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PROFESSOR CLYDE H. CROCKETT
A PERSONAL RECOLLECTION AND TRIBUTE

WILLIAM F. HARVEY*

Professor Clyde H. Crockett retired from the law school's faculty in 2001. He joined the faculty in 1973. He was an able teacher who respected students. He was a splendid faculty member because he understood the standards and criteria that establish the purpose and function of a law school as an academic institution in a community of schools and colleges called a university.

His J.D. was taken at the University of Texas School of Law. He received an LL.M. from the same institution. He attended the London School of Economics. He was a Judge Advocate in the United States Air Force, and a General Attorney in the United States Maritime Commission. He was the Director of the International Trade Law Program in the Law School. He taught courses in Admiralty, Civil Procedure, Conflict of Laws, Federal Jurisdiction, International Civil Litigation, and International Law.

We first met in the summer of 1973. He entered my office to introduce himself. He was as new to legal education as I was to the law school's deanship that commenced only a few days earlier in that summer.

Initial impressions are said to be the strongest. My initial impression of Clyde Crockett was strong and it did not change during the next twenty-five years. His constant personality was a delightful mixture of cheer with discipline, a gentle impishness blended with profound respect, and wisdom undiluted by the trivia that daily pervades schools of higher education and law schools in particular. He displayed politeness, manners, and goodwill toward others who never understood those norms or delighted in repudiating them with boisterous contempt. Always, he showed kindness and compassion from the core of his being. This showing was not limited to special friends, or selected students, or to a dean who could affect his life and career. It was and is the man himself. In few words, he was genuine. He had the "right stuff."

Almost fifty years ago, Justice Felix Frankfurter returned to the Harvard Law School and spoke to a graduating class. In his comments, the Justice said that the law, more than any other profession, discipline, or calling, has been concerned with those standards, those criteria, those appeals to right and reason, that have had a dominant share in begetting a civilized society. Professor Crockett was educated in these ideals and ideas. He brought them to his classroom and to the law school. He understood magnificent principles, standards, criteria, and their history.

He brought them to an American legal educational community that had begun its disintegration into sophistic babble. Let us listen to Professor Crockett's opponents, and understand their views.

Discipline? Standards? Criteria? Judgment? What are these? To today's type of realist, a postmodernist Derrida-dandy, appeals to right and reason, and a dominant share in begetting a civilized society are disgusting triumphalism!

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What is a civilized society? No one can say because there are no standards for such a concept. If you offer a judgment then you are merely judgmental and probably infected by DWEMs (dead white European males). If you express an opinion it cannot be superior to other opinions because there are no standards. (Well, other than this one, but do not talk about this one either). As for Felix Frankfurter—"who is he?"

Constitutional Law. This subject, they announce, is the greatest ruse in a law school's curriculum. It is a course with a large, heavy, expensive book filled with cases that are valid only because the Justice or judge who wrote the opinion received five votes, or some other form of numerical agreement.

You doubt what we say? Well, then, ask one of our own: Justice William J. Brennan. He would tell you, as he told his law clerks: the only thing that matters in this Court is the most important word in Constitutional Law. That word is "five." "Look, law clerk," Brennan might say, "get me five votes, and we have the law." What a guy! What a sense of history! Such institutional integrity!

Look at Criminal Law say the contemporary realists. When Professor Crockett attended law school or when he commenced teaching, the allegations state, Criminal Law was addressed in an archaic manner. People really thought in terms of crime and the moral standards that, ultimately, defined crime. That was an ancient regime. Today's law school rulers allege that crime is nothing more than the way that persons are perceived by the police, and then arrested and accused. One cannot say that an act is "criminal." If an act destroys property so be it because private property is theft anyway. If an act harms another person, then seek "the cause" that can be understood only in terms of poverty, dispossession, or an unequal distribution of goods. If children are involved, then if it is necessary to save them you may kill them. This is, was it not, the teaching of Attorney General Reno?

In rebuttal, Professor Crockett might have quoted from Leroy S. Rouner who wrote that the best thing ever written on the philosophy of education is Plato's *Protagoras*. (Leroy S. Rouner, *Resolved: That Phi Beta Kappa is Gloriously Useless*, 66 THE KEY REPORTERS 1, 4-6 (2000)). Protagoras was a sophist, an ethical relativist who would teach a student how to make a speech without knowing what justice or the content of the speech really means. When a young man asks Socrates to make arrangements for this instruction, Socrates asks the crucial question: "If you study with this fellow, what will he make of you?"

Rouner continues saying that this is not a question that a college dean's office will address today. In legal education, the condition is much worse than Rouner's college dean.

Professor Stephen B. Presser, Raoul Berger Professor of Legal History at Northwestern University says that something has gone radically awry with legal education. (Stephen B. Presser, *Can America's Legal Education Be Fixed?*, CHRONICLES 50-53 (Jan. 2001)). Today's lawyers commonly regard the law as an infinitely malleable set of theories and doctrines that can be manipulated by judges at the prompting of clever advocates. With the triumph of legal realism at Yale and Columbia in the 1930s and 1940s, law professors (in those schools, but clearly not everywhere at that time) believed that there are no overarching

ethical—or other—principles in the law. Thus, a wholesale attack on the doctrines of constitutional law occurred. By the late Twentieth Century, prominent professors at Yale, with straight faces, could say that there was no need to amend the Constitution. A "living Constitution" can be altered simply by judges acknowledging the articulated desires of the people. Of course, Professor Presser states, "the people" are Yale law school professors.

No doubt the Yale crowd had a moment of great pride when their most distinguished graduate defined reality by insisting that it depends on what the meaning of "is" is. Perhaps their greatest moment arrived when this same graduate had to plea bargain his exit from the White House in order to end his term in office without indictment.

Professor Presser's solution for reforming legal education "is to return to a required curriculum with a heavy dose of the history of American law." He says, "As the rule of law has eroded in recent years and the Constitution has been pummeled, it is no wonder that we have trembled on the edge of urban unrest, plunged into the crass excesses of materialism, and completely lost our moral bearings." He refers to Chief Judge Harry Edwards of the United States Court of Appeals for the District of Columbia Circuit. Professor Presser states that Judge Edwards' article in the *Michigan Law Review* in 1992, in which he said that law schools are obsessed with impractical theories and law firms maximizing revenues, means that both law schools and law firms have disregarded the ethical practice of law.

There is much more that Professor Presser might have observed. The reaction to the criticism by Judge Edwards was entirely predictable and entirely beside the point. The reaction was (a) require more hours in legal ethics courses taught in law schools, and (b) demand that all members of the state's bar attend continuing legal educational classes in ethics during a calendar year. This resulted in little more than adding substantial cost burdens to the law student, whose law schools costs and incurred debt are appallingly excessive already, or the attorney, who can not afford either the time or the money. All of this occurs because of nothing more than an assumed benefit. It is that the law student or the attorney will be an ethical person. The spirit of the thing seems to be, "take these courses or continuing legal educational courses, and then you will be ethical. Damn it!"

This assumed benefit can be postulated only by disregarding the wholesale abolition of ethical standards, the dismissal of a moral order, the repudiation of ultimate social criteria, the abolition of American and British legal history, the corrosive rejection of the laws and history of organized religion(s) in a law school curriculum, and the denial of classical educational criteria that occur throughout the courses in today's law school curriculum.

What a philosophy! What a basis for law! But this was not Professor Crockett's doing. These are not the principles (should one say, "non-principles") that he understood and defended in his fine career. Professor Crockett did side with Frankfurter. In his own way, he, too, maintained that law has standards and that the law, more than any other profession, discipline, or calling, has been concerned with those standards, those criteria, those appeals to right and reason, that have had a dominant share in begetting a civilized society.

Perhaps Professor Crockett already sensed Professor Presser's prediction: if the American law school does not change and draw upon the classical moral and religious traditions of the Eighteenth and Nineteenth Centuries, and recapture the benefits of professional apprenticeship as a means of legal education, it may not last throughout this century. Or perhaps Professor Crockett fought the good fight and stayed the course because of the principles themselves. In my observations of him, he clearly understood what was at issue. He understood the principles and the impact that their destruction has inflicted upon the American social order. He was a splendid faculty member and I was honored to be his colleague for over twenty-five years.