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# Wade Keyes' Introductory Lecture to the Montgomery Law School: Legal Education in Mid-Nineteenth Century Alabama

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# WADE KEYES' INTRODUCTORY LECTURE TO THE MONTGOMERY LAW SCHOOL: LEGAL EDUCATION IN MID-NINETEENTH CENTURY ALABAMA

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On the Cover—Nineteenth-century photograph of the state capitol building, courtesy of the Alabama Department of Archives and History.

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# INTRODUCTION TO WADE KEYES AND THE MONTGOMERY LAW SCHOOL

On January 25, 1860, the Alabama State Legislature approved an act that created the Montgomery Law School and made it the "Law Department of the University of the State."[1] The Law School, located at Montgomery, Alabama, under the direction of lawyer and scholar Wade Keyes, was the second effort to establish an organized law curriculum within the state. Prior to the creation of the Montgomery Law School, the University of Alabama in 1845 appointed trustee Benjamin F. Porter as the school's first professor of law. Porter had introduced the resolution that created the professorship of law, and was later chosen to fill the position. As the result of unacceptable restrictions placed on the program by the Board of Trustees at the insistence of the regular faculty, Porter resigned the position before classes could begin and the promising program was not pursued.[2]

Throughout the nineteenth century, legal training in America underwent dramatic changes not only structurally but

[1] For the enabling legislation of the Montgomery Law School, see: *Acts of Alabama* (1860), 342-344.

[2] For Wade Keyes, see Thomas McAdory Owen, *History of Alabama and Dictionary of Alabama Biography*, III (Spartanburg: Reprint Company, 1978), 974. The standard work on Keyes and the Montgomery Law School is E. David Haigler, "The First Law Class of the University of Alabama," *The Alabama Lawyer*, 40 (1979), 369-376. For Benjamin F. Porter and the first effort to found a law school at the University of Alabama, see Paul M. Pruitt, Jr., "An Antebellum Law Reformer: Passages In The Life of Benjamin F. Porter," *Gulf Coast Historical Review*, 11 (1995), 40; Sarah Walls, *Reminiscences of Men and Things in Alabama* (Tuscaloosa: Portals Press, 1983), 18, 95; and Owen, *History of Alabama and Dictionary of Alabama Biography*, IV: 1375-1376.

also with respect to the approach to legal study. The study of law moved from the traditional law office apprenticeships to the college and university systems which developed during the course of the century. By the late 1860s, the method of teaching the "science of the law" by tracing the historical development of legal doctrines through the analysis of cases was introduced by Christopher Columbus Langdell at the Harvard Law School and soon became the standard approach to legal study.[3] It was during this dynamic period in legal education that the Montgomery Law School was created. The school was conceived by, and organized under, the direction of Wade Keyes.

Born at Mooresville, in Limestone County, Alabama, on October 10, 1821, Wade Keyes was the son of George and Nelly (Rutledge) Keyes. The Keyes were a distinguished family of soldiers, planters, lawyers, and public men, some of whom had served in the Revolutionary Army. After living in Virginia and Tennessee, the family settled in Limestone County near Athens on an extensive tract of land during Alabama's territorial period. Wade Keyes spent his childhood on the family plantation, located three miles from the town of Athens, of which his grandfather was one of the founders.[4] Keyes received his education from a variety of sources. After early instruction by private tutors, Keyes attended LaGrange College and the University of Virginia, where he was a member of the class of 1839; however, he left before

[3] See Lawrence Friedman, *A History of American Law* (New York: Simon and Schuster, 1973); Steve Sheppard, ed., *The History of Legal Education in the United States: Commentaries and Primary Sources* (Pasadena: Salem Press, Inc., 1999); and Albert J. Harno, *Legal Education in the United States* (San Francisco: Bancroft-Whitney Company, 1953). For the development of legal education in America and the move away from the more casual and democratic apprenticeship system, see Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: The University of North Carolina Press, 1983).

[4] For Keyes family history, see Owen, *History of Alabama and Dictionary of Alabama Biography, III: 973-974.*

graduation as the result of illness. Keyes graduated from the Law Department of Transylvania University at Lexington, Kentucky, after first studying law with Judges William Richardson and Daniel Coleman at Athens.[5] After spending a year in Europe he moved to Marianna, Florida, in 1844 and practiced law there until returning to Alabama, settling into the political center of the state at Montgomery in 1851.[6]

Keyes soon established himself in the Alabama legal community. He published the legal volumes: *An Essay on the Learning of Remainders*, 1852; *An Essay on the Learning of Future Interests in Real Property*, 1853; and *An Essay on the Learning of Partial, and of Future Interests in Chattels Personal*, 1853. Keyes' recognition for his legal work on property rights won him notice and an appointment by the state legislature in 1853 to the chancellorship of the southern division of Alabama.[7] In the Court of Chancery, Keyes was able to apply his substantial scholarly expertise in property law to a practical forum. His knowledge of the law and competence as a jurist served him well in his hearing of equity cases, including those addressing complex issues such as an 1858 matter involving a precatory trust which featured both real and personal property questions. In issuing his decree in *Means vs. McCree*, Keyes wrote, "here I desire to express my

[5] See Owen, III: 974; and Haigler, "The First Law Class of the University of Alabama," 373.

[6] Ibid.

[7] Keyes' respect for the common law is illustrated by the dedication included in *An Essay on the Learning of Future Interests in Real Property*, in which Keyes wrote that the work was dedicated to "The Students of the Common Law, With the hope that it may somewhat open to them This Difficult Learning Without which no one can attain to the excellence of a Common Lawyer." See W.H. Brantley, Jr., "Our Law Books (1819-1865)," *The Alabama Lawyer*, 3 (1942), 380. On Keyes' position with the Court of Chancery in the southern division of Alabama, see Rembert W. Patrick, *Jefferson Davis and His Cabinet* (Baton Rouge: Louisiana State University Press, 1944), 310-312; Owen, *History of Alabama and Dictionary of Alabama Biography*, III: 974; and Haigler, "The First Law Class of the University of Alabama," 373.

dissent to the idea that a common law court in this country may depart from a principle or a construction of words which had been asserted or established in England long before the Declaration of Independence, any more than it may depart in such cases from its own decisions."[8] It was Keyes' considerable skills as a jurist and scholar which led him during his tenure as chancellor to begin teaching classes on property law at Montgomery. The Montgomery Law School developed as an expansion of Keyes' lectures.[9]

In the incorporation act of the Montgomery Law School, the state legislature designated the Justices of Alabama's Supreme Court as *ex officio* trustees of the new law school with the power to fill vacancies in professorships, create the school's by-laws, and control the real and personal property of the school. In a move which was most likely designed to avoid the administrative difficulties that plagued the University of Alabama's previous attempt to establish a law department, the legislature provided that "the founder of said school [Keyes] shall continue as the teacher therein, and that no other or additional teacher shall be elected or appointed therein without his consent, whilst he continues in said position."[10] Although the law school was attached to the University of Alabama as the Law Department, mutually protective language within the act allowed for the trustees of the University of Alabama by a resolution entered on their minutes, or by the same procedure initiated by the Montgomery Law School, to dissolve all connection between the two institutions.[11]

Students of the new law school enjoyed full use of the books and facilities of the state and supreme court libraries, and "one or more rooms in the Capitol" were made available

[8] See Alabama Court of Chancery (Hayneville), *Means vs. McCree, Wade Keyes, Chancellor* (Montgomery: 1858), 3. Special Collections Department, Alderman Library, the University of Virginia.
[9] Haigler, "The First Law Class of the University of Alabama," 373.
[10] Acts of Alabama (1860), 343 (section 3).
[11] Ibid., 344 (section 10).

for use by the school.[12] The school year was divided into two sessions beginning on the first Monday in March and the first Monday in October. The program was divided into three levels of study that were comprised of Junior, Senior, and Moot. Tuition was fifty dollars per session, and board was available for approximately twenty dollars per month. A few of the school's students boarded and studied at Keyes' home, which was located approximately one mile from town.[13] Students were urged to call at the law office of Keyes and Gunter upon arriving for the session. Of the school's mission Keyes wrote in the *Montgomery Weekly Advertiser*, "It is true that a young man must make himself a lawyer by his own exertions—no school can perform the task for him—it can do no more than direct, facilitate and make more accurate his learning." The law school had the authority to confer degrees and to license students to practice in all Alabama courts. Diplomas were conferred on students based on subjective evaluation of their performance and qualifications, not solely on the basis of the completion of a set of quantitative, often minimum requirements.[14] This manner of evaluation represented a significant break with the frequent practice of law office apprenticeships that released a student to practice law after the completion of an approved reading list and examination.[15] Of

[12] Ibid., 343 (section 7). For the creation and early history of the state and supreme court libraries, see Brantley, "Our Law Books (1819-1865)," 363-382.

[13] See Cicero Stephens Croom diary, Velma and Stephens G. Croom Collection, the University of South Alabama Archives. Croom, a relative of Keyes' wife, attended the Montgomery Law School beginning in the Spring 1860 session and with a few other students, boarded with the Keyes.

[14] On the organization of the school, see the *Montgomery Weekly Advertiser* announcement in Haigler, "The First Law Class of the University of Alabama," 371; and for details of the enabling legislation, see Acts of Alabama (1860), 343 (sections 6, 7, and 8).

[15] The 1852 Code of Alabama established the guidelines for who was entitled to practice in state courts. It required an individual seeking a license to pass examination on his knowledge of the law of real property; personal property; pleading, and evidence; commercial law; criminal law;

this practice, Keyes wrote, "it is scarcely necessary to say to the young men of the State who propose to study law that it is better to prosecute their studies in a school than in an office, and that it is better, *caeteris paribus* [all things being equal], for those who intend to remain in the State, to study in a school of the State."[16] Although the Montgomery Law School had sound and scholarly leadership, a well-organized corporate identity, a progressive curriculum, and adequate resources, these were not sufficient to sustain the young school during the turbulence and instability of the Civil War years. The school ceased operations during February 1861, and it was not until 1872 that a new law program was established at the University of Alabama's campus.[17]

During the war years, Wade Keyes and his two younger brothers volunteered for service in the Confederate cause. Keyes' youngest brother, attorney George P. Keyes, served in the Alabama unit known as Hilliard's Legion from his enlistment in 1862 until he was incapacitated while fighting in Kentucky. Physician and dentist John Washington Keyes also served the Confederacy in a military capacity. He entered service in 1861, attaining the rank of second lieutenant in Hilliard's Legion with his brother George. He resigned in November 1862, and was assigned to the position of surgeon of the seventeenth Alabama infantry regiment.[18] Wade Keyes,

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law of chancery, and chancery pleading; and on the statute laws of the state. Because these examinations could be administered by judges of any trial or appellate court, there was no consistency of bar admissions standards in Alabama during this period. See *The Code of Alabama, Prepared by John J. Ormond, Arthur P. Bagby, George Goldthwaite, with Head Notes and Index by Henry C. Semple* (Montgomery: Brittan and De Wolf, 1852), 195-196 (sections 739-744).

[16] Haigler, "The First Law Class of the University of Alabama," 371.

[17] Ibid., 376.

[18] George Keyes, to whom Wade Keyes dedicated his *Essay on the Learning of Partial and of Future Interests in Chattels Personal*, served as register in chancery after the war, but was removed during Radical Reconstruction, after which he served as associate editor of the *Montgomery*

unlike his brothers, volun- teered his services to the Confederacy in a non-military capacity within the Confederate Department of Justice as Assistant Attorney General, Acting Attorney General, and Attorney Gener- al *ad interim.*[19]

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*Advertiser*. After the war, John Washington Keyes and his immediate family were among the many Confederate expatriates who fled to Brazil to escape life in the postwar South. John Keyes moved to Rio de Janeiro with the Gunter Colony from Montgomery at the invitation of Emperor Dom Pedro II, and became dentist to the royal family. The Gunter Colony which emigrated to Brazil in 1867 was led by Wade Keyes' former Montgomery law partner at the time that the Montgomery Law School was organized, Charles Grandison Gunter. During the late 1840s Gunter worked within the state legislature to advance property rights for married women under Common Law. "Gunter's Law" was one of the first legislative steps in Alabama toward the advancement of women's rights. For Gunter, George Keyes, and John Keyes, see Owen, *History of Alabama and Dictionary of Alabama Biography*, III: 715-716, 973. For Confederate expatriates, see Cyrus B. Dawsey and James M. Dawsey, eds., *The Confederados: Old South Immigrants in Brazil* (Tuscaloosa: University of Alabama Press, 1995). For Confederate military history, see Willis Brewer, *Alabama: Her History, Resources, War Record, and Public Men. From 1540 to 1872* (Montgomery: Barrett & Brown, Printers, 1872). Hilliard's Legion was organized by Henry W. Hilliard, a three-term Whig, Unionist, United States Congressman and lawyer from Montgomery, who after the war was appointed Minister to Brazil by Rutherford B. Hayes and sent, in part, to facilitate the return of American expatriates in Brazil. For Henry W. Hilliard, see his *Politics and Pen Pictures at Home and Abroad* (New York: G.P. Putnam's Sons, 1892); and Norman T. Strauss, "Brazil in the 1870s as Seen by American Diplomats" (Dissertation, New York University, 1971).

[19] For Wade Keyes' tenure and opinions in the Confederate Department of Justice, see William M. Robinson, Jr., *Justice in Grey: A History of the Judicial System of the Confederate States of America* (Cambridge: Harvard University Press, 1941); Rembert W. Patrick, ed., *The Opinions of the Confederate Attorneys General, 1861-1865* (Buffalo: Dennis & Co., Inc., 1950); and Rembert W. Patrick, *Jefferson Davis and His Cabinet* (Baton Rouge: Louisiana State University Press, 1944). Keyes served through the terms of three Attorneys General. He was the actual director of the office once for two months in the fall 1861, during the Christmas holidays 1861, in October and November 1862, and in August 1863 under Thomas Bragg and Thomas Watts. Again in September and October 1864, Keyes

Throughout numerous appointments and transfers of various Attorneys General, Keyes remained a consistent and competent presence in the office, writing 23 of the 218 opinions issued by the department. Keyes, passed over three times for the position, never received the permanent appointment as Attorney General from Jefferson Davis. A letter from Davis to Keyes on December 6, 1862 offers a probable explanation for Keyes' failure to advance to the position of Attorney General. It reveals that on at least two occasions Keyes had challenged the executive's interference with the independence of accounting officers in the discharge of their official duties. Davis' terse response rebuked "a subordinate officer of the government" for interposing "his criticism on the intercourse between the President and members of the cabinet, especially if, as in your [Keyes] case, there be no official connection with the matter."[20]

Keyes applied his substantial knowledge and legal skills to his duties in the justice department. His opinions reflected his strict interpretation of the law, his respect for the common law, and a conservative application of acts of the Confederate Congress. Keyes followed the practice of continuing United States law in force at the time of secession unless such law had been repealed by Confederate legislation. He often cited United States acts as authority, even relying on current U.S. law where Confederate authority was mute.[21]

After the war, Keyes resumed the practice of law, and accepted the appointment of Governor George S. Houston to produce an updated codification of the laws of Alabama in

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controlled the office during the absence of the last Attorney General, George Davis.

[20] Davis to Keyes, see Dunbar Rowland, ed., *Jefferson Davis Constitutionalist: His Letters, Papers and Speeches*, vol. V (Jackson: Mississippi Department of Archives and History, 1923), 382-383.

[21] Patrick, *The Opinions of the Confederate Attorneys General*. This application of legal principles is consistent with Keyes' earlier writings in *Means vs. McCree, supra* note 8.

1876. Judge Fern M. Wood, who was killed before the completion of the work, and John D. Roquemore assisted Keyes as commis- sioners for the project. Keyes died suddenly on March 2, 1879, at Florence, Alabama, three years after completing his work on the Code.[22] He was buried in the Keyes family plot near Athens, Alabama.[23]

While a biographical sketch can offer only an outline of an individual's life, a more comprehensive understanding of Keyes emerges from reading his words. Keyes' introductory lecture delivered to the class of the Montgomery Law School on March 8, 1860 reveals much about Keyes as a lawyer, scholar, and professor.[24]

[22] For Keyes and the 1876 Code of Alabama, see Haigler, "The First Law Class of the University of Alabama," 370; and *The Code of Alabama, Prepared by Wade Keyes and Fern. M. Wood; and John D. Roquemore, Successor to Fern. M. Wood* (Montgomery: Barrett & Brown, Printers for the State, 1877). Inserted in the Code is a memorial entry for Judge Fern. M. Wood who, as part of the tribute reads, was "by a singular perverseness of fortune, he who was attempting to methodize the laws, fell a victim to the lawlessness he deplored, and the suppression of which was the object of his labor."

[23] Owen, *History of Alabama and Dictionary of Alabama Biography*, III: 974.

[24] Wade Keyes, *Introductory Lecture, Delivered March 1860, Before the Class of the Montgomery Law School, Law Department of the University of Alabama* (Montgomery: Barrett, Wimbish & Co., 1860); Haigler, "The First Law Class of the University of Alabama," 374-376. In a July 2, 1956 issue of the *Montgomery Advertiser*, Judge Walter B. Jones' "Off the Bench" column cites a news entry in the *Daily Post of Montgomery* on April 16, 1860, which describes Keyes' introductory lecture and offers a short personal and political history of Keyes.

## LAW AND THE LIFE OF THE MIND: WADE KEYES' INTRODUCTORY LECTURE

On March 8, 1860, Wade Keyes gave an introductory lecture to his pupils, who no doubt listened with the combination of apprehension and excitement common among law students on their first day of class. The next day, a committee of three young men asked Keyes to publish his lecture, expressing confidence that his words would be "of incalculable value to all, of whatever calling or pursuit."[1] The printing of academic lectures and other public speeches was common in antebellum America; the practice served to advance the prestige of both the speaker and the sponsoring institution.[2] For law teachers, who were typically dependent upon tuition for income, a published lecture was an effective advertisement.[3] By such methods, the leaders of the early law

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[1] Wade Keyes, *Introductory Lecture, Delivered March 1860, Before the Class of the Montgomery Law School, Law Department of the University of Alabama* (Montgomery: Barrett, Wimbish & Co., 1860), [3]. The committee members were J.S. Winter, WM [sic] Weeden, and J. Shackelford; see Thomas M. Owen, *History of Alabama and Dictionary of Alabama Biography* (Chicago: S.J. Clarke Publishing Co., 1921), IV: 1865-66 and IV: 1741.

[2] Benjamin Buford Williams, *A Literary History of Alabama: The Nineteenth Century* (Rutherford, N.J.: Fairleigh Dickinson University Press, 1979), 24; see also Alfred L. Brophy, "The Rule of Law in Antebellum College Literary Addresses: The Case of William Greene," *Cumberland Law Review*, 31 (2000-2001), 231 ff.

[3] For a collection of published law lectures, see W. Hamilton Bryson, *Essays on Legal Education in Nineteenth-Century Virginia* (Buffalo, New York: W.S. Hein, 1998). On the matter of salary, see David J. Langum and Howard P. Walthall, *From Maverick to Mainstream: Cumberland School of Law, 1847-1997* (Athens: University of Georgia Press, 1997), 12, 19-20;

schools hoped to attract pupils who might easily have read law or otherwise taken advantage of the low admissions standards of the time.[4]

It is impossible to say whether Keyes had read the few contemporary works on legal education, the most notable of which was written by Maryland's David Hoffman.[5] Certainly Keyes shared with other legal educators a determination to "offer no hopes to the indolent and the superficial."[6] Rather, citing a string of legal and literary sources ranging from Lord Coke to Lord Byron, Keyes made the case for a systematic regime of patient work, holding out the prospect of legal studies as an exciting journey of self-fulfillment while likening its challenges to the difficulty of maintaining a boat in "a deep, swift, current." Later, switching metaphors, he counseled his students to accept the law as a compelling way of life, warning

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Gwen Y. Wood, *A Unique and Fortuitous Combination: An Administrative History of the University of Georgia School of Law* (Athens: University of Georgia Law School Association, 1998), 6, 13; and Paul M. Pruitt, Jr., "Life and Times of Legal Education in Alabama, 1819-1897: Bar Admissions, Law Schools, and the Profession," *Alabama Law Review*, 49 (1997), 286-288.

[4] Robert Stevens, *Law School: Legal Education in America from the 1850's to the 1980's* (Chapel Hill: University of North Carolina Press, 1983), 20-35; for institutional and curricular changes from mid- to late-nineteenth century, see *ibid*., 35-50. For admissions standards in antebellum Alabama, see Pruitt, "Life and Times of Legal Education," 282-284, 289-290.

[5] The most important work of David Hoffman (1784-1854) was the second edition of his *Course of Legal Study*, 2 volumes (Baltimore: Joseph Neal, 1836). Two English works reprinted for Americans were John Raithby, *The Study and Practice of the Law, Considered in Their Various Relations to Society* (Portland, [Maine]: Thomas B. Waite, 1806); and Samuel Warren, *A Popular and Practical Introduction to Law Studies, and to Every Department of the Legal Profession, Civil, Criminal, and Ecclesiastic*, 2nd edition (New York: D. Appleton and Company, 1846).

[6] Hoffman, *Course of Legal Study*, II: 721; see also Bryson, *Essays on Legal Education*, 49, 159-160, for similar opinions by Henry St. George Tucker (1780-1848) and John White Brockenbrough (1806-1877).

that legal work "must cease to be a task" and "must, as huntsmen say, become a keen pursuit."[7]

Reasoning along the same lines as his English contemporary Henry Sumner Maine, Keyes perceived the law as a body of knowledge subject to evolutionary processes.[8] Stating that the common law first consisted of a few principles suitable for a simple society, he noted that it was gradually expanded by judges and by statutory enactments in order to meet changing needs. He added that legal doctrines have been "enlarged by the introduction of other principles drawn from reason," all of which tended to make the common law "one of the most wonderful productions of the human mind."[9]

Such statements place Keyes in the mainstream of ante-bellum jurisprudence, which regarded law as (in the words of historian William P. LaPiana) a "science of principles."[10] In this view, law is an intellectual discipline based on concepts that have their origin in natural law.[11] In their practical applications, moreover, the ruling doctrines of law were considered to be subject to the types of observation and deduction commonly applied to the phenomena of natural science.[12] To ground his students in the fundamentals of this hybrid science, Keyes promised to acquaint them with the

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[7] Keyes, *Introductory Lecture*, 5-6, 9-11; see also Hoffman, *Course of Legal Study*, II: 773; and Warren, *Popular and Practical Introduction*, 54-69, 92-93, 96, 137-153.

[8] See Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society* (London: John Murray, 1861).

[9] Keyes, *Introductory Lecture*, 11-13. See also Peter Karsten, *Heart versus Head: Judge-Made Law in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1997).

[10] William P. LaPiana, *Logic and Experience: The Origin of Modern American Legal Education* (New York: Oxford University Press, 1994), 29.

[11] Hoffman, *Course of Legal Study*, II: 722.

[12] LaPiana, Logic and Experience, 29-44, 46; see also Stephen A. Siegel, "Joel Bishop's Orthodoxy," *Law and History Review*, 13 (1995), 222, *passim*; and Pruitt, "Life and Times of Legal Education," 282-283.

"ancient learning" which was, he said, the "mathematics and metaphysics of the Law."[13]

By this last remark he almost certainly referred to the works of Sir Edward Coke (1551-1634), author of several classics including the treatise known as *Coke upon Littleton* and an authoritative collection of *Reports*.[14] Yet unlike some contemporary law teachers, Keyes did not spend his first lecture discussing the historical bibliography of law; nor did he mention the most common legal textbook of the day, the *Commentaries on the Laws of England* of Sir William Blackstone (1723-1780).[15] Keyes likewise ignored the common practice of outlining and expounding upon his methods of instruction. Whatever combination of readings, recitations, oral or written examinations and moot courts he may have had in mind, he kept these opening remarks free of pedagogy.[16]

On the important question of legal ethics, however, Keyes was ready to descend to cases. Often derided by laymen, professional ethics was seldom discussed by English or American law writers—though Hoffman's *Course of Legal*

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[13] Keyes, *Introductory Lecture*, 12.

[14] See, for example, Sir Edward Coke, *The First Institutes of the Laws of England, Or, A Commentary Upon Littleton*, 9th edition (London: William Rawlins, 1684); and George Wilson, ed., *The Reports of Sir Edward Coke, Knt., in English, in Thirteen Parts Complete* (London: J. Rivington, 1777).

[15] See Bryson, *Essays on Legal Education*, 45-50, 125, 139-144, for discussions of Blackstone by Henry St. George Tucker (1780-1848) and Lucas Powell Thompson (1797-1866). St. George Tucker (1752-1827) produced a five-volume edition titled *Blackstone's Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government . . . and of the Commonwealth of Virginia* (Philadelphia: Birch & Small, 1803).

[16] For a summary of such methods, set forth by Benjamin F. Porter (1808-1868) during his unsuccessful effort (1845-1846) to found a law school at the University of Alabama, see Pruitt, "Life and Times of Legal Education," 287-288. For similar methods described in 1841 by Virginia's Henry St. George Tucker, see Bryson, *Essays on Legal Education*, 145; for those used in 1847 at Cumberland University by Abraham Caruthers (1803-1862), see Langum and Walthall, *From Maverick to Mainstream*, 24-25. See also Stevens, *Law School*, 21-24.

*Study* contained a fifty-part list of "Resolutions in Regard to Professional Deportment" that Keyes may well have seen.[17] Well aware of the temptations that can beset a young attorney, Hoffman had advised a cautious, firm, mannerly attitude toward clients, col- leagues, and judges, while insisting that a lawyer should be master of his own conscience. He was so unswerving on the latter point that he advised his readers to avoid pleading either the statute of limitations or infancy, or pressing certain types of civil claims that "ought not to be sustained." As to the criminal defense of clients whose guilt seemed certain, Hoffman stated primly that an attorney was not obligated to "impede the course of justice by special resorts to ingenuity."[18]

Like Hoffman, Keyes advised lawyers to cultivate politeness and aspire to virtue. His ideal practitioner was a gentleman "bound by all ties of honesty, honor, and truth"—and inciden- tally, not greedy for fees.[19] On the other hand, he reminded his pupils that the "Carthagenian test of merit was success," and agreed that this standard was a good one. In a curious series of asides—possibly a case of professional elitism triumphing over political discretion—he warned his young men neither to adopt the prejudices of the "unthinking multitude" nor to look to the public for approval; and he illustrated his point with a wry story of the Athenian soldier-orator Phocian, who was notoriously contemptuous of public opinion.[20]

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[17] Hoffman, *Course of Legal Study*, II: 752-775. See also Warren, *Popular and Practical Introduction*, 83-100, for a discourse on the "General Conduct" of lawyers.

[18] Hoffman, *Course of Legal Study*, II, 754-755 [XI-XIV], 755-756 [XV].

[19] Keyes, *Introductory Lecture*, 7; on the subject of fees, see Hoffman, *Course of Legal Studies*, II: 758 [XVIII], 762-763 [XXVII].

[20] Keyes, *Introductory Lecture*, 7, 9 (quoted passage). Yet Keyes reminded his audience that, as clients and fees "must come from the people," the lawyer should "cultivate . . . kindly feelings towards all men" (*ibid*., 8). For a discussion of haughty independent-mindedness in one of Keyes' favorite authors, see William J. Calvert, *Byron: Romantic Paradox* (Chapel Hill: University of North Carolina Press, 1937), 52-56. See Rollin G. Osterweis,

A gentleman-lawyer operating in a rapidly changing world, Keyes understood the volatility of professional reputation, [21] and he knew that lawyers were the objects both of sincere praise and heartfelt condemnation. He was willing to concede that the profession had within its ranks a few villains. Yet he argued that many criticisms of the bar were based on a misunderstanding of the lawyer's role.[22] Keyes' sense of legal ethics was shaped by his experiences in Florida and Alabama, where the hectic "Flush Times" of the 1830s had been followed by financial panic and waves of litigation.[23] During these years, the leaders of the bar might have endorsed Benjamin F. Porter's assertion that the law was a magisterial system that "dispenses reason and justice to the community" by the "calm, but powerful test of legal principle."[24] But in reality, Porter, Keyes, and other lawyers operated on the assumption that the system was adversarial and noble in equal parts.

Thus Keyes had no hesitation in asserting that a lawyer must "present all of the reasons which occur to him" on his

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*Romanticism and Nationalism in the Old South* (reprint of 1949 edition; Baton Rouge: Louisiana State University Press, 1971), 33-34, for comments on the regional popularity of Thomas Carlyle (1795-1881), whose antidemocratic histories and essays included *The French Revolution* (1837) and other works to which Keyes almost certainly had access.

[21] Keyes' lecture embodies the professional contradictions and dilemmas of the post-Jacksonian era. Whatever his personal feelings about genteel behavior and disciplined love of learning, he was a legal entrepreneur, a law teacher who placed advertisements in newspapers. By this latter approach he was helping to bring about a transformation whereby the legal profession was transformed from a "guildlike, ... restrictive" body of lawyers to a more di- verse group whose membership was determined by "objective standards of technical competence"; see Kermit Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), 212.

[22] Keyes, *Introductory Lecture*, 7.

[23] See Joseph Glover Baldwin, *The Flush Times of Alabama and Mississippi: A Series of Sketches* (New York: D. Appleton & Co., 1854), *passim.*

[24] Quoted in Paul M. Pruitt, Jr., "An Antebellum Law Reformer: Passages in the Life of Benjamin F. Porter," *Gulf Coast Historical Review*, 11 (Fall 1995), 27.

client's behalf. Further, he declared that it was not the lawyer's business to decide which side in a suit had the better case—that was a matter for judge and jury. In marked contrast to Hoffman, Keyes told his students that an attorney was "not responsible for the morality of his client," nor yet for "the defects of the law" by which cases are sometimes won.[25] Not surprisingly, Keyes' ethical instructions were well within the standards prescribed by Alabama's 1852 code, which simply admonished lawyers to be truthful (especially to judges), to avoid "offensive personalities" in court, to keep clients' confidences, to refrain from encour- aging litigation or lengthening trials from selfish motives, and to uphold, when possible, the "cause of the defenseless or op- pressed."[26]

Beyond its professional depth and authority, Keyes' lecture is notable for its intellectual breadth. In his references to Scott, Byron, and the ballad-maker John Leyden, and in his explicit comparison of lawyers to cavaliers ready "to aid the fallen and assist the distressed," it is easy to trace the outlines of a creed of chivalry, adventure, and striving—a type of conservative Ro- manticism embraced by many southern intellectuals.[27] Yet if Keyes conformed to regional patterns in some respects, in the larger sense he was essentially a man of letters, enthu- siastically conversant with the works of Classical authors,

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[25] Keyes, *Introductory Lecture*, 7.

[26] *The Code of Alabama, Prepared by John J. Ormond, Arthur P. Bagby, George Goldthwaite, with Head Notes and Index by Henry C. Semple* (Montgomery: Brittan and De Wolf, 1852), 196 (sec. 738). The legal ethics section of the Alabama code was itself patterned after section 511 of New York's 1850 "Field" Code. See *The Code of Civil Procedure of the State of New York, Reported Complete by the Commissioners on Practice and Pleading*, introduction by Michael Weber (reprint of 1850-1865 editions; Union, New Jersey: Lawbook Exchange, 1998), I: 204-205 (sec. 511).

[27] Keyes, *Introductory Lecture*, 8. The source of the quoted passage has not been identified. For southern Romanticism see Clement Eaton, *A History of the Old South*, second edition (New York: MacMillan Company, 1966), 444, and Osterweis, *Romanticism and Nationalism*, 24-40, 431-53, *passim*. See also above, n. 20.

Shakespeare and Milton, a range of eighteenth-century writers including Bolingbroke, Sterne, and Fielding, and such modern poets as Longfellow and Poe. Even on the printed page, he provides a glimpse of the pleasures of what he called the "enkindled mind."[28] By refusing to set rigid boundaries between law and literature, he emerges as a practitioner of what a modern scholar has termed "the arts of cultural and communal life."[29]

If Keyes presented himself as an example of a lawyer-intellectual, both he and his audience knew that his case was not unique. Montgomery was home to a number of scholarly attorneys, including the former university professor Henry W. Hilliard and the celebrated writer Johnson Jones Hooper.[30] Attorneys could command easy access to books of law or litera- ture in the 1850s, as a prosperous agriculturally-based society reached higher levels of cultural maturity than ever

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[28] Keyes, *Introductory Lecture*, 11. See www.eapoe.org/works/editions/taop .htm, for evidence provided by the E.A. Poe Society of Baltimore that Keyes owned a copy of Poe's first collection of poetry, *Tamerlane and Other Poems* (1827). It is interesting that Keyes' literary references fall well within the range of a book-list constructed by the twentieth-century agrarian John Donald Wade; see "The Life and Death of Cousin Lucius," in John Crowe Ransom, *et al*., *I'll Take My Stand: The South and the Agrarian Tradition, by Twelve Southerners* (reprint of 1930 edition; New York: Harper and Row, 1962), 276-277.

[29] See James Boyd White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison, Wisconsin: University of Wisconsin Press, 1985), 28-48. For a study of the impact of classical learning and rhetoric on antebellum southern judges, see William E. Wiethhoff, *A Peculiar Humanism: The Judicial Advocacy of Slavery in High Courts of the Old South, 1820-1850* (Athens: University of Georgia Press, 1996), *passim*.

[30] William Warren Rogers, Jr., *Confederate Home Front: Montgomery During the Civil War* (Tuscaloosa: University of Alabama Press, 1999), 6. Hilliard himself would in 1865 publish a novel, *De Vane: A Story of Plebeians and Patricians*, containing literary references to some of Keyes' favorite authors; see Osterweis, *Romanticism and Nationalism*, 48. See Williams, *Literary History of Alabama*, 69-95, for discussions of Johnson Jones Hooper (1815-1862) and another notable lawyer-author, Joseph Baldwin (1815-1864), both masters of the genre of "Southwestern Humor."

before.[31] Not far from Keyes' classroom was the bookstore of White, Pfister & Company, said to be capable of supplying any "ancient, or very rare work—an English, French, or German classic—or a very *recherché* book of Engravings," as well as books of history, biography, and reference.[32] Armed with good resources and role models, each student could develop his "three-fold nature" of "intellectual, moral, and sensual" life, as Keyes defined it, to the full.[33]

By the conclusion of his talk, Keyes only wished to remind his class that their time together was short. He chose to do so in dramatic and arguably Romantic manner, with the image of an onrushing Present obliterating Past and Future.[34] It is impossible to say whether he foresaw the onrushing crisis that would break up the nation and with it, in a carnival of disruption, his school. For the moment, and since he intended his remarks to be a beginning, he could take refuge in the spirit of *carpe diem*.

[31] Eaton, *History of the Old South*, 442-443; and see Eaton (*ibid*., 446-447 Glover) for references to lawyer litterateurs in South Carolina and Virginia.
[32] Montgomery *Daily Mail*, January 7, 1861; see also Rogers, *Confederate Home Front*, 67, 131. Rogers notes that "Montgomerians could hear lectures, enjoy professional and amateur musicians, and sample a wide variety of other attractions," including the Montgomery Theater (*Confederate Home Front*, 6-7).
[33] Keyes, *Introductory Lecture*, 5-6.
[34] *Ibid*., 13-14. For the rewards and difficulties of labeling ideas, see "Appendix: Romanticism Defined," in Osterweis, *Romanticism and Nationalism in the Old South*, 235-239.

GENTLEMEN:--Before we enter regularly upon the study, which I hope will be alike diligent and pleasant, I desire to say a few words to you by way of introduction. It requires but a short experience in this life to learn the truth of Sir Walter Scott's remark, that "Labor is absolutely *the charter by which we hold existence*; and be it in picking straws or legislating for empires, we must all work or die of *ennui*."[1] The end we labor to attain is not so valuable to us as the laboring to attain it. Happiness, which is the great object of life, is not a freehold, and we cannot, therefore, have seizin of it—it is not a position which we can reach and set ourselves down, or loiter about a lasting elysium. It is not fame, with its echoing plaudits, nor wealth, with its marble halls and high festivities—its houses, and lands, and servants, and glittering equipages; nor is it honor won at the sword knot,

[1] Scott (1771-1832) often expressed this sentiment. See letter quoted in J.G. Lockhart, *Life of Sir Walter Scott, Bart* (Edinburgh: Robert Cadell, 1839), VI: 287; see also W.E.K. Anderson, ed., *The Journal of Sir Walter Scott* (Edinburgh: Canongate Books, 1998), 233, 234.

or by the midnight lamp; nor is it anything for which men strive and toil. As time is a succession of moments, hours, days, and years, so happiness is but a succession of pleasures—intellectual, moral and sensual. Men are, by nature, unequal, and by nature are fitted for different vocations. Whenever circumstances allow a young man to elect, he ought to choose an occupation for which he is fitted, which is life-long, and in which he may most fully exercise and develop his three-fold nature. If you have not mistaken your capacity and your tastes, you have, therefore, chosen wisely and well in taking the profession of the law. It is a science which, as Lord Bolingbroke said, is, "in its nature the noblest and most beneficial to mankind; in its abuse and debasement the most sordid and the most pernicious."[2] It is a profession which taxes to their utmost all the faculties of the

[2] [Henry St. John, Lord Viscount Bolingbroke (1678-1751)], *The Works of Lord Bolingbroke, with a Life, Prepared Expressly for This Edition* (London: Henry G. Bohn, 1844), II: 234. Several editions of this work had been published by 1844, including at least one American edition.

mind, however strong or far-reaching they may be—which furnishes occasion for, or admits the exercise and development of all the moral feelings, and which allows the rational indulgence of our sensual appetites. It is not a profession, however, which in this country yields great wealth; but its successful practice will yield a competency. But do not be avaricious, nor look to gain as the great end of your pursuit; for if you do, you will become money-changers in the temple, and unworthy ministrants at the altars of justice. I do not teach you to despise money; on the contrary, I say take as much as your services are worth, for it will be useful, not only in allowing you to be liberal, but also in the comfortable maintenance of yourself and of those who will doubtless become dependent upon you.

It is, perhaps, a paradoxical coincidence of facts, that there is no class of society against whom exists a stronger prejudice, than against

lawyers; whilst there is no class in which the individuals have more or warmer friends, and none in which they have more ardent admirers. The prejudice against the class arises principally from two causes. The first is, that it sometimes happens that men unworthy of any honorable calling become members of the profession, and bring dishonor upon all. This is an unjust consequence, but it is in accordance with the habit of generalization to which the unthinking multitude is subject—a habit well illustrated by the case of the traveler, mentioned by Sterne, who, upon entering the southern part of France, saw a red-headed woman, and immediately noted in his journal that the women in the south of France are all red-headed.[3] The second cause of the prejudice arises from a misapprehension of the duty of

[3] For a similar passage, see Laurence Sterne, *The Life and Opinions of Tristram Shandy, Gentleman* (Baltimore: Penguin Books, 1967), 508 [Vol. VII, Chapter 41]; American editions include those of 1813, 1816, and 1859. Sterne (1713-1768) wrote several other books, including *A Sentimental Journey Through France and Italy.* American editions of this work include those of 1801, 1810, and 1827.

lawyers. It is his duty to present all the reasons which occur to him in support of his client's cause. It is not his duty to decide whether the arguments for or against his client are the better ones—that is the province of the judge or jury. The lawyer is not responsible for the morality of his client, nor is he responsible for the defects of the law. He is not bound to tell falsehoods in behalf of a client; nor is he bound to do aught inconsistent with his character as a gentleman; on the contrary, he is bound by all the ties of honesty, honor, and truth. The majority, however, of the lookers-on see nothing of the contests within the Bar but attempts to pervert truth and to mislead justice. They believe that even the angry cuts and thrusts, which zeal and rivalry sometimes produce between contending counsel, are but parts of a play, and they are confirmed in the belief when they see kindly feeling and friendly intercourse so soon restored. They cannot understand how it is

that when the occasion, like a summer cloud has passed, that all should so soon be sunshine again.

As to the friendship and admiration which surround the lawyer as an individual, I have to say that it is all deserved. For there is no man more generous-hearted—no one who takes more liberal and more kindly views of life and of his fellow-men—no one more ready to perform the primary duty of the cavalier, “to aid the fallen and assist the distressed,” than the lawyer who is worthy of his profession. There is no class of men more subject to temptations, and none who feel and act more uniformly in obedience to a high and chivalric sense of honor.

And here I may tell you that a lawyer should not look to the public for approbation, nor should he ever be influenced by their prejudices, nor deterred by their disapprobation. One day, it is said, when Phocian, the Athenian, spoke to the people, he was applauded, whereupon he turned

to one of his friends and said: "What have I done amiss?"[4] I do not intend, however, to teach you all that the question implies; but the story may serve to impress you with the truth that you must look to your sense of duty, and not to public sentiment, as a guide in your professional career. And this leads me to say that your client and your fees must come from the people; and you should always, therefore, cultivate your kindly feelings towards all men, not only because it is abstractly a duty, but also because kindly feelings are the foundation of true politeness; and, as the novelist of England says: "There is no policy like politeness; and a good manner is the best thing in the world, either to get one a good name, or to

[4] This story is from Plutarch; but Keyes' wording is not that of standard editions. See John and William Langhorne, *Plutarch's Lives, Translated from the Original Greek* (Philadelphia: James Crissey, 1828), III: 379; A.H. Clough, *Plutarch's Lives: The Translation Called Dryden's* (reprint of 1859 ed.; Boston: Little, Brown, 1876, IV: 338; and *Plutarch's Lives of the Noble Grecians and Romans, Englished by Sir Thomas North Anno 1579, with an Introduction by George Wyndham (London: D. Nutt, 1895-1896),* V: 79.

supply the want of it."[5] But do not imitate anybody. Each one has his idiosyncracy; let each one, therefore, be himself in everything; let him gather what is good here and there and everywhere, but let him assimilate it, and then it will be nourishment and not otherwise.

The Carthagenian test of merit was success, and, as a general rule, the test is still a good one—not, of course, in those cases which depend upon chance, as the single cast of a die, but in the earnest and prolonged contests of life. It sometimes happens that circumstances bear a man, like wings, steadily to fame or fortune; whilst, like evil spirits, they seem to beset the path of another and make Murad, the unlucky, a hero

[5] Keyes almost certainly refers to Henry Fielding (1707-1754), the celebrated lawyer-novelist. For Scott's endorsement of Fielding as a peculiarly English novelist, see *Miscellaneous Prose Works of Sir Walter Scott, Bart* (Edinburgh: Cadell & Co., 1827), III: 89-90. Scott's essay was available in various American editions of Fielding's works, including a two-volume Philadelphia imprint of 1839. For Fielding's discussions of politeness and related topics, see Leslie Stephen, editor, *The Works of Henry Fielding, Esq.* (London: Smith, Elder & Co., 1882), VI: 293-326 ("Essay on Conversation"), 329-353 ("Essay on the Knowledge of the Characters of Men").

of history rather than the sport of an Arabian tale.[6] If, however, you have not mistaken your vocation, and you will do your duty, I may safely predict that soon or late you will attain a success equal to your merit. But you will doubtless find it true of the practice of the law, as well as the study of it, as Lord Byron said of poesy, "nothing is so difficult as a beginning."[7] But though you should occasionally despond, do not despair—"learn to labor and to wait"—remembering that the best trees do not always bear the earliest fruit.[8] One of the best lawyers who ever practiced at this bar told me that the income of his first year's practice was ten dollars, and that he had often wished he had some trade or occupation by which he could earn a comfortable support. But he did his duty to himself, and in after years his office was filled with

[6] See Maria Edgeworth, *Murad the Unlucky: A Tale* (Pittsburgh, Pennsylvania: Cramer and Spear, 1818).
[7] George Gordon, Lord Byron (1788-1824), *Don Juan*, Canto 4, line 1.
[8] Quoted passage is from Henry Wadsworth Longfellow (1807-1882), "A Psalm of Life," line 36.

clients, and so continued until his death. But let us return to the stile; and there I must tell you that a knowledge of the law does not come by nature, as the sagacious Dogberry said of reading and writing;[9] and that though you need not "scorn delights," you must resolve to "live laborious days."[10] It requires life-long, continuous, and oftentimes the most exhausting labor. There is no such thing as perfection, and if there were, and you were to attain it, like a boat in a deep, swift current, it would take strong and steady rowing to hold you to the point. There are indeed some lawyers who seem to believe that the principles of the law will come to them, as it is said some Chinese philosophers thought the members of another *bar* got their pearls, viz: by gaping.[11] But

[9] The reference is to Shakespeare's character; see *Much Ado About Nothing*, Act III, Scene iii, lines 14-16.
[10] John Milton (1608-1674), "Lycidas," line 70.
[11] The belief that pearls are formed when rain-drops fall into open oyster-shells dates to antiquity. E. Cobham Brewer cites a Persian (not Chinese) tale, told by novelist Samuel Richardson (1689-1761); see "Pearl," in *Dictionary of Phrase and Fable* (Philadelphia: Henry Altemus Company, 1898).

you will not adopt their theory, nor take them as your rivals. Hear now what Lord Coke says: “In troth, reading, hearing, conference, meditation, and recordation (i.e. remembrance) are necessary to the knowledge of the common law, because it consisteth upon so many and almost infinite particulars: but an o[r]derly observation in writing is most requisite of them all, for reading without hearing is dark and irksome; and hearing without reading is slippery and uncertain, neither of them truly yield seasonable fruit without conference, nor both of them with conference without meditation and recordation, nor all of them together without due and orderly observation. And yet, he that at length, by these means, shall attain to be learned, when he shall leave them off quite for his gain or his ease, soon shall he, I warrant him, lose a great part of his learning; therefore, I allow not to the student any discontinuance at all, for he shall lose more in a month than he shall

recover in many, so do I commend perseverance to all as to each of these means an inseparable incident."[12] Lord Coke was one of the great masters, and we shall not forget his advice as we work our way along to a knowledge of his profession.

It is certainly true that we cannot attain great excellence in our profession, nor in any other occupation of life, unless our efforts are sustained, and we are ever pressed forward by a steady enthusiasm. It must cease to be a task, and it must, as huntsmen say, become a keen pursuit. You must learn to feel as the antiquarian does as he searches and sifts the dust of long-buried cities for relics of the Past; as did the alchymist of old, as by day and night, through long years, he fed his fires and watched his crucibles. It is said that Leyden's "favorite principle was, that difficulties

[12] See George Wilson, ed., *The Reports of Sir Edward Coke, Knt., in English, in Thirteen Parts Complete* (London: J. Rivington and Sons, 1777), I: [viii] (Preface). Keyes has slightly edited Coke's language.

exist but for the bold and persevering to conquer," and that "fatigue was a feeling which entirely depended on the mind, and over which the mind ought to triumph."[13] But there is a point and a time beyond which muscles and nerves will not bear tension, and within that limit the theory is true. It is not, however, the cold, unlighted mind, but the enkindled mind, the mind which, like the sun, burns and is lighted by its own fires, that gives to the man what was ever the burden of the troubadour's song, patience and perseverance, and that bears and presses him on to excellence and success.

In the early history of the common law, the transactions of the people who lived under it were

[13] The brilliant linguist John Leyden (1775-1811) was a collaborator of Sir Walter Scott. Scott's memoir of his friend, published in 1811 and reprinted in *Poems and Ballads by Dr. John Leyden* (Kelso: J. & J.H. Rutherfurd, 1858), contains similar but not identical language (*ibid*, 19-20, 25, 29), as do passages in the same volume by Robert White and James Morton. The same is true of James Morton's "Memoirs of Dr. Leyden," in *The Poetical Remains of the Late Dr. John Leyden* (London: Longman, Hurst, Rees, Orme, and Brown, 1819), i-xc. See also T.F. Henderson, ed., *Sir Walter Scott's Minstrelry of the Scottish Border* (New York: Charles Scribner's Sons, 1902), I:174, 174-175 n. 2.

few and plain, but as civilization advanced the wants of society became more and more varied and complex, by reason of the natural necessities which it developed, and of the artificial ones which it created. The common law, which seemed at first to consist of a few plain principles, has expanded by judicial application to meet the new, varied, and complex wants of society; it has been modified by statutes and by circumstances, and it has been enlarged by the introduction of other principles drawn from reason and other systems, and it is now, as it long has been, one, at least, of the most wonderful productions of the human mind. I have told you this for the purpose of impressing upon you, that a knowledge of the law as it was is necessary to a thorough knowledge of the law as it is; and for the further purpose of calling to mind that it is easier to go down with a current than it is to go up against it to the fountains.

I would not have you spend years among the fountains, but take one deep drink there and then turn to the rivulets, and you will be able to follow them with firm and unwearying steps.

The ancient learning is the mathematics and metaphysics of the law; it trains the mind to close, subtle, and acute reasoning, strengthens it, and warms it, and lights it with a professional enthusiasm which cannot, at least so readily, be enkindled by the learning of later times.

I know there are many good practitioners in this country, who have not studied the ancient law, but they would have been better and safer counsellors if they had, and they would not, at times, find themselves in difficulties which they cannot understand, and from which nothing but a knowledge of the ancient law can extricate them.

It is a misfortune that in this country we are pressed to the Bar so soon, either by our necessities or by a misguided ambition; for then,

apart from the interruptions of an office, we are too apt to regard ourselves as masters of the Profession, and to abandon the regular and laborious study of its elementary principles.

I wish, therefore, I could impress you with the truth of the figurative language in the preface to one of the Reports, that "assuredly out of the old fields must spring and grow the new corn."[14]

One of the habits, you must acquire whilst you are students, is that of questioning and carefully examining. You must learn to do as did the lawyers in the days of Queen Elizabeth, of whom, it is said, she complained that, whenever she asked them a question, they replied, "We must consult the books;"[15] and yet they were as good

[14] *Reports of Sir Edward Coke*, I: [x] (Preface). Coke borrowed this much-quoted line from Chaucer's *The Parliament of Fowls* (line 22).

[15] Nineteenth-century writers often quoted Elizabeth I without attribution. For an example concerning her assessment of the legal abilities of Francis Bacon (1561-1626), see Thomas Babington Macaulay, *Critical and Historical Essays*, 7th edition (London: Longman, Brown, Green, and Longmans, 1852), II: 300. It may also be worth noting that one of the queen's officials, at her bidding, scolded Justices of the Peace for a series of shortcomings, including the charge that they "plauge [sic] themselves with curious interpretations." See Bertil Johansson, *Law and Lawyers in*

lawyers of their time as we, by the greatest assiduity, can ever be of ours.

In looking around, one of the most obvious truths which strikes us is, that man has but one life to live in this world; and another truth equally as obvious is, that the Present is the time in which that life must be spent. Now, these seem to be but common-place truths, and yet they are two great truths in the philosophy of life. It is in the Present of which the Past is made; it is in the Present that we make and change our habits; in which we resolve, falter, and fail, or resolve, pursue, and achieve; it is in the Present that we gather our sweet or bitter, or proud or grievous memories; in which we enjoy or suffer, and in which our hopes and fears are consummated or destroyed. The Future has no value but because it may become the Present; and the Past no value but because it once has been. These truths are common alike to

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*Elizabethan England, as Evidenced in the Plays of Ben Jonson and Thomas Middleton* (Stockholm: Almquist and Wiksell, 1967), 47.

all men, but they have for that reason none the less of force and individuality. I would not have you take them as abstractions; but take them as one of my first lessons to you as students of law, and wear them as glasses, and use them ever in examining the world without and the world within you. And now, let the motto of our school be your rule of action: *Invade viam et festina lente manibusque pedibus*;[16] and let every failure you make as a student, or in after life, be but an incentive or a step to excellence and success.

[16] Freely translated as "Take the road and hasten slowly."

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