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ON THE CRISIS OF JUSTICE

Remarks on Induction to the
Presidency of the Association of
American Law Schools, Chicago,
December 30, 1970.



by Professor Alfred F. Conard

I am deeply sensible of the honor and the responsibility of presiding over the affairs of our association. I don't know how I can be so lucky as to win this prize just in a year when we are running a \$40,000 deficit, law schools are up against the wall, the whole of higher education is on the defensive, and government and foundations are cutting back on the support to which we have become accustomed. Probably one of the blessings of our invisible system of nominating officers is that when one of us is approached, he has no idea how many wiser men have turned down the job before it was offered to him.

I have only this slight consolation. Thanks to our imminent incorporation, the debts incurred will not be a personal liability of the new president, as the debts of 1970 are for Jeff Fordham.

However, the financial troubles of the association are not the most serious ones we have to deal with. We have others which are more fundamental, both inside and outside.

Inside, we have a problem of functional democracy. I suspect that our spirited discussion of finances is a symptom of a lack of widespread participation in the activities and decisions of the association. Although channels have been open, they have not been used. We can and we must reorder our relations so that all of us will find it easier to follow what our association is doing, and make our views felt as issues arise. President Fordham and I have created a new committee, headed by (Dean) John Cribbet, to re-examine the association's purposes and its structure. This committee will consider substantial revision of our channels of communication and our decisional processes. In particular it will give consideration to the appointment of a delegate of each member school, charged with a personal responsibility to follow association affairs, and to represent the views of his faculty. I am confident that, when we come here in 1971, all of us will know more than we did in 1970 about the association's affairs, and our diverse opinions will be better known to the association's officers.

On the outside, we have an even graver problem, which I would characterize as the moral responsibility of legal education for the solution of the social crisis which grips the United States of America. This is not a crisis of hunger, or of disease, or of foreign invasion. This crisis which grips America today is a crisis of justice—a crisis in the resolution of the conflicting interests and demands of the diverse ethnic groups, age cohorts, economic levels, and opinion sectors. The crisis can be seen in the repression of crime, in freedom of speech and the press, in the compensation of injury victims, in the determination of wages, and in the control of pollution.

I suppose you may ask how this got to be *our* responsibility. *We* have not been mugging shoppers or bugging telephone lines, shooting drugs, disrupting courtrooms, nor even striking for higher pay. But we have been lagging badly in devising new ways of solving the problems which threaten the dissolution of the social organization in which we now live.

Our colleagues in agronomy, medicine, and engineering have discovered new and vastly more effective ways to produce food, to conquer disease, to repel heat and cold, and to travel in two hours as far as our forefathers traveled in two months. In the law, we are using basically the

In the law, we are using basically the same approaches to crime and to civil liberties which we used in 1790, and it probably takes longer to get one's day in court now than it did then.

same approaches to crime and to civil liberties which we used in 1790, and it probably takes longer to get one's day in court now than it did then. Our attachment to ancient rites, celebrated in obsolete terminology, is sometimes reminiscent of the Roman curia's resistance to the *aggiornamento*.

Fortunately, we stand at the dawn of a new day in our capacity to analyze and understand the workings of justice. Studies of jury deliberations, of pretrial hearings, of court delays, of injury reparation, of release on recognizance, and of police methods show that we can produce a new kind of sociolegal data, leading to a new kind of jural science, and new solutions to the conflicts which are endemic in human society.

In a sense, we are moving from microjustice to macrojustice. For centuries, jurists have focused on the rights of one litigant against another. Microjustice has devised more and more elaborate ways of conducting trials, and excluding evidence, but has failed to notice that the waiting line outside the courtroom has grown to be five years long. Macrojustice focuses on the effects of rules on the total mass of involved humanity, not just on the lucky individual who has found a lawyer and got his day in court. It is concerned with how many people experience justice, and how many just hear about it as something that happens to somebody else—like sweepstakes winnings. It is concerned with how many months or years it takes to get justice. What good is money to pay doctor bills and lost wages if it arrives five years after the doctor, the grocer, and the landlord had to be paid?

There is scarcely any area of law which cannot be illuminated by macrojural analysis. In the embattled area of searches and seizures, where libertarians insist on the absolutism of civil rights, and where police allege that civil rights are destroying public safety, the open-minded

observer would be greatly enlightened if he could be told how many more criminals would range at large, or how many more police would be required to catch them, if the strictest rules were followed? How many innocent citizens are detained, and how many innocent homes invaded, under more relaxed rules?

In the settlement of small estates, are more assets gobbled up by formalistic procedures than would be misappropriated under more informal methods?

In the reparation of automobile injuries, how much more would it cost to pay everyone's out-of-pocket costs regardless of fault, than to investigate and litigate the elusive questions of negligence, contributory negligence, and causation in order to compensate only the innocent victims of the guilty?

In the administration of criminal corrections, how many offenders could be as effectively cured by finding them jobs as by incarcerating them?

In the crisis of the polluted hydrosphere, how can we balance the ineluctible necessity of using air and water with the equally imperative need of preserving them?

Many factors have led to our past neglect to explore and to apply macrojustice. There has been in the past an overly reverent fixation on the words of the judges as holy writ; there has been too much abstract conceptualism; until very recently, we were relatively ignorant of scientific methods for observing the habits and attitudes of people. These barriers have now been largely surmounted. The remaining barrier is money. While hundreds of millions of dollars are being spent in each year on research in the physical sciences and in the health sciences, and millions in the social sciences, the expenditure on legal research is too small to be recorded in the United States Statistical Abstract.

If we are serious about our obligation to contribute to the solution of social crises, we must demand support of jural research which will permit justice to keep within hailing distance of the vertiginous evolution in the rest of society. That means that we must devote ourselves to changing the attitudes of senators, congressmen, university administrators, philanthropists, and philanthropoids toward research on justice. We intend to press this concern in public hearings and in private colloquies during the coming year. I would like to ask the help of all of you in this endeavor.

These concerns are more than enough to give us a busy association year in 1971. I hope we may work effectively together in dealing with them.