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# Fifty Years From Now

*John G. Hervey*

It is a genuine pleasure to be here on this memorable occasion and to rejoice with you in the commemoration of fifty years of glorious history. They have been fraught with impressive accomplishments. Through the years, they have redounded to the benefit of the profession and the community. Indeed, you have built a school and you have achieved an eminence here which is the envy of the entire Southland. If one may judge the future by the past, the accomplishments to date are but a plateau from which the institution will ascend to greater heights of which one has yet to dream. I bring you the hearty congratulations, the sincere greetings, and the best wishes of the entire official family of the American Bar Association.

It seems good to get back down into the Southland. I wasn't fortunate enough to be born in Louisiana but I was born next door — in Texas. Assuredly, my friends, no section of America, indeed, no part of the Western world, has excelled the progress of the South during the past fifty years.

My topic is "Fifty Years From Now." I chose it because of the latitude which it affords and because no one can gainsay, when I have concluded, that I touched on matters which were not germane to my subject. But I would first like to glance backwards for a few minutes. I hope that you won't get lost. We have two rarities in our local courts — one is a lawyer who searches for the precedents all the way back to the Romans and never fails to quote a bit of Latin or Greek in every case he argues; the other is a judge with the patience of Job and a keen sense of humor. The lawyer was in fine mettle one morning not long since. He had cited precedents from time immemorial — had quoted both his Latin and his Greek, with translations supplied. After he had been under way for two hours, he noticed that the judge was inattentive, as they are wont to be. "I beg your pardon, your Honor," he said, "but do you follow me?" His Honor shifted in the chair, lifted an eyebrow, and replied: "I have so far, but frankly I would quit you right now if I thought that I could find my way back."

It was in 1856 that the Supreme Court of the United States held that Dred Scott, a child born of African slave parents, was not and could not become a citizen of the United States. I need not retell the story, of which the end is not yet. It was only a hundred years ago that the same court decided *Wheeling and Belmont Bridge Company v. Pennsylvania*, which first explored adequately the power of the Congress to remove obstructions to the channels of interstate commerce.

The first railway train crossed the Mississippi River in 1856 and thus commenced the industrialization of the entire nation under the impact of the twin forces of steam and steel. Manufacturing passed from small shops to large factories. The home preservation and processing of foods and meats were replaced by canneries and packers. Giant corporations liquidated or swallowed up individual enterprises. Employees became numbers on brass checks. The population grew denser. Big cities, such as Chicago, virtually sprang up overnight. The net results were mergers, pools, and monopolies in both the necessities and luxuries of life — steel, sugar, oil, meat, coal, flour, matches, whiskey, and coffins.

The forces of steam and steel, in the transportation field, worked a transformation of the nation the like of which had never been witnessed. The railroads engaged in ruthless practices — others emulated the example. The giants vied for industries. Special rates, rebates, and drawbacks were granted by the railway companies to all who had sufficient "pull" — geographical territories were allocated. The practices were well presented by Frank Norris in "The Octopus," wherein he depicted the conflict between the wheat ranchers and the octopus railroad corporation, and in "The Pit," which described the distribution of wheat and the struggle of the speculators to control it. The Interstate Commerce Commission, in the report of January 9, 1889, summarized the matter in these words: "No one thing does so much to force out the small operator, and to build up those trusts and monopolies against which the law and public opinion alike beat in vain, as discrimination in freight rates."

Let us now move forward fifty years. President McKinley had been re-elected in 1900. Wall Street slept well. The industrial giants still ran rampant. But all was not well. The *New*

*York World* later observed that: "The United States was probably never nearer a social revolution than it was when Theodore Roosevelt became President on September 6, 1901." Shop-keepers were weary of monopoly producers and monopoly prices. The fraudulent, misbranding of drugs and the adulteration of foods had aroused the consuming public. Ray Stannard Baker wrote, in "Our New Prosperity," published in 1900, that: "We can feed ourselves, we are great and powerful; but we have our own galling Negro problem, our rotten machine politics, our legislative bribery, our municipal corruption, our giant monopolies, our aristocracy of mere riches, any one of which is a rock on which the ship of state, unless skillfully navigated, may go to its destruction. And, then, great as we are in money, and commerce, and power, we have yet our greater fame to make in music, art, literature, science."

The peasant immigrants from the fields of Europe were being thrown inhumanely into the crucible of the coal, steel, and packing industries. Upton Sinclair finished "The Jungle" in 1906. His fellow socialist, Jack London, wrote the book announcement and said: "The book depicts what our country really is, the home of oppression and injustice, a human hell, a jungle of wild beasts."

At your convenience, examine the newspapers and magazines of fifty years ago. They are filled with stories on instalment buying, the growth of divorce, women's suffrage, and new inventions. Grover Cleveland, after he had retired from the presidency, admonished women not to join clubs except for charitable, religious, and intellectual ends. He said that women did not want to vote and that her safest and best club is her home. Said he: "The relative positions to be assumed by man and woman in the working out of our civilization were assigned long ago by a higher intelligence than ours." That shows you how little he knew about women and what a poor prophet he was.

But one more quotation, please, and that from Chauncey Depew. Only a few months prior to 1906 he had told the Transportation Club in New York: "Within ten years the steam locomotive of today will be seen in the museum for the inspection of the antiquarian and we will be able to proceed over the rails by means of electricity at a rate of seventy-five mile per hour."

You will note that the leading national advertisers were not beer, liquors, and cigarettes; rather, they were the manufacturers of patent medicines who sold their products in general stores and every drug store. The advertisements terrorized the readers into believing that they had the very ailments which the "medicines" were calculated to cure. Catarrh was pictured as the bane of society women — Peruna would cure it. There were also Dr. King's New Discovery for Consumption — depicted as "Greatest Discovery of the Nineteenth Century"; Hydrozone pictured as "Positive Preventive of Yellow Fever"; and Dr. Kline's Great Nerve Restorer for those who wanted "Fits Permanently Cured." Many purchased Warner's Safe Cure for Backaches — "It's your kidneys." And of course there were Swamp Root, Groves Chill Tonic, and Wine of Cardui. The patent medicine sales reached a total of \$59,611,355.00 in 1900.

There was adulteration, both of food and liquor. Repeatedly labels were silent or did not speak the truth. Whiskey could be either pure, blended, or rectified — one couldn't be sure absent a government stamp. In 1906 the government would label as pure only five percent of the whiskey produced in the United States. Thus it was that Congressman Stanley of Kentucky on June 23, 1906, said: "I object to a man making any kind of whiskey 'while you wait.' Here is a quart of alcohol. It will eat the intestines out of a coyote. It will make a rabbit spit in a bulldog's face. It is pure alcohol" but the rectifier will put in coloring matter, a little bead oil, and a little essence of Bourbon whiskey "and there is no connoisseur in this House who can tell that hellish concoction from the genuine article."

Theodore Roosevelt was our President fifty years ago. He had succeeded to the presidency in 1901 at the age of forty-three and had been nominated and elected over the opposition of Wall Street. He was criticized, cajoled, advised, and admonished. Roosevelt fought the corruption of politics by "big business" — the influence of Mark Hanna folded and ceased to be. He took credit for the overruling of the *Knight* case of 1895 by the holding in the *Northern Securities* case. He instituted the Department of Commerce and Labor in the presidential cabinet and pushed through the Pure Food and Meat Inspection Act of 1906. He mediated the dispute between Russia and Japan, recognized the Republic of Panama, and made possible the construction of the Panama Canal.

In 1906 Congress passed the Hepburn Railroad Rate Bill. There was an insurrection in Cuba in 1906, American intervention was called for, the Cuban government was dissolved, and William Howard Taft, of Roosevelt's cabinet, established a provisional government. The Board of Education of San Francisco decreed, in 1906, that thereafter all Chinese, Japanese, and Korean children should be instructed in what were to be called the "oriental schools." These children should no longer attend the regular schools. August 1906 witnessed the famous "conspiracy of silence" — with three companies of soldiers discharged from the United States Army *without honor* because of a shooting affray in Brownsville, Texas, following which the guilty men could not be determined individually because of a conspiracy among their comrades to protect them. President Roosevelt discharged without honor all three companies, of which the culprits were members. In 1906 Chinese commissioners visited the United States to study economic and political conditions. And it was in 1906 that the Supreme Court of the United States heard argument in the famous case of *Kansas v. Colorado*, wherein the Court held that the federal government has no inherent powers of sovereignty; that Congress may control the flow of water in interstate streams but has no power to control the flow within the limits of a state except to preserve or improve the navigability of the stream.

Thus the merry-go-round of history. Such was the year in which this institution was founded. But those fifty years have been a significant period in the administration of justice, not only in our nation and in the world, but more particularly in Louisiana. For during those years this institution has served far beyond the call of duty. It has justly earned the admiration, confidence, and respect of those who are best qualified to pass judgment. It has witnessed two global wars. It has survived the dissolution of empires in Europe, the rise and fall of "dictators and would-be-dictators" both at home and abroad — the clash of political and economic ideologies — achievements and defeats in all areas of life. But through it all this institution has ever labored for the improvement of man through the processes of the law and for the promotion of the Kingdom of God on earth. It is an accomplishment to which others could well aspire.

But "What of the Future?" "What About Fifty Years From Now?" I can supply no blueprint. But the very recital of the

events of fifty or a hundred years ago reminds us of the present and teaches the constants and variables of history. The names and the places are different today — otherwise the events read as if they had been lifted from the morning press. And so it may well be in the future — not fifty but even a hundred years from now.

There are three constants of history of which I would remind you. They are particularly apt on a day such as this. The first teaches us that human nature will continue to be what it has been in the past. Human nature fixes the basic patterns of history because it doesn't change. The race will continue to multiply — about double in fifty years. The population of the United States stood at 75,994,575 in 1900 and rose to 150,697,361 in 1950 and was estimated at 165,248,000 on July 1, 1955 — I'm not responsible for the even number. The baby boom which started at the close of World War II continues unabated. The medical profession has lengthened the span of life and we can safely predict a population of 300,000,000 by the year 2000. The same goes for the lawyer population — it stood at 114,703 in 1900 but rose to 241,514 in 1954. And the increase will be needed. Individuals will continue, as in the past, to be careless, criminal, diligent, eccentric, extravagant, generous, greedy, lazy, prejudiced, stupid, and quarrelsome. Recall, if you will, the opposition to the Industrial Revolution in England and reread the statute, enacted during the reign of Queen Victoria, which decreed that all Britishers should be interred in woolen shrouds. The present is ever inextricably tied to the past in that human nature does not change.

It is said that Oliver Herford, the well-known humorist, attended a dinner at which he was seated next to a very serious-minded young lady. "Tell me, Mr. Herford," she asked, "have you no other ambition beyond making people laugh?" Herford replied in the same serious vein: "Yes, I have. And some day I hope to gratify it." Eagerly the young lady asked: "Please tell me. What is it?" And Herford replied simply: "I want to throw an egg into an electric fan." Which is to say that human nature will ever be the same tomorrow as it was yesterday.

The second constant reminds us that there will be changes. Of all the certainties the one most preeminent which history teaches is the certainty of change. One of the things eternal is

change. The Roman Empire fell apart and independent states emerged to supplant it. The feudal system passed into history forever to torment the law student. Kings ceased to rule by divine right. Government became the tool of the masses rather than the plaything of princes and lords. The steamer replaced the sailing vessel; the railroad eliminated the stagecoach; and the "iron horse" now competes with the "flying box-car." Coal replaced wood and coal in turn was replaced with oil which is now threatened by electricity and atomic energy. The author of the recent volume entitled "1999" predicts that by 1970 half of the people gainfully employed will be engaged in the manufacture and distribution of goods not now known. Thus also the law has changed and will continue to change.

The final constant of which I would remind you is that many men will oppose the changes. They will even hire others to oppose them. It has ever been so. There are always those who want to preserve the status quo or to return to the status quo ante. The present state of the Republican party illustrates the point. You will recall that Sir Winston Churchill said on one memorable occasion that he did not become prime minister to preside over the dissolution of the British Empire — that what England had, she expected to keep, that what she had lost she expected to regain. Thus there is the innate yen for "the good ole days."

Nature knows no such thing as arrested growth. It knows only life and death. History teaches us that we also must change or else we too die. When we cease to change we are through. Bruce Barton told a story not long since in the *Wall Street Journal*, which aptly illustrates the point, of the meeting of two investment bankers one Sunday afternoon in 1883 on the banks of the Hudson when the ferry boats were at their height. The bankers watched the boats plying back and forth between the New Jersey and New York shores — some carrying freight, others transporting passengers. They spoke of the financial solidarity of the ferry boat companies and exchanged mutual congratulations on having advised their clients to invest in the securities of those companies — "they are indeed sound investments," said the two. One then observed that he had heard that engineers had dreamed of putting a tunnel under the Hudson River. Both agreed that it could never be done. Then the second remarked that some dreamed of bridging the Hudson as the East

River had been bridged but both agreed that it could never be done. Man was not capable either of bridging over or tunneling under the Hudson. There would ever be the ferry boat companies — their securities would ever be the soundest investments. Which is to say that when men and institutions cease to change, they are through — the lesson of history ever has been either change or die.

Now, quite obviously, change is not necessarily progress. The French statute which increased the size of men's handkerchiefs didn't solve the overproduction of flax in France nor did the decree of the Deputies decreasing the size of the fishing boats cause the markets to be less flooded with fish. Progress lies only in the intelligent application of our knowledge to the problems at hand. Fifty years ago the press joked about the flying-machine. It was in the same class as the "mother-in-law" jibes. In the October 19, 1904, issue of *Puck*, one friend inquired of another: "When will you wing — I believe that is the correct term — your first flight?" The other replied: "Just at soon as I can get the laws of gravitation repealed." Which is to say that the progress in aviation, as in every area of life, was made possible only by the constant, intelligent, vigilant application of what we know to what is here.

Such are three of the invariable constants of history — there are others. But the three I have pointed up run like unbroken threads throughout Western civilization. One may inveigh and declaim against them but they cannot be successfully rebutted or controverted. And yet, there has been one inconstant in history, one variable, which, more than the constants, has determined the happiness or the misery of man. That variable has always been what man has done with his freedom. Study, if you will, the histories of the Greeks, the Romans, the French, and the Anglo-Americans. Note carefully that it has been the freedom of the individual in every age, in every nation, which has made possible the advancements in Western civilization. Some have wrested freedom from monarchs to surrender it to the masses. Some have exercised severe self-discipline and retained it unsullied — others have yielded it up to the state not knowing the price that had been paid. The quality of the freedom of the individual has fixed the moral climate of every age and place. Tell me, if you will, what will have happened to individual freedom fifty years from now and I can tell you the rest of the story.

The constants of the next fifty years will be not unlike those of the past fifty years. But what man does with his freedom will plot the direction of the changes that are to be for happiness or for misery.

Permit me to say, quite candidly and quite sincerely, that what happens to freedom will depend on what we lawyers do more than on any other professional group. And what the lawyers will do will depend upon their social aspirations and their training. As I said on another occasion not unlike this: "The values of the ages and the facts of legal problems meet in the minds of the lawyers. They must make the choice." The choices which the lawyers of the future may make will depend in large measures on the training they have had. The training will perforce depend upon this school and others like it. And the responsibility is greater than the schools and lawyers realize. That is where we come in on a day such as this.