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Memorial Dedication to Justice William J. Brennan, Jr.

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Loyola Law School has done a great service by celebrating Justice Brennan's public spirit, as reflected in his commencement speech to the graduating class of 1986. It is a privilege and joy to witness the Justice's passionate commitment to creating a just and free social order through law. Whether directly through eloquent exhortations to law school graduates, as here,¹ or indirectly through his constitutional jurisprudence, Justice Brennan relentlessly impressed upon lawyers the importance of promoting public values in one's professional life. But the central lesson Justice Brennan's legacy can teach young lawyers, indeed all young persons, was left unexpressed in his speech—though it was very evident in the way he lived. The lesson: a strong commitment to social justice necessarily begins at home, with a basic respect for one's fellow travelers through life.

Justice Brennan's commencement speech outlines his true vision of the role of lawyers—and hence of law—in American society. As he aptly notes, despite great strides in previous decades, both old and new forms of inequity and injustice continue to mar our national promise. Our collective duty is clear:

Society's overriding concern today is with providing freedom and equality of rights and opportunities[,] in a realistic and not merely formal sense, to all the people of this Nation: justice, equal and practical, to the poor, to the members of minority groups, to the criminally accused, to the displaced persons of the technological revolution, to alienated youth, to the urban masses, to the unrepresented consumers—to all, in short, who do not partake of the abundance of American life.²

And it is lawyers and judges who are trained and empowered to rise to this challenge, which is truly “the primary mission of the profes-

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1. See Justice William J. Brennan, Jr., *Commencement Address Delivered to Loyola Law School Class of 1986*, in 31 *LOY. L.A. L. REV.* 725.

2. *Id.* at 725.

sion.”³

Justice Brennan certainly rose to this challenge in his own way, by shaping the content of public law through thirty-four years of constitutional jurisprudence. In opinion after opinion, Brennan aspired to inscribe into doctrine the fundamental value choices he saw reflected in the Constitution he revered, as appraised through the lens of contemporary society and its pressing needs. And the Justice's jurisprudence was driven by his fervent belief in law's capacity to make a real difference in people's lives, not by a commitment to abstract legal principles. I recall that sometime during my clerkship, a nationally renowned scholar sent the Justice a law review article purporting to explain how the Justice's First Amendment jurisprudence flowed from his commitment to Alexis de Tocqueville's vision of American democracy. Justice Brennan read the article carefully and praised it highly for its insight and craft. But, he noted to me with a wry smile, there was an obvious difficulty with the thesis: he had never read de Tocqueville! To be sure, this protest sounded apocryphal, and the twinkle in Brennan's eye seemed to belie his claim. But the intended message was clear: Brennan's jurisprudence was not derived through top-down deduction from abstract postulates, no matter how embedded in constitutional discourse.

Rather, Justice Brennan's jurisprudence was driven by his recognition of the real plight of real people touched by the law. Of course, text and precedent frequently presented constraining influences, and the Justice would appropriately give them their due. Yet his heartfelt passion for the fundamental values embedded within the Constitution and the individuals those values purport to serve was never left unexpressed in chambers and, one can easily surmise, was never very deep beneath the doctrine that flowed from his pen. Indeed, as he put it himself in his pithy public statement upon retiring from judicial service: "It is my hope that the Court during my years of service has built a legacy of interpreting the Constitution and federal laws to make them responsive to the needs of the people whom they were intended to benefit and protect."⁴ It is hardly surprising, then, that Justice Brennan's most oft-recalled opinions appeal to our most enduring and cherished values, rather than formalisms and abstractions. As in his commencement address here, he often used his

3. *Id.* at 725.

4. Statement of Justice William Brennan, Jr., Supreme Court of the United States (July 20, 1990) (copy on file with *Loyola of Los Angeles Law Review*).

public office to speak eloquently of the plight of the downtrodden and outcast, the scourge of bigotry, the vulnerabilities of the accused, and the precious need for individual autonomy and freedom of expression in a just social order.

Thus, Justice Brennan harmonized a fidelity to law with a commitment to do right. Indeed, for him the two aspirations were inseparable: without the second, the first lacked direction; without the first, the second lacked structure. Lawyers dedicated to championing the public interest would do well to emulate Justice Brennan's attitude toward jurisprudence. Successful and well-intentioned law reform efforts must be informed, not just by abstract principles, but also by the complex relationship between the needs of the public and the operational and inspirational effects of legal doctrine.

But young lawyers can and should learn more from Brennan's example than to mimic his professional commitment to public service and values. This commitment flowed naturally from his inner devotion to the analogous private values: love and respect for his fellow humans. The more fundamental lesson of Brennan's career is that public service extends from personal caring.

Justice Brennan treated all human beings, both near and far, friend and foe, with the utmost care, dignity, and respect. Despite his sometimes vehement disagreement with his colleagues on the Court, Justice Brennan always listened with interest and respect to their views and treated them with due regard for their intellect and vision. Indeed, it is quite remarkable how Justice Brennan maintained cordial relations and sometimes even close friendships with those who opposed his heartfelt commitments. Moreover, Justice Brennan was legendary for his ability to remember the small details of the lives of Court employees, always asking after their latest child or recent vacation when passing them in the elevator or halls. The Justice also embraced his law clerks as part of his extended family. While he certainly cared how we were coming along with the work he delegated to us, he cared even more about our health and happiness. (Of course, above all else he cared about our birthdays, which gave him an all-too-rare opportunity to indulge his sweet-tooth against his wife's orders.) Finally, the Justice went to great effort to respond to each of the thousands of letters that poured in every Term, whether they expressed supportive or angry sentiments. By writing such letters, the Justice believed, members of the public were participating in a small, but important way in a constructive democratic dialogue—and their effort deserved his acknowledgement and applause. In all of these

ways, Justice Brennan's approach to people of all stations simultaneously revealed and celebrated the fundamental interconnectedness of us all, a theme that properly informs all law reform efforts to improve human society.

The true depth of Justice Brennan's respect for others was most clearly revealed to me on the day he retired from the bench at the very end of my clerkship. Justice Brennan was scheduled to meet with his new set of four clerks on the morning of July 23, 1990. These clerks, of course, had been waiting with indescribable anticipation for their first meeting with the Justice. On the previous Friday, July 20, however, Justice Brennan came into chambers with a heavy heart. He had just returned from a long trip during which he had suffered the ill effects of a minor stroke. After a series of consultations with his doctors, he was forced reluctantly to make what was undoubtedly his most difficult decision of thirty-four years: to retire from the Court. He came into chambers that Friday morning to compose his resignation letter to the President, along with an explanatory note to his colleagues. Somewhat surprisingly, he insisted on post-dating his letters for Monday the 23rd. Why didn't he just announce his retirement, effective immediately? Because he was fiercely committed to meeting with his new clerks and breaking the bad news to them personally, rather than having them learn of it through the Friday evening media just as they celebrated their new beginning! As events unfolded, an unfortunate leak through another chambers allowed the media to catch wind of his decision early Friday afternoon. As a result, the Justice was forced to redate and transmit his resignation letters immediately. But he remained quite angry and frustrated at his inability to cushion the sharp disappointment of his new clerks in person. I still find it stunning that, even in his last official act as Supreme Court Justice, Brennan was less concerned about his own well-being than about the feelings of four young persons whom he had never even met. But that was just his way.

Justice Brennan's retirement story succinctly reveals just how deeply he took to heart the notion that all persons, whatever their station, were equally worthy of his interest and respect—a notion certainly echoed in his constitutional jurisprudence. But the story equally captures a lesson that Loyola's lawyers and all other young lawyers would do well to learn. One can spend a career focusing on the betterment of society, through Supreme Court jurisprudence, or through public interest law, or through any other calling. But a true commitment to public service begins at home: the compassion, em-

pathy and insight that drives such service cannot be sustained unless it grows from an inner, private respect for the value and dignity of the people one confronts on a daily basis. To me, this lesson is perhaps Justice Brennan's most profound legacy to the new generation of lawyers.

