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Principal Address

Earl Warren

Supreme Court of the United States

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Principal Address

BY EARL WARREN*

It is a great pleasure for me to be here in Lexington with you this afternoon. I feel honored in being allowed to share in these proceedings.

Kentucky has played a significant part in the development of our legal system, and a number of citizens of this Commonwealth have been members of the Court over which I am privileged to preside. Retired Justice Stanley Reed, as you are all aware, is a Kentuckian. Though Justice Reed has retired from our Court after twenty years of distinguished service, he has by no means left active public life. He is still performing important and significant judicial duties by assignment in the Court of Claims and the Court of Appeals for the District of Columbia. He has served the Nation in various important capacities since 1929, and I look forward to his continued active work for a long time to come. My immediate predecessor as Chief Justice of the United States was Fred M. Vinson, also an outstanding Kentuckian. He served his country with great distinction, occupying high office in all three Branches of the Government. Despite the success which he attained in diverse fields, he never lost the common touch with people which, along with sound judgment, is the true hallmark of greatness.

Another eminent Kentuckian, the soundness of whose dissenting constitutional views in the field of race relations has received vindication in our day is the first justice John Marshall Harlan. Familiar to us all are his ringing words that "the Constitution is color blind." The insistent claims of equality in our governmental system were as clear to Justice Harlan as they were obscure to some of his contemporaries. As has been noted, "often John Marshall Harlan stood alone; but he always stood firmly and proudly as the stalwart judicial champion of the dignity of man and the protector of human rights." The most meaningful tribute

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to the memory of this truly great son of Kentucky has been paid by cities such as Louisville and other parts of the Commonwealth, through recent understanding and mature accommodation to social fair play. In doing this, they have created an impressive living memorial to Justice Harlan.

Another Justice who came to our Court from Kentucky was Thomas Todd, who was appointed by President Jefferson and served for 19 years. Still another was Robert Trimble. There have also been five members of the Supreme Court who were born in Kentucky though their appointments were made from other States. These were Samuel Miller, Horace Lurton, James McReynolds, Louis Brandeis, and Wiley Rutledge. Brandeis, who made such a lasting mark on our Court and such an indelible imprint on American law, felt very close to Kentucky.

In a letter to his brother, he wrote "Everything in the life of the state is worthy of special enquiry. Every noble memory must be cherished, thus the details of Kentucky history, political, economic, and social, become factors of ultimate importance. . . ."¹

Thus Kentucky holds a high, if not unique, position in the work of our Court and in American jurisprudence. There must be something in your soil which nurtures not only the smooth-stalked meadow grass for which this area is famous but which inspires its citizens with reverence for the law and the promotion of justice. It is especially gratifying to me to be able, while a guest in your Commonwealth, to acknowledge our indebtedness to your many distinguished jurists and to do so on an occasion as felicitous as the dedication of your new Law School Building.

In his book on the Kentucky River, Professor Thomas D. Clark, a distinguished member of the faculty of this University, wrote about a traveler in the 1830's who was passing through this part of the country. From the stagecoach in which he was riding through Blue Grass Kentucky, the passenger beheld not only the beautiful billowing countryside but commodious and comfortable dwellings. He observed that "it is seldom that the eye of the traveler is delighted with so pleasing a combination of rural beauty and tasteful embellishment."²

Though the building which we are dedicating today is an "em-

¹ Mason, Brandeis, *A Free Man's Life* 589 (1946).

² Clark, *The Kentucky* 88 (1942).

bellishment" quite different from the lovely homesteads which still grace this area, it is no less tasteful. This structure will inspire countless generations of law faculty and students for years to come. I can think of no more rewarding manner than its dedication to culminate the Centennial Year of this great State University.

On an occasion like this I am especially mindful that the progress which the new building symbolizes does not just happen. Careful planning and generous expenditures of time and money have been the precursors of today's proceedings. To all who have played a part in the fulfillment of these efforts I offer my congratulations.

A ceremony such as this provides an opportunity for rejoicing and for the satisfactions which attend accomplishment. But the moment also affords us with the occasion for useful introspection. We can take pride that we have come as far as we have, but the insistent questions remain—where are we going, and how are we going to get there?

It is not possible to answer these questions without a proper awareness that we are living in an age whose foremost attribute is change. This fact should be evident to all; yet it is noteworthy that there are always some who are unwilling to acknowledge the very existence of change. Their attitude seems to be that we have reached the limits of progress, or, in the words of the Rodgers and Hammerstein musical *Oklahoma*, that "they've gone about as fur as they can go." This outlook reminds me of a statement made by Henry L. Ellsworth, the first United States Commissioner of Patents. He observed in an annual report that "the advancement of the arts, from year to year, taxes our credulity and seems to presage the arrival of that period when human improvements must end."³ It was well over 120 years ago that Mr. Ellsworth made that pronouncement. Just think of the developments which have occurred since his doleful prediction.

The changes which have taken place are most dramatically visible in the fields of science. As our full resources are applied to research and development, one astounding achievement follows another. Many of the fanciful concepts of yesteryear that Jules

³ U.S. Patent Office, *The Story of the American Patent System, 1790-1940*.

Verne and H. G. Wells wrote about are phantasies no longer. Today they are realities, and in some instances almost commonplace realities at that. The speed of travel, the conquest of space, and the ability to control the atom have given us powerful instruments for good. At the same time, they have facilitated self-destruction on a scale hitherto never contemplated. But the possibility of avoiding catastrophe can be averted if the progress of law and the social sciences can move forward at a pace which corresponds with the advance of the physical sciences.

The greatest contemporary problem is that of adapting our democratic institutions to the breathtaking changes wrought by science without at the same time altering the fundamentals of our free society. This adaptation falls to a large extent upon the legal institutions of our Nation. Our legal system has sometimes responded too slowly to the demands of change. Yet there have been alterations in the practice of law and in the teaching of law which suggest that an accommodation is being made, and that ultimately, through enlightened leadership of the bar, scientific knowledge can be fully employed and applied to further the dignity and well-being of mankind.

More and more emphasis is now being placed on the solution of social and economic problems through legislation. This is a far cry from that period, about the time that this Law School was established as the fourth college of this University, when legal education was concerned primarily with the common law of torts, property, contracts and equity, and the courts were relied upon for the solution of social and business problems.

The highly accelerated legislative activity which has occurred at both national and state levels has itself posed problems arising from the sheer bulk of the laws that are enacted. The number of volumes it takes to contain our federal and state laws would have astounded our forefathers.

Running parallel to the development of legislation is a growth of comparable proportions in the field of administrative law and procedure. Here again the sheer bulk is little short of overwhelming. The *Code of Federal Regulations* now runs to over a hundred volumes. The decisions of such administrative agencies as the Internal Revenue Service, the National Labor Relations Board, the Interstate Commerce Commission, and the Federal Trade

Commission occupy a formidable amount of shelf space in our law libraries.

In Blackstone's time, there were fewer than 5,000 reported decisions in the English-speaking world. An estimate today is more difficult, but the number of reported decisions now runs to about three million.

How does one account for this proliferation of cases? To some extent, the increase in population is responsible. There are in the neighborhood of 160 million more people in this country than there were when this University was founded one hundred years ago. There were only 35 million then—195 million today. It is quite natural to expect that the increase in population would be reflected in the amount of litigation in our courts. But this is not the complete explanation. Life itself has become more complicated; the inter-relationships between individuals and groups have become more intricate. A recent analysis of what has been termed the "mid-century law explosion" which is now confronting us makes the observation that:

We have a society that is far more complex and vastly more demanding on law and legal institutions. New rights, like those of social security, have been brought into being, and older rights of contract and property made subject to government regulation and legal control. New social interests are pressing for recognition in the courts. Groups long inarticulate have found legal spokesmen and are asserting grievances long unheard. Each of these developments has brought its additional grist to the mills of justice.⁴

It is no longer possible when appraising most sociological phenomena to say that an effect follows from a given cause. There is likely to be a whole complex of causes, many of which are subtle and difficult to comprehend.

At the present time, to cite but one example, the reasons for the commission of crime are being subjected to scrutiny from many different points of view. What the results of these surveys will be cannot be predicted but one thing is clear. The answers when they come will not be simple. We are at least aware that the

⁴ *The Courts, the Public, and the Law Explosion 2* (The American Assembly, H.W. Jones ed. 1965).

problem of crime can no longer be approached merely in terms of good and bad. Though we may not yet be able to comprehend the intricacies of what makes people disobey the law, we do know that social environment, poverty, the complexities of urban living, disruptions of home life, world tensions, and a host of other factors play their part.

An inevitable consequence of the increase in the scope, complexity, and sheer volume of legal materials is specialization. And the unavoidable consequence of specialization is the increased difficulty in coping with the conflicts that arise in our society of identifying and resolving such competing demands as human rights, national security, labor-management, federal-state relationships, and so on. The requirements of tax law may preempt all of one lawyer's time and the complex details of anti-trust law may preoccupy another's. The same is true with respect to the law of communications, labor law, and many other fields.

Perhaps we cannot altogether avoid this high degree of concentration and specialization. Yet we must not be unmindful of the resultant pitfall. Specialization tends to fragmentize our approach to legal problems. It likewise makes us lose sight of the basic function which the law has as a social instrumentality.

It is suggested from time to time that automation can take care of the problem of the sheer volume of laws, regulations and decisions. The thought is, I suppose, that the computer can somehow reduce their bulk to manageable proportions. I do not wish to minimize the possibilities of modernizing our methods of legal research and fully utilizing all the technique that scientific advances make feasible. I know that useful work is being done in this area. At the same time I am confident that the computer has its limitations too. I read in the sports section of our local newspaper the other day that the computer was tried out on the football field. It was supposed to be able to anticipate the other team's plays, and the information was transmitted to the players through radios in their helmets. I do not know whether the effort proved to be satisfactory, but I hope not. For who would like to see the wonderful game of football robbed by a computer of its extra-sensory factors, its decision-making, its imagination, and its spontaneity? An association of translators recently convened in Washington. The use of computers for translation was given some

attention. But the difficulties of applying electronics in that area were illustrated by the way two expressions were rendered by the computer. "Hydraulic ram" came out as "water male sheep." And the phrase "out of sight, out of mind" emerged as "invisible insanity." The remark of one of our great educators, though made in a somewhat different context, seems equally applicable here. He said: "[I]t has too frequently been forgotten that man has a soul as well as a personality and that he is a creature of God rather than a machine."⁵

In coping with the problem of the sheer volume of the law I feel that our law schools not only are faced with a great challenge but they are afforded a most exciting opportunity. Specialization will not be their answer to these problems, any more than mechanization. Our law schools must see to it that a lawyer's training is *both* broad and intensive. There is nothing in the panorama of our country's affairs—I will go further and say that there is nothing in the spectrum of world affairs—that can justify a narrowing of the preparation and training of the modern lawyer. The demands of leadership in the councils of the world, in the area of national government, and in the areas of state and local communities are more exacting in terms of enlightened leadership than they ever were before. We need—as we have never needed before—the leadership of those who have a broad insight into the ills of society and who have the perspective, understanding and poise to cope with the problems that confront us. We need lawyers of broad outlook and comprehensive points of view. We need those who can utilize the fragments of knowledge which the specialists possess and who can assimilate and fashion those fragments into a working whole.

There can no longer be any narrow or insular view toward the law. The role of law in society has changed and is still changing and it is axiomatic that the role of lawyers must change too. Lawyers can no longer concern themselves with the sector of commerce or business which up until recent years has confined the law within narrow bounds. The lawyer who is faithful to the demands of contemporary life must today participate in all the areas of society where the legal role is active. I do not exclude business law by any means, but on a parity with that traditional

⁵ Gould, *Knowledge Is Not Enough* 5 (1959).

area are criminal law, social welfare, urban planning, labor relations, monopolies, problems of the mentally ill, civil rights, international law, and public housing. I am pleased to note that your College of Law recognizes, as all forward-looking institutions must, that a proper legal education "involves a great deal more than the mere study of substantive legal principles"; that the solution of contemporary legal problems calls for manifold skills; and that today's law student cannot be prepared to assume his obligations to the community without a broad and eclectic background that goes far beyond the confines of the law school curriculum which existed in my generation.

It will no longer suffice for the lawyer to be the mouthpiece or representative of someone else, vital as that role still remains. The lawyer today must be an originator and innovator. Only by performing that broader function can he fulfill his destiny in today's society. A recent appraisal of the contemporary law school made precisely this point. The commentator observed:

It is important to recognize explicitly that whether he is engaged publicly or privately, the lawyer will no longer be serving merely as the spokesman for others. As the law becomes more and more a determinative force in public and private affairs, the lawyer must carry the responsibility of his specialized knowledge, and formulate ideas as well as advocate them. In a society where law is a primary force, the lawyer must be a primary, not a secondary, being.⁶

Earlier this week I attended the White House Conference on International Cooperation. The participants were assembled to consider the various problems which today divide the world into armed camps. Many different points of view were expressed as to how we can realize world peace. But the accord was complete that we must somehow achieve international cooperation whatever divergences exist between nations.

International cooperation is basic to the development of international law. The lesson we have learned in our local communities and in our Nation is equally valid when applied to relations between countries. There must be a rule of law or there can be no peace, there can be no order, there can be no stability. When law breaks down, society is beset by confusion, fear, and chaos.

⁶ Reich, *Toward the Humanistic Study of Law*, 74 Yale L.J. 1401, 1408 (1965).

We know that we must extend the rule of law to the world community, for law is the greatest instrument of peace which man has devised. We are all familiar with the difficulties of realizing this objective. These difficulties result from differences in language, color, creed, and political belief. Yet all people of good will now understand the rule of law. It therefore provides a common ground on which we can build a structure of peace.

Are we doing enough to achieve international cooperation? When account is taken of the possible consequences of failure, the answer must be that we are not. We are not spending enough time, we are not spending enough money, we are not devoting sufficient energies to this paramount and overriding cause. I hope that our universities, and especially our law schools, will increasingly stress the importance—the vital importance—of achieving a world rule of law. I believe that those who have received a legal education can make a unique contribution to solving the problem of controlling force in international relations. The lawyer's skills in presenting and helping to resolve differences between people, the judge's experience in deciding, the leadership of all elements of the law in public affairs provide a reservoir of strength in meeting the challenge of achieving a lasting peace.

It is fitting as we dedicate this beautiful building that we consider these matters. For this structure symbolizes not only progress which has been attained at this great university, but stands for that never-ending quest for knowledge and improvement which is education. This building represents accomplishments, but it likewise represents the challenge of unfulfilled goals. I have no doubt that your faculty and students now and in the years to come will be worthy of the exciting mission of pursuing that challenge. For yours is a proud tradition. It is one which views the potentials of our great Nation as being without limit. This outlook is aptly illustrated by the remark a Kentuckian is said to have made when asked what he considered to be the boundaries of the United States: "The boundaries of our country, sir?" he asked. "Why, sir, on the north we are bounded by the Aurora Borealis, on the east we are bounded by the rising sun, on the south we are bounded by the procession of the Equinoxes, and on the west by the Day of Judgment."

If this spirit prevails, and I am confident that it will, the second century of the University of Kentucky will contribute appreciably to the hopes and ambitions of this Commonwealth and of the Nation. And in the success which will attend the exciting future of the University, those who will be privileged to teach and study in this fine new law school facility will play a vital role. I wish all of you good fortunes and Godspeed.