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Cornell Law School's Birth and Its March to Greatness: A Rambling Centennial Tribute

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THE CORNELL LAW SCHOOL'S BIRTH AND ITS MARCH TO GREATNESS: A RAMBLING CENTENNIAL TRIBUTE

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I must begin with an abject confession: Contrary to the belief of those who invited me to speak here today, I was not in Ithaca on the day the Law School opened in September 1887. But that was not my fault. In getting me here, the Lehigh Valley Railroad, not atypically, was about 60 years late.

Yet, the geriatric theory of choosing me as a speaker is not without substance. As an observer of lawyers and law schools, I have been around for much more than half of the life-span of this school, and during more than a quarter of its ever ascending development I was an active member of the team.

Standing in this room, on this platform, on a Saturday morning, I have an acute sense of deja vu. This is the story: In the late 1940s and early 1950s, the Law School had a curriculum that generally was well-rounded; but for budgetary reasons we were unable to offer a course in Family Law. That was embarrassing, especially since Domestic Relations was a Bar Examination subject. When Robert Stevens came up with the idea that the most vital aspects of the subject might be covered in two or three extra-curricular lectures, each of two hours duration, I volunteered. Some of you may remember those Family Law lectures. They were oriented toward the Bar Exam; but the subject, of course, lends itself to a certain amount of sprucing up, especially at the hands of a speaker who at that time was too young and too brash to have lost his taste for off-color allusions. To make a long story short, the lectures became sufficiently popular to be held in the moot court room on Saturday mornings, when weekend-visitors as well as regular law students were able to attend. In the end, I was hard-pressed to find enough recent cases that would meet all the expectations of the audience. But careful legal research always helps to solve problems. In the Table of Cases of the New York Digest I invariably found what I needed—by looking for the ones entitled Anonymous v. Anonymous.

For those of you who are interested in Family Law, I still have

my notes on some of the more remarkable cases. However, the subject to be discussed this morning relates, not to the marriages, passions, and foibles of individuals, but to the birth and growth of an institution—*our* institution.

Let me disclaim, at the outset, any intention of presenting coherent chronological information, or indeed any information, on the history of the Cornell Law School. Many of you are thoroughly familiar with that history,[1] and all of its colorful details are recorded eloquently in a succession of well-known law review articles written by masters of the subject. Consecutive accounts of segments of that history—authored by Dean Woodruff, Dean Stevens, and our friend Dave Curtiss—were published in the pages of the Cornell Law Review, formerly the Cornell Law Quarterly,[2] while an additional survey of the School's history, which flowed from the busy pen of our friend Harry Henn, appeared in the N.Y. State Bar Journal.[3]

What I propose to submit to you this morning is much more modest. I shall try to put the birth of the Cornell Law School into the broader context of the history of education, and especially of legal education, in the United States. Against that background, I shall mention a few—and only a few—of the proud accomplishments of our school during its first 100 years. And at the end of what I promise will be a brief address, I shall add a few thoughts concerning the choices the school faces at the present time.

From colonial days until well into the second half of the 19th century, American higher education in general and American legal education in particular was dominated by the English model. As to general education, this meant that the young gentleman received his post-secondary education at a college, usually a college affiliated with a religious group, where he studied the classics, mathematics, and other gentlemanly, non-professional subjects. Legal education, again in the mold of English tradition, until the 1870s was provided almost exclusively by "reading law" in the office of a legal practitioner. There were some so-called law schools, like the Litchfield School which operated from 1784 to 1833, but the training provided by these schools in essence was no different from the type of apprenticeship plus reading of Blackstone that an ordinary law office might offer to a candidate. In the course of the 19th century, a

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1 For a recent discussion of the school's history, see Schilke, *Law As Humane Study: A Century of Progress at Cornell Law School*, CORNELL L. FORUM: CENTENNIAL ISSUE 3 (1988). *See also Selected Bibliography*, CORNELL L. FORUM: CENTENNIAL ISSUE 45 (1988).

2 Curtiss, *The Cornell Law School from 1954 to 1963*, 56 CORNELL L. REV. 375 (1971); Stevens, *The Cornell Law School from 1919 to 1954*, 54 CORNELL L. REV. 332 (1969); Woodruff, *History of the Cornell Law School*, 4 CORNELL L.Q. 91 (1919).

3 Henn, *The Cornell Law School—Its History and Traditions*, 37 N.Y. STATE BAR J. 139 (1965).

few institutions of higher learning, such as Columbia and Harvard, began to offer law courses, but until about 1870 these courses, also, remained within the traditional framework of law-office training which the majority of young lawyers continued to obtain at the hands of individual practitioners.[4]

It was not until the 1870s that legal education, as well as general education, in this country was changed dramatically. But before we can explore the roots and the nature of that great change, in which Cornell played a prominent part, we must take a look at the other (non-English) component of 19th century intellectual history.

The fundamental ideas that were to change American higher education during the last quarter of the 19th century originated in the great universities of continental Europe. Ever since their medieval beginnings at Bologna and Paris[5] those universities have been marked by two basic features: first, in stark contrast to English colleges, the continental universities, in their outlook and structure, have always reflected a professional orientation. Each of the four traditional university faculties serves the needs of a specific profession: The Faculty of Theology trains future clergymen; the Faculty of Medicine produces physicians; the Faculty of Law brings up the future judges, government officials, and lawyers; and the Faculty of Letters supplies teachers for service in primary and secondary schools.

The second significant feature of continental universities is that for the majority of their students, including their law students, they provide this professionally-oriented education on what we would call an undergraduate level. To become a law student, or a medical student, under that system requires only completion of the equivalent—though perhaps a slightly tougher equivalent—of an American high school.

To these two traditional features, German universities during the 19th century added a third and wholly novel characteristic: the combination of teaching and research. Not only in the new natural sciences, but also in dealing with the older subjects, the professors were to produce as well as to disseminate knowledge, and in seminars and laboratories to draw the best of their students into every phase of that process. It was largely on the strength of this new and exciting idea that throughout the 19th century a small number of

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4 *See* Rheinstein, *Law Faculties and Law Schools. A Comparison of Legal Education in the United States and Germany*, 1938 WIS. L. REV. 5 *reprinted in* R. SCHLESINGER, H. BAADE, M. DAMASKA & P. HERZOG, COMPARATIVE LAW—CASES, TEXT AND MATERIALS 158, 159 (5th ed., 1988) [hereinafter COMPARATIVE LAW].

5 *See* Clark, *The Medieval Origins of Modern Legal Education: Between Church and State*, 35 AM. J. COMP. L. 653, 654 (1987).

German universities managed to occupy a position of world leadership in higher education.

This did not go unnoticed in the United States. Wealthy and enlightened parents tended to send their sons to German universities, which between 1815 and 1914 attracted more than 9,000 American students.[6] Upon their return, many of these students became leaders in medicine, in law, and in other fields. Two of the returning young scholars—using, adapting, and further developing their impressions of the German academic scene—totally transformed higher education in this country. Needless to say, the first was Andrew D. White, who together with Ezra Cornell, founded this university in 1865 and for two decades thereafter served as its first president. The second was Charles W. Eliot, who was appointed president of Harvard in 1869 and thereupon proceeded to revamp that institution.

Unavoidably, a spirit of competition developed between these two giants. Each of them displayed sharply-etched personal traits—traits which since then have become woven into the fabrics of their respective institutions. White, who in addition to many other revolutionary innovations was the first in this country to pioneer the elective system in higher education, probably was an even bolder reformer than Eliot. But Eliot, like his successors to this day, was better at public relations. White always resented the widely publicized credit which Eliot received for introducing the elective system at Harvard—quite a few years after that system had begun to flourish at Cornell.[7]

Concerning legal education, White and Eliot pursued the same German-inspired and visionary objective: to transform legal studies into an academic discipline; to entrnst legal education to full-time professors who would combine teaching and creative scholarship; to convey to law students the broader theoretical aspects of law as well as the traditional craftsmanship; and by thus providing a superior training to out-compete and eventually to defeat the old system of "reading law" in a practitioner's office.

Everybody knows how those objectives were implemented at Harvard, where Eliot, within the first year of his presidency, hired Christopher Columbus Langdell as law dean and commissioned him to transform what was then an insignificant legal trade school into a true university law school. For Andrew D. White, the path leading to the same objective was more tortuous. In point of time, he was again ahead of Eliot in formulating his innovative dream. In 1862,

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6 *See* Clark, *Tracing the Roots of American Legal Education: A Nineteenth-Century German Connection*, 51 RABELS ZEITSCHRIFT 314, 320 (1987).

7 *See* M. BISHOP, A HISTORY OF CORNELL 75 (1962).

even before the beginning of his felicitous association with Ezra Cornell, he wrote to another potential donor regarding his plan to establish "a truly great University" in upstate New York. In his outline of the plan, written three years before the founding of our university, he prominently mentioned his intention "to secure the rudiments, at least, of a legal training in which Legality shall not crush Humanity."[8]

When the cooperation of Ezra Cornell and Andrew D. White resulted in the founding of Cornell University in 1865, the traditional four-faculties model of a European university was modified considerably. The Faculty of Theology was omitted. On the other hand, agriculture and the mechanic arts were added as focal areas of study. Subject to these modifications, however, White was still intent on following the European model, which called for schools of law and medicine as integral parts of a great university.

It was only due to financial stringency that the establishment of these two schools had to be postponed—for three decades in the case of the medical school, but for little more than two decades in the case of the Law School. In 1885, in his last report as president, White urged that the time was ripe for the creation of a law school.[9] His hand-picked successor, Charles Kendall Adams, lost no time in translating White's dream into reality, and in September 1887 the first class of law students appeared on the Cornell campus.

Reflecting on the school's pre-history, one must conclude that the Cornell Law School, like its cousin on the Charles River,[10] never would have come into existence but for the transfer to the New World, via the German connection, of the old continental idea that law should be studied and taught as part of a big, independent, multi-faceted academic enterprise—i.e., a University.

Compared to its models in continental Europe, the fledgling law school high above Cayuga's waters had its special weaknesses, but soon acquired special elements of strength as well.

The principal initial weakness was an exceedingly low admissions standard. Having to compete with the more traditional facilities provided by law offices and proprietary schools, the Cornell Law School initially had to admit students whose pre-legal education did not rise above a ninth grade level. But as the school acquired a growing reputation for excellence, successive deans and faculties were able, step by step, to raise these requirements. Cornell indeed became one of the leaders of the movement which, during the first quarter of the present century, made graduation from college a gen-

8 *Id.* at 41.
9 *Id.* at 273.
10 *See* Clark, *supra* note 6, at 326-30.

eral requirement for entry into the better university law schools in this country, thus putting those schools a giant step ahead of their slow-to-change European models.

As to methods of instruction, American university law schools such as Harvard and Cornell outdid the European universities from the very beginning. While European law faculties to this day have adhered to the pure lecture as the dominant teaching method,[11] new and more effective techniques were developed on this side of the Atlantic. The case method—introduced by Langdell at Harvard before our school opened its doors—found strong supporters here, and many trail-blazing casebooks were authored by members of the Cornell Law Faculty. The Cornell Law School was the actual pioneer of two other important innovations in legal education; I am referring, of course, to moot court arguments and to problem courses.

While always giving first priority to its teaching function, the Cornell Law Faculty from the beginning also cultivated the other side of the coin of being a university law school: creative scholarship in the form of books, law review articles, and important reports prepared for the Law Revision Commission and other legislative and governmental bodies. Some of the names of Cornell scholars have become household words among lawyers on a national and, more recently, even an international scale. Mentioning only a small sample limited to those no longer among us, we all know that our hearts beat just a little faster with pride when we remember such fellow Cornellians as Edwin Woodruff, George Bogert, Robert Stevens, George Thompson, Gustavus Robinson, Horace Whiteside, Bertram Willcox, and John MacDonald.

From modest beginnings as a school catering largely to students from nearby counties of upstate New York, successive generations of dedicated teachers and scholars, under the leadership of outstanding deans, developed the Cornell Law School into a truly national institution of international reputation. In every sector of legal endeavor, of business and of government, its alumni have been signally successful, and one may perhaps suspect that the legal education they received here might have contributed, however modestly, to that collective success story.

Among the national law schools, Cornell fortunately has remained one of the smallest. This fact, together with the beautiful but somewhat isolated location of our campus and the intimacy of

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11 At a slow pace (and in part under American influence) some continental universities have introduced discussion groups and other methods supplementing the lectures. *See* COMPARATIVE LAW, *supra* note 4, at 150, 169, 172-74. The lecture, nevertheless, remains the dominant teaching method.

the resulting social scene, has created a genuine and lasting link connecting all members of the Cornell Law School family. While we are here as students, we beef and gripe. While we are here as faculty members, we gripe and beef. But the moment we get more than five miles away from Lake Cayuga, nostalgia creeps into our souls and we realize that there is something in the undefinable aura of this institution to which we are deeply attached.

For its first 100 years, our celebrant surely deserves grades of the highest range. What the next 100 years will be like, will be explained to us in a few minutes by a distinguished panel whose members, being less ancient than I, will be more actively involved in shaping the future of the school.

Even apart from the centennial celebration, the present moment is a particularly suitable one for planning ahead. For many years, Cornell has belonged to the—very competitive—top group of American law schools. In the recent past, some of the leaders of that elite group have been weakened seriously by internal dissension over essentially political issues. To see these formerly distinguished law schools lose some of their luster is a sad sight, and we should refrain from gloating. At the same time, however, we should not be blind to the fact that the ongoing or impending decline of some of our most famous competitors opens up a challenging opportunity for the Cornell Law School, if it stays clear of similar difficulties, to climb to the very top of the heap.

A blueprint of the techniques to be used for that ultimate climb perhaps will be developed by the four sages who are about to address you. All I want to do in ending these remarks is to submit to them, and to all the policy-makers of the school, three humble and diffident requests:

First, please do not forget that in this shrinking world of ours we are witnessing a rapid globalization of legal practice and that an ever-larger percentage of the work of American lawyers has to be done in a transnational context. It is, therefore, of the utmost importance to heed the international-minded advice given us by Mr. Myron Taylor at the time of the inauguration of this building: to preserve Cornell's leadership in the fields of international and comparative law.

Second, while nobody will deny that the Goddess of Law stands with one foot in philosophy and with the other foot in the social sciences, please remember also that the main part of her beautiful body stands tall and visible as a discipline, a craft and an art of its own.

Third, and last, let me address a delicate subject: the eternal conflict facing a law faculty and every one of its members—a conflict

created by competing demands upon their time and their energy. On the one hand, there are classes to be taught. On the other hand, every day brings temptations: to write yet another book, to become a consultant to yet another important governmental body, or to prepare a Supreme Court brief in yet another landmark case. These temptations are usually backed up by financial rewards and by promises of fame, individual and institutional. Public relations arguments always militate in favor of giving in to the temptations. But a truly great law school does not live on public relations. It may indeed quite often have to sacrifice public relations in order to achieve true greatness.

True greatness of a law school can stem only from total dedication to inspired teaching—the kind of teaching that requires a prodigious portion of the teacher's strength and enthusiasm and will leave only a moderate amount of time and energy for the other temptations; the kind of teaching that not only sharpens the students' legal minds but affects them as human beings; the kind of teaching that will continue to weave a bond of loyalty among all members of the Law School family, and which, a hundred years from now, will bring to these halls another group of distinguished and faithful alumni, united by fond memories of intensive learning and by a shared affection for their Alma Mater.