

*The Game of the Law and Its Prizes.\**

Address at the seventy-fourth commencement of the Albany Law School,  
June 10, 1925.

*Members of the Graduating Class, Ladies and Gentlemen:*

SIR FREDERICK POLLOCK tells us in his new *Essays in the Law* that in medieval times there was a special patron saint to whom students used to pray that they might pass their examinations. The records do not inform us, he says, whether the intercession of the saint was supposed to strengthen the brain of the students, or soften the heart of the examiner. Enough that her power, whether exerted one way or the other, was never doubted by the faithful.

I remember the sense of relief, of an incubus cast aside, with which I took my last examination after the years that I had passed in college and in law school. There, I said to myself, was a chapter closed. I might make mistakes in the future, but I should no longer make them under the eye of examiners charged with the special duty of exposing my failings and giving them a quantitative value in comparison with my virtues. Exposure thereafter would be, so to speak, a matter of chance. A class of professional detectives would be no longer on my tracks.

I suppose some such dreams of felicity are stirring and elating you tonight. It gives me pain to dispel them, yet dreams they are, and nothing more. As long as you live, and surely as long as you practice law, an examiner will dog your foot-steps. When you enter some law office, an apprentice to some older lawyer, there will be some one looking over your shoulder, criticizing your work, pointing out its defects, cheering you, once in a while, by a concession of its merits, educating, examining, testing—the process repeated without end. When a little later you start for yourselves, there will be trial judges and juries and appellate courts, all examining, testing, approving or rejecting, just as in the days of adoles-

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cence which you thought were left behind. Sometimes when these critics are compassionate or silent, you will have to meet a test still sterner, a scrutiny yet more rigid, the merciless test and scrutiny of a defeated and reproachful client. As years go by, some of you may cease to be advocates, and gain a seat upon the Bench. You may think then that you are safe, but alas! it is not so. Examiners still crowd about, and no longer are they to be propitiated by the invocation of a patron saint. If you happen to be a trial judge, there are the judges of the appellate courts. If you mount to one of those courts yourself, there are your colleagues, ever lying in ambush vigilant and keen, and perhaps some other court yet higher than your own. If you live through all these dangers with reason unimpaired there are other trials as searching. The Bar, with its associations and committees, and, worse than these, the law schools and the law reviews, are still waiting at the door. Let there be a joint in your armor, a flaw in your opinion, it will not be long before probe and scalpel will expose a gaping wound. The examiner is near at hand.

So, in very truth, gentlemen, this is not the end at all, but only the commencement. I was reading a few weeks ago a book by Abraham Flexner on *Medical Education* which has a lesson for lawyers too. "As a matter of fact," he says, "schools of engineering do not produce engineers or architects; schools of law do not produce lawyers. The school's part is largely limited to training in method and technique, and to inspiration." Method is much, technique is much, but inspiration is even more. If you go out into the world thinking that the ordeal is over, or that it will be over when you have leapt one hurdle yet to come, the hurdle maintained by the State Board of Law Examiners, not very far away, if you go out into the world in this spirit, there will be the shock of many a disillusionment before the course is run. But if you bear in mind the truth that this is only the commencement, that troubles are only beginning, and if you act upon that faith behold, by some subtle necromancy, the pain that you foresee shall be transmuted into joy. The troubles will emerge as triumphs; the travail and the doubt will yield an unexpected peace; the great truth will have been learned that the quest is greater than what is sought, the effort finer than the prize, or, rather, that the effort is

the prize—the victory cheap and hollow were it not for the rigor of the game.

I have spoken of it as a "game" and so indeed it is, though it will depend upon your notion of a game whether the metaphor shall elevate or cheapen. It is a game, but it is a game of skill, and that is why there has been need of this elaborate preparation to give you a working knowledge of its rules, of its method and technique. When I contrast the training that is given to the law student of today with the training that was given to me in the prehistoric days before my admission to the bar, I am filled with a spirit of envy that makes me anxious to step down and take my place in your ranks, forgetting, for the moment, that your examiners would probably refuse to pass me. In the days of my study at the law school, we had courses in the law of contracts, real estate, torts, equity, evidence, and practice. That was about all, and this little was taught out of some old-fashioned textbook, with slight reference to the cases and little or no discussion of them by students or professors. Take such a subject as the law of corporations; we had no instruction in it at all. Perhaps the notion was that no corporation would be foolish enough to retain us at the beginning, and that by the time such retainers came to us we could pick up the knowledge for ourselves. Whatever may have been the reason, I do no more than report the fact. If some one had asked us to state the difference between a bond and a share of stock, I fear that most of us, for all that we had learned to the contrary at law school, would have been in the position of a woman of my acquaintance, who, when a similar question was propounded to her, eyed her questioner quizzically for a moment, and then exclaimed triumphantly, "I know. They are the same." So it is that in an envious spirit I contrast my own meager preparation with the copious and varied courses that it has been your privilege to follow.

You have gained something, however, which is more than mere knowledge of principles and rules and precedents. These are so many and so diverse that with all the facilities of the modern law school and with all the industry and zeal that you could exhibit in the endeavor to become masters of them, you would find in the end that you had only scratched the surface. The thing even more important that you have learned is the ability to think legally, an understanding of

the method, the technique, by which the judicial process works. It is in truth a fascinating process, baffling, elusive, infinite in the variety of its aspects, and yet infinite also in its appeal to the heart and mind and spirit of generous and ambitious youth. The new generations bring with them their new problems which call for new rules, to be patterned, indeed, after the rules of the past, and yet adapted to the needs and the justice of another day and hour. Yours will be the task of formulating these rules when we, who have done our little as best we could, shall have laid the burden down. One must be historian and prophet all in one—the qualities of each united in a perfect blend—who would fulfill that task completely. Rights and duties are to be defined in such terms as to fit them to the complexities of modern life, yet all the time, in defining them, we speak the words and perpetuate the thought of the judges of long ago who penned some ancient writ of emperor or king. "The last of the Caesars has fallen," I quote the words of Roscoe Pound, "but the thought of the jurisconsults of the days of the first Caesar is still law in half of the world." Here is a game, a puzzle, a conundrum, to mystify and pique. Here is a task, a summons, a vocation, to rouse and stir and quicken. Give what you have, whether what you have be much or little. You will be sharers in a process that is greater than the greatest of its ministers.

Yes, indeed, it is a wonderful and inspiring opportunity that confronts you in this year of grace as you turn your backs upon the law school to take your places at the bar. The process of justice is never finished, but reproduces itself, generation after generation, in ever-changing forms, and today, as in the past, it calls for the bravest and the best. Pretty soon we old fellows shall be leaving the scene, and you will be coming forward to fill the broken ranks. I should like to come back a generation or so from now, just to get a peep at the state of the law, make my bow, and retire. I suppose I should find big changes. Many of the opinions that I have written would probably by that time have been overruled, or charitably distinguished. The chief effort of my successors would be, very likely, to find some respectful and respectable way of avoiding or forgetting them. These things might distress me a little, but I have small doubt they would be right. I should feel, doubtless,

when I thought it all over, that the movement was in the right direction, that we were getting closer to the goal. Very possibly I should wish to know the names of those who were doing the work of the day, who were carrying the standard forward, who were keeping alive the great tradition. They would show me the roll of honor, and there I should read the names of some who look into my face tonight. It will be your fault if it is not so.

I come back to my metaphor of a game, a game which exacts skill but which, like every game worth playing, exacts something more important, and that something is the sportsman's spirit, which is only another word for character. This is the chief thing, more important far than skill, for skill without this will be palsied and perverted. Play the game like sportsmen, or give it up at the beginning, and choose some other calling, which, if its aims are less exalted, will at least spare you the reproach of insincerity, since its members will not have pledged themselves to be votaries of justice. I do not ask the impossible. I know that for most of you, the law, though a profession, must also be a means of livelihood. I know that worldly success is pleasant in itself, and that it is also for many who live in the world the badge of all success. I do not ask you to turn yourselves into hypocrites by pretending that you are indifferent to it, or that you would not gain it and gain it in the fullest measure if you could have it on terms consistent with dignity and honor. But you would not cheat at football or at tennis or at cards, though the game were thereby assured to you and detection a remote possibility, or even impossible altogether. You would know that your honor had been pledged, and the zest of the sport would be more precious than success. So it is with the life-game upon which you are to enter. You know its ideals. You have said that they are yours. You will be as good as your word, and as proud as your heritage.

Some of you may have read the charming and stirring address that was given by Mr. Barrie not long ago as Rector of St. Andrews. He called it "Courage": and the courage that he praised and the courage that he invoked was the courage of the sportsman, of the young sportsman, the courage of adventurous youth. You will need it now and again in the years that are ahead of you. The tests of character come to us silently, unawares, by slow and inaudible

approaches. We hardly know that they are there, till lo! the hour has struck, and the choice has been made, well or ill, but whether well or ill, a choice. The heroic hours of life do not announce their presence by drum and trumpet, challenging us to be true to ourselves by appeals to the martial spirit that keeps the blood at heat. Some little, unassuming, unobtrusive choice presents itself before us slyly and craftily, glib and insinuating, in the modest garb of innocence. To yield to its blandishments is so easy. The wrong, it seems, is venial. Only hyper-sensitiveness, we assure ourselves, would call it a wrong at all. These are the moments when you will need to remember the game that you are playing. Then it is that you will be summoned to show the courage of adventurous youth. There are some unquenchable spirits who never lose it, though the calendar may say that they have left youth behind and reached manhood or old age. "Be inspired with the belief," said Gladstone, "that life is a great and noble calling; not a mean and grovelling thing that we are to shuffle through as we can, but an elevated and lofty destiny."

You think I ask too much of you. I ask of you nothing that you are not competent to give. More than that, I ask of you nothing that will not mean success and honor if only you have the will and the strength to give it. I take as my text two utterances that have consoled and inspired me in many a doubting hour. The one is that of William James; the other is that of Emerson. The one shall stimulate your minds. The other shall cheer your souls. The one shall teach that intellectual effort is not wasted and never can be. The other shall teach that spiritual effort, the force of fine and noble character, is destined to a kindred triumph.

Skill is not won by chance. Growth is not the sport of circumstance. Skill comes by training; and training, persistent and unceasing, is transmuted into habit. The reaction is adjusted ever to the action. What goes out of us as effort comes back to us as character. The alchemy never fails. "Let no youth," says James, "have any anxiety about the upshot of his education whatever the line of it may be. If he keep faithfully busy each hour of the working day, he may safely leave the final result to itself. He can with perfect certainty count on waking up some fine morning to find himself one of the competent ones of his generation, in

whatever pursuit he may have singled out. Silently, between all the details of his business, the power of judging in all that class of matter will have built itself up with him as a possession that will never pass away. Young people should know this truth in advance. The ignorance of it has probably engendered more discouragement and faint-heartedness in youths embarking on arduous careers than all other causes put together."

I know not where you will find a more heartening or tonic gospel. Our fates are in our own hands. We make and remake our own selves. We are "the captains of our souls." Nature pants with the desire to make us what we wish to be. The wish is the reality. What we think, that we are.

So much for the triumph of mind and spirit in the shaping of our own lives. There is something even stranger. It is the power of mind and spirit to shape the lives of others. Here I hold fast to Emerson. Again Nature is inflexible, inflexible in beneficence for those who serve as she is inflexible in indifference for those who stand aloof. The words in which Emerson to the very end gave utterance to this faith are as fine, a wise critic has said, as anything in literature.

"If you love and serve men," he writes, "you cannot by any hiding or stratagem escape the remuneration. Secret retributions are always restoring the level, when disturbed, of the Divine justice. It is impossible to tilt the beam. All the tyrants and proprietors and monopolists of the world in vain set their shoulders to heave the bar. Settles forevermore the ponderous equator to its line, and man and mote, the star and sun, must range to it, or be pulverized by the recoil."

A robust doctrine this, and one for stout hearts and placid and unruffled souls. Not the less for that are its validity and power. There may be hours of discouragement and rebuff. When the course is run, we shall see them in their true perspective. We shall know in the end that the game was worth the effort.

"Most of the troubles of life," says the French philosopher, "would be avoided if men would only be content to sit still in their parlors." Ah! but they will not, even those of them who have the parlors, and that is their glory, if it is also their undoing. The ceaseless drive is there; the lure that prods

and teases; the shining, if shifting, goal, which, like the lighthouses of today, may summon with a revolving light, but ever swings full circle, a beacon to the wandering traveler.

"This is no life of cloistered ease to which you dedicate your powers. This is a life that touches your fellow men at every angle of their being, a life that you must live in the crowd, and yet apart from it, man of the world and philosopher by turns.

You will study the wisdom of the past, for in a wilderness of conflicting counsels, a trail has there been blazed.

You will study the life of mankind, for this is the life you must order, and, to order with wisdom, must know.

You will study the precepts of justice, for these are the truths that through you shall come to their hour of triumph.

Here is the high emprise, the fine endeavor the splendid possibility of achievement, to which I summon you and bid you welcome.