

# NEWS

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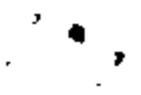
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"THE ROLE OF LAW IN SOCIETY"  
An Address by Harold M. Williams, Chairman  
United States Securities and Exchange Commission

The Legal Aid Society  
Servant of Justice Award Dinner  
New York, New York  
April 23, 1979



I feel privileged to participate in this program honoring Whitney North Seymour. While this is only the Legal Aid Society's second Servant of Justice Award dinner, I am certain that it will rapidly become part of the venerable tradition of New York's legal and corporate communities.

Just as the Society itself has come over the years to be recognized for its sense of responsibility and commitment to community betterment, this award and its distinguished recipients remind us that dedicated and inspired individuals -- whether in the private or public sectors -- can make a difference in enhancing the administration of justice and in preserving the integrity of our institutions.

While Mr. Seymour, and the initial honoree, John McCloy, are both lawyers, it is not for their proficiency in the law for which they are honored, but rather for their appreciation of the role of law in a healthy, democratic society.

In discussing the role that lawyers play in our society, Norman Redlich, Dean at New York University Law School, has said:

"It is our burden and our glory that we are expected to live by a high professional standard and earn a living at the same time. We do not have the luxury of the clergy who can live in the temple and condemn the market place. We have to carry the standards of the temple into the market place and practice our trade there. That is why a country which questions its moral behavior inevitably questions its lawyers." \*/

I would like to discuss the "standards of the temple" -- that is, the role of law itself, its relationship to values and moral and ethical behavior and its impact on the governmental process.

We have developed a tendency to view the "law" as a discrete body of rules and regulations which, by governing conduct, ensures justice and the enhancement of morality.

My concern is that, as we turn increasingly to the "temple" of the law for solutions to social problems and as a guide to conduct, we give less and less recognition to any conception of values and morality above the law. And that is a trend which is unhealthy for the law and for society.

It is unhealthy for two reasons. First, it tends to relieve the individual from responsibility for personal values and conduct beyond that prescribed by the law. Second, it places

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\*/ Redlich, "Lawyers, The Temple, and the Market Place," in The Record, p. 200.

a burden on the governmental process to deal with issues which would be more effectively resolved in the private sector.

In a number of my talks -- on such matters as corporate accountability, regulation of the accounting profession, and the development of the national market system -- I have dealt extensively with what I believe to be the respective roles of government and the private sector in today's environment. Therefore, I will focus primarily on the first point in my brief remarks this evening.

In my view, a good measure of the health and strength of a society could be read from a graph depicting two variables. One line on the graph would reflect the level of values and ethical behavior. The second line would reflect the conduct to which the law compels adherence. When the values and ethics line is significantly higher than the law line -- that is, when concepts of acceptable behavior are significantly higher than the standards which the law imposes -- the society enjoys good moral health. If, however, the gap between the two lines narrows, it reflects a greater dependency on the law and a decline in moral vigor.

In the United States today, I believe that these two lines are coming much closer together. Increasingly, we as

a society look to the law to distinguish not only right and wrong, but the ethical from the unethical, and the moral from the immoral. The notion that the law sets the floor rather than the ceiling receives little currency. By the same token, the tendency to focus on the law leads to a withering of responsibility and concern for the ethical. The implicit assumption increasingly becomes that, if the law has not forbidden it, it must be acceptable. This results in increased dependence on the legal process to define the limits, and the game becomes one -- as it has in tax law -- of avoidance and loophole-closing. The result is a fundamental change in where the responsibility lies for establishing the behavior and mores of our society. It absolves individuals and organizations for behavior which is not legally proscribed and legitimizes individuals and organizations to use the law to advance their own ends. It places the burden on legislation, regulation and the judicial process to shape the values of our society.

An illustration, which also describes my second point about the tendency to look for legal solutions to what are essentially nonlegal questions -- is the debate concerning what is often called "corporate accountability" or "corporate governance." For example, proposals continue to be advanced

that Congress enact legislation to control the exercise of corporate power. Enhancing corporate accountability does not, in my judgment, lend itself to effective legislative prescription, yet that is where much of the discussion has become stuck. As I have suggested in the past, in my view, the most effective response is for corporations to take steps to assure and demonstrate to the public that they are capable of self-discipline which is consistent with both the realities of the marketplace and the noneconomic aspects of the public interest. Mechanisms which reinforce that assurance should be made effective structural components of the process of governance and accountability in the American corporation.

My concern does not stem from a distrust of American business as it is currently structured. On the contrary, I have enormous regard for the capability and integrity of American business leadership which I know well. Yet, it would be unrealistic to ignore the fact that corporate accountability can be improved, that not all boards are discharging their oversight responsibilities, and that the system should be strengthened. What concerns me is that a legalistic approach does not assure a constructive solution and can be avoided if business, and the corporate bar which serves it, respond substantively.

There are even larger risks in a legalistic approach than the imposition of further governmental restrictions on American business. The "law" cannot and should not provide the answer to all socioeconomic problems. It lags rather than leads. Implemented by the political system, the primary role of law is to articulate pre-established norms of a society. As Alexander Solzhenitsyn noted in his momentous Harvard talk, Western Society is based "on the letter of the law." He went on to point out that the absence of an objective moral order leads to a legalistic system in which the goal is for each one to get the most out of the system for his own advantage. We are all aware, I am sure, of the extent to which we have acquired skill in using, interpreting, and manipulating the law. For many, being right from a legal point of view, means that nothing more is required. Nobody may mention that one might still not be entirely "right" and urge self-restraint or counsel renunciation of such legal rights. Solzhenitsyn concluded:

"I have spent all of my life under a communist regime and I will tell you that a society without any objective legal scale is a terrible one indeed. But, a society with no other scale but the legal one is not quite worthy of man either . . . . Wherever the tissue of life is woven of legalistic relations, there is an

atmosphere of moral mediocrity, paralyzing man's noblest impulses . . . . Life organized legalistically has shown its inability to defend itself against the corrosion of evil.\*

Unfortunately, however, we seem to be falling into precisely this trap. We have become a litigious society where individuals and groups -- in dramatically increasing numbers -- bring suits to resolve issues which previously would have been settled privately -- even to the point of a son suing his parents for not rearing him properly. A litigious society breeds confusion, ambiguity, and lack of subtlety in the law. It impairs institutional autonomy and leadership and creates institutional paralysis while litigation winds its laborious way through the procedural maze and delay likely to characterize such a society's judicial system.

If the legal structure cannot provide either the process or the philosophy we need, where can we find it? For me the answer lies beyond the law -- in assuring that we bring a sense of responsibility -- of values and morality transcending those articulated by the law -- to our economic and political decisionmaking. By continually reminding ourselves of the essential role of personal, internal restrictions based on ethics and morality on the part of both individuals

and organizations. Such checks are a necessary complement to external restrictions. Only the combination of an internalized value system and external constraints can assure that individuals and institutions act truly responsibly.

We need to work more diligently and with broader vision in evolving a set of values held in common by our citizenry, values which give shape to the institutions of our society -- or at least provide a more effective process for arriving at consensus.

It becomes increasingly clear that economic growth, efficiency, and profitability alone are not adequate unifying values. Nor is the commitment alone to improvement in the human condition and in the level of individual freedom.

And precisely at the time when we can use leadership, the trust and credibility of our leaders, both in the public and private sectors, is at an all-time low. When survivors in leadership feel most inhibited in exercising the potentiality of power, we most need individuals who can lead -- who can shape the future, not just barely manage to get through the day.

Business leaders must accept and act on the fact that the social contract with business is changing to include

an ever-enlarging set of expectations beyond business' traditional role and covering the full spectrum of corporate activities. To the extent that business responds to this challenge legalistically and narrowly -- or not at all -- society will turn to the political process to impose external restraints.

And we must all be concerned that legalistic, government-imposed response is unlikely to be fashioned with due appreciation for its impact on the health of the market place, and could result in the restructuring of our corporate system in ways which ultimately create an economy inadequate to fund our future.

Consumers, environmentalists, unions, and other groups which have increasingly cast themselves in the role of business' opponent must recognize their own obligation to temper the demands of their interests with consideration for the health of the market system so vital to the overall objective of a strong society. They must also recognize that they, too, must take a broader view of society's needs than the legalistic. Pyrrhic victories -- vindicating what is legal but not necessarily what is "right" in the context

of the larger society -- may be won in the courtroom and the legislature, as well as on the battlefield.

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It is with these thoughts in mind that I feel privileged to join in honoring Whitney North Seymour. Persons of integrity and vision, who provide moral and philosophical as well as technical leadership, are too few, and we all are deeply indebted for their presence in our midst.

Thank you.