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The Social Function of the Legal Profession

Cover Page Footnote

Sermon at the Annual Red Mass, St. Patrick's Cathedral, Nov. 2, 1952. Rector and President, Fordham University.

THE SOCIAL FUNCTION OF THE LEGAL PROFESSION*

VERY REVEREND LAURENCE J. MCGINLEY, S.J.†

YOUR SOCIAL FUNCTION

ON the calendar of the spirit we have marked this day to gather in the home of the Supreme Law-Giver. Humbly we ask God's blessing upon our courts in this year of decision. This social act of sacrifice—the Holy Sacrifice of the Mass which fulfilled the Old Law and validated the New—manifests the serious purpose with which you regard your share in the total task of human society. My role is to formulate and stress the pertinence of your profession to the larger pattern of society's life and work. I want to speak to you of the social function of your legal profession.

Human society is more than the sum of its parts, more than a catalogue of disparate skills, more than a listing of unrelated legal entities. The essence of society is to be found in its unity: in the unity of its origin in the one Creator God, in the unity of its destiny in the one Redeemer God, in the unity of its task: the collaborative promotion of the temporal and eternal welfare of all of us so that each may fulfill his origin and attain his destiny. This unity of society is in danger today, not only from without but most specially from within. Our western civilization tends to disintegrate from its very complexity. Too often it reserves its accolade for the technologist who atomizes the part and denies it to the philosopher who gives meaning to the whole. It is especially important then in our complex society that each part see its function in the light of the whole. And so I ask: what is your social function, your contribution to your society? Beside the skillful performance of legal tasks in your busy days, what more does society ask from you, as men of the law, for the collaborative promotion of the welfare of all the sons of God? I think it asks two things: first, that you be, what you are clearly considered to be, a true profession; and second, that you be, what the times so urgently need, men dedicated to the spirit of law.

PROFESSIONAL MEN

Of any role that it consistently calls a profession the sound judgment of human nature seems to ask three things. It asks them also of you in your social function as a true profession.

Society's first requirement of any profession is skill. The average citizen esteems you because you exercise a higher skill, one beyond his reach. Your tasks are so close to the vitals of human life that upon

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your training and preparation depends the prevention not just of error but of tragedy. This esteem is a challenge to your fidelity. It is a stimulus to your conviction that amid all the sordidness of human quarrels yours is a truly professional task as you bring the trained order of your mind to solve the confusion of human conflict.

Society's second requirement of any profession is service. Men do not begrudge you financial success. They know that your contribution is essential to society's life. But they do inspect your spirit, your motive as you approach your task, because they have granted your prestige that money cannot buy, the prestige won by devotion to client and to law. This prestige is also a challenge. It reminds you that though men enter a profession for a livelihood the measure of their success in it is the service they perform. It keeps you aware of the fact that the men of law take with them into their sunset years only the satisfaction of the justice done through their instrumentality.

Society's third requirement of any profession is self discipline. Men set any profession, and especially yours, above the trades and utilities in this: that your discipline is regulated by higher standards you yourselves impose beyond the call of statute. Here certainly is a challenge to your professional sense: to know that within you is the only ultimate guarantee of the faith of our American society that our courts are beyond venality.

Skill, service, self discipline—these are the requirements of a true profession. They are desperately needed by America in this year of decision. We need your skill to counteract the creed of minimal effort for maximum reward. We need your service to counteract the cult of glamor: the flashing smile, the witty phrase, the artificial homespun of sentiment as substitutes for the solid values of life. And we need your self discipline to counteract the code of amoral dexterity. This is indeed part of your social function: to be what you are considered to be, a true profession.

DEDICATED TO THE SPIRIT OF LAW

Your other social function in this our day is one most particularly your own: dedication to the spirit of law.

These last decades, the walls of civilization's courts have been defaced not only by the sprawling, defiant handwriting of the lawless but by the polished, incisive phrases of those philosophers who have cut deeply into the fabric of men's belief in natural moral law. "Right," they tell us, is only an "empty substratum" to account for legal coercion. "Force, mitigated by good manners," is the ultimate explanation of legality. "Natural law and an ultimate standard of justice," they repeat, "are examples of illusion on illusion."

Washington warned us long since against those who would drive a wedge between religion and morality. This century's attack on the natural moral law has driven a wedge between the moral and the legal order. Its effects are all too sadly clear.

In private life this denial of the natural moral law has endangered the sense of personal moral obligation on which democracy stands. It has imperilled the monitoring voice of conscience and the fruitful inhibitions of a sense of guilt. In the courts this denial of the natural moral law has made law penal only: a trap for the unwary and unwise. It has made legal process a game with artificial rules where dexterity of action is more prized than consistency of principle. Among the nations this denial of the natural moral law has substituted force for moral obligation and made possible the triumph of the law of jungle over the law of reason in the organized violence of the absolute state.

Your dedication to the spirit of law means this: keen understanding, deep conviction and articulate defense of the natural moral law. "Let us be realists," your opponents say. And you reply: there are no greater realities in life than those inalienable rights for which men die. "Let us be practical, pragmatic," they say. And you reply: nothing is more practical, more indispensable to any man even the philosopher of law himself—on the bench or hailed before it—than moral right to which there corresponds a moral obligation. "Let us take cognizance of history," they say, "the voices of mankind." And you reply: for more than two thousand years the voices of our western world have proclaimed the ultimate basis of legality to be the moral law ordained by God. Voices in the desert of Moses, the Athens of Aristotle and the Rome of Cicero; the voice of a Paul, of a Justinian, an Augustine, a Gratian; the voice of an Aquinas, "This participation of the eternal law in the rational creature is called the natural law"; the voice of a Bracton, "The king is under God and the Law"; of a Thomas More, "I die the King's good servant but God's first"; of a Jefferson, "All men are endowed by their Creator with certain inalienable rights"—these are the voices of our history.

With every pledge of human rights from Magna Carta to the Charter of the United Nations, you too are dedicated to the spirit of law, the natural moral law. Like this Mass you also have your Credo:

God, Supreme Intelligence, created all things, men included, according to a Divine Plan. There is a Divine Eternal Law. This I believe.

Man, possessing freedom and intelligence, can ascertain his basic rights and duties in this Plan. There is a Natural Moral Law. This I believe.

To express, to clarify, to determine in concrete circumstances this Natural Moral Law is the function of human law and of the men of law. This also I believe.

VOCATION

Your social function as truly professional men, dedicated to the spirit of law, is obviously a high calling. You can say of yourselves the words of Cardinal Newman: "God has committed some work to me which He has not committed to another. I have my mission. I have a part in a great work." Truly you have—for you are instruments of God, interpreting his moral law in the concrete complexities of modern society and thus guiding men to that ordered fulfillment of their nature which is each creature's destined happiness.

It is well then that we have gathered to pray together to the Holy Spirit—the Divine Advocate—for the wisdom you so need in this year of decision. May His gifts be poured abundantly upon you—especially one He gave to Paul: a certain "boldness of speech," an incisive confidence in the frank advocacy of truth. For you too have been made "fit ministers . . . not of the letter but of the spirit; not of the letter that kills but of the spirit that gives life."

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