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THE LAW AND THE LEGAL PROFESSION IN THE TWENTY-FIRST CENTURY

In our modern society, it is difficult to adapt existing laws to the acceleration of technical and social change. Tremendous population growth, urban congestion, pollution, racial strife, organized crime and the novelties created by the discoveries of scientific laboratories, constitute a threat and a challenge to traditional social, legal and political forms. New solutions are needed which may radically depart from the concepts of the past and of the present. Although much has been written about the future, this has not been the case with respect to law.

The aim of this anniversary issue is to indicate how our legal structures can adapt to the future. In a series of essays, the contributors have attempted to analyze the legal side of tomorrow. They have not, however, indulged in crystal-ball gazing or law fiction but rather have developed a new branch of the law which could be called "legal futurism". The current of change is so strong that, much sooner than expected, it may overturn our institutions and shift our moral and political values. In fact, today, one cannot help but notice that change is constantly accelerating. There is too much change in too short a time. Obviously, the sociological consequences of this ever-increasing rate of change will have a tremendous impact on the law and the legal profession. As Alvin Toffler maintains in *Future Shock*, unless man quickly learns how to control the rate of change in his personal affairs as well as in society at large, we are all doomed to a massive adaptational breakdown.

How can we adapt to tomorrow? Should the law and the legal profession prepare us for the future? What will be the basic responsibility of the legal profession to society at large in the twenty-first century? How can lawyers make the law a more effective instrument of peace and human welfare? Already the nature of legal

practice is changing with a consequent expansion of the role and responsibility of the legal profession in our society. I strongly believe that our legal structure and institutions must be prepared for the future because the future, in fact, already influences the present.

The challenges facing the legal structure as a result of new scientific discoveries and technology are stupendous. For instance, what is or is not legitimate in the area of human experimentation? How far should the government impose restrictions on individual behaviour when this behaviour has only indirect effects on the welfare of others? Systematic attention to the legal questions raised by the rapid expansion of biomedical knowledge is of prime importance as techniques of genetic control and government control of the behaviour of citizens will soon be possible. New legal structures must be conceived in anticipation of what is to come. At the present time, the impact of science and technology upon society is not fully met by legal education. In this type of legal planning, the legislator, when attempting to provide for the health and well-being of the citizenry, must exercise a certain amount of caution in order to avoid freezing the existing scientific state of the art into law, as it is a characteristic of science to be continually changing whereas the law tends to be conservative and to contain little built-in flexibility. In the field of administration of justice it is possible that very advanced types of computers will replace both lawyers and judges in certain types of case. Legal assistance to the poor and the needy will have to be thought anew. Corporation law, family law, environmental law, consumer law, poor law, mass communications law, transportation law, credit cards law, and other sensitive areas of the law must be constantly reviewed and become future oriented in order to help people to come to terms with the society of tomorrow.

Today, it seems to me, one of the most important functions of the law is to control the rate of change and the directions of change and not simply to attempt to regulate situations already in existence. The legislator and the legal profession must guide society and anticipate new developments, for if the law lags behind, unbearable social stresses might develop. A good example of this foresight on the international level, is the Treaty governing the activities of states in the exploration and use of outer space, including the moon and other celestial bodies which was signed in December 1966 before man had landed on the moon. Without entirely repudiating the past, the law has a capital role to play in the planning of the future, because the past is no longer adequate to cope with the future.

Of course, it must be recognized that since law is by nature conservative, it does not anticipate but reacts to social needs and demands. Thus far, law has seldom searched out or responded to

hypothetical needs: its role is to solve real problems. I am not suggesting here that, in 1973, we must legislate for the year 2000. Clearly, the legislative effort must begin with a problem that has to be solved. I am merely proposing that we must constantly ascertain whether particular scientific or other accomplishments have progressed to the point where the framing of legislation is possible and necessary, and that, in some cases, legislation can be passed to anticipate a problem. Only by identifying and discussing the issues that are likely to arise and considering alternative lines of possibility can legislative response take place and be adequate.

As futurists of the law, the contributors to this special issue have not attempted to deal in fanciful predictions since no one can claim to absolute knowledge of tomorrow. They have only tried reasonably to anticipate the types of legal problem which society may have to face in the post industrial society of tomorrow and to give readers a vision of what the law and the administration of justice might be in selected areas of human activity in the next fifty years. In their essays they have offered the members of the legal profession and the public in general ample food for thought. Every effort has been made to explore the future uninhibited by the present or the past. As André Gide once wrote: "Man cannot discover new oceans unless he has the courage to lose sight of the shore." Thus, we owe much to the contributors for their bold conceptions of the role of the law and the administration of justice, legal education, the legal profession, legal aid, and so on, in the twenty-first century.

A totally new society is emerging in our midst and as lawyers we must shape its development. To do this we must take a fresh look at law and its functions in a post industrial society. Automation, which is perhaps the greatest change in the whole history of mankind, has created problems of such magnitude that existing legal structures are no longer sufficient to deal with them. The ways in which law will cope with the astonishing expansion of the scale and scope of change will affect the course of history. Law must resolutely break with the past. The legislator should experiment and either repeal laws periodically or enact statutes that will only remain in force for a very short period of time as the acceleration of change shortens the duration of many situations. Our throw-away society, our corporate state, the economics of impermanence, the spread of rentalism, the shortening of human relations especially in marriage, the difficulty of overchoice, the collapse of bureaucracy, the large scale exploitation of the resources of the earth, pollution, the new birth technology, to use some of Alvin Toffler's terminology, call for new legal rules and restraints. The law may even have to legitimize certain forms of "crime" in order to enable people to work out their aggressions. New legal concepts will be

needed in a society where the individual will constantly change his social ties.

The political structure of society may also be affected by the fact that there is no longer a broad central core of commonly shared values. Diversity and lack of consensus are already the characteristics of our society. How will a society that cannot agree on standards of conduct be governed? Is democracy the right form of government under post industrialism? Perhaps citizens should be consulted more often or elections should be held at shorter intervals in view of the rapid turnover of people in a given constituency. Voters by way of referendum would be polled not only about specific issues, but also as to future courses of action. Will the year 2000 bring us the golden age of humanity or the harshest of dictatorships?

Lawyers must not become irrelevant in the society of tomorrow by restricting their role to that of mere technicians or legal mechanics practising a rather esoteric craft of limited social value. In a scientific and technological society, the legal profession should remain central to the decision-making process which is open-ended in nature. As social engineers, individual lawyers cannot think exclusively in terms of the adversary system. They must be prepared to assist in the policy-making decisions relating to law in every aspect of human life. For this reason, lawyers will be highly trained multispecialists; they will have to be experts in economics, science, technology, statistics, and so on. They will be assisted by computers. Thus, legal education will have to be reshaped. Law, science and technology programmes will be established. Perhaps law schools will be organized as public interest law offices in order to give the proper clinical training and experience to students. It is quite likely that the character of the legal profession will change entirely before the twentieth century is over. Paralegal services may one day replace some legal services. In fact no one should graduate from high school, or university, without some knowledge of the law.

The contributors have made long-range assumptions about the future in order to imagine the new trends of family forms and human relationships that might prevail, the trends of technology that might surround us, the types of organizational structure that might be created.

The law and the legal profession have almost always been silent about tomorrow. Law has been focussed backward instead of forward as if there were no future. I believe that it is imperative to change this orientation and shift into the future tense.

Law in the society of tomorrow should regulate technological advance and where necessary anticipate it. The legislator has a duty to prevent the ravages of irresponsibly used technology. It is

the time lag between the use of a new technology and its control by the legislator which is a serious problem, as new laws or regulations often are enacted too late. Special political or administrative institutions may have to be created for screening new discoveries. The law should organize a systematic control over the diffusion and application of inventions. Thus, it has been suggested by some writers that a public administrative agency, or a sort of technology ombudsman should be charged with receiving, investigating and acting on complaints having to do with the irresponsible application of technology. New products should not be distributed to the public without control.

Let us hope that it is not already too late for legislators and the legal profession to be able to moderate and regulate the rate of change in order to humanize and make livable distant tomorrows.

The purpose of this series of essays is to convince our legislators and the members of our profession that they must become future conscious. Legal realism must go hand in hand with legal futurism. By examining alternative futures, the contributors have indicated some of the choices open to the legislators.

The legal profession can no longer live on the received wisdom of the past. Lawyers must participate in the changing of the old order and contribute to the solution of the great problems of today and tomorrow. Let them offer their views on questions of environmental pollution, population control, human experimentation and many others. By critically and constructively examining the pressing issues of the day and helping to articulate social goals as well as providing alternative means for accomplishing them, the legal profession will better fulfill its true vocation which is to bring about a just society.

The law and the legal profession must respond or react to scientific change, they must seek affirmatively to guide that change. There is no other alternative. In an age where knowledge is so swiftly and recklessly used for evil or for good, it is better to be overspeculative than overcautious.

I should like to express my sincere gratitude to all the contributors for undertaking such a bold journey into the unknown and also thank the gifted Canadian sculptor, Sorel Etrog, who kindly consented to design the cover theme for this special anniversary issue.

THE EDITOR

. . . We cannot think our way to humanity. Everyone of us, and every group with which we live and work, must become the model of the era which we desire to create. The many models which will develop should give each one of us an environment in which we can celebrate our potential—and discover the way into a more humane world.

. . . The call is to live the future. Let us join together joyfully to celebrate our awareness that we can make our life today the shape of tomorrow's future.

IVAN D. ILLICH

Celebration of Awareness (1970)