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LET US NOW PRAISE FAMOUS MEN

Milton Katz*

I am indebted to Arthur Krock for a concise appreciation of John Lord O’Brian that approximates the reality. Mr. O’Brian’s “untopped eminence as a public servant and practitioner at the American bar is questioned by none but himself.” To do full justice to his subject, Krock had to turn back to the precursors of the Elizabethans who, as Amy Lowell once explained, had the advantage of coming to the use of the English language while the dew was still on it.

Robert Whittinton’s famous tribute to Sir Thomas More in the 16th century fits John Lord O’Brian with precise though unconscious prescience:

[A] man of angel’s wit and singular learning. I know not his fellow. For where is the man of that gentleness, lowliness, and affability? And as time requireth, a man of marvellous mirth and pastimes; and sometimes of as sad a gravity; a man for all seasons.1

In his reference to “lowliness,” Whittinton invoked the early meaning of modesty or humility. On one occasion, I have seen the passage quoted with “lowliness” transmuted into “lawliness,” a typographical miscue of singular felicity in regard to Mr. O’Brian.

I first met John Lord O’Brian in the summer of 1941, when I reported for duty as his subordinate in the Office of Production Management, later the War Production Board of World War II, which he served as General Counsel. Seeking to account for the tardiness of my arrival, two weeks later than originally agreed, I explained that I had been delayed in Cambridge by the birth of my second son. “A second son!” he exclaimed. “That transcends war. I have five daughters.” He was then in his youthful 67th year, beginning a new phase, by no means the final phase, in his constantly renewed career of public service and law practice.

There is a tale perhaps apocryphal that is told about Louis D. Brandeis when he was a promising young practitioner at the Boston bar. An experienced and well-intentioned friend urged him to pursue a prescribed course of conduct with the prediction that it might well help him to become “X’s lawyer,” X being a prominent and powerful leader of the financial community. Young Brandeis replied that he didn’t want to be any person’s lawyer; he wanted to have clients.

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1. R. Whittinton, Passage Composed for Schoolboys to Put into Latin (undated).
The corridors of the War Production Board in World War II were peopled by distinguished and commanding figures drawn from the world of industry and organized labor to reorganize and redirect the American economy to meet the needs of the armed forces and the indispensable basic requirements of the civilian society. Accustomed to having lawyers, they undertook as a matter of course to use the General Counsel of the War Production Board and his staff in ways made familiar by their previous experience. In a series of remarkable lessons administered by the General Counsel with unfailing “gentleness, lowliness, and affability,” they learned that John Lord O’Brien was not their lawyer but that they were his clients. They also learned that no clients ever received sounder guidance, sensitively and toughly fitted to the accomplishment of their jobs and the enduring standards of law. Despite occasional understandable outbursts of impatience, most of them and especially the best of them came in time not only to accept the relationship but to relish it. They joined the company of John Lord O’Brien’s friends and admirers, which continued to grow throughout a professional career in length exceeding the biblical life span.

Some years later, when Mr. O’Brien had returned to law practice, I had an opportunity to hear him argue an antitrust case in the Supreme Court of the United States. Following the argument, he suggested that we call on Mr. Justice Frankfurter. After the initial exchange of greetings, the two old friends fell into easy banter, with the practitioner gently chiding the Justice for his opinion in an earlier case decided by the Supreme Court against Mr. O’Brien. The Justice insisted that Mr. O’Brien had missed the point. “But John, you fail to appreciate what the Court did for you. That case is now a landmark in the law.” Mr. O’Brien observed that it appeared to him less a landmark than a tombstone. The Justice became consoling. “After all, John,” he asked, “don’t we give our discontents to our country?” “It would be most convenient if we could,” replied John Lord O’Brien.

In April, 1955, Mr. O’Brien delivered the Godkin Lectures at Harvard. An annual event, the lectures, in accordance with the terms of an endowment establishing them, are given by eminent guests of the university on the “essentials of free government and the duties of the citizen.” During seven of the 15 years preceding Mr. O’Brien’s lectures, the nation had been at war, in World War II and in Korea. The other eight years were marked by the Cold War, and by a condition of public anxiety described by John Lord O’Brien as an “all-pervasive craving for security at any price” fostered, in his view, by the “two wars, the desperate experience of the great depression and the threat of atomic warfare,” together with “the reemergence of totalitarianism as an aggressive force.” Although mindful that contemporary totalitarianism challenged “every primary

3. Id.
4. Id. at 8.
value treasured by Western civilization,"\(^5\) he focused his analysis upon the subtler threat to the same values from a possible confused and panicky reaction of Americans to the external dangers. He addressed his lectures to the "problem of reconciliation between national safety and individual freedom."\(^6\)

By way of prologue, he expressed his intention to discuss certain far-reaching changes in law, in constitutional theory and in the attitude of the public toward our institutions, which have been developing during the present generation and which, if not halted, may result in a permanent reorientation of the individual citizen in his historic relationship to government and to organized society.\(^7\)

He sought and found a standard for appraising current behavior in what he regarded as the finest achievement of his countrymen: "[T]heir faith in a common humanity and the deliberate promotion of mutual respect and reasoned toleration."\(^8\) To the extent that we might be vulnerable to the challenges of the time, "it is in our own behavior, our own self-righteousness, and particularly our failure to deal justly with minorities and the socially underprivileged, that our defenses are weak."\(^9\) Acknowledging that "in a democracy there is always latent the cancer of indifference and apathy,"\(^10\) he nevertheless fixed "chief responsibility... upon those high in official authority in the nation."\(^11\)

In this spring of 1974, perhaps I may fittingly close my tribute to John Lord O'Brien with the closing words of his lectures in 1955:

If and when the leaders in the Executive, Congressional, and Judicial departments awaken to their obligation to protect the freedom of the human spirit, they will, like their great predecessors, respond to that obligation. The public...will then also respond to the sense of moral responsibility, and out of the present confusion will come a re-dedication to the cause of freedom in our time.\(^12\)

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5. Id.
6. Id. at 22.
7. Id. at 1.
8. Id. at 19.
9. Id.
10. Id. at 81.
11. Id. at 83.
12. Id. at 83-84.