
The Role of the Lawyer in Modern Society

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In the ideal society toward which the human race has been working for 2,000 years, lawyers and judges would hardly be necessary in the sense that they function in our society today. Possibly in that ideal setting we would need even fewer physicians than we have now, for the stresses that tend to make us ill would be far less. In that happy setting the base population would be made up of producers and teachers in the broadest sense of those two terms.

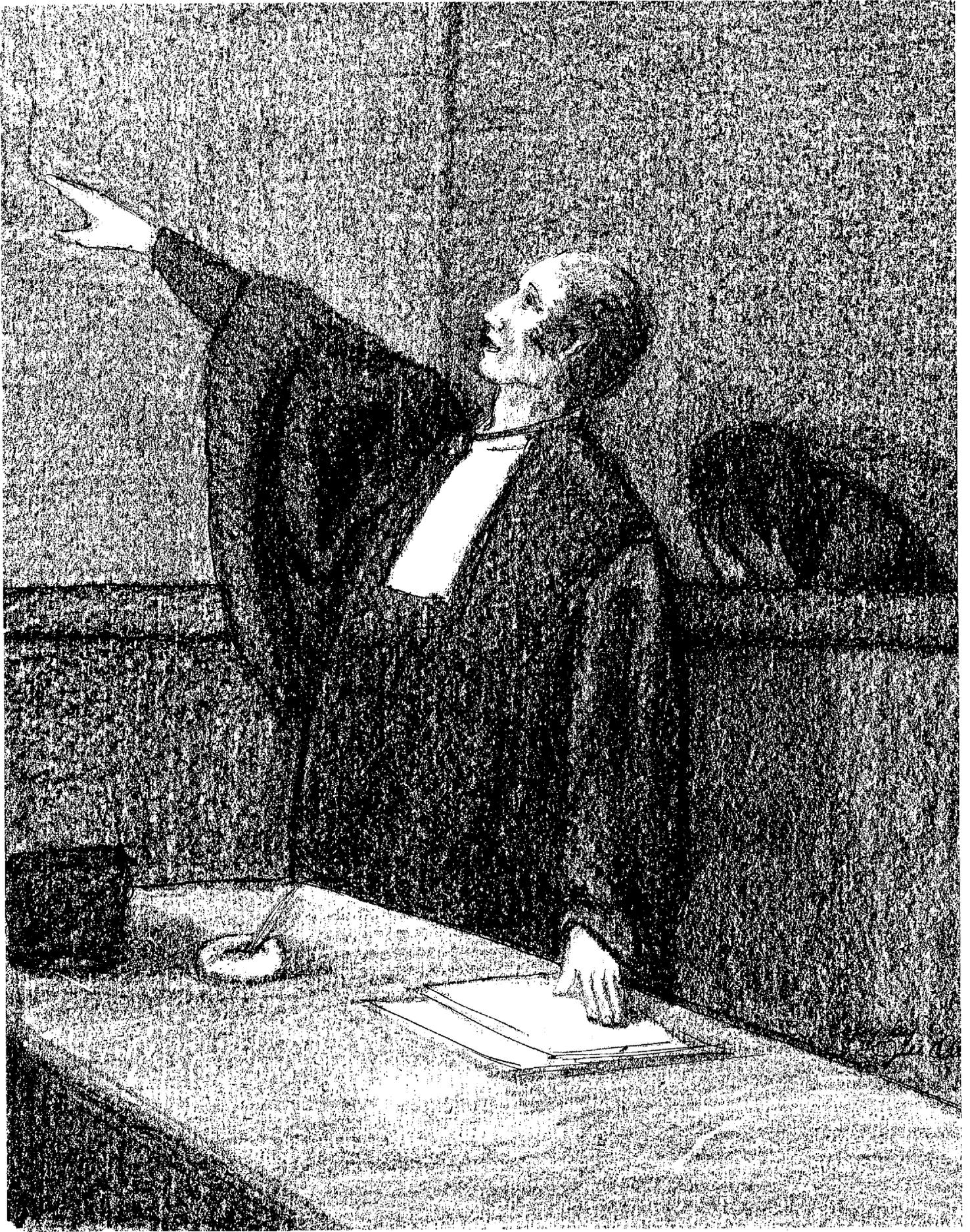
But until that society of the Golden Rule is achieved, lawyers and judges will be necessary components wherever men and women are gathered together in villages, towns, and cities where they must rub shoulders, share boundaries, and

deal with each other daily. Lawyers will be necessary because, in their highest

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role, they are the healers of conflicts and they can provide the lubricants that permit the diverse parts of a social order to function with a minimum of friction. I emphasize that this is the role of the lawyer in the highest conception of our profession, but we know that members of our profession do not universally practice according to these great traditions and with due regard for the moral basis of much of our law. Yet laymen must try to remember that the process of resolving the balance of a lawyer's duty to his client with the public good presents problems of great difficulty at times.

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a school of law to carry on the training of lawyers in keeping with the standards that have made this institution one of the great centers of learning in America, privately sustained and conducted in conformity with Christian teaching. A school of law with such inspiration and sponsorship fills a significant need in the legal education of this country — a need not met by all law schools today. Guided by

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these standards, it is safe to predict that this law school will become one of the foremost in the country.

For centuries lawyers have not been well regarded by the people, and, if we are to believe the polls, that is still true today. The literature of the English-speaking world is replete with slurs on lawyers. Typical is the statement that the first step in creating a decent society is "to kill all the lawyers." But, in fairness to lawyers, we must remember that their most visible activities are in the conflicts that arise between people, particularly those conflicts that are finally resolved in the courts. In the courts, however, the lawyers are not the principals but only the agents of those who are in conflict. It is inevitable that lawyers to some extent become the scapegoat in the play. Obviously, if all people lived by the Golden Rule and adjusted all their personal and business conflicts, there would be no lawyers to castigate.

Although critical analysis of all our institutions and professions has real value, we should also remember, on the affirmative side, the countless examples of courageous lawyers supporting the claims of people who were subject to oppression or abuse of governmental power. Mr. Justice Jackson once commented that in every vindication of the rights of individuals and in every advance of human liberty in our history, the key

figures were lawyers who were willing to risk their professional reputations and their futures in pursuit of an ideal.

A new law school such as this has a rare opportunity available to few others. It can engage in a re-examination of the basic assumptions on which our system of justice functions, always remembering that some are fundamental and immutable and some are open to change. We begin, of course, with the Constitution that implemented the ideals of the Declaration of Independence, and few better foundations could be conceived. In this 200th year of independence we will do well to look again at both of those documents. We see that in the Declaration itself, not less than four times, the authors expressed direct reliance on God as "the Supreme Judge" and "the Creator," and, in the closing sentence, called for the protection of Divine Providence. The uniqueness of this law school is, in part, that its basic charter exemplifies these concepts of the Declaration of 1776.

It is not always popular, even in the presumably rational setting of a law school or university, to challenge or question long accepted parts of our system of law and justice. It is sometimes regarded as heresy to question the validity of the adversary system as it prevails in this country. It is sometimes thought even more heretical to ask whether the full panoply of courts and the contentiousness inherent in the adversary system

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are indeed the best methods to resolve the myriad human conflicts that today reach every courthouse in the nation.

If the idea of a university is to be maintained, however, these are examples of the kinds of questions that ought to be asked and examined in the pursuit of perfection. Certain aspects of law and procedure are not immutable truths but simply

tools to get at the truth. Perhaps the most penetrating inquiry by our best minds will lead us to conclude that, with all its infirmities, our system is indeed sound. But if our system of justice cannot stand up under such inquiry, the flaws may call for change. To make such inquiry is to do no more than to apply the techniques of the adversary system to an examination of our legal institutions. Lawyers schooled in and dedicated to the adversary process should not object to using that process in a continuing self-examination of our legal institutions.

The Law School at Brigham Young University has a unique opportunity in at least two respects: It is totally independent and therefore free to emphasize that there is indeed a moral basis for our fundamental law; and it is free to examine and explore whether it is sound educational policy to train people in the skills of a professional monopoly while leaving it to some vague, undetermined, unregulated, undefined future to teach the moral and ethical precepts that ought to guide the exercise of such an important monopoly in a civilized society. . . .

. . . The operation of a law school is itself a high trust and, as with every fiduciary function, it must be treated as a stewardship for which there is an accountability. That accountability is to the public, to the concept of the rule of law, to the highest principles of justice, and in the last analysis, to a conscience responsive to the basic ideals of Western civilization.

As the Law School at Brigham Young University enters its third year, my wish is that the teaching here will always be guided by the need for lawyers who will understand their mission in terms of the great tradition of our profession. That tradition is to serve people's needs, acting as the healers of the inevitable conflicts bound to arise in our complex, competitive, modern society; to participate at all times in the affairs of community and nations; and to execute their trust in keeping with the traditions of Western civilization and with the ideals of the Declaration of 1776 and the Constitution — always guided, as the authors of those great documents were guided, by Divine Providence. This is indeed a large mission for any school or university, but the background of 100 years of Brigham Young University assures that it will be accomplished.