

CONVOCATION ADDRESS

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The dedication of a law school building is an important event in the life of any university and the commonwealth of which it is a part. In recent years it has been my privilege to participate in a number of such ceremonies, and on each such occasion I add to my confidence in the future of our institutions and the well-being of our people. The realization that for generations to come young Americans will there acquire an inspiration for the law and thereafter throughout their professional lives as practitioners, judges, and legal scholars will leave their mark on the standards of justice under which all our people live lends excitement to the occasion. Also, it gives one a warm feeling of gratitude to those who, having conceived the idea, labored to bring it to fruition with such high hopes of thus making the law serve better as the guiding genius of our way of life.

I suppose that the construction of a law school building means different things to different people as has the construction of great buildings in all times. On occasions such as this, I am always reminded of the ancient story concerning the wayfarer who was passing a structure under construction. He stopped to inquire of the three craftsmen who were working on it what they were doing. The first, without looking up, responded, "I am making a living." The second said, "I am following my trade." But the third, rising to his full height and looking straight into the eyes of the stranger said, "Sir, I am building a temple."

I am sure that Dean Fordham and his faculty who have such high aspirations for their already great Law School, and the President and faculty of the University who honor the dedication with this great convocation, all believe they are building a temple.

And I can think of no place in this broad land where a temple of justice could with better justification or with greater inspiration be built. This University, conceived as the brain child of the benevolent Benjamin Franklin a generation before our Declaration of Independence was proclaimed, is so intimately connected with the formation of the Union and its growing pains of the first dubious years as to be almost inseparable from its institutions. Particularly is this true in the field of law. When James Wilson, Associate Justice of the

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Supreme Court, delivered his first lectures as Professor of Law in the year following the adoption of the Constitution of the United States, he laid the foundation for a school that was destined to remain among the leaders in advancing the Rule of Law to which our nation has been committed throughout its existence.

And today, on the occasion of the dedication of your new law school building, that rule is the dominant theme of the occasion. We have heard three inspiring lectures concerning its application on the various levels of governmental action. Senator Clark, Ambassador Herter, and Dean Cordier have all made a distinct contribution to the cause. There is a common denominator running through all their discussions which is basic to any furtherance of the legal order, whether in urban areas, international regions, or on a world level. Necessarily the foundation for all discussion of the advancement of the legal order is those principles of justice embodied in our best traditions and highest ideals for the administration of justice and the supremacy of law which constitute the Rule of Law.

In an Outline Study of the Rule of Law in the Legal System and Practice in the United States, prepared in 1958 for the International Commission of Jurists in The Hague, by a special committee of the American Bar Association, it is observed:

The "Rule of Law" as a term in common usage by the disciples of Anglo-Saxon law is not susceptible of such precise definition as to carry the same meaning to all. For the purposes of the American analysis . . . it is assumed to be the body of precepts of fundamental individual legal rights permeating institutions of government which are vested with appropriate power of enforcement and those procedures by which such precepts may be applied to make those rights effective. These elements—of precepts, institutions and procedures—exist in law to effect the protection of essential interests of the individual guaranteed by society through limitations on the authority of the state. . . . The precepts applied by our legislatures, executive agencies, courts and the bar are thereby recognized to be the basic law establishing fundamental legal rights.¹

This is, I believe, the sense that we in our country usually attach to the phrase "Rule of Law."

The Rule of Law is expanding and gaining prestige on every level. However, the greatest single advancement in the Rule of Law in the last millennium is what was done in Philadelphia in Inde-

¹ ABA SECTION ON INT'L & COMPARATIVE LAW, THE RULE OF LAW IN THE UNITED STATES 10-11 (1958).

pendence Hall where the Declaration of Independence was proclaimed and the United States Constitution charted, written, and put into effect. Here we adopted and tried for the first time a system of government with separate but coordinate branches, each autonomous in its own field, yet all of them interdependent in the performance of their functions. Here those branches learned to live together in a single government by first learning to respect each other and to exercise the self-restraint that is the very cement of our institutions.

It must be inspiring for a Law School to be in such surroundings and to be a part of a University that was founded by Benjamin Franklin, without whose wisdom, patience, and understanding of human history we probably never would have had the Constitution—at least not the one we have now. Without his guidance our country might well have become balkanized and the Union set back for generations. We were floundering under the Articles of Confederation. There is nothing more prophetic than Benjamin Franklin's remarks when the Constitution was in the actual process of being signed on Monday, September 17, 1787, in Independence Hall, so near the Law School where we are now assembled. James Madison reports in his Journal that:

Whilst the last members were signing it Doctr. Franklin looking towards the Presidents Chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.²

Up to the time of the American Revolution, the Rule of Law as then understood was confined practically to the Magna Charta (1215), the Petition of Right (1628), the Bill of Rights (1689), and the common law that had developed through their interpretation. Here in Philadelphia in our Constitution that Rule of Law was expanded and put into one written document for the first time. To further the concept of the Rule of Law, our own Bill of Rights was added to the Constitution by the first Congress of the United States, which, by the way, was perhaps the greatest Congress that has ever met. Not only did it propose the Bill of Rights, but it established our federal

² MADISON, *THE DEBATES IN THE FEDERAL CONVENTION OF 1787*, at 583 (int'l ed. Hunt & Scott 1920).

judiciary. The Judiciary Act remains to this day with very little change and it has served us well. That Congress also implemented our new government and provided the ingredients for our federalism that has been recognized as the genius of our American institutions. It has brought about more freedom of action on every level of government with greater freedom of the individual than anything yet devised by man.

At that time life was simple. We were remote from the rest of the world. The idea of international law was in its infancy. Although Hugo Grotius had already made his contribution to the cause of international law by proclaiming that natural law prescribed rules of conduct for nations as well as individuals, it still was more of an ideal in the minds of a few people than a reality. Since those days we have moved forward greatly in spite of the terrible wars we have had and the forebodings of the end of civilization by weapons of mass destruction. Now nations large and small do sit down at the conference table; they do have an opportunity to be heard. All decent people do reject the idea that might makes right. While we cannot yet say the Rule of Law pervades the earth, we can say that all who believe in a free world are thinking in terms of advancing that cause. Personally, I believe that in spite of all dangers that face us, in spite of the intransigency in the world, we are moving forward and we have a right to believe that in the foreseeable future we will be able to avoid great wars. But the speed with which that can be done and the certainty with which it can be done depends on the attitude and approach made to the Rule of Law by everyone in this and every other free land.

Our leaders, or many of them, must come from our law schools. The law schools are the places our young men and women must not only learn how to use the law to achieve just results in solving the affairs of life, but they must also dedicate themselves to a belief that problems large and small can and should be decided through law. They should become a great breed whose preoccupation is not only with the mechanics of the law but with those great principles of justice and ethics and humanity that are implicit in it.

Sometimes I wonder if all our law schools are measuring up to such a concept of the law. We are wont to say that science is impersonal and that we are in danger of science destroying civilization. But is there not equally a great danger of destroying ourselves if the law becomes cold and indifferent and materialistic and without those humanitarian influences that have made it the sheet anchor of civilization? Too few of our law schools can find a place in their curriculum

for such indoctrination. I know there are different ideas of approaching these subjects, and there are those who believe that students can be infused with such basic ideals by each professor in teaching the prescribed so-called practical legal subjects. I suppose that could be done. But human nature is such that it is not always done because specialization has a tendency to become myopic and to the extent that this kind of instruction is denied the students of the law it is a weakness in our system.

Thousands of the graduates of law schools will eventually become judges, law professors, and public servants, as well as private practitioners, and the contribution that each of them is capable of making depends on a true understanding of the Rule of Law. That term as we so often hear it expressed—that we have a government of laws and not of men—has been used so much in recent years that we sometimes utter it without really appreciating its true meaning. To one person it may mean one thing; to another it may have a quite different significance. And it is uncommon to find people who have a rounded concept of the Rule of Law. Too often we find people who believe fervently in that portion of the Rule of Law that protects them in their own sphere of activity but who are intolerant of that portion that protects other people in other walks of life. Many a person who believes implicitly that the Constitution is designed to protect him in the enjoyment and use of his property has little patience with those who insist on freedom of expression, freedom to teach, and freedom of association. Some believe ardently in the freedom of the press and of their right to protect their confidential sources of information but have no regard for those who might claim the right against self-incrimination.

When we say we have a government of laws and not of men we mean, at the very least, that the law protects all men equally in their property and individual rights regardless of their race, religion, color, or wealth. And even in America, where we have made great advances, we should not be complacent about the Rule of Law until we have first embraced and applied it at home and made it work in all its aspects. If we are honest with ourselves, we must recognize that we are still working on a great unfinished job. This is our next and nearest step in developing a modern, adequate legal system, and the attainment of this goal should be a primary purpose of the faculty and students in all schools of law.

In this time when the problem of building peace and averting nuclear war seems to overshadow every other question, there are those who are skeptical about the value of the contribution to be made in

law schools and the usefulness of legal research. There are people who feel that the physical sciences have so far outstripped the social sciences that our civilization is in danger of utter destruction because of a lack of the moral force necessary to control science. They are afraid of science. It seems to me that this carries an implication that scientists are less concerned with the welfare of the world than are the rest of us. I do not believe this is true.

When the chemists of the last century worked out by careful experiment the nature and properties of chlorine, I do not believe they had in mind the use of chlorine gas to exterminate massed soldiery, as happened on the battlefields of Europe in World War I. When Albert Einstein at the turn of the century worked out his famous mathematical formula equating mass with energy, I do not believe he had military uses of atomic energy in mind. When Ernest Lawrence built his first cyclotron on the hill back of Berkeley and successfully split the atom, I am positive that the atomic explosion at Hiroshima was not in his thoughts. And I would be surprised if Benjamin Franklin was thinking in terms of radar and guided missiles to destroy civilization as he made his electrical experiments with his kite. It is not the scientists who are the ogres of our time, and it is not science that is running away and endangering civilization. The danger lies in the lack of a lawful world and the absence of a world ordered under law which will avoid the pressures to use scientific knowledge for destructive rather than for peaceful purposes. It would be better if, instead of worrying about the advancement of scientific knowledge, we gave more consideration to applying some of the techniques that make science so powerful to the furtherance of the Rule of Law and the controls and self-restraint that will make the wartime applications of scientific knowledge obsolete.

In all countries and from the beginning of literature, it is traditional to express our ideas about education, the pursuit of knowledge, and progress towards ideals by analogy to the sun and to the mysteries of light, and probably such analogies are no less useful today. Recently the physical scientists have produced a most extraordinary invention which will produce a beam of what they call "coherent light," a kind of light never found in nature and never before seen in the world. The device is called an "Optical Maser." The principle was discovered by Charles H. Townes at Columbia University, and the word "Maser" derives from the key letters in the phrase, "microwave amplification by stimulated emission of radiation."

In this fascinating device, by the application of electrical power atoms are reflected and bounced back and forth within a tube reaching

a crescendo from which a cascade of photons emerges in a beam of light in which each wave is precisely in step with its predecessor, each wave thus adding to the power of the wave which has gone before. Because these waves are all in step, each adding to the force of the other, a beam of light of incredible power can be produced. The Optical Maser has actually flashed a spot of red light on the surface of the moon which could be observed with telescopes on earth. At present, not even the scientists can estimate the potential usefulness of this device.

On this analogy I suggest that our law schools could well become a kind of Maser for the Rule of Law. Within their walls the elemental principles of law and justice should be broken down and reflected and re-reflected, striking sparks from students and faculty alike, and this mixture with adequate stimulation should produce a beam of coherent legal light of immense power and capable of revealing the Rule of Law in its full glory to any and every part of the earth.

We must not be led astray by the notion that legal research is limited to puttering among dusty books in order to amplify some morsel of academic learning which is of interest to but a handful of other scholars. The meaning of legal research must be broadened to include basic research on the jurisprudence of world Rule of Law, the exploitation of new sources of international law, and the creation of new concepts of international law, creative, intellectual efforts in designing and improving international institutions, the provision of teaching materials and new kinds of courses, and supplying materials to educate and influence public opinion in all parts of the world. Wave after wave of research in these fields emerging from our law schools would be a beam of coherent legal light and a powerful engine in spreading the Rule of Law and building peace through law.