Introduction to the Issue

Follow this and additional works at: https://digitalcommons.law.yale.edu/ylj

Recommended Citation

Available at: https://digitalcommons.law.yale.edu/ylj/vol79/iss6/1
Introduction to the Issue

In the course of a long and remarkable career, Thurman Arnold occupied nearly every role traditionally filled by members of the legal profession—small-town practitioner, elected representative, law professor and dean of a law school, government lawyer and administrator, judge, and finally senior partner in a corporate law firm. As he suggests in his autobiography, Arnold's restlessness reflected the unsettled character of the times. National and international upheavals, combined with the rapid advance of technology and its counterpart, social planning, challenged the lawyer's skills and imagination. At the close of Arnold's career, the times are as unsettled—and as unsettling—as any in this century, and never has the ability of the legal profession to cope with its times been more seriously questioned. It is fitting that our memorial to Thurman Arnold appears in an issue of the Journal which attempts to explore some of the directions in which the legal profession is moving in response to pressures of social conflict and change.

The articles in this issue suggest that the future of the legal profession will be determined largely by an interplay of social and personal needs as lawyers perceive them. In part, the contributions of the legal profession to ending racism and poverty, to protecting the consumer, or to saving the environment, will depend on the extent to which lawyers are willing to sacrifice traditional rewards of the profession, such as high income and job security. But as the articles which follow indicate, the future direction of the profession depends on much more than how lawyers resolve conflicts between working for the social good and working for themselves.

Serious questions are being raised about how the social good is itself to be defined, and what the lawyer can do to achieve it; at stake are questions of politics, values, and technique. These questions are being asked at a time of social crisis which some see as a crisis of law. Law is perceived as an instrument of oppression, the legal system as an inade-
quate and deceptive medium for change. An increasing number within the profession are coming to share that disenchantment, or at least to flirt with it. These views undoubtedly have been shaped by official lawlessness and unwise laws, which undercut the authority and idea of law and thus threaten the basis of social order. For example, the persistence of official and non-official racism, in spite of the promises of law and the hopes of many lawyers, has destroyed the basis for once-accepted assumptions about the role of lawyers and the law in social change, and the failure of the liberal program and apparent collapse of the old liberal coalition has added to the demoralization felt by many lawyers and law students committed to social change.

In addition to these problems concerning the social function of the law, the legal profession faces challenges in more personal terms. Debates about the practice of law reveal disagreement not only over conceptions of the social good, but over conceptions of personal need as well. These personal concerns are hardly new; Cardozo and Llewellyn wrote frequently of them, and Cardozo's phrasing of the "halting doubt" is appropriate even in its grandly serious tone: "whether the law in its study and profession can fill the need for what is highest in the yearnings of the human spirit." To ask whether the practice of law is personally fulfilling is for many lawyers inseparable from questions about the social usefulness of their practice. But in addition many are asking today whether certain valued styles of living and thinking are inevitably closed off to lawyers because of their training and work. In ways that we barely understand, the legal culture appears to generate styles of living and thinking that set lawyers against parts of themselves and against emerging parts of the larger culture. For example, lawyers are told that professionalism requires the separation of personal feeling from their work; and they seem particularly baffled or outraged by an increasingly common feeling in the larger culture that rationality should not be the basis for living. It is certain that any significant transformation in the larger culture—in the ways it thinks about personal satisfaction and freedom, in the styles of personal living it favors—will create significant strains in the legal culture as well, and influence the structure of the profession.

Cardozo's own response to the question about the fulfilling nature of legal practice is revealing. "Thus challenged, I do not argue. I point the challenger to Holmes." Such a response would probably not be

Introduction

sufficient today, in part because lawyers and law students are shockingly ignorant of "heroes" and intellectual leaders in their tradition, but also because that tradition is being questioned; no established hero of the tradition can serve so easily to assure us about the present practice and study of law.

And so there is some irony that our issue is devoted to the memory of Thurman Arnold. Arnold's career and his person came close to being a model of the "great life in the law" as it has traditionally been viewed. But juxtaposed with persuasive and deeply felt memorial statements about Arnold in this issue are articles about the legal profession which, at least implicitly, question his life as a model for the future.