

1835

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Repository Citation

Tucker, N. Beverley, "Professor Beverley Tucker's Valedictory Address to his Class" (1835). *Faculty Publications*. Paper 1358.
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Professor Beverley Tucker's Valedictory Address to his Class.

The following correspondence and address have been sent us for publication, by the members of Professor Tucker's class at William and Mary College. We give place to them with pleasure, and commend the admonitions of the amiable and learned professor to all young gentlemen about to enter upon the practice of the law. The friendly and paternal spirit of his advice, gives an uncommon interest to this production, and shows that his have indeed been "labors of love."

WILLIAMSBURG, 5th July, 1835.

Much Esteemed Friend:—

I am requested, in the name of your class, to solicit you either to have your Valedictory Address published, or deliver it to us for that purpose. I sincerely hope for your compliance; and although our exercises for the present session have ended—although we no longer stand in the relation of students and professor—and notwithstanding we are about to part (some of us) perhaps forever, we *must hope* that the *tie* which has bound us together for the last eight months, instead of *weakening*, will continue to "*grow with our growth and strengthen with our strength*," and that the day is *far* distant when that union shall break. Go where we may, a fond recollection of your past services will be long cherished by us. We know the interest you *have* felt, and still feel in our welfare, and I hope your exertions to promote the interest of those who have been placed under your care, are duly appreciated. You have done *your* duty, and all that has been wanting must be charged to *us*. You have given us a chart by which to steer our political ship, and *should* we succeed in stemming the current of opposition, may *you* live to enjoy our triumph. Permit me now, in conclusion, to tender you our united sentiments of the highest esteem and respect.

WM. T. FRENCH.

WILLIAMSBURG, July 5, 1835.

My Dear French:—

I have great pleasure in complying with the request of my young friends, so far as to hand the lecture to the printer. I am not aware of any merit in it, such as your partiality sees, to justify me in permitting you to incur the expense of publication. But in that partiality and its source, I have more pleasure and more pride than I could have in any composition. Self-love will not permit me to believe that I possess the friendship of those who have been placed under my care without having deserved it. Self-love is "much a liar," but is always believed; and she could hard-

ly tell me a tale more acceptable. To acquit myself faithfully and satisfactorily of the duties of a new and untried station, was the engrossing wish of my heart during the whole course. When I remember the manner in which my class went through their examination, and reflect on the pleasures of our intercourse, the marks of confidence which I continually received, and the affectionate feelings with which we part, I am sure I have not altogether failed. But I should be unjust to you, if I did not say that I am sensible how much your assiduity has done to supply the defects of my instructions.

May God bless and prosper you all, (for I speak to all,) and make your success in life not only honorable to yourselves and me, but to your friends and country. May each of you be a gem added to the bright crown with which the glory of her sons encircles the gray head of the venerable and *kindly* old college. If ever there was a heart in walls of brick and mortar, it is surely there; and cold is he whose heart does not warm to it. In her name, once again I say God bless you.

Yours faithfully,

B. TUCKER.

ADDRESS.

Neither duty nor inclination will permit me to take leave of you, young gentlemen, without offering a few remarks, of general application to the subject of our late studies.

We part, perhaps to meet no more. Some of you go into the active business of life, some to pursue your researches under other guidance. To both alike, my experience may enable me to suggest thoughts, and to offer advice, which may be found of some practical value.

Whether your immediate destination is to the bar or the closet, you will alike find the necessity of continuing your studies. To give them such a direction as may be profitable and honorable to you, is my sole remaining duty.

There are many branches of the law which you will still find time to investigate at leisure. Many years will probably elapse, before you will be called to take the *sole* management of any case involving valuable rights or intricate questions. The land law, and the perplexing minutiae of chancery jurisdiction, will be of this description. When engaged in such cases, you will commonly find yourself associated with older and abler counsel, from whom you will then obtain, at a glance, more insight into these difficult subjects than I have been able to afford. Under such guidance,

you will have opportunities to investigate the law, with an eye to its application to your case. You will then see the practical value of the principles with which you have been made acquainted, and may execute your first tasks in that line, as successfully as if you were already imbued with every thing but that knowledge which nothing but study and practice combined can afford.

But though, in regard to matters of this sort, a general acquaintance with the grand principles of the law is as much as you can be expected to carry to the bar, there are other duties which you must assume, in a complete state of preparation. Let me particularize a few of these.

You will find it then of the utmost importance, to be thoroughly acquainted with the science of pleading. I have not concealed from you that the loose practice of our courts dispenses habitually with many of its rules, and has done much to confuse them all. But they still retain all their truth, all their reasonableness, and much of their authority. The courtesy of the bar will indeed save you from the consequences of any mistake you may make in the outset. But though this may screen your errors from the public eye, they will not escape the animadversion of your brethren. They will be prevented from forming such an estimate of your acquirements, as will lead them to recommend you to their clients, in the hope of obtaining from you valuable aid. It is by such recommendations that young men most frequently gain opportunities to make an advantageous display of talent, and an introduction into that sort of business which is, at once, a source of honor and profit.

It sometimes happens, (though, to the credit of the profession such occurrences are rare,) that a young man, on his first appearance at the bar, encounters adversaries who do not extend to him the forbearance which youth has a right to expect. He is taken at a disadvantage. His want of experience and readiness lays him open to a more practised opponent, who ungenerously strikes a blow by which his client is injured, and he himself is brought into disrepute. To him who is really deficient in capacity or acquirement, such an attack is sometimes fatal. To him who, on a fit occasion can retaliate on his adversary, it is of decisive advantage. Mankind are generally disposed to take sides with the weak and injured party, and to visit with their indignation any ungenerous abuse of accidental advantages. A young man therefore, thus assailed, is sure to have with him the sympathy of the profession and of the public. They look, for a time at least, with interest to his course. They are impatient to see him redress himself; and, until he has done so, all the rules of comity and forbearance which generally regulate the practice, are suspended in his favor. *He* is free to take advantages of his ungenerous assailant, which,

under other circumstances would be denounced as ungentlemanly. And they would be so, because they would be in violation of the covenanted rules of the profession. But between him and his adversary there is no such covenant. A state of war abrogates all treaties. It follows that all the maxims of courtesy which forbid any advantage to be taken of slips in pleading, do not restrain him; and he is free to hold the other up to all the strictness of the law. It is expected he should do so. If he does not, it is concluded that he does not know how. But if he has once carefully studied the science and made himself acquainted with its principles, he stands on strong ground, and sooner or later his triumph is sure. The older and more hackneyed his adversary, the greater his advantage; for it is true in law, as in morals, that evil practice vitiates the understanding. The *habit* of loose pleading unsettles the knowledge of the rules and principles of pleading, and many nice technicalities are totally forgotten. There is not, for example, one old county-court lawyer in a hundred, who remembers that \$100 means nothing in pleading, and that a declaration in which the sum should be no otherwise expressed, would be so bad as to make it doubtful whether even the sovereign panacea of our late Statute of Jeofails would cure it. But though *this* be doubtful, there is no doubt that, on demurrer, it would be fatal. A demurrer then, being filed and submitted *sub silentio*, it is probable that such a defect would escape even the eye of the court. In that case a reversal of the judgment would be sure, and a triumph would be gained that would gratify the profession, and command the admiration of the multitude.

A thousand cases of the same sort might be suggested, where an old practitioner, though on his guard, (as he must be against one whom he has provoked to retaliation,) would, from a mere defect of memory, or the established influence of vicious practice, fall into blunders which would place him at the mercy of an adversary who has his learning more fresh about him. How many, for example, will remember where to stop the defence, in drawing a plea in abatement, or to the jurisdiction of the court? How many ever think of the necessity of entitling their pleadings? How many know how to take advantage of this defect, even when it occurs to them?

But though you should escape the attack of any illiberal practitioner, yet cases will occur, in which the nature of the controversy will require great accuracy in drawing out the pleadings to a precise and well defined issue. In such cases, no disposition to mutual or *self-indulgence* in the bar, can prevent the necessity of pleading correctly. In such cases, opportunities will be offered you of reciprocating the kindness of your seniors, by lending them the aid of your pen, and assisting them

to recall forgotten technicalities. The value of such aids will raise you in their esteem, establish you in their regard, and ensure you their good offices. Out of such circumstances grow alliances which are strength and honor to both parties. A well read young lawyer, associated with one of less learning but more experience, sagacious, vigilant, and versed in human nature and the established though irregular routine of business, is like the lame man mounted on the shoulders of the blind. Their powers are not merely united; they are reciprocally multiplied; they fall together habitually. Their joint success commands confidence and practice, and finally the fruit of all their triumphs enures to the benefit of the survivor.

But there is another point of view in which an intimate knowledge of the rules and principles of pleading is of permanent advantage, notwithstanding all the looseness which our practitioners habitually indulge. It has been well said, that "the record is the lock and key of the law." You will often find that without this interpreter, the ancient books are sealed to you. It is by this alone that you will sometimes be able to discover the point really decided. The concise notes of the old reporters taken for the use of those already familiar with the great principles and leading maxims of the science of pleading, are perfectly unintelligible to the mere sciolist.

It often happens too, that a lawyer undertakes a suit or defence which cannot be sustained, and thus involves his client in unnecessary expense. Such blunders would often be avoided by a ready familiarity with the science of pleading. The attorney has but to ask himself, "how shall I frame the declaration or plea?" and the answer shows him the impossibility of making good his case. He advises accordingly; and, though the advice be at the moment unpalatable, it will be afterwards remembered with gratitude and respect. No reproach is keener or more just, than that of a client who has been decoyed into expensive litigation by the rapacity of the disingenuous, or the blunders of the unskillful. A place among those whose advice may be relied on, is the safest and most honorable at the bar. It cannot be lost without some great error. It gives a lien on posterity. The father hands down to the son a respect for his constant and faithful adviser. Friend communicates it to friend; neighbor to neighbor. The showy qualities which are the gift of nature to others, are neutralized by it. The plain man, destitute of such endowments, becomes the patron, the dispenser of business and benefits to him whose eloquence shakes the court—commands his gratitude, secures his friendship, and, on all admissible occasions, makes this envied talent his own.

There is another subject on which an ever ready preparation is even more indispensable than

on the subject of pleading. I mean that of *evidence*. On this, of necessity, we have touched but lightly. It would be properly, one of the principal subjects of a second course. To stop short between a cursory notice of it and a thorough investigation, such as we have not had time to make, might mislead the student. He might overrate his knowledge if he found himself as well acquainted with that as with other branches of the law; and supposing he had enough, might venture to the bar without acquiring more. But this is a topic of which a superficial knowledge will not do, even at the beginning. It must be understood perfectly; it must be understood distinctly; it must be wrought into the very texture of the mind, and ever present there. The occasions on which this knowledge is wanted, can rarely be anticipated. They start up like fire from the ground, and he whose information is not various, exact and ready, is liable to be disconcerted, embarrassed and disgraced. They often occur in those apparently plain cases, which the partiality of friends sometimes intrusts to the sole management of an untried lawyer. To be baffled, through want of skill in such cases, is to injure those who have sought to serve you. It mortifies and discourages your friends, and what is worse, it disheartens you.

You will be often employed too, to set aside an office judgment, and plead, *pro forma*, in a case admitting of no defence on the merits. In such a case, where nothing is expected, your adversary, however able, may be unprepared through some neglect of his client. Relying on your rawness and want of skill, he may venture to trial. You strike at the gap in his armor with the dexterity of a veteran; he is nonsuited, and your success is the immediate source of honor and emolument. You find yourself gazed at, followed, and employed by those who never saw you before, and who know nothing of you but that, in a plain case, admitting of no meritorious defence, you had just baffled one of the first men at the bar. The consequence is, you are presently engaged in business of more consequence, and if you acquit yourself well in it, your practice is established and your fortune made.

To these two subjects then, of pleading and evidence, I advise you to apply so much attention as to make you feel sure that you understand them thoroughly. Having done this, let them be again revised immediately before you go to the bar, and let them, in all the early stages of your practice, be the constant objects of your attention and study. You can never understand them too well, and your knowledge of the last especially, can never be too ready. It is by ignorance on these topics, that men lose causes they ought to gain. Such defeats are disgraceful and ruinous. When the right of the case is against you, it is your misfor-

tune; but you are never blamed. But to be defeated with law and fact both on your side, is to be weighed in the balance and found wanting.

And here let me say a word of the cases which you lose, because the law is against you. For these there is one short rule. "Though you lose your case, do not lose your temper." It is easy for a young man to argue himself into a conviction of the justice of his client's case; but if you do not make others see it too, you must learn to distrust that conviction. Remember that the argument which has convinced you, without convincing others, came to you through the favorable medium of self-love. A young man who doubts the justice of his first cause just after having argued it, must be either very dull, or very philosophical, or the case must have been utterly desperate. On the other hand, remember that the judge is rarely exposed to any undue bias. He can scarcely ever have a motive to do wrong; and he is a man of tried integrity, practised to resist and overcome the influence of such motives. Then remember that he is old, learned and experienced, selected from among his fellows for his endowments; and thus learn to acquiesce in his decisions with that cheerful complacency which so well becomes a young man, distrustful, as all young men should be, of his own judgment.

Above all things, never stimulate the dissatisfaction of your client. You tell him he is wronged. He believes you. You blame the judge. He divides the blame between the judge and you. Was the judge prejudiced against you? Do not say so, or men will not employ you to practice before him. Was he ignorant? was he dull? was he inattentive? You had the same chance to awaken his attention, to rouse his dulness, to enlighten his ignorance, as your adversary. If you did not succeed, another might, and your client will try another the next time. Let him believe, if he can bring himself to do so, that he only failed because the law was against him, and there is nothing to prevent his trying you again. Better so, than to gratify him for the moment by catering to his evil passions, at the risque of injustice to another, and injury to yourself. Apart too from the injustice, prudence forbids that any blow be struck at men in power, which is not well aimed, and sure to take effect. He that throws up stones, endangers his own head. "He that spits against the wind," said Dr. Franklin, "spits in his own face."

There is another consideration to be regarded here. The profession is a *unit*. Its respectability depends on that of the head. It is an arch, of which the bench is the key-stone. Let them who should uphold it, withdraw their support, and all will fall together. Would you degrade the seat to which you aspire? Would you dim the lustre of that honor, which is to be the brightest reward of a life spent in the labors of your profession?

Hardly more unwise is the youth, who would revoke the prerogatives of age, forgetting that he shall himself be old.

But there is a present advantage in a gentle and complacent acquiescence in the unfavorable decisions of the court. It engages the sympathy, the respect, and good will of all who witness it. Among others it bespeaks the regard of the judge himself. However impartial he may be, this will not be without its value. If he is seen to be your friend, men will employ you, in the *hope* that his friendship may produce a bias in your favor. Your very enemies will serve you, by charging him with partiality, in the hearing of those who may wish to avail themselves of it by engaging your services. Besides, man is but man. We lean to conviction from those we love. Why else is the eloquence of a lovely woman so persuasive? We may man ourselves against prejudice; but the very effort to do so unfixes the attention, and the words of one who is odious to us are lost in air. But the voice of a friend is music to the ear, and sinks into the mind. He is a poor metaphysician who undervalues the influence of the affections on the very sense of hearing.

It is of great importance, in this point of view, that you should not misapprehend the relation between the bar and bench. A young man entering into life, is apt to magnify the consequence and authority of office; and he naturally falls into the belief that the incumbent is disposed to presume upon it, and abuse its powers. There can be no greater mistake than to apply this notion to a judge. The beautiful fiction of Law, by which the members of the profession are considered as brethren, of whom the judge is but the elder, hardly deserves the name of fiction. There is no corps animated by a spirit so truly fraternal, nor is there any member of it to whose comfort this spirit is so essential, as the judge himself. Few men attain to that elevation, without learning that the sanction of judicial authority is opinion. The judge is armed indeed with the process of contempt. But what is its true use? To conciliate the forbearance of others by his forbearance in refraining from the use of it. In this view, it is right that he should have it. But his comfort, his respectability, the very stability of his office are secured, not by the power that he *does*, but that which he does not exercise. Depend on it, among all the brethren of your profession, you will find none to whom your friendship will be so desirable as the judge himself.

Remarks of the same sort may be made with regard to your intercourse with the members of the bar. You will find them for the most part gentlemen and friends, disposed to lead you gently by the hand. Requite their courtesy in kind. If an advantage is taken of you, I have told you how to retaliate. You will have the whole

bar on your side. But such cases are rare. You will probably meet with nothing illiberal. None will crow at you until your spurs are fully grown. No sarcasm will be dealt out against you, unless by a junior like yourself. In such case, in general, pass it by. It will be thought that your self-respect restrains you from affording sport to the by-standers, and you will rise in the respect of others. Men naturally respect those who are seen to respect themselves. You may indeed be sometimes provoked to retort, by attacks which will make a retort necessary and proper. In that case, your previous habit of forbearance will stand your friend. It will dispose others to presume you to be in the right, and to approve your conduct. It will enable you to reflect; to do nothing rashly; to choose your words; to measure the force of your blow; and to strike without laying yourself open. To such rencounters apply the advice of Polonius to his son:

“Beware

Of entrance into quarrel, but being in
Bear it, that the opposer may beware of you.”

If you are compelled to strike, let no second blow be necessary, and you will not soon be called to give another.

I might multiply remarks of this sort without end, and perhaps with little profit to you; for it is too true, “that no man learns wisdom by another’s experience.” I am bound to own that it is not by the practice of these maxims that I have learned their value. But experience has perhaps convinced me of it somewhat sooner, because they were inculcated in my youth, by one whose advice I fear was never justly appreciated until his voice was hushed forever. My suggestions to you may answer the same end. If, when my head lies low, the recollection shall come to your minds accompanied by the feelings it awakens in mine, my labor will not be lost or unrewarded.

But there is one maxim learned in that same school, which no one who expects to thrive by his profession must neglect. The success of a lawyer and his honor as a man depend on his fidelity and punctuality. I need not recommend these to you. But a single auxiliary rule, in the observance of which there is perfect safety, may be of use.

“Whenever you receive money for a client, always consider that specific money as his. Set apart the identical dollars and cents, just as you received them, done up into a parcel labelled with his name, and accompanied by a statement showing the amount received and the balance due after deducting your fees and commissions. Let a counterpart of this statement be drawn up in a book kept for the purpose, and always carried with you; and at the foot of this counterpart, take your client’s receipt.” In this proceeding there is something level to the apprehension, and obvious to the senses of all men. It will engage confi-

dence, and multiply in your hands that sort of business, which, if not the most honorable, is the least laborious, and not the least profitable.

And now, my young friends, we close a relation which has been to me one of the happiest of my life. God grant it may prove equally profitable to you. If it does not, the fault is in me. I have indeed the satisfaction to know that my exertions are appreciated by you, at more than their real value; and that wherever your lots may be cast, you will long remember the months we have spent together with feelings responsive to my own. It has been my endeavor to divest the subject of our studies of its dryness, and to render it, if possible, less unpalatable than you had expected to find it. The task was difficult, but I hope I have not altogether failed. I have felt it my duty too, to lay aside the pedagogue, and to disarm my office of all austerity. In doing this I had but to yield to my natural disposition. The rules of our institution indeed placed me *in loco parentis*. But the relation of an elder brother was more congenial to my feelings. I am happy to believe that it has been so filled, as to establish the sentiments appropriate to it in each of our minds; and that, when the infirmities of age shall overtake me, there is not one of you who would not extend an arm to stay my tottering steps, as there is not one on whose shoulder I would not lean with confidence.

But my method of instruction was not adopted merely because it suited my disposition. I believed it most appropriate to the subject of your studies. It in some measure prepares you to enter in its true spirit into that relation to the heads of your profession, of which I have spoken. You will find few judges to whom the authority of office will not be as irksome as it is to me; and it will be in your choice to establish, between yourselves and your brethren of the bar and bench, the same sentiments which make our separation at once pleasant and painful.

I cannot take leave of you without offering and inviting congratulations on the distinguished harmony which has pervaded every department of our venerable institution. It has been a complete fulfilment of the reciprocal pledges passed at the commencement of the course, “that you should be treated as gentlemen, and that you would so demean yourselves.” How far this desirable end has been promoted by the peculiar character and structure of the society of this place, you are capable of deciding. We must have been unwise, not to avail ourselves of the aids afforded by the moral influence of a circle of gentlemen and ladies, intelligent, refined, polite and hospitable, zealous for the honor and order of the college and the happiness of its professors and students. It is this ever present influence that has enabled us to dispense with the rigor of discipline, elsewhere so necessary. It is this which enables William and

Mary College to preserve its distinctive characteristics. In any other situation they would soon disappear. The city and the college have grown together. They are moulded on each other. Each is a part of each. Each is necessary to the other. You might learn as much, or more, elsewhere; but where else would you leave behind, from what other place would you carry with you so much of those kindly affections, the cultivation of which is not the least important part of education? On these we have determined to stake the usefulness, the permanency, and the prosperity of our institution, and in these we find a reward for our labors, which nothing can take away.

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