

A D D R E S S

to

JOHN JAY CHAPTER,
PHI ALPHA DELTA

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by

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At once I confess great surprise and pleasure at becoming a frater of a distinguished law fraternity. It had seemed not merely improbable, but in fact impossible, that I should ever have such an honor and privilege. Circumstances prevented me from attending a law school, and I had to journey to the bar through the office route. Thirty or thirty five years ago fraternities were uncommon in colleges of any sort, and law schools were not found at each turning of the highway. In the colleges the fraternity---with rare exceptions,---had yet to demonstrate its right to a place in the sun. Thus lack of eligibility and opportunity---two valid obstacles---kept me from active membership in such an organization; and of course the chance of honorary membership was too remote ever to enter my head. With all earnestness, therefore, I express unfeigned delight and sincere appreciation of the honor and privilege conferred upon me. This honor carries obligations which I cheerfully and unhesitatingly assume because pleasurable, and because thereby I make partial requital of the debt I owe professional brethren of a former day for time and energy unstintingly expended in trying to make something out of a young and unpromising law student. Perhaps thereby I may indirectly aid even my children's children.

There has been a great change in the attitude toward the college fraternity. Once proscribed, it is now virtually prescribed. It has demonstrated its usefulness. Without it an essential element in modern education is lacking. There is nothing strange in finding such an altered attitude. They say times change, and we change with them. This is better to be but half a truth. We have much in common with the generation before and that which comes after.

Ages before history began, a man struck a bit of heavy, black stone with a flint, and the spark chanced to fall in a handful of dry, bruised flax. This had often happened. But this man, finding he had a gift from the gods, cherished the spark, and ran with the glowing embers for all the world to see. In middle life he fell in step with a youth, who touched to the glowing fire a twisted thread in an oil-filled shell. Together they carried onward the smoking flax and the rude lamp, until they met a third with wax fashioned in a cylinder around the thread; and to him they imparted the divine flame. So from runner to runner, on through the ages, they passed the flame, maturity giving the sacred fire to youth, progressing in stride a ways, then turning aside and dropping into the darkness. But the torch has ever been improved, and the light has grown in radiance as each generation has carried it forward and yielded the trust to its successor.

I count myself young in years and spirit. Yet I have had the fortune in early days of being a contemporary and intimate of old lawyers who in their youth had caught the flame of inspiration from great men of the generation before the civil war. Almost with my own eyes could I glimpse the mystery of inspiration and ideals of the professional generation of Webster and Clay. What magic in the words "He knew Lincoln," as applied to a wise friend of your own! In the library in which I studied the ninth volume of Indiana reports carried on the fly-leaf the autograph of Herndon, Lincoln's law partner. Fancy the privilege of using, as a daily tool, in current course, a book which without doubt the most manly figure of modern history had carried in his saddle-bags as he travelled on circuit in Illinois, earning his living! Someone chanced to find in the library of the Interstate Commerce Commission several volumes of reports of the Supreme Court which bore the autograph of the great chief justice, with marginal notes which showed that they had been not merely owned, but constantly used by John Marshall. And those books, the tools of the great justice, were available for like use by the youngest junior attorney on the Commission's roll.

The essential nature of fire is ever the same, whether it be struck from the flint, or stolen from the sun, or hurled by Jove as a thunderbolt. So the eternal principles of justice

are constant, however varied their application. Likewise those ideals of greatness and nobility in the practice of the profession which force us to our utmost and make for final contentment, are the same to-day and will be to-morrow no different than when Patrick Henry arraigned George the Third. After a third of a century, I find no later guides better or surer as to my duties, my privileges, and my opportunities, professionally, than the precept and example of my older brothers and friends. May I mention the gallant colonel of the Iron Brigade, who single handed captured the colors of a regiment; the hickory-shirted frontier judge who had been a classmate of Longfellow; the gentle, blind Quaker; the rugged pioneer legislator and statesman? They, and others, now slumbering in inconspicuous tombs, passed on from hand to hand the master secrets of Hammurabi, and Moses, and Solon, Augustus, Justinian, the nameless priests and chiefs of the hierarchies and the clans, of the Conquerer, the barons at Runnymede, and Coke, Hale, Blackstone. And the chief master secret is that the lawyer's calling is a high and noble one, and his function is to serve in the temple of justice, and to do it well.

We have seen changes in the spirit of our statesmanship and polity which are little short of revolutionary. One example will illustrate the point. The constitution of Alabama declares that "the sole and legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when government

assumes other functions it is usurpation and oppression." Yet Alabama is now greatly concerned that the government shall best administer the enormous possibilities of Muscle Shoals in the public interest. We no longer share Jefferson's doubts as to the propriety of the government undertaking the carriage of mails, rather than to leave it to private initiative. But the essentials of our jurisprudence, the administrative machinery, and the underlying harmony of essentials to justice, have remained constant or changed merely in detail and degree. The maxims of equity apply in a controversy between the warring stockholders of a modern trust as they did between partners in the wine-selling business on the Appian Way. When the railroad and airplane came, there were waiting ready for application the principles of common law, common sense, common justice, fashioned and expressed in the days of the porter and carter, ripened and perfected in the days of the stage-coach, and needing little adaptation to fit the new conditions. The principle on which we bottom the regulation of public utilities was readily enough found by the Supreme Court when occasion arose in the Granger Cases, and traced back to Lord Chief Justice Hale, two hundred fifty years. All roads lead to Rome; all rights trace back to fundamentals long generations ago recognized and stated, which all our pains can but amplify and apply in more meticulous detail. Few have been the basic changes. As the modernists in the art of music must employ the harmony of Father Bach as the

basis for their extravaganzas, so the cardinal threads of the law lead back through long ages until lost in the dim past of the sum total of human experience.

One hundred fifty years ago this month the first Continental Congress convened, and formulated a Bill of Rights. It was largely a congress of lawyers. Colonial lawyers had played a large part in the development of an orderly civilization in this new continent, by the adaptation and application of the common law, by resistance to aggression under guise of law by the parent government overseas, and by inspiring an American national consciousness. From then until now the task of the American lawyer as to public matters has varied, generation by generation. First, with liberty assured, the decision as to the form and framework of the government, and the creation of machinery to carry it on; second, the determination whether that government should be strongly centralized and federalized, or should be a string of loosely connected democracies; third, the period of constitutional development through exposition; fourth, the legal phases of the political questions, economic in nature, arising out of the efforts to extend slavery into new territory, until the arbitrament of war solved the question and determined the indivisibility of the nation. Then, reconstruction and readjustment; the coming of "big business," and the expansion of territory far across the seas, until the nation

their classes. Busy lawyers cannot spare the long hours necessary daily to develop a lawyer out of an office clerk. Other plans of legal education have been forced on us. Students no longer eat their meals with the masters and benchers, nor, as did I, do they nightly go with their preceptor after the day's work is done, to his home and family for instruction such as a father might give a favorite son, not only in the technique of law, but in the fundamentals of the lawyer's etiquette, of legal ethics, and of manly honor. But the flame must be passed along. The priesthood must not lapse; the temple must not be given over to money-changers.

And this is the opportunity, the justification, and the promise for fraternities like this. Their ideals, their purposes, and their organization all contemplate the passing from the mature to the younger and less experienced that which no lectures, no books, no moot courts can give---the realization of the high calling of the lawyer, an inspiration to measure up to its lofty standards as a worthy servant in the temple of justice, and the sacred charge of the traditions of devoted men. Whatsoever things are true, are honest, are just, are pure, are of good report, of any virtue, which we have learned, or received, or heard, or seen, we must not merely do, but teach, and give, and say, and show, to those who are with us and those coming on, for their sakes, for our sakes, and for humanity's sake.