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LEGISLATION AND JUDICIAL DECISION

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IN THEIR RELATIONS TO EACH OTHER AND TO THE LAW.*

MR. PRESIDENT, AND GENTLEMEN OF THE GRADUATING CLASSES:

After the British troops had sailed away from Boston, and while the war of the revolution was still going on, John Adams and his compatriots, in framing the last paragraph of the declaration of rights in the constitution of Massachusetts, used these words: "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men."

This division of governmental powers into three classes is found also in the federal constitution, and was adopted generally by the American states. On this occasion we are concerned with only two of these three classes. I shall speak to-day of legislation and judicial decision, complements of each other in the realm of law—unlike in features, but yet twin sisters in the family of social regulation.

In the infancy of law as a governing force in human society no such separation of the legislative from the judicial functions was possible. As an institution of government law has its origin and finds its support in the sovereign power. This is true alike when recognized authority resides in the sovereign people, and when it rests upon the will of an arbitrary monarch.

At the dawn of civilization, when the king was all powerful, he sat in his palace hall and settled disputes between his subjects as they stood before him face to face. He was both judge and legislator. In the beginning he decided cases without the aid of laws, sometimes according to his caprice, but oftener according to his sense of justice. His methods, compared with ours,

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mark the distinction between a government of laws and a government of men. He brought to his aid such customs and rules of morality as had begun to be recognized among his people, and by his application of them he gave them the sanction of positive law. Long before he assumed the work of direct legislation he was making decisions which were themselves a source of law. The modern conception of a judge as an expounder and administrator of laws already promulgated, was contradicted by the method of the primitive judge who created the law which he professed to declare. Rules of practice grew up under these decisions, which furnished a basis for formal legislation. New mandates were added, and individual laws became a system. As time went on, wise and progressive rulers framed codes which grew with the growth of civilization.

Such practices and methods show the origin and growth of English law. In the centuries which immediately followed the abandonment by Rome of her English possessions no one would have predicted that England would be the birthplace and home of a system of jurisprudence the most just and liberal that the world has ever seen. Her people were but little better than barbarians, and the domination of their chieftains showed few of the rudiments of civil government. But in later times, among the Saxon kings, there were lawgivers who prepared codes for the better government of their subjects. Ethelred, who began to reign A. D. 561, was the first of these, while Alfred, who came to the throne three centuries later, was the most celebrated. Nearly two centuries after the promulgation of Alfred's code a more elaborate system was prepared by Edward the Confessor.

In these times the Supreme Court was held in the king's palace and the king sat in person. In later years he was attended by his barons, and still later, judges selected from the barons administered justice in the king's name.

Under the early Saxon kings the Roman law was little known in England, and it had no direct influence in the administration of justice. But in the twelfth and thirteenth centuries there grew up a livelier interest in law as a science. Roman law, which for a long time had been an elaborate system, was taught in Italy and in some other continental countries, and was studied with enthusiasm by a few scholars. But in England it never was adopted in the secular courts. Pope Innocent IV, in the year 1254, is said to have issued this decree: "In France, England, Scotland, Wales and Hungary the imperial laws shall not be read, unless the kings of those countries

will have it otherwise. Causes of the laity are to be decided by customs, not by imperial laws; while for ecclesiastical causes the constitutions of the holy fathers will suffice." Whether such a decree was made or not, the Roman law prevailed in England only so far as it survived in ecclesiastical law, which kept control of questions of ecclesiastical status, controversies concerning lands given to the church by way of alms, the exaction of spiritual dues, and suits relating to marriage, divorce, and legitimacy. Thus the domain of the old Roman law and of the later ecclesiastical law was closely hedged about and limited.

All temporal lords and barons were bound to attend the king by their tenure. By the St. 14, Ed. III, the House of Lords was made a regular court for the decision of questions of law, and it has remained the court of last resort in England ever since. Under the statute "the Lords had the liberty of calling for the assistance of the judges whenever they found it needful to consult with them on points of law." This provision is still in force. The parliament met for the redress of grievances, the furnishing of supplies for the king, and the making of laws. In the early years of its existence legislation was its least important function. The king was for a long time the chief lawgiver. When the parliament acquired a voice in legislation, public acts began to be called statutes. An English statute, according to an old definition, is "anything decreed by the king's majesty, by and with the advice and consent of the Lords spiritual and temporal and commons in parliament assembled." This implies authorship and original authority in the king alone. Although there is now little left of the substance of this kingly authority, the original form of enactment of English statutes, which puts the king in the first place, remains unchanged.

English law in its origin and growth, as shown in this brief sketch, lacks many of the features of legislation and judicial decision in the twentieth century. Although it suggests interesting reflections, I have presented this dim outline of it, not so much for the lesson which it teaches as for a background for the more important delineation of legislation and judicial decision under the American system.

The division of civil government into three departments was not an original conception of the framers of constitutions in America. It previously had been recognized by Montesquieu and other learned writers as one of the bulwarks of civil liberty. But our ancestors, after the separation of the colonies from Great Britain, first made it

a foundation on which to build an enduring system. This method secures to each department complete independence of the others in its separate work in its own field. It opens a wide door for legislation, and introduces the lawmaking representatives of the people to a realm where they can breathe an atmosphere of freedom and enjoy the sunlight of progress.

Under our constitutions, legislators may well be astute to discover defects in governmental machinery, and to supply the requisites for perfect work. They may exercise their constructive faculties in building new systems adapted to the complications of human society. So far as they see errors to be corrected or wrongs to be righted they should be reformers. The elements of growth in governmental organization which reside among the people are entrusted to them as the people's representatives. If not nearer to the source of power than members of the executive and judicial departments, they are at least the people's trusted spokesmen, who are expected correctly to formulate their conceptions of political progress. They constitute the constructive force in the government, as distinguished from the managing and regulating forces. These last must take the equipment of the state as they find it, while they may provide a new equipment suited to its needs.

In devising and furnishing the machinery of the government they need to exercise a wise conservatism. Novelty may or may not be improvement. Change without improvement is always a detriment; for settled conditions and certainty in the management of public affairs are in themselves promoters of prosperity. With a boundless field open to legislators, the danger of too much legislation is ever present. There is a tendency to legislate too much in regard to trifles. Misconduct which might well be left to the reprehension of public opinion, and wrongs which are sufficiently redressed by civil remedies, often are made subjects of penal statutes. Without the broad view that results from reflection and experience, the hardship of an exceptional case often leads to legislation in disregard of general conditions. On the other hand, the increase in population, the establishment of new industries and the close and complicated relations into which men are brought in every walk of life, call for numberless statutory regulations which formerly were unnecessary. A sparsely settled state, inhabited mostly by agriculturists, needs but few laws. A densely populated manufacturing and commercial country needs many more.

The great advancement of the American people in the last hundred years along the lines of just and wise statutory regulation is

universally recognized. To say nothing of multitudinous laws on new subjects, the outgrowth of new conditions, there have been great reforms in many classes of existing laws. In England about a hundred years ago there were more than thirty distinct crimes punishable by death. But the rigor of the penal code has been so softened that in the mother country and in most of the American states murder and treason are the only crimes that subject the perpetrator to capital punishment. A century ago our jails were full of poor prisoners whose bodies had been taken by their creditors because of the non-payment of their debts. But imprisonment for debt, except in cases of fraud, has long been abolished. In early times in criminal trials the accused was not allowed the aid of counsel. Now the rights of persons charged with crime are carefully protected. Formerly, in civil as well as in criminal trials, the lips of parties and of all other interested persons were sealed, and in the search for truth courts groped their way in darkness, without the aid of statements from those who best knew the facts. Now all may testify, subject to the application of proper tests of veracity. Under laws then generally approved, our grandmothers lost their property as well as their independence when they bowed their heads to receive the matrimonial yoke. To the bride of to-day the law secures, not only the ancient privileges of married women, but many new rights, including the right to control her own property and earnings. Humanitarians and students of political and social science have given free expression to their views in our law-making assemblies, and their well directed efforts have not been in vain.

Nor have the courts been obstructive in interpreting and applying reformatory statutes. With all the conservatism that is necessary in adapting new laws to existing conditions and the customs of the people, the courts have gone forward hand in hand with the law-making power to create a system of jurisprudence that shall be worthy of a people of the highest intelligence. While statutes have been enacted for the simplification of procedure, the courts of their own motion have often disregarded precedents in non-essentials, and have sanctioned the omission of unnecessary verbiage, and have encouraged the statement of facts without formality, in clear and simple terms.

The field of the common law, so far as it is left undisturbed by statutes, is for the court alone. The distinctive feature of the common law is that it is a growth, which has always adapted itself to new discoveries and changed conditions, and which is still capable

of boundless expansion and adaptation to meet the requirements of a changing world. All the progress in this field is the work of judicial decision, founded on careful deliberation aided by arguments of learned lawyers.

I think I do not claim too much for judicial tribunals when I say that, in my judgment, the institutions of government in this country have not seriously suffered from any lack of faithful, laborious, intelligent service on the part of judges. I believe that the common law has been broadened and elaborated by decisions of the courts, which for the most part are wise and just. Statutes have been interpreted in a way to give effect to their meaning and spirit, and at the same time to make them conform to those established principles of jurisprudence which plainly were intended to be kept in force. A large and important part of judicial decision under our system is in the interpretation of statutes. Questions often arise in the application of statutory law to unforeseen circumstances, and a meaning must be given to language by construction, when the words as originally used meant something less in the minds of those who used them, because the new conditions were not then contemplated. Another class of questions arises under carelessly drawn statutes, where obscure or inconsistent provisions leave the meaning doubtful.

It is obvious that in moulding new and imperfect and hastily drawn statutes into a system, the revisory work of the courts is hardly less important than the original constructive work of the legislatures.

It is also manifest that in the construction of statutes questions of great delicacy arise which involve the relations of the judicial and legislative departments to each other. This is particularly true in dealing with constitutional questions, of which I shall speak hereafter. Even in mere interpretation, when no constitutional question is involved, the court must determine whether one purpose or another purpose should be imputed to the legislature, must try to ascertain the meaning of language in reference to conditions which were not thought of, must give weight to important principles that are a part of the very tissue of the state, and must reach a result, even when the best result possible will be of necessity unsatisfactory. Is it strange that there are decisions which are sometimes called judicial legislation?

Proper judicial construction tends to give symmetry to independent enactments which at first seem unfinished and incongruous. One of its effects is to bring harmony out of confusion and seeming conflict. Without the aid of the courts there could not be a system of

jurisprudence. Without the aid of the courts and with the annual enactment of new laws no existing system of jurisprudence could long survive. With carefully selected legislators and learned judges we reasonably can expect the continuation of a changing and constantly improving body of laws, that will bring health and strength to the body politic.

Neither legislators nor judges in their official action should disregard the rights and duties of the other class. It is the province of courts to discover and without bias to declare the legislative will in all its relations. It is the province of legislatures to enact laws in reference to constitutional limitations and the principles of jurisprudence which have been established by the courts. It is the duty of each department to show respectful consideration for the other.

The distinctive and most important features of legislation and judicial decision under the American system grow out of the adoption of our written constitutions. The construction of a frame of government for the United States of America and for each of the several states was a new departure. Existing monarchial systems furnished no precedent to guide the deliberations of our fathers in this supreme effort for the establishment of free institutions in an enduring form. The few experiments in self-government that had been tried in ancient and modern times were hardly valuable for study except as warnings. The mother country, whose systems of laws had been adopted here with modifications, was without a written constitution. Such guaranties of liberty as her people had were in the form of concessions from the king, like *magna charta* and the bill of rights. These were subject to change at any time by the enactment of a statute. The English system of laws and customs and precedents left power without restraint in the king and parliament. A new country, that knew no sovereign but the people, that tolerated no orders of nobility, and that was devising a method of government, must needs elaborate a scheme with a distribution of powers clearly defined in an instrument whose terms could everywhere be invoked for supreme and commanding authority.

In making provision for the central government peculiar difficulties were encountered. Each of the states had its own organization which it maintained independently of all the others. Except for their common interest in establishing their independence, their attitude had been that of separate, individual, sovereign states. Their experience during the war of the revolution, and afterwards under the articles of confederation, taught them that in other matters as well

as in conducting a war of defense their prosperity was dependent on forming a closer union. Out of the necessities of their situation, out of difference of opinion, out of fear and jealousy of one another, through anxious thought, profound study, and long deliberation, through conference and compromise, came the wonderful and consummate bond of union and chart of our liberties, the constitution of the United States.

For regulation of the internal affairs of the several states, state constitutions had previously been adopted, infused with the spirit of liberty, and adapted to the needs of the people who framed them. Those were days when patriots, who had fought and bled and endured for their country, had pondered well in the dark watches of the night the matters involved in the maintenance of free institutions. In every state there were keen minds sharpened by adversity. In every state there were students of history who had thought deeply on the problems of government, and who took counsel with one another and with their compatriots in neighboring states, that they might put in the best form the principles and methods by which they were to be governed.

The federal constitution is itself a recognition of the need of a written instrument to be agreed upon by all of the states and to be of paramount binding force. According to its terms it is the supreme law of the land. It is supreme in its control of the nation in national affairs. It is supreme in its control of the states and of all their officers and instrumentalities so far as their action comes within its provisions. It is supreme in its control of the people of the states in their conduct to which its provisions relate.

It creates a judicial department consisting of the supreme court and such inferior courts as Congress may ordain and establish. The judicial department is to decide all questions arising under the constitution and laws of the United States. The constitution prescribes and limits the powers of the United States and of the several states. It establishes the jurisdiction of Congress and sets bounds to its authority. A question in court as to the validity and effect of a law of Congress is a judicial question, which by the terms of the constitution is to be finally decided by the Supreme Court. It follows that on doubtful questions of constitutionality the laws of Congress depend for their validity on the decision of the Supreme Court of the United States.

This fundamental principle under our organic law was not fully recognized or understood when the constitution was adopted. Cer-

tainly its importance and effect were not generally comprehended. That this was the meaning of the constitution as a result of giving its plain provisions their logical effect was decided by the Supreme Court in the case of Marbury v. Madison in the year 1803. The demonstration is given in a masterly opinion by Chief Justice Marshall, which settled the question for all coming generations.

Previously the jurisdiction of the court to decide a question of this kind had been gravely doubted. Federalists had asserted and republicans had denied the existence of the power. Previously the principle had been declared in some of the state courts in reference to state constitutions. In November, 1782, in the case of Com. v. Paten, et al, in Virginia, the judges intimated in their opinions, although they did not decide, that a court has power to declare a statute void if it is repugnant to the constitution of the state. There is evidence that at some time prior to the year 1785 Chief Justice Brearly of New Jersey decided that an act of the legislature providing for trials by juries consisting of six men was unconstitutional and void. In 1786 the case of Trevett v. Weeden came before the Supreme Court of Rhode Island under an act of assembly prescribing punishment, on summary conviction without a trial by jury, for any one who should refuse to receive as specie the bills of any bank chartered by the state. The court held the act void because a trial by jury was expressly given under the colonial charter which then constituted the constitution of the state. The legislature punished the judges by refusing to re-elect them at the end of the year, and others were chosen who enforced the statute. A similar decision under a different statute was made in the case of Bayard v. Singleton by the Supreme Court of North Carolina in 1787. In 1792 the Supreme Court of South Carolina held that an act passed in 1712 by the coloinal legislature was *ipso facto* void, as being in contravention of *magna charta.* Except as appears in these cases, never before in the history of the world had a court of law assumed to set aside a deliberate act of the legislative department of a government on the ground of illegality.

In the early years of the nation it was thought by many that the Supreme Court of the United States would play an unimportant part in the growth and development of our federal system. Only very few cases were brought before the court. John Jay, the first Chief Justice, after a short term of service, resigned his office to become Governor of New York, because he thought that at the head of this court he had little opportunity to render valuable service. John

Rutledge and Thomas Johnson, associate justices, had previously resigned, and Justice John Blair followed their example a year later. Other eminent men had declined offers of appointment to the bench of the Supreme Court because they preferred to use their powers in a more conspicuous arena.

But on several occasions before the appointment of Chief Justice Marshall the court had asserted its independence in a dignified and impressive way, which showed that the powers of the court and of the general government were to be maintained, so far as the declarations and mandates of the judicial department could maintain them. When, in Marbury v. Madison, the great Chief Justice Marshall declared the supremacy of the judicial power in the interpretation of statutes, even so far as to justify setting aside a statute as unconstitutional if need be, judicial decision in the national capital assumed an importance which no one had foreseen.

After the announcement of this decision the principle which it established was applied throughout the whole field of judicial jurisdiction. The constitution of the United States, including the interpretation of it by the court of last resort in its application to every kind of question, then obtained universal recognition as the supreme law of the land. It matters not whether a constitutional question arises under an act of Congress or a statute of Maine or of California, the legislation is submitted to the same test by the same judicial tribunal.

What would have been the effect of a constitution different in this particular, or of a different interpretation of the existing constitution, no one can tell. Without this check upon legislation we should be like a ship without rudder or anchor, subject to the vicissitudes of sunshine and storm. A written constitution with no authoritative tribunal to interpret it would be little better than a rope of sand. When men's passions are excited and their desires are strong their reason and judgment cannot be trusted to save them from hasty and erroneous action. Of the three departments of government the legislative is the most susceptible to transient influence and sudden excitement. For the protection of the people from their own impulsive movements, and for the preservation of safeguards then deliberately provided, our forefathers did well to establish a conservative tribunal, far removed from the outbursts of feeling which sometimes sweep like a tornado across the fields of human action.

It is not alone in the security furnished against hasty and ill-considered action that the wisdom of this constitutional provision ap-

pears. Its effect is hardly less salutary in the opportunity it affords for the development and growth of the constitution by interpretation, as advancing years bring new conditions. A constitution is or ought to be the organic law or framework of government, as distinguished from a code of statutory provisions. It is supposed to embody fundamental principles rather than elaborate rules covering all kinds of questions. Like the common law, in its application to particular cases not expressly provided for, it is elastic in its structure, capable of contraction and expansion to preserve its substance and spirit when a narrow and literal interpretation of its words would be misleading. In considering constitutional questions arising out of unforeseen conditions, it should be remembered that the general purpose and object of the framers of the instrument are to be ascertained, rather than the specific things to which their language was directed. This principle of interpretation often has been applied by the Supreme Court when deciding questions under the constitution of the United States. As a result, that instrument, with the decisions that have made its meaning clear, has assumed full and well rounded proportions that give the nation strength and solidity which the naked framework of its original structure seemed neither to afford nor to promise. Step by step through the years the court proceeded, fixing limits and setting boundaries for the guidance, not only of the parties then before it, but also of future generations. Now it was a controversy involving the chartered rights of Dartmouth College as against the legislature of New Hampshire. Now it was the great case of Gibbons v. Ogden as to the validity of a license to run a steamboat on the Hudson river, involving the question whether Congress had exclusive authority to regulate commerce on all the navigable waters of the United States, their bays, rivers and harbors, without interference by state legislation. Again it was the question whether a state could impose the requirement of a license upon one engaged in foreign commerce. In McCulloch v. The State of Maryland there was the double question whether the act incorporating the bank of the United States was constitutional, and whether the state could tax an agency of the general government. It was in the argument of this case that William Pinckney exclaimed: "I have a deep and awful conviction that upon that judgment it will depend mainly whether the constitution under which we live and prosper is to be considered like its precursor, a mere phantom of political power to deceive and mock us—a pageant of mimic sovereignty, calculated to raise up hopes that it may leave them to perish—a frail and tottering edifice that can afford

no shelter from storm either foreign or domestic—a creature half made up, without heart or brain or nerve or muscle—without protecting power or redeeming energy, or whether it is to be viewed as a competent guardian of all that is dear to us as a nation."

The event contemplated by the last alternative of the great orator came to pass. The rights of the states were defined in a way that secured to them the management and control of their domestic affairs, and yet recognized the paramount authority of the national government within its prescribed domain. The rights of the United States were defined and her powers were established in a way that left no doubt in later years that under our law the secession of a state is rebellion against the nation.

If the question were asked whether the present place of our country among the nations is due more to salutary laws enacted in the halls of Congress than to wise and just decisions made by the Supreme Court of the United States, it would be hard to answer it. Together the two branches of government have wrought, each in its own field, contributing the products of heart and brain to the common weal. But the judicial power, which is the conservative power, is that on which we lean with a degree of confidence that a more ephemeral organization can hardly be expected to evoke.

The importance of the federal judiciary in our system of government has profoundly impressed statesmen and students of political science. Said Daniel Webster: "No conviction is deeper in my mind than that the maintenance of the judicial power is essential to the very being of this government. The constitution without it would be no constitution—the government no government. I am deeply sensible, too, as I think every man must be whose eyes have been opened to what has passed around him for the last twenty years, that the judicial power is the protecting power of the government. Its position is upon the outer wall. From the very nature of things and the frame of the constitution it forms the point at which our different systems of government meet in collision when collision unhappily exists. By the absolute necessity of the case the members of the Supreme Court become judges of the extent of constitutional powers. They are, if I may so call them, the great arbitrators between contending sovereignties." Horace Binney said of our highest judicial tribunal: "It is the peaceful and venerable arbiter between the citizens in all questions touching the extent and sway of constitutional power. It is the great moral substitute for force in controversies between the people, the states, and the Union." De Tocqueville de-

clares that "A more imposing judicial power was never constituted by any people;" while Lord Brougham does not hesitate to say that, "The power of the judiciary to prevent either the state legislatures or Congress from overstepping the limits of the constitution is the very greatest refinement in social policy to which any state of circumstances has ever given rise, or to which any age has ever given birth."

The power and duty of the Supreme Court of the United States to pass upon the validity of acts of Congress under the constitution of the United States has its counterpart in the similar power and duty of the state courts to pass upon local legislation in their respective states. This jurisdiction is precisely the same in kind as that just considered, and its difference in importance is only that which exists between questions affecting internal affairs and local conditions and questions which concern the life of the nation. A great variety of questions arise under the constitutions of the states. Every year local statutes are subject to the scrutiny of the highest courts in the states in which they were enacted, for the purpose of determining their constitutionality. Largely through the decisions of the courts, each state has a reasonably harmonious system of general legislation. Partly because of the revisory power in the courts, legislators sometimes fail to give such consideration to constitutional questions as they ought to give. Often men have been heard to say when about to vote on a legislative bill, "I shall not trouble myself about its constitutionality; if it is unconstitutional the court will say so." Partly because of this seeming indifference on the part of some legislators, there have been indications lately of a tendency on the part of some courts in considering constitutional questions to give less weight to the action of the legislative department than fairly belongs to it. The true rule is that there is every reasonable presumption in favor of the constitutionality of the action of a co-ordinate branch of the government. It is to be presumed that the makers of law intend to be as regardful of their constitutional obligations as the interpreters of law. They must be supposed to have given intelligent consideration to the relation of every one of their enactments to the constitution from which it derives its authority. A court therefore will not lightly set aside an expression of the legislative will, but will try in every reasonable way so to interpret it as to bring it within the true meaning and spirit of the constitution. In this respect each of the two departments owes the same duty, first to be constantly mindful of the terms of the constitution which controls it, and secondly, to be mindful of the fact that the other department acts with like authority and under like control in its own field.

In this connection we may notice in passing a provision of the constitution of Massachusetts, which is like provisions in a few of the other states, under which each branch of the legislature, as well as the Governor and Council, has "authority to require the opinions of the justices of the Supreme Judicial Court upon important questions of law and upon solemn occasions." This is somewhat analagous to the English statute under which the House of Lords, in deciding cases as a court of law, may require the opinions of the judges on questions submitted to them. Every year in Massachusetts such questions are submitted to the justices, whose opinions are used as an aid in legislative and executive proceedings. Such opinions, being given by the justices as individuals without arguments of counsel, are not judgments of the court, and so are not binding as precedents in judicial proceedings. But practically they have the effect of law. By obtaining these opinions in advance, legislators are able to enact statutes which otherwise would be of doubtful authority, with an assurance of their validity, and are saved from the misfortune, as the people are saved from the uncertainty, that would otherwise attend the passage of other laws which might prove to be invalid. As these opinions can be given only in response to a voluntary requirement, as the right to require them has been exercised with reasonable discretion, and as the justices have construed the right with some strictness and have declined to give opinions except on constitutional questions or other matters of gravity, the working of this provision in Massachusetts has been generally satisfactory.

A proposition to give the legislative and executive branches of the national government a like power to require the opinions of the justices of the Supreme Court of the United States was introduced by Charles Pinckney in the convention which framed the constitution of the United States, and was referred to the committee, but was not reported.

We are about to enter on the second quarter of the second century since our fathers threw off the yoke of England and declared their independence. In the years that have passed since then we have travelled a long and devious way. When approaching very near to shoals and quicksands we have steered the ship of state into safe waters, and have gone on our course with favoring winds. For our system of laws, in reference to the relations of the people to the government, and in reference to their relations to one another, we well may claim the merit of great improvement over those of former times, and of a close approximation to perfection according to the standards that we now possess.

What the future has in store for us as a people I will not venture to predict. Certainly there will be constant need of such watchfulness and effort as have sustained us in the past, in order that we may go forward and not backward in the untried future. Doubtless the years will bring problems that will tax the ability and patriotism of judges and legislators as they were taxed in the great crises of our national history. Just now our relations to our foreign possessions open a new chapter in our history. With our inborn love of liberty, and with the principles which lie at the foundation of our government, we have embarked on an unknown sea without chart or compass. I hope and believe that men will come forward strong enough and upright enough and unselfish enough and in sufficient numbers to uphold the national honor, by continuing legislation and judicial decision in harmony with the purpose of our fathers, and by thus maintaining a free and just government, as a beacon light and an example to lovers of civil liberty.

In our domestic affairs great questions confront us, the solution of which will exercise the best thought of students and statesmen for years to come. The enormous aggregations of capital in all kinds of industrial enterprises, and the general combination of employees for self-protection and advancement mark a new era in the industrial and social life of the American people. These questions must be answered by the organized governing forces of society with statutes and ordinances made for the people by the people's representatives. So far as our legislatures and courts have yet gone these contending industrial forces are left to wear each other out by frequent conflicts. In reference to the share of the benefits which each class shall receive from enterprises conducted through their joint contributions, their interests are of necessity antagonistic. Often their struggles continue until one party or the other is forced to yield by the necessity of self-preservation. I believe that time and justice and wisdom will combine to discover a better way for the settlement of these disputes. In times of great excitement organized industrial warfare, culminating in the use of physical force, might plunge the country into anarchy. There should be an orderly and peaceful method of adjusting such controversies, as there are methods provided by law for adjusting all other controversies concerning property. In New Zealand there is an elaborate system of compulsory arbitration, which has been in successful operation for more than six years, to the seeming satisfaction of all classes of people. During all this time New Zealand has been a country literally without strikes. Under our government there would be difficulties in the introduction of such a

system that did not exist there, and it is too early, with the rapidly evolving changes in industrial life in America, to determine how ultimately we best can deal with these perplexing problems. I firmly believe, however, that they will find their solution though legislation and judicial decision founded on the intelligence and integrity of the American people.

It is to you young gentlemen, and to such as you, that the public chiefly looks for guidance in maintaining and extending governmental authority in the years to come. The principal contributions to legislation must come through lawyers, without whose participation no important statute can safely be enacted. The interpretation of statutes when questions arise under them, must be by lawyers on the bench or at the bar. Judicial decisions are not altogether the work of the judges who make them. Their first elements often are found in the work of lawyers who give weeks or months to thought and study on the questions involved, and who present in argument the fruits of their labors for the enlightenment of the courts. Each one of you who engages in the practice of your profession will have opportunities to make valuable contributions, great or small, to your country's jurisprudence. In the legislation of the state or nation, or of the smaller local branches of government with which you will be connected, you can render aid and give direction more effectively than those who have not learning in the law.

In the decision of questions before the courts, whether in high or in humble station, you can make your voice heard and your opinion potent. All the way from the effort of the young lawyer sitting in his office and giving his best thought to the study of a doubtful question to be tried in an inferior court, to the decision of the same question in the court of last resort, the effect of his study is seen and felt. It gives shape to the argument from whose convincing force may come the conclusion of the magistrate who hears it. The expression of opinion by the magistrate and the form which the case then takes in turn give force to his view when it comes before the higher court.

Think not that any legitimate work which you undertake in your profession is too insignificant to engage your highest powers. Its influence and effect upon yourself and others may extend far beyond anything within your contemplation. While occupied with the legislation and judicial decisions of the past, you may be laying foundations for an edifice, to be erected in the future, grander and more beautiful than any that has preceded it.

Marcus P. Knowlton.