

A SPRIG OF ROSEMARY FOR HAMMY

from FRED RODELL†

MAGIC was the word for Walton Hamilton, who died this past October, seventy-seven years young. There was magic in his manner of teaching—no rigid laying out of rules, no question-and-answer quiz show, no cat-and-mouse sparring with students with the mouse predoomed to defeat. Rather, the subtle inference that sank in slowly, the oblique suggestion like a sign-post dimly seen at dusk and hence far better remembered; he might be called the precursor of the hidden persuaders, except that he had nothing to sell save his own warm-wise way of looking at law and the world. There was magic too in his manner of writing—the soft stab, the tangential epigram that had to be read twice and then yielded ten times its surface meaning; his every line of prose was imbued with latent poetry. And there was magic in the manner of man he was—a gentle southerner out of Tennessee whose shuffling bounce belied his inner firmness but betrayed his outer shyness, a Carl Sandburg sort of man in humor and simplicity, a man whose intellectual questings and excitements brushed off on everyone he taught or knew.

Hammy and I came to the Yale Law School together in the fall of 1928, just thirty years ago—and though he came as professor, I as student, we had one thing in common: neither of us had ever been to a law school before. He had taught in secondary schools and at the Universities of Texas and Michigan and Chicago; he had taught at Amherst (and quit when its president, his close friend Alexander Meiklejohn, was fired) and at the Brookings School in Washington; he had taught medieval history and economics and something called political economy. He had never taught, or formally studied, law.

But the Law School fast felt his presence and his mental sparkle. Those were the days, to borrow Poe's perceptive distinction, of Grecian glory rather than Roman grandeur—when the school was snugly ensconced in tiny, musty Hendrie Hall and ideas had only to seep through thin office walls, not traverse long corridors. Bob Hutchins, not yet thirty, was dean and was refashioning the faculty, the curriculum, and the Yale approach to law into an unorthodox and adventurous unpattern. Hence Hammy—the economist who belonged to no bar, whose law was self-taught and imaginatively unconfined by case or code. Then Hutchins went West to higher things and Higher Learning; Charlie Clark took over; and the school's unofficial steering committee became a quintet composed of Clark, Wes Sturges, Bill Douglas, newly arrived Thurman Arnold, and of course non-lawyer Hammy. As Hammy himself described them in a letter written shortly before he died, they were "a small group within the faculty who took little stock in established verity, knew that reality lay at the end of diverse paths asking to be trodden, and kept no unity within their

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own ranks." Characteristically, he labelled his account "a legend"—but he knew that legends, like dreams, are sometimes true.

Public Control of Business was the then new-fangled name for what Hammy mainly taught. Since most of what legislatures and courts and boards and commissions do involves some sort of control of business, he had chewed off a sizable chunk of public—and constitutional—law. Indeed, he had first tackled law, untutored, out of a simple realization that no one could understand the nation's economy—or teach economics sensibly—without knowing the legal rules-upon-rules that had made Adam Smith's and Herbert Spencer's easy answers at best obsolescent, and without knowing too the reasons behind the reasons behind the rules. It was this last that had led him to examine, with all the freshness of prior ignorance, the ways and the workings, the facts and the folklore, of the Supreme Court, where so many of the last-word decisions on business and industry and commerce and agriculture seemed to be made. By the time he hit Yale, Hammy knew more—and knew better—about the Supreme Court and about constitutional law than did any of his law-trained colleagues.

Conversely, his store of information and his insight about the economic facts of national life gave a light-and-shadowed third dimension to the study of law-flat cases. "Affectation with a public interest" or antitrust, substantive due process or police power—the silly abstract phrases faded away as Hammy played them down to their essential unmeaning and took a marksman's bead on the factual bull's-eye involved in regulating the milk industry or the steel industry, electric utilities or labor unions. Never pontificating out of his own encyclopedic expertise but patiently prodding us to aim straight—to ask the right questions and "let the answers fall where they may"—he wanted us to learn for ourselves to not be bullied by an inarticulate major premise or browbeaten into the "one-octave competence" (his phrase) that typified too many legal minds.

I can remember with what delight we would hear him bring the formidable complications of inter-corporate contracts down to the level of the old-fashioned horse trade—or sidle up to a hint that a law designed for huge national store-chains might not work so well for a country-corner grocery. He delighted us too with his constant anecdotes, always apt, always told him by "someone I met on the stairs"; this was his gimmick of anonymity, for we soon discovered that the second stair-frequenter was of course Hammy himself, going the other way. These anecdotes ranged from hilarious and sometimes unprintable tales about Supreme Court Justices to little enlightening bits of color about litigants in famous cases—for Hammy never forgot that, despite all the formal folderol, what the law was always dealing with was people. One book he never got around to writing, though he talked of it for years, would have been a collection of personal sketches of otherwise insignificant citizens whose names had become common legal counters because fortuitously attached to big decisions—Marbury, Dred Scott, the Schechter brothers. This was not just a conversation piece; he did some research on it, as when, mindful of *Nebbia v. New York*, he stopped

by Mr. Nebbia's store in Rochester for a chat. If ever a teacher removed himself so far from the ivory tower that he lived in the earthen cellar and loved it—as did his students—that was Walton Hamilton.

Nor were his students confined to the fortunate few, comparatively speaking, who sat week after week in his free-wheeling classes. No colleague or acquaintance with the wit to pay him heed could fail to learn from him—to find a new lead here, a new angle there, as Hammy, taking every idea on the first bounce, would lob it back with a special Hamiltonian twist. I was his colleague, while remaining always his student, for thirteen years; not once did I leave a talk with him, seriously in the office or casually on the stairs, without a sense that something new had been added, some notion made less fuzzy, some facet softly illumined. He had the glorious (his favorite word) gift of excited receptivity to what came out of other men's minds. His own creative mind—although as American as apple cider—was likewise an unlikely amalgam of Lewis Carroll and Thorstein Veblen, of the Old Testament and Gilbert & Sullivan, and most of all—and most uniquely—of Walton Hamilton.

It has been a dozen years now since Hammy retired from the Law School but his flavor and influence linger on, and will for a long time to come. Of the current faculty, no less than eleven men, ten of them full professors, were once his students; many more were students of his students—and the juice of his teaching was potent enough to survive transfusion. Furthermore, his last great service to the school, shortly before he retired, leaves us still—on a different level—his beneficiaries. For it was he—when the school was rebuilding its faculty after World War II, with Clark and Douglas and Arnold no longer here to help him—who led and won the battle to keep us from becoming over-Harvardized. Not that he had anything particular against the Harvard Law School and the kind of legal competence it fostered. Simply that his whole mind and heart were so fiercely dedicated to the looser-limbed, wider-ranging way of education that he had done so much to implant and nourish at the Yale Law School—which he loved.

He never cut—he only stretched—his ties to Yale when he left here; indeed, at the time he died he was planning to come up and give a few informal talks at the school next spring. He would have had much to tell—for the intervening years had seen him fabulously build, beginning at the age of sixty-five, an entirely new career. He who had never practiced law except peripherally—he who had never belonged to a bar until, a few years earlier, a grateful governor got him admitted, by special motion, to the Georgia bar for his help on a freight-rate case (and this always delighted Hammy)—went to Washington and made himself an indispensable aide to those master legal craftsmen, Thurman Arnold and Abe Fortas. He not only helped prepare cases; without benefit of schooling or training in procedure or evidence, he argued them. And he continued to argue them after he was overtaken by what, to most men, would be a devastating and career-ending tragedy—for Hammy, who had lived so much in a world of books (along with people and music) went gradually blind. That blindness did not

stop him, that it served only to sharpen his incredible memory and enhance his capacity to talk and to listen, was the final seal of his gentle, selfless courage.

One of the finest of the myriad brilliant pieces Hammy wrote was an article-length book review of the Holmes-Pollock letters, which began: "It has taken a decade to elevate Mr. Justice Holmes from deity to mortality." It will take no decade to make a mortal out of Walton Hamilton whose greatest gift of all was his unquenchable humanity—but it will be many a decade before the memory of the man he was is forgotten. And it could be an eternity before the fires he lit no longer flame or the springs he set to flowing run dry.