

**LAW AND DEMOCRACY. AN ADDRESS
DELIVERED BEFORE THE GRADUATING
CLASSES AT THE SIXTY-SECOND
ANNIVERSARY OF THE YALE LAW
SCHOOL, ON JUNE 29TH, 1886.**

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Law and Democracy. An Address Delivered Before the Graduating Classes at the Sixty-Second Anniversary of the Yale Law School, on June 29th, 1886. by Wayne Mac Veagh

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WAYNE MAC VEAGH

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From Dr. J. B. Angell

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AT THE

SIXTY-SECOND ANNIVERSARY

OF THE

YALE LAW SCHOOL,

ON

June 29th, 1886,

BY

HON. WAYNE MAC VEAGH, LL.D.

NEW HAVEN:

PUBLISHED BY THE LAW DEPARTMENT OF YALE COLLEGE.

1886.

PREFATORY NOTE.

THE graduates and friends of Yale Law School will be interested in the following extract from the Annual Statement in regard to the condition of Yale College in 1886, presented at the recent commencement to the Society of the Alumni of the University, by its executive committee.

* * * * * "The close of President Porter's administration is a convenient point of retrospect from which to observe the rapid progress of the Law Department, since his accession to office in 1871. In 1869 Governor Dutton, the Kent Professor of Law in the University, who had for some years been the only instructor in the Law School, died, and the Kent Professorship remained vacant until 1881. In 1872, Professors Wayland, Robinson, Baldwin, and Platt were elected to the chairs they have since occupied; Professor Woolsey was appointed in 1878, and Professor Townsend in 1881. From 1881, until his acceptance of the position of Minister to Great Britain, Professor Phelps also gave regular instruction to the Senior Class. Among the special lecturers have been President Woolsey, the late Rev. Dr. Bacon, Judges McCurdy, Seymour, and Foster, Mr. Betts of New York, Mr. Simonds of Hartford, and Mr. Seymour of Bridgeport.

The Law Library had received substantially no accessions between 1853 and 1869. When the older members of the present Faculty first assumed the temporary charge of the School, there was not even a complete set of the Connecticut or United States Reports. A fund for the purchase of books was started by a gift of \$250 from Hon. Wm. Walter Phelps, and in 1873 had risen to about \$25,000. This brought up the library to a good condition, and it was then strengthened by a permanent endowment of \$10,000 from Hon. James E. English. Other occasional donations, and since 1884, a grant of \$300 a year from the general funds of the University, have now made the library better than that of any other American Law School except that of Harvard University.

In 1876, the course of study was prolonged by the addition of the optional graduate course of one or two years, leading up to the degrees of Master of Law, and Doctor of Civil Law. Three of those who have taken this course are now instructors or lecturers in the University in law or political science (Professor

Townsend, Mr. Henry C. White, and Dr. Edward V. Reynolds), and two others are Professors of law elsewhere, Dr. Russell at the University of New York, and Dr. Hatogama at the University of Tokio. Another, last year, took the first rank in an examination for admission to the Bar in Ohio among over seventy candidates, and the same was true three years ago of another in a similar examination in New York.

The Law School in 1871 was still crowded into the two inconvenient rooms, where it had been conducted for twenty years. In 1873, it was removed to the third floor of the Court House building, where it has ample and handsome accommodations, and can give its students unusual facilities for the observation of actual judicial practice.

In 1872, the School sent out ten graduates, and in the 13 years before it had had in all but 95. In the 13 years since (1873 to 1885, each inclusive) its graduates have numbered 383. No department of the University has had so rapid a growth during this period in numbers, or general prosperity. It has, however, been conducted at a considerable personal sacrifice, on the part of its Faculty, who, in doubling the length of the term of study offered, have doubled their work, without expecting or receiving any corresponding increase of compensation. No Professorship is endowed, though provision was made by the will of the late Judge Lafayette S. Foster, one of the lecturers at the school, for the ultimate endowment of one.¹¹

LAW AND DEMOCRACY.

MR. DEAN AND GENTLEMEN:—

The recurrence of the academic festival of the year brings with it, like so many other pleasures, a grave sense of responsibility as the counterpart of its joyous sense of happiness; and nowhere is either likely to be more fruitful than at the annual gathering of her children at the home of this famous and venerable University.

The sons of Yale are indeed proverbial, throughout the land, for their abiding and ever-increasing affection for their Alma Mater; and when, in this leafy month of June, with the elms clad in the glory of the midsummer, they are permitted to walk in the old ways, to greet old friends, to summon old memories, to renew old associations, they recognize the high privileges which they enjoy, and they are sure to go away bearing in their hearts a sense as of an abiding benediction.

Perhaps it is a wise, as well as a gracious, custom to withdraw from the pleasures of these happy days an hour in which some elder brother may speak to those just entering upon the labors and the joys of active life such words of suggestion and good cheer as his experiences, beyond these classic shades, have brought him; and an address delivered at this time, upon the invitation of the Yale Law School, finds a subject, naturally, in the question now pressing itself upon the attention of many thoughtful lovers of their country: What are the relations which Law would be likely to sustain to Democracy, if the latter succeeded to the practical control of the government? Fortunately, it is permissible to consider such a subject in accordance with the demands of an occasion like the present in a freer spirit than before either a popular or a scientific audience; and in your presence it is only

necessary to say that Democracy is used in the sense of the masses of the people who labor with their hands, and that the object of this discourse is not to express opinions, but only to suggest to you lines of thought which you may follow if you choose, not unprofitably, to their legitimate conclusions, whatever such conclusions may be.

You observe that, for the purposes of this discourse, it is taken for granted that a genuine Democracy, the actual government of the many, may be coming and coming to stay. Earnest and learned students of comparative politics continue to warn us that popular government is particularly unstable, and that it is, by its very nature, encompassed by dangers which threaten no other form of authority; that it has from the earliest times far more often failed after a short trial than succeeded after a long trial; and that the unrest which attends its vigor and the insecurity which foreshadows its fall are the inevitable precursors of the appearance on the scene of the military despot. They assert indeed that the processes of evolution in the physical world do not move with more sublime or relentless order than the periods which mark the rise, the progress, and the decay of free institutions—no matter upon what theatre or under what circumstances the experiment may be tried.

These critics of Democracy, from the standpoint of history, persuade themselves that real popular government is alike incompatible with the safeguards of civil order and the bases of a high and stable civilization; and they especially and earnestly insist that a government of the many will not afford adequate protection either to personal liberty or to private property, and that, failing in these two of the principal functions of modern states, Democracy itself, sooner or later, must also fail.

If such prophecies of evil were accurate forecasts of our political future, which they probably are not, it might still remain the plain duty of all practical and sensible men to accept Democracy, the government of the many, without illusion and without reserve, if no other form of government was now possible in America. The actual political authority of the nation may be passing to the numerical majority of the people as a class, and they may be awakening very surely, and not very slowly, to the consciousness of their possession of it. Heretofore ignorance of the possession of such power has interfered with

the practical exercise of such authority, but in a country whose boast has been these many years that it offered some measure of education to all its children, it ought not to be expected that more than a generation would grow up in the enjoyment of such education, without a great change, probably, coming over the face of society; nor ought it to occasion surprise if the masses of the people in America are becoming reasonably well-informed as to their political rights, and the possibilities of action which those rights confer. It would, therefore, serve no good purpose to pretend any longer that this numerical majority of our fellow-citizens may not soon act together, as the men who have the right to govern the country, and who know that they possess such right. Indeed, if we throw off the illusions created by old habits of thought, and permit ourselves to see our institutions as they really are, we will see that they might soon constitute a democratic system of government in its purest and simplest and amplest sense. The constitution of the United States, and the constitutions of different States, undoubtedly interpose obstacles to the popular will taking immediate effect; but those limitations are limitations of time and method only, and they will not, of themselves, long prevent the majority from exercising its sovereign will, in respect to any proposition upon which it is substantially united; so that Mr. Lincoln's immortal phrase might become a singularly accurate statement of the character of our institutions—"government of the people, by the people, and for the people." That is far from an accurate statement of their character to-day, but they would satisfy every requirement of the definition if such majority, acting as a political party, had secured the control of every department of the government and all of its officers, executive, legislative, and judicial, for such control would be naturally devoted to trying to secure the greatest good of the greatest number.

Mr. Webster, who thought much upon the philosophy of politics, predicted, more than sixty years ago, that an irrepressible conflict must arise between a political system based upon manhood suffrage and therefore aiming at equality, and an economic system based upon legislation in the interest of capital, and therefore aiming at inequality. He declared that "the freest government, if it could exist, would not be acceptable, if the tendency of the laws was to create a rapid accumulation of property in few

hands, and to render the great mass of the population dependent and penniless. In such a case the popular power would be likely to break in upon the rights of property, or else the influence of property to limit and control the exercise of popular power. Universal suffrage, for example, could not long exist in a country where there was great inequality of property. The holders of estates would be obliged in such case, in some way, to restrain the right of suffrage, or else *such right of suffrage would before long divide the property*. In the nature of things those who have not property and see their neighbors possess much more than they think them to need cannot be favorable to laws made for the protection of property. When this class becomes numerous it grows clamorous. It looks on property as its prey and plunder, and is naturally ready at all times for violence and revolution."

As nobody now believes that property can succeed in America in restricting suffrage, we ought to find, if we may, some other way of securing for ourselves, if the people ever take possession of their own, two of the indispensable elements of a free and happy modern state—a profound reverence for law and a profound respect for the rights of the individual citizen in the acquisition and enjoyment of private property.

For a long time past we have assumed that the dictates of self-interest were all that modern society needed for its development and permanence, to buy where we could buy cheapest and to sell where we could sell dearest, to interfere as little as possible with the desire of gain, however hateful might be some of its manifestations, and to teach everybody one lesson only—to put money in his purse. It is now becoming quite clear that this theory of social and political economy, upon which we have been living, is not of itself sufficient to insure the good order and happiness of a modern society essentially and vitally democratic. It is, indeed, too apparent to need argument, that our conclusion in this respect must be revised, and if we are to live together in peace, if private property is to continue to be respected, if law is to be revered and obeyed, before we can regard these blessings as absolutely secure, much private property and its method of acquisition must be rendered more worthy of respect, and the enactment, the construction, and the execution of the laws must be in the public interest; and even the securing of these blessings may not be sufficient. Perhaps, also, in some