

## **IN SANDERS THEATRE**

Speech by President Carter Oration by Judge Oliver Wendell Holmes, Jr.

Some few minutes before 1 o'clock the procession formed in front of Austin Hall. Mr. Roger Wolcott was chief marshal, and was assisted by the following aids: Charles C. Read, Henry G. Pickering, Timothy J. Dacey, Austen G. Fox, Lauriston L. Scaife, William F. Wharton, Edward W. Hutchins, Walter Clifford, George Wigglesworth, Felix Rackemann, William A. Gaston, Henry E. Warner, and William A. Hayes, Jr. The president of the association and the invited guests were followed by members in the order of the seniority of the connection with the law school. Among the prominent gentlemen were General A. R. Lawton of Georgia, who was nominated by President Cleveland as minister to Russia; the Hon. Dorman B. Eaton; John Winslow of Brooklyn, N.Y.; Charles Jerome Bonaparte of Baltimore, Md.; Solomon Lincoln, Nathan Morse, Robert A. Bishop, W.W. Vaughan, T. Lothrop Thorndike, Robert M. Morse, Jr., John C. Gray, Francis Rawley of Philadelphia, F. V. Balch, and Dr. William Everett. As the procession entered the theatre the Germania band played during the seating of the company. After an announcement by the chief marshal as to the reforming of the procession after the exercises, the newly-elected president of the law association, the hon. James C. Carter of New York, advanced to the front of the platform and said:

## **PRESIDENT CARTER'S SPEECH**

Gentlemen of the Harvard Law School Association – I make to you my most grateful acknowledgment of the distinguished honor you have conferred upon me. In the presence of this assembly, embracing not only recent graduates, but also veterans in the legal profession, I hail this occasion as an auspicious inauguration of this association, and one that is full of promise. The Dane law School we may justly consider as occupying, if not the first, certainly not the

second, place among institutions devoted to legal education; for here we find many advantages for the study of law not equaled elsewhere. Without disparagement of those whose names have become famous as authorities on legal matters, it is true that it does not follow that those occupying the highest seats at the bench are best fitted to impart instruction. It has been said that the Dane Law School is too theoretical, but I think its methods have been much improved of late years. What is the law? It was not promulgated from Mt. Sinai, it is not in the Gospel, it is not found in the writings of Socrates nor of Bacon. It is found, and is found only, in the adjudications and decisions made from time to time in our courts. The true way of acquiring knowledge is to go to the original and not take it at second hand. This is why it is best to take big cases and find the rule involved in them. This is the method now pursued at the Dane Law School. Whenever I have found it necessary, by reason of press of business, to obtain the services of an assistant, I have found none so well fitted for the work as the recent graduates of the Dane Law School. The method they have followed is the way lawyers study law, and why not do it at the beginning. It is no royal road to learning; it is no primrose path to give to each point its due weight. I know of no more difficult task. The lawyer who seeks to obtain reputation by indulging a desire for applause or for newspaper notoriety, will soon be outstripped by the veriest charlatan. But, gentlemen, I keep too long from you the distinguished judge whom you have gathered to hear. His name is potent, and if the law did not claim him we might expect from him occasional letters like those we have received from his father. But the law knows no divided duty. I have the honor to present Mr. Justice Holmes of the Supreme Judicial Court.

## **JUDGE HOLMES' ORATION**

It is not wonderful that the graduates of the Law School of Harvard College should wish to keep alive their connection with it. About three-quarters of a century ago it began with a chief justice of the Supreme Court of Massachusetts

for its Royall Professor. A little later, one of the most illustrious judges who ever sat on the United States Supreme bench – Mr. Justice Story – accepted a professorship in it, created for him by Nathan Dane, and from that time to this it has had the services of great and famous lawyers; it has been the source of a large part of the most important legal literature which the country has produced; it has furnished a world-renowned model in its modes of instruction; and it has had among its students future chief justices and justices, and leaders of State bars and of the national bar, too numerous for me to thrill you with the mention of their names. It has not taught great lawyers only. Many who have won fame in other fields began their studies here. Sumner and Phillips were among the bachelors of 1834. The orator whom we shall hear in a day or two appears in the list of 1840 alongside of William Story and the chief justice of this State, and one of the associate justices, who is himself not less known as a soldier and as an orator than he is as a judge. Perhaps without revealing family secrets I may whisper that next Monday's poet also tasted our masculine diet before seeking more easily digested, if not more nutritious food elsewhere. Enough. Of course we are proud of the Harvard Law School. Of course we love every limb of Harvard College. Of course we rejoice to manifest our brotherhood by the symbol of this association. I will say no more of the reasons for our coming together. But, by your leave, I will say a few words about the use and meaning of law schools, especially of our law school, and about its methods of instruction as they appear to one who has had some occasion to consider them. A law school does not undertake to teach success. That combination of tact and will which gives a man immediate prominence among his fellows comes from nature, not from instruction; and, if it can be helped at all by advice, such advice is not offered here. It might be expected that I should say, by way of natural antithesis, that what a law school does undertake to teach is law. But I am not ready to say even that without a qualification. It seems to me that nearly all the education which men can get from others is moral, not intellectual. The main part of

intellectual education is not the acquisition of facts, but learning how to make facts live. Culture in the sense of fruitless knowledge, I for one, abhor. The mark of a master is that facts, which before lay scattered in an inorganic mass, when he shoots through them the magnetic current of his thought, leap into an organic order and live and bear fruit. But you cannot make a master by teaching. He makes himself by aid of his natural gifts. Education, other than self-education, lies mainly in the shaping of men's interests and aims. If you convince a man that another way of looking at things is more profound, another form of pleasure more subtle than that to which he has been accustomed – if you make him really see it – the very nature of man is such that he will desire the profounder thought and the subtler joy. So I say the business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers. Our country needs such teaching very much. I think we should all agree that the passion for equality has passed far beyond the political or even the social sphere. We are not only unwilling to admit that any class or society is better than that in which we move, but our customary attitude toward everyone in authority of any kind is that he is only the lucky recipient of honor or salary above the average which any average man might as well receive as he. When the effervescence of democratic negation extends its working beyond the abolition of external distinctions of rank to spiritual things, when the passion for equality is not content with founding social intercourse upon universal human sympathy and a community of interests in which all may share, but attacks the lines of nature which establish orders and degrees among the souls of men, they are not only wrong, but ignobly wrong. Modesty and reverence are not less virtues of freemen than the democratic feeling which will submit neither to arrogance nor servility. To inculcate those virtues, to correct the ignoble excess of a noble feeling to which I have referred, I know of no teachers so powerful and persuasive as the little army of specialists. They carry no banners. They beat no drums. But where

they are, men learn that bustle and push are not the equals of quiet genius and serene mastery. They compel others who need their help, or are enlightened by their teachings, to obedience and respect. They set the example themselves. For they furnish in the intellectual world a perfect type of the union of democracy with discipline. They bow to no one who seeks to impose his authority by foreign aid. They hold that science, like courage, is never beyond the necessity of proof, but must always be ready to prove itself against all challengers. But to one who has shown himself a master they pay the proud reverence of men who know what valiant combat means, and who reserve the right of combat against their leader, even if he should seem to waver in the service of truth their only queen. In the army of which I speak the lawyers are not the least important corps. For all lawyers are specialists. Not in the narrow sense in which we sometimes use the word in the profession, of branch of practice, such as conveyancing or patents, but specialists who have taken all law to be their province; specialists because they have undertaken to master a special branch of human knowledge – a branch, I may add, which is more immediately connected with all the highest interests of man than any other which deals with practical affairs.

Lawyers, too, were among the first specialists to be needed and to appear in America. And I believe it would be hard to exaggerate the goodness of their influence in favor of sane and orderly thinking. But lawyers feel the spirit of the times like other people. They, like others, are forever trying to discover cheap and agreeable substitutes for real things. I fear that the bar has done its full share to exalt that most hateful of American words and ideals – smartness – as against dignity of moral feeling and profundity of knowledge. It is from within the bar, not from outside, that I have heard the new gospel that learning is out of date and that the man for the times is no longer the thinker and the scholar, but the smart man unencumbered with other artillery than the latest edition of the digest and the latest revision of the statutes. The aim of a law school should be,

the aim of Harvard Law School has been, not to make men smart, but to make them wise in their calling – to start them on a road which will lead them to the abode of the masters. A law should be at once the workshop and the nursery of specialists in the sense which I have explained. It should obtain for teachers men in each generation who are producing the best work of that generation. Teaching should not stop, but, rather, should foster, production. The “enthusiasm of the lecture room,” the contagious interest of companionship, should make the students partners in their teacher’s work. The ferment of genius in its creative moment is quickly imparted. If a man is great he makes others believe in greatness. He makes them incapable of mean ideals and easy self-satisfaction. His pupils will accept no substitute for realities, but, at the same time, they learn that the only coin with which realities can be bought is life.

Our school has been such a workshop and such a nursery as I describe. What men it has turned out I have hinted already and do not need to say. What works it has produced is known to all the world. From ardent cooperation of student and teaches have sprung Greenleaf on “Evidence” and Stearns on “Real Actions” and Story’s epoch-making “Commentaries,” and Parsons on “Contracts” and Washburn on “Real Property,” and, marking a later epoch, Langdell on “Contracts” and on “Equity Pleading” and Ames on “Bills and Notes” and Gray on “Perpetuities,” and I hope we may soon add Thayer on “Evidence.” You will notice that these books are very different in character from one another, but you will notice also how many of them have this in common, that they have marked and largely made an epoch. There are plenty of men nowadays of not a hundredth part of Story’s power who could write as good statements of the law as his, or better. And when some mediocre fluent book has been printed, how often have we heard it proclaimed, Lo, here is a greater than Story! But if you consider the state of legal literature when Story began to write, and from what wells of learning the discursive streams of his speech were fed, I think you will be inclined to agree with me that he has done more than any other English-speaking

man in this century to make the law luminous and easy to understand. But Story's simple philosophizing has ceased to satisfy men's minds. I think it might be said with safety that no man of his or of the succeeding generation could have stated the law in a form that deserved to abide, because neither his nor the succeeding generation possessed or could have possessed the historical knowledge – had made or could have made the analysis of principles which are necessary before the cardinal doctrines of the law can be known and understood in their precise contours and in their innermost meanings. The new work is now being done. Under the influence of Germany science is gradually drawing legal history into its sphere. The facts are being scrutinized by eyes microscopic in intensity and panoramic in scope. At the same time, under the influence of our revived interest in philosophical speculation, a thousand heads are analyzing and generalizing the rules of law and the grounds on which they stand. The law has got to be stated over again, and I venture to say that in fifty years we shall have it in a form of which no man could have dreamed fifty years ago. And now I venture to add my hope and my belief that when the day comes which I predict, the professors of the Harvard Law School will be found to have had a hand in the change, not less important than that which Story has had in determining the form of the text-books of the last half-century. Corresponding to the change which I say is taking place there has been another change in the mode of teaching. How far the correspondence is conscious I do not stop to inquire. For whatever reason, the professors of this school have said to themselves more definitely than ever before: We will not be contented to send forth students with nothing but a ragbag full of general principles – a throng of glittering generalities like a swarm of little bodiless cherubs fluttering at the top of one of Correggio's pictures. They have said that to make a general principle worth anything you must give it a body. You must show in which way and how far it would be applied actually in an actual system. You must show how it has gradually emerged as the felt reconciliation of concrete instances no one of which established it in

terms. Finally, you must show its historic relations to other principles often of very different dates and origins, and thus set it in the perspective, without which its proportions will never be truly judged. In pursuance of these views there have been substituted for text-books more and more, so far as practicable, those books of cases which were received at first by many with a somewhat contemptuous smile and pitying contrast of the good old days, but which now, after, fifteen years, bid fair to revolutionize the teaching both of this country and of England.

I pause for a moment to say what I hope it is scarcely necessary for me to say – that in thus giving in my adhesion to the present methods of instruction I am not wanting in grateful and appreciative recollection – alas! it can be only recollection now – of the earlier teachers under whom I studied. In my day the dean of this school was Professor Parker, the ex-chief justice of New Hampshire, who I think was one of the greatest of American judges, and who showed in the chair the same qualities that made him famous on the bench. His associates were Parsons, almost if not quite a man of genius, and gifted with a power of impressive statement which I do not know that I have ever seen equaled, and Washburn, who taught us all to realize the meaning of the phrase which I have already quoted from Vaugerow – the enthusiasm of the lecture room. He did more for me than the learning of Coke and the logic of Fearne could have done without his kindly ardor. To return, and to say a word more about the theory on which these books of cases are used, it has long seemed to me a striking circumstance that the ablest of the agitators for codification, Sir James Stephen, and the originator of the present mode of teaching, Mr. Langdell, start from the same premises to reach seemingly opposite conclusions. The number of legal principles is small, says, in effect, Sir James Stephen, therefore codify them. The number of legal principles is small, says Mr. Langdell, therefore they may be taught through the cases which have developed and established them. Well, I think there is much force in Sir James Stephen's argument, if you



can find competent men and get them to undertake the task, and at any rate I am not now going to express an opinion that he is wrong. But I am certain from my own experience that Mr. Langdell is right. I am certain that when your object is not to make a bouquet of the law for the public, nor to prune and graft it by legislation, but to plant its roots where they will grow, in minds devoted henceforth to that one end, there is no way to be compared to Mr. Langdell's way. Why, look at it simply in the light of human nature. Does not a man remember a concrete instance more vividly than a general principle? And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half dozen examples which mark its extent and its limits than it can be in any abstract form of words? Expressed or unexpressed, is it not better known when you have studied its embryology and the lines of its growth than when you merely see it lying dead before you on the printed page? I have referred to my own experience. During the short time that I had the honor of teaching in the school it fell to me, among other things, to instruct the first year men in torts. With some misgivings I plunged a class of beginners straight into Mr. Ames's collection of cases, and we began to discuss them together in Mr. Langdell's method. The result was better than I even hoped it would be. After a week or two, when the first confusing novelty was over, I found that the class examined the questions proposed with an accuracy of view which they never could have learned from text-books, and which often exceeded that to be found in the text-books. I, at least, if no one else, gained a good deal from our daily encounters. My experience as a judge has confirmed the belief I formed as a professor. Of course, a young man cannot try or argue a case as well as one who has had years of experience. Most of you also would probably agree with me that no teaching which a man receives from others at all approaches in importance what he does for himself, and that one who has simply been a docile pupil has got but a very little way. But I do think that in the thoroughness of their training, and the systematic character of their knowledge, the young men of the

present day start better equipped when they begin their practical experience than it was possible for their predecessors to have been. And although no school can boast a monopoly of promising young men, Cambridge, of course, has its full proportion of them at our bar, and I do think that the methods of teaching here bear fruits in their work.

I sometimes hear a wish expressed by the impatient that the teaching here should be more practical. I remember that a very wise and able man said to a friend of mine when he was beginning his professional life, "Don't know too much law," and I think we all can imagine cases where the warning would be useful. But a far more useful think is what was said to me as a student by one no less wise and able – afterwards my partner and always my friend – when I was talking, as young men do, about seeing practice and all the other things which seemed practical to my inexperience: "The business of a lawyer is to know law." The professors of this law school mean to make their students know law. They think the most practical teaching is that which take their students to the bottom of what they seek to know. They, therefore, mean to make them master the common law and equity as working systems, and think that when this is accomplished they will have no trouble with the improvements of the last half-century. I believe they are entirely right, not only in the end they aim at, but in the way they take to reach that end. Yes, this school has been, is, and I hope long will be, a centre where great lawyers perfect their achievements, and from which young men, even more inspired by their examples than instructed by their teaching, go forth in their turn, not to imitate what their masters have done, but to live their own lives more freely for the ferment imparted to them here. The men trained in this school may not always be the most knowing in the ways of getting on. The noblest of them must often feel that they are committed to lives of proud dependence; the dependence of men who command no factitious aids to success, but rely upon unadvertised knowledge and silent devotion; dependence upon finding an appreciation which they cannot seek, but dependence proud in

the conviction that the knowledge to which their lives are consecrated is of things which it concerns the world to know. It is the dependence of abstract thought, of science, of beauty, of poetry and art, of every flower of civilization, upon finding a soil generous enough to support it. If it does not, it must die. But the world needs the flower more than the flower needs life. I said that a law school ought to teach law in the grand manner – that it had something more to do than simply to teach law. I think we may claim for our school that it has not been wanting in greatness. I once heard a Russian say that in the middle class of Russia there were many specialists, in the upper class there were civilized men. Perhaps in America, for reasons which I have mentioned, we need specialists even more than we do civilized men. Civilized men who are nothing else are a little apt to think that they cannot breathe the American atmosphere. But if a man is a specialist it is most desirable that he should also be civilized; that he should have laid in the outline of the other sciences as well as the light and shade of his own; that he should be reasonable and see things in their proportion. Nay more, that he should be passionate as well as reasonable – that he should be able not only to explain but to feel. That the ardors of intellectual pursuit should be relieved by the charms of art, should be succeeded by the joy of life, becomes an end in itself. At Harvard College is realized in some degree the palpitating manifoldness of a truly civilized life. Its aspirations are concealed because they are chastened and instructed, but I believe in my soul that they are not the less noble that they are silent. The golden light of the university is not confined to the undergraduate department. It is shed over all the schools. He who has once seen it becomes other than he was forever more. I have said that the best part of our education is moral. It is the crowning glory of this law school that it has kindled in many a heart an inextinguishable fire.