

Vision and Workmanship

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VISION AND WORKMANSHIP*

TODAY you embark for a new world, and we are gathered on the pier to wish you a happy and prosperous voyage. None of you is a courier without luggage. You have accumulated for your voyage trunks full of rules of evidence, sections of the Civil Practice Act, principles of contracts and torts and equity. Doubtless you would like to forget all these matters for a while, and you will not hear any more about them from me. Instead, we can stop for a few minutes, after the years of hard work, to consider where you are going and what you expect to find for yourselves in this new land of the law.

Let us begin by blasting some false hopes. A law school diploma is not a bonus bond. Nobody will cash it in for you on presentation. If you have thought of the practice of law as full of gold-mines, you are doomed to disappointment. There will be very little easy money in the future for lawyers or for anybody else. The fact is that all the gold-mines have been seized by the government. The law is not an El Dorado, and neither is it a Land of Lotus Eaters. We have heard a good deal about the thirty-hour week lately, but there will be no thirty-hour week for you. By steady work you can obtain rather unsteady pay, enough to enable you to live happily with your future families. But you have about as much chance of amassing a large fortune at the bar as of drawing a prize in the Irish Sweepstakes.

* Address delivered at the ninth annual commencement of the St. John's University School of Law, June 10th, 1936.

Another mistake is to pick out a little nook of legal activity and allow yourself to settle down in it for life. Do not be bothered by friends who inquire what kind of law you mean to practice. Try as many kinds as possible at the start, and avoid if you can openings that are obviously narrow. Do not become like the middle-aged Austrian lawyer who was drafted into his army as a captain at the outbreak of the World War, and was found on the day after a big battle about six miles behind the lines. At the court martial, his colonel remonstrated with him: "You're an officer—it was your duty to be aggressive—to attack." The unfortunate captain replied: "But colonel, how could I attack when all my life I've been attorney for the defense."

Of course everybody discovers in time that he can do some things better than others and selects his work according to his proved abilities. Let your specialization come gradually as the result of an initial fairly wide experience and not because of a premature choice. And if you find yourself in a distasteful branch of law, shift as soon as you can and give other sorts of legal work a try before you abandon law altogether.

It is a pity to specialize narrowly from the outset because one of the main attractions of a lawyer's life is the great variety of his activities. Detective stories and motion pictures make some laymen think that we spend all our time trying exciting cases before juries. Dramas of that sort will come, but they are likely to be few and far between. Yet there is equal pleasure in the explanation of an intricate question of law to a court or in the successful completion of a big business transaction which had to be carefully arranged so as to be fair to all those concerned. Perhaps the greatest permanent satisfaction will arise from work of which the public hears nothing. People will learn to trust you. They will come to you with their troubles. Through your help men will enter into agreements whose meaning you make clear to them from the start so as to avoid needless disputes; property given by dead men to their families will be received without injurious diminution; homes will be bought, and money will be safely invested to pay for the education of children.

Do not think that you have escaped from drudgery by going into the law. There will be hours and perhaps days when you will bitterly compare yourself to a man shoveling ashes on the dump. But every occupation has its tiresome times, and few have so many good moments as ours.

Think of yourselves henceforth as members of a great profession. Measure your conduct in perplexing moments by that thought. Law is not indeed the noblest of the professions. It is not given to you to explore the mysteries of the Universe and to establish the Kingdom of God in men's hearts. And your services may seem slight to you in comparison with what a doctor does for a sick child or his saving of a useful life by an operation. But do not underrate your calling. You have undertaken the difficult task of furthering the attainment of justice in an imperfect world. It is within your power to make human relations run much more smoothly and to see that atrophied rules are lopped off before dangerous putrefaction sets in. You are the surgeons of society, the physicians of the body politic.

Vision and workmanship are two requisites for success in your profession—indeed in all professions. Each is important, but either without the other tends to produce a lopsided life. They belong together, but, now and then, one or the other is likely to be over-emphasized and the companion quality neglected. In the union of vision and workmanship lie great possibilities of achievement.

“Your young men shall dream dreams, and your old men shall see visions.” By vision I mean the power to conceive of a better world, with less poverty, ugliness, waste, delay, unhappiness, the ability to test the value of what we are doing by comparing it with such a better world. Vision judges what is by eternal standards—*sub specie aeternitatis*.

By workmanship, I mean doing a good job, the proper execution of details, laying the bricks evenly, building to last. There is a deep satisfaction in stepping into a laboratory or a factory or an automobile repair shop and watching a good man at his task. The same satisfaction was expressed twenty-five centuries ago in Ecclesiasticus, in a passage that applies

metaphorically to a busy lawyer preparing a case for trial or argument.

"So is the smith sitting by the anvil, and considering the unwrought iron; the vapour of the fire will waste his flesh, and in the heat of the furnace will he wrestle with his work; the noise of the hammer will be ever in his ear, and his eyes are upon the pattern of the vessel; he will set his heart upon perfecting his works, and he will be wakeful to adorn them perfectly."

Good workmen, the writer continues, must not expect public acclaim; their reward lies elsewhere.

"They shall not be sought for in the council of the people, and in the assembly they shall not mount on high. * * * But they will maintain the fabric of the world; and in the handy work of their craft is their prayer."

The importance of workmanship in the practice of law is too obvious to require many words. Do every job a little better than it needs to be done. Do not neglect a small case. However unimportant it seems to you, it may involve most of your client's meagre property. Put yourself in the client's place and always think what the case means to him. When you are drawing instruments, do not take things for granted. Even a very able lawyer may have this fault. Such a lawyer was once told by a client that he wanted to give a legacy of \$300,000 to a charitable corporation, which, the client said, was called the Rock Nook Home for Children. The lawyer wrote the will, describing the legatee in the client's words. After the testator's death, this children's home was discovered not to be a corporation at all but just a building owned by a Family Welfare Society of an entirely different corporate name. Up came distant relatives to gather in the \$300,000, and it was saved for the children's home only after years of expensive litigation,¹ which could have been avoided by a five-minute telephone conversation with the office of the Secretary of State to verify the corporate name. When you are drawing an instrument, you are building a house for others to occupy. Your duty is to plug up all possible leaks in advance.

¹ *Eccles v. Rhode Island Hospital Trust Co.*, 90 Conn. 592, 98 Atl. 129 (1916).

One element of workmanship conspicuously lacking in our profession is promptness. Lawyers are said to spend more time in getting a case postponed than in trying it. Suppose that your automobile was promised by a repair shop for nine o'clock in the morning, and was not ready until five in the afternoon. You would not go to that shop again. Yet we lawyers will think nothing of putting off trials for weeks and months. It is no excuse that there are so many matters on hand. You would not accept that excuse from the repair shop. It is part of good workmanship to arrange tasks so that they can be completed as promised. You will find this easy-going attitude all around you in the profession. Do not let it get into your bones. Of course you must sometimes consent to your opponent's request for delay, but resolve at the very outset of your practice not to make such requests yourself.

The great danger of the law, however, is not lack of workmanship, but workmanship without vision. We are so rushed with what we are doing that we hardly ever take time to think, "What are we doing?" We do not get outside ourselves and stand off and look at our work and see what its consequences are upon the rest of society and whether it is really worth while. Laymen often reproach us with defending those whom we know to be guilty. To my mind, our tendency is just the opposite—to believe too strongly that those we defend are wholly right. We accept our client's economic and social outlook along with his retainer. Consider for example the numberless corporate financial structures that came down in the crash of 1929. How great a part was played in erecting them by members of the bar, who never stopped to think over the economic soundness of their performances. Of what use is it to society for men to sit up until three o'clock in the morning perfecting the legal details of a bond issue which leaves the mortgagor in complete freedom to render the security worthless? The joke is that lawyers as a class of investors have been conspicuous losers by each other's technical skill. They sawed off the limb on which they sat, and can find little satisfaction in the perfect accuracy of the cut.

Think again of lawyers as social physicians. A doctor

has his patients which press on his time as much as client's do on a lawyer's. But suppose that an able doctor is confronted with a typhoid epidemic or a high death rate of mothers in childbirth in a particular hospital. When the physician has done his best for the unfortunate patients who thus crowd in upon him, he does not stop there. He turns around to find the cause of the disaster and its permanent cure. He persuades his city to purify its water, or like the father of Mr. Justice Holmes he reduces the maternal death rate by ending the infection that caused puerperal fever. We lawyers have our epidemics, but do we exert ourselves very much to end them?

One of these legal epidemics is automobile accident litigation. It has kept law-offices busy with clients, but meanwhile the courts have become hopelessly congested. If an automobile accident should occur outside this hall this minute, it would probably not be tried by a jury until 1941; the most honest witness cannot remember accurately what happened during twenty seconds five years ago, but a liar's memory is always fresh. Among the consequences of this congestion are heavy hospital expenses never repaid to honest victims, big sums paid in settlements to dishonest victims, the delay of commercial lawsuits so that disgusted men are leaving our tribunals altogether and setting up private law courts of their own for arbitration. Just what the cure for this great evil is, we do not yet know, but there must be a cure. Perhaps a scheme like Workmen's Compensation. Perhaps a constitutional amendment eliminating jury trial in civil cases, for despite its traditional merits changing conditions may have made it too costly and there are not enough intelligent men who can spare time from urban occupations to sit on a jury. At all events, lawyers should not be satisfied merely with trying accident cases or law teachers with exploring the fine details of negligence. The blocked-up channels of litigation must be freed and soon, for the delays are getting longer every year.

A second and related evil is ambulance chasing. This epidemic has been energetically attacked, but chasing the ambulance chasers has not had much success. Despite numerous disbarments and prosecutions, certain lawyers systemati-

cally continue to solicit clients among the victims of automobile accidents. Perhaps this objectionable activity persists because it responds to some social need that is not adequately taken care of by the present methods of legitimate law practice.

Consider the conditions that bring about ambulance chasing. Suppose a pedestrian is hit by an automobile in downtown Brooklyn. The victim needs medical help and he needs legal help. His medical need is met automatically because everybody present knows that the thing to do is to rush the victim off to the nearest hospital. There skilled service will be given for charges within his means. But how can he legitimately obtain the legal help which he ought to have within a few hours? The only lawful way is to rely on the chance that some friend or bystander happens to know an attorney, who may or may not be skillful and whose fee may not be ascertainable in advance. Is it surprising that the injured man prefers to deal with a runner from a highly organized defense office? The runner's activities are tolerated by a large mass of citizens because the legitimate alternative is so unsatisfactory. How would it be if medical aid were obtainable only from private doctors? If the victims of an accident had to rely on the casual recollections of the bystanders about neighboring physicians, some would fall into the hands of incompetent doctors and some would die for lack of any care. Before long some doctors would have their runners at every accident. As things are, however, such illegitimate medical aid is discouraged—by hospitals, not by punishments. My guess is that ambulance-chasing lawyers will operate actively until we provide legal hospitals as well staffed and equipped as medical hospitals, and with similarly regulated fees. The need the ambulance chaser fills would then be met by an effective lawful substitute. To use the typhoid parallel once more, if the city water system is outgrown and people supplement it by infected wells, it is hopeless to try to close the wells—a new reservoir must be built.

Doubtless some legitimate accident lawyers would lose business to the legal hospital, but in compensation paid staff

positions would have to be filled comparable to those in our medical hospitals.²

A third persistent problem is presented by the defense of persons accused of crime. The aspect of this most emphasized by the press, is that malefactors of great wealth, like gangsters and racketeers, have permanent legal advisers ready to come to their aid whenever they are caught. Another side to the matter, just as disturbing although less discussed, is the plight of the innocent man or the man guilty of a small offense charged with a serious crime. Professional criminals can have able counsel because their tainted income supplies large fees, but where is the innocent man to turn for legal help? Years ago every enterprising lawyer took criminal defense cases as a matter of course along with contracts, wills, and dog suits—they were all grist to his mill. But during the past half century general law offices, at least in cities, have more and more kept away from criminal practice, except for offenses under the Sherman Act and the revenue laws. Today most leaders of the bar would not touch a criminal case with gloves on, and if they did they would probably make a mess of it for lack of experience. Of course there are exceptions, but criminal defense has increasingly drifted into the hands either of incompetent lawyers who cannot make a living from civil cases or else of none too scrupulous specialists who charge all the traffic will bear, so that the accused and his relatives must mortgage all they possess in order to get counsel.

Just as private business enterprise seems to have broken down before the problem of working-class housing, so private law practice has broken down with respect to criminal defense. Where can counsel be found in sufficient numbers to represent all prisoners both scrupulously and efficiently, for fees within the means of the accused?

Here again the cure is uncertain. It would be of little use for me to urge you to flock into criminal defense work and raise the standards. The remuneration is too small, and your association with real or supposed offenders might scare

² Professor K. N. Llewellyn's addresses have suggested some of the ideas in the three preceding paragraphs. See, for example, his *Comments on the New York City Bar Survey* (1935) 8 AM. L. SCH. REV. 135.

off respectable clients. Assignment of counsel by the court is a makeshift. Better possibilities are found in the Voluntary Defender supplied by a legal aid society and the Public Defender employed by a city. Perhaps the suggested legal hospital will have a contagious ward for criminal cases. Of course the malefactor of great wealth will not turn to such sources, but some organized plan is badly needed in every city to take care of those who are now unsatisfactorily defended or not represented at all.

These are only a few of the reasons why lawyers should escape from their absorption in the law as it is and try to bring about the law as it ought to be. We ought to have fewer cases and more causes. Vast possibilities are open for remoulding the law with the help of economics and psychiatry. Law is only a part of life. The health of the law requires that it be constantly related to the rest of life. A great lawyer must supplement his workmanship by his vision of the whole scheme of things.

Now let me turn aside from your private practice and consider these two requisites of vision and workmanship as they apply to another phase of your future activities. Law is the broadest of the gateways into public life. You can all look forward to some participation in public affairs, not necessarily in elective offices. Some of you will be offered salaried appointments, and you will have abundant opportunities for occasional legal help to the government of your city or state or the nation, help none the less valuable because it may be unrewarded by money or press publicity.

If workmanship without vision is the danger of the private practice of law, its opposite, vision without workmanship, is the besetting sin of public life. Whatever the administration or the party, public affairs are full of noble aims and sloppy execution, magnificent projects for a better world with no care for expense. The streets of the earthly paradise are to be paved with taxpayers' gold.

The course of American history has tended to develop a tradition of ideals rather than workmanship. The great crises have turned on broad conceptions like religious freedom, independence, opening the West, the liberation of the slaves, make the world safe for democracy, abolish poverty,

restore America to herself. The public appearances of our ablest statesmen have usually been campaign addresses, set speeches in Congress, radio talks, ceremonial occasions that call for general statements, where the details that require workmanship would be tiresome. Our political leaders are not obliged to come into the limelight with solid facts like an English Chancellor of the Exchequer unfolding all the taxes of the year. Few state governors have imitated Al Smith's crystal-clear expositions of state finances to the people. Much sound work is done by some public men, but it is mostly done in seclusion, in conferences and Congressional committees and scientific bureaus, where it receives little recognition. We remember Woodrow Wilson for his great speeches, and forget the weeks of painstaking labor and adjusting conflicts which led to the Federal Reserve System. Thus little in our experience leads us to surround good workmanship with heroic emotions. We thrill at the thought of dramatic clashes and immortal phrases, but we are not stirred by the recollection of what really counts—the establishment of sound finance so as to make every taxpayer's dollar do its utmost for the public good, the elimination of waste, the painstaking selection of able men and the power to get the best out of them when selected, the ability to make diverse minds cooperate in a national enterprise.

One important reason for the lack of sound workmanship in public affairs is that we early acquired the habit of running away from difficulties. In a sense all of our ancestors ran away from something in Europe when they came over here, and we have been doing pretty much the same thing ever since. If eastern cities became crowded or the soil was getting exhausted, we moved west to the frontier and followed it onward so long as there was any free land to go to. Instead of reorganizing an incompetent city police force, we run to state police or G-men. Instead of convicting super-gangsters for murders and extortion, we run over to the Treasury Department and get them imprisoned for evading income taxes. Some day I expect to see a man who commits a murder on Broadway prosecuted for obstructing traffic. We ran away from the liquor problem into prohibition and then back again without any real effort to achieve intelligent

control of intoxicants. We run from muddled divorce laws to Reno and Yucatan, from unadjusted labor disputes to injunctions and Washington officials, from boss-ridden conventions to ballyhoo primaries, from unsystematic commercial litigation to arbitration, from ill-considered Congressional law-making to the Supreme Court. We do not stand our ground and face the difficulties and struggle to end them where they are. But the time has arrived when we cannot run away much longer. The free land has gone. If we shift from one government to another in fighting powerful criminals, they soon learn to corrupt the new authorities. The only satisfactory way to end an evil is to fight it through systematically until it is eradicated and not try to get away from it by going around the corner.

Vision is a good thing just as bread is a good thing, but both demand the sweat of the brow. Our hopes for the utilization of our natural resources and our mechanical ingenuity so as to provide for everybody an adequate subsistence and the opportunity for the fullest development of his powers cannot be attained unless we have in public life the same trained skill and shrewd economy and unfailing accuracy that turns out a Ford car for \$425 F. O. B. Detroit. It is for you lawyers to supply much of the workmanship which alone can make possible the realization of the visions of an America forever liberated from the disasters of the last seven years.

Vision and workmanship can be combined. Louis Pasteur made real his dreams of saving agriculture and human life from pestilence through his long hours in the laboratory. George Washington's greatness consisted not merely in his conception of a free and united country, but in the detailed work necessary to get our government started. I get a thrill from turning over the statutes of his first Congress in 1789—the statutes that got the country going. Our own profession furnishes many examples of the union of workmanship and vision. I might speak of David Dudley Field, who devoted unpaid hours to the simplification of procedure; of Arthur Von Briesen, who turned aside from the intricacies of patent law to found the New York Legal Aid Society and provide justice for the poor; of Elihu Root,

giving the last years of his active life to the creation of a modern government for the state of New York. From these well-known men I turn to a lawyer of past times, for it is one of the pleasures of our profession that strong links bind us to ancient lawyers who tried in their day to accomplish the same tasks that we must perform in ours. Serjeant Maynard, born in 1602 in the reign of Queen Elizabeth, had "great reading and knowledge in the more profound and perplexed parts of the law." He knew all about contingent remainders and shifting uses. But he did not live in the past. In 1689, at the age of eighty-seven, when most men ask to be excused from being forward-looking, he answered the argument that his country in a great crisis must be guided solely by old precedents, with words which the leaders of the American bar might wisely take to heart in the equally troublous times through which we are passing.

"We are at this moment out of the beaten path. If therefore we are determined to move only in that path, we cannot move at all. A man in a revolution resolving to do nothing which is not strictly according to established form resembles a man who has lost himself in the wilderness, and who stands crying 'Where is the King's highway? I will walk nowhere but on the King's highway.' In a wilderness a man should take the track which will carry him home."

Vision comes naturally with youth and workmanship with age. Our young men dream dreams, but our old men do not always see visions, especially older lawyers. There is danger that as the vapor of the fire wastes our flesh and the noise of the hammer is ever in the ear, the dreams of youth will be forgotten. Do not let this happen to you. Beware of those who repress your enthusiasm by saying that everybody had such ideas once and knows better as he grows older. Men's ideas become different as they grow older, but it by no means follows that those they had first were wrong and the later ideas are right. It may be just the opposite. So keep alive the visions you have this morning of a better world and try to bring that world into being by the thorough workmanship for which you have been trained.

Do not expect too much of yourself. Do not be disappointed if your accomplishments seem small in comparison with your early hopes. Even so, you can lessen the evils that surround us because you are not laboring alone. Others are sharing your workmanship and your vision. Each of us can do only a little, but that we should do that little is of tremendous importance.

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