit. The radical evil of despotism is not in the form of government, but in the liability to abuse. A paternal and intelligent despotism, where the chief is indeed the Vicegerent of God and governs by divine law, in its own just and beneficent spirit, might be practicable in small communities; and would be perhaps the best form of human society. But these conditions are hopeless in the present state of society; they belong to the millenium. Pure despotism is essentially a primitive form of government. Mankind outgrew it, not only by advancing civilization, but by increasing numbers. For it is not only offensive to the pride of intelligent man; it is impossible in communities too large for the government of a single will. So, as mankind grew in numbers and intelligence, governments arose with distributed powers. Man gradually acquired the faculty, and saw the value of organization. In time nations learned to distinguish the three fundamental functions of government, the executive, legislative and judicial; and knew that the separation of these is essential to the freedom of society and its order. And it came to be understood that the freedom and order of society depended hardly less on observance of the law, than on certainty of the law.

And so, when men differed, according to their intelligence and their interest, in the interpretation and application of the law of God, the legislative function set itself at work to formulate the divine law appointed for man, in codes constituting, in each state, the law of the land. Thus the *lex loci* is the enactment, by each state, for itself, as applicable to the conditions of its own society, of its comprehension of the law given by God to man, in the beginning. This is the philosophy of legislation. This is the authority of municipal law. It does not rest on its own right, but on the right which it reflects. It has the same relation to divine law that moonlight has to sunlight. In a philosophical sense, it is not so much the law, as the interpretation of the law. Its moral force rests on the law of God.

As man has labored and failed and erred in his comprehension of divine law, so has he therefore labored and blundered and miscarried his legislation. Perhaps in no other aspect of life has he more plainly manifested his slow and uncertain progress in civilization, or proved his own insufficiency for himself, his dependence on wisdom and power higher than his own. The history of human legislation is a record of error and presumption. From time to time, man has established code upon code, as the perfection of human reason; from time to time, he has had to modify and change each; from time to time, code upon code has been lost in the revolution or anarchy which surely awaits all systems of legislation not founded on the divine law. The very nations who devised them have often disappeared, as in the course of time all things lapse out of being which are not founded by God or do not rest on the law which He gave for the guidance of man. Man's intelligence and conscience both enter into his legislation. Imperfect knowledge of the divine law is the essential error of all municipal law; infidelity to the divine order is its accidental infirmity. These both deform all human codes; it would be hard to say, which of them the most. There has been, at all times, in all nations, more or less judicial blindness to the mandates of God; more or less abnormal assertion of the will of man, as the rule of society. There has been, at all times, in all nations, an inclination, more or less presumptuous, to intrude human shifts and inventions, essentially unnatural and immoral, into the order of God. There have always been the lust of will and the tyranny of accident. At his best, man has never risen wholly out of the brute nature; and brute nature is essentially

selfish. Intelligence has imposed upon ignorance, and ignorance, has trampled on intelligence; wealth has oppressed poverty, and poverty has plundered wealth; power has domineered over numbers, and majorities have persecuted minorities. All the natural passions, all the social impulses, all the exigencies of life, all the infirmities of humanity, have helped to pervert and distort legislation. At his best, man's intelligence has been inadequate to the government of society. His insufficiency is written, through all history, in letters of blood and sorrow and shame; in terrible episodes of war, and of tyranny, and of social suffering, which perhaps rivals war and tyranny, in horror. And man is not only incompetent in legislation; he is fickle also, as incompetency is apt to be. Through all his boasts, there lurks in him a consciousness of failure. This makes him restless. Dissatisfied with the present order, his is more inclined to look to arbitrary change, than to seek the principle of wrong in existing law. He often confounds change with progress. He forgets that, if antiquity cannot confirm the old, novelty can lend no sanction to the new. He does not perceive that the old is neither right nor wrong, because it is old; or the new, because it is new. He forgets morality in expediency. He foregoes principle for appearance. He loses sight of the substance in the darkness of the shadow. He overlooks the law of God, or sees it dimly through the mist of social error. Like all blunders, legislation is at once presumptuous and unstable. It is constantly facing problems which it cannot solve. It has constantly had to correct mistakes, which it did not foresee. Yet it hesitates little at innovation, and loves arbitrary change. It has been so far little better than a system of experiments, more or less successful, as they have adhered, with greater or less fidelity, to the fundamental authority of God's law.

Not the will of man only, but the habits and usage of society, enter into legislation. These habits not only influence written law; they produce, from generation to generation, those social rules, those common principles, those hereditary precepts, that traditional legislation which become obligatory by prescription and, with us, are called the common law. There are the customary legislation of experience and progress. And, because communities are generally better able to recognize their own wants and convenience than individuals to prescribe them; and because generations of mankind are generally able

to adjust law to society, with nicer fitness, than speculative precept can frame it; and, because the philosophy of experience is apt to be wiser than the philosophy of theory; and, because the *lex non scripta*, defined, but not literal, is more pliant to new conditions and varying circumstances, than the letter of the *lex scripta*; the unwritten law, the *jus commune*, is perhaps safest and wisest form of legislation. The wisdom of ages should outweigh personal dogma. With us, far more than on written constitutions, far more than on the fickle and fragmentary policy of state or national legislation, personal right, the order and welfare of society, rest on the common law. It has no peculiar inspiration. It is only the wisdom of generations of our fathers, interpreting the eternal law of right and wrong. It is human, and therefore not perfect. But it has guided the country from which our system of law comes, through many centuries of personal freedom and social order; it guided the fathers of this country in the establishment of civilization and social order here, and has guided their posterity into great and prosperous and orderly communities. To-day we owe much of what we have and what we are, to the common law order, which our fathers planted in the wilderness of forests and prairie, which are now the United States. It must need amendment, because it is human. It must need modification, because society and its habits and necessities have changed and are changing. But it is perhaps the noblest contribution—it and the twin system of the civil law together, are assuredly the noblest contributions—of human legislation to history; the most faithful human copies of the divine law. The common law should always challenge all our respect. It merits the reverence, if it needs the correction, of legislation. Cautious regard and deliberate care should go to all amendment of it. Pert and flippant innovation should not be suffered to lay unskilled and unscrupulous hands upon it. Sweeping changes of it, arbitrary substitutes for it, are always in danger of progressing backward, not forward. This state is suffering today from a notable instance of unwise and unhallowed tampering with the common law. The system of pleading and proceeding in the courts of the common law, which had grown up with generations of lawyers and survived them, matured by the experience of ages, rested in the surest principles of logic and of law. It was in some things over technical. It had excrescences and absurdities; faults which sometimes embarrassed or impeded justice. But these were frailties, not

essential to the system, which might be easily weeded from it. Elsewhere they have been, leaving the hereditary wisdom, the adjudicated certainty, of the system, redeemed from its defects. But, in several states as in this, it has been arbitrarily abolished, sacrificing the essential wisdom of the system for its accidental faults. And, under pretence of simplifying the administration of law and facilitating justice, there has been substituted for it, a crude and mischievous theory; which attempting to dispense with skill, dispenses with certainty and security; embarrasses the processes of the law; unsettles much, far beyond its purpose, which was well settled before; has vastly increased litigation and its cost; has impeded justice, and added to the uncertainty of the law. If it survive, it will need exposition for generations of judges, before its innovations, in all their scope and effect, will be settled; and then it will be more or less of an evil, as the courts shall have given it more or less of likeness to the system which it displaced. Its simplicity is a cheat. It is loose, not simple. Its plainness is a fraud. It is vague, not plain. It makes the remedies of the law a paradise of doubt and ambiguity. It was not so intended. It was undoubtedly designed for reform. It is one of countless proofs that sudden and violent changes of the law are always dangerous and generally wrong; that reforms of municipal law have no assurance of being right, save only when they follow, through the wilderness of error, the guiding light of the law of God.

This mutability, this appetite for change, are inherent in all human law, because of its essential imperfection. The divine principles of truth and right and justice, are immutable and eternal. It is the duty and necessity of all human legislation, to struggle to conform itself to them. No human system can otherwise be stable. Man may deny God and repudiate His law. But he is under the law, and nothing short of it will fulfill the necessities of his life, or satisfy the cravings of his nature. At fault in his comprehension of divine law, failing in his application of divine law to society, his needs and longings impel him to continual experiment and change. This is the philosophy of uncertainty in human law. It can have no rest from its labors, until at last man shall perfectly comprehend the law which God appointed for him, and shall truly apply it to the conditions of complete civilization. And these

are the conditions of the millenium, if the future be indeed pregnant with so blessed a state on earth.

The incompleteness of human law implies its mutability; and both imply its complexity and confusion. At its best, its varying provisions are defective, fragmentary, partial, in-harmonious; often inadequate and even conflicting; sometimes obscure and doubtful; rarely as comprehensive and certain as the varying needs and questions of society. Municipal law, resting in the invention of man and the expedients of society, is essentially a failure.

This is judging municipal law by the standard of perfect excellence; the fallible law of man by the infallible law of God. Our municipal law is only a relative, not a positive, failure. To say that it is a failure, is only to say that, so far, all society is a failure; that whatever progress it has made, it has far more to make; that it is incomplete, and has before it ages of weary experience and toil, before man shall fully comprehend the law of his being, and walk—as Enoch did—with God. That is comparing the present with the future. But when we compare the present with the past then we see the vast progress man has made in self culture, the wonderful amelioration of social law and order. And, while we see how far we are from the end of perfect rest, which means the perfect administration of perfect law, we still comfort ourselves by comparison with those who have gone before us; and bless the age in which our lives are cast, and the law which secures to us the daily bread of life and the peaceful homes in which we eat it. Then we almost wonder that our municipal law has so much likeness in it of the perfect law of God, and are thankful to Him for the government of law, such as it is under which we live.

With all its short-comings, it is our only earthly security for personal right and social order. Society scolds, but relies on it. Society sometimes fails to see that the inadequacy and mutability of its law, is essential to its own incompleteness; and that the complexity and confusion of its law are essential to its own varying habits and restless inventions. Man's unquiet love of change, his search for higher law, grows with his civilization. With these grow the frequent changes of the law, and the difficulties of its interpretation and application. And so it happens that, in the most civilized nations, the pro-

visions of the municipal law are the most intricate, abstruse and obscure to the common intelligence; and the uneducated mind is as much bewildered by the law of the land, as by the law of nature; and the common and statute law is a sealed book to most men. Law becomes a science, and the great body of society has no leisure for its study.

And yet upon the thorough and exact knowledge of the municipal law, upon its intelligent and certain administration, depends the whole value of personal right and social order. This is not always fully felt. There is occasional impatience with the administration of the law and discontent with its results; and men strive to think that society might dispense with some or all of its machinery. That is a radical delusion, which would reduce society to anarchy. The direct and visible results of the administration of the law are a small part of its service to society. The number of captured criminals is not the measure of utility of municipal police. It is not the aggregate of invaders whom the sentinel shoots, that tells the value of his guard before the citadel of society. Without administration of the law, there would be virtually no law. The order of society rests on the administration of the law; and the freer the society, the more it so rests. There are governments of force and governments of law. A government of law makes a country free; and without full and free administration of the law, it would necessarily lapse into a government of force. In free countries the administration of the law, is the law.

The administration of the law implies the judicial function. For that only is a government of law, which, to apply the language of Mr. Webster, puts life, liberty and property under judicial protection proceeds always upon inquiry; hears always before determination; renders judgment only after trial. Independent of the judicial function, the legislative is impotent, and the executive is despotic. The judicial function implies question and debate. And, in this sense, it includes a Bar, trained and skilled in the principles and processes of the law. This is the business of lifetime, for which society at large has no leisure, and so society has instituted and set apart a body of men, trained to the knowledge and practice of the law, learned in its principles and processes, to interpret the law to society, to guide the business of society under the law, to protect the legal rights of society and its members, to look

to the intelligent and faithful course of judicial proceedings, and to stand charged with the holy office of the administration of God's justice among men.

Young gentlemen, this is the profession which you have chosen, to the discharge of whose active duties you are this day called. This address has been in vain, if it have not verified the high, arduous and responsible nature of the duties which you are assuming; if it have not made manifest our profession as the noblest and loftiest of purely human callings.

There it stands, the profession of the law, sometimes disgraced by error and sin, which are the common lot of all humanity. There it stands, the profession of the law; not always or fully appreciated by the world. Society is prone to grumble at those who serve it, and to lavish its smiles on those who amuse it. There it stands, the profession of the law; subrogated on earth, for the angels who administer God's law in heaven. There it stands, charged with the peaceful protection of every public right of the state, of every civil and religious right of the people of the state; charged with the security and order of society. In peace, the life, liberty and property of the country, its personal freedom and its political symmetry, are in its ultimate keeping. And peace is the normal condition of society, and its duty. *Inter arma silent leges*, is a fact, not a principle. That is only because all liberty and all right give way before brute force. The authority of the law and the power of its profession are silent only in the downfall of a government of law, before the eruption of a government of force. I had the honor to say in the Supreme Court, during the days of terror in the late war, I say now, that no country is free, where the bar is not stronger than the army. The one is the organization of animal power; the other, of social law and order. The one represents the brutal part, the other the intellectual part of man's dual nature. *Cedant arma togae*. Let us thank God for restored peace, and pray for the perpetual subordination of military power to civil authority; of the sword to the law; of those who strike with the sword, to those who should give law to war as well as to peace, because they represent on earth eternal right and justice.

The law is a science. It is no mere trade. It is not the road to wealth. There is, in our society, no branch of business, no mechanic art, which is not a better avenue to riches. Law-

yers, indeed, sometimes grow rich in the speculations of the world. Such run the risk of sacrificing their profession to their interest. For law is a jealous mistress, and exacts devotion of heart and life. She often honors her disciple; but, in this country, she rarely enriches him. Great lawyers, not otherwise enriched, always, or almost always, die poor. Wealth, too, is a jealous god, and those who worship at its shrine must surrender heart and life to their idol. What we call the learned professions are therefore, not among the thoroughfares of fortune. It is generally the successful lawyer's lot to spend life in the luxury of refined and elegant poverty. The lawyer, indeed, must live and receive his *puid-dam honorarium*. But this is the incident, not the aim, of professional life. The pursuit of the legal profession, for the mere wages of life, is a mistake alike of the means and of the end. It is a total failure of appreciation of the character of the profession.

This is the true ambition of a lawyer. To obey God in the service of society; to fulfill His law in the order of society; to promote His order in the subordination of society to its own law, adopted under His authority; to minister to His justice, by the nearest approach to it, under the municipal law, which human intelligence and conscience can accomplish. To serve man, by diligent study and true counsel of the municipal law; to aid in solving the questions and guiding the business of society, according to the law; to fulfill his allotted part in protecting society and its members against wrong, in enforcing all rights and redressing all wrongs; and to answer, before God and man, according to the scope of his office and duty for the true and just administration of the municipal law.

There go to this ambition, high integrity of character and life; inherent love of truth and right; intense sense of obedience, of subordination to law, because it is law; deep reverence of all authority, human and divine; generous sympathy with man, and profound dependence on God. These we can all command. There should go high intelligence. That we cannot command. But every reasonable degree of intelligence can conquer adequate knowledge, for meritorious service in the profession. The character of a lawyer cannot always gain distinction. That may belong to intellect. But character can always command usefulness. It is best that they go together.

But in our profession, character without high intellect is a greater power for good, than intellect without high character. It is a grievous mistake that it is a profession of craft. Craft is the vice, not the spirit of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wildest devices. The power of integrity is the rule, the power of fraud is the exception. Emulation and zeal lead lawyers astray, but the general law of the profession is duty, not success. In it, as elsewhere in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar.

On the bench, lawyers are charged with a higher grade of function, little more important than their duty at the bar. The bench necessarily depends much upon the bar. A good bar is an essential of a good court. The problems of justice can rarely be safely solved in solitary study. Forensic conflicts give security to the judgment of the law. The world sometimes scolds at the delay and uncertainty of the administration of justice. These are evils essential to our civilization, perhaps to any attainable civilization. But summary judgment is judicial despotism. Impulsive judgment is judicial injustice. The bench symbolizes on earth the throne of divine justice. The judge sitting in judgment on it, is the representative of divine justice, but has the most direct subrogation on earth of any attribute of God. In other places in life, the light of intelligence, purity of truth, love of right, firmness of integrity, singleness of purpose, candor of judgment, are relatively essential to high beauty of character. On the bench they are the absolute condition of duty, the condition which only can redeem judges from moral leprosy. When I was younger, I could declaim against the enormity of judicial corruption. I could not now. I have no heart for it. The mere words seem to have a deeper ignominy, than the wisest brain and the most fluent tongue could put into other language. The judge who palters with justice, who is swayed by fear, favor, affection, or the hope of reward, by personal influence or public opinion, prostitutes the attribute of God, and sells the favor of his

maker as atrociously and blasphemously as Judas did. But the light of God's eternal truth and justice shines on the head of the just judge, and makes it visibly glorious.

Hardly less grave are the duties of the bar. The courts do not see half the service which a practicing lawyer renders to society. In his office every lawyer is a judge. In matters not litigated, vastly exceeding litigated matters, he decides all questions; and failing litigation, his opinions are the actual judgment of the law. He counsels those who resort to him so as to avoid difficulty, solves doubts, removes obstacles, guides affairs according to law, and settles controversies before they grow into lawsuits. It is the office of a lawyer at the bar to discourage, not encourage, litigation. His calm and skilled judgment soothes, if it cannot convince, contentious selfishness and passion. Every good lawyer's office is a court of conciliation.

It is the business of a lawyer to consider well the merits of a controversy, before he takes retainer to litigate it. But once he is retained, hesitation should give place to zeal. In forensic controversies, one of the parties is generally wrong; both may be. But that does not imply that the lawyer's retainer does wrong to the administration of justice. In doubtful cases, it is within neither the duty nor the power of a practicing lawyer to decide. That is for the court. It is only judgment, after litigation, which can settle right. In the selfish controversies of life, a practicing lawyer should generally accept all knowledge as uncertain, all aspects of truth as hypothetical, all opinion as doubtful, until tested by the ordeal of litigation. Even proximate justice is only to be secured, in the forensic contests of interest and feeling, by thorough presentation of both sides; by zealous advocacy of each as if it were the sure right. The counsel on both sides, within due professional limits, alike serve the cause of truth, alike contribute to the justice of the case. To this end, it is the duty of every retained lawyer to put his faith in his client's cause. The lawyer should believe in his retainer when he takes it; once taken, he should never mistrust nor betray it. The fidelity of our profession is a great moral lesson. Kings may envy and prelates imitate it. It is a shining glory of the bar. The world may frown, friends fall off, children rebel, wife desert or betray; but the client has an adherent whose faith

never fails; whose loyalty never wavers; true through good report and evil report; true to death and to the memory which survives death. It is the wise policy of the law that the lawyer should be the legal *alter ego* of his client. And legal annals bear a noble monument of justice well administered, to the controversial fidelity of lawyers to their clients, in proceedings everywhere according to the course of the common law.

The bar does not claim to be the communion of saints. It only claims to be a noble organization of fallible men, in a fallible society. It concedes that all lawyers sometimes blunder in a professional service; that many sometimes sin against professional duty; that some are incompetent and some are vicious. But it asserts its own dignity and integrity, by a greater contempt than the world has for its dunces, by a severer reprobation of its knaves.

Let the dunces pass. As Dogberry says, their talent is the gift of fortune. Society is too full of dunces to spare a contribution to all the learned professions. And the dunces of the world are altogether too respectable and influential a class to be criticised with safety. Indeed, the professional dunce is too mere a negative to be worth separate consideration. It is not so with the knaves. They point professional vices, and a glimpse at them, they are not worth more than a glimpse, will serve for shade in the likeness of the true lawyer.

Behold the pettifogger, the blackleg of the law. He is, as his name imports, a stirrer up of small litigation; a wet nurse of trifling grievances and quarrels. He sometimes emerges from professional obscurity, and is charged with business which is disreputable only through his own tortuous devices. For the vermin cannot forego his instincts, even among his betters. He is generally found, however, and he always begins in the lowest professional grade. Indeed he is the troglodyte of the law. He has great cunning. He mistakes it for intelligence. He is a fellow of infinite pretense. He pushes himself everywhere, and is self-important wherever he goes. You will often find him in legislative bodies, in political conventions, in boards of supervisors, in common councils. He is sometimes there for specific villainy; sometimes on general principles of corruption, waiting on Providence for any fraudulent job. He is always there for evil. The temper of his mind, the habits of his life, make him essentially mischievous. In all places,

he is always dishonest. When he cannot cheat for gain, he cheats for love. He haunts low places, and herds with the ignorant. It is his kindly office to set them by the ears, and to feed his vanity and his pocket, from the quarrels he incites or foment. He is in everybody's way, and pries into everybody's business. He meddles in all things, and is indefatigable in mischief. He is just lawyer enough to be mischievous. He is a living example of Pope's truth, that a little learning is a dangerous thing. Among his ignorant companions, he is infallible in all things. Sometimes he is reserved and sly, with knowing look which gains credit for wisdom and character, for thinking all he does not utter. Generally he is loquacious, and demonstrative of his small eloquence. Then his tongue is too big for his mouth, and his mouth too loose for truth. By his own account he is full of law and overflowing. Among his credulous dupes he cannot keep it down. He knows all things. Nothing is new to him. Nothing surprises him. Nothing puzzles him. But it is the law that his omniscience shows best. His talk is of law incessantly. He has a chronic flux of law, among his followers. He prates law mercilessly to everyone, except lawyers. He discourses of his practice and his success to the janitor of his office and the charwoman who washes his windows. He revels in demonstrative absurdity, and boasts of all he never did. He is the guide, philosopher, and friend of vicious ignorance. He is the oracle of dullness!

*And still the wonder grows,
That one small head can carry all he knows.*

He hangs much round justices' courts. There he is the leader of the bar. But he finds his way into courts of record. In them he is a plague to the bar and an offense to the bench. He is flippant, plausible, captious, insolent. He is full of sharp practice, chicane, surprise and trick. He is the privateer of the court, plundering on all hands, on private account. He is ready to sell his client or himself. He is equal to all things, above nothing, and below nothing. He is ready to be the corner of the county, or the chief justice of the United States. He would be a bore, if he were not too dangerous for that harmless function. He is a nuisance to the bar and an evil to society. He is a fraud upon the profession and the public; a lawyer among clowns and a clown among lawyers.

There is a variety of the animal, known by the classic name of Shyster. He has forced the word into at least one dictionary, and I use it without offense. This is still a lower specimen; the pettifogger pettifogged upon; a troglodyte who penetrates depths of still deeper darkness. He has all the common vices of the family, and some special vices of his own. This creature frequents criminal courts, and there delights in criminal practice. He is the familiar of bailiffs and jailors; and has a sort of undefined partnership with them, in thieves and ruffians and prostitutes. These he defends or betrays, according to the exigencies of his relations with their captors or prosecutors. He has confidential relations with those who dwell in the debatable land between industry and crime. He is the friend of pimps and fences. He has intimacies among the most vicious men and women. He is the standing counsel of gambling dens and houses of ill-fame. He knows all about the criminals in custody, and has extensive acquaintance among those at large. He is conversant with their habits of life, and calls them familiarly by their christian names. He prowls around the purlieus of jails and penitentiaries, seeking clients, inventing defenses, organizing perjury, tampering with turnkeys, and tolling prisoners. He levies blackmail on all hands. His effrontery is beyond all shame. He thinks all lawyers are as he, but not so smart. He believes in the integrity of no man; in the virtue of no woman. He loves vice better than virtue. He enjoys darkness rather than light. His habits of life lead him to the back lanes and dark ways of the world. He is the counsel of guilt. He is the Attorney General of crime.

Akin to these in mischief, but mischief of more subtle and dangerous type, and different in quality; less manifestly scandalous, but of deeper corruption and far more pernicious; is the professional adventurer who trades in judicial favor. Nepotism is a grave social evil, foisting vicious or incompetent officers into public service, and subjecting public interests to incidental injury. But judicial nepotism strangles the very life of the judicial function; deposes justice from her own bench, and seats in her place, decked in her robes and masquerading in her semblance the harlot of profligate family interest; to cozen truth and right, property and honor; to betray all that is dear to man or tends to make life happy or

holy; to poison the very bread of life; in order to feed the unhallowed avarice of the judge's kindred. There are other conditions of judicial favoritism, but this is the commonest and most constant; and I speak of all, in speaking of this. It would be waste of words to denounce the ghastly enormity of this crime; all the more deadly and heinous, because it is so subtle and impalpable. All human sense comprehends it. All human conscience sickens before the thought of the deadly hypocrisy and obscene atrocity, of this prostitution of the holiest human function. And it is the trafficker who is in question now, rather than the traffick. Sometimes, but rarely, he is indeed a lawyer. A lawyer's professional pride would almost always revolt from the degradation of such a shameful condition of success; of lying in the embrace of judicial prostitution, and accepting the wages of judicial shame. I have known good and honorable lawyers, to whom the accidental seeming of a judge's partiality, gave a sense of deep humiliation. True pride of life scorns to eat the bread of shame. It is a poor pride, which will not rebel against guilty dependence on another's profligacy. The judicial pimp, is therefore seldom a lawyer. He is almost inevitably a mere pretender, without professional education; a quack, who despises honorable learning, of which he stands so little in need. He is an intruder into the profession, who never knows its worth or temper; whose dim mind is never penetrated by the light of jurisprudence; whose dull pulse never feels the faintest throb of a lawyer's true ambition; who comes into the profession by some back-door, under judicial patronage, to trade in justice, as his betters trade in other merchandise. He never draws a pleading, or makes a brief, or tries a cause. He cannot. These he leaves to associated lawyers. Fees are the only professional duty he understands, and these he takes, not for services he does not render, but for favor he does secure. And business flows in upon him. And clients crowd about him, not trusting to the retained nephew, or son; or brother, but to the propitiated uncle, or father, or brother. He is a legal huckster. Justice is his commodity. His trade is both infamous and precarious, and intelligent roguery can find itself a better. So he is almost always a dunce; a fellow of low intellect and vitality; of meagre life; of mean and selfish instincts and tastes; dull of head and cold of heart; of little passion and no impulse; so cold and clammy that he might

have been a fish; a creature whose lean brain and thin blood, cautious egotism and selfish greed, would fit him, as far as they go, for store or bank or factory, conducted on purely economic principles; but could fill no honest place in a lawyer's office. A quick-tempered or warm-hearted rogue could never fill the favorite's place. It requires a fellow of no pity to mitigate his thrift, and of no temper to betray his confederacy. So you find him a grave, quiet, sedate sharper; guarded, formal, presuming, dogmatic, with as little taste for fun as talent for honor. In his intercourse of business, he rarely speaks of his uncle, or father, or cousin, the judge; but he utters no words to client or adversary, in which the judicial influence is not implied, like the verb, sometimes in grammar, which gives significance to the whole sentence. He is indignant at the slightest reference to the nepotism. But he is virtuous about expression only; the thing he wishes always understood. It is his stock in trade, his family estate. Indeed he luxuriates in the common apprehension of it, and suns his shame in open day, as the harlot parades her professional finery. And yet this charlatan holds up his head, and is permitted to hold it, as gentleman among gentlemen, and lawyer among lawyers. Visibly eating the bread of shame and wearing its livery, he accosts honorable lawyers as a brother of the law. He is sometimes even admitted by them as an associate. In his modest confidences with them, he sometimes goes so far as to complain that his uncle's place upon the bench is a trouble to his delicate mind; that it gives him no advantage, and yet causes him scandal; and that his professional business would be as great without it, and more agreeable to his sensitive feelings. And the fellow knows that this is known for a lie, but that is in keeping. For his profession is a lie. He is not a lawyer; he is an impostor.

These are the chief plagues of the profession, and its disgrace—the camp followers of the bar. I have sketched them, to tell you of each

Hic niger est, hunc tu, Romane, caveto.

These are the barnacles of the profession, which cluster on its bottom and form its dirty part. But they are parasites, rather in the profession than of it. They are only seen on close inspection. A broad, generous, philosophic view of the pro-

fession, from without does not notice them. The noble aim of the profession, its character and place in society, its high and holy office, are unaffected by such accidental and incongruous blemishes. See it sweep through the generations, the glorious bar, administering justice, preserving order; not only defending and consolidating the institutions of civilization, but pointing the way and leading the van, in the course of all safe and solid progress; the constituted and faithful guardian under the law, of all true human liberties. In all free countries, the love of right, the broad views, the disciplined mind, the educated skill of the bar, have made it a potent political agent. In this country, they made it in great degree, the teacher and leader of parties. In the absence of all privileged orders, they made it a virtual power in politics, a *quasi* aristocracy of cultured talent. Think of the great parties and their leaders. Think of the congresses and their great men. Take the lawyers from the leaders and statesmen, and see how sorely thinned the ranks would be. We may boast of our democracy as we will. Organized leadership, and intellectual aristocracy, is essential to a free country. And though others have filled and are filling many great places in the ranks, the American aristocracy of brain is substantially the American bar. So it has been and so it will be. We deprecate party, but party is necessary to free government. For good and for evil, party has done great work in this land. And it will. Old parties seem to be passing away. The grand old party, which I have long loved and served, which I hope I may not survive, seems to have forgotten its principles. The other great party, greater now in power and place, yet with fewer and lesser historical claims to reverence, seems to have outlived its principles. There is an odor of political decomposition in the air. The spirit seems moving on the face of the waters. New parties are likely to arrive. Those of us who have grown old in old parties, are generally too little pliant to new policies, too true to the past, to take new party service. For one, I never will. But you, gentlemen, are young and free. The generation of lawyers to whom I belong has nearly passed away, and will have no leadership in new parties. That will soon fall to your professional generation. It will soon claim the succession of the aristocracy of intellect. Imitate your grandfathers of the bar, the great generation of lawyers which preceded mine, and gave Webster to the bar and Taney to the bench. Play your

allotted part, with their courage and ability, and with fidelity to the spirit of our noble profession.

In the past it was Greek with Greek. Intellect was the only antagonist of intellect. The brief revolt of money against brain, in the last days of the United States Bank, was convulsive and insignificant. And the grasping claims of manufacturers have rested more on the brain, than on the Capital, of New England and Pennsylvania. But there is looming up a new and dark power. I cannot dwell upon the signs and shocking omens of its advent. The accumulation of individual wealth seems to be greater than it ever has been since the downfall of the Roman Empire. And the enterprises of the country are aggregating vast corporate combinations of unexampled capital, boldly marching, not for economical conquests only, but for political power. We see their colors, we hear their trumpets, we distinguish the sound of preparation in their camps. For the first time really in our politics, money is taking the field as an organized power. It is unscrupulous, arrogant, and overbearing. Already here at home, one great corporation has trifled with the sovereign power, and insulted the state. And there is grave fear that it and its great rival have secretly confederated, to make partition of the state and share its spoils. Wealth has its rights. Industrious wealth has its honors. These it is the duty of the law to assert and protect, though wealth has great power of self-protection influence beyond the limits of integrity. But money, as a political influence, is essentially corrupt; is one of the most dangerous to free institutions; by far the most dangerous to the free and just administration of the law. An aristocracy of money is essentially the coarsest and rudest, the most ignoble and demoralizing, of all aristocracies. Here it comes, a competitor for social ascendancy. It is entitled to fear, if not to respect. The question will arise and arise in your day, though perhaps not fully in mine, which shall rule—wealth or man; which shall lead—money or intellect; who shall fill public stations—educated and patriotic freemen, or the feudal serfs of corporate capital. Gentlemen, when money wages that war on intellect, the country will demand: *Videant juris-consulti ne quid republica detrimenti capiat*. Look to it in that day, that the bar do not suffer the disgrace of permitting mere money, the successful gambler's stake in Wall street, to assume the

functions of intellect so long and largely shared by our profession.

It is said that he that girdeth on his harness, should not boast himself, as he that putteth it off. That depends, perhaps, on the conditions under which it is put on and taken off. In the battle of life, we all stumble, we are all maimed. Few, if any, lay down their arms, in that battle, without sense of failure or defeat. It is fit to lay off that armor, at the call of the trumpet, cheerfully but humbly. It is better for society that the young should put it on joyfully and hopefully, at least, if not boastfully, as a bridegroom puts on his wedding garment. I trust that you are so putting on your professional armor; resolute and full of confidence, that in your day at the bar, order shall be preserved, law ameliorated, civilization raised, justice truly administered. I hope that you and your generation of lawyers may play well your part towards these results. I pray that when all of our great profession, you of your generation and we of our, shall stand in turn before the bar of the great and final Judge, the alpha and omega of all law and all judgment, we may be each found to have so contributed to the administration of justice here, that we may find mercy there. Once more, I welcome you to the Wisconsin Bar. And for a farewell, I wish unto you in the words of grand old Coke, the gladsome light of jurisprudence, the loveliness of temperance, the stability of fortitude, and the solidity of justice.

Hon. Edward Ryan.

University of Wisconsin