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THE LAWYER'S ROLE IN A CHANGING WORLD †

Justice William J. Brennan, Jr. *

I WOULD LIKE particularly to address my remarks directly to the law students. I have some ideas of my own of what is ahead for our profession and would like to sell them. I have found though that seniors at the Bar listen to them, politely and circumspectly, but they do so with their deaf ear. I suppose that is because most of us fear change. But explosive change will be the unvarying lot of the coming generation of lawyers, and I usually find that those who have not yet completed their study of the law have not had time to have their thinking settle into a firm mold and like to talk about the future and listen to others guess about it.

I've been at the Bar for twenty-five years. Yet amazing as have been the changes in our profession in that time, the next quarter-century bids fair to make the last look like the "horse and buggy" era.

I have mixed feelings whether the threshold of the twenty-five years ahead is for you better or worse than the threshold for me back in 1932. I expect many of you are about the same age I was then but still have your bar examinations ahead of you. The average age of those coming to the Bar is higher, perhaps by several years. With few exceptions, all now coming to the Bar have both college and law school degrees and probably on the average more than two years of military service behind them. You must necessarily be better trained and more mature than were we of the 1932 vintage. In those days the equivalent of a high school training sufficed to qualify for entry into law school, or indeed, without going to law school, to learn law in the law office. Too, the law schools were not then, as now, required to adhere to the high standards for law schools approved by the American Bar Association. And, of course, none of us was faced with compulsory military service. We lived our youth in the "happy-happy twenties," when not death in battle but synthetic gin was the great fear—the world had been made safe for democracy and there was never to be another war—the outcast who took ROTC training was a "square" or a "wet smack," in the vernacular of that time.

But the system of our day produced great lawyers, just as even lesser standards for admission prevailing in earlier years produced great

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lawyers. Yet, would any of us return to the old standards even though it is harder for you than for us to gain admission? I am confident all join me in answering in the negative, for the law, a venerable and honorable profession, rich in tradition and rightly proud of its achievements, fully acknowledges its responsibilities. Who will gainsay that in our modern complex society, really growing fantastically so compared to twenty-five years ago, we do not owe the public, whose servants we are, only the best equipped and qualified, those of highest integrity and a deep felt sense of loyalty to the moral traditions of the profession.

Ours is an exacting profession, a learned profession in which powers of intellect and industry bear rich fruit. When you are admitted to the Bar, you have not completed your studies—you have only begun them. And there is so much to be learned. Complex specialties, each of itself sufficient to tax the best talent in any of us, in taxation, in industrial relations, in the ever expanding area of executive justice meted out by administrative agencies, latterly, indeed, even a growing area of legislative justice, now demand the attention of the profession claiming equal stature with the traditional fields of common law, equity, probate and the criminal law. And marching over the horizon are the great wonderful, but virtually unknown expanses of international law and relations, and other equally exciting novel fields of the law sure to be by-products of a nuclear age.

If you, soon to be on your way up in the profession and to displace the older leaders, will inexorably be driven to some specialization, yet the integration of the whole makes a working knowledge of all a prerequisite to success in the specialty. As perhaps never before the younger men of the Bar must know and maintain a continuing interest in matters of economics and public affairs, and things spiritual and cultural in the broadest sense.

It has been suggested that perhaps law—in the sense of law-making and law-declaiming—is the only true social science and that the other disciplines which claim to that category are usurpers of the title. This pretension proceeds from the premise that law in action determines which adjustments of human relationships are in fact compatible with the realization of democratic ideals—that it is the lawyer’s mastery over constitutions, statutes, appellate opinions and textbooks of peculiar idiom, and his skill in operating the mechanics of governmental institutions, courts, legislatures, administrative boards, executive offices, and private associations, corporations, partnerships, trade associations, labor unions—that set him apart from, and give him a certain advantage over diplomats, economists, social psychologists, social historians, biologists and the other skilled groups.

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In the onrushing atomic age, the realization and preservation of democratic ideals demand that the legal profession, on which society has laid the primary responsibility to be the protector of those ideals—to take the lead in realizing them—must not grudgingly, but rather designedly and thoroughly, avail itself of the wisdom other disciplines provide, lest democratic values be lost.

The democratic ideal has been variously stated. Professors Lasswell and McDougal have epitomized it, I think as well as any. Say they:

"The supreme value of Democracy is the dignity and worth of the individual; hence a Democratic society is a commonwealth of mutual deference—a commonwealth where there is full opportunity to mature talent into socially creative skill, free from discrimination on grounds of religion, culture, or class. It is a society in which such specific values as power, respect and knowledge are widely shared and are not concentrated in the hands of a single group, class or institution—the state—among the many institutions of society."

The great importance of the lawyer's role in the common task of achieving this most difficult of all ways of life derives from the very practical fact that the lawyer is the roving fullback of our society with his nose stuck in every activity in which we severally participate. This has been a marked development of the last half century, and necessarily so as the rule of law has loomed larger and larger as the essential stabilizer of the complex organism society has become. Judge Wyzanski recently put it this way to an audience of lawyers, law scholars and law students.

"You will all agree that it has been implicit in everything that I have said so far that there has been a vast extension of the law. Perhaps it could have been said fifty years ago that property, and contract, and tort, and procedure, and the ordinary criminal law, represented the bulk of a lawyer's interest, and that the law was primarily concerned with the problems of force and fraud. Today the reach is infinitely more complicated and thorough. The law is the concern, as it never was before, of the good man and the average man, for he feels at each stage of his life the impact of the legal order more open, more diverse, more far-reaching. Does he go to work? He knows of the labor law as to hours, and wages, and social security. Does he farm? He cannot be indifferent to the myriad regulations, sometimes cast in the form of benefits and inducements to his labor, but for all a legal force impinging upon his capacity to make a profit. Is he a consumer? He would do well to take advantage of the branding now commonly imposed, not only upon food and drugs, but upon stocks and bonds. Each
aspect of his life is either confined or expanded or in some way affected by a host of new legal regulations. This altered legal structure, in its all-pervasive reach, has among other things greatly augmented the opportunities of the Bar. For the Bar today has for its outlet not merely work in the courts, not merely family settlements, and like advisory functions. The Government, the business corporation, the labor union, the Farm Cooperative, the consumer group, all need men with legal background. We of all the legal profession are almost like the medieval member of the clergy. You are the successors of Chaucer's clerk. You are the learned men, moving throughout the society, and to a large extent giving it not merely its standards, but also its day-to-day advice on how to deal with the special problems of the new order."

In other words, more than ever is the lawyer the policy maker whether in legislative halls, where he has complete dominance; on the bench, which is his monopoly; as practitioner, where his advice is indispensable to men of every calling; or in commerce, industry and other pursuits where increasingly he occupies seats of power.

Enormous social changes are bound to follow the stupendous scientific advances of the age at the threshold of which we now stand, uncertain and perhaps not a little afraid. It is a time when, as Judge Wyzanski has observed, "men have come to wonder whether the older values are fully adequate and whether there has not been a degree of deception with respect to the absolutism previously claimed for the older values." Can the developing law, rightly viewed as continuously more effective social engineering, any longer isolate itself from the other disciplines, each of themselves also achieving greater perfection in the study of the human condition pertinent to its role in mirroring our complex social organism?

The job at hand is to create a realization, particularly among our law students, that the law is not an end in itself, nor does it provide ends. It is preëminently a means to serve what we think is right. Government, it has been said, is a menial task. I think we can accept the truth of the statement, without accepting the disparaging connotations. Law is here to serve—to serve, insofar as law can properly do so, the realization of man's ends, ultimate and mediate.

In this task lawyers must turn their minds to the knowledge and experience of the other disciplines, and in particular to those disciplines that investigate and report on the functioning and nature of society. The lawyer is accustomed to the use of history in this regard, because the common law particularly is the creature of history and growth. But the lawyer is much less used to valuing and examining the other, less firmly established sociological disciplines. I know that there are
still some who so firmly believe that the law should not consult the wisdom of the other disciplines as to meet this proposal with scorn and demand that the profession keep to its own business, whatever that is. Surely the lawyer's business is broader than these critics suppose, and the profession would shirk its responsibility if it neglected any source of wisdom that could reasonably be thought to assist the better doing of the profession's really difficult task. Of course, it is an effort to broaden our perspective to include what I suggest must be included, especially for lawyers who are caught up in the immediate demands of litigation. But I suggest the task is well worth-while if through its accomplishment, the legal profession can enrich the discipline to which lawyers are attached and thereby give greater meaning to their own thought and action.

True, no one can longer master the full range of learning, nor even any considerable portion of it. Lawyers, however, who inevitably encounter, and in the future, will increasingly encounter, cases involving diverse human situations, must be equipped with a working knowledge of the basic facts and skills in each of the major fields of learning. President Kiewiet of the University of Rochester said what I am attempting to convey.

"The life of every society contains an unending contest between the forces of stability and change. To change too little may lead to stagnation and death; to change too much may lead to disaster and collapse. Yet the thrust of revolution is upon our generation. Some of the thrust must be resisted if we are to live according to the lights history has given us. Yet we must know that even then we shall have to accept and make possible great changes in our society. The law is utterly caught up in the immense crisis of our generation. Upon those who practice the law rests a great share of the delicate responsibility of deciding what must be preserved and what must be changed, what we shall protect and what we shall abandon."

And the lawyer's task will be the more difficult if he loses sight of the great struggle which may go on obscured by the excitement of convulsive change. Reluctant though we as a people have been able to see it, ours is not an age of science, as so many think, or of technology or atomic energy, but an age dominated by politics, and all too often selfish power politics. In the face of political pressures both at home and abroad the retention and development of our freedom will continue to be, as it is to-day, the supreme concern of our times. The struggle of centuries in England for freedom culminated in the acceptance of the Doctrine of the Supremacy of Law, and that doctrine has been expanded here not only in our written constitutions but in the very spirit of our
people. Despite our more than occasional lapses from vigilance in the protection of our rights, our freedom has grown from year to year. The protection of our growing concept of freedom in the rapidly shifting environment of our times and in the face of many adverse forces is the grand task of American Law today. Justice between individuals necessarily follows in the wake of freedom of the citizen against his government. Indeed, complete justice is possible only in the realm of freedom, where justice is a matter of right and not merely of governmental grace.

The primary mission of us all has been and at the present moment is to preserve individual freedom—freedom of thought and action—to the fullest extent possible consistent with the public welfare. Over the centuries our freedom is largely to be traced to lawyers at the bar, lawyers on the bench, and lawyers in the legislature. The modernization of the law, its adaptation to the needs of our times must be thought through in terms of freedom if we are to get the greatest good out of the potentialities of every individual. It is only within recent years that we have had occasion to think of freedom except in terms of peace. Now we have to consider freedom in terms of cold war, preparation for actual war, war itself, recovery from war and the emergencies attendant on war, and in a world which daily witnesses miracles of science undreamed of a quarter of a century ago. Even the Constitution must be restudied in terms of these basic realities, with which we apparently have to live for years to come. The preservation of freedom is very obviously, it seems to me, the central problem of our law to-day and around it the separate study of individual subjects in the law must necessarily revolve.

So young men of Villanova, never lose consciousness of the sacred aspects of your profession. You will not be working with implements of the mechanic, the formulas of the scientists nor the tools of the artist. You will be working for the protection and assertion of the God-given and constitutionally guaranteed, inherent rights of life, liberty and the pursuit of happiness of human beings. You will be dealing with the vital affairs that affect the whole pattern of human relationships under a government that derives its just powers from the consent of the governed.

You will assume your rightful place in the matter of service to the individual, among the men of the church and the physicians, who will be concerned with his spiritual welfare and his physical well-being. You will be concerned with the things that may be as important to him as either—his life, his liberty, his rights, his estate and his beneficiaries. To this important task you can do no less, in good conscience, but to pledge your time, your talents and your honor.

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