

LIBRARY
OF THE
UNIVERSITY OF CALIFORNIA.

GIFT OF
Columbia University.

Accession

86590

Class

ADDRESS

TO THE

GRADUATING CLASS

OF THE

Law School of Columbia College

OF MAY, 1861

BY

MURRAY HOFFMAN, LL. D.,

JUSTICE OF THE SUPERIOR COURT OF THE CITY OF NEW-YORK.

Published by order of the Trustees.

New-York :

JOHN W. AMERMAN, PRINTER,

No. 47 CEDAR-STREET.

1861.

ADDRESS

TO THE

GRADUATING CLASS

OF THE

Law School of Columbia College

OF MAY, 1861,

BY

MURRAY HOFFMAN, LL. D.,

JUSTICE OF THE SUPERIOR COURT OF THE CITY OF NEW-YORK.

Published by order of the Trustees.

New-York :

JOHN W. AMERMAN, PRINTER,

No. 47 CEDAR-STREET.

1861.



ESAY ON THE HISTORY



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

Letter to Judge HOFFMAN, from the Law School Committee.

COLUMBIA COLLEGE LAW SCHOOL,
New-York, June 7th, 1861.

HON. MURRAY HOFFMAN, &c., &c., &c.:

Dear Sir,—In behalf of the Trustees of Columbia College we have the honor of informing you, that they unanimously passed a resolution, at their last meeting, expressing their thanks for your Address to the Graduating Class of the Law School at the recent commencement, and requesting a copy for publication, under the direction of the undersigned, the Law School Committee.

We beg to add, that we shall take great pleasure in making public a performance in all respects so admirable, and so gratifying to the College of which you are an *alumnus*.

With high respect,

We are, very respectfully and truly,
Your friends and servants,

SAMUEL B. RUGGLES,
HAMILTON FISH,
WILLIAM BETTS,
GOUVERNEUR M. OGDEN,
GEORGE T. STRONG,
ALEXANDER W. BRADFORD,

Law School Committee.

Answer of Judge HOFFMAN.

New-York, June 10th, 1861.

GENTLEMEN,

In compliance with your request, I send you a copy of my address to the Graduating Class. I beg you will offer my thanks to the Trustees for the honor they have done me.

I avail myself of this occasion to say, that Columbia College, in establishing the Law School, has taken one of the most creditable and beneficent steps of its whole career. If that School proceeds with the energy and well-directed talent with which it has begun, the character of the profession in our State will be elevated, and the reputation of the College be deservedly increased.

Very respectfully and truly,
Your friend and servant,

MURRAY HOFFMAN.

Messrs. SAMUEL B. RUGGLES and others,

*Law School Committee of
Columbia College.*



ADDRESS.

MR. PRESIDENT:

YOUNG GENTLEMEN OF THE GRADUATING CLASS:

The Law School Committee of the Trustees have done me the honor to request that I would address you, on this the closing day of your course of studies beneath the auspices of Columbia College. You are about to sever your connection with the learned Professors who have guided your labors, to break the tie of a common pursuit, which has united you with your fellow-students, to start forth upon the path of your profession in the strength of your own energy and self-dependence, and to fashion for yourselves the character of your future lot. That College has given you the opportunity of a wise and efficient schooling, to mature your powers for your struggle, and will continue to look with interest and with hope upon your future career.

I cannot be of greater service to you in aught I could say or urge, than to rouse in your minds an ardent and vigorous devotion to your profession; to cause you to love it because of its dignity, because of its power; above all, because it gives you the solemn duty of watching and guarding the dearest of all the interests of your fellow-men, except those of religion; and of sharing, more than is the common lot, in the task of protecting the constitutional liberty of your country from the usurpation of power, or the libertinism of freedom. You are to pursue a path bearing the impress of the tread of thousands of the illustrious dead, whose lives were bene-

factions to their age, and whose influence has stretched for ages beyond their deaths. No sterile study awaits you. A healthy intellect will gather animation and interest in the most arid of its fields. The shades of the majestic, world-conquering Roman will accompany you as you move through the pages of the Justinian Institutes; the solemn umbrage of the Saxon forests will be around you in the mastery of the grand old common law; the lustre of a thousand fields of fame will illumine your search into that great triumph of jurisprudence, the Napoleon Code; and the spirits of the sages of the American Revolution will be your companions in the study of that magnificent system of political independence, consolidated power, and civil liberty, condensed in the constitutions of the United and of the separate States. Invoke in your labors the images of those, who have linked themselves with the grand periods in which law has made the deepest impress upon the fate of mankind; and above all, bring to your task the resolution that no mere mercenary motive shall prompt you—no low love of place or authority shall be your monitors—but “those aspirations and those efforts to be of use to your fellow-men, which make ambition virtue”—and then your path will never be to you wearisome or lonely; there will be flowers upon its crags, and affluence of waters over its seemingly sterile sands. One of your great predecessors, the immortal orator of Rome, broke forth into the enthusiastic exclamation, that the book of the Law of the Ten Tables, to one who would know the sources of truth, law, and justice, exceeded, in weight of authority and richness of profit, all the writings of the philosophers.*

With this object of stirring up your minds to an

* De Oratore, i., c. 44.

earnest love for your profession, I cannot choose a better theme than that to which I now invite your thoughts—the obligations of liberty to law and its professors.

Let me first call your attention to the new relations of men to society, and the new influences which controlled or modified all human objects, obligations and actions, when Christianity arose upon the earth. An apostle has declared, that old things were done away, that all things had become new. This was so, not merely in the high sense in which the language is primarily to be understood; not merely that the paganism of civilization was to be overthrown, and “the fair humanities of old religion were to live no longer in the faith of reason;” not merely that the wall of partition was broken down, and one universal church was to seek to enfold all men within its pale; but it was also true, because every duty of man to man, individually or in associations, assumed new forms, new inspirations, and new rules of government. Manners, morals, laws and their administration, polity, and all social relations were thenceforth revolutionized, and the world began a new career upon new ideas and new impulses.

In the dramatic pages of Tacitus we find depicted the desperate corruption of the age, and the menacing barbarism which was to be its substitute. Rome had lost all the energy of a stern despotism, whether impersonated in king, consul, senate, or tribune. Already luxury and venality had poisoned the springs of manhood in the State, and already there was the muttering in the clouds of Scythian power, which, rattling over the Caspian, broke upon the South in a deluge of savage fury. Where, then, was the hope and refuge of the civilization and liberty of man? Where, amid the ruins of the past, the dread realities of the present, and the shadows over the future, could hope look for a resting place or fear

for relief? It was in the organized Christian church, then emerging into the sway of men. It was in her prelates and priests, as dispensers of justice, as ministers of law, as framers and administrators of a system of equity, and as embodying, moulding and applying prevailing law, with the ameliorations of the principles they were commissioned to diffuse. In these the agitated new-born world found a refuge and something of repose.

One of the most thoughtful and philosophic of modern writers, M. Guizot, has done justice to the church of that period in declaring, that in it first arose the great idea of the separation of temporal and spiritual authority, the true source of liberty of conscience. I will not dwell upon the unwelcome theme of the causes, when power begat usurpation, which led to the abandonment of this, one of her great offices; and how she strove, at different periods, and under the most adverse forms, at Rome, at Geneva, and in Scotland, to render the State the slave of the Church; nor upon the equally false and pernicious doctrine, which renders the Church subservient to the State.

But the distinguished writer has omitted to give its proper force to one great point which concerns us more nearly. It is the fact, that for eleven centuries the courts of justice were extensively controlled by the clergy, and the vast influence of that control over the system and administration of law.

I will not detain you with many details or proofs. I will notice a few. Before the time of Constantine the habit of submitting controversies to the arbitrament of clerics was common; and that emperor, in the year 311, sanctioned it by an edict. It was then a voluntary submission. Another edict of that Emperor, or of Theodosius, gave the right to either party to bring causes before such tribunals, and gave the power of the civil

arm to enforce their sentences. In the constitutions of the early French kings, the right was expressly recognised; it was declared by Charlemagne; and in the Saxon days of England was found in the union of the bishops with the earldormen, or their sheriffs, in the county courts.

Justice has of late years been done to the clergy of the dark ages, by the admission and the praise of having sheltered, in the recesses of the monasteries, the fading sparks of literature and science, and of forming the strongest barrier of the age against the fierce rapacity and oppression of feudal barons. The serf who had filed the collar from his neck, the merchant who had escaped from the rack, the woman who had fled from dishonor, found there protection. A mysterious dreaded power surrounded the sanctuary, which curbed licentiousness, and awed ferocity. A tribute is also due to that clergy for having infused into the rude, though free codes of the northern nations, much of what they possessed of equity, and all that they had of system. It was the necessity of the age, and it was the blessing of the age, that the church had risen in its organism to protect life and personal rights, and to mitigate the savage character of the times.

In proportion as the nobles and the people emerged from ignorance, the separation of the judicial powers became inevitable, and was beneficial. The assertion by courts ecclesiastical of general jurisdiction in things temporal did not cease until after the year 1414, in the reign of Henry V.; and it deserves notice that most of the Chief Justices under the Norman monarchs were clerics.

I have called your attention for a few minutes to this subject, because, in the doctrines and practice of these early tribunals, nearly cotemporaneous with Christianity,

you find the fountains of much of the law administered at this very day in the courts spiritual of England, and of probate in this country; because you will find here the origin of the influential and beneficent system of equity jurisprudence; because, in tracing the civil law throughout its course, you will see how that law and the canon law have mingled, and aided, and enlarged each other; and because you will find how some of the purest lessons of truth and justice, which our systems now inculcate, were born of Christianity and nurtured at her bosom. The ministers of the new dispensation of faith were the first ministers in the new temple of justice.

Let me now call your thoughts to the institutions and jurists of that proud island of the main, from which humanity has received higher and more abundant blessings than from any other land the sun has shone upon—

————— “that white-faced shore,
Whose foot spurns back the ocean’s roaring tide.”

Begin with the England of the Saxons under the great Alfred. He strove to accomplish in his life the grand sentiment of his last will, “that it was just, the English should forever remain as free as their own thoughts.” By the parcelling of shires, and the establishment of decennaries and the hundred, he introduced the model of our existing municipal system, bringing the force of the immediate will and action of the people into the control of affairs, as far as was possible, without resorting to the mob of a turbulent Grecian democracy.

The battle of Hastings overturned in a day the fabric of Saxon power; but it failed to obliterate the influence of Saxon institutions, or to extinguish the fires of Saxon freedom. Outwardly the despotism of the king was supreme over church, nobles and people; and he carried absolute power into the tribunals of justice by the appointment of Chief Justiciars.

But Henry I., to court popularity, began his reign with a restoration of some of the Saxon institutions. The Constitutions of Clarendon, in the reign of Henry II., were a restoration of the ancient independence of the British church, and formed the basis of the ecclesiastical polity of the Reformation. But, above all, the great charter, wrung from John, was for the most part compiled from the ancient customs of the realm; was a restoration of that which had been enjoyed under Saxon princes, and was found in the laws of Alfred or Edward, and where they were silent, in the traditions and usages of the people.* A forgotten charter of Henry I. was the immediate model, and Archbishop Langton brought that before the assembled barons.

I beg you to dwell upon this stirring event and memorable law, for its importance has been greater to the cause of liberty than any thing that has issued from the human mind or human will. I do so, also, because of late years an effort has been made by some writers to represent the greatness of England as springing from the high-born Norman, and to degrade the Saxon element of her people. The Chronicle of Gloucester has been made the motto of the graphic work of a brilliant writer of France. "From the Normans have descended the great men of the land, and men of base condition from the Saxons." The great charter is of itself a refutation of this false thought. Norman barons, indeed, were the chief agents to win it; but who believes, that but for the infusion of Saxon thoughts in their minds, and Saxon blood in their veins, it would have been achieved? Who believes that in Normandy it could have been accomplished? Could the cause of freedom have been more successful there than it was in France?

* Sir William Blackstone's Tracts.

Look at that proud historic kingdom, shining in the lustre of martial renown, splendid with a thousand achievements of beautiful art, and sitting upon the highest seat in the temple of science. What lesson of freedom has her example taught? What encouragement has she given to patriots to suffer and persevere? What light has she shed upon the path of nations groping for redress? The 29th article of the charter, has proved of more avail to human rights, advancement, security, and the true honor of man, than all that the genius of France has accomplished, though the empire of Charlemagne and the sway of Napoleon are the monuments and trophies of her greatness.

I cannot refrain from giving you the character, more than the eulogy of the charter, in the fitting language of one of the most gifted of modern writers:* “Whoever, in any future age or unborn nation, may admire the felicity of the expedient which converted the power of taxation into the shield of liberty; by which discretionary and secret imprisonment was rendered impracticable; and portions of the people were trained to exercise a larger share of judicial power than ever was allotted to them in any other civilized State; whoever exults in the spectacle of enlightened and independent assemblies, which determine the laws and policy fit to make nations great and happy; whoever is capable of comprehending all the effects of such institutions upon the mind and genius of a people, is sacredly bound to speak with reverential gratitude of the authors of the great charter; to have produced it, to have preserved it, to have matured it, constitute the immortal claims of England upon the esteem of mankind. Her Bacons and

* Sir James McIntosh.

Shakspeares, her Miltons and Newtons, with all the truth which they have revealed, and all the generous virtue which they have inspired, are of inferior value, when compared with the subjection of men and their rulers to the principles of justice; if, indeed, it be not more true, that those mighty spirits could not have been formed nor roused to full activity, without the influence of that spirit which the great charter breathed into their forefathers."

The reign of Elizabeth has been selected as a proof of the despotic character of the English constitution. That great queen made the people as of one heart by her thoroughly English spirit. She made the highest intellects of her council submissive, as much by her commanding ability, as by her imperious will. History has detected her foibles and her faults; and, with slight variation, we may apply to her the character of Bacon—the wisest, greatest, meanest of her race.

But the homage of the people of England to her, was the homage of men retaining and avowing sentiments of a transmitted and growing freedom. Through her reign, as through the reigns of her predecessors, the preservation or restoration of ancient rights was a theme asserted and acted upon. Archbishop Parker refused to admit her power to grant dispensations of marriage. What was his plea? "It was not avouchable by the laws of the realm." In the case of Cavendish, all the judges of the Queen's Bench refused to admit him to an office under the Queen's writ, and to sequester its profits, which were in the possession of another. It would be a disseisin of the freehold. They used this language: "It was no contempt against her Majesty, because the command was against the law of the land." In the year 1592, the justices of both benches and the barons of the exchequer made a remonstrance against illegal commit-

ments, which asserts with force and precision, and to a very great extent, the privileges and rights subsequently embodied in the *habeas corpus* act. And the first four books of the Ecclesiastical Polity, by the great Hooker, were published in her reign, and the whole was written before her death. Of that immortal work an eminent writer, not friendly to his principles, says: "I know not whether any later writer has more admirably displayed the capacities of our language, or produced passages more worthy of comparison with the splendid monuments of antiquity; so stately and graceful is the march of his periods, so rich in images, so condensed in sentences, so grave and noble is his diction."* In that work we have these axioms—"Law makes the king"—"what power the king hath, he hath it by law,"† enforced and explained upon principles, on which the limited nature of the monarchy of England has been most successfully vindicated in all subsequent times.

The next period in the history of English liberty, to which my subject leads me, is the latter part of the age of Lord Coke. When he was Attorney-General he was among the most unscrupulous of crown lawyers, stretching prerogative to its utmost limit. When he was made Chief Justice of the Court of Common Pleas, he stood forth the most unswerving, as well as the most able of the champions of British freedom. The opening of the Parliament in the year 1628 has been described as the great crisis of the English constitution. In the first Parliament of Charles I. Lord Coke quoted and vindicated what he called a noble record of the early time of Edward III.: "Loans against the will of the subject are against reason and the franchises of the land. It is against the franchises of the land for freemen to be taxed

* Hallam. † *Lex facit regem. Rex nihil potest nisi quod jure potest.*

but by their consent in Parliament." The American Revolution of 1776 was thus based upon the doctrine of your ancestors of 1326. Lord Coke carried three resolutions in the House of Commons, the provisions of which were adopted in the celebrated *habeas corpus* act of 31st Charles II. He strengthened the wavering House in passing the petition of right, justly termed the second Magna Charta; and condemned, with a scornful eloquence, the proviso, that "nothing in it should be construed to entrench upon the sovereign power of the crown." He uttered in the House of Commons that grand sentence, which deserves a place of honor among the most memorable declarations of freedom, "*that power which is above the law, is not fit for the king to ask, or the people to yield.*"

I cannot lead you through the long line of English judges or lawyers who have followed this example, and vindicated these great doctrines. I can only place before you the images of Hale, Holt, Somers and Camden, and bid you do them reverence. Yet one word more. Numbers on the bench and at the bar have indeed exhibited gross servility, corruption, insolence and cruelty. The crimes of Scroggs and of Jefferys darken the page on which shine the names of Hale and of Wilmot. But do not forget, that the results of the guilty acts of the former were as evanescent as the sufferings of their victims; while the influences of the principles and deeds of the latter, have been as enduring and as expanding as the eternal precepts of justice and truth from which they sprang. And do not forget, that liberty found its great strength in its Saxon ancestry; and that it was by virtue of her Saxon spirit "that England never relapsed into patient submission or self-complacent servitude."

It was the year 1628 which witnessed the signal ser-

vices of Lord Coke to the cause of liberty to which I have referred. I choose that year as the date, at which to ask you to transfer your thoughts from England to our own land. In that year Virginia was beginning to flourish under the ordinance of 1621, which ratified the establishment of a general assembly, and was the origin of her colonial system. In 1628 the site of Boston and of Charlestown was explored with a view to a settlement; and in the next year the charter to the Governor and Company of Massachusetts Bay was issued. In the same year the charter of Maryland was granted, though, by reason of the death of Lord Baltimore, it was not passed with all necessary formalities until 1632. By that, "laws were to be made with the advice and consent of the freemen of the province, or their representatives convoked in general assembly." That year may well stand forth as one of the most memorable in our annals, to be remembered among the festal periods of humanity.

And here I wish you to realize and appreciate the great and all-pervading truth, that our civil liberty was not the creation of our national independence, or sprung up with a written constitution, or any new declaration of rights. National independence was the offspring of the doctrines of civil liberty living in the hearts of the people; and these doctrines were part of their English heritage. I give you the thought in the language of Richard Henry Lee, of Virginia: "When your fathers came first from England to settle this country, they had a right to, and did enjoy and bring with them, the same liberties with the rest of their fellow-subjects in England." This doctrine pervades the acts of the colonial assembly of our present State in a remarkable degree. The address of that assembly of 1704, a document scarcely inferior to the Declaration of Independence in impor-

tance, and immeasurably superior to it in dignity, is instinct with it. The address to the people of England, of 1774, on behalf of all the people of the thirteen colonies, is full of the same doctrine. Therefore, in the form either of a bill of rights, of a charter, or of a declaration of liberties, the 29th article of the great charter in nearly its identical language, is found the fundamental law of every colony; and therefore, upon the formation of State constitutions, it was adopted into them. Our ancestors were impelled by the same motives—breathed the same thoughts—were roused by the same aggressions—and defended liberty with the same weapons as did the champions of English constitutional law, from the day of “the field of the council,” onward for five hundred years. No maddened and sudden cry for freedom, to end in anarchy and be crushed by despotism, arose from among them. The sense of transmitted right was the life-thought of the people’s heart, for fathers before fathers had told “what had been done in their day, and in the old time before them.” And thus it was, that Patrick Henry was the descendant of Hampden, and Bunker Hill the offspring of Runymede.

But I must hasten to bring before you some of the illustrious servants of the cause, in our own State and country.

On the 9th of September, 1777, the first term of the Supreme Court of this State was held at Kingston. At that moment Burgoyne was pressing forward from the north, in the flush of his early success, with Albany apparently within his grasp. The British army in New-York was menacing the decisive and fatal blow of ascending the river to meet him. The village in which the court met was, a few weeks later, in ashes. John Jay was Chief Justice, and, with exalted confidence and hope, charged the Grand Jury thus: “I congratulate you on the dawn of that free and equal government which

now begins to rise from the clouds of anarchy and licentiousness, which the domination of Great Britain has spread throughout this and the other American States. The infatuated sovereign of Britain has, by destroying our former constitutions, enabled us to erect more eligible systems of government on their ruins; and, by unwarrantable attempts to bind us in all cases whatever, has reduced us to the happy necessity of being free from his control in any. But let it be remembered, that whatever marks of wisdom, experience and patriotism there may be in your constitution, it is yet, like the beautiful symmetry of our first parents, to be animated by the breath of life; from the people it must receive its spirit, and by them be quickened. Let virtue, honor, the love of liberty and science, be and remain the soul of this constitution, and it will become the source of great and extensive happiness to this and future generations. Vice, ignorance and want of vigilance will be the only enemies able to destroy it."

With such sacred lessons of purity, patriotism and wisdom was the Supreme Court of the State of New-York inaugurated. Under such auspices did it begin its career as the efficient guardian of private rights, public faith, personal and civil liberty. How well it fulfilled the destiny which the virtue and greatness of its first Chief Justice marked out for it, the annals of every succeeding age, the records of every judicial tribunal, from the sea-washed rocks of Maine to the flower-clad prairies of the West, or the sunny glades of the South, will give a response. Its influence in spreading the rules of a clear and enlightened jurisprudence, of applying and expanding the flexile and wise principles of the common law, to every new and varying phase of social, commercial and political relations, has been felt and applauded wherever that common law has extended its power, and justice reared a sanctuary beneath it.

When I began my profession, the members of the bench of the Supreme Court were Joseph C. Yates, Smith Thompson, Ambrose Spencer, James Kent and William W. Van Ness. The former was a model of inflexible integrity and truth, with an adequate measure of learning for the ordinary questions considered, and with a sound judgment, well-fitted to decide accurately when a case was fully placed before him. Smith Thompson was distinguished for an acuteness and severity of intellect, which disdained every thing but the most rigorous logic, and which no sophistry of counsel or allurements of his own ingenuity could lead from the decisive points of a case. Ambrose Spencer was deemed by such men as Josiah Ogden Hoffman and Thomas Addis Emmet the first among all these jurists, in the qualities of a great judge. His mind was of the highest order of acuteness in detecting fallacy or discerning truth, and yet never wandered into subtleties or abstractions. His comprehension and application of leading principles was similar to that of the unsurpassed Chief Justice Marshall; and if there was something imperious in his manner, it was because there was so much of a proud disdainful strength in his intellect. It made him sometimes as merciless to the advocate of sophistry, as to sophistry itself.

With the fame and services of Chief Justice Kent you are familiar. I need not dwell upon them. I would not presume to depict them, when I can refer you to the eloquent tribute to his memory in the address of the late Chief Justice Duer, before the judiciary and the bar. But I cannot mention the honored name of John Duer without a word of affectionate respect. He was well-fitted to discourse of Chancellor Kent, for he was filled with the same love of beauty, philosophy, and truth; he was animated with the same enlightened and

ardent attachment for his country, her constitution, and legal system; and his imagination equally teemed with the fair images of classic literature. I may speak of him in language like that which his favorite and model, the great Roman orator, addressed to Marcellus: "That was not to be called your life which dwelt in the body and the breath. That was your life which remains ever blooming in our memories, which posterity will delight to cherish, and time will be proud to guard."

The last of the judges of the Supreme Court I have mentioned was William W. Van Ness; over his memory there has been the invocation—let it sleep in the shade. No one should presume to rake up the ashes of our sires to do them aught but honor. I will call forth only those brilliant qualities of genius and manners which placed him on a level with the great men I have noticed, and rendered him in many particulars their master. I speak of him when his youth was strengthening into manhood. He exhibited the finest development of manly Saxon beauty; there was the noble presence, the ruddy glow on his cheek, the grand forehead, the sparkling genius-lit eye. With a voice of strength and melody, with language as clear as the mountain stream fresh from its rocky cradle, tinged with the light of a rich and chastened imagination, no judge acquired such a sway over juries. No one led them so quietly, yet so surely, through the mazes of fallacies, the exaggerations of advocates, and the complexities of evidence. Persuasion was in his accents, pervaded his manner, and lived in his voice; and it seemed as if, like one of the famed orators of Greece,

"the bees

Had o'er his sweet lips distilled their golden dew."

I would now call your attention to another and yet greater scene of the progress and influence of legalized

liberty. Upon the recognition of Independence, "the strong sympathies, rather than the feeble government which bound the States together during a common war, dissolved on the return of peace; and the very principles which gave rise to the war of the Revolution began to threaten the Confederacy with anarchy and ruin."

Then arose that perilous struggle which happily resulted in the Constitution of the United States. There has been nothing in the history of civilized man more difficult, more important, and more interesting, than the construction and adoption of that instrument. It was to solve the problem of framing a system of government which should guard individual rights, respect State independence, and form one consolidated power, springing from the will of the whole people; ruling upon the highest subjects of legislation over all inferior bodies, and under whose sway and banner one inseparable nation should advance on its course of security, civilization, and honor.

The object was accomplished, and that noble product of the wisdom and justice of man was created, and brought its influence to bear upon the destiny of an expanding people.

The task of vindicating and explaining it fell to Alexander Hamilton, John Jay, and James Madison. They gave for our instruction and guide that great work, *The Federalist*. I have no command of language dignified enough to do it justice. The measured gravity of the tone; the simplicity and purity of the style; the seriousness of men whose inmost souls were filled with imperishable truths, and were devoted to the task of instilling them into their fellow-men; the subjects so profound; the perils to be averted so alarming, and the blessings to be secured arising in such glory upon their gifted sight; all these circumstances invest the *Federalist*

with an impressive grandeur and a perpetual interest which cannot be excelled. Study it with diligence ; study it with reverence. God grant that you may not study it, as the traveller in the East so often studies a fallen majestic column, half covered with the sands of the desert.

In the year 1832, Daniel Webster asked, in language sounding like the strains of a saddened prophet—"Who shall reconstruct the fabric of a demolished government? Who shall raise again the well-proportioned columns of constitutional liberty? Who shall display the skilful architecture which unites national sovereignty, State rights, individual security, and public prosperity? No! if these columns fall, they will not be raised again. Like the Coliseum or the Parthenon, they will be destined to a melancholy immortality. Bitterer tears will flow over them than were ever shed over the monuments of Roman or Grecian art, for they will be the remnants of a more glorious edifice than Greece or Rome ever saw, the edifice of constitutional American liberty."

But if a vision so gloomy sometimes haunted him, the spectre disappeared before the light of his faith ; the shadows that were "strewed on the dark land of futurity" vanished away. He spoke with unbounded trust in the perpetual strength of the Constitution. We will gather confidence from his belief, as well as elevation from his eloquence. We will believe, that as the Constitution has met victoriously its foreign foes, so it will master domestic insurgents ; that it will subdue the spirit of misrule and treachery, and will arise from corruption and imbecility with the strength of the lion, "shaking the dew-drops from his mane." We will believe, that as it was designed for the happiness of a nation, for all that a nation can have of immortality, so time will attest the sacredness of its consecration, and be the witness of the fulfilment of its lot.

Such was the Constitution of the United States, as explained and vindicated by these great men. Let me present to you some instances of obedience to its provisions, and to the Supreme Court, which is its organ, by two great States.

In the Dartmouth College case, the Legislature of New-Hampshire had passed laws interfering with the administration of a college, and removing the control from the body constituted by the charter, and vested it in others. The Superior Court of the State sustained the laws. The Supreme Court of the United States reversed the decision, and held that the laws had impaired the obligations of a contract. The State submitted.

When the genius of Fulton, and the sagacity and support of Livingston, brought a steam vessel to move upon our river, the gratitude of the State gave the inventors a monopoly of the waters, in a series of laws. The struggle to sustain or overthrow this grant called forth the highest learning and ability of the bar and of the bench. The laws were supported in the Court of Chancery, the Supreme Court and the Court of Errors. "If the State laws," said the able and most eloquent of their defenders, Chancellor Kent, "if the State laws were not absolutely null and void from the beginning, they must require a greater power than a simple coasting license to disarm them. We must be permitted to require, at least, the presence and manifestation of some constitutional law, or some judicial decision of the supreme power of the Union, before we can retire from the defence and support of them. We must be satisfied that—

*'Neptunus muros, magnoque emota tridenti
Fundamenta quatit.'*

The Supreme Court of the United States decided, that commerce between the States was within the exclusive

power of Congress, under the Constitution ; that a coasting license, under a law of Congress, gave access to the waters of all streams to which it applied, at least all those which mingled with the ocean, washing the shores of the respective States. Thus our river was unchained ; and thus the trident of Neptune did shake down the walls of State pride and legislation.

What a noble spectacle is here presented of the loyal obedience of two powerful States to the law ; a law treated as controlling the movements and legislation of bodies so proud and so strong ; a law recognised and yielded to, because it was the command of duty to hold it supreme ; and held supreme, because, in the language of Rufus King, which condenses in one line the whole principle, "the Constitution was the result of the union of the MEN of the States."

You will have noticed, through much of what I have said, the leading truth I would inculcate, how all that is precious in the law and government you live under, has been transmitted to you through an inheritance of ages. Without the vigor imparted by time and contest, freedom could never have attained the energy and maturity it now possesses. It has grown like an oak of an English glade, whose branches may have waved over a Roman legion, brightened in the sun of the day that witnessed the oath of John, shaded the march of the Ironsides, and stirred with the breeze which lifted the flag of William the Deliverer. Like that it has acquired its strength from its conflicts. It could not have been so rooted as to resist the tempest, unless it had struggled with the frequent storm. Realize, then, the truth—in these days of a mighty contest between principles as well as passions, realize the truth—that Saxon institutions, and the enduring spirit they infuse—the spirit of freedom and justice, the heaven-born

spirit of unswerving loyalty, will make those who nurture them ultimately victors. The councils of nations, and the tribunals of justice, are, as you have seen, memorials of this truth. The fields of battle are no less eloquent in its vindication. Agincourt, where pennon and banner of the valiant nobility of France went down before the shafts of the English yeomen, Blenheim and Waterloo, are manifestations of the destined superiority of freedom over stern despotism or insolent aristocracy, as truly as Runymede or the *habeas corpus* act. I do not forget, and I do not under-rate, the striking exceptions in history to this great truth. I do not forget Montrose in the Highlands, or Rupert in many a bloody field; but I do remember, that Marston Moor could never be retrieved, and that Worcester crowned and closed one fierce struggle; and no lover of freedom or of national independence can forget, that though the tempests of the north and the valor of the Russian soldiers stemmed the mighty despot of our day, his doom was reversible, until the trumpet-tones of the songs of the sword awoke the trodden-down people of Germany; and then Lutzen, and Bautzen, and Leipsic were the preludes and the assurances of his ruin.

So may we, in all the vicissitudes, gloom, or doubts which may occasionally dwell upon the future of our country, gather encouragement and confidence from the lessons of the past.

Young gentlemen, I have brought the memorials of the lawyers of the past before you, not to discourage you by their greatness, but to rouse you by their examples. The same powers are given to you which made them illustrious. Be resolute, unwearied and fervent in study. Remember, that if the fields of labor are somewhat varied, the necessity for vigorous, extended labor is the same for you as it was for them. The compila-

tions and codes of later days save you nothing, though they guide you on your path. A distinguished member of the French Tribunal of Justice, when presenting the grand Napoleon Code, said, "If you study only the Code, you will never know the Code." Do not let the lethargic, destructive doctrine, that whatever just meets your task will do well enough, find a harbor in your minds. Reject from your labors, as well as your opinions, all apathy and indifference; move on your course with a fixed and determined will to command success; discard all trust in fortune; adopt the great truth expressed in the beautiful line of Schiller, "in your own bosoms are your destiny's stars;" and invoke the goddess Prudence to your aid, and distinction must await you.

Nullum numen abest, si sit prudentia,
Sed te nos facimus Fortuna Deam,
Cœloque locamus.

You will hear suggestions around you of the worthlessness and evanescence of fame, and invocations to the delights of a lettered ease. It is a fine remark of Cicero, that the philosophers took care to inscribe their names in the very books, which they wrote to condemn ambition. The love of distinction will save you from sensualism or inertness. The love of distinction will support you in the wearisome watches of labor, and amid the depression of exertions perhaps long unrequited, and of hope deferred. Marry this immortal principle of our nature, with the fixed resolution to make distinction the instrument of benefit to others, and then the love of fame is no longer the last infirmity of noble minds, but becomes a virtue which philosophy and truth will inculcate and applaud.

I am jealous of your devotion to any other mistress than the majestic, passionless, statue of the law. But it

is useless to expect from you this exclusive love. Let me then give you my suggestions of an honest, right-minded, warm-hearted literature for your healthful recreation when labor presses upon your intellect. Make Shakspeare, Sir Walter Scott, and John Wilson of Blackwood, your choice companions. I shall not quarrel with you if you do not love the two last less, for their staunch old Toryism; for a more able, sneering, disloyal band than the Whigs of England during her struggle with Napoleon, never infested a nation. I shall think less of you, if you fail to imbibe from these exuberant fountains of genius, the most stirring impulses of your nature to all that is manly, generous, chivalric and loyal, all that makes men true to faith, to country, and to duty, or exalts women from pettiness into nobility.

Young gentlemen, I bid you farewell. I say, God speed you. I cannot better close than in the lines of one of those writers I have commended to your notice :

“ Yon path of greensward
 Winds round by sparry grot and gay pavilion.
 There is no flint to gall thy tender foot—
 There's ready shelter from each breeze or shower.
 But Duty guides not that way—see her stand,
 Her wand entwined with amaranth, near yon cliffs:
 Oft where she leads, thy blood may mark thy footsteps;
 Oft where she leads, thy head must bear the storm;
 But she will guide thee up to noble heights,
 Which he who gains seems native of the sky;
 While earthly things lie stretched beneath his feet,
 Diminished, shrunk, and valueless.”



RETURN TO the circulation desk of any
University of California Library
or to the

NORTHERN REGIONAL LIBRARY FACILITY
Bldg. 400, Richmond Field Station
University of California
Richmond, CA 94804-4698

ALL BOOKS MAY BE RECALLED AFTER 7 DAYS

2-month loans may be renewed by calling
(415) 642-6233

1-year loans may be recharged by bringing books
to NRLF

Renewals and recharges may be made 4 days
prior to due date

DUE AS STAMPED BELOW

DUE NRLF MAR 11 1986

REC CIRC JAN 17 1986

DEC 08 1999

YC 65122

LD
1266

86590

THE UNIVERSITY OF CALIFORNIA LIBRARY

