

Preface

THIS BOOK CONSISTS of a series of essays and talks prepared for different occasions and audiences but united by a set of common themes. The first of these is the idea that law can usefully be regarded not only as a set of rules and incentives designed to produce results in the material and social world, but also as an imaginative and intellectual activity that has as its end the claim of meaning for human experience, individual and collective. For the law offers us, as a larger community, an important way of imagining our shared life and history; and it provides those of us who live within its world—whether as lawyers, judges, or citizens—a rich array of practices, occasions, and methods for debating and claiming meaning. It can, of course, do these things well or badly, and part of my object is to suggest some way of making judgments on that important matter.

My second theme is the idea of education expressed in the title: that education is the constant modification of expectation by experience. For at every juncture we bring to the world a set of expectations that are in the nature of things incomplete or imperfect. College is not what we thought it would be—nor is law school, or marriage, or life in late middle age, or travel to Greece, or teaching a class, or a brush with death, or the joy of victory. Sometimes our disappointments are mild, sometimes bitter indeed; sometimes we are gently but pleasantly surprised, sometimes astonished at the blessings life proves to offer.

Of course we need our expectations; they are the ground of our hope and action; but an essential task of life is learning to shape them to our experience as it happens. In this way experience constantly offers us a modification of the mind; and it does so with special force and clarity in the law, which seeks in an explicit and self-conscious

way to create both a certain set of shared expectations—this is how it works as a system of regulation—and a series of occasions and methods for their revision.

In this book I examine the law in a wide range of forms and contexts: in law school, in the writing of lawyers and judges and law teachers, in statutes defining the role of the corporation in our world, in the relation between law and other forms of imaginative literature, in the practice of law, and so on. In all this I am trying to give content to the idea of law sketched out above: law not as a merely logical enterprise, or as a matter of theory or politics or power, but as an activity of the whole mind, including its imaginative and affective capacities. This is how I imagine it, and how I try to speak about it.

My perspective throughout is internal to the law: it is not so much what we as a society can expect of law as an instrument for the solution of social problems that concerns me as what we, as individual people engaged with the law, can expect of ourselves and others as we do this work. The central question addressed in each of these essays is what kind of imaginative and expressive life the law offers, first to its practitioners, and then to the rest of us, as we live in the world of meaning it defines.

The chapters vary somewhat in style and method: some are suggestive, others argumentative; some expository, others analytic; some specifically professional in concern, others more general; some brief, others long; and they variously speak, as I say above, to different phases of legal life. The first and last chapters, which frame the book, are meant in different ways to suggest lines of thought that run through the whole; the remaining chapters form a sequence, beginning with certain fundamental questions of legal thought and education and proceeding to more complicated ones. Different readers will find different chapters congenial, but I hope that each is in its own way responsibly addressed to the relation between expectation and experience in the law.

The first chapter can be seen as a continuation of this preface, setting forth in brief compass some of the major themes of the book as a whole. It was originally a talk given at a conference on judicial language, and retains some of the feel of the occasion.

PREFACE

IT IS A GREAT pleasure to be able to say that a great deal of whatever may be of value in this book derives from conversations with many colleagues and friends, especially Alton Becker, Thomas Eisele, L. H. Larue, Alfred McDonnell, Winnifred Sullivan, Joseph Vining, and, as chapter II makes more plain than any words here might do, Milner Ball. Deep thanks go as well to the Monday Night Group, a wonderful source of continuing education to me, and, as always and above all, to my wife, Mary. I am grateful in addition to Sharon Rice for her care in typing the manuscript, and to Shani Warner for research assistance.

I wish to acknowledge here with particular gratitude and pleasure the benefit of over thirty years of friendship and conversation with Homer Clark, to whom this book is dedicated.