

10-1-1957

The Lawyer's Role in the Profession and the Community

Francis Bergan

Appellate Division of the Supreme Court of the State of New York, Third Department

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Legal Ethics and Professional Responsibility Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Francis Bergan, *The Lawyer's Role in the Profession and the Community*, 7 Buff. L. Rev. 1 (1957).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss1/3>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

THE LAWYER'S ROLE IN THE PROFESSION AND THE COMMUNITY*

By FRANCIS BERGAN**

ON this bright June day which throughout each of your lives will be memorable for the achievement of a long-cherished aspiration and a tenderly nourished hope, we, who are now your professional brethren, bid you welcome. By the oath of office you have just taken, with all the binding implications of duty and devotion it carries with it, you have become part of that great confraternity of lawyers, with ties binding us to each other, and with traditions of public and professional service unbroken, generation after generation into the dim recesses of the past.

You would not have undertaken the arduous study of law in the first place had you not been motivated by an interest in its mastery and practice, and found it harmonious with your way of thinking and your way of acting; but you will find, happily, in its practice, that it offers an enormously wide range to different kinds of talent and ability. There is room for almost every temperament and every special bent and aptitude.

For most human beings a rounded and happy life requires some form of creative effort. We must build something; impart some part of our own personality and significance to the world in the materials with which we work. The artist, the composer, the novelist, the sculptor find outlet and expression each in his own media. The lawyer, too, finds adequate opportunity for expression.

The well-written brief which compresses the whole subject germane to the issue into a few dozen printed pages may be as high and rewarding an experience to write and to read as may be found in any area of literature. Some lawyers are able to bring the touch of perfect balance, restraint and utility to what they write. The judicial opinion, too, we submit with some temerity, may be a work of art. We sometimes forget the high joy and happy outlet of expression possible in the forensic art, in the argument to the court; in the summation to the jury; in the appeal to reason, to sense and to the forces of emotion that underly all action.

A perfectly drawn contract may become, like Keats' Grecian urn, a thing of beauty even if it is not always a joy forever.

There can be high artistry in a precision of language that would embrace contingencies not now forseen and which are shielded by the future; and agree-

* Address delivered on June 24, 1957, to the class of newly admitted attorneys at a term of the Appellate Division of the Supreme Court of the State of New York, First Department.

**Associate Justice, Appellate Division of the Supreme Court of the State of New York, Third Department.

ments affecting trusts and future interests require not merely artistry in expression, but an imagination which is akin to a brooding penetration into the future.

Lawyers are the creative architects of the business corporation and of partnership structures, of the institutions of enterprise and of commerce, which must serve their purpose and weather the gales of attack and competition and perform functions in ways to which we have become accustomed and on which increasingly the business community depends.

The rounded and happy life needs some opportunity for successful combat, too. However restrained, channeled, conventionalized and codified these combats may be, they surely exist in the keen competitions and in the striving of modern society and the lawyer has every special opportunity to exercise his powers and find outlet in this area of his work. Indeed, almost every case presents a challenge to combat and to controversy; to win by one's courage, strategy, knowledge and skill is high joy and heady wine; but what is a very important circumstance of all this, is that you will find in spite of your best efforts and your highest hopes, there will be enough failures and disappointments to save your ties with humanity; and from this you will find that at its very best the law is a humane and humble profession.

You will find ample opportunity to exercise your intellectual powers at full reach. However much you may learn of law there will be more beyond the horizon that you do not know; and what is more interesting, there will be new combinations and arrangements of problems differing from any you have ever seen or can find exactly in the cases. Law is an arrangement of life; and life has a recalcitrant way of defying and breaking through arrangements.

The main intellectual discipline of the lawyer, however, is in the evaluation of case law. We examine by a series of decided cases what the judges have done with the controversies that have come to them for decision. We take due note of their reasons, of the ways, with artistry or bluntly, they have rationalized what they were deciding; but we pay closest attention to what they have actually done with the case, and putting these decisions in sequence and in relation to each other, we do two important things. One, we grasp the rule as it has been developed up to now; two, we make a prediction, based on our judgment, of what the court will do with the somewhat similar, but also somewhat different problem of our client.

Many factors enter into the intellectual synthesis that lies at the bottom of this prediction. The rule as it has developed in the past; the general drift of the law in similar areas; the shift in its emphasis; the atmosphere, necessities and standards of current society—all the complex factors which affect the law—become the components of our thinking. It is this informed prediction about

THE LAWYER'S ROLE IN THE PROFESSION AND THE COMMUNITY

what the courts will do with the controversy which is the main basis of the lawyer's service and advice to his client, and it is the principal service for which the client pays when he retains his lawyer.

There is ample room for the outlet of emotional strivings in the practice of law. The espousal of the rights of the persecuted person and the unpopular cause provides examples. There are many men and women in our profession who have found deeper satisfaction than any tangible possession could give them, in the defense of the helpless and the protection of hated people and unpopular causes, and the winning of justice for the oppressed. It is one of the solid tributes to our profession that we continue to attract lawyers disposed to put a sense of righteousness and justice above their own economic advantage.

This is part of the highest tradition of the profession. You will remember that after the Boston Massacre the redcoats who had shot into the civilian crowd were the most hated symbols of British power in the colonies; but it was the conviction of John Adams as a lawyer that they should have adequate defense that led him to become their counsel at the cost of incurring strong public disfavor.

This consideration of the role of the individual lawyer in the profession leads directly to a consideration of the somewhat larger question of the role of the lawyer in the community. In this respect we have made in the past a record built on very solid foundations. The debt of the modern democratic community to the lawyer and to the constitutional concepts and machinery which he fashioned is very great indeed.

If you would ask the average thoughtful citizen what institution of our country he most valued he would almost certainly say the Constitution of the United States; and if he became more specific about it he would denote that part of it which contains the Bill of Rights.

The fact the Bill of Rights has been universally accepted and enforced has been the shield of our freedom as a nation. One is immediately struck by the fact, when one re-reads the Bill of Rights in fresh perspective, how much of it is concerned with legal rights in terms of lawyer-made language; and with legal machinery created and moulded by the professional thinking and experience of the English and American Bar.

We see, for example, that the accused in a criminal case shall have the right to "the assistance of Counsel for his defense"; that he shall have a "speedy and public" trial; that he shall be confronted by the witnesses against him and "have compulsory process for obtaining witnesses in his favor"; he shall "not be twice put in jeopardy"; he shall not be compelled to be a witness against himself or

deprived for life, liberty or property without due process of law; he shall not be subjected to unreasonable searches and seizures, and where any are granted the warrant shall be issued "upon probable cause supported by oath or affirmation."

All this is the very life blood of the Bill of Rights; and all of it is the product of the experiences and creative work of our profession. These rights are not mere generalities; they are specific safeguards described and framed in words of legal art.

We cannot rest upon the laurels of our past services. We have duties to the present generation; and you, in particular, have duties to the generation which will become dominant during the next half of this century. Each of us feels within him, according to the demands and intensity of his nature, something of this insistent need to serve the community and his fellow man to leave the world in some way improved by what he contributes to it; but there is more to it than our own personal promptings.

We, all of us, the judges who sit on this bench; our professional brethren who practice at this bar; you who have just been called to that bar, owe a heavy debt to the free society which has nurtured and honored us and made possible at once our privilege and our opportunity.

The benefits of that free society have been the product of the imagination, the courage, the sweat, the toil and the effort of countless thousands of men and women who have gone before us. The colleges which provided the basic intellectual preparation for our legal studies, the professional schools at which we were trained were alike the creations of generations who have gone before us; the profession to which we have been called, the judicial offices which we occupy have come down to us full blown and already made.

We must bestir ourselves to do our part in our day. What can the lawyer do best for the society in which he lives and practices his profession? He can provide it with community leadership and he can give to it freely the benefit of his professional judgment and his professional experience. The problem of competent community leadership is one of growing and pressing importance. The lack of balanced and informed leadership is one of the shortcomings of our times. Government on all levels has become so complex a matter and involves so many specialized problems that the assistance of countless commissions and committees to formulate legislative and administrative policies has become a basic necessity and a characteristic of modern government; most of this service is based on voluntary contribution of time and effort and where the problem touches on law and public policy, and that is everywhere, the guiding hand and the judgment of the lawyer are manifest.

THE LAWYER'S ROLE IN THE PROFESSION AND THE COMMUNITY

In New York and in every state, in the federal structure and all local governments, the community dependence on the lawyer is very large and it is growing larger. The lawyer is asked to fill and he fills countless community positions providing important services. He sits on hospital boards; on the boards of schools and colleges; on boards of education and on library boards of trustees; on governing bodies of charitable and welfare agencies. His service is manifest everywhere; ubiquitous; universal. You will not find your professional life fully satisfactory unless you, too, put your shoulder to the wheel.

Finally, as citizens as well as lawyers, you ought to take active part in the political party of your choice.

There is in each political party every shade and gradation of opinion; and you are sure to find sentiments congenial to your own, and people you will like and respect. There are in each—the exact proportion depending somewhat on the place where the observer sits—reactionaries, liberals, progressives, conservatives, strict constructionists, and those who hold broad views. Millions of people are members of one or the other party because of the fortuities of heredity and environment; and having been born there, that is where they stay.

What is very important for your purpose to note about the parties is that they are not closed and finished institutions; they are not static; rather they are open-ended and go through evolutionary changes.

Sixty years ago, for example, they were divided by the tariff and the monetary place of silver. It is almost as difficult, looking back at that period, to understand how those issues were so vital, as it is to understand the divisions in the medieval parties in Florence that Dante describes.

Yet the contemporary importance of the issues is suggested by the fact that of the four statues in Madison Square across the street, the public careers of two of them, President Arthur and Senator Conkling, were concerned with the tariff as a dominant public issue.

This ability and readiness of parties to grow and to change provides the opportunity to you within the frame of your own party to make yourself heard; to make your influence felt on party policy, and thus on public policy; and if your convictions are strong enough, your voice clear enough, you will be heard. From the very beginning of the American political parties, the lawyer has played the leading role in the formulation of policy as well as its articulation.

There are those who hold aloof from political activity on the ground it is

distasteful and that it corrodes high standards. But the parties reflect the standards of the community from which they spring. You will find some corruption and some stupidity in them; but you will find also integrity and enlightenment.

Penetrating critics of American institutions have observed that in our development as a nation the political parties played a major role, if not the principal one. The founders of the Constitution did not envisage the growth of parties; but in the Eighteenth Century the political parties in England were in rudimentary form, and did not go back much earlier than Walpole's day.

The United States has developed the greatest aggregation of military and economic power; the largest population of skilled and enlightened people; continental in magnitude, that the world has ever seen gathered together under a free government. That it has remained a successful and responsive democracy despite its enormous power and size is one of the remarkable incidents of modern times; because such a huge governmental organism can not be managed democratically by a rising vote or a show of hands like a Grecian city state or a New England town meeting. That we have succeeded in remaining free while we have become great has been in large measure due to the discipline, the sense of balance and direction, the instinct for continuity possessed by the political parties. They have given coherence to our free institutions.

Ingrained in their doctrines has been the acceptance of the will of the majority; but they have slowed down, absorbed and stabilized the violent and emotional sweeps of public reaction which have proved the downfall of republics before ours; and their absolute dedication to the Constitution has more than once saved us in major crises.

With all their shortcomings they are, perhaps, the most characteristic of American institutions and so important it is that they function well within their traditional frame of public responsibility, that we ought not stand as mere observers on the sidelines, but play our full part in the political and public life around us.

There, ahead, lies the road before you. It is filled with color and opportunity; it has brightness as well as shadow. It offers in your own self-chosen field the open way for a well-balanced life, a life of effort and skill and growth. There lies the high challenge to your professional devotion; may you meet that challenge nobly; may you gain from it a happy and rewarding sense of achievement that will walk with your spirit through all your days at the Bar.