Edward Douglass White

[In April, the Law School sponsored a lecture by Mr. Peter Fitzpatrick, a distinguished member of the Chicago Bar, on Chief Justice Edward Douglass White. Mr. Fitzpatrick's paper follows.]

When Wilson named Brandeis to the Supreme Court seven past presidents of the American Bar Association testified against his confirmation. Ex-president Taft wrote to his wife: "I hope White will not end his judicial career with an apoplectic fit caused by the nomination." At about this time Brandeis conferred with White. Perhaps, because the opposition to Brandeis recalled to White's memory the charge of bribery that once had been leveled against him when he fought the Louisiana Lottery, he immediately accepted Brandeis and insisted that Brandeis should look on him not as the Chief Justice but as a father. Following this meeting, in circulating a draft opinion, Brandeis wrote on the copy to be delivered to White, "Father Chief Justice." In returning the draft opinion, White showed appreciation of the spirit of the ex-

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The opportunity to talk to you here today is one I have been anticipating for some weeks. It is good to be here, especially since we are today honoring the science of law and particularly those persons who have chosen careers in law.

As we meet here, we are in a great worldwide struggle of ideas. It is therefore fitting that we should honor our most priceless heritage—the Rule of Law. Our is a government of laws and not of men, because the founders of this country recognized that the rule of law and liberty are indivisible. There are many countries today which do not recognize this principle, and it is imperative that we maintain eternal vigilance to protect our heritage.

Aristotle once said that in all well-organized governments there is nothing which should be more jealously maintained than the spirit of obedience to law, especially in small matters. He added that lawlessness creeps in unperceived and at last ruins the state; just as the constant repetition of small expenses in time eats up a fortune. The great philosopher recognized the importance of Rule by Law. He knew well that man, the best of beings, when separated from laws and justice, becomes the worst of all. For justice is the bond of men, and the administration of justice is the principle of order in any political society.

"Law," said Cicero, "arises out of the nature of things." He defined it as right reason which, in accordance with nature, applies to all men. By its commands, he said, this law summons men to the performance of their duties; by its prohibitions it restrains them from doing wrong. Its commands and prohibitions always influence good men, but are without effect upon the bad, Cicero contended. This, we know, is the expression of a natural law theorist.

On the other hand there is the positivist or legal realist. His view is that law is fundamentally a series of rules by which a state governs society. Both of these definitions are correct, today, in some respects and wrong in others. To define law properly, both theories must be judged together. The fallacy of the one view is that it confounds law with ethics; the fallacy of the other is that it confounds law with force.

As Pascal stated with respect to government, both reason and force are essential for any proper concept of law. Law without the power of government to enforce it is not law but morals. Law without the basis of morality and reason is not law but tyranny. If a choice were to be made, it is evident that natural law is probably the most important since right will eventually make might, but might cannot make right. Law must of a necessity arise out "of the nature of things" and her true voice is the voice of reason. Still, we cannot ignore the fact that it is the nature of our society and our relationships within that society that determines what shall and shall not be law.

We must recognize that these necessary relationships form the basis of the law by which our society lives, and that the rules of law are deduced by applying reason to these relationships. If we are to be governed by law and not be arbitrary will, we should recognize these facts. We should understand natural law and be able to interpret it. And through study of the ideal system of natural law, we should acquire the ability to perfect the rules of law enforced by the state.

From this it is evident that not only is law essential for order in a community, but it is also a proper expression and enforcement of natural law in a free society, an essential for individual liberty. Only through law can the rights of individuals be protected from the power of government and only through law can the citizens themselves exercise sovereign power. This is the basic concept of our national constitution which has become a model for free governments.

It is not a collection of "thou shalt, and, thou shalt nots." Nor is the constitution a reference guide for government action applicable only to the officers of that government. It is law, basic law, embodying the principle of exercise of sovereign power by the people and their representatives. It embodies three basic concepts. The first of these recognizes that the individual has certain natural liberties and inalienable rights which the state has no power to regulate. The second is that the people shall exercise sovereign power in matters concerning themselves, that people of states shall exercise sovereign power in state matters, and people of the nation in matters affecting the country as a whole. The third is that no single person, office, or agency shall exercise complete sovereign power, but that it shall be divided into three distinct branches, executive, legislative, and judicial.

Our constitution set forth in clear, unmistakable language that government existed for men, not men for government; that men, regardless of their economic or political stature, were to enjoy these God-given rights; and that neither their officers in the various branches, nor their courts, could deny these rights to the humblest of citizens. It implied that law is order, and good law is good order. It established rule by law rather than rule by individual. But, I also believe the founders of our nation recognized that many people are controlled by necessity rather than by reason, and by fear of punishment rather than by love of duty, a very practical outlook.

We recognize that it is through the judicial processes that the rights of the individual—the practical rights as well as the legal rights which our system of government emphasizes and guards—are made effective. Courts exist for that reason. It is to the courts...
that the individual goes to seek justice—not as a matter of privilege, but as a matter of inalienable right.

To us here today, these facts may seem a tedious recitation of something we already know. We in America take these rights for granted and assume that such is the status now, was, and ever shall be. Unfortunately, we cannot rely on this assumption. In many countries today these illusions have been shattered. Their citizens realized too late what was happening to them. In these countries there are no laws as we know them, no courts and no juries. Rule is by the individual, by the iron fist, and millions of people today are governed not by law but by force.

The average American is too prone to say, “but it can’t happen here.” Too many are engrossed in their own personal problems to worry about something which they believe cannot affect them in any possible manner. We need only reflect that in many countries now ruled in this fashion, they too had rule of law. We were not unique in that respect. But somehow, somehow, this rule was superseded by the rule of individuals.

As a result, millions of citizens have lost their rights—the same rights that are guaranteed by our own constitution. What law is left in these countries is a mockery to justice. Courts are virtually non-existent—as we know them—in many cases. The rights of citizens are trampled and transgressions against public and private institutions are the rule rather than the exception.

The awareness, in the legal profession, of this threat to the individual is to the credit of that profession. For example, the active role of lawyers in one drive for an international court of habeas corpus, is a manifestation of the deep faith the legal profession has in the rights and freedoms of the individual, regardless of his citizenry, his position, wealth or background. Such concern for the individual, I know, exists beneath the blanket of force which covers much of the earth today, but, tragically, is being smothered, I fear.

With this evil force spreading across the face of the Earth, ours becomes a struggle of survival. It is no longer a matter of difference in international customs and heritage. It is now a struggle to preserve our own orderly processes of law against the threat of lawlessness. We are in the midst of that struggle now. Nothing can be more evident to anyone who has studied history. This has always been the first object of any oppressor—destroy the court system—then replace that orderly system with his own individual rule.

It becomes obvious then, that the interests of the legal profession are closely interwoven with the interests of government itself. So it must certainly follow that an alert, strong judicial system is a vital part of a vigorous, alert government. Many of you here will take part in that system and others of you, no doubt, will find other careers in government work. With this in mind, I would like to examine briefly with you some of the problems we in government are facing.

First of all, we must recognize that there has been a tremendous growth in government processes and consequently the administrative law. It would be impossible to conduct this vast area of government without.

For the first time in nearly fifty years we are now legislating in a body which represents the people fairly. A proportionate voice has been given to all segments of population and area, and this fair representation has been insured in future years through a system of mandatory, periodic redistricting by population.

In our administrative branch of state government, we were able to make sweeping, much needed changes during the 1957 legislative session. Particularly in the area of fiscal control, we were able to bring about a centralization of responsibility, and a streamlining of administrative function. This change is already yielding the state substantial savings in tax money.

In our third branch of state government, the one in which you are most interested, the judicial branch, we are on the threshold of sorely needed changes. I am certain that most of you are acquainted with the new judicial article for amendment to the state constitution which will be voted in a general referendum this fall. Our present judicial article satisfied very well the needs of the government and population when it was established in 1840. But it is woefully inadequate for our present-day government.

For a government based on the rule of law, the present backlog of court cases is a shameful disgrace. It is ridiculous when viewed against the intent of rule by law as set up in our 1870 constitution—to give speedy justice to all. No government based upon mercy and justice can neglect these facts.

Plato speaking in his dialogues had this to say about such a situation—and I quote—“Even when laws have been written down, they ought not to remain always unaltered. As in other sciences, so in politics, it is impossible that all things should be precisely set down in writing; for rules must be universal, but actions are concerned with particulars”—end of quote.

His words ring true today, just as they did when he spoke them to his students in ancient Greece. Actions are concerned with particulars. And the particulars today are the legal delays that can be blamed on crowded, badly organized courts. We realize that in any field there is always some tendency to resist change. We also recognize that any change made merely for change’s sake is senseless. But to resist a change as sorely needed as the one in our judicial system because of selfish or local interest is monumental
backwardness.
Let me say here that the necessity for improving this situation is an immediate, pressing problem. It is not something that can be set aside for some future indefinite solving. Citizens are being deprived of their access to justice—something that is their basic right. It is a dangerous situation. People are quick to sense danger when our legislatures or courts seem to lose sight of their purposes. But this access to justice is an element that has fewer automatic safeguards than have our legislative and judicial systems. If we neglect it, the dangers are multiplied manyfold.
I sincerely believe that we as citizens are being denied one of our most precious assets—justice, speedy justice. I believe that you here who are students of the law should keep in mind these basic ideals not only in law school, but in their practical application. It becomes important that you who are going to be the future lawyers know these facts. If you cultivate an active and intelligent interest in public affairs, you will qualify as leaders of public opinion and eventually as our leaders in public office.
Interest and action with respect to all of these matters are essential to the good lawyers, and, if you pursue the law in the spirit of Justice Holmes, you will achieve the desired results. Let me end by quoting him:
"Law is a business to which my life is devoted, and I should show less than devotion if I did not do what in me lies to improve it, and when I perceive what seems to me to be the ideal of its future, if I hesitated to point it out and press toward it with all my heart."

At the reception for Governor Stratton preceding his Law Day Lecture, left to right, Mrs. Laurence A. Kimpton, Hon. William G. Stratton, Governor of Illinois, Laurence A. Kimpton, Chancellor of the University, and Mrs. Stratton.

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