SUPREME COURT OF THE UNITED STATES.

MONDAY, DECEMBER 21, 1942.

Present: THE CHIEF JUSTICE, MR. JUSTICE ROBERTS, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE MURPHY, and MR. JUSTICE JACKSON.

The HONORABLE CALVERT MAGRUDER, United States Circuit Judge, addressed the Court as follows:

May it please the Court:

The members of the Bar of the Supreme Court met earlier this morning to do honor to the memory of Mr. Justice Brandeis. Fitting addresses were made by Judge Learned Hand, Mr. Paul Freund and Senator Norris, after which the meeting voted certain resolutions which I am directed to present to the Court.

"RESOLUTIONS.

"Mr. Justice Brandeis, having retired on February 13, 1939, from regular active service on the bench, died in Washington, D. C., on October 5, 1941, shortly before his eighty-fifth birthday. Thus, in the fullness of time, ended an august career. The members of the Bar have met in the Supreme Court Building on December 21, 1942, to commemorate him as one of the great figures of our profession and of the country's history, to survey his accomplishment, and, in the contemplation of a dedicated life, to fortify our courage and faith in the task of achieving the gracious civilization for which he so mightily strove.

"Louis Dembitz Brandeis was born in Louisville, Ky., on November 13, 1856. His parents, Adolph and Fredericka Dembitz Brandeis, cultivated Bohemian Jews, and his scholarly uncle, Lewis Dembitz, had come to this

country a few years before, in quest of liberty. The son from his early youth was thus imbued with an active devotion to free institutions and to the processes of democracy as a means of enhancing the dignity and releasing the potentialities of the common man. After studying in the public schools of Louisville, he went abroad, and for two years attended the Annen Realschule in Dresden. During this period, there was some suggestion that he prepare for a medical or academic career in Europe, but he held to his resolve to return to America and to study law.

"Without a college degree he entered the Harvard Law School in 1875, at the age of eighteen. His father's fortune having been lost in the panic of 1873, Brandeis earned his way by tutoring fellow students. He made a preëminent scholastic record at the law school. Though not yet of the required age of twenty-one, he was given his LL. B. degree in 1877 by special vote of the Harvard Corporation. His intellectual distinction and prepossessing manner opened to him all gates in Boston and Cambridge. At this time he met Oliver Wendell Holmes. The acquaintanceship was destined to grow into an intimate and tender friendship, through a long period of distinguished service of the two as colleagues on the Supreme Court of the United States.

"After a further year of graduate study in Cambridge, Brandeis was admitted to the bar and practiced for some months in St. Louis, Mo. In 1879 he returned to Boston and entered into partnership with his classmate Samuel D. Warren under the firm name of Warren & Brandeis. Warren retired from practice in 1893, other partners were taken in, and in 1897 the name was changed to Brandeis, Dunbar & Nutter. Brandeis remained in this firm until 1916, when he was appointed to the bench.

"In his early years of practice in Boston, perhaps his major outside interest was in the growth and development of the Harvard Law School. He helped James Bradley Thayer collect materials for his notable course on consti-

tutional law, and procured funds which enabled the School to appoint Holmes to the faculty. In 1882–83 Brandeis taught the course on evidence, but he declined an assistant professorship. In 1886 he was the prime mover in the formation of the Harvard Law School Association, and for many years thereafter he served as its secretary. He rendered valuable assistance, financial and other, in the founding of the Harvard Law Review in 1886–87, the first of the academic periodicals which have become so lively and significant a part of legal education, not only for law students, but also for the bench and bar. His pioneering article on 'The Right to Privacy' (as co-author with his partner Warren) appeared in an early issue of the Review. In recognition of his services, Harvard University awarded him the honorary degree of Master of Arts in 1891.

"Though not in chronological order, it is appropriate at this point to mention another educational interest with which he was much preoccupied in later years. In 1924 he formulated, and in succeeding years gave wise guidance to, a broad-visioned program for the upbuilding of the law school and the general library of the University of Louisville, in the city of his birth. His thesis was that to become great 'a university must express the people whom it serves, and must express the people and the community at their best.' His generous gifts of money constituted the least important part of his contribution. He gave painstaking thought to the educational problems involved, laid the broad foundations, and sketched the lines of sound development. In the pamphlet 'Mr. Justice Brandeis and the University of Louisville,' Bernard Flexner tells the story of this great enterprise, which the Justice initiated and followed through with characteristic idealism, imagination, and scrupulous attention to detail. This project was all of a piece with one of his firmest convictions: that the strength of America lies in diversity, not uniformity; that local cultures and traditions should be preserved and fostered, a sense of local responsibility quickened, local leadership evoked and encouraged.

"By 1890, Brandeis had built up a varied and lucrative practice and had established himself as one of the leaders of the Boston bar. He steadfastly maintained the independent standing of the profession and never hesitated to impress upon his clients the obligations that go with power. It was characteristic of him that, whatever problem he dealt with, his concern went beyond the winning of a victory for his client. With intense concentration he mastered the facts, however intricate; then shrewdly appraised their social significance; and finally, with technical skill, inventiveness, and imagination, and with objective consideration of diverse conflicting interests, he devised the means of long-range adjustment or solution.

"In conscientious performance of his duty as a citizen, he found time more and more to devote his talents, without retainer, to various public causes. Thus he played a major part in the fight to preserve the Boston municipal subway system, in devising and establishing the Boston sliding-scale gas system, and in opposing the New Haven Railroad's monopoly of transportation in New England. His investigation of the abuses and tragic inadequacies of so-called industrial insurance led him to draft and procure the adoption by the Massachusetts Legislature of the savings bank life insurance plan, which, under his watchful guidance, became established on a firm foundation. In these provocative activities, he did not escape the shafts of criticism and personal abuse; notwithstanding this, he calmly held his ground, confident of ultimate vindication. He was sometimes called a crusader, and so he was. But he had qualities too often lacking in the crusader—a sure grasp of concrete fact, a constructive mind and, also, patience. He never tired of urging the steady improvement of society by 'small reforms'—steps forward which were of intrinsic importance, but which did not alter the basic pattern of our institutions, nor overtax the capacities and imagination of men.

"The country is vastly indebted to him for his creative work in the field of labor relations, in dispelling misunder-

standings between management and labor, and in making collective bargaining an effective instrument for industrial peace. He successfully arbitrated or conciliated many labor disputes. In 1910 he was arbiter of a serious strike in the New York City garment trade. Not content with settling the immediate dispute, he devised the famous 'protocol' for the permanent government of labor relations in the industry, with provision for the preferential union shop, for a Joint Board of Sanitary Control, and for a continuing Board of Arbitration composed of representatives of the public as well as of the employers and the union. The procedures thus developed and successfully tested served as a model in other industries. For several years he served as impartial chairman of this board of arbitration.

"Recognizing his grasp of intricate economic problems, the Interstate Commerce Commission engaged him in 1913 as special counsel to develop the facts relevant to the application of the Eastern railroads for permission to put into effect a horizontal 5-percent increase of freight rates.

"In a series of papers and public addresses, he challenged the abuses of financial manipulation, and pointed out the dangers and diminishing efficiency of undue concentration of financial power. These, collected in the book 'Other People's Money,' exemplify extraordinary powers of analysis and lucid exposition, and state forcefully some of the dominant ideas of his life—ideas which, as intellectual working tools of great power, have had profound influence on thinking and on events. They are among the major contributions to American thought of the last half century, and have grown into our culture as the statement and fulfillment of some of its richest and most characteristic themes.

"One of the most significant activities of his career at the bar was his advocacy of the constitutionality of state minimum wage and maximum hour legislation. With in-

telligent utilization of the doctrine of judicial notice, his unconventional type of legal brief went beyond the citation of legal precedent and set forth the social and economic background out of which the need for the legislation arose, together with all relevant scientific material, expert opinion, and experience in other states and lands in dealing with comparable problems. Thus the 'Brandeis brief,' as it came to be called, lifted the issue of due process of law under the Fifth and Fourteenth Amendments out of the realm of the abstract and placed it in its proper setting of contemporary fact.

"In 1914–16 Brandeis was chairman of the Provisional Committee for General Zionist Affairs, and thereafter remained in the forefront of the movement to develop the Jewish National Home in Palestine. In this great creative activity, he saw the fulfillment of a prophetic vision, the building of a haven of refuge against storms of intolerance and oppression, and the opportunity to realize his most cherished ideals of democracy and social justice. In the document known as the Zeeland Memorandum, drafted by him in 1920 as a statement of proposed Zionist policy, there is exhibited in striking fashion his insight, his humanity, his practical idealism, his grasp of detail, his insistence upon sound financial management and efficient organization.

"By appointment of President Wilson, Brandeis took his seat as Associate Justice of the Supreme Court on June 5, 1916. Its fortunate outcome is all that will be remembered of the long and bitter fight over his confirmation by the Senate. Though he was one of the few men who came to the Court without having previously held judicial or other public office, his career at the bar and experience in large affairs constituted a magnificent preparation for the tasks of judicial statecraft. In 528 opinions during twenty-three years of service, he found occasion to deal with all the issues, large and small, which come before the Court—problems of federalism, jurisdiction and venue,

administrative law, patents and copyrights, bankruptcy, finance, public utilities, monopoly and restraint of trade, labor relations, civil rights, and the law of the public domain. The solid stuff of his opinions is set forth to advantage by a simple, straightforward, lucid style, without rhetorical flourish. Noteworthy illustration of his judicial work may be found in his opinions on the economic and constitutional problems of public utility valuation, and in his opinions on the rights of free speech and other civil liberties, in peace and in war, which have won high place among the best of our Anglo-American legal literature. To borrow the words of Chief Justice Hughes, Mr. Justice Brandeis was 'the master of both microscope and telescope. Nothing of importance, however minute, escapes his microscopic examination of every problem, and, through his powerful telescopic lens, his mental vision embraces distant scenes ranging far beyond the familiar worlds of conventional thinking.' How the future will regard his judicial work it is not for us to say, but this much is certain: from our contemporary viewpoint, Mr. Justice Brandeis stands with the half dozen giants of our law, wise, strong, and good.

"In his own person, with the ready coöperation of his wife and children, Mr. Justice Brandeis practiced his austere preachment to others of 'simple living, high thinking, and hard work.' His marriage in 1891 to Alice Goldmark gave him warm intellectual comradeship and a happy home, which sustained and fortified him throughout a long and vigorous career. The serenity of spirit which he achieved, and retained to the last, was the due reward of his dedication of great gifts to great purposes. His personal influence on young people was remarkable; in an age of cynicism and materialism, they learned from him that life had not lost its spiritual meaning. Countless men and women, of all ages and walks of life, came to him as to a sage and counsellor and went away with lifted hearts and a new insight.

"Wherefore, it is

"*Resolved,* That we, the Bar of the Supreme Court of the United States, express our grievous sense of loss upon the death of Mr. Justice Brandeis, that we acknowledge our professional debt to him for his exemplification in word and deed of so lofty a conception of the lawyer's calling, and that we give grateful recognition to the enduring contributions made by him to the enrichment of our national life: It is further

"*Resolved,* That the Chairman of our Committee on Resolutions be directed to present these resolutions to the Court, with the prayer that they be embodied in its permanent records."

That, continued Judge Magruder, concludes the reading of the resolutions. As directed by the Bar, I now move that these resolutions be received by the Court and made a part of its permanent records.

Mr. Attorney General Biddle addressed the Court, as follows:

Mr. Chief Justice and Members of the Court:

We are gathered today to honor the memory of a great American—Louis D. Brandeis. In paying our tribute to that memory, we speak for the Bar and the Bench. Yet we speak too not only as lawyers, gathered to record his extraordinary contribution to the profession in which we have spent our lives, but as Americans, joined now for a moment that we may try to express what he did for our country. It is timely that at this moment we should think of Mr. Justice Brandeis in this broader sense; for those inherent values that he held dear are being desperately defended throughout the world. As we fight today we are redefining among ourselves, and among those with whom we are allied, the meaning and the reality of those values. If this war touches us more deeply than any war, it is to the extent that we feel the essentials of our freedom beyond the sounds of words that we and others have spoken. To

ourselves we must, day by bitter day, rediscover and reaffirm what constitutes our old American faith.

Brandeis spent his life in such a continued reaffirmation. I suggest, Mr. Chief Justice, that here is a very rare and very moving thing to remember; to remember again in the years that will come after this war, terrible years, or years of hope and growth, according as we shape them. Today, again, men are dying for the faith they cherish; Brandeis lived for that same faith, quietly dedicated his life to the service of his country. To be sure, he was too fundamentally simple to think of anything he did as a dedication. But, as much as anyone I have ever known, he was innately selfless. Nor was it the selflessness of a man who held off the world. Brandeis lived intensely in his world—a world where the economic struggle for power, the wretched inequalities between comfort and suffering, the failure of the accepted democratic processes to give scope to the needs of a new industrial era, enlisted his heart as well as his mind.

His preparation for his twenty-three years on this Court thus transcended his wide and varied experience in practice, which had brought him to the front of his profession. But in the practice the same qualities stood forth: there was the battle for cheap insurance, which led to the adoption of the savings banks insurance legislation in Massachusetts; the successful campaign for lower gas rates in Boston; the Ballinger-Pinchot investigation, which resulted in centering public attention on the vital need of immediate and effective conservation programs; his chairmanship of the board of arbitration in the needle trades; his representation of the interests of consumers and workmen in many fields.

Although he was frugal and ascetic, living a life of steady concentration and immense work on the problems before him, his singleness of purpose never limited the friendly sympathy of his nature, or the curiosity of his mind. He was without prejudices, as he was without clichés. The asceticism and his fundamentally moral

outlook gave him, in the eyes of many of his friends, the quality of a saint. Mr. Justice Holmes felt this reverence for his younger associate. "Whenever he left my house," Holmes wrote of him in 1932, "I was likely to say to my wife, 'There goes a really good man . . .' In the moments of discouragement that we all pass through, he always has had the happy word that lifts up one's heart. It came from knowledge, experience, courage, and the high way in which he always has taken life."

Yet, Justice Brandeis had none of the mystic essence which we associate with sainthood. He was practical, realistic, patient, persistent. He brought the mind of a trained social scientist to the analysis of legal opinion and decision, a method which is beautifully illustrated in his brief in support of the Oregon law fixing a ten-hour day for women wage earners. Three pages argue the law; the other ninety-seven diagnose factory conditions and their effect on individual workers and the public health. This approach has had a profound influence on the method of presenting arguments in cases involving social legislation, and, I suggest, on the outlook of courts to social problems. That judges today are more realistic, less given to the assumption of accepted dogmas, more mature and more curious-minded, is largely due to the influences of Brandeis. "What we must do in America," he once said, a few years before he was made a judge, "is not to attack our judges but to educate them. All judges should be made to feel, as many judges already do, that the things needed to protect liberty are radically different from what they were fifty years back . . . In the past the courts have reached their conclusions largely deductively from preconceived notions and precedents. The method I have tried to employ in arguing cases before them has been inductive, reasoning from the facts."

I hesitate to suggest that Brandeis had a philosophy of life, for I do not think of him primarily as a philosopher. Do not philosophers deal with generalities that take shapes of the universal and glitter above and below the

realm of the restless particular? Unlike Mr. Justice Holmes, who, distrustful though he was of the essences, yet felt that the nature of man was to indulge in their formulation, Brandeis, clear in his first principles, was truly empirical in his preoccupations. While Holmes' doubts were philosophic, Brandeis' were scientific. "I have no general philosophy," he said. "All my life I have thought only in connection with the facts that came before me . . . We need, not so much reason, as to see and understand facts and conditions." He believed profoundly that behind every argument is someone's ignorance, and that disputes generally arise from misunderstanding. President Wilson knew this when, after the hearings on the Justice's appointment which had lasted for three months, he wrote Senator Culbertson, the chairman of the Judiciary Committee: "I cannot speak too highly of his impartial, impersonal, orderly, and constructive mind, his rare analytical powers, his deep human sympathy, his profound acquaintance with the historical roots of our institutions . . . his knowledge of economic conditions and the way they bear upon the masses of the people."

Mr. Justice Brandeis' fundamental thought, running through the whole frame and direction of his efforts, was always of man—"Man (to quote Alfred Lief) struggling with oppressive forces in society. Man's right to full development. The infinite possibilities in human creativeness. Man's limitations, too. But especially the breadth of national achievement which can come when energies are released." He voiced this approach many times, never more profoundly than in his testimony before the Commission on Industrial Relations, in 1914, more remarkable for having been delivered extemporaneously. "We must," he told the Committee, "bear in mind all the time that, however much we may desire material improvement and must desire it for the comfort of the individual, the United States is a democracy and that we must have, above all things, men. It is the development of man-

hood to which any industrial and social system should be directed."

That, I believe, was the chief reason why he was so deeply concerned with the growth of huge corporations as presenting a grave danger to American Democracy by what he called "capitalizing free Americans." In his dissenting opinion in *Liggett* v. *Lee,* he spoke of the "widespread belief . . . that by the control which the few have exerted through giant corporations, individual initiative and effort are being paralyzed, creative power impaired, and human happiness lessened; that the true prosperity of our past came not from big business, but through the courage, the energy, and the resourcefulness of small men . . ."

His belief, therefore, in preserving our fundamental rights protected by the Constitution, was no matter of individual preference, however strongly felt; a free climate of thought is indispensable for the development of individual men. "Those who won our independence," he wrote in a concurring opinion in *Whitney* v. *California,* "believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness, and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly, discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government."

He believed in seeking "for betterment within the broad lines of existing institutions," as he once wrote Robert W. Bruère; for progress is necessarily slow, and remedies nec-

essarily tentative. "The development of the individual is," he added, "both a necessary means and the end sought. For our objective is the making of men and women who shall be free, self-respecting members of a democracy—and who shall be worthy of respect . . . The great developer is responsibility."

He believed, never doubting, in democracy. But he knew it to be a serious undertaking which "substitutes self-restraint for external restraint." He knew also that democracy "demands continuous sacrifice by the individual and more exigent obedience to the moral law than any other form of government." Its success may proceed from the individual, and "his development is attained mainly in the process of common living."

And so Brandeis believed that every man in this country should have an actual opportunity, and not only what he termed "a paper opportunity." He was convinced that industrial unrest would not be removed until the worker was given, through some method, a share in the management and responsibility of the business. The social justice for which we are striving was, for him, not the end but a necessary incident of our democracy. The end is the development of the people by self-government in the fullest sense, which involves industrial as well as political democracy.

Thus holding that democracy was based on the theory that men were entitled to the pursuit of life and of happiness, and that equal opportunity advances civilization, he saw the threat to this way of life from the opposing view that one race was superior to the other. Less than a year after the first World War had begun, he expressed this fundamental difference of conception, speaking before the New Century Club in Boston, twenty-seven years ago: "America," he said, "dedicated to liberty and the brotherhood of man, rejected heretofore the arrogant claim that one European race is superior to another. America has believed that each race had something of peculiar value which it could contribute to the attainment of those

high ideals for which it is striving. America has believed that in differentiation, not in uniformity, lies the path of progress. Acting on this belief, it has advanced human happiness and it has prospered."

Today Brandeis takes his place in the moving stream of history as a great American, whose life work brought nearer to fulfillment the essentially American belief in equality of opportunity and individual freedom—the dream that Jefferson, whom Brandeis once referred to as the "first civilized American," had cherished, and Lincoln, sprung from such different roots. Brandeis is in their tradition, the American tradition of those who affirm the integrity of men and women.

THE CHIEF JUSTICE directed that the resolutions be received and spread upon the minutes of the Court.

Response of the CHIEF JUSTICE:

Mr. Attorney General, you are right in speaking of Justice Brandeis as a great American. It is because he was a great American, devoted to the law, using the lawyer's learning with skill, resourcefulness and, above all, with wisdom, that he was a great lawyer and lawgiver. We think of him as a great American because of his abiding faith in the principles of liberty, justice, and equality of opportunity which were proclaimed by those characteristically American documents, the first Virginia Bill of Rights, the Declaration of Independence, and the Constitution. His Americanism contemplated a society in which our continued adherence to those principles of government should, in all the vicissitudes of our history, bring to every man the opportunity to live the good and efficient life.

For him those principles were not concerned alone with the tyrannies of eighteenth century government which gave them birth. They were equally to be taken as

guaranties that the social and economic injustices which attend the development of a dynamic and increasingly complex society should not prevail. In his mind the phrase "law and order" meant more than the suppression of lawless violence by government. It signified a state of society to be achieved by a new and better understanding of social values, and by just laws which should check those social forces that in a changing order tend to withhold from men freedom and equality of opportunity. Only as we are aware of his passion for freedom and justice for all men, and of the means by which he translated it into action through a profound understanding of both the function of law in a changing world and the techniques by which law may be adapted to the needs of a free society, do we gain insight into the true sources of his power and influence as a judge.

Most progress in the law has been won by those who have had the vision to perceive the necessity for bringing under its protection or suitable control the forces which, for good or evil, affect the good order and freedom of society, and who, seeing, have possessed the craftsmanship with which to make the necessary adjustment of old laws to new needs. Progress in the law has never been easy or swift. Apart from the legitimate demand for continuity in a system of law founded on precedent, we have sometimes been slow to perceive those resemblances which call for the extension of old precedents to new facts and events, and those differences of the new from the old which make necessary the qualification of precedent or the development of new doctrine.

Some centuries passed before judges and legislators were persuaded that the law should take notice of fraud or deceit as well as robbery and larceny, and before they recognized that if the law compels men to perform contracts it should equally impose an obligation to repay money procured through fraud or mistake. When Lord Mansfield was engaged in his great work of adapting a feudal common law to the requirements of a commercial

England, his studies of the practices of merchants as a basis for an enlightened expansion of the law were regarded as a daring judicial innovation. The innovation was, in truth, no more and no less than the application of all the resources of the creative mind to the perpetual problem of attuning the law to the world in which it is to function. It was such a mind that Justice Brandeis brought to the service of the country and of this Court, when he took his seat on the Bench in 1916. The twentieth century had already brought to the courts new problems which had been as little envisaged by the law as had been the customs and practices of merchants before Mansfield's day. The demands for the protection of the interests of workingmen and for the creation of new administrative agencies, the growing inequalities in bargaining power of different classes in the community, and the recognized need for repressing monopoly and for regulating public utilities and large aggregations of capital, all called for the adaptation of the principles of the common law and of constitutional interpretation to new subjects, which often bore but a superficial resemblance to those with which lawyers and judges had been traditionally concerned.

These were problems to tax the technical skill and training of lawyers and judges, but their solution demanded also sympathetic understanding of their nature and of the part which the legal traditions of yesterday can appropriately play in securing the ordered society of today. In the long history of the law, few judges have been so richly endowed for such an undertaking as was Justice Brandeis. His career at the Bar had revealed his constant interest in finding ways by which the existing machinery of the law could continue to serve the good order of society, notwithstanding the new stresses to which it was being subjected.

Despite the demands of a busy practice, he had had the inclination and had found the time to give freely of his professional services for the protection of the public from

the abuses of monopoly and the misuse of financial power, from the injury suffered where labor disputes are not adjusted by peaceable means, and from the wrongs inflicted by the misconduct of recreant public officials. In all this, his aims were persistently constructive. Aware that permanent gain in social progress, because of its very nature, must be slow, he was content with small reforms, with few steps at a time and short ones, so long as they were forward. He was convinced that progress would not ultimately be attained by resort to methods which required any surrender of his ideal of freedom and justice for all; that our constitutional system, administered with wisdom and good will, had within it all the potentialities for realization of that ideal without altering the essential character of our institutions. Social conscience and vision, infinite patience, an extraordinary capacity for sustained intellectual effort, and serene confidence that truth revealed will ultimately prevail, were the special gifts of character and personality which he devoted to his judicial service. These are gifts seldom united in any one person, but they would have been inadequate for the task without his insight into the true significance of a system of law which is the product of some 700 years of Anglo-American legal history.

Justice Brandeis knew that throughout the development of the common law the judge's decision of today, which is also the precedent for tomorrow, has drawn its inspiration—and the law itself has derived its vitality and capacity for growth—from the very facts which, in every case, frame the issue for decision. And so, as the first step to decision, he sought complete acquaintance with the facts as the generative source of the law. By exhaustive research to discover the social and economic need and consequences of regulation of wages and hours of labor, of rate-making for public utilities, of the sources and evils of monopoly, and in many another field, he laid the firm foundation of those judicial decisions which for nearly a quarter of a century were to point the way for

the development of law adapted to the industrial civilization of the twentieth century. For what availed it that judges and lawyers knew all the laws in the ancient books, if they were unaware of the significance of the new experience to which those laws were now to be applied? In the facts, quite as much as in the legal principles set down in the lawbooks, he found the materials for the synthesis of judicial decision. In that synthesis the law itself was but the means to a social end—the protection and control of those interests in society which are the special concern of government and hence of law.

This end was to be attained within the limits set by the command of Constitution and statutes, and the restraints of precedent and of doctrines by common consent regarded as binding, through the reasonable accommodation of the law to changing social and economic needs. In such a process the law itself was on trial. The need for its continuity was to be weighed against the pressing demands of new facts, and in the light of the teachings of experience, out of which our legal system has grown. These were the guideposts marking the way to decision for Justice Brandeis, as they had been for other judges. What gave his judicial career its high distinction was his clear recognition that these are boundaries within which the judge has scope for freedom of choice of the rule of law which he is to apply, and that his choice within those limits may rightly depend upon social and economic considerations whose weight may turn the scales of judgment in favor of one rule rather than another.

It is the fate of those who tread unfamiliar paths to be misunderstood. There were many, when Justice Brandeis came to this Court, who had forgotten or never knew, and some perhaps who were not interested in knowing, that this was the judicial process which, throughout the history of the law, has in varying degree served to renew its vitality and to continue its capacity for growth. It was the method of the great judges of the past, who had consciously or unconsciously practiced the creative art by

which familiar legal doctrines have been moulded to the needs of a later day. This is better understood today than it was twenty-five years ago. In the fullness of time we have seen the shafts of criticism which were directed at Brandeis the lawyer and Judge turned harmlessly aside by the general recognition of his integrity of mind and purpose and of his judicial wisdom.

He was emphatic in placing the principles of constitutional decision in a different category from those which are guides to decision in cases where the law may readily be altered by legislative action. He never lost sight of the fact that the Constitution is primarily a great charter of government, and often repeated Marshall's words: "it is *a constitution* we are expounding" "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." Hence, its provisions were to be read not with the narrow literalism of a municipal code or a penal statute, but so that its high purposes should illumine every sentence and phrase of the document and be given effect as a part of a harmonious framework of government. Notwithstanding the doctrine of *stare decisis,* judicial interpretations of the Constitution, since they were beyond legislative correction, could not be taken as the final word. They were open to reconsideration, in the light of new experience and greater knowledge and wisdom. Emphasis of the purposes of the Constitution as a charter of government, and the generality of its restraints under the Due Process Clause, precluded the notion that it had adopted any particular set of social and economic ideas, to the exclusion of others which fair-minded men might hold, however much he might disagree with them. He was the stalwart defender of civil liberty and the rights of minorities. In the specific constitutional guaranties of individual liberty and of freedom of speech and religion, and in the adherence by all who wield the power of government to the principles of the Constitution, he saw the great safeguards of a free and progressive society.

Justice Brandeis revered this Court as an institution which he held to be the indispensable implement for the maintenance of our federal system. He believed that the Court's continued strength and influence depend more than all else upon the thoroughness, integrity and disinterestedness with which its justices do its work. Because of that belief, he withdrew from every other activity; the work of the Court was the absorbing interest of his life. Intelligent and disinterested study and the force of reason at the conference table he held to be the only dependable guaranties of the adequate performance of its great task. Although often in the minority, he never sought or desired any other assurance that the Court would meet its responsibilities.

Justice Brandeis' active judicial service covered a period of twenty-three years, from 1916 to 1939. His opinions, appearing in Volumes 242 to 305 of our reports, cover every phase of the wide range of questions which came before the Court in this transition period. They bear internal evidence of the prodigious labor and painstaking care with which they were prepared. In cases involving the validity of legislation or the application of statute or common law to new fact situations, his opinions, like his briefs at the Bar, give us the results of his extensive researches into the social and economic backgrounds of the questions presented, buttressed by expert opinion and accounts of the experience in other states and countries. His statements of fact and law were simple, direct, orderly, powerful, proceeding to their conclusion with convincing logic. In their discussions of the principles of constitutional government and of civil liberty they rise to heights of dignity and power which place them among the great examples of legal literature. He was never willing to sacrifice clarity to the turn of a phrase, for he wished above all to be understood. For laymen as well as lawyers his opinions are a compendium of the legal aspects of the social and economic phenomena of our times. Together

they constitute one of the most important chapters of the history of this Court.

Apart from the work of the Court, his life was centered in his home and in the intimate associations with family and friends. His substantial means were devoted largely to charity, and by choice his home life was austere in its simplicity. He exercised a unique personal influence over the lives of men and women, young and old, who came to him from every walk of life to seek guidance and inspiration in his counsel. He revived their faith that—in a world troubled by declining standards—right, justice, and truth must remain the guiding principles of human conduct. Despite his great intellectual vigor and activity, his life was singularly placid, unruffled by the misunderstandings or criticism of others, however unmerited. This was the outer manifestation of an inner life, untroubled and serene, because given to great ends, with truth as the ultimate goal.

The time has not yet come to bring into its proper perspective a career so unusual and so far reaching in its influence, but we can appraise now the great service which he rendered by his devotion and loyalty to the Court as an institution and by the scholarship, integrity, and independence with which he performed his judicial labors. We know that because he sat as a judge on this Court the course of constitutional interpretation has been altered and that courts, in the process of adjudication, must henceforth, far more than in the past, look for light beyond the lawbooks to the experience of the world in which we live.

We see him now as one of the influential men of his time—in the words of the Resolution of the Bar, wise, strong, and good—taking his rightful place among that small group of great figures of the law who have given to it new strength, and to us renewed assurance of its adequacy and hence that it will endure.

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