

# Lawyers, Law Schools and Law

*Philip B. Kurland*

Those of you who have attended earlier sessions of this annual open house may be able to appreciate the handicaps under which I labor today. This part of the program—post-prandial remarks by a faculty member—was originally intended to be, I am sure, purely a ceremonial lull, a brief respite between the stimulating luncheon conversations that you have now enjoyed and the tours of this magnificent Saarinen structure and interviews with the faculty. In the immediate past, however, Mr. Meltzer, in the role assigned to me today, delivered an enlightening lecture on the legal profession and Mr. Kalven gave an inspirational talk about law schools in general and this one in particular. It remains for me to resuscitate our original purpose—the lull, albeit ceremonial—not only because I have no ideas to add to theirs, but because they have also exhausted the supply of appropriate quotations from Oliver Wendell Holmes, Learned Hand, and Felix Frankfurter, upon and about which any talk such as this must be based. As you will soon see, in order to fill the time between feeding your bodies and feeding your minds I have been forced to a repetition of some of their quotations and an inclusion of some unorthodox ones. I do promise, however, that what these remarks lack in quality will be compensated for in terms of quantity.

Before I go any further, I should tell you that the remarks I am about to make are my responsibility and mine alone. In the best tradition of this law school, every faculty member has the right to make a fool of himself in his own way. On this occasion I am certain that many, if not all, my colleagues will choose to dis-

sociate himself from much, if not all, that I have to say.

I would speak to you of three cognate subjects: of lawyers, of law schools, and of law. And I start, in accordance with prescribed ritual, with a quotation from Mr. Justice Frankfurter, responding to the question of who should go into the practice of the law:

The best reason for going into the law is the same that led Fritz Kreisler to be a fiddler and Gutzon Borglum to be a sculptor—some inner compulsion that selects one's own career. Fortunately indeed are those for whom a coercive aptitude or a controlling interest leaves no problem for choice of a calling. So far as the law is concerned, I suspect this inevitability saves less than a majority who are finally won to the law from the painful necessity of choice. Indeed, the probability is that a much larger percentage of men turn to the law in default of not being enticed by some other activity. . . .

I have thought a little about why few are "called" to the law, as they are called to the practice of the fine arts, or to the ministry, or even to the pursuit of pure science. I have reached the dubious conclusion that the primary reason that the profession of law does not exert this call is that law is not—like those other pursuits—an end in itself. The law is not even a means to an end, as I think the profession of medicine is. The law rather is a means to a means to an end. It provides the machinery through which government may operate, a government that is in turn only a means to a desirable form of society.

Given the fact that many lawyers are neither called nor chosen, it is remarkable that the profession has attracted a body of practitioners who—on the whole—have talents well above the average, talents sufficiently great to have opened doors to many other successful careers. Again, I can speculate on some of the reasons for this fact. Perhaps the first is that the law does not foreclose other career opportunities: it keeps the alternative options open, indeed, it enhances the possibility of moving into other areas of endeavour. It will prove possible for a successful lawyer to run a railroad or the United States Steel Corporation, to become a leading sociologist or an Episcopal bishop, to become a university president or, indeed, President of the United States. And, for better or worse, the governments of the United States on the local, the state, and the national level, are dominated by the legal profession.

A second reason that I can conjure up for the law's attraction is that it affords, to a greater degree than other professions, the opportunity to deal with matters of the mind. And, for this reason, those who have known the joys of thinking, find enticement in earning their living by their brains.

A third attraction of the bar is less exalting. But, if practice of law by itself has produced few millionaires, the monetary compensations are, for the most part, greater here than elsewhere. And the opportunities for earning income outside the practice is, in many cases, sufficient so that lawyer millionaires are not unknown.

Those of you who find money to be a crass subject might reflect on the fact that the practice of law also offers a great opportunity to be of service to the deprived members of our society. If, as I believe to be the case, this service has not been adequately forthcoming in the past, there is evidence that the new generations will have every chance to make up this deficiency.

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*Some casual remarks by Philip B. Kurland, Professor of Law, The University of Chicago Law School, on the occasion of the Law School's Open House for prospective students, December 21, 1968.*

A word or two then, about law schools, where lawyers purportedly receive their training for the occupation about which I have been speaking. Law Schools, at least at the higher levels, have been particularly free of the cant of pedagogy. Every faculty member is his own pedagogue. Every law school class is dependent on the contribution of its students no less than those of its faculty. Like all graduate schools, law schools are concerned essentially not with the imparting of information but rather with the seeking of solutions to problems. A law school is, therefore, a three-year course in relevance. And its attraction is to be found in the fact that the problems with which it deals are essentially the major and minor problems of living in society. Let me hasten to tell you that you will not learn the answers to these problems, either at this law school or any law school. What you should learn are the ways and means of solving these problems. And I put emphasis on what you will learn rather than what you will be taught because, if you are successful, you will learn a great deal but you will be taught nothing, except that which you teach yourselves. That I dare say is the essence of legal education, as it is the essence of all education.

Dare I suggest that this might not be the time to undertake a career in the law? The law, as I said earlier, is not an end, but a means. It is capable of being put to evil purposes no less than to desirable ones. The goal to which law aspires is, if I may again borrow from Mr. Justice Frankfurter's language: "A democratic society, in which respect for the dignity of all men is central." That is a goal that is certainly not yet achieved. It is a goal that, I regret to say, is not likely to be attained quickly. And the result is that there are some who are too impatient to use the law to secure what they are certain to be the proper form of society. For these, I suggest that law is not an appropriate study. For the alternative to law is force and that medium should be learned elsewhere than in law school.

I was reminded here of some lines from Robert Bolt's play, *A Man for All Seasons*. At a point some time before his martyrdom, when Sir Thomas More—

a lawyer, I should point out, who authored a *Utopia*, describing communal ownership of land, education of all men and women alike, and religious toleration—was Lord Chancellor, it was suggested to him that he take steps to imprison a turncoat who threatened his safety. The conversation between More, his daughter, Alice, and her suitor Roper, was recorded by Bolt in this way:

ALICE: While you talk, he's gone!

MORE: And go he should if he was the Devil himself until he broke the law!

ROPER: So now you'd give the Devil benefit of law!

MORE: Yes, what would you do? Cut a great road through the law to get after the Devil?

ROPER: I'd cut down every law in England to do that!

MORE: Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then?

I really believe that those more concerned with cutting down the laws than with improving them would find law school tedious and irrelevant.

My concern is deeper, it is obviously not for those who would choose force over law. I'm disturbed by the obvious factual support of such revelations as those by the prestigious psychiatrist Rollo May, who recently told us: "The modern age . . . has ridiculed myth or explained it away because of its own myths, born out of the death of the Middle Ages, rationalism—a faith in reason—and individualism." A faith in reason and the individual is, indeed, what law is all about. If these are dead or dying myths, there is little to be said in favor of a legal career.

If you will indulge me in a few more quotations that do not derive from the learned judges who have been our mentors, I would read you a page from C. P. Snow's most recent novel, *The Sleep of Reason*:

Reason. Why had so much of our time reneged on it? Wasn't that our characteristic folly, treachery or crime?

Reason was very weak as compared with instinct. Instinct was closer to the aboriginal sea out of which we had all climbed. Reason was a precarious structure. But, if we didn't use it to understand instinct, then there was no health in us at all.

Margaret said, she had been brought up among people who believed it was easy to be civilized and rational. She had hated it. It made life too hygienic and too thin. But still, she had come to think even that was better than glorifying unreason.

Put reason to sleep, and all the stronger forces were let loose. We had seen that happen in our lifetimes. In the world: and close to us. We knew, we couldn't get out of knowing, that it meant a chance of hell.

Have we arrived at that dreadful day that Yeats foresaw not too long ago:

Turning and turning in the widening gyre  
The falcon cannot hear the falconer;  
Things fall apart; the center cannot hold;  
Mere anarchy is loosed upon the world,  
The blood-dimmed tide is loosed, and everywhere  
The best lack all conviction, while the worst  
Are full of passionate intensity . . .

And what rough beast, its hour come round at last,  
Slouches toward Bethlehem to be born?

I have now done with quotations.

Is this too lugubrious a tone to have set for this occasion and this season? The answer to that is largely dependent on what is in the minds and hearts of those young people here today and their peers. The law can be a noble calling with much power for good and for the destruction of evil, if it is undertaken by those who understand the meaning of the word responsibility. If you want to build a brave new world, not Huxley's brave new world of the scientist, but the brave new world of a humanist, the responsibility for its creation is yours and the law can be an ample tool for its accomplishment.