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LAW IN THE LIBERAL ARTS

The Importance of Values to the Practicing Lawyer

ROBERT J. McDONALD*

This conference, at least the portion which I have been privileged to hear, and this address tonight, have been wide-ranging and most learned. In these discussions, I understand there have been allusions to the continuing deterioration of communications among the various disciplines. The case is at least partially proved because there has certainly been a failure at times to communicate with me. I would hasten to add, however, that this failure is not in the transmitting but in the receiving. My mission here tonight is obscure. I have been far away from the academic atmosphere for so long, and even if I had kept such ties close, I think I would feel ill-equipped to play a harmonious counterpoint to M. Villey's beautiful philosophical music. I therefore concluded that my mission tonight is to render a myopic review of M. Villey's speech from the point of view of a practicing lawyer.

It has always been my view as a practicing lawyer that law seeks justice. Here, of course, I am using justice in a broader sense than "justice according to the law" which, as Roscoe Pound put it, means the decision of disputes by adjudicators, judicial or administrative, who apply rules and principles of law—or lawyer's law. In this broader sense I include also structural law that sets through legislation and administrative rules the framework of government and which must also seek justice.

But then it occurs to me as one who practices law—and isn't that a wonderful way to put it in a discussion such as this—that the philosophical distinctions between the nominalists and the classicists have little day to day reality. Whether the end of law be the auxiliary, or even parasitic, role of servicing

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** (Professor Villey's).
individual groups, their economic wealth, or the state, or whether the law has its separate, independent grail, in operation the law and the individuals who practice it must have ethical and moral values. Whether these values have their existence only in the limited area of the techniques of law or a separate existence in a recognized discipline, they seem to me to come out the same. I assume then that law seeks justice.

In using a word such as justice, I assume like Humpty Dumpty that it means what I mean it to mean. To rationalize for me the conflicting philosophical views of law to an acceptable common denominator for daily practical application I mean “justice” to mean the fairest compromise which weighs and reconciles at a particular time and place the conflicting positions among individuals, groups or governments. I do not ask perfection of justice at a particular time or place; it is fallible. I expect only to strive hard for perfection.

To effect this compromise in the fairest possible way in this most complicated of modern worlds the practitioner of lawyers’ “law,” whether by avocat, avoué, barrister, solicitor, attorney or judge, and of structural law, whether by a legislator, governmental administrator or community leader, must have the tools with which to fashion this fairest compromise. Thus, for example, if he be a lawyer acting as a legislator fashioning the law with respect to the dissemination of birth control information or a practicing lawyer commenting thereon in a bar association committee, he must understand—or before he reaches a solution to his problem he must learn—the economic, political and sociological impact of the population explosion; he must, especially in states such as in New York or Connecticut, appreciate certain theologians’ position including the predicted deterioration of the family as the basic unit of society. He must, of course, have a sense of history and at least an intuition of philosophy. Whether the legislator in equipping himself to deal with such a problem be a lawyer who studies various aspects of the problem when confronted with it, or whether the political scientist follows the same course, learning also the legal techniques, it comes down to a question of choice.

Whatever the approach, the lawyer, including the lawyer acting as a legislator, must be able to break down, or crawl over, the walls built between the various disciplines so that in his quest for this fairest compromise of a problem he can bring the necessary knowledge and values to bear upon the problem. This can, in my opinion, best be accomplished by a person who has the general training, experience and education to be able to communicate among the various disciplines.

Two choices in the solution of this problem immediately suggest themselves. Either teach the other disciplines the tools of law or teach the lawyers the other disciplines. The first is probably impossible because practitioners
of each discipline before they learned the tools of law would first have to learn to communicate among the other disciplines and they may not really care to communicate; the second is likewise impossible because the lawyer obviously cannot be a philosopher, an economist, a political scientist or various other things. It would seem, therefore, that I have created for myself an insoluble dilemma.

I do not think so. I believe the answer lies in this narrow area to which I am confining myself of seeking justice—in striving to educate generalists who will then learn law with a generalist’s approach. In this connection, I would like to read you from the remarks, at times facetious, of Sir Eric Ashby, Master of Clare College, Cambridge, in a recent address. He said:

But the world needs generalists as well as specialists. Indeed you have only to read the newspapers to know that the big decisions on which the fate of nations depends are in the hands of generalists. I do not believe that universities, American or British, are satisfied with the education they give to the man who is to become a generalist. Some believe he should have a rigorously specialist’s training in some field which he then abandons for life. Others believe he should have a synoptic acquaintance with the ways of thinking of humanists, social scientists, and natural scientists. And I suppose there are still a few antique persons who cling to the view that generalists need no higher education at all. We can with some confidence prescribe the minutiae of curriculum for doctors, physicists, and lawyers. The unpalatable fact is that we have no such confidence in prescribing curricula for men who become Congressmen, presidents of industries, newspaper editors, or senior civil servants. This shortcoming in universities is part of a larger deficiency which universities will have to remedy without awaiting pressures from society.

I would put lawyers in this generalist category.

Would I be presumptuous to suggest that lawyers who practice, sit as judges, teach and become legislators, because of their basic mission of seeking “justice” or, as I put it, of seeking the fairest moral compromise for the most complicated disputes involving finance, economics, government and human rights and a host of other problems, would be among the best of the generalists? But, if lawyers are to be generalists in this sense, they must assume the burdens of the generalists. Thus, as legislators, teachers, community and governmental leaders in every day practice of their art they not only must have the ability to communicate with the various disciplines but they should lead the moral values parade; they should like Caesar’s wife be above suspicion because they are the arbitrators of justice which must be based upon moral solutions.

These moral values and ethical standards must be honed, sharpened and brightened by lawyers and those who practice law in every area in which
law is practiced or taught. If not, lawyers deserve to become no more than bail bondsmen. Thus, in the university both at the undergraduate and especially at the law school level, where much of the training of lawyers is done, it is painful and erosive, for example, that examinations must be proctored and that the potential seekers of justice do not have sufficient ethical standards to police themselves; or that writings are published that are not original work, or at least represent the collective work of many, without proper acknowledgment; or that objective examinations are given in subjects that defy fragmentation because it is easier to correct them; or when a professor is tempted by payola, the student body of his university rises up in sympathy and blames the tempter.

At the practicing law level, it is unforgivable that justice can be delayed or defeated by legal gymnastics or even by crowded calendars; or that community morality has reached a point where the almost universal avoidance of the tax law is not considered a moral issue, only the Spartan concept of being caught is offensive. In this area, ethical standards are so eroded that they are close to collapse.

At the community level, for example, it is imperative that a solution be found to the political bartering of judgeships, and to the filling of important policy posts of government as a political reward. Otherwise, the dispensing of justice in this area becomes a mockery.

But most of all, the legislative level where structural law is practiced needs a reassessment of its own morality since it too is a purveyor of justice. Thus, for example, the use of public funds for political patronage only, or the lack of thrift in public office is immoral. A double standard of conflict of interest, one for the public and a separate and looser one for the legislators is rather hard to stomach. The legislator who is uninformed or who fails regularly to attend legislative deliberations erodes ethical standards. And finally, special legislation for the benefit of the few at the expense of the many, usually as a result of political backscratching, is reprehensible.

My examples are perhaps too simple. In the face of these and the myriad of urgent problems in the law area which need a moral approach (meaning conforming to a standard of what is right and good) for their solution I can state categorically—and like all lawyers I am always categorical even though I am not always right—that the undergraduate and law schools cannot forget morals and ethics and smugly conclude that their teaching cannot affirmatively be taken over by the university but should be left to parents and churches, as the president of one large university said to me several months ago, because as he noted—if they don't have these values when we get them it is too late to teach them. If this is right, then I say at the very least don't tolerate the lack thereof.

Thus, the teaching of law or the teaching of a person who will practice
law in this broad sense must be concerned not only with what the law is as an aid to proper advocacy but what it ought to be, not as a pragmatic exercise in which the professor's views are expounded, but by instilling an approach which recognizes with a sense of urgency that justice is essential in lawyers' law and structural law. Thus, the student should be urged and taught that when he as a lawyer becomes a legislator or speaks for his community, or is in governmental office, or urges legislative reform individually or through bar associations, he must be equipped to bring moral and ethical values to bear upon the particular problem and not take a rigid position which represents a particular client's or particular political group's special interest, whether it be economic or political. And even when he is acting as an advocate, he should never do it in a manner which erodes justice or, to be trite, the shining image of the law. Lawyers pretend they practice this way; let's hope some day that they actually do.