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The Role of the Law School in the Preservation of Constitutional Government

Chief Justice John B. Fournet

Allow me to say: Dr. Daggett, my esteemed and loyal friend of long standing, for your generous appraisal of my efforts in the discharge of the duties of my office as a jurist, I thank you most sincerely. To the University, to the Law Faculty for recommending, to the members of the Board of Supervisors for approving, and to President Middleton for conferring the honorary degree of Doctor of Laws, I want you to know that you will always have my undying gratitude. And to my colleagues on the Supreme Court, and other members of the judiciary, as well as to my fellow lawyers and my many friends who have come from all sections of the state for this Golden Jubilee, and have braved the weather to be here tonight, let me say that you have not only honored me by your presence, but have added luster to the occasion.

I suppose that it should come as no surprise to me that I am again the beneficiary of this great University's generosity. This is just part — for me, of course, the finest part — of an old story. It was here in 1917, on the ground floor of the Chemistry Building on the old campus, that a small but inspired faculty first revealed to me the adventures in the law. It was here in 1938 that I assisted in dedicating the splendid edifice in which the law is now being taught. It was in this very building in 1948 that I was inducted into The Order of the Coif. And it is to this place that I have confidently turned — again and again — for the gracious assistance that so greatly advanced the undertakings for which I am now honored.

One does not live long before he begins to realize how short is a lifetime — and how many added lifetimes he will need to deserve the kindness the world has shown him in the first. It is in this state of mind that I accept with humble gratitude the coveted honor conferred upon me.

But the greater honor — and of greater collective responsibility — is the role of my benefactors. Theirs is the unsung but unparalleled honor of those great bestowers “who cannot afford riches” or power, but yet have the privilege of being the advance guard on the frontiers of human knowledge, as well as the tremendous responsibility that rests in the hands of the dedicated men and women who educate our youth.

The Law Faculty of this University, whose devotion to the traditions of historical scholarship has sustained the vital link of continuity with the juridical wisdom of the past, are entitled to their full share of this honor, and it is difficult for me to forego paying tribute to all of the outstanding men and women who have guided the Law School throughout its phenomenal growth and history of achievement. But I must, for, like those who have preceded me on today’s program, I would like to place emphasis instead on their responsibility and speak of the role of the law school in the preservation of constitutional government.

From where I have been sitting for more than twenty years with my esteemed colleagues of the Louisiana Supreme Court, I have had a special view of the march of events as they passed in solemn review through the last two decades. The memory of the law is longer than that of men, and daily counsel at the bar have shown us the old world peering in amazement through old analogous decisions at the vital and unusual problems of the new.

I have just lamented how short is a lifetime in terms of gratitude. Now I would say that in terms of change we should rejoice, for, viewed from this perspective, how much longer is our lifetime than that of our forefathers. We have, within our memory, seen moral, economic, and scientific developments that our forebears could never have foreseen. In such a world of rapid and manifold evolution, changes become fashionable. No institution, no principle, no habit of mind is entirely safe from abandonment. Events both at home and abroad show that this is no less true of constitutional government.

We may take pride that our form of government and our liberties have, in the main, survived great depressions and two world wars. But danger lies in happily assuming the future holds no greater crisis, or, indeed, that crisis is the only quarter from which our system of government can be threatened. Let us briefly reflect how the keystone of that system has fared in this

recent world of shifting flux. I refer more specifically to the separation of the executive, legislative, and judicial powers of the government into spheres of independent preeminence — the core of the political philosophy upon which our Republic is founded.

It is simple to exaggerate the original vitality of an old faith and point with alarm to the supposed inroads that are currently being cut into its corpus. We should remember, then, that even Madison in the "Federalist Papers" was hard put to define this separation of powers. He first explained that of course the executive, legislative, and judicial departments could not be totally separate and distinct, falling at last to an examination of the desirable degree of separation and independence. Notwithstanding these difficulties, the concept of separation of powers does have content, and this meaning becomes clearer as we review developments that resemble all too closely a gradual erosion of this balance-wheel of our governmental machinery.

In the recent national election — and wholly apart from the merits or the outcome — we saw the incumbent executive praised and blamed for the legislative record of a Congress in the hands of the opposition. We heard the man on the street praise and blame the incumbent executive for a judicial decision of great regional and national implications. It was even argued that this same decision is an invasion of the legislative branch by the judiciary.

Time after time we have seen the judicial branch forsaken for administrative tribunals having all of the characteristics of courts except the so-called inefficiency — that is, the safeguards — of the judicial process. These same administrative agencies in 12 years issued more than 100,000 rules and regulations with the force of law, while Congress, in 160 years of its existence, saw fit to enact only 66,000 statutes. And our times have added to our history the phenomenon of political trial by committee investigation.

It may be said that even the great expansion of governmental activity is, in itself, evidence that the mechanism of checks and balances designed to control this expansion threatens to collapse, for, of course, the separation of powers is no end in itself. And if we speak of increased governmental activity in terms of human liberties, we are ultimately speaking about the distance at which

we stand from the tyranny which the separation of powers was designed to prevent.

These are examples that merely scratch the surface. Others — like the uncharted implications of the treaty-making power — could be mentioned. But the point need not be labored.

Although I view these wanderings of the executive, legislative, and judicial branches from their theoretical positions of proud isolation with no great alarm, these developments should, nevertheless, concern us, for they bespeak the restlessness and power of men, and the refusal of life to be ruled from the grave. They must, even more particularly, concern the law schools. This is not merely because these changes complicate the teaching of the law. It is also because of the fact that among the men at the forefront of these and other changes yet to come are to be found the largest single occupational group that has been, and will continue to be, the product of the law schools. Only recently a study of the 71st to the 75th Congress disclosed that during this period the lawyers had a clear majority in both houses — 61 to 75 percent of the Senate and 56 to 65 percent of the House. Further illustration is unnecessary to demonstrate the key position of the American lawyer as a leader in policy decisions vitally affecting every aspect of our way of life.

Lawyers, because of their training, their devotion to the cause of liberty and freedom, and their unswerving allegiance to the time-honored principles and ethics of their profession, have always stood out as the leaders of their generation. In fact, it was de Tocqueville who said "the government of democracy is favorable to the political power of lawyers." But it can be said with equal truth that "the government of democracy" is favorable to the political influence of law schools. For it is in the law school that the lawyer of the future, in his formative years, develops the philosophy of law that will influence his conduct in the public affairs that await him. It is more and more to the law schools that this nation will turn and say with Whitman "Produce great men!" — in the hope that the rest will follow.

It has been said of the Supreme Court of the United States: "We are not final because we are infallible — we are infallible because we are final." Similarly, it may be said that the law schools are also, in a very real sense, final. They are final because they are the last link between the unselfish and idealistic

traditions of University life, and the hard — sometimes embittering — realities of the world in which their wards will inevitably be called upon for leadership. Theirs may be the casting vote that inclines a given youth from political expediency to true statesmanship. For although youths come to law schools with the object of learning law, they leave imbued with the philosophy of its faculty. The law schools thus bear the peculiar responsibility for kindling in the great and moving current of youth the fires of vision and of courage for the tasks that lie ahead.

This responsibility of the law schools is an exacting one. It is also a glorious one. That they have succeeded in instilling in their students that love and respect for humanity which forms the foundation of our national greatness cannot be disputed. Their graduates have been fully conscious of the magnificent legacy to which they stand in heirship. They have been worthy bearers of the torch of liberty from generation to generation. In this relay to succeeding generations we must not, we will not, fail.

There is a story about a young sailor on a Coast Guard ship heading to the scene of a shipwreck on a stormy night. The young sailor approached the Captain saying, "Sir, the wind is rising, the storm is getting worse. Surely we will never make the shipwreck. And even if we do, we'll never make it back." The Captain replied: "You may be right. We don't have to get back. But remember, we do have to go!"

So must it be with the law schools. They must carry on with loyalty to the constitutional principles which constitute the bed-rock of the law in which they labor. As the late Dean Tullis — to whom we of the law are all so heavily indebted — reminded us, in the words used by Justinian more than fourteen centuries ago, theirs is the duty "to instruct [their students], with the guidance of God . . . to the end that they may be made worthy ministers of justice and of the Republic."

Let an old teacher say, however, that it is not the province of the teacher to indoctrinate youth in prevailing political fashions. His task is to seek and to teach the truth — not propaganda — and the test of truth is not, as Holmes once suggested, "the majority vote of that nation that can lick all others." The course of momentous events in our time leaves no doubt that might

does not make right, that truth — not naked power — will prevail in the end.

Thus the law school's fidelity to the underlying principles of constitutional government and to the ideals of human dignity and freedom does not require unreasoned resistance to change where change is dictated by the industrial, social, and economic movements characteristic of the Twentieth Century. For we cannot lightly assume that the future holds less room for improvement than the past. Our faith must be that the law schools will remain conscious of their place in our society as the seedbeds of tomorrow's leadership; and that, while training young men and young women in the practical aspects of the law, they will be mindful that the part they play in adding other dimensions to the stature of the lawyer is of transcendent importance.

In this faith we may look as confidently to the future of our Republic as we look proudly to the traditions of its glorious past.