The Young Lawyers: Bane or Boon?

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An after-dinner speech should, I am sure, be soothing to the digestion even when, as usual, it fails to stimulate the cerebrum. I am afraid I may be about to defy that cardinal principle. I want to indulge for a few minutes in what may well be considered a kind of viewing with alarm. I hope you will find, however, that it is offered in a buffered form, and that any excess acid will be neutralized.

The law schools, as almost everyone knows, are faced these days with an unprecedented wave of new aspirants to the legal profession. My purpose is not to try to explain this phenomenon but to consider how we should greet it, and, more particularly, to respond to what seem to me some regrettable misgivings being manifested by segments of the bar. Unless I read the signs incorrectly, there is a growing sense of concern that the legal profession has been oversold to the oncoming generation and that in ways not yet clearly apparent we will soon have cause to regret it.

My suggestion is that such a pessimism would betray the faith we should have in the law and our profession, and may distract us from making the most of our opportunities. In short, I view with alarm those who would view with alarm.

Of course my own fears may be exaggerated; the attitude I perceive may be nonexistent. If so, I hope you will be indulgent, and remember that one of the time-honored and not least worthy devices of a law professor is setting up and demolishing straw men. But I think you will not consider the Chief Justice of the United States a straw man. In a widely noticed interview some months ago, noticed especially by law students, he expressed "an uneasy feeling" that the dramatic growth in law school enrollments "may be another one of the situations in this era that we are living in of creating expectations that are beyond fulfillment." A report emanating from the mid-winter meetings of the American Bar Association—dare I call it another straw in the wind?—refers to fears among leaders of the bar that the profession will be torn by controversy over whether to limit the number of young people permitted to become lawyers. We are invited to consider the prospect that thousands of disappointed young people, trained in the skills of lawyers and unable to find work, may turn against the system. In response to such concerns the American Bar Association has created a special nine-member Task Force to propose a program for finding jobs for young lawyers. More recently, we have had a report from another special committee of the Bar Association to study the possible impact of the new wave of lawyers on the standards of professional conduct. Among its suggestions is a search for novel ways of screening law students as to their character and moral fitness.

These expressions are not necessarily ominous. They have been properly accompanied by affirmations of the bar's commitment to an open profession, and they point to some problems that are surely worthy of study. The Task Force on Lawyer Util-
lization in particular has highly constructive possibilities. But at the same time there is surely some paradox here. The theme of countless Law Day speeches of recent memory was encouragement to the young to abandon self-help, to move their discontent from the streets to the orderly processes of society, and to look to law for change and improvement. Perhaps they have misread the message. Perhaps, even, they have not been much influenced by it, for certainly other and quite different forces have had their part in stimulating applications to law school. But it would be surprising if there were not a good many who thought they could detect a considerable change in tune from the themes of only two or three years ago.

The apprehensions about the new generation of lawyers seem to be stirred by two different but related causes.

First, there is the simple matter of numbers. There are about 95,000 students in law schools this year. The number of lawyers presently engaged in practice, either private or governmental, is reported as 325,000. The specter that is seen is of a bar that will suddenly find itself with four lawyers for every three now active. The specter is of course exaggerated, if past experience is a guide. In 1950, for example, there were 53,000 students in law school as compared with about 200,000 lawyers in practice. Yet from 1951 to 1954 the number of lawyers rose by only about 17,000. For two decades the enrollment in law schools has been rising, although at an accelerated rate in the last two years. In the same period the number of new admissions to the bar has paralleled quite steadily the number of third-year students. For the country as a whole, the number of third-year students has regularly been far lower than the number of first-year students, and in recent years has fallen to about one-half. In the current year there are about 22,000 third-year students in approved law schools, a slight rise in the proportion of third- to first-year students, who this year numbered 36,000. If all of the present third-year students are admitted to the bar the increase in the lawyer population will be about seven per cent, a substantial increase but hardly a deluge. For the past fifteen years the growth rate has averaged about three per cent a year.

Can the society absorb lawyers in such numbers? From an economic point of view, the answer is clear. Of course it can, although perhaps at a reduced rate of return, either for the new lawyers or for old lawyers or for some mix of both. And such a lower rate of return, should it occur, will of course have its impact on the new enrollments of law students. The supply of lawyers is not immune from the laws that govern the supply of pork.

But the more interesting question is not the economic but the social one. Are we on the verge of having too many lawyers for the good of society? Are we really worried about whether there is useful work to do for all who can be induced to join? The answer we give will say much about our self-esteem and our perception of the role of lawyers in the national life.

Television has helped glamorize somewhat, for the moment, the public image of the lawyer. But when this season's attractions have lost their ratings lawyers will be left with their traditional burden of a layman's view of them that does not fully understand, that depreciates, and that is often impatient with their role. It has always been easy to stir antipathy for the vision of a lawyer-ridden society. Perhaps that is the vision many would see in the fact that the lawyer-population has increased much more rapidly than the population as a whole during the last two decades. A more sober and perceptive view, which should come most naturally to lawyers, would understand this trend to be an inevitable product of our changing society: on the one hand, a reflection and not a cause of the increasing complexity of social organization; and on the other, an index of our rising social wealth and its ability to provide a quality of life that includes more help from the legal profession.

It is this last aspect that especially needs emphasis now. Abundant needs and opportunities for the wise use of lawyers' talents confront us. There is scarcely an area of social concern in which, could we afford them, an infusion of legal resources might not make a difference. The most conspicuous present example is the criminal justice system, that aspect of law that touches the most elemental of social needs and the most acute of human plights. What would it do for the performance of those institutions if every major police department had a skilled legal staff, if corrections administrators had lawyers at
their elbows, if our prosecutors' offices could deal with cases rather than with numbers, if we had public-defender establishments equivalent in resources and efficiency to large private law offices? How shall we manage the new burdens of criminal defense that are sooner or later—and probably very soon—to be imposed by a constitutional rule requiring counsel for indigents in misdemeanor cases? And what of the next development after that, which seems likely to make the right to counsel even in civil cases an expanding benefit in our society?

But these present and impending necessities can hardly exhaust the field of good that lawyers could do if given the opportunity. The present administration of the State of Illinois, if I judge by the number of our own outstanding graduates who have been attracted to it, has shown what opportunities there are for the effective use of additional legal talent. It seems unlikely that there is any agency of state or local government that could not gain from the addition of able lawyers. Our legislative processes from the bottom to the top, and the executive offices that feed legislation into them, could be far more professional and technically competent than they are. We need legal skills at least as much for the making of good laws as for the repair business that comes from defective ones. And all of this says nothing about the countless individuals who from time to time might cope better with the world had they the helping hand of a sympathetic lawyer.

Apart from the mere question of numbers, there appears to be a concern that the new generation of lawyers may be a disillusioned or frustrated group, and perhaps even cantankerous—as if that would be a mutation in lawyers! The new students do seem to come with different and perhaps more idealistic motivations than those of a decade or a generation ago. There seems more zeal to take part in solving social problems, a tendency to identify with causes or goals, a stronger sense of commitment to particular kinds of careers. Perhaps also there is a stronger conviction about the humanitarian potential of the lawyer’s career, and an urge to perform in that role, even at some economic sacrifice. Certainly there is a rising interest in the arts of litigation and the uses to which they may be put.

It is hard to see legitimate grounds for anxiety in these qualities or attitudes. Perhaps the fear is that an army of such lawyers will reinforce pressures that are already straining our processes and unsettling many time-sanctioned legal principles. The new openness of the law to untraditional claims; the recognition of group interest through judicial and not merely legislative action; the proliferation of the class action; the assumption by judges of increasingly managerial and directing powers—all these raise difficult and even profound questions about the modes through which official processes can best mediate the claims upon our society. But these are questions about the content and processes of law, not about the value of lawyers. It would be error to wish the claims to fail for lack of lawyers to advance them. It is the business of the legal system to attract and channel the interests that press for satisfaction, to shape the right processes for testing them, and to effect a more stable and enduring resolution because the claims have been recognized and weighed. Our attitude toward the youthful tide of new lawyers puts to the test our faith in law itself.

It is also, I think, a test of the profession’s belief in education. Edward Levi has spoken eloquently of the nature of law as a special commitment that...
brings its own force and values to the vectors that shape society—primarily neither an instrument of change nor a bulwark against change, but a commitment "to develop concepts, and to maintain and operate procedures which enable a sovereign community to be governed by rule for the common good . . . and to make that rule effective." To impart an understanding of that commitment, of its strengths and its limitations, of its historical roots and of the social and behavioral forces with which it interacts, is a necessary function of legal education.

If lawyers carry a burden of inadequate appreciation of their role by the society at large, law schools perhaps carry the burden that lawyers do not always seem fully to appreciate the values that legal education should serve. It is often suggested that law graduates might do as well to learn less in school and leave more to learning on the job. To be sure, not all law schools need be alike; there should be room for experimentation, perhaps with two-year law schools for some and with more limited kinds of training for others that will prepare them for special tasks in assisting lawyers—a need, incidentally, that seems to refute the idea that we may be about to have too many hands to do the work. But I trust there will always be support and enthusiasm for the kind of education our own school has tried to give and in which I think it has been a leader. I mean an education that looks beyond the merely utilitarian or manipulative essentials of the lawyer's art and invites a deeper understanding of the complexities and variety of the law—an education concerned with causes and effects, that searches for the values law serves and the means by which they may be realized, and that may lay a foundation for wisdom as well as technique.

For such an education, the new students seem to me at least as promising subjects as their predecessors now at the bar. Let us look upon them as a resource and not a problem, and let us hope that whatever visions of a rewarding life have brought them to the study of law will not soon fade away.