The Lawyer in His Profession

Edward McGrath S.J.
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This group constitutes the first post-war graduating class whose course of study of the law has not been interrupted, although it was delayed, by the war. This indicates some approach to a more nearly normal peace-time state of affairs, it is true—but I fear, a rather remote approach.

For we live in a post-war world that has not returned to complete peace—a world in which the war, in its results, is constantly with us, a world in which rumors and threats of new conflict are by no means lacking.

Peace has not yet been achieved—and the effects of these disturbed conditions are visible in our own land, though not, thank God, to the same extent as abroad.

A world-order is in the making—and the process promises to be long and difficult. Human passions of hatred, greed, ambition and revenge have been loosed and will not easily be brought back under orderly restraint. All the peoples of the world, if we can believe the public declarations of their leaders, want peace and order and tranquility in which to rebuild, to repair the ravages of war and to attain a reasonable standard and mode of life. But the prospects are not too bright—and the reasons, some of them at least, are not too obscure or too difficult to name.

If men are to live in a harmonious and peaceful world society, there must be some agreement on how men should live. Certain elementary and primary principles of a philosophy of man, a philosophy of the state, a philosophy of government and politics, and a philosophy of law must achieve common acceptance and must be made effective. For where there is conflict in basic philosophies there are the roots and seeds of war.

The world today is split by two basically opposed philosophies of man—the one totalitarian, the other democratic in fundamental concept.

On the one hand we see still in force the same general philosophy, which, glorifying race or state, and denying the worth of individual men, set the stage for the last great war. For there you have even today the acceptance of slavery of the weak, however the fact may be named, the doctrine of regimentation of subject peoples and of citizens for the purpose of national power and aggrandizement. There you find the ruthless exploitation of men for the establishment of a planned and regimented economy at home, and power politics abroad.

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*This article embodies the commencement address given by Father McGrath to the 1947 graduating class of Marquette University Law School.
Now the state operates through law, and the plans of government are effective by law, and the relationships of citizens and government are defined and regulated and controlled by law. And if this law be a law of force—if it be devoted to state supremacy—if it be based on the denial of human rights, and is thought of as above and beyond all considerations of morality and abstract justice, then you have a law, and a consequent theory of society and government and politics that cannot in any way lead to peace. Our nation occupies today a position of influence for good that is without precedent in history. The gaining of peace, and the character of that peace, and the terms and conditions under which society will live will be determined largely by our influence in shaping world policies.

It is fortunate indeed that we are in this strategic position, for the United States possesses, and our theory of government is based upon, the sole philosophy of law that can in any way insure peace and tranquility, liberty and justice to men.

The traditional American philosophy of law must not be forgotten or abandoned. Whatever may be the forms of government by which states operate, the fundamental principles which have controlled this land must ever be observed and held in reverence. And thus the blessings that we enjoy and prize so jealously may be shared by a world that sadly needs security and peace and freedom from fear.

This country is dedicated to the doctrine of human rights, inalienable rights, “conferred by Nature and by Nature’s God”—it is intent upon the preservation of these rights, the safe-guarding of liberties and the advancement of the common good. Our government—“of the people, by the people, for the people”, “derives its just powers from the consent of the governed.” It is not dictatorial; it is not totalitarian; it is democratic in concept and in purpose. The laws of God, and the natural moral law found embedded in human nature have traditionally supplied the background for our law and our government. And so our courts, insisting we are a Christian people, have appealed to the natural moral law with surprising frequency.

But new philosophies have appeared in the land, and new theories of the scope of law and the functions of our courts have begun to gain acceptance.

There are men who simply deny that law has ever been concerned with rights, or liberties, or justice. In their opinion the law and the courts have never been other than tools in the hands of dominant groups in the state for securing and perpetuating their selfish domination and control. And so the practicing lawyer need not concern himself too much with idealistic theories of justice and rights.

There are others less cynical by far, and public spirited, intent upon the common good as they understand it, who would enlarge and change
the functions of our courts. Since, in their understanding, the law has no meaning until a judicial interpretation has been made, the courts are to consider themselves not merely as interpreters of law, but to a considerable extent as legislators. They would have the courts not too tightly bound by the intentions of the legislators—they would rather have the courts liberalize the law, interpret law in terms of present needs—in brief, the courts are to engage in "sociological engineering", to guide and direct the progress of the nation.

There are others who completely deny that the courts are really concerned with law at all. They charge all the dignified panoply of justice, and all the machinery and procedures of the courts with being essentially dishonest pretense. For they assert that judges do not judge according to law, but rather on the basis of a "hunch" or a "pre-mention" or a prejudice, and that the citing of precedent is merely a means of excusing a prejudice or justifying a "hunch" or rationalizing an independent judgment.

Now in all these criticisms and theories there are, of course, some elements of truth, but in all of them are elements of danger—and against these dangers we must be on our guard. For our continual welfare will depend upon our preservation of traditional American ideals and concepts of law.

By virtue of the degrees conferred upon you today you are admitted to the goodly fellowship of the ancient and honorable and noble profession of law. You will find yourselves in a position intimately and vitally to affect, for good or for ill, the fortunes and the very lives of those with whom you deal. For the law affects the citizen at almost every moment of his life. All his public dealings with his fellows are controlled by law—his private interests and his personal safety are affected by law. His rights and liberties are subject to its control.

And to you, as practitioners, or as future judges or legislators the well being of your fellows and the security of society are, in large part, entrusted. You are engaging in the practice of a profession and not a trade. While you will find in the law a means of livelihood, that will not be your principal concern. You will be of service to your fellowman, with an eye on his benefit and aid, and not primarily to your advantage and profit. For that is what a profession demands. Those who follow a profession are supposed to be dedicated to the service of mankind.

Their personal interests are secondary and subordinate to the good that they can do. They are the repositories of others' secrets, the recipients of confidences, the custodians of others' goods. The goods and often the reputations and the very lives of others are entrusted to their care with full trustfulness and complete confidence. They
are expected to be men and women of high ideals, sound principles and complete integrity.

On no other groups is such complete confidence conferred. On no other groups does the safety and the welfare of society so heavily depend.

In joining the numbers of those who follow the profession of the law, a man makes large promises of unselfish devotion and of service, and assumes real and heavy responsibilities.

Because we feel quite certain that the members of this class are such as I have described, Marquette University Law school is content and pleased to have you admitted to the pursuit of the law. We hope and we expect that the law will be your life; that you will find in it a source of real benefit and success and happiness. We expect that you will practice law with sincerity and devotion to high ideals, with an eye single to the security of justice, the safeguarding of liberty, and the protection and vindication of human rights.

You have been trained in a definite philosophy of law. You have learned that the sole reason for the existence of man upon this earth is the attainment of his beatitude, to the consequent glory of God, his Creator. For man is created and destined for beatitude. The decree of happiness is the fundamental motive governing his every free choice, and on a proper appreciation of the nature of his action depends his chance of achieving the destiny proper to his nature and its needs.

There are actions of their nature helpful and beneficial to man; there are actions of their nature harmful and injurious, and it is important that a man know how to choose between them. And so he considers human nature and its needs and capacities—he looks at man as he is found existing—an individual, rational being, endowed with intellect and free will—whose knowledge is based upon his contact with the world in which he lives—but not merely an individual. He is a member of a family, and therefore enmeshed in certain rather clear relationships—he is a member of society and a citizen of a civil state—and he is a creature of God.

Now in all these aspects he is found to be endowed, merely by the fact that he is a man, and that he does exist, with a number of rights and duties, which reason points out to him readily enough. In the civil state he can most easily find his means for reasonable living—and so the state becomes a means for advancement of the temporal prosperity of the families and individuals of which it is composed. Man is social by nature and not a-social or anti-social; therefore it is no part of the duty of government, as a agency of society, to regiment or dragoon its members, or to invade human rights and freedom save in-
sofar as the reasonable concept of the common good demands. On the contrary, reasonable exercise of rights is to be made secure.

The family is the basis of the state, and the law must be solicitous that this fundamental society be protected.

Government is an agency of the state, and its powers and rights are determined and limited by the needs of civil society. Government then is not supreme, and human rights are not to be abolished.

Human law, then, and all the apparatus of law must function against the background and upon this basis of justice and right if men are to live rationally and well.

Thus has it been in these United States. Against the inroads of false philosophies of law that would in any way transform our land and turn it into a police state, or that would transform our courts from tribunals of justice into tools of power-loving government, you must be on guard.

America can lead the world to peace, if America is true to her heritage. You, as lawyers, judges, or legislators, will have much to say, each in your own degree about the philosophy of law that will prevail.

May you, then, follow the law—serve your fellow man, your country and your God—and may God bless you and prosper you all the days of your life.