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On Legal Education

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I am delighted to take part in these proceedings.

I am confident of my standing to speak as an unofficial representative of the other law schools of the country in expressing hearty good wishes to the University of Kentucky and its College of Law as we come to dedicate a splendid new building for the College of Law. I assure you, Dean Matthews, and your colleagues on the law faculty that the dedication of your new professional home is occasion for gratification on the part of your brethren in legal education the country over. I hasten to add that no one else in legal education is to be held accountable for what I say beyond this point.

No one of us, I am sure, would give primacy to the physical setting and tools of legal education. I do suggest not only that the equipping of a law school with a first-rate physical plant is noteworthy in itself, but also that it has institutional significance. That the facilities have been provided is encouraging recognition of the great responsibilities of the College of Law. That and the aura of a new law school home combine to provide additional stimulation for a school already committed to the achievement of even higher levels of excellence.

I salute the College of Law as a state university law school. This is not to denigrate the important contributions of the so-called private schools, with one of which I am associated, but to take appropriate notice of the major role and potential of the state school. The strategic posture of the latter is its position of confrontation with problems of the legal order in the manageable context and laboratory, if you will, of a single jurisdiction. This situation is demanding as to thoroughness and accuracy in tracing the development of the law and in appraising its current position.

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It provides a realistic framework for viewing legal problems as they actually arise. At the same time there is no compulsion to be parochial in approach. What is indicated is comparative study both within and without the American system. The resources of the whole world of the law and legal scholarship may be drawn upon in the consideration of problems in specific jurisdictional focus. What has just been said has reference obviously to state legal institutions, law and practice. When we turn to problems involving federal questions we have legal elements common to all the states although factual situations in which they are presented may vary from state to state.

My thesis, if I have one today, is that legal education should be more practical. This bald proposition, without more, would strike some who know me as a complete *volte face*. Certainly, I have been known to say in the past that there is nothing more practical, in a very pragmatic sense, for the lawyer than a sound grasp of theory, that the lawyer who attacks a problem on or out of court without such command is doing it empty-handed. Of course, the explanation derives from definition. By "practical" I do not mean such things as lawyer skills and workaday know-how, which are valuable parts of lawyer competence best gained in actual practice. What I do have in mind is the sustained relating of legal education to the living problems of society. In familar parlance, this has to do with the law in action. It does not reject experience; it demands that we come to earth in genuine problem areas. Assuredly, this should be done in the light of experience.

In paraphrase of language of Justice Holmes employed in another context, I would exhort young people and law students in particular to be part of the action and passions of their time. What needs to be said in this connection, at the present time, however, is not an appeal to the students, but an acknowledgement of the responsibility of higher education and the law schools, in particular, to respond in the educational process to the interest of students in the problems of our society. There are those who condemn the present generation of college students as rather irresponsible, self-indulging pleasure-seekers. These prophets of gloom get no sympathy from me. Young people are enormously more sensitive to human problems than they were in my student days and there is not much doubt but that the attraction of law

study and careers in the law for a great many people now in law schools is the potential of the law as an instrument not only of social control but also for the promotion of human welfare. Thus, it must be evident that to do justice to the law student of today, legal education must come to grips with the difficult human problems which are pressing so hard upon us.

This is a good point at which to observe that, as others have said before, legal education, justly conceived, is general education. It is further development of the whole man. This is so because the law has much more nearly pervasive relevance to human affairs than was once the case. Traditionally, the law has established norms of acceptable conduct and provided sanctions calculated to encourage a favorable degree of conformity to those norms. It has done more—it has provided the framework within which and the legal devices, such as the corporation, contract, lease and trust, by which people can establish and regulate the affairs of a congeries of private sovereignties. In our time the law is doing much, much more. It has become a positive instrument of social betterment.

I am talking descriptively more about a condition than a theory and I do not consider this an occasion to deal critically with philosophies of government. The point is that the law is pervasive and, in considerable measure, is a positive force in American society, the why, the what, and the whither of which can be well explored only in societal context. Thus, it is that law schools are concerned with courses like Legal History, Jurisprudence and Comparative Law, which bear on human values. This is why law teachers, under the leadership of my colleague, Professor Clarence Morris, helped to obtain recognition for this area of legal education in the recently enacted federal law establishing a National Foundation on the Arts and the Humanities. Again, this is why law faculties are drawing upon the knowledge and insights of colleagues in various disciplines in the social and behavioral sciences.

In developing my point I look to the "urban condition of American life." Of course, we all know that our society is highly urbanized, that concentration of population in urban areas is increasing and that problems of our great urban regions are almost overwhelmingly complex and difficult. I think that a realistic view

of things compels us to face human problems in their predominantly urban context and that this applies to legal education. There is risk that I may be charged, as a student of urban affairs, with seizing any occasion to burden others with my own preoccupation. I will take the risk. I think that the urban condition is to be taken into account not only in courses in Local Government Law, Community Planning and Development and Public Finance, but also in other parts of the law school curriculum.

First, some observations about urban affairs. This subject as such, whether called Local Government Law or what not, deserves very substantial recognition in a law school curriculum. I say this not simply because it is a large and extremely active area of plain lawyer's law—cases in the larger field probably occupy more space in the advance sheets than those from any other area—but more because of the subject's pervasive importance and challenge. It touches the life of the individual from start to finish and conditions, all the while, the prospects for his personal fulfillment.

From a politico-legal standpoint a central problem in urban affairs is that of achieving a sound distribution of responsibilty and authority within the sphere of government at the local level. One may note that we have cut the number of organized units of government in the United States almost in half during the latest quarter century. I do not, you notice, say "last"—I am still optimistic in this nuclear age about our prospects. The total is now a little over 90,000. The reduction is not of broad significance because it has been achieved largely in relation to one function—public education—by elimination and consolidation of school districts. The terribly pressing question is how do we relate responsibility and authority to the actual reach of urban problems and functions at the same time that we nurture a sense of community. This does not call for an answer here and now. I do point out that there are possibilities, which lie in between unitary regional government, on the one hand, and piecemeal approaches on the other. One of these is the creation of a regional overlay of government concerned with problems and functions of regional character and scope.

Let us look briefly at two substantive matters in the realm of urban affairs. They are circulation and the environmental conditions of air and water.

A major urban community is a social organism that, like an individual human being, must have a circulatory system. Belatedly this is gaining some recognition in discussion of, if not action upon, urban problems. Instead of giving attention to parts of the system without constant concern for the whole, some thought is being directed to the unitary character of the circulatory system. The interrelationships of the private automobile and the streets that it demands with mass transit, water and air travel and the various types of terminal facilities that different modes of movement call for certainly should be taken into account by the policy-makers. The same can be said for the treatment of the subject in the study of urban affairs in law school. Technical legal material as to establishment and regulation of public ways, for example, is infused with meaning by consideration in relation to function.

Urban man is fouling his environment in more ways than one, not the least of which is pollution of air and water—things vital to life processes. It is desirable in law school exploration of urban problems to regard air and water pollution in adequate physical context, whatever the existing jurisdictional configuration, and to take into account legal aspects of relevant governmental action and its financing. It will be seen that not even state jurisdiction, let alone local, is adequate to deal with that mobile polluter, the automobile. So Congress has acted on the matter.

I come to the field of Constitutional Law. This, truly, is everyone's domain. As one of my bright younger colleagues observed in a faculty meeting recently, all hands teach Constitutional Law with perhaps some notice of lower-stratum material now and then. The hyperbole had the emphasis to stir reflection. I find students in my course in Local Government Law looking immediately for constitutional issues in almost any problem which is put before them. No doubt we of the faculty have had something to do with bringing about this sensitivity. I suggest that the explanation does not stop there. I discern a tendency to settle a great many matters in the courts at the constitutional level and I am not talking here simply about civil rights. In zoning, for example, courts have been persuaded to rest decisions on constitutional grounds in cases in which disposition could have been made at the statutory level.

There is a major area of constitutional law—an area with special relevance to urban affairs—which has been sorely neglected

in legal education. I refere to state constitutional law. One has but to examine any of the well-known coursebooks on Constitutional Law to see that there is almost total preoccupation with the Constitution of the United States and is interpretation. This does not exclude the role of the states in the Federal System from consideration, but it certainly fails to achieve focus upon state constitutional development.

So far as my observation goes, the law school men have not been involved to any large extent in the movement for state constitutional revision. They have left the field to the political scientists. You will note that I have spoken in the past tense. I think that things are going to be different due to a powerful stimulus from the Supreme Court of the United States in the state legislative apportionment decisions.

I have no disposition to minimize the importance of fair representation, but the aspect of the apportionment decisions, which has given me particular encouragement is the leverage they have given us with respect to revision of state constitutions and, in the process, to strengthening the state legislative institution. I simply do not believe that the relative weakness of state government and the state legislative institution in particular is attributable to Federal aggrandizement in public affairs. State constitutions contain hampering provisions bearing on legislative power, sructure and procedure. Were the familiar shackles of state constitutional limitation broken, the state legislatures would be restored to their historic plenary power posture and would be able to shape policy with respect to urban affairs and other matters with the flexibility that the complex and changing character of our society requires. It is to be borne in mind that one of the great responsibilities of a legislature is power devolution within the state constitutional framework. This has obvious relevance to urban affairs.

Another part of public law with much constitutional law content, which calls for notice here, is that concerning intergovernmental relations. Law operates upon human relationships. In the past we have thought of private law as that governing relations between private persons and public law as that bearing upon the relations of private persons with government. Actually, we have had legal problems of relations between governments

from the early days of the republic. On the contemporary scene intergovernmental relations are of major magnitude and importance. This is conspicuous in the urban setting, one of the most painfully evident characteristics of which is a great fragmentation of jurisdiction. More and more we have been getting policy ideas as to urban problems articulated at the national level with the expectation of state and local action on the firing lines. Currently the Economic Opportunities Act of 1964 calls for participation by the poor in decision-making with respect to local activities within the poverty program. The bearing of this upon decision-making by regular local governmental organs as to community action is a matter of great interest.

The urban situation is the sociological setting of most of our difficult problems of the criminal law and its administration. Surely, we are beyond the day when criminal law was studied simply by examining the substantive law of crimes as applied by the courts. There is need to seek depth of understanding by exploring the social context as well as forces active in individual human behavior. The collaboration of social and behavioral scientists is helpful in the process. A law school in a University has such help within easy reach. The symposium program here this morning illustrates admirably a live problem area in the administration of criminal justice.

I wish to speak now of the relation of legal education to human rights. It is another field with special relevance to urban affairs.

The great urban complexes are the most crucial and difficult areas in the civil rights revolution, which is going on in this country. In my judgment the problems involved in achieving equality of opportunity and even-handed treatment under the law are more difficult in Chicago, Los Angeles, Philadelphia and New York than in the deep South. The physical dimensions are larger, the relevant factors more complex and the social tensions greater. These problems put to the test our commitment to individual rights and social justice. They are inescapable; they must be met.

The law student should come to grips with them in appropriate curricular context. Subject matter-wise they cut across a number of conventional courses, which include Constitutional Law, Criminal Law, Family Law, Labor Law and Local Government Law. Their human interest is matched by the intellectual demands

of their legal aspects. Human affairs do not fit neatly into any legal or other classification, however convenient we normally find them to be. It is good for the law student, in developing the intellectual competence to deal effectively with whatever problem may come his way, not to be bound by the confining influence of subject matter classification.

In closing, I will not undertake to summarize the points I have made. I am most concerned to leave with you the thought that the living problems of these troubled and fascinating times provide excellent grist for legal education. They confront us directly and they are fraught with challenge.