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## AFTER TWENTY-SIX YEARS ON THE NEW YORK COURT OF APPEALS

CHARLES S. DESMOND \*

Learned Hand ruminating, after fifty years of judging, on his "most engaging and pleasant occupation," listed two qualities which a judge should have: "complete personal detachment" and "as much imagination as is possible." Judge Curtis Bok thought that a good judge "must have an enormous concern with life, animate and inanimate, and a sense of its tempestuous and untamed streaming." My dear friend Justice Walter Schaefer of the Illinois Supreme Court thinks that even minimal standards must include legal ability, a judicial temperament, and integrity, plus not only such matters as punctuality and promptness in the dispatch of legal business, but, more importantly, "responsibility, concentration, sensitivity and a lack of intellectual arrogance." The Italian lawyer-scholar Calamandrei wrote that the worst thing that can happen to a judge is to get used to it and that the fortunate judge is the one who even to the day of his retirement "experiences the same religious exaltation in rendering judgment which made him tremble 50 years before, when as a young praetor he handed down his first decision."

Of all those laudable qualities, I, after 26 years on the Court of Appeals (plus one on the trial bench), can claim for myself only a little of Hand's "imagination," a bit of Bok's "concern with life" and a lot of Calamandrei's "exaltation." Never have I forgotten to be grateful for the immeasurable privilege of being a judge, and sitting in judgment, of being a part of the process developed painfully over centuries by patient, earnest men of law,

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of being a cog in the never worn-out machine which grinds unceasingly, turning out the judgments by which men live and make their livings, and keep their societies intact. I leave the bench as I came to it—thankful to my God, to my family and my teachers, to my fellow judges and innumerable lawyer friends, to colleagues in the law schools, to all those in the information media and governors' offices and legislative halls who have cooperated and been friendly and forgiving, to the non-judicial personnel in many courts and judicial administrative bodies, to everyone everywhere who joined in making my long judicial job what Hand called his "most engaging and pleasant occupation." All these helps and friendships were as little deserved as the tributes voiced on my retirement—but just as acceptable and as gratefully received.

It was my good fortune to serve on a Court whose traditions are unexcelled and kept constantly alive—and to serve there in a time of high emprise and exciting change. My quarter-century saw, in my state and around the country, more improvement in judicial administration than in a century before. I saw legal education become strikingly more mature and efficient, and I had a little part in it at several universities. Bar Associations—at least some of them—took on more responsibility for maintaining the standards, standing and service of the profession. In-service training programs proliferated, not least usefully among the judges. We of the bench and bar tried with some success to make up for long years of seeming stagnation and stand-still.

All this was not just "busy work" or paper shuffling or press releases. The bar and the bench took their roles in the great freedom movements of the twentieth century. Compare today's decisions in the tort and criminal law fields with those of 1940. The law has at least partially adjusted itself to our mechanized civilization by expanding the remedies available to tort victims, and we will go much further. The greatest advances have been in the protection and defense of those, especially the indigent ones, accused of crime. We are probably too close to the

scene to appreciate the size of this revolution or to realize how far we have moved toward real and actual effectuation for all Americans of the Bill of Rights. In all of this the New York Court of Appeals has had a not inconspicuous part—again, my gratitude for being allowed to participate.

What of tomorrow? Like Jefferson in one of his famous letters to John Adams: "I like the dream of the future better than the history of the past." The courts are crowded with cases, the schools with students. Our efforts to modernize the disposition of tort claims have not gotten far. Calendar reform is only partially successful. In half the states the bar is not fully organized. The education of law students still lacks room in its traditional three years for needed "practical" courses. Centralized administration of state court systems is gaining acceptance, but slowly. In Federal, State and local courts everywhere there are too few judges. Except in a few places, procedures for disciplining lawyers—and for removing unfit judges—are inadequate. Like the poet Robert Frost, we have far to go before we sleep.

But mine have been years of hard work and good companionship, of pressure and endless toil and much fun, of working with people than whom there are no better, on a job that brought as its best reward a sense of accomplishment, meagre and insufficient but real. For all of which, thanks. As Dryden translated one of the Odes of Horace:

Be fair, or foul, or rain, or shine,  
The joys I have possessed, in spite of fate, are mine,  
Not Heaven itself upon the past has power,  
But what has been, has been, and I have had my hour.