nesses and *differences.* And while I am here on the most uncertain of ground, I am also strongly inclined to believe that one of the earliest and most persistent stimuli to the growth of generalization, and classification, and so of rational thought, especially that branch of rational thought which we call formal logic, is attributable more to law than to any other phase of civilization except perhaps language.

I should argue that later students of logic and language might do well to make contact, again, with such a wellspring.

Finally, I think it is to law that we owe the conception of *justice.* I am not wholly sure of this. There is a very remote chance that the matter runs the other way, that we owe law to the concept of justice. There is a greater chance that both are shoots of the same root. Still, I think law as a discipline may claim the concept. It should, if it can, for the concept marks a noble achievement. As legislation offers the wherewithal for re-adjusting that same order which brought forth the device of legislation, so justice and the law. Recall what I have said before of social justice, and of the confusion of social injustice with the workings of the law. Here law, at the point of pressure, by its own weight calls its own concept to its own perfection. There are few social institutions that can boast of self-sanation. Indeed this idea of self-sanation, the proof of its possibility, the provision and testing of machinery for its accomplishment: these may be not the least of law's contributions.

VIII. BEYOND BREAD AND BUTTER*

To me there is more joy than pain, by a good deal, in the thorns of such a thicket as that through which I have just dragged you. And as the tonic iodine burns in the wounds and beneath the skin the whole body tingles with that curious bubbling sense of muscle pleasure, there comes again the thought: for too much law, more law will be the cure. If law makes blind, more law will make you see.

But more law of what kind? More of the bread and butter kind, of the straight trade dope? That turns, I fancy, on how you conceive your trade. There is a bony structure of technique without which you will be a feckless artisan—worthless, and unsuccessful. Those hard bones you must have. You must assemble them into a whole, each in its place, each one articulated with the rest. When that is done you can refine somewhat on the articulation, get joints to working neatly. But I do not know that extra bones will bring much vision to the eye-sockets of a skull.

It all depends on what you want of law, what law can offer you. That turns, in turn, on what you want of life.

There is a brand of lawyer for whom law is the making of a livelihood, a competence, a fortune. Law offers means to live, to get ahead. It is so viewed. Such men give their whole selves to it, in this aspect. Coin is their reward. Coin makes it possible to live. Coin is success, coin is prestige, and coin is power. Such lawyers, I take it, reflect rather adequately the standards of our civilization. They have perceived the mainspring of a money economy. They follow single-heartedly on their perception. Coin *is,* in this society, the measure of a man.

I have no quarrel to fight out with this way of life. No quarrel to fight out with it, even as a way of *life.* It is as satisfactory, doubtless, as any; it may be more so. Single-heartedness simplifies choices; choices are most uncomfortable business. And if the coin-chaser does achieve his goal at forty-five, he has achieved a happiness that few can rival. Happiness after all is a balance between desires and fulfillment. He whose desires have shrunk to meat and drink and income tax evasion, to bowing butlers and the bejewelling of his wife—he has his happiness if he can gain the coin. I would not say that "more law" had brought him vision. But neither do I see that he desires vision, or could use it.

One thing does trouble me about a man like this, and about you, if you make this your ideal of the law. I shall say nothing here of service to society. As society stands, its own institutions warrant any man in holding that he best serves the whole who gathers purchasing power to

* This lecture, and X, use rhetoric that assumes an initially adverse hearer. When written, that was sound.

himself. I shall say nothing, either, of any ethical duty to make those institutions work out a bit more decently. As things stand I perceive no basis for assuming such a duty, *except as to men who can themselves perceive it.* I shall say nothing of a possible conflict in this way of practice between a lawyer's own interests and his client's, or between his client's and the common welfare. That presupposes that a lawyer's business is to serve his client rather than to use him—within the limits laid down by business-getting policy; it presupposes, too, that a lawyer's function includes some service to the community, to his own disadvantage. And I think our lawyer might pungently ask me whence I purport to derive such presuppositions, except from my own head, and tell me that the measure of an institution's purpose is not what any man or group of men have said of it, nor any sweet dream of philosophers and schools, but is, and is only, what the institution is.

What troubles me about a man like this is something else. It may seem far-fetched to you—a matter of a foolish distant future. To me, an educator, it seems pressing to you even now. What troubles me about this man is his children. How is this single-minded lawyer to get the resiliency without which he will stand blank and helpless before the new generation that he raises up—on which, in keeping with his way of life, he pins more hopes and more ambitions than on his own career? I have watched many of these simple, hard-headed, single-hearted men, with those grown sons and daughters who were *never* like themselves. I have watched the complete satisfaction of achievement fade and give place to hopeless emptiness. If this is your aim, you may do better not to marry. It seems to be possible to be a husband, comfortably, along these lines; although it is not easy on the wife. But being a father calls for human qualities which will get in your way. It will destroy the virtue of the single heart.

There are men to whom this choice of life is barred by an eager, uneasy temperament. We find them making another current in the bar. They have ideals of another sort; they, like academicians, are prey to queer feelings that a profession—or even a trade—should carry an obligation of some weight to a community it purports (they think it does purport) to serve. They see specialization of effort less in terms of an accidental growth which is good for the favored of specialists than in terms of a view of the whole which only the specialist's thought for the whole can bring to its finer fruiting. They have, too, restless desires. The grind of the law they accept. A man must keep alive. Indeed, a man must get ahead—to keep in with the intellectual set, to follow the theatre, to be abreast of music and art, to have the adequate residence address and freedom of movement that metropolitan living requires.

These men do not sink themselves in the trade as do the others. Yet often, for that very reason, they outgeneral the others. Even cobbling gains

something from perspective, and in a trade devoted as yours is to battle, perspective is a generous addition to your fighting plant. Perspective, however, is not gained by losing yourself among the trees. It takes detachment, it takes standing off, it takes the seeing of other things to give ideas and standards of comparison. So these men outgeneral the legal cobblers—and they outsell them. There is another reason why they have success: they have brains, and they are eager. And they work. For, observing the facts of life, they see that the road to coin is the road to freedom. Freedom is their desire.

Neither with these men have I any quarrel. Their work I welcome. They find time and interest, again and again, to do things which the others will not do, and which need doing. They give service to new causes, whether popular or not. They have, as I said, ideals. And they are good companions.

Yet happy they are not. A good way of life they have not found. The cartoons in the New Yorker give them a pleasant moment; a lovely distortion by Brancusi in the living room brings comfort for a while; there is a fine superior feeling at spreading abroad the inside dope on this and that, at being one of the first to take up the tabloids, tom thumb golf, what have you next; at wisecracking over the Yahoos in the sticks. But it is a nervous, a sickish business, to be disgusted at your work. Calm cynicism counsels: you need the money; you can do this as well as the next man, and better; at times you give some service that he would not give. Yet of two things one: either the man finds himself not man enough to carry his two lives separately, either he goes under in the surge of the law-factory, to be thrown up after five years upon the beach, a dry, smooth, shining pebble with the others of our first, our hard-boiled group; so with the vast bulk of the men who try this road.—Or else, or else, carrying on—as so few can—after ten years of it or twenty the man looks out on the world with the sensation: part of my soul, though it has shrunk and warped, I still have saved, but at the cost of all my working hours. It is more than a feeling of wastage in his work; it is a feeling of unremittent compromising and soiling of the very ideals that the coin was meant to salvage.

As to this course of life at the bar I have only this to say: do not fool yourselves into thinking it is easy. Most who try it fail. And those who succeed are far from finding ease.

As at the bar, so in your schooling. You can do nothing but the law, and of that content yourself with bones. Grubbing of rules today, grubbing of dollars tomorrow. Or you can divide your time into the dirt and the delight; do what you must with law, and do it well, but leave the real hours of living for your reading, for social contacts, and for Toscanini.

There is a third course I would put before you: to wed the unity of the one way with the perspective of the other. To make of your law a

study of the ways and the workings and the wonder of this curious higher primate known as Man. That will not hamper your learning of the trade. On the contrary, if you know anything of Man you will know that only perfect mastery of the details of his institutions will give you any key to what he is or how he works; but you will know also that only study of his ways and drives will give you insight into these his institutions. You will study the details, the techniques, the otherwise dull and remote intricacies of procedure, as records of how ape-like creatures have gone gropingly about their ends, of how inertia and blindness and self-interest and child-like pride of skill have played through the centuries a multipartite game of chess against intelligence and energy and further self-interest and arrogance and ambition—and against ideals. You cannot *see* this, without seeing also the details, without seeing also how to move when it comes your turn. You will see your own move vastly better for the study. For now there will be against you not merely a lawyer, but one of the creatures whose workings with this structure you have watched—and you will watch him as you watched them, and diagnose his attitude as you did theirs, and play the game against him with more skill *and with more interest* for it.

So, too, and so only, if you are one of those queer souls who dream dreams of something, somehow, sometime better, can you be proof against disgust. There can be no disgust at what you understand. Each one of us is what his life has made him. See that, and look to the causes. That will leave regrets. But it will remove the sticky, queasy feeling. It will leave you free to observe, and understand, and act, and learn. Of course, if you grow jaded, this is no help for long: If this "is just another case of an injured workman" your contact with living life will have been lost.

Nor do I know how to forestall the jading. I can say only this. That human drama, for all that it runs in types, is never twice the same. Our typification, our setting up of types—and so our jading—I take to be chiefly due to a pair of factors. The first, intellectual. To cope with situations one must think. To get out of them their common elements, and thus to arrange one's thinking, one's tools for dealing with new situations like them, is, while the work goes on, a pleasant process. So, for a while, is the check-up process which follows, the testing of one's prior thinking, the trying out of one's tools and skill. When that is over, when one is sure that he is right, this stimulus ceases. There comes no further titillation of the wish for novelty.

The second factor I take to be emotional. Life is so full of pain, so instinct with trouble, that in a mere effort to keep going we have either to shut ourselves in from suffering, to keep from seeing it, or else to dull our sensitivity. The latter is the rule when we are called upon to do our work with social pain. To give oneself wholly to one's case is to burn

oneself up. But to condition oneself against the burning is to set the ruts for jading.

These tendencies are present and eternal. Nor does one man know the answer, for another's temperament. But it should be possible to retain as live an interest in the *differences* of situations as in their similarities. It should be possible to see in types of situation not merely a technical tool, but a device for ordering, arranging, deepening his knowledge of his fellows, a device whereby the similarities of situations are employed to throw their unfailing differences into relief. And on the emotional side, it should be possible to dampen burning, consuming, useless sympathy, to dampen down expectation of results as well, without destroying all one's urge to learn and do—or help.

This last I would turn to first. It is close to me. I rebel against some of the fiercer tricks old nature plays our passions. Love and begetting—and children where there are no means to keep a child in health, alive. That is one trick that I rebel against. To reach for one thing—to be blinded into reaching—and then see crouching costs creep forth from cover. To find your poor self *used,* without your knowledge or against your will. So with this other trick, that unleashes action only by leaving men prey to dreams sure-fated for despair. Is there no other way? Must we forever be the fops of blind illusion? Is youth to have energy only because it has not yet discovered the yard-thick jutting wall before its head? Is urge to *do* to be conditioned always on will o' the wisps, on flickering visions of achieving the impossible? It has been so. It has been so throughout the ages. But I rebel. I find it hard to believe in the necessity. I find it hard to believe that this is not another force of nature man can partly tame. I know here no obscenity legislation to combat the taming.

The problem, I say, touches me closely. It cuts into the marrow of my work. For you come to us disillusioned as few other generations have been disillusioned. I meet and talk with you. I have, I think, learned to see and discount pose. Yet with all such allowance, I find you, great numbers of you, curiously bleak. You are the post-war inheritors. "The war to end war" is for you an exploded slogan. Our economic system you find neither the best of all possible worlds, with captains of industry to gape at in admiration, nor yet a crying injustice to be fought. Nay—at the captains you lift your eye-brows with a sneer compound of envy and contempt: servants of the commonwealth? Tell that to Adam Smith! Great men? Twaddle! Yet not in revolt: you know the revolters for the beaten at the game. Religion, too many of you, for all I see, have none. Governmental corruption does not shock—it is an interesting item like a Hall-Mills case. The culture of the hinterland you scorn, its voiced ideals you turn off as mere prating. I do not share such views on any of these matters. I am aware, too, that you are not all alike. I meet in you also a homeless, forlorn idealism that is

ill at ease among the disillusioned thoughts it lives among. Yet with most of you the process has gone far, with some so far that not far is left to go. Let me then put my case as would a lawyer, upon demurrer to the plea. Conceding the worst, the most, I still ask judgment. It then will matter little that here and there in you is still an enthusiasm that has not yet discovered its futility. I can then take it that each futility, as it comes to discovery, will kill off one enthusiasm more. And still deny that this must mean defeat.

But the case looks bad, against me. For observe wherein you are peculiar. In most generations of the past this damping of illusion indeed has come, but it has come *late*. It has come after *ways of life* were formed. A good part of the basic *working* ethics of life had been already taken over from the world as it was found given, and disillusion worked out only as to individual pieces of that world. But yours comes early. Yours cuts to the whole.

You come then to us. Whatever has gone, the law is yet left to you. Left to you as the fixed sure order of society. Left to you as that which controls the judges, which clothes the judge with a certain majesty even while and indeed because it does control him, which lifts him and his work to a level he could not attain alone. Left to you as the million of sonorous sentences that in a million cases expound the inescapable logic under which the judgment is dictated by the law. And we? These fabrics we seize and tear as idle cobweb. These mirrors of old dear-held truth we shatter. The law itself dissolves before our acids. Right and justice come to figure as pretty names for very human acts done on often the less human of human motivations. I have said before that this tendency of our teaching has caused me worry, in its aspect as developing the technician at the cost of the whole man. It gives me double pause in this connection—in its effect on young men already disillusioned beyond the portion of young men.

In the first place, iconoclasm can be a sport as well as a condition; even when not so viewed, the fact of smashing calls disproportionate attention to the broken pieces; revolt is seldom characterized by balanced judgment. We of the teaching world are still as full of our discovery as once was tortured Galileo: move, move it *does*, the law. And if to make you see the movement we must shout down the pious words with which courts have pretended that no change occurred—then we must shout, shout disbelief. We must blaspheme the legal oracles. Well, then, we do. We strip the trappings, verbal and other, off the courts. We turn the spotlight on the places where the tinsel gaps, where you see cheap cotton, or see sweaty skin beneath. These are the crucial cases for the argument—but are they type or caricature of the run of legal work? The tendency of the teaching has its worry. To get across a vital lesson one must risk distortion.

The sight of falling tinsel, too, may seem to argue falling dignity. It is a vicious seeming. It is as false as the ill superstition that the tinsel is the measure of a man. Rather are measures and dignity of man and office to be found when folderol and claptrap are stripped off; when, free of pomp, on the record and the naked fact, they stand four-square. So must we strip the courts; so must we test them. The stripping is a tribute. An institution we could not honor naked we should not dare to strip. You are to remember, too, the dignity and measure of a critic: they lie in that he sees the record whole; in that his judgment and his tone of judgment weigh the accomplishment against the difficulty, weigh partial flaws against the fulness of what has been done. Seen thus, judged as you would judge a man upon his life, law and the courts stand up. It may be that as your knowledge grows your disillusion will be tinged with wonder, as has mine. The heaped-up cases through the centuries; the heaped-up wisdom. As I watch the succession of the cases—moving, rising, taking form eternally—as I see the sweep of them entire, I find old formulae of tribute rising to my tongue: "the full perfection of right reason"! The closer I can come to seeing law whole, the more nearly do I, of the skeptic's clan, find myself bordering on mysticism. There is such balance and such beauty and such consummate skill in this whole—seen whole; balance and beauty and skill beyond the little powers of the individual judges. It is the little powers you are watching in the individual cases. Loose logic, or even bad, lies open to your sight; the wisdom of the holding when set in the rhythm of the pillaring years—to see that is not so simple.

Single case after single case there is that irks me, that I would pluck out. Yet take them: what is it that offends? Here is the case whose reasoning is wretched, grotesque. Yet how of the outcome, on the *facts*—was it not rather sane? Systematizing conclusions is after all the business of the second or the fourth case in a series, not of the first; our law has grown by trial, and then correction. This same court which has mangled the authorities: may it not when the need comes mangle this one, too—and reach another sane result? Here is another case; it seems outrageous. Yet stay—why so outrageous? Because it cuts across *my* precious prejudices; because it does not square with *my* opinions. But how many are there here beside the judges who do not square with my opinions? These judges may judge social values differently from me: no sign that they are fools; opinions differ. A third type of case: a technical problem; a crazy decision; the court has utterly failed to see the point. Look to the counsel: has a Root misled the court? Yet even so, that would be but an excuse. But now the question rises of perspective. *How often does it happen, in the large?* How often, too, in the light of the maze of matters that in a year are brought before a court? Criticize such a decision, attack it—yes; attack it with all vigor that is in us, as we attack the others that we doubt.

The courts need such attacks. The court requires attack on its *decisions,* because the *court* is strong. The law requires detailed surgery, the law can stand up under major operations, because the law is strong to stand the shock. Four-square it stands, upon its whole performance. He who helps cut out error gives it strength.

Yet the effect of our teaching cannot but be to make the courts, for a while, seem vaporers, uttering falsehood as to what they do, ignorant, misguided, blind. This will not last—but while it lasts it devastates the little there is left in you undevastated.

"A thousand cases, many of them upon trifling or transitory matters, to represent half a lifetime! A thousand cases, when one would have liked to study to the bottom and to say his say on every question which the law has ever presented, and then to go on and invent new problems which should be the test of doctrine, and then to generalize it all and write it in continuous, logical, philosophic exposition, setting forth the whole corpus with its roots in history and its justifications of expedience real or supposed! . . . We cannot live our dreams. We are lucky enough if we can give a sample of our best, and if in our hearts we can feel that it has been nobly done."

Now here is a thought spun pure of faith and beauty. But it is the thought and phrasing of an older generation. It will not do for you and me. Not for us the gesture of high resignation, made in the fulness of a ripe experience. Ours is a more pedestrian, prosaic business. On us the blow of disillusion has crashed in the flush of youth. What noble doing is to comfort us is still undone.

Yet I say again, I see no help. I see no way to train you but to give you the light your teachers think they have, whatever it may cost in shattering. I see no way but to risk all upon it. I see no way but to pass you through this further fire.

If nature is ineluctable, then we are beaten. Then you go forth, hard-eyed, hard-minded, with one end in life. If we are beaten, then since life is bunk, and law is bunk, and ideals of the softer sort are folly, a single-mindedness for the bank account will be in order, and God help any who are in the way! (You will excuse the archaistic phrasing.) I have seen this result in many, and I have beat my breast to have contributed to the schooling of the wolves.

But I cannot believe that nature has us thus in the strangle-hold. I cannot believe that analysis and observation leave us helpless. There is a will to do, *apart* from expectation of result, a will to do that gives heart even to the disillusioned. There is in Gauguin's painting an expression of what I am trying to say that dwarfs poor words, and dwarfs the half way artist. Look on the faces of his South Sea women. There is no expectation there, from life. Desire is empty, effort is illusion. Do what one will, there will come disappointment. Yet look again, and see the power of living, the vigor, the exuberance of life, driving on gloriously—while expecting nothing. There is the answer to our disillusion, in that old truth that neither rainbow nor the pot of gold can be attained, nor would be worth the having if it were. But the search is good.

If I knew ways of making this seem real I should be troubled at your disillusion not at all. Nay, I should welcome it. Freedom from butted aching heads, freedom from sacrifices to the empty idols, freedom for action fitted to your ends, straight-cut, hard-hitting. These, if you grasp them, are the fruits of shattered dreams. These—if you grasp them.

For I see in disillusion no dampening of interest. Rather I see all interest gaining height and depth. All that is lost is expectation of the unattainable. And the attainable becomes the more worth while, the more enthralling. Two things, and two things only, are the need: a will to understand, and a certain patience.

No, gentlemen, for the disillusioned there are three roads, unless they are to rack themselves to bits. The first, a whole-souled selfishness, in any form: self-seeking, self-consistent, self-contained. The second, mysticism—which your very turning to the law well nigh negates, for you.—The third, an act of faith in the worthwhileness of doing, accepting in advance a failure to achieve the ultimate end.

Such faith in the worthwhileness of doing as such, and grounds for such faith, I personally can conceive only in terms of interest in people, in Man, in men; and for a lawyer I can conceive them only in terms of grafting upon his law that interest, of working out a unity between law and his living life.

I have hinted before at what can be gotten even from the cases. I know no more fascinating record of the human tribe if you have the wit to read it. The wit to read it! Within a hair we have lost the art of reading. There was a time when men read by putting all of themselves and their experience into what they read. Reading was active, reading was creation. There is one book on which that has been proved. See what the Bible meant to Puritan culture. Read over Pilgrim's Progress once again, and see what John Bunyan put into his Bible. Each terse, sharp story, each pregnant word, became a focus for experience, as the theme of the Annunciation became to a medieval artist the vehicle to work out all the message and miracle of impending motherhood.

Now, reading is different. Pay by the word. More words, more pay. The author does your thinking for you—as your instructors, you sometimes hope, will do your thinking for you. A pleasant evening with the Satevepost, each thought sprawled out at length and twice repeated.—And what you read there as much as three months ago, is washed away. Why, indeed, should it stick? You cannot read the Bible so. Either it bores you, and you

drop it; or its stays with you. Either you get nothing, or you do the bulk of the work yourself.

So of the cases. Put yourself into them; dig beneath the surface, make your experience count, bring out the story, and you have here dramatic tales that stir, that make the cases stick, that weld your law into the whole of culture. There are the parties. There are, as well, the judges: working at shaping the law to human needs. In every case the drama of society unrolls before you—in all its grandeur, in all its humor, in all its futility, in the eternal wonder of the coral-reef. The clash of ideals, the courage of high hope—and man's purblind inadequacy with man's problems. This, for the seeing. Humanity and law—not two, but one. Not veneer-coating of a so-called culture, cracking, discolored as the body of you grows or shrinks. But culture that keeps pace with, that *is* your human sympathy and understanding; human sympathy and understanding which *are* your law.

The drama of society: each opinion a human document; each case a human struggle, warm with life; each changing rule a motion of the giant whose hands control your destiny and mine. Mansfield, a Scot, and once a Jacobite, ascending to the Lord Chief Justiceship of the King's Bench. Mansfield remaking the commercial law of England. Mansfield a judge for thirty solid years, and *twice* in thirty solid years, reversed. Mansfield in terror at a city mob. Mansfield struck white, speechless, quaking, in the House of Lords at Chatham's invective—and on a point of law.

Cardozo, remaking the judicial theory of the country. Not alone, but effective as have been few others. Cardozo, through fifteen years, shaping, reshaping the attitude of the whole court of which he was a member, and of the other members of that court, leading it slowly, surely, to the position of our greatest court today.*

Holmes, in the Abrams Case, with pressure in the court and out to bring him to withdraw dissent, because "the country was in danger." Holmes, at what may be well the summit of a life lived among the peaks, firm in conviction that some things cannot be yielded—voicing that dissent that stands among the papers of our statesmen beside the Gettysburg address.

I say in these things there is poetry, in these things there is life, in these things there is beauty. If this be not culture, I do not know where to find it. Nor do poetry, drama, culture, play alone among the kings. Lesser judges, lesser cases in their struggle shape not the destinies of peoples; but they have no lesser interest; they offer no less to learn.

Go, then, and read—in the law and out. By all means read. Work at your art, your science, your philosophy—work even at your Mencken, if you must, or Heywood Broun. But bring the work home again, and merge it

* This was written in 1930. And in 1950 the Cardozo tradition in that court can still be seen.

with your law. Read, too, from your own law out. This, in your law—in school and practice—is the one part of wisdom: trade, culture and profession all in one.

The old-time lawyer of the finer sort, the counsellor of his community—he needed no such telling. He grew that way. In these more hectic days the path is not so clear to see. One searches for it. What one thinks to have found he puts before you. That is your right.

And will you, then, if you tread my path find there what I have found? Of course you will not. One man, one path; one path and a hundred endings; expectation is illusion. Yet in one thing I find that I have faith: set out upon that path, and what you find, however wide apart from my own finding, will be a something just as good; or better.

Go, then, and read. Go, then, and look, and *see*. I cannot say that that way fortune lies. I cannot tempt you on with worlds to conquer, nor yet with worlds to save. Must you have the moon? I find this plain match enough, that flares for its tiny moment. Surely a nothing—tossed, it may be, for sport into the gutter. Yet a pitiful, brave flame. Some warmth, some light, some touch of burning courage. What have you more to ask—or to ask to be?