

Maurer School of Law: Indiana University
Digital Repository @ Maurer Law

Indiana Law Journal

Volume 19 | Issue 1

Article 1

Fall 1943

The President's Annual Address

James R. Newkirk

Indiana State Bar Association

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>

 Part of the [Legal Profession Commons](#)

Recommended Citation

Newkirk, James R. (1943) "The President's Annual Address," *Indiana Law Journal*: Vol. 19 : Iss. 1 , Article 1.

Available at: <https://www.repository.law.indiana.edu/ilj/vol19/iss1/1>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.


JEROME HALL LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

INDIANA LAW JOURNAL

Volume XIX

OCTOBER, 1943

Number 1

THE PRESIDENT'S ADDRESS LEGAL LEADERSHIP

JAMES R. NEWKIRK*

Charles Dickens began his "Tale of Two Cities" as follows: "It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way." This quotation, in my opinion, would summarize your conclusions if I ask each of you to separately describe the decade through which we have been living.

During a debate in the United States Senate some of the speakers had apparently departed from the question under consideration and when Daniel Webster arose to speak, he said, "Mr. President—When the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance at the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate his prudence, and, before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are."

If the description of Dickens does justice to the period through which we are living then ordinary prudence requires

* President, Indiana State Bar Association, 1942-1943.

us to pause and ascertain if possible where we now are and how far the elements have driven us from our true course. Although we are in complete agreement upon a speedy and successful termination of the critical conflict in which we are now engaged, yet we seem hopelessly confused about the causes of this terrible war and the consequences which must necessarily result therefrom. I am, therefore, departing from that type of discussion ordinarily heard during this war period and I sincerely hope that you will consider this a proper time and place for my remarks.

Because of our educational achievements and professional engagements we are well qualified to observe and appraise the conditions of society in which we occupy a position of tremendous responsibility. There is no higher or nobler calling in all the earth than ours. Our sphere of endeavor is as broad; our domain of inquiry and investigation is as boundless; our commission is as high; our labors and achievements are as permanent; our powers for good and our contributions to progress are as great; and, our monuments are as enduring as any that have been vouchsafed to the children of men since the world began. The proud distinction which we possess implies obligations far and beyond those to our clients. We must look backward across the untold centuries to the very dawn of civilization and forward to the boundary line of eternity for the purpose of discovering and interpreting the relation of man to his Creator and of man to his fellowman. We must think of the aims and purposes of human life and the ends of organized society and above all we must not embrace the current thought that money alone can overcome oppression and depression, can insure happiness and security, and can dispel fear and poverty.

Civilization first appeared in China and in the valleys of the Euphrates, the Tigres, the Indus and the Nile. Slowly but definitely man has progressed through the ages in comprehending the laws of nature. Man has always possessed a burning desire to know the reason for his existence, the purpose of his life and the consequences of his death. Primitive people endeavored to control nature by imitation which can be illustrated by one simple example. They noticed that when frogs croaked it would rain, and when they desired rain some would dress like frogs and croak. From this

stage we moved on to magic, then to mythology and then to Christianity.

Greek mythology is very interesting, first because it reveals the character of a great people possessing an unusual sense of beauty, a confident joy in life and a warmth of affection; and, second, because it foreshadowed the Christian concept of life.

The Greeks were a gallant, vigorous, open hearted and conquering people of extraordinary brilliance. Located in a region of exceptional beauty, where the seas brought trade and knowledge of all the world to their ports, where the climate favored their protected cities, and where slaves made life easy, they developed the highest forms of art, science, philosophy, and literature. Aeschylus, Sophocles and Plato among others evolved the idea of a single, supreme and righteous god, Zeus. This occurred simultaneously with a change in the philosophic outlook, when men turned from a belief in capricious happenings dependent on the chance will of irresponsible gods, to a vision of the uniformity of nature under divine and universal law. For this new vision many were indicted and condemned including the great Socrates. Plato and Aristotle symbolize the great height of Greek philosophical thought which spread to South Italy, Sicily and throughout the world.

The intellectual center of the world moved from Greece to Alexandria where a great Museum was founded and its four departments of literature, mathematics, astronomy and medicine were served by a great library which is said to have contained over 400,000 volumes. One section of this great institution was destroyed by Theophilus, a Christian Bishop, and later the Mohammedans, accidentally or deliberately, destroyed what the Christians had left. For centuries the Library of Alexandria was one of the great wonders of the world and its destruction was one of the greatest intellectual catastrophes in all history.

While Rome was conquering the world, Greek philosophy was conquering the Romans. Marcus Tullius Cicero, a great lawyer and statesman, is credited with saving the great intellectual treasures of Greece. He, like Plato and Aristotle, advocated the overthrow of superstition. The Romans became noteworthy in the application of science to material improvements such as sanitation, highways, hospitals and

particularly equipment for their armies. Although Rome, with all its material splendor, power and glory, failed to advance theoretical science and philosophy, it did through Pliny's 37 volumes of encyclopaedia, Plutarch's "Lives" and Diogenes Laertus "Lives of Philosophers" preserve much of the knowledge and information we have today about early civilizations. During the Dark Ages the Byzantine Empire maintained a background of civilization through the worst times of barbarism in Western Europe. Its armies cleared Italy of the Goths and its lawyers codified the Roman law in the Institutes of Justinian. One of the first signs of the revival of learning during the Dark Ages was the resumption of legal study at Bologna about the year 1000, and, in the twelfth century, schools of medicine and philosophy were added to that of law.

The most fascinating thing to me in the history of science is the fact that practically every fundamental theory now used by us to produce all our machinery and equipment was discovered and announced before the beginning of the twentieth century. I am amazed to note that Sir William Cecil Dampier in his *History of Science*, published last year, says, "In our day, Aston with his integral atomic weights, Mosely with his atomic numbers, Planck with his quantum theory, and Einstein with his claim that physical facts such as gravitation are exhibitions of local place-time properties, are merely reviving ideas that, in older and cruder forms, appeared in Pythagorean Philosophy."

Socrates regarded the mind as the only worthy object of study and held that the true self was not the body, but the soul and the inner life. He simply turned philosophy from the study of the past and present to the consideration of the future,—the end for which the world was created. Roger Bacon and Saint Thomas Aquinas devoted their lives to philosophical thought and demonstrated that philosophy and theology are compatible. Leonardo da Vinci was supreme in the role of painter, sculptor, engineer, architect, physicist, biologist and philosopher. There are few his equal and he was a son of an eminent lawyer by whom he was educated. Newton was a great scientist, a noteworthy philosopher and a deeply religious man. John Locke was a great philosopher and a good physician. Sir W. R. Grove was a remarkable judge and a great man of science. The most significant

characteristic of these men as well as Thales of Miletus, Pythagoras, Hippocrates, Euclid, Archimedes, Galileo and many, many others is that none of them were specialists, but on the contrary were familiar with the entire field of knowledge. They thereby realized a relationship between themselves and their Creator and they pursued their labor for their own personal satisfaction without regard of reward or compensation. They did not utilize, as we do, the fruits of their labor simply because they were more interested in life, its purpose and its destiny than riding in automobiles or flying through the air. They did not consider the mind as incapable of understanding all the laws of nature and they saw a definite and irresistible relationship between physical and metaphysical laws.

At the beginning of the twentieth century the majority of men of science unconsciously developed a naive feeling that they could depend entirely upon themselves, which feeling, to some extent, resulted from Darwin's announcement of his theory of evolution and his hypothesis of natural selection. Darwin, a modest man, considered his announcements as mere scientific theories which were not in conflict with theology or man's belief in God. As a matter of fact Newtonian science and Darwin's theories were combined to form German materialism and although Kant and Hegel developed an alternative system of idealism, it was more or less repelling to men of science, who, for the most part, ignored philosophy. I am shocked at the materialistic attitude, the egoism and the arrogance of man which exists in this country. Many feel that we are masters and directors of our own lives and that progress is measured by great material achievements. Was Christ interested in material things? Could He not have created the automobile, the radio, or the airplane as easily as He healed the sick or fed the multitude? There is no purpose in ridiculing or condemning the use of our knowledge in providing for our physical comforts so long as such use conforms to a philosophy founded upon Christian ideals and principles. Is not *now* the time to re-examine the values to be ascribed to our material development, to reappraise our moral standards and to establish new codes of ethics in our whole economic system?

I know it is natural for a scientist of a sanguine tem-

perament, who is over-impressed by the dependence of life upon physical circumstances, to think that he is only a short way from the solution of every problem. He is sure that he is about to deliver a final assault upon the very citadel of Life itself; then, when the heat of battle is over and he can look around at what he has accomplished, he finds that it is only an insignificant and almost undefended course he has taken and the citadel of Life is as far off as ever. The most that can possibly be said for science is that it can reveal aspects of reality, and it can diagram, sketch and explain in part natural processes, but by its own definitions and assumptions it is necessarily mechanical and deterministic. To make science a creed or a faith is certainly a pessimistic view of life which I can best illustrate by quoting from Bertrand Russell, who says:

“That man is the product of causes which had no prevision of the end they were achieving; that his origin, his growth, his hopes and fears, his loves and his beliefs, are but the outcome of accidental collocations of atoms; that no fire, no heroism, no intensity of thought and feeling can preserve an individual life beyond the grave; that all the labours of all the ages, all the devotion, all the inspiration, all the noonday brightness of human genius are destined to extinction in the vast death of the solar system, and that the whole temple of man's achievement must inevitably be buried beneath the debris of a universe in ruins—all these things, if not quite beyond dispute, are yet so nearly certain that no philosophy which rejects them can hope to stand.”

William James who taught at Harvard from 1880 to 1910 has influenced to a great extent the ethics and standards in our own country. He contended that there were no permanent standards of right and wrong and that one does right if his action is expedient, useful and advantageous. Thus everyone becomes capable of determining for himself if what he does is right or wrong by asking himself three questions, Was it expedient? Was it useful? and Was it advantageous? If the answer to each is in the affirmative, then the action was right. Another influential figure in our educational system is John Dewey of Columbia University, who insists that culture is extended by the extension of science. The proof of his error must be obvious to all of us, because Germany advanced science to the point of exclud-

ing both theology and philosophy and thereby developed Dewey's scientific culture. Professor Dewey may approve the new German Culture and acts of the German Government may meet the test questions of Professor James, yet we have no place in this country for this New German Culture and we surely feel that the acts of aggression on the part of the German Government were wrong. Plato, who more than twenty-three centuries ago, proposed a perfect state, frankly admitted that good government could not be achieved until philosophers became rulers or rulers became philosophers. The expositions of Professors Russell, Dewey and James are not likely to produce philosophers and we should be impressed by the exigency of these times of the necessity for clear and logical thinking. The intellectual centers of the world, Babylonia, Greece, Alexandria and Rome are now battlegrounds drenched in blood, a fate that might conceivably be ours.

We are surely living in an age where the sensate values of pleasure, utility and expediency predominate and we are reconciled to the fact that some easy way will always be discovered to solve all our future problems and difficulties. Our people, as a matter of fact, have been unable to balance the attraction of immediate and palpable advantages against the danger of remote and concealed evils. We have encouraged corporate growth without realizing the danger of the concentration of economic power. We have fostered monopolies without noticing the destruction of free enterprise. We have condoned reprehensible acts of labor leaders without a thought of the ultimate consequences. We increase wages and prices without fear of inflation. We patronize movies without regard for the character of the actors. We indulge in questionable activities without any concern for those who may be misled by us. The greatest weakness of our generation is its disposition to let the advertisers, propagandists and political crack-pots do all our thinking. The person having the largest income, the preacher attracting the greatest number, the college with the biggest enrollment, the book having the greatest sale, the newspaper with the greatest circulation, the tallest building, the biggest corporation, the most expensive project, the lawyer with the most clients, the physician with the most patients, the largest church,—all become the best, simply on account of size or

volume of business. We have adopted the corporate slogan: "The bigger, the better," and anything to be good and right must be colossal. This materialistic and indifferent attitude has culminated in the biggest, but not the best, war in history.

You and I know that our economic system is unbalanced; that our standards of compensation are inequitable; that monopolies control every field of production; that free enterprise is in jeopardy, and that personal and property rights are being both limited and denied. Men in high position sincerely believe these evils can be and are being eliminated by Public Welfare, Social Security and "Cradle to the Grave" measures, but these are all designed to cushion the hardships of an unbalanced economy and not to eradicate the evils. These measures scotch the snake instead of killing it.

Jean Jacques Rousseau said "Men always desire their own good, but do not always discern it; the people are never corrupted, though often deceived, and it is only then that they seem to will evil * * * * The general will is always right, but the judgment which guides it is not always enlightened." The real task which confronts us today is to enlighten the judgment which guides us and this can only be accomplished through education. We have reactionaries who would retain the status quo, the liberals who plan a paternalistic society, and the radicals who advocate a complete change in our form and structure of government. They would all solve our problems by beginning at the top with government itself, rather than at the bottom with the individual who is the foundation of organized society. The top is confused because of weakness in the foundation.

When our constitution was composed the authors thereof were familiar with philosophy and experience of man since the dawn of civilization and this constitution of ours contains checks, restraints and controls of the natural and inherent weaknesses of mankind, yet it fully recognizes the individual as a servant of his Creator, in Whose service he must be reasonably free to work, to think, to speak and to own and use property. This constitution is based upon the fact that an individual has certain inalienable personal and property rights of which no government can justifiably deprive him. Property rights and personal rights are necessarily of equal importance to the individual and neither can

have a preference over the other. The loss of one exterminates the other and the extinction of either is tyranny. Philosophy, Theology and our Constitution all recognize the individual as the very foundation of organized society and that the ends of all just governments must be to protect the rights of the individual.

Our constitution was primarily designed to protect the political rights of the individual in which we have been remarkably successful. However, under this noble document we have unconsciously developed an economic system which treats the individual as a product to be employed in the same manner and to the same extent as iron, wood, coal or any other natural resource. The very fact that we measure strength by man power and horse power is of itself indicative of the scientific and materialistic attitude of this age. Force, Size and Power are the gods of materialism. They create and produce the same kind of tyranny in our economic life as they would in our political life. We must look forward to a Bill of Economic Rights comparable to our Bill of Political Rights, in the construction of which lawyers must necessarily play an important part. An economic code or charter containing checks, restraints, and controls to serve the individual will inevitably take form from under our constitution which I hope will result in the decentralization of economic powers, restore free enterprise, re-establish locally owned industries, destroy monopolies and reopen the door of opportunity to the individual.

I cannot escape the conclusion that a philosopher is by virtue of his objective a lawyer. They seek knowledge primarily for the purpose of knowing and discharging their duties to their Creator, to themselves and to their fellowmen. They do not seek wisdom in order to reap some material advantage over their fellowmen. The lawyers of our age compare more favorably to the old philosophers than any other group. I attribute this to the nature of our service which compels us to deal with both the physical and the metaphysical laws. Very much like Cicero, the lawyers and judges of today are again preserving philosophical thought and I predict a real contribution on the part of our profession in adjusting our economic system to serve the aims and purposes of human life.

The universities have limited and adjusted their cur-

ricula to the immediate needs for an engineer to attain success after leaving school and this is due largely because the universities depend to a great extent upon business which demands men for specific jobs. Our whole system of education has become more or less vocational in order to process men to fit into a mechanical order instead of preparing them for a place in organized society. The university executives consider the physical properties of the individual more important than his spiritual qualities. Educators simply do not understand that science and philosophy must blend and harmonize in a stabilized society. We cannot successfully advance scientifically without atuning our material progress to traditional concepts of right and wrong. Education should first make sure that a student knows the aims of human life and the ends of organized society before he starts preparation for law, medicine, pedagogy, theology or business. With our facilities, it is certainly not beyond the capacity of any normal individual to acquire a balanced liberal education at a reasonably early age. It is unpopular to criticize our school system, but I cannot escape the conclusion that it has completely failed to prepare men and women for the life they are to live in a scientific age. There is no reason, in my opinion, why a boy or girl cannot acquire a balanced liberal education before entering the university in which event the university would become a seat of higher learning and that is exactly what it was meant to be.

We have fallen onto a society of endless contesting factions where there are no ethical values common to or equally binding upon all these factions. It is therefore not surprising that people are confused. The confusion is not confined to the average man and woman but exists in the minds of our great educators who no doubt will deny the implication of my remarks, yet the cures they offer for our economic ills are predicated, in my opinion, upon a materialistic faith. Planned economy, collectivism, curtailment of production, vocational training, spreading of work, enforced security, paternalistic appropriations, and public spending are sedatives which may give temporary relief to society but the treatments will necessarily become more frequent and less effective unless we can begin now to administer some philosophical stimulant to the individual through our educational system.

I would like to see the lawyer reassert his independence

and resist the forces, corporate, political and social, which tend to undermine, discredit and destroy the fundamental principles of Justice, and Democratic Processes. We must immediately liberate ourselves from that false and despicable impression that we have sold out lock, stock and barrel to the new economic powers and special interests. We must envelop higher moral standards and a more thorough preparation for leadership in culture, science, philosophy and jurisprudence. It is our duty to champion the cause and uphold the rights of the individual. Let us always have in mind that justice, not power or wealth, is our ultimate goal. The fortunate must have counsel but the unfortunate must never be neglected.

The rank and file of our profession are common, ordinary men who have dedicated their lives to the promotion of justice. Notwithstanding the constant criticism of our profession, I say to you that man for man, the world round, in view of its temptations, its difficulties and the grade of citizenship with which it deals, ours is the cleanest and the most high-minded of all the learned professions. The marvel is, not that some lawyers go wrong, but that so many go right. The legal profession demands that the lawyer be a manly man, an upright citizen, a tireless worker, a student of the affairs of life, and thoroughly familiar with the mainsprings of human nature. In the course of the shocking events now occurring in every quarter and section of the world one cannot but foresee the need after the war for men of courage and capacity to prevent panic, violence and moral bankruptcy. The post war period will present the greatest opportunity we have ever had to serve organized society and in that task we must not fail.

