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# "Not Unmindful of the Future": Some Reflections on Stability and Change<sup>\*</sup>

Barry Sullivan<sup>\*\*</sup>

One cannot spend much time on this campus without becoming acutely aware of the great, and justifiable, pride that this community takes in its history and traditions. Among those traditions, of course, is the community's commitment to the highest standards of honor and integrity. That commitment has tangible consequences. Because of it, we are able to live in a pervasive atmosphere of trust. That is good. We live, after all, in a larger world in which it is fashionable to trust no one. And the larger world is poorer for that. This community's commitment to honor is our most obvious and central tradition, but there are other traditions that are important to us, that also define who we are as an academic community. Each of us could easily enumerate some of the most important. There is no question, in any event, but that we draw great strength from our respect for the past and from our commitment to the traditions that have come down to us from other generations. In that case, if I correctly understand how important our traditions and our sense of the past are to us, why did I choose a title that talks about the future, rather than the past? Why did I pick as my title: "Not Unmindful of The Future" Some Reflections on Stability and Change"?

There are several reasons. To start with, the first part of my title — "Not Unmindful of the Future" — is the motto of the University. That reason, of course, encompasses several subreasons. I know that most — and probably all — of you know that this is the motto of the University. I thought that it was important that I tell you, however, in the unlikely event that some of you might not know. More to the point, though, I thought that it was important for you to know that *I know* that these words are the motto of the University. After all, many of you — the third-year students in the

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\* Speech delivered at Opening Convocation, Washington and Lee University, Fall 1994.

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Law School and the fourth-year students in the College and the Commerce School — have been here for two or three years already; and I have been here for only two months. What business have I standing up here? I need all the props I can find. The third subreason, however, is the most important — the fact that the University's motto is a very good motto. Indeed, there are not many mottos like this one around. It is deep and profound; rich and nuanced. There is a lot that could be said about it. We should be grateful to Horace for first uttering these words and to the Lee Family for bequeathing them to us.<sup>1</sup>

But think for a moment about what this motto is saying to us. Think of the situation we are in, and the way in which this motto speaks to us about that situation. Think, for example, of the event in which we are participating this afternoon in this chapel. Think of the times, and the number of times, that this particular kind of ceremony has occurred in this place. Think of the other ceremonies and events that have taken place here. We gather together, after all, in the very place where General Lee and his faculty and students once gathered. To be sure, those teachers and students were different from us in many ways. To start with, they were all men, they were all white, and they probably were all Christians, at least nominally, of the Protestant tradition. But they were like us in the most relevant respect: the business that they had here is our business too. We, like them, are teachers and students. We are here to learn, both for our own benefit and for the benefit of others. We, like them, are here to learn things that have been passed down to us, and to learn things that are new — things that will advance human knowledge and enrich human life.

This place truly is a special place. As we go about our work on this historic campus, and take strength from the traditions of the past, we *cannot help* but be mindful of the past and the claims it makes on us. The University's motto — "not unmindful of the future" — seems to recognize that, and it recognizes it in a very forceful way. In a way, by emphasizing the future, the University's motto seems to take for granted, and properly so, the truth that no one in this place could ever be unmindful of the past. So the motto does not even mention the past. It takes the past — and our recognition of the claims of the past — for granted. Not in a way that minimizes the importance of the past, but in a way that acknowledges its pervasive reality. It takes for granted that the past is on our minds already, and it reminds us that there is more than the past — that there is the future

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1. See Christopher J. Lonsbury, *The W&L Coat of Arms: An Explanation and History*, W&L (Washington and Lee Univ., Lexington, Va.), Winter 1992, at 28, 29

as well. However much we should honor the past, the motto of our University reminds us that it is the future in which we will have to live. That is a powerful exhortation.

I chose these words as the title of my talk because they are the motto of the University, but also, as I hope these remarks have suggested, because these words have something very profound to say to us about the human condition and one of its central problems. Let me try to put this thought in a different way. We struggle constantly, it seems to me, with the respective claims of past, present, and future; and we do so, for the most part, in a way that really is not very helpful. We tend to get caught up with labels, and we tend to become confused by the power of our own rhetoric. Our words often do not facilitate clear thinking. They do not serve their proper function as instruments of our freedom, but act as agents of our imprisonment. When I was in New Orleans for the American Bar Association meeting last month, I had two experiences that brought these issues into focus for me. Let me tell you about them very briefly.

First of all, thanks to my colleague Professor Gwen Handelman, I had the good fortune to attend the annual luncheon of the American Bar Association's Commission on Women. The speaker was Barbara Jordan, one of the first women of color to serve in Congress, one of the most effective members of the House Judiciary Committee during the Watergate crisis, and one of the true leaders of our times. In New Orleans, as always, she gave a speech that was thoughtful, provocative, constructed with care, and delivered with conviction. However, one thing about that speech stuck in my mind. At several points during her talk, Professor Jordan spoke of the social progress that women and people of color have made since she was a student, and she suggested that this progress was due, at least in part, to the commitment of people — like the people in her audience — to change. Because we believed in change — and were committed to change — all this had come about. Hearing that speech, and thinking about those particular words, was one experience I had in New Orleans.

The other experience I had in New Orleans occurred on the same day. I realize, by the way, that people usually come back from New Orleans with far more colorful stories. Let me assure you that I could indeed share stories like that with you. Those kinds of stories would be entertaining, but they would not illustrate my point. The other experience: I happened to overhear a conversation in which someone I did not know was discussing the law school accreditation process with someone else I did not know. The gist of the conversation was that the system was under attack and had to be protected. On the one hand, a group of law deans (those perennial

troublemakers) wanted to tear down the system because it was too intrusive. On the other hand, a group of practitioners (an even more suspect group) wanted to tear down the system because it was not intrusive enough. The gist of what these two people were saying was that the stability of the system — the status quo — had to be protected. What these two people were saying was somehow connected, in my own mind at least, to what Professor Jordan had said. I found myself reflecting on that connection, and I would like to share those reflections with you.

In neither instance, you will notice, was the speaker explicitly articulating a position in terms of any particular substance or values. Barbara Jordan spoke approvingly of change; the defenders of the law school accreditation system spoke in terms of preservation — of the need for stability. Now, I do not want to carry this too far. By talking about "change," Barbara Jordan was obviously talking about some particular historical developments in our public life which she — and we — would think felicitous. The same might well apply to the defenders of the law school accreditation system; it may be that they were not just defenders of the status quo, but of a particular set of values which the status quo embodies. In both cases, "change" and "stability" might simply have been shorthand for a particular and nicely calibrated set of views about substantive issues. In one sense, I know they were just that — shorthand expressions for a position. In another sense, however, I know that they were more than that. I know that is the case because those words are used every day, in our public and private discourses, in a way that is meant to do more than simply serve as shorthand expressions for thoughtful and carefully-developed positions. They are a way to avoid (perhaps limit is a better word) thinking — or talking — about the specifics of nitty-gritty issues. A way to cut off conversation about particulars; a means for shifting the focus of the conversation to a higher level of generality. They are terms that are used like a blank check — they sign me up as a partisan, as a categorical and uncritical supporter of some more general cause.

Change and stability. Both are powerful rhetorical devices that strike responsive chords deep within us. They tell us that we must make a choice, and the choice is a simple one. It is always black and white, with no shades of grey. They allow us to paint ourselves with an heroic brush. Either we are apostles of change or unstinting defenders of the traditional ways of doing things. These kinds of words can have a strong emotional effect on us. Think, for example, of Robert Kennedy's powerful paraphrase of Bernard Shaw: "Some men see things as they are and say, 'Why?' I dream

things that never were and say, 'Why not?'"<sup>2</sup> Or of W.B. Yeats's plaintive line: "I am worn out with dreams,"<sup>3</sup> and of his admonition in "Under Ben Bulben":

Cast your mind on other days  
That we in coming days may be  
Still the indomitable Irishry<sup>4</sup>

Change and stability These are words capable of suspending the usual operation of our analytical powers. These are strong slogans. They overpower us. The label is enough. "I'm for change, of course," or "I'm for traditional values." This way of looking at things is very seductive. It is reassuring to think that we can look at the world one way or the other, in black and white with no shades of grey, and make the most important choices based on that.

I do not wish to be misunderstood. I do not mean to suggest that the exhortations of Barbara Jordan, or Robert Kennedy, or Bernard Shaw, or William Butler Yeats have no content, still less that they seek to manipulate us. All that I mean to say is that this kind of rhetoric has a certain effect on us, and that that effect is not entirely good. My point, and I hope it is clear by now, is that life is more complicated than that. There are not, I think, very many questions that can be answered, at least not very profitably, by picking the right watchword. Our relationship to change and stability is more ambiguous than that; the world and its problems are more ambiguous. And, I might add, the past and the future are themselves more ambiguous than that.

To be sure, some of us, by temperament or because of metaphysical reflection, tend to view stability as more important than change; others will generally prefer change to stability. Some are inclined to see the world through Burke's eyes; others through Rousseau's. Some of us have great faith in theory and in synoptic solutions; others think that truth is more likely to evolve, little by little. Some of us are devoted to codification in the law; others to the common law tradition. In a sense, these are biases or predilections that any of us who has thought seriously about these things is likely to have developed. What I want to suggest is that they are like other

2. JULES WITCOVER, *85 DAYS: THE LAST CAMPAIGN OF ROBERT KENNEDY* 161 (1988); see also BERNARD SHAW, *BACK TO METHUSALEH* (1921).

3. W. B. YEATS, *Men Improve with the Years*, in *THE COLLECTED POEMS OF W. B. YEATS* 134 (1956).

4. W. B. YEATS, *Under Ben Bulben*, in *THE COLLECTED POEMS OF W. B. YEATS*, *supra* note 3, at 343.

biases and predilections; once we are conscious of them, as Aristotle suggested, we need to try and compensate for them.<sup>5</sup> We must try and get past the labels and dig into the nitty-gritty<sup>6</sup>

That, perhaps, is my main message. But let me go back again to the University's motto — which categorically points to the need for one kind of correction — and suggest some basis for believing that most of us probably should be thinking about the need for that kind of correction most of the time. That is, that most of us, in our daily lives, tend to err on the side of preferring stability, of wanting to keep things pretty much as they are. And we tend to imagine that the way things are now is the way that they always have been.<sup>7</sup> That in itself is an important point. In any event, we tend naturally to be mindful of the past, if only of a highly constructed and selected version of the past.

Let me explore that a bit. In one sense, we welcome change. There is a tremendous attraction to new beginnings — to the promise of starting fresh when we've run out of track, or when we've had back luck, or when we've made a muck of things. But most of the time, I think, if we are reasonably comfortable, we have a natural aversion to change. The devil we know is better than the devil we do not know. Indeed, I would guess that most of us,

5. See, e.g., ARISTOTLE, NICOMACHEAN ETHICS, Bk. 2, § 1107a (Martin Ostwald ed., 1962) ("We may thus conclude that virtue or excellence is a characteristic involving choice, and that it consists in observing the mean relative to us, a mean which is defined by a rational principle, such as a man of practical wisdom would use to determine it. It is the mean by reference to two vices: the one of excess and the other of deficiency").

6. See, e.g., NORMAN MALCOLM, LUDWIG WITTGENSTEIN: A MEMOIR 39 (1962) (quoting letter from Wittgenstein to Malcolm) ("I then thought: what is the use of studying philosophy if all that it does for you is to enable you to talk with some plausibility about abstruse questions of logic, etc., & if it does not improve your thinking about the important questions of everyday life, if it does not make you more conscientious than any journalist in the use of the *dangerous* phrases such people use for their own ends.") (emphasis in original); see also Barry Sullivan, *AIDS, Law, Public Policy, and the Work of the American Bar Association*, 21 U. TOL. L. REV. 1 (1989).

7. See, e.g., RALPH LERNER, THE THINKING REVOLUTIONARY: PRINCIPLE AND PRACTICE IN THE NEW REPUBLIC 31 (1987) ("The distant observer needs all the help available for orientation in unfamiliar terrain — and by and large it *is* unfamiliar terrain. Or to put it more cautiously, it is a safer presumption to treat the past, including our national past, as different or as possibly even strange. In doing so we reduce the likelihood of our unwittingly smoothing away or overlooking whatever might be distinctive in that earlier period. By preserving some sense of possible alienness, we leave ourselves open to being surprised and even to learning something. Then, should we indeed find ourselves in alien territory, all the more certainly will we stand in need of any available farsighted guide.") (emphasis in original).

most of the time, are not very receptive to change. Once we have learned to do something, we have an investment in that knowledge. We are not terribly open to learning new ways to do things we already know how to do. That is true in matters large and small, trivial and significant. We are creatures of habit. In addition, we sometimes have a fear of change because it represents the unknown; and the unknown, by definition, is uncontrollable. Change makes us uncomfortable for another reason as well — it reminds us of our own mortality. The ultimate change for us, of course, is death, and death is always with us. The *Book of Common Prayer* reminds us that "In the midst of life we are in death." <sup>8</sup> And Yeats speaks, in "Sailing to Byzantium," of

— Those dying generations — at their song,  
The salmon-falls, the mackerel-crowded seas,  
Fish, flesh, or fowl, commend all summer long  
Whatever is begotten, born, and dies.<sup>9</sup>

If only we could stay the same. If only we could break out of that natural cycle or at least slow it down. If only we could insulate ourselves from change. When you think about it, that has a powerful emotional pull. It is not the past, but the present that we want. We want to live as we are. We would prefer not to change; but that is not a possibility

Some of you no doubt remember the children's book *Tuck Everlasting*,<sup>10</sup> in which the Tuck family tried to protect people against the spring of everlasting life because they knew from their own experience that living forever in this world means never growing. And in this world, as Cardinal Newman said, "Growth [is] the only evidence of life."<sup>11</sup>

8. *The Order for the Burial of the Dead: Prayer at the Grave*, in *BOOK OF COMMON PRAYER AND ADMINISTRATION OF THE SACRAMENTS AND OTHER RITES AND CEREMONIES OF THE CHURCH ACCORDING TO THE USE OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA* 332 (1945).

9. W. B. YEATS, *Sailing to Byzantium*, in *THE COLLECTED POEMS OF W. B. YEATS*, *supra* note 3, at 191.

10. NATALIE BABBITT, *TUCK EVERLASTING* (1975).

11. JOHN H. NEWMAN, *APOLOGIA PRO VITA SUA* 19 (Martin J. Svaglig ed., 1967); *see also* JOHN H. NEWMAN, *AN ESSAY ON THE DEVELOPMENT OF CHRISTIAN DOCTRINE* 40 (1900) ("It is indeed sometimes said that the stream is clearest near the spring. Whatever use may fairly be made of this image, it does not apply to the history of a philosophy or belief, which on the contrary is more equable, and purer, and stronger, when its bed has become deep, and broad, and full. Its beginnings are no measure of its capabilities, nor of its scope. At first no one knows what it is or what it is worth. It remains perhaps for a time quiescent; it tries, as it were, its limbs, and proves the ground under it, and feels its way. In time it



Think, for example, of General Lee in the days and years that came after Appomattox. He continued to steer his course by principles to which he had long adhered, but he also recognized the need for change. He certainly was not unmindful of the future. He rejected outright the possibility of rearguard actions; he knew that the war was over and that was that. It would be necessary, as Lincoln said in the Second Inaugural, to bind up the nation's wounds,<sup>12</sup> and General Lee believed that it was his duty to play a constructive role in that process. So he accepted the authority of the federal government; he worked for peace; he came here and made revolutionary changes in what he found here, becoming one of the central figures in the modernization of American collegiate education. He did not accept the then-prevailing traditions of American education, but sought new principles for new circumstances.<sup>13</sup> Among other things, he gave us an honor system that has an explicitly organic quality. In short, the tradition with which he left us is a living tradition — one that allows us to deal with the past in critical terms, to appreciate that the past encompassed both good and bad, to distinguish between the two, and to seek without apology to preserve that which is good.

Think, as well, of the white Southern judges who were put on the firing line following the decision in *Brown v Board of Education*<sup>14</sup> — judges like John Brown, Frank Johnson, Robert Merhige, Richard Rives, Bryan Simpson, Elbert Tuttle, John Minor Wisdom — who sat where you are sitting exactly 70 years ago — and Skelly Wright.<sup>15</sup> They, too, rejected the possibility of rearguard actions. They were vilified and put countless times

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enters upon strange territory; points of controversy alter their bearing; parties rise and fall around it; dangers and hopes appear in new relations; and old principles reappear under new forms. It changes with them in order to remain the same. In a higher world it is otherwise, but here below to live is to change, and to be perfect is to have changed often.").

12. Abraham Lincoln, *Second Inaugural Address*, in ABRAHAM LINCOLN, SPEECHES AND WRITINGS 1859-1865: SPEECHES, LETTERS, AND MISCELLANEOUS WRITINGS, PRESIDENTIAL MESSAGES AND PROCLAMATIONS 687 (Lib. Am. ed. 1989).

13. See OLLINGER CRENSHAW, GENERAL LEE'S COLLEGE: THE RISE AND GROWTH OF WASHINGTON AND LEE UNIVERSITY 145-74 (1969). See generally CHARLES B. FLOOD, LEE: THE LAST YEARS (1981).

14. 347 U.S. 483 (1954); see also RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1976).

15. See generally JACK BASS, UNLIKELY HEROES (1981); FRANK T. READ & LUCY S. MCGOUGH, LET THEM BE JUDGED: THE JUDICIAL INTEGRATION OF THE DEEP SOUTH (1978); Barry Sullivan, *The Honest Muse: Judge Wisdom and the Uses of History*, 60 TUL. L. REV 314 (1985); Barry Sullivan, *Book Review*, 35 SW L.J. 1111 (1982) (reviewing JACK BASS, UNLIKELY HEROES (1981)).

to the test. Sometimes they were threatened with physical harm, and so too were their families. It was not just their moral courage that they were required to prove. But they too thought that they had a constructive role to play, and, like General Lee, they had the courage to try and play those parts. We owe where we are as a society today to people like them. We would be much worse off if it were not for them.

But why did General Lee act as he did, and why did those federal judges act as they did? Why was it that others did not? Those are good questions, and they deserve a more sustained answer than I can give right now. But I will hazard a guess, namely, that they all had confidence in their ability to take strength from the traditions of the past, without becoming blind to the faults and shortcomings of the past. In addition, they had the courage and the imagination to conceive of a world that would be organized along new lines — conserving what was good from the past, and yet dealing effectively with the challenges of the future.

My point, in truth, is perhaps too simple to be worth stating. For us, as for General Lee and those Southern judges, we will have no choice to make if we conceive of our choices purely in terms of black and white, in terms of slogans and labels. We cannot choose between change and stability. We cannot be partisans of one or the other. Both are necessary; both are indispensable. Human society could not survive, the Polish philosopher Leszek Kolakowski reminds us, "without the constant tension between structure and development."<sup>16</sup> "This tension," Kolakowski tells us, "is proper to life; its dissolution would result in death, either by stagnation (if only conservative forces remained) or by explosion (if only the forces of transformation remained, in a structural void)."<sup>17</sup>

Perhaps this sounds a bit abstract, but I hope by now it does not. I hope that I have made my point clear. I know that you are not yourselves unmindful of the future. In a matter of months, many of you will leave this historic place to take up a myriad of new responsibilities as educated members of our society. You will take with you, I hope, not only that living tradition of honor which defines this community, but also a sense of commitment to playing a role in the public life of our nation and the world.

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16. LESZEK KOLAKOWSKI, *The Revenge of The Sacred in Secular Culture*, in LESZEK KOLAKOWSKI, *MODERNITY ON ENDLESS TRIAL* 70 (1990).

17 *Id.*, see also *id.* at 72 ("[I]t is a conditional conservative spirit, conscious not only of its own necessity but also of the necessity of the spirit that opposes it. As a result, it can see that the tension between rigidity and structure and the forces of change, between tradition and criticism, is a condition of human life — a thing its enemies are seldom prepared to admit.").

It was not only honor, after all, that General Lee emphasized, but duty as well, and it is our duty, in our time, to look outward beyond ourselves to the problems that others face.

But the problems that our society faces — and those that you will help us to solve — are not problems that can be solved by saying that you vote for change or stand for tradition. The real challenge for the leaders of our society — and by that I mean to include all of you — lies in having the wisdom to distinguish between what needs to be conserved and what needs to be changed, having the confidence to listen to the views of others, and having the courage to act. I wish you luck in your studies this year and in the greater challenges that lie ahead.