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Dean of Harvard Law School

At Dinner at The University Club, Denver, Colo., Wednesday, November 2, 1927
By Courtesy of C. P. Gehman, Shorthand Reporter

I WAS doing a little calculating while I was listening to your president; and, if university presidents and deans have been discharged here into this community at the rate of three a minute this afternoon, you can see by a little figuring that there is liable to be some sort of an avalanche of learning.

But I was less alarmed at that rate of discharge—which is the term you use in your irrigation law out here, isn't it?—when I reflected that some of us at least, are not here in that capacity. Dean Fulsom seemed to indicate that I was out here to collect something that was due me. I confess I did not know that I had come out here on a bill collecting errand, but I have been in Denver in times past on that errand, and if there is anything due I shall not go until I have collected it, and shall carry it back with me!

One gets a bit used to post-prandial introductory oratory, even when sometimes the speaker gets a bit *Fulsome!* (Laughter) I often think of a story that I heard from a president of the South Carolina Bar association some years ago when I was a guest of that association.

The president of the association told us about his colored butler, who asked for a night off to go to lodge. "Why," the master said, "Sam you don't need to go to the lodge; they can run the lodge without you." "No, they can't run the lodge, Marse John; they can't run the lodge without Sam," he said. "How is that, Sam, are you the master?" "Oh, no, Marse John, I'se not the master; I'se only the Supreme High King, and there is seven officers above me!" (Laughter)

I thought I would try to speak to you on the subject of law and laws, and leading up to that subject I was going to suggest to you that we are in a time of transition, when it occurred to me that, when I was a student in the University of Nebraska, from which I graduated in the year 1888—a good while ago — we then thought that we were in a stage of transition. I suppose in a sense everything is always in a state of transition. But it is sometimes, perhaps, more in a state of transition than at other times. I suppose the truism that everything falls is emphatically true of life.

The very essence of life is change; and the social order that is today with life is bound to reflect that change which constitutes life, and the law, which is a specialized form of social control, cannot but itself be continually to a greater or less extent in a condition of change.

But I suppose we have today in the law as everwhere else to mediate between the need of stability and the need of change, and the economic order in which your civilization has culminated calls for stability, which presupposes general security. But it has to do with life; it is an order of life; it has to do with conduct, and every item of conduct in a sense is unique. And so we have always with us a problem, as you might say, of mediating between a need of stability and a need of change.

But at some times the balance in-

clines toward change and at other times toward stability. In the last century it inclined very much toward stability. At least we think so as we look back at the last century. We did not think so then. I remember there used to be a college oration that went through oratorical contests year by year. Its title changed; its content changed somewhat, but its main theme was Progress. We did not talk so much about transition then; we called it progress.

And I remember that college oration used to begin with Adam's fall, and it traced progress down to Appomattox. I suppose if the situation had been located south of Mason and Dixon's line a different terminus might have been selected. But progress in the year of our Lord 1888 for the latitude and longitude of Nebraska had temporarily stopped at Appomattox; and as I look back at that I think it was a bit symbolical, because while we believe in progress, I suspect we had an idea that from then on progress was going to take the form of perfecting a few details, the great outlines had been pretty well worked out, and progress was going to consist in touching up a detail here and touching up a detail there.

As we look back now we can say that the balance was on the side of stability. Quite as definitely I think one cannot but feel today it is inclined to the side of change.

I had occasion not so long ago to look over note books that I kept as a first year's student of law under some very great teachers, and they were very confident, and had just cause, I suppose, to be confident that they had got hold of the great fundamental, eternal principles, and that those who came after them would be merely working those principles out in detail.

It is rather alarming to see what has become of some of those principles. You cannot be as sure of them now as you could be thirty odd years ago. In the course of a generation many of them have simply disappeared from the legal map. Instead of working out of details in the principles which now seem to be vital in the law, which were hardly dreamed of at that time, and yet we can look back and, with a little logical acrobatics such as a teacher always has to indulge in, we can demonstrate them by authorities going clear back to the Year Books.

Well, I am certainly safe in saying that we are in a time of transition, and I suspect that transition plays a very much larger part in the law, is much more of a factor in the law today, than it was in the law a generation ago.

Now of the phenomena of this time of transition, one that seems to me peculiarly significant—if you would like, impressive — is that, with the greatest respect for law, preaching respect for law up and down the line, we are not so sure about laws.

A generation ago we believed that law was an aggregate of laws, and yet with all the praise that we have continually upon our lips for law, you find relatively little praise for laws.

I was going to quote from a cowboy version of Shakespeare that used to be current when I was a student, where Mark Antony, standing over the body of Caesar is reported to have said, "But, after all, boys, we do not come here to praise Caesar, but to bury the son-of-a-gun!"

I suppose there is no other country in the world where there is such an output of laws and such complaint of laws when put forth as there is with us.

We devote more energy to our law-making machinery, it is more continuously in action, there is more of it, it is more complicated than I suppose

any lawmaking machinery in the world or that the world has ever seen, and along with that machinery and that output I suppose there is more outcry about the laws when enacted than there is anywhere in the world or ever has been.

Now of course in a way that is relative if you take the great compilation of the Emperor Justinian. There are four parts. Two parts codify the traditional law, the jurist made law; and two parts codify legislation. The legislation in the Code and the Novels cannot run back more than two and one-half centuries, and mostly runs back two centuries, before Justinian's time. The juristic part represents the activities of Roman jurists for four centuries. But, that half of that compilation represents a legislative activity of two centuries, suggests to us that, after all, when we come to codify our law, it will be some time before half of that part of our law which we conceive to be significant and worthy of perpetuating will be legislative in origin.

As to a good deal of our legislation you can say about it what the freshman said about his hero in his theme, when he said that he made himself immortal for a great many years! (Laughter) And yet it will not do for us to sneer at legislation as we are accustomed to do. It is said, and said truly, that the conspicuous fact in the American state is the energy of the legislature; and if we look back at our legal history we are bound to admit that legislation has played no small part in making our American law what it is.

Let us go back to our formative era. Think of the statutes that have entered into the very corpus of our American law. We have almost forgotten that these things are statutory, the statutes are so universal, they have been so generally adopted, and have stood the test of time so well.

Take the way in which we made over the law of real property in this country in the Nineteenth century. A great deal that we have thought of as common law in this country was really legislation, beginning in New York in 1795. Our whole law of descent and distribution has been made over in statutes that are substantially alike all over the country. Our whole system of conveyancing is statutory. Our homestead and exemption laws, almost universal—covering a great part of the country at least—are statutory. One can go on with a long list of statutes; and a member of your bar has pointed out as a result of very valuable research how many of these things go back to the time and how much of them we owe to the genius of Thomas Jefferson. They are great legislative achievements that are a part of our everyday law; and it is not to be said that modern legislation does not play an important part in our everyday administration of justice.

Why, at every turn the lawyer encounters statutes. There is not an item of law that potentially may not be and that actually is not affected by legislative lawmaking. And yet, with all that, our tendency is to ignore legislation or to treat it certainly very lightly.

Take our legal education—it almost ignores the existence of legislation. I suppose there is not a law school in the country of any pretensions that has a course in statutory interpretation, a fairly important practical subject. Our legal schools ignore legislation. A few years ago we had a debate that was running up and down the law schools of the land with reference to the nature of the res of a beneficiary of a trust—were his rights in rem or were they in personam?

And I remember on one occasion

discussing this subject with a very great law teacher, who has since attained one of the highest positions upon the bench. I said to him, "Why, take the case of a person who has an unrecorded deed of conveyance to a piece of land; he has legal title, but if some one gets another conveyance from the grantor and records it, taking for value without notice, he can cut off those rights in rem of the owner by the unrecorded conveyance." "Oh, well," he said, "that is statutory."

Is our universal American institution of recording acts something to be ignored in an analysis of an everyday legal situation?

Of course that viewpoint grows out of our historical modes of thought in the last century. The historical jurist had no use for legislation. It did not enter into his scheme of things. A statute to him seemed to be a sort of pathological growth in the law, that we could leave out of account in our consideration of its normal phenomena.

But take the writers of our text books. Did it ever occur to you what a contrast there is between the way in which a practical text writer, writing a practical treatise for practical men to use in their every day practical work, will deal with judicial decisions, and the way in which that same text writer will deal with statutes?

Why, he would consider himself disgraced if there were a judicial decision in an English speaking country from the seventeenth century to the date on the title page of the book that did not find a place somewhere in his foot notes. But as to the statutes, the practitioner must look them up for himself as best he can—they do not come within the purview of the work of a legal scholar.

I always think of a vigorous old time Federal judge, of the type that was more common in this part of the world when I came out here than it is now, as he was delivering himself very vigorously from the bench one day an oral opinion in which he was laying down the law applicable to the case with great force, occasionally by way of a punctuation mark bringing down his fist upon the bench.

As he proceeded with his forcible exposition a member of the bar seeing that things were not going the way he conceived they ought to go, pulled down a volume of the statutes and opened the volume at a certain page and handed it to an usher to take up to the bench. The usher took it up and laid it on the bench, but the judge went on with his vigorous exposition of the law, and then having reached the end of a paragraph he picked up this book and looked at it a moment—then looked at it again—looked at it more carefully, then shut up the book and put it down and went on, "But they tell us there is a statute to the contrary. Now what is a statute? Words—mere words! Judgment for the plaintiff!" (Laughter)

Well, I am afraid that has been the attitude of the teachers of the law in law schools, and of text writers; and I do not know that it is any wonder that legislation is not entirely a thing for us to be proud of, when we insist on dealing with it in that fashion.

As I have said, there is really nothing in the history of our law—not in the history of our American law—to lead us toward that attitude. Even in the law of today, one of the great achievements has been, has it not? workmen's compensation — absolutely a work of legislation, in which the law making branches achieved the solution of something with which the courts had been wrestling for a generation, with results that perhaps have not entirely added to the respect for judicial justice.

And yet there we have that situation. My impression is that our difficulties are not with legislation in and of itself, much as we declaim against the quantity of legislation. What we really have to address our minds to is quality of legislation; and that quality I suspect is intermedially connected with the phenomena of a time of transition.

Now it has been proposed that we have a legislative holiday in some states. Propositions have been made to call special sessions of legislatures for the purpose of repeal only, enacting nothing. Well, it would be an interesting thing if we could have the short and simple statute books of a hundred years ago. The statute book in Michigan, and the statute book in Ohio, have now, I believe, got to four volumes. The statute book in New York occupies a shelf that is longer than that balcony up there!

But we cannot as things are today expect to go back to the old-time one volume statute book. The points of contact of man and man in the society of today are too many. The things that call for solution and call for solution immediately are too many. We cannot wait. In a time when communication by airmail between Boston and Los Angeles is two days, we cannot take the time to deal with these questions that come up as we did at a time when it took General Grant going as a cadet from Ohio to West Point nine days to make that journey.

The mere circumstances of our life compel us to deal with things speedily, where a generation ago we waited a slow process of judicial inclusion and exclusion.

So I imagine that the statute book is something that we have got to expect to have with us. In fact Montesquieu saw this long ago, when he pointed out that an agricultural community needed few laws and a commercial community needed many. That is even more true of an industrial community such as that in which we live.

Our problem, I suspect, then, is not one of quantity; it is one of quality.

There are some other things besides quality to be taken into account. Did you ever consider the difference between the sedulous way in which our governments take care that the decisions of the courts be made accessible and the free and easy way in which legislation is promulgated?

Take our Federal statute book, for a generation after the revised statutes of the early seventies, it became less and less possible to say with assurance what Federal legislation was. And what has congress thoughtfully done for us recently? We now have a private compilation, which by legislative enactment is prima facie evidence in our courts of the legislation of the Federal government — prima facie, but any of us are at liberty to show that there is legislation that is not there, or there is legislation there that ought not to be.

I do not believe you will find a parallel to that situation since the time of the ruler of antiquity who carved his laws high up on a column, out of sight, to enjoy the embarrassment of his subjects who were bound by them but did not know what they were!

What are the reasons for this attitude toward legislation? I think there are three. It is to be accounted for partly through a bit of history, a professional tradition. It is to be accounted for partly because our law schools have always been professional law schools and have echoed that professional tradition. But partly also it is something connected neither with the teaching of law nor with the practice of law, but very closely and in-

timately related to an old time American pioneer characteristic. Let us look for a moment at each of these things.

I said to you a moment ago that our legal scholarship in the last generation was historical. Now the historical scholar in the science of law in the last century did not have any intimate connection with history.

It always makes me think of a Greek candy maker who attained some political importance in my native town when I was a bit interested in politics, and as Greeks came to town and became eligible for political activity he always saw to it that they were taken around and registered as republicans. Most of them had come to this country because their views in Greece were republican, and Greece was a monarchy; and he always explained to them, republic and republicans, it is the same thing! (Laughter)

Now the historical scholar and history were not the same thing. But the historical jurist of the last century conceived the law was something that could not be made. It was something that grew spontaneously, like language, as an idea of right or an idea of justice released itself in the development of legal institutions, legal proceedings, legal doctrines, and all he could do was, as it were, to sit upon the fence and observe, and could no more by any conscious effort affect the orbit of this development than—shall I say?—he could affect the phases of the moon or the revolutions of the planets.

That was a cheerful doctrine for the era of mid-Victorian liberalism, when at least in the part of the world where I observed it, certain things had come to a grand finale at Appomattox; but it is a doctrine that has not been able to hold its own in legal science in the last 35 years.

More and more we become conscious that there are things that call for effort, that we can do things and must do things, and that this historical dogma that preaches futility is simply preaching a juristic optimism that is out of line with modern life.

But that is the way we were taught; a statute is an attempt to do the impossible, it is a pathology, as I said, an abnormal growth in the law. Now we have got to make the best of it; we have got to construe it, if it is in derogation of the common law, strictly; we have got to fit it into our common law scheme, and one way or another we cannot regard it simply as a futile effort to do something that cannot be done.

But along with that there was another factor, as I suspect, that operated even more vigorously in this country. As I said, our American law teaching has always been professional. It goes back to the very beginning of the law teaching in English speaking countries. The Inns of court had their very origin in bodies of law students, apprentices studying under the master.

It was an apprentice teaching that brought apprentice teaching to this country. The first law school in this country, Judge Reeves' school, at Litchfield, Connecticut, was nothing but a glorified law office, and we have gradually brought those glorified law offices under the eaves of universities; but they have kept that tradition to the present time.

Now in civil law countries that is very different. The civil law has been a body of written texts since at least the fifth century when the writings of the great Roman jurisconsults were given legislative authority. The makers of the civil law have been teachers; their great books have been commentaries on written texts. And the civilian is always at his best when he

is interpreting or applying or formulating a written text.

It has been very different with us. The fundamental ideas of our law had become pretty well fixed before we had much if any legislation on legal subjects in English speaking countries. Ours is a tradition not of handling of written texts but of finding the grounds of decision in reported judicial experience.

The common law lawyer is usually at his worst when he is called on to apply or to formulate a written text; and the law schools have simply reflected that attitude of the profession that the real law is the traditional law, that the life of the law is in the tradition and not in the written formulated text.

But I think there is still another reason, and that is our pioneer faith in versatility. The pioneer had to be versatile; he was versatile; he had to be equal to all the emergencies of life. If he could not do himself what had to be done it had to be undone. He must himself prove equal to every emergency that presented itself or he must get off the earth or go back east where he came from. It was not possible for him to turn to a well-organized board of health or board of house commissioners around the corner; he could not write a letter to the department of agriculture. He did not have even the ordinary every day experts that we regard as essential to our household emergencies sometimes within miles. If a doctor was accessible it was only, usually, after a long drive to bring him to the place where he was needed. It was necessary for the pioneer to be versatile; he was versatile, and he conceived a sort of contempt for the specialist. I like to read in Cooper's Pioneer about the way in which the physician got his start in the community. He would serve an apprenticeship under the physician in a community, and does not seem to have picked up very much in the apprenticeship. A man got a bullet in his hand and a physician used a jackknife to extract it; and by observation of how Indians and others dressed wounds, etc., he got his start in the practice of the medical profession.

Well, that is the way things were done and could be done in a pioneer community. Experts did not seem to be particularly necessary. The pioneer conceived that any honest citizen, by and large, was equal to anything that had to be done in the community. He learned to administer by administering. He observed, and he applied his good sense to what little experience there was and gradually picked up a few simple problems.

Let us remember that it was a long time before we thought it was necessary for a man to be a lawyer in order to sit upon the highest courts in many of our states. In New York the senate had ultimate appellate jurisdiction until 1847. The decrees of Kent and of Walworth were reversed, and you can read the opinions of the senators as they voted to reverse them. It is interesting to notice that somehow or other Johnson's Chancery ranks a little higher as an authority than Wendell's reports, in which Kent's and Walworth's decrees were reversed.

It was not until 1847 in New York that those who ultimately passed upon writs of error and appeals were necessarily learned in the law. It was not until 1857 in Rhode Island that the legislature gave up the last of its appellate jurisdiction. It was not unil 1874 in Pennsylvania that the legislature gave up its jurisdiction in divorce.

It was a long time before we conceived that any special preparation or expertness was necessary for adjudication. Now I suggest to you that in legislation we are in that stage still.

We have learned in administration that it is necessary at least to have an expert in the background. If a commission is composed of persons who have no expert knowledge, there is a corps of experts behind the scenes. We learned a long time ago in adjudication the necessity of putting upon the bench men learned in the law.

We have still to learn, and we have got to learn pretty soon, if this outcry about legislation means anything, that behind this work of lawmaking there must be expert processes and expert preparation of which our ideals of pioneer versatility took no account.

How is it that we do actually prepare, make smooth the paths, for legislative lawmaking? Well, of course there are certain official agencies. There are the judiciary committees of the houses—I am speaking only of legal matters, because that is all that I am competent to talk about—there are legislative reference bureaus; there are arising over the country judiciary councils. Now those are great institutions. I expect to see them do great things.

But their scope is relatively narrow. There are certain unofficial agencies—there are bar associations, state and national. There is the American Law Institute, the American Judicature Society, the Commercial Law League, the Commissioners on Uniform State Laws.

The bar associaions have done a great deal. The Commissioners on Uniform State Laws have given us laws on commercial subjects some of which seem to me to be models of what legislative lawmaking should be. The bar associations within certain limits have done and are doing a great deal. Take such matters as procedure, where lawyers are especially competent, where they have a particular knowledge of the difficulties of the problems and of the materials with which the solution is to be reached, there they have done much. Consider such things as the corporation law in Ohio, under the auspices of the Ohio State Bar association; the new rules of court in Delaware, under the auspices of the Delaware Bar association; the things done by the American Judicature Society for judicial organization and administration; the work done by the Commissioners on Uniform State Laws—all these are admirable.

But beside that there are certain agencies with a less breadth of view, a less grasp upon the problems, that I suspect are in practice much more effective. For every trade, every business, every profession, every sort of organized activity, today has its national association, has its legislative committee, has its annual or biennial budget of bills, which it persistently urges, and in the end is likely to be able to put upon the statute book.

Now when the lawyer deals with these purely legal problems he has one great advantage. He is likely to have in bar associations men who represent every type of client in the community, who know how a particular law will affect their particular clients, who will be watchful to see to it that nothing is put in there which will be prejudical to the interests with which he is immediately concerned.

But I do not think that is as much so as it used to be. We are getting so specialized that the very necessities of our economical organization are such that more and more we do not have the type of lawyer we had a hundred years ago, or in this part of the world a generation ago, the roll of whose clients was a cross section of the community.

But by and large it is true that a cross section of a bar association will pretty nearly give you a cross section

of the interests in a locality. And today the moment you get outside of those associations you find a radically different type of preparation for legislation. Let me give you an example.

All of you know, of course, the problem of interpleader, but let me put a typical case. John Doe we will say is a bachelor with some money, and he rooms and boards in a boarding house that is kept by Richard Roe and Mary his wife. He runs up quite a bill there. Richard and Mary disagree; each claims to be operating the boarding house; each claims that John should pay him or her as the case may be. Now if John is wealthy and Mary good looking and Richard indigent, the chances are that two juries in two separate actions, duly moved by a benevolent desire more equitably to distribute the economic surplus, will find in each case for the plaintiff. Of course the remedy is in equity in a suit for interpleader. But that bill of interpleader is hedged about with many historical difficulties. There are purely historical anomalies, one might say, that beset that proceeding, historical limitations upon its scope.

Well, Congress undertook at the last session to deal with that matter, so far as the Federal courts are concerned, and it has given us a new statute, which extends the scope of interpleader, and removes those historical obstacles in the case of insurance companies, surety companies and fraternal insurance organizations. Other courts are exactly where they were before.

Well that is not all. Take another subject that has made the law infinite trouble, and that is the subject of contributory negligence. There are no less than six different solutions of contributory negligence in the books. We have experimented in this country one state or another with three or four of them. The civil law has an entirely different way of dealing with the matter, and the Roman jurists apparently never could agree between two or three distinct views.

Congress dealt with that matter some time ago, and fifteen states have dealt with it by legislation, and have brought in a new doctrine for employes of railroad companies, or, in Nevada, for employes in mines.

Now the solutions that have been propounded judicially were applied equally to the various problems. The farmer with a lumber wagon or the railroad company operating a freight train were subject to the same rule. But now we have this improved legislation the benefit of which accrues simply to employes of railroad companies, or in Nevada, to employes of mines. Now it is possible there is something peculiar about that type of employe, but I suspect the peculiarity is that it is represented, or was represented before the lawmaking bodies, by a vigorous organization.

But how those things affect the law is really an interesting study, because it is something more than to get one law for one type of litigant and another for another type.

Take a case that has been coming up over and over again, ever since the bankruptcy law of 1898. The Committee on Commercial Law of the American Bar Association is now engaged, and it has been engaged off and on for a long time on improvements in the bankruptcy law. And what is one of the things that trouble them? The commercial lawyer is very apt in thinking about a bankruptcy law to have in his mind's eye the interests of the general creditors. Now equity had certain doctrines about cases where it conceived that it should impose a constructive trust or there should be a lien, and the tendency in this legislation, promoted by those who had before their eyes the inter-

ests of the general creditor, is to do away with these equity doctrines and bring everybody in on the basis of the general creditors. But some how or other the courts have always managed to read the doctrines of equity back into the statute when they have been legislated out.

Now it is easy to see why the courts are conscious that there are two sides to this situation. They are conscious that this legislation is framed from one standpoint only, and it is a most unfortunate situation, but a very real situation, in our law, that you have legislation drawn continually from the standpoint of one interest, compelling the courts by a process of interpretation or application or what you like to bring into account the other interests, which ought to have been taken into account in the formulation of the written text.

Now one could vouch any number of cases of this sort; but I am always afraid that I may hit upon something that is locally controversial. I do not know just what sort of statute you have in this state. I did not have time before I came on here to look at your statutes. But I do not imagine you are one of the states, of which there are a few, that has a type of material liens statute whereby one can furnish material to a cost of five times the amount of the contract between the owner and the contractor and the owner can find himself liable to pay not the amount of his contract but the amount that the material man charged the contractor.

When you look into the history of that legislation as I have looked into it in a number of states, you find behind it the activities of a lumber dealers association.

Well, what are we going to do about a situation of that kind? We have got a situation where the professionals are not acting, the experts are not acting. You cannot blame the layman for bringing to bear the power of his organization to get something done. In many of these situations it is necessary that something be done. It is a situation that occurs in every walk of life, over and over again.

It has happened that professions have forgotten that they are practical institutions, that they exist for practical purposes. Over and over again charlatans and quacks have had to teach the medical profession, have had to wake it from a pedantic slumber. Over and over again volunteers have had to remind the military profession that they are a practical profession.

I like to tell the story about the Hessians at the battle of Bennington, highly trained, highly disciplined professional soldiers, sent on a forced march to rescue their comrades, arrived on the field too late because, as the commanding officer explained, on account of the mud and the bad state of the roads, it was necessary to halt five times in a mile to dress ranks!

Then there was the naval commander of whom Captain Mahan tells in his Great Naval Battles of the Eighteenth Century, who had his orders to keep a certain number of cable lengths behind the ship next ahead of him in the order of battle, and he stood upon the quarter deck so intent upon keeping his precise place in the line that in the smoke and excitement of battle he drove through the French line without firing a shot!

And we have to remember that in the Civil war our professional naval officers did not believe in the Monitor; that it took lay pressure, lay ingenuity, lay creative energy, to really make an efficient fighting machine out of the navy.

Now some times we have to learn these same things in our own profession, and we cannot wonder that the

layman takes hold and does things when for the reasons I have spoken of or other reasons we are not doing what we ought to be doing, we are not organizing the creative energies of our profession, we are leaving these things to be done by some one else.

Well, what is it that we ought to do? In a civil law country they would say of course, "Set up a ministry of Justice; clear away limiting jurisdictions." That has been urged in English speaking countries. Bentham urged it in England about 1830. Lord Haldane urged it in the rather remarkable report which he presented to the British Government in 1918. Judge Cardozo urged it in the report of the commission of which he was a member in New York. But I am afraid we shall not see Ministers of Justice in our time in any English Speaking jurisdiction. It is rather alien to the genius of our institutions. We expect these things to be done unofficially; we are suspicious of official institutions of this kind, if for no other reason because we feel they are likely to get into politics, and we are likely to get the same sort of preparation that we get at the present.

Well, if we cannot have ministers of justice, is there anything in any institution that we have got available that we can turn in whole or in part to that purpose? There are several unofficial institutions springing up, and there is one old existing, well established institution in this country that I should like to see put its shoulder to the wheel and try to do its share, and that is the Law School.

I cannot but feel that we have been negligent in allowing the situation to grow up in America. While we have been studying the Year Books and collecting large and expensive accumulations of Black Letter folios, I am afraid we have let a very important part of our duty get by us unnoticed.

I make this observation because in our universities we have the possibilities for something very like a ministry of justice. There are the trained men; there are the scientific conditions of study; there is the secure tenure, and there is the opportunity of dealing with questions as a whole and not in local fragments; there are the opportunities for dealing with questions without restrictions of jurisdiction or parties or venue.

And there you can bring together more comprehensive faculties. Take such subjects as promoters' liability, or sales agencies, that are making a great deal of trouble in some parts of the country today. If those are to be dealt with properly you will have to bring something more than lawyers into the field—economists, specialists in those lines; perhaps specialists from schools of business will have to be brought into the work, and they are there in the faculty of any great university.

So I say we have in our universities right at hand the materials out of which to make institutes for research in preparation for a better and more effective legislation.

Now I can conceive that a law school has not done its whole duty when it has turned out well trained men to enter into the practice of their profession.

If that is all that it is to do why should a university maintain a law school under its roof? Lawyers have a work to do in bar associations and in legislatures and as citizens in urging and promoting and explaining measures that will make our administration of justice in the next generation as effective as it was in the last. But I do not believe that law schools will have done their full duty when they have turned out men trained and disposed to take up that work.

Just as our university is doing the

work of research that has opened up modern technical manufacture in almost every field of industry today, why shouldn't they do the work of research that shall be behind the making of our laws a more effective instrument.

I look forward to the time, and I hope it will come speedily, when the law school will feel that its duty is not only to train practitioners, not only to train men who will do their work in bar associations and in legislatures and as advocates of proper measures before the public that must necessarily rely upon them, but I look forward to the time when in law schools up and down the land will be doing this work of preparation that must go before effective law making.

Think of the advantage that we have. The country is so unified today that these questions must be looked at largely as nation-wide questions. And yet we have a very natural and a very wholesome fear of centralization. We are afraid of any centralized national agency, with its possible bad effect upon local institutions. But in a locally respected university these questions can be taken up in their national aspects without any fear of an attempt to efface the locality.

My hope is that we need not wait for ministers of justice to take this up but that our law schools will take the burden of this work upon themselves also, and that they will do for legislation in the time before us what they did for the traditional element of our law in time past. (Applause)

The Reason

Mistress: "So your matrimonial life was very unhappy. What was the trouble? December wedded to May?"

Chloe Johnson: "Lan' sake, no, mam! It was Labor Day wedded to de Day of Rest!"

Wanted

Copies of the Journals for the 11th Session (1876) of the House and of the Council of the Legislative Assembly of the Territory of Colorado. Communicate with Editors. Telephone Main 1234.

Notice

Dr. Nicholas Murray Butler, President of Columbia University, will deliver two addresses in Denver on Monday, December 12, under the auspices of The Foundation for the Advancement of the Social Sciences of the University of Denver.

The first of these occasions will be at luncheon at the Cosmopolitan Hotel at 12:10 P. M., to which all members of the Bar Association are invited. $1.00 per plate. Dr. Butler will speak on "The Path to Peace."

The second occasion will be at the Municipal Auditorium at 8:30 P. M., to which the public generally is invited. Dr. Butler's subject in the evening will be "The International Mind."

On account of limited seating facilities, it is necessary to make reservations for each of these occasions, through the office of the Foundation at the University of Denver, by letter or telephone. Seats will be reserved in the order of application.

New Members

The following applicants have been approved by the Membership Committee of The Denver Bar Association and will be voted upon at the meeting to be held on December 5, 1927:

Hyman D. Landy
Fred Y. Holland
Thompson G. Marsh
James R. Jones
James D. Parriott
Frank Swancara