Collected Papers—
The Dedication Year

The Law School is now making arrangements to publish all papers delivered at the School during the Dedication Celebration, the academic year 1959-60. An announcement as to format, price, and means of obtaining this collection will be made soon.

To give readers of the Record an impression of the content of these addresses, there follows a series of brief excerpts, drawn from all the talks given during 1959-60 for which manuscripts are available.

"I know that this great law school will continue to send out from its campus graduates who are superb legal technicians with all the qualifications that will assure success in private practice, in business, or in the other professions they may select.

May I urge, too, that they may also be men with a mission, motivated by a flaming idealism based on the recognition of the fact that this last half of the twentieth century can be the brightest or the darkest page in the history of civilization.

May their mission be not simply the negative objective of the defeat of communism but the positive goal of victory. And may the victory work for not be the victory of America over any other people but the victory of all mankind—the victory of knowledge over ignorance, of plenty over want, of health over disease, of freedom and justice over tyranny, wherever these evils may exist in the world.

Men and women with practical, disciplined, legal minds inspired by such idealism will make a mighty contribution to a realization of the eternal goal of the American revolution—a world in which men can be free, nations can be independent, and people can live together in peace and friendship."

—The Honorable Richard M. Nixon, Vice President of the United States
Dedictory Address
October, 1959

"When a lawyer draws up a document and makes it say exactly what he wants it to say in the shortest possible compass, but covering every point with accuracy and precision; when he writes an opinion or a brief with flawless care, and does it in depth and with the simplicity which comes from thinking through his problems to the very end; when he will not let go until the job is done not merely correctly but elegantly, in all its perfection of workmanship; then the lawyer experiences something of the true artist's satisfaction. And if he goes further and by a great exercise of the imagination—which of all the lawyer's gifts is the rarest and the hardest to come by, being the product of great sweat and agony and prolonged inner searching, repeated and repeated till suddenly in a moment of calm the inspiration flashes forth like a star in the night—when by a great exercise of the imagination a lawyer finds the solution to a hitherto insoluble problem or sees a clear pathway through an impassable jungle, and thereby puts everything to rights, he does in truth experience all the joys of a creative artist who has reached into the depths of his being and has brought forth beauty out of chaos. Each of you may, and if you devote yourselves to your clients' needs with ardor and determination you surely will experience this joy of the creative artist."

—from "The Practice of Law"
by Lloyd K. Garrison, Esq., of the New York Bar
October, 1959

"Obviously the law, and other forms of public service, seek men and women who are educated in the very best and highest sense of that term. But how do we define an educated man?

I would suggest that an intelligent man recognizes facts, although he may not know what to do about them; a learned man recognizes ideas, although he may fear them or avoid them; an educated man recognizes himself as a man, beset by conflict, from within and without, but with a capacity for peace, weak before nature's inexorable laws but aware of and obedient to those laws, blind to the ultimate mystery of life but awake to the possibility of immortality.

He is aware of a universal harmony; he has an eye for the right form and an ear for the voice of truth. He has a deep respect for the past, a devout faith in the future, and he knows himself to be the one conscious, if imperfect instrument for binding the two together.

Most of all, I believe that the mind of the educated man is open, it is flexible, and it gives him a power to soar—a spiritual zest for living—not granted to the merely intelligent, the merely learned man. The educated man is not immune to prejudice or weakness or bad habits; certainly not to discontent or discouragement or confusion, but he strives to resolve all fortune, good or bad, into useful experience. He may regard himself as an optimist or a pessimist, religious or agnostic, Republican or Democrat, or he may believe only in his own disbelief, but he is motivated always by some kind of belief. He may be a doubter but he is not cynical. He is capable of a high pitch of enthusiasm. He may conform to custom, where it involves the regulation of traffic, the wearing of clothes, his coming and going to work, but he will not, in the long run, be confined by custom. There are no real walls around him and no roof above. He is no paragon or saint, but only a man, conscious, however dimly, continued on page 23
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that he, and all mankind, has both a responsibility and an opportunity to take a faltering step toward some ill-defined and ultimately distant goal that he has labelled “Good.”

—from “Liberal Arts Training for Public Service” by William E. Stevenson, then President of Oberlin College
The Conference on the Public Servant October, 1959

First, note that these social scientists in the public service, like all civil servants, are “private men in a public spot.” They are private men with all their appetites and weaknesses and dreams and decencies. Yet as agents and officials of the public, they are called upon, whether as consultants or career officers, to serve as agents of a vast, mixed, largely unseen mass of people operating through parties, factions, sects, intermediate decision-making officials in agencies with their own built-in organic life. They are public officials, in Dewey’s sense, and needing the sensitiveness and sympathy of which Mead wrote, in that their office is established by the public to perform a function that is above and beyond, yet in some measure evolving from, the particular membership of that public. The performance of that function with both skill and integrity is necessary to its life, liberty and the pursuit of its happiness. How to create the institutions and practises whereby these two elements of the public servant may be reconciled is a problem that is inherent in government considered as the composition of a public functioning through officials. The problem is the more acute and difficult in the areas of the social sciences. There the issues that are still fresh from the uncertainties and suspicions of wider partisan and factional controversy, have not yet been dissolved by communicated knowledge and widely accepted standards. This is also true on the frontiers of physical sciences in our day, as in controversy over atomic power policy.

The necessity for leaving wide discretionary powers well down the line beyond the legislative decision-makers and political-executive heads to administrative officials has everywhere forced attention upon their
education and selection, the conditions of their service, and their control.

—from "The Social Scientist as Public Servant"
by John M. Gaus, Professor of Government at Harvard University
The Conference on the Public Servant
October, 1959

But we prefer to accept the view that the examination should continue to be a test of general rather than specialized ability and education, and that it should be a means of selecting, under the existing scheme of National Education, those candidates who have used the best talents to the best advantage under that scheme. We consider that the best qualification for a civil servant is good natural capacity trained by a rational and consistent education from childhood to maturity. We consider that the first requisite for a successful competition is a good field of candidates, and that such a field can best be obtained by adapting our scheme to the chief varieties of University education; so that candidates while working for University honours will be at the same time preparing themselves to join in the competition if when the time comes they are attracted to it. We do not wish candidates to adapt their education to the examination; on the contrary, the examination should be adapted to the chief forms of general education. We consider it highly important that candidates who sit for this competition and are not successful should be as well qualified, at least, for other non-technical professions as if they had never thought of it. For all these reasons we hold that any scheme that we propose should be accommodated to University education as it at present exists rather than to some scheme of instruction specially devised for the public service. But we think it necessary in our scheme—to attach higher value than at present to certain University subjects that seem to provide suitable knowledge and training, such as history, economics, law and politics; and throughout to ensure that sufficient attention should be paid to modern conditions.”

—from "The Training and Selection of Candidates for the Public Service in the United Kingdom"
by Sir Percival Waterfield, First Civil Service Commissioner of the United Kingdom, 1939-1951
The Conference on the Public Servant
October, 1959

"The truism that the public servant must obey his masters is, like the statement that judges must obey the law, only an introduction, not a summing up of the problem. Lawyers well know that neither black-letter precepts nor fine-print documents can wholly eliminate the element of choice, for actual events in their complexity and flux cannot be shored in rules and instructions. The official in international affairs, whether diplomat or technician, cannot be reduced to an automaton in which everything he is to do is prescribed in cables emanating from those on high. To be sure, the range of discretion will vary greatly from senior to junior, from administrator to expert, but there will rarely be a post in which an official of reasonably high rank will not be faced with decisions involving considerations of policy.

You may say that this is also true of many civil servants in domestic affairs, but I believe that there is
a distinction in degree which has some importance. In the domestic field, the objectives of administration are by and large spelled out, normally in legislative enactment, sometimes in executive regulation or through precedent and tradition. While choices remain for the official, their limits are well defined; basic issues of policy have, for the most part, been settled by Parliament or Cabinet; the official administering social security or taxation, agriculture or atomic energy, need not, save in exceptional cases, decide on the major goals of his job.

In the international field, in contrast, only a small part of the actual problems faced by officials are already settled by legislation, treaty, precedent or tradition. Even in areas supposedly governed by international law, the assumed rules are often uncertain and fragmentary in relation to concrete cases. In short, whatever the future may hold, today international problems are not usually susceptible to a priori general treatment; individual variations and changing circumstances will often be crucial factors in decision-making; the government rebuffed one day may have to be wooed the next.”

—from “The Public Servant in International Affairs”
by Oscar Schachter, Director, Legal Division, United Nations
The Conference on the Public Servant
October, 1959

“In most lawyers there is a demand for the greater variety of experience, additional tests of ability, adventures into unexplored fields, different associations and associates which practice alone does not offer. This demand exists entirely independently of any thought of do-gooding, sense of duty to serve the public or feeling of obligation to uphold the traditions of the profession. That is why the new concept of continuing legal education disavows any resort to exhortation and preaching. There will always be enough of that so long as lawyers enjoy making speeches to fellow lawyers. The Arden House conference believed this approach unnecessary and inappropriate. As the conference saw it, it is instinctive in each human being who wanted to become a lawyer, who submitted to the long preliminary training and persisted in the arduous practice of the law, to insist upon doing more than taking care of paying clients, provided only that he is qualified by education and study to acquit himself creditably in the broader field. It is in this faith that lawyers are expected to avail themselves of the opportunity for the broader and deeper education now envisages and which will not only qualify them for public service in many fields but will stimulate them to engage in it.”

—from “The Private Lawyer as Public Servant”
by Harrison Tweed, President, The American Law Institute; Acting President, Sarah Lawrence College
The Conference on the Public Servant
October, 1959

“We must prepare our Army judge advocate to take diverse problems in stride. Our officers, have in general, splendid law school records. With a good education in the fundamentals of law, a judge advocate fits into our program of continuing legal education. He spends his first nineteen weeks in school—learning a little about the Army and a lot about military law. After eight to twelve years of practice, the most promising judge advocates are returned to our school in Charlottesville where they study for a year. In this advanced course the student is prepared for the widest responsibility in military law, and, as his contribution, he must explore an area in our legal field which needs study and development and, in a thesis, make a worthwhile contribution to military law before he can graduate. Before and after the advanced course, he returns to Charlottesville for short periods to participate in seminars on various specialties such as government contracts, military international law, and the duties of the law officer. At our school we teach no subjects which are taught in civilian law schools—when an officer is in need of education offered by a civilian school, we send him to a civilian school subject to the appropriation acts, of course. By the time an officer has finished fifteen years of practice, we
expect him to be a good general military practitioner and to have one legal specialty. For example, for some years we have studied space law, and in our office two men have made it a specialty. It is possible that one day we will have rules of space warfare just as we have rules of land warfare and naval warfare today. Summing up these observations on general practice, specialized practice, continuing legal education, and studies for the law of the future, it is easy to see why the military lawyer must be a flexible and open minded individual. Sometimes it seems that our retirement time should be based, not on age, but on lack of flexibility and open mindedness. However, that is probably an ideal that would be unacceptable. It would be difficult indeed to explain why some were retired in their twenties while others served fifty years."

—from "The Military Lawyer"
by Charles L. Decker, Brigadier General, USA, Assistant Judge Advocate General
The Conference on the Public Servant
October, 1939

"Through our guarantees of liberty, the people find protection against the arbitrary powers of legislative bodies or administrative agencies and their personnel. Since neither constitutions nor statutes are self-executing, their interpretation and construction falls into the hands of the lawyers in government either before or after the administrators have applied them concretely to particular situations. This responsibility calls for intellectual integrity and loyalty to the important function lawyers perform in government. He must be a lawyer, not merely an employee of a government.

Since many of our laws put wide discretion into the hands of the Executive, the government lawyer must approach his duties with an understanding of the spirit as well as the letter of the law. The calculated risks of business judgments are not for him. The satisfaction of his own social or political theories of course ought not to warp his conclusions as to the law. His responsibility for the successful functioning of government is great but others share the burden of proper administration. But in the sphere of legal guidance from the drafting of proposed legislation and construction of its scope to the arguments before the tribunals, duties rest upon him that are of first importance in the successful conduct of our governments—state and national."

—from "The Lawyer in Government Service"
by The Honorable Stanley Reed, retired Justice, The Supreme Court of the United States
The Conference on the Public Servant
October, 1939

"These two ideas, or words, impress us only in combination. In combination they lead us into all the major legal and political problems of the West. The legal and political history of the West may be seen as the effort to make power responsible. The problem of power and responsibility is identical with that of a free and just society. Freedom implies power of some kind, and justice implies responsibility.

The American tradition is the tradition of dispersing power and trusting to luck, or to the Invisible Hand, to produce responsibility.

There is something unsatisfactory in the notion that the whole matter of power and responsibility, freedom and justice, is going to be solved because the centers of power will balance one another and that the role of government is simply to see to it that the supply of such centers is adequate.

In order to have any confidence that if enough centers of power contend they will make one another responsible and give us a just society, we must attribute to Providence a greater interest in the welfare of the American people than either our history or our merits would seem to justify. My purpose is to suggest the possibility that we as a people, as a community learning together, might learn how to assume conscious control of our destiny."

—from "Introduction to the Subject"
by Robert Maynard Hutchins, President, Board for the Republic, former Chancellor, The University of Chicago
The Conference on Power and Responsibility
November, 1939

"The bedrock foundation for the economic power of a labor union is its monopoly position. Without that it could not enforce wages above a free entry competitive level, for if it tried to do so, non-union workers would offer to work at competitive wages, thus destroying the union scale. To enforce its higher wage rates it must keep out the wage-cutting com-
petitors—it must be a monopoly. How does it get to be a monopoly and how does it remain one? First you induce the rest of society to accept your goals of being a monopolist. In the case of public utilities this has been easy. In the case of unions this was much harder, although it seems now to be widely enough accepted for all practical purposes. But when it comes to enforcing the monopoly right, i.e., keeping out competitors, the public is not willing to help the union be a monopolist in the way it will help a public utility. The union cannot telephone the police and have non-union competitors put in jail. Although the public attitude toward labor monopoly seems favorable, the public is not willing to let its police power be used to enforce it—nor, and this is most important, is it willing to use its police power to prevent it—by protecting "strike breakers."

Instead, our police power is used neutrally, that is, it is not used to protect labor rights of non-union workers. How then does the union enforce its monopoly? It resorts to private threats and applications of violence rather than through publicly operated agencies. Private police forces are called "goons and gangsters," presumably because their actions are reprehensible or illegal. These special employees are specialists in private applications of force and violence and compulsion, although literally they are in the same class as police or military action. One is state-owned, the other is privately owned. One is socially acceptable, the other is not—although its purposes are. Thus, if striking is done peacefully, that is, if potential strike breakers are kept out with no overt violence, no legal sanctions are available.

—from "The Assumptions of Economics with Respect to Power and Responsibility"
by Armen A. Alchian, Professor of Economics, University of California, Los Angeles
The Conference on Power and Responsibility November, 1959

"The modern administrative state has come to resemble this medieval guild system without the religious and ethical values which helped to mitigate some of the worst features of its earlier prototype.

Moreover, because they exercise not only administrative authority, but legislative and judicial powers as well, it has been customary in this country to make these agencies independent. Neither the elective executive, whether governor or president, nor the legislature has any effective continuous control over their policies or procedures. If we are to make the modern democratic state a more responsible and effective instrument of the public interest and welfare, a greater measure of popular control over these administrative agencies is essential. Otherwise they will remain as a "headless fourth branch" of American government. Increased popular control will involve not only closer scrutiny by the legislature but much closer supervision and control by the elected executive.

This in turn will necessitate a searching review of the structure, procedures, and interrelations of the executive and legislative departments and some reconsideration of the federal system itself. The centripetal forces at work since the Civil War have not only expanded the powers and functions of government at all levels, but have produced a progressive concentration of leadership and power in the executive and a centralization of power and leadership in Washington. On the assumption that these trends are, for all practical purposes, irreversible, they pose serious problems not only for governmental organization and political responsibility but for the basic values and assumptions of a free society."

—from "The Response of the Political Order"
by Peter H. Oedogard, Professor of Political Science, University of California, Berkeley
The Conference on Power and Responsibility November, 1959

"All these encroachments on the right to get information threaten to change the nature of a self-governing society: the functions entrusted to them only if they are ing society in which the citizens can intelligently per-fuly informed. The citizen who is partially informed has no opinions of his own but only the opinions of those who select for him the information he is to be allowed to have. His judgments and decisions are of little moment if they are judgments and decisions given to him by an informed elite which alone is in possession of the facts.

The government puts out a great deal of information, and that is to the good, and not otherwise; but it does not satisfy the whole requirements of free citizens for information. They need to know not only the things that make the government look good, but the things that make the government look bad when it deserves to look good and the things that make it look bad when it deserves to look bad. This is not likely to be found in official statements and press releases."

—from "The Position of the Press"
by James R. Wiggins, Executive Editor, Washington Post and Times-Herald; President, American Society of Newspaper Editors
The Conference on Power and Responsibility November, 1959

"In this section an attempt will be made to explore the meaning of the new concept of responsibility and to ascertain (1) the extent to which management has been legally freed from the duty to maximize stockholder profit and (2) whether there are grounds for belief that management policies are being determined by considerations of social responsibility. In attempting the second task, we shall not study the after-
dinner speeches and other declarations of management spokesmen. Instead we shall consider, with respect to particular management problems, whether it is likely that behavior departs significantly from that which is prescribed by the traditional canon of responsibility. In the course of the discussion, we shall comment on the desirability of some of the possible departures.

We may begin with the subject of corporate gifts to charity, the example of the new doctrine most frequently cited. Many of these gifts—like other practices supported as examples of social responsibility, do not need a new justification. For a firm looking to the future and to the economic value of consumer and community goodwill, some types of contributions involve no departure from the profit goal. Many recent statutes have given corporations general authority to make charitable gifts, but it is not certain that this authority includes gifts not covered by the traditional doctrine. In a celebrated decision sustaining a gift to Princeton University, the court said that such gifts to preserve independent centers of higher learning could be regarded as for the benefit of the corporation—indeed, if need be the matter may be viewed strictly in terms of actual survival of the corporation in a free enterprise system. But the court cited *The Modern Corporation and Private Property* and Professor Dodd’s article and said also: “It seems to us that . . . modern conditions require that corporations acknowledge and discharge social as well as private responsibilities as members of the communities within which they operate.”

—from “Power and the Modern Corporation”
by Wilber G. Katz, James Parker Hall Professor of Law, The University of Chicago Law School
*The Conference on Power and Responsibility* November, 1959

“Where the decisions to be made involve a large segment of industry and a major public interest, such as, for example, inflation or automation, it may well be that the stakes are too large to leave the matter either wholly to the unguided discretion of management or to the determination of management and labor in atomized negotiations. Independent guidance and advice would surely be helpful in reaching the best result, and the suggestion of Mr. George Meany for a national conference of labor and management, which the President is now considering, could lead to important improvements in our system of private decision making. If the idea of the conference could be broadened to include public representatives acceptable to both of the parties, and if it were made a permanent and continuing body, like the Foundation of Labor in Holland and the National Joint Advisory Councils to the Ministry of Labour in Great Britain, and equipped with an adequate research staff of economists, sociologists, social psychologists, and the like, it could become an extremely useful decision-sharing or, at least, decision-influencing center in our pluralistic society, as well as a vehicle for the formulation of that “public consensus” which Berle describes.”

—from “The Position of Labor”
by Paul R. Hays, Nash Professor of Law,
Columbia University School of Law
*The Conference on Power and Responsibility* November, 1959

“In Adam Smith’s system of Laissez faire, the functions assigned to government were substantially identical with those assigned by the Physiocrats: maintenance of inter-individual justice; defense; and essential “public works,” including education as such, of a kind which private initiative would not or could not undertake, or which for special reasons, such as their monopolistic character, it would not be safe to leave in private hands. For Adam Smith, laissez faire in the economic sphere found its intellectual basis in terms of a comprehensive system of social thought which drew eclectically from a wide variety of earlier sources, but added discussion of freedom or “natural liberty” understood in a general or universal sense to discussion in the traditional way of particular “freedoms” or “liberties.” For the social system as a whole, excluding its market aspects, the beneficial outcome of laissez faire, according to Smith, results from the social instincts imbedded in human nature, as well as from the “moral sentiments”: sympathy for others, the desire for social approval, the dictates of conscience,
and, to a minor extent, benevolence towards others. In the economic market-place, as described in the *Wealth of Nations*, the beneficial outcome of laissez faire is ascribed to other factors than instincts and social sentiments, except as the simple rules of commutative justice are voluntarily obeyed. Within the family, in relations with one's friends and one's immediate neighbors, in one's operations as a patriotic citizen of one's country, the instincts, the social sentiments, conscience, the desire for public approval, sympathy benevolence, patriotism, suffice to produce a good society. In the market, however, one is dealing as with strangers; to use later terminology, the market is "anonymous," ruled by the "cash nexus." The social sentiments, therefore, are not aroused into action, and man behaves in response to calculating, rational self-interest. Fortunately, however, the nature of economic process is such, it involves such a high degree of harmony of interests between the individuals participating in it, that government, provided only that it enforces the rules of justice, need do little else to assure a flourishing economy."

"The Anglo-American is accustomed to think of discretion as a power exercised by men, as indeed it is, and therefore a departure from the doctrine that ours should be a government of laws and not of men. In criminal law where the principles of strict construction, ex post facto, and *nullum crimen sinse lege* have their rich burgeoning, the presence of broad discretionary power seems a negation of fundamental principle and a gross threat to individual freedom.

Be that as it may, discretion, occupies a special place in the administration of criminal justice. There is more recognizable discretion in the field of crime control, including that part of its broad sweep which lawyers call "criminal law," than in any other field in which law regulates conduct. Moreover, that discretion exists at the inception of a criminal matter and persists to the end.

The police exercise discretion whether to arrest or not, whether to investigate or not. The prosecutor has, too, the discretion whether to initiate a prosecution or not, whether to investigate or not. The grand jury, if there is one, has virtual discretion to indict or not, the contrary applicable statutes notwithstanding. The prosecutor, again, has a discretion whether to prosecute an indictment, or to nolle pross., or to accept a lesser plea. The court has a discretion in determining which counts to submit to a jury, the kind of charge to give to the jury, the lesser plea it may accept, or the sentence that will be imposed. The petty jury, of course, has in the criminal case, a practically uncontrolled discretion to acquit. There is obvious discretion in the probation agency, if an offender is turned over to it. There is ever larger discretion reposed in correctional agencies. It is evident in classification, reception centers, modes of treatment, and the various rewards, including time credit for good behavior. Parole exercises the broadest discretion in releasing, conditioning release, supervising, and returning offenders for violation. There is even the capstone of absolute discretion involved in the executive pardoning power.

Compare that roster of discretions with those in private law, and the contrast is marked indeed. Not even the broad reaches of equity provide a comparable roster of discretion."

"It may be that in the time to come new methods will be devised for laying bare the truth and we shall be taught to read the mind of man; and then trial by jury will seem as barbarous as trial by ordeal now seems to us. But then it will no longer be a trial but an inquisition. Trial by jury is not an instrument for getting at the truth; it is a process designed to make it as sure as is possible that no innocent man is convicted. It was born in the same century as Magna Carta. No free man shall be seized or imprisoned or outlawed save upon the judgment of his equals. That was the concern of the men of those times and the state of the world has not yet so altered that it should not still be our concern. It means in England that the guilty often go free. It explains and justifies the rule about the reasonable doubt, the need for unanimity and the favour that is shown to the defence. But above all it means that a man shall not be imprisoned by his rulers but by the verdict of the ruled. In a world from which all tyranny has gone we may find a better way of doing justice. But until then a man must have the right to "put himself upon his country." It is all contained in the old words of the charge to the jury:

'Upon this indictment he hath been arraigned, and upon his arraignment he hath pleaded that he is not guilty, and by his plea he hath put himself upon his country, which country ye are, and it is for you to say whether he be guilty or not, and to hearken to the evidence."

"from "The Controls in Criminal Law Enforcement" by the Honorable Charles D. Breitel, Justice of the New York Supreme Court, Appellate Division, First Department The Conference on Criminal Justice January, 1960"

"from "The Criminal Trial and Appeal in England" by the Right Honorable Lord Justice Deakin, of the Court of Appeal The Conference on Criminal Justice January, 1960"
"The judges of England, it is said, do not make the law. They only apply it. The judges of America not only apply the law, they make it...

If the function of the judges comes to be regarded as being, not only to maintain but also to improve the law, there will cease to be any real divergence between the functions of the judiciary in England and in the United States. The judges of England, for all that some say, do quite a lot of law-making. They influence the growth of the law by "distinguishing" previous cases, by writing off pronouncements as obiter dicta, by choosing one line of precedents rather than another, by overruling particular precedents which are at variance with principle, by giving a liberal interpretation rather than a literal one, by applying old principles to changing circumstances, and so forth: but they do not reject or change its fundamental principles. They leave that to the legislature. The line is no doubt difficult to draw, but it is regularly done."

—from "The Judiciary in Modern Democracy" by The Right Honorable Lord Denning of Whitchurch, Lord of Appeal in Ordinary
The Fourth Ernst Freund Lecture
March, 1960
"America has never had a real counterpart of the English Inns of Court. Now, for the first time, in this National Center of Law, the Inns of Court become a reality in our country. In some ways we actually improve or expand the Inns of Court—because in addition to a place where the young lawyer can learn from the leaders of the Bar—here we have a chance for members of the Bar, both old and young, to draw knowledge and inspiration from watching one of our great State Supreme Courts at work.

The idea of having sessions of the Illinois Supreme Court in this Courtroom located in this law school is an innovation. But it is based on an idea which is as old as the law itself—the idea that the disciple learns best when he sits at the feet of the Master. It seems to me that here is a unique opportunity for the Illinois Supreme Court to teach by example. And, at the same time, this is not a one-way street. The distinguished judges who will sit in this courtroom know that they must ever be students of the law. Judges can not contribute to the growth of the law unless they remain students throughout their lives. With the bench and bar, the faculty and the students all working together in these buildings, this courtroom becomes a living, growing, vibrant thing for those students who sit on the bench, as well as those who sit at its foot. As part of the only national law center in the country, the Supreme Court of Illinois becomes a truly national institution—furnishing leadership to other courts throughout the nation. All of these things justify, I think, the statement made earlier that this courtroom becomes the vehicle for a new development which can be a significant milestone in the growth of the law."

—from the remarks of Thomas E. Sudderland, former Vice President and General Counsel, Standard Oil Company (Indiana); President, United Fruit Company; member of the Law School Visiting Committee, at the Dedication of the Weymouth Kirkland Courtroom, April, 1969
"While the use of the new courtroom by the reviewing courts is a further step toward bringing reality into the teaching of law, I place as first and foremost the need for a closer relationship with the trial courts. Here is the crucible in which is tested the worth of every document a lawyer writes, every opinion he renders, all counsel he gives—in fact, every legal commitment. There are lawyers, great lawyers, who have not had court experience. Talleyrand said of Hamilton that he was the one true genius he had known; that he divined Europe without having seen it. So it may be with some lawyers. They may divine the spirit of the courtroom without experiencing it, but they are exceptional men.

Yet, I feel that there could be put into effect within a reasonable time, provision for trial at the law school of a limited number of cases. Arranging this is a problem which, on its face, appears insoluble. The faculty is busy. The courts are overwhelmed. Lawyers have no time to spare for the young student. But in the multitude of cases which come to our courts, certainly a few suitable ones can be found which by stipulation can be tried in this courtroom. When I consider the enormity of the jury project so ably advanced by Professor Harry Kalven, Jr. and his associates, in the face of great obstacles, I believe that the application of a fraction of such energy to this project would bring desirable results. From there on, the practice could be extended to having students attend trials in the regular courtrooms."

—from the remarks of the Honorable Ulysses S. Schwarz, Justice of the Illinois Appellate Court, member of the Law School Visiting Committee, at the Dedication of the Weymouth Kirkland Courtroom April, 1960

"Although there seems to be no evidence that any American statute of distribution has been drafted on the basis of social science research, the British Parliament, steeped in its tradition of research for the purpose of legislative reform, twice has charged a Royal Commission with studying a sample of wills so that the legislators might be enlightened as to what people actually do in their wills. This was done in England in 1925 when the English Parliament made the first major change in the statute of distribution since 1670, and it was done again in 1952 when another significant change was made. It is the purpose of this paper to consider some of the problems which arise in constructing a social science research project to obtain the information which appears necessary in drafting a reform of the statute of distribution.

The underlying theory of the two studies undertaken in England by the Royal Commissions is that people who make a will are really not different from those who fail to make one, except for the formality of whether they make a will or not, and that therefore a study of a sample of wills will indicate what people who do not have wills would want done with their property if they had thought about it, or, to use the term that Grotius used, to indicate the person to whom it is probable the dead man had wished that it should belong. The first questions we must consider, therefore, is whether this is a fair assumption."

—from "Statutory Reform of Interstate Succession Laws and Social Science Research" by Allison Dunham, Professor of Law, The University of Chicago Law School

This talk, together with the Kalven and Menkel-Meadows papers quoted from below, formed a discussion of the Law and Behavioral Science Research Projects at the Law School offered as part of the Dedication Celebration on April 30, 1960.
"Our study of commercial groups and their law-government institutions—for every group has its own law-government institutions—has been in progress over six years now. It has been focused on the basic question of how disputes are settled or avoided in such groups.

The study has three disparate and yet related aspects. The first aspect deals with why commercial groups on such a wide scale prefer their own institutions of law-government to those theoretically available to them in the formal legal structure. The second aspect deals with what the kinds of law-government machinery in commercial groups are, and whether they differ significantly from those in the formal legal system. The third aspect deals with how decisions settling disputes are made in the commercial groups, and to what extent these processes are similar or different from the processes normally used in the formal legal system."

—from "Some Observations on the Adjudicatory Process"
by Soia Mentschikoff, Professorial Lecturer, The University of Chicago Law School

"I think it would be fair to say that the work which is going on here and at other law schools today is characterized by a different approach. First it is recognized that the job requires teaming up with the social scientist in an effort to discover jointly new facts about legal behavior. This has meant that the work has stayed out of the library, the social science library as well as the law library, and has gone directly into the field in the hope of discovering data out of which a new literature could be created. Second, there is absent the intense critical attitude toward existing law. The modern hope is not one of revolutionizing law but more modestly and sanely of gradually enriching it through empirical study.

Although we have been at our work now for what seems to us especially like a very long time, it is still too early to tell whether we have succeeded. In any event we have given the task a truly serious and sustained try and you will soon be able to judge the results. We are encouraged by the fact that our interest has not only sustained itself over a long period of research but has actually heightened as we have begun to put the pieces together and as we have become increasingly aware of the fluency with which we, on both sides of the table, have surmounted the barriers of interdisciplinary communication. We are now quite confident that this blending of disciplines can illumine both law and social science, or at least both the lawyers and the social scientists."

—from "The Jury and the Principles of the Law of Damages"
by Harry Kalven, Jr., Professor of Law, The University of Chicago Law School

"A liberal art can be as liberal as you please, and it should be—any liberal art should be, including law. But one thing, I repeat, sits firm: any man who proposes to practice a liberal art must be technically competent. I choose a single example which does not even involve the lawyer’s responsibility of every lawyer to his client. In the entrance hall of Al Barnes’ amazing collection and arrangement of paintings one meets head-on a huge reclining nude done by Renoir with infinitely sharp and accurate drawing and perspective (with, incidentally, a cold green tone that reminds of David.) It hangs there side by side with the same subject, in the same pose, in the same size, done by the same Renoir with the luscious reds and soft, almost fluid, contouring of his later work. The pair of pictures make clear to anybody, once he has a chance to think, the fact: technical cleanliness is the only reliable foundation. The matchless second picture could never have been painted by a man who lacked competence to paint the first. Technical skill is not a foundation only. It is the necessary foundation. Appreciation of a liberal art can, sometimes in high degree, be got without it; though even in regard to appreciation an amateur performer can commonly get lengths and laps ahead of the appreciator who can do nothing but appreciate. But for the practicing artist technique is the foundation.

I pause for a moment to deal with an objection. It can be argued that in this era of specialization technical proficiency can beentrusted by the artist to a subordinate as some entrust their spelling to a capable stenographer. We hear of laboratory scientists—outstanding in research as a liberal art—who, the phrase
goes, would be "lost" without their artisan but effective technicians. And there have been great captains—for surely the military art has not infrequently been practiced also as a liberal art—there have been great captains who were not too good at handling close-order drill (though, few, I suggest, who were deficient in thinking about the techniques of supply.) Despite such possibilities I argue firmly that in the particular matter of law, American law, as we approach the 7th decade of the 20th century, no such delegation can be envisaged, and each individual prospective craftsman requires to go out individually and adequately supplied with his personal basic kit of effective techniques and with some personal basic competence in their use. The American law school, even that of the University of Chicago, is not devoted to the training of Justinians, or of any Justinian's successor—of any man who, on mere emergence from his training, can command the technical assistance which, without any technical adequacy of his own, can produce the fighting power of a Belisarius, plus Hagia Sophia in five short years, plus a Corpus Juris Justinianum in seven. The American law school has as its task to turn out a graduating class of craftsmen each of whom can stand on his own feet."

"This intervention by the State in the affairs of private individuals has enormously increased since the war, and certainly since the days of the late Lord Hewart’s famous protest in his book “The New Despotism.”

A large number of regulations affecting the lives and homes of citizens have poured from the Government.

All manner of tribunals outside the ordinary courts of law have been set up, and procedures have been devised which appear to many of us to be dangerously restrictive of the liberty of the subject.

To mitigate the harshness of this relationship, you and we too have introduced various procedures resulting in what we call administrative law and practice—a series of palliative discs between the rigid vertebrae of bureaucratic machinery.

In 1956 we set up a Committee under the chairmanship of Sir Oliver Franks to make a thorough survey in this field.

They reported swiftly and, I am proud to say, we acted swiftly.

In 1958 I introduced the Tribunals and Inquiries Act which set up a permanent independent Council to watch over these administrative tribunals and procedures and report upon their working to Parliament.

The Franks Committee laid down three essentials, which I think will find an echo in every lawyer’s heart: openness, fairness and impartiality. These are the qualities which should be insisted upon in the constitution and procedure by every administrative tribunal."

"We speak of lawyers “practicing” the law. In the deepest sense, each of us—ruled by his own conscience—must practice the law. We do this, as citizens and as Americans, by every word or deed or gesture toward our fellow-man—or fellow-nation. And there are, in this regard, a few simple rules of behaviour I believe deserving of respect.

We must realize, first of all, that the great issues of justice and equality cannot be fought only in chambers of the legislature. They must first be fought—and won—in the hearts of men. The law is properly a servant of conscience—not a substitute for it.

We must be aware, in this spirit, that, deeply as we believe in equality before the law, there is a kind
of equality beyond the law—fully as meaningful and critical. This touches upon areas of opportunity, health, human relationships largely untouched by explicit statute. The moral issue, ultimately, is a matter of individual motive and intent. And the comment of Scripture is sound and relevant: "The law is good, if a man use it lawfully."

We must at the same time—in our laws and our actions, in our nation and before the world—strive to leave no people, nor any nation, to feel that “the world is not thy friend, nor the world's law.” For respect for the law itself will disappear, if the law evades or lags in meeting new and rightful needs. This is the law of change by which the law itself must live.

We must, even as we strive to foster and to lead change, act without prideful passion or righteous wrath—even against those who would thwart our hopes. There is no part of the earth to which we, as a people, can say: we, the Americans, are flawless models for your future destiny. And there is no part
of this nation entitled to say to any other part of this nation: we have achieved perfection in respecting the dignity and equality of all men of all races.

All this suggests the spirit—the calm and sovereign spirit—that I deeply believe must rule in these halls of law, as in all such halls throughout our nation.

There is truly no other area of national life or national conduct to test us, as a people, so critically in this Twentieth Century."

—from "The Law and Human Equality"
by The Honorable Nelson A. Rockefeller, Governor of the State of New York
The Convocation Address, at the Special Convocation for the new Law Buildings
May 1, 1960

"Historically we have to register a tendency to create new organs for each new major field of activity. Thus international cooperation in the field of the peaceful uses of atomic energy led to the establishment of the International Atomic Energy Agency, which for all practical purposes functions as a specialized agency. Similarly, in the case of control of the implementation of an agreement on nuclear tests, the creation of a new autonomous organ is anticipated. Finally, even in the field of disarmament, which under the Charter is a central task of the United Nations, suggestions have been made to the effect that activities of decisive significance should be entrusted to a new organ which might be not only administratively but also politically independent of the United Nations.
In view of the tentative stage so far reached as regards coordination of activities among the various organizations working on the basis of universality, it may be questioned whether the tendency to which I have just referred will not prove to be a deviation leading us away from the most fruitful direction for an evolution of a framework for international cooperation. At least it seems to me that, if this tendency is accepted and continued, it should be counterbalanced by an effort to evolve new forms for integration of the work of the various international agencies. I am not in a position to say in what direction such forms may be found, but unless they are developed we may come to face a situation where the very growth of the framework for international cooperation tends to lead us to an ultimate weakening. If I am permitted to fall back again on a parallel with biological developments, it is as if we were to permit the growth of a tree to be weakened by the development of too many branches, finally sapping its strength so that it breaks down under its own weight.

Having spoken about the risk of disintegration of the international framework through a proliferation of organs, I should mention also the opposite risk, that by combining too many tasks too closely within one and the same organ, you break it up, as of course no organization can carry an unlimited burden because of the simple fact that no leaders of such an organization can have the capacity to give satisfactory leadership over ever-expanding areas."

—from "The Development of a Constitutional Framework for International Cooperation" by The Honorable Dag Hammarskjold, Secretary-General of the United Nations

The Dedication Celebration

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