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Thomas W. Swan, 1877-1975*

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To honor a man who died at 97 is not an occasion for mourning in the usual sense. It is a time for words which bear affectionate witness to a memorable episode in the changing of the seasons. Those of us who knew Thomas W. Swan shared a privilege we value, one of the most important ever vouchsafed to us: we have been in the presence of a good man, whose life among us was and will remain an inspiration, not only for the superlative quality of his work, but also for the warmth and grace of his being. What Dean Swan and Judge Swan did has influenced and will continue to influence great institutions to our common benefit. What he was will long echo in our spirit.

Dean Swan's life encompassed nearly half the life of the Republic. It represents all that is finest in the life of the Republic: in the Roman style of New England and the older Yale, I hasten to add, not that of the Republic at some of its gaudier and more flamboyant moments. Dean Swan was an old-fashioned Yankee from Norwich, Connecticut. His father was a graduate of Yale College and a respected country lawyer in Norwich. Dean Swan was staunch rather than ebullient; disciplined and reliable, rather than spectacular; a child of duty, not of ambition; a leader by quiet example and force of character, never by panache or charisma.

Tom Swan prepared for Yale at Williston Academy, which he was later to serve for many years as Trustee. He took his Yale degree in 1900, then studied law at Harvard, where he graduated in 1903 as President of the *Harvard Law Review* and the first nongraduate of Harvard College to be chosen Class Marshal. After a decade or so of successful practice in Chicago, during which he also lectured at the

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University of Chicago Law School, Tom Swan was brought to Yale in 1916 as Dean of our Law School.

Dean Swan's coming to Yale was the only dramatic event in his career, although the drama was not of his making. He was called as the candidate of a faculty cabal led by his great friend and stalwart partner in many good deeds, Arthur Corbin. Professor Corbin has told us a little of the story.¹ I shall leave the rest to the historians of Yale. Suffice it to say that Professor Corbin and the other young revolutionaries of the day were determined to persuade Dean Henry Wade Rogers, who had been appointed a judge of the United States Court of Appeals for the Second Circuit in 1913, that the Yale Law School needed and deserved a full-time Dean, and a Dean far more vigorous and imaginative than Dean Rogers. Judge Rogers wanted to remain as Dean. The brightest spirits of his faculty thought otherwise. They were certain that the Deanship should not be a somnabulent sinecure to be handled in the Judge's spare time. After a number of moves and countermoves, President Hadley and the Corporation were persuaded by the faculty rebels, and Dean Swan was duly invited. Indeed, he began to function as Dean—without salary—for what must have been six difficult months before Dean Rogers finally retired from the field.

Dean Swan was a great Dean of our School—a very great Dean indeed. The modern Yale Law School came of age under his leadership. Swan's Deanship set in motion traditions and currents of thought which have dominated the evolution of the School ever since. Both Corbin and Hohfeld were members of the faculty when he came; indeed, without their presence, he would never have been invited. The other key figures in the intellectual and moral mutation of the Yale Law School were chosen by Tom Swan and the faculty, and persuaded to come by the appeal of Swan's character and by the calm assurance which emanated from him that the Yale enterprise was a matter of high importance. Walter Wheeler Cook, Edmund Morgan, Lorenzen, Borchard, Vance, Karl Llewellyn, Roscoe Turner Steffen, Charles Clark, Wesley Sturges—all important names in the lexicon of legal scholarship and law teaching—were among the strong and forceful men who joined the faculty during his term of office.

Guiding the development of an educational institution is always and everywhere a difficult and rather mysterious affair. At Yale, the task is especially daunting, because authority here is vested in strongly congregational faculties. Our Deans lack even the power of Deacons, to say nothing of Bishops. For nearly 11 years, which included the

1. Corbin, *The Yale Law School and Tom Swan*, YALE LAW REPORT, Spring 1958, at 2.

turbulence of the First World War, Dean Swan presided over a democratic process which transformed the School and made a major contribution to the transformation of American thought about law. It is hard to point to any one step or decision which accomplished this goal. Yet it was achieved, without benefit of public relations, image making, or guile, as the visible embodiment of the conception of law and of legal education which constituted the climate of the School in Dean Swan's time. When his Deanship had reached its natural end, after two terms, the world knew that the Yale Law School had become a force of moment in the life of the nation.

How this was brought about illuminates the role of individuals in history. There are men and women who possess a striking inner gift which permits them to lead. When they are in a room, or an office, their presence cannot be gainsaid. The gift comes, of course, in many forms. Sometimes it is called "presence," "authority," "security," or "grace." We have no accepted word to identify it. By common consent, General Marshall possessed it, and each of us, in the course of his life, has known others who possessed it also. For Dean Swan—modest and self-deprecating as he was—it was a quality of character as well as judgment which made his warmth and his wisdom so manifest an influence on those with whom he worked.

When I became a student at the Yale Law School, a few years after Dean Swan gave way to Dean Clark, and for many years thereafter, Judge Swan was a familiar figure in the library, working on his opinions as we worked on our student projects—without his jacket, going to the shelves himself for a book he needed, a simple and direct symbol of our fraternity. When in due course I became Dean and had to deal with our finances, I discovered that Dean Swan had saved the *Yale Law Journal* in a period of financial difficulty by lending it \$6,000 of his own funds. For many years, the relationship between Dean Swan and his beloved wife Mabel and the faculty and students of the School remained a cherished memory, and a living force, in our communal life.

When Dean Swan accepted appointment to the Court of Appeals for the Second Circuit in 1927, his interest in the School remained strong. He became a Fellow of the Yale Corporation and participated faithfully in our concerns. I recall an occasion when we had proposed a controversial appointment to the faculty. A member of the Corporation had publicly expressed his doubts. A committee of the Corporation met with us in the Dean's office. After a long discussion, Judge Swan spoke for the first time. "I should like to ask what some of you may feel is an old-fashioned question," he said. "Is the candidate a

gentleman?" In a most disarming and personal way, Swan's question put the responsibilities of the faculty and of the Corporation with regard to faculty appointments into a perspective acceptable to both. What could have been a dangerous confrontation disappeared. On our assurance that the man was indeed a gentleman, the debate was over, and the appointment was made.

Early in his term of office, during the McCarthy period of the early fifties, President Griswold took a stand of immense importance to the protection of our universities and to the ultimate victory of our constitutional instincts over the forces of McCarthyism. The question was what the universities should do about faculty members who invoked the Fifth Amendment in congressional or other investigations. In determining and preparing his position, President Griswold consulted at length with Judge Swan and Professor Corbin as his chief advisers on the problem. They, and he, reached a common position, and one of high principle—that the universities should do nothing at all. Griswold's view soon came to dominate the public opinion of the period.

Judge Swan's services as a judge were of the cloth of his life. In his time, the Court of Appeals for the Second Circuit was a bench of the utmost distinction. Two of his colleagues, Learned and Augustus Hand, were men of towering quality. He served as their friend and equal, calmly and confidently, to become one of the genuinely important judges of our tradition.

After Judge Swan had been on the bench for 20 years, Judge Learned Hand wrote an article about him which is also a classic essay on the judicial art.² I conclude with Judge Hand's final paragraph:

My brother is not a man of neutral disposition, but of strong convictions resolutely held; he might be thought likely to allow these to enter into his judicial decisions. I will not say that any of us is without all tincture of such interjections; but he stands among those who are most completely free. In support of this I could adduce the overwhelming testimony of bench and bar, familiar with him and his work. They find in him a rectitude, which goes far beyond the elimination of all personal interest or concern; a rectitude which ignores his own beliefs and his own inclinations, and seeks for its sanction an authority, more commanding than the authority of himself or any other man—the authority of the collective will of a people, manifesting itself in their accredited declarations, as they strive, however blindly and inarticulately, towards their conception of the Good Life. To that authority

2. Hand, *Thomas Walter Swan*, 57 *YALE L.J.* 167 (1947).

alone he owns allegiance; and without stint and without alloy he has given himself to ascertain and to realize that conception. This he has done with patience, courage, insight, self-effacement, understanding, imagination and learning; and his success has been an achievement equalled by only a handful. It is well that we should seize upon a moment, in itself irrelevant, on which to celebrate an anniversary of such a public servant. We are aware that today the foundations of all that we hold dear are in the balance; and we live in just apprehension. Without such servants no society can prosper; without such servants no society can in the end even endure. Let us pause then to acclaim one, who—himself all unaware of his deserts—has so richly earned our gratitude, and whose presence helps us to take heart against our forebodings.³

Judge Hand wrote these words 28 years ago. For all of us who have known Tom Swan or live in the shadow of his work, his presence abides, and will abide.

3. *Id.* at 172.