



Notre Dame Law Review

Volume 47 | Issue 1

Article 2

10-1-1971

Law and the Future Society

Maurice H. Stans

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>

 Part of the [Law Commons](#)

Recommended Citation

Maurice H. Stans, *Law and the Future Society*, 47 Notre Dame L. Rev. 24 (1971).

Available at: <http://scholarship.law.nd.edu/ndlr/vol47/iss1/2>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

LAW AND THE FUTURE SOCIETY

*Maurice H. Stans**

Without any reflection on those who have come before us, it is quite apparent that the talents of all those who practice law have never been needed more than they are today. Some of our nation's problems are hanging on from decades of neglect, others were generated more recently, but in the long run the legal profession must have an influence on the solution of almost every major concern facing our country and our people today. No group in America knows the value or the importance of the law better than those in the legal profession, and no group in America knows better how seriously the law is really being threatened today—or what great service it can do for good.

Certainly no society has achieved better methods of solving its problems than ours, living as we do by a system of laws. At the same time, however, some of the means of solving our problems must be vastly improved if we are to achieve the kind of society we hope to have twenty-five years from now. The law should play a major role in the process of improvement and achievement within our system. But it cannot be alone in designing the progress and evolution of America, and I believe its potential can best be appreciated if we first review the contributions which are needed in the future by business, the private sector, and certain specific forces within our society. It is this larger context which I would first like to consider here.

Economic Growth

Some of today's unprecedented problems, such as pollution and traffic congestion are the by-products of economic growth. Some people contend that we must stop growing in order to solve them. This is nonsense, of course. One of our most cherished goals is a rising standard of living for all our people—and this necessitates economic growth, the creating of more goods for more people. Not only are we not going to stop growing, but we are getting set today for the greatest period of economic growth in American history. This does not mean the kind of jungle growth which characterized the latter half of the 1960's, resulting in one of the worst bouts of inflation of all time. Instead, the nation is now reverting to a period of balanced, orderly expansion based on a sound dollar and a known capacity for increased productivity. That kind of solid growth, orderly expansion in a peacetime economy, is essential to national vitality. A decade ago the leader of the Soviet Union was boasting that his nation would surpass ours by 1970. Today it trails with a GNP of less than one-half of ours. But spectacular economic growth by the United States does in truth challenge us. We must not only make certain that the growth itself is more orderly, without severe ups and downs, but also we must be able to manage successfully the problems that are the by-products of our affluence.

This, of course, is going to require some planning. The public and private

*United States Secretary of Commerce.

sectors must get together and set some goals. Even more important, we must plan how to reach them.

This may be a historic first for the Secretary of Commerce to advocate planning. But I do want to emphasize that I am not suggesting a "planned economy." We have not achieved a trillion-dollar GNP by putting the American free-enterprise system in a straitjacket—and I would be the last to suggest that we do so. Yet a lack of long-range planning in the past has been a major factor in creating some of the worst problems that beset us today.

One of the most glaring examples is in the matter of pollution. Like all problems, it was small and would have been manageable in the beginning. But as President Nixon said in his message on environmental quality, we failed in the past "to take into account the full consequences of our actions. . . . Conditioned by an expanding frontier, we came only late to a recognition of how vulnerable our resources of land, water and air really are." Today it requires foresight and a well-developed forward-planning process to devise and apply solutions before problems get out of hand. We must become more future-oriented, so that we don't try to meet every social and economic crisis on an ad hoc basis, so that we are not caught off balance by each unfolding issue, so that we do not have a government by reaction. We cannot be half effective in our response to problems that demand full answers.

The Census Bureau projects a possible population increase of nearly 100 million by the end of this century—almost a thirty-three percent increase, the equivalent of a new Tulsa every month—and this demands that we do some serious looking ahead. Now what shall we plan for, in addition to those 100 million people? What are some of the questions that we must answer in order to assure our economic progress over the next twenty-five years? To put it another way, when we survey the scene at the end of this century, what will we wish we had done to avoid creating the problems then confronting us?

Small Business

In an era of giant corporations and continuing mergers, how do we assure continuing opportunity for the individual businessman? In our country, it is traditional that businesses start small and grow. Twenty-five years from now, will the opportunity still exist for anyone with an idea to start his own venture and have a reasonable chance to succeed? How do we maintain an economic environment that helps small business to grow and become big? In a similar area, what can we do to assure full minority participation in the free enterprise system? Minority members must have the right not only to equal employment, but to an equal chance to become owners and managers of their own businesses. President Nixon has launched the first organized program in history to help minority entrepreneurs succeed, and we are making progress, with considerable support from the private sector. But we must explore other possibilities and do much more—in government and business—in creating opportunities, providing funds, and helping to train managers, in order to assure continuing opportunities for minorities in the future.

International Economy

Turning to the international economy, how can we retain U.S. leadership as the greatest trading nation in the world? How can our country, with the highest wages and the highest standard of living, continue to be competitive in an increasingly one-world market? We have no corner on knowledge; knowledge respects no political boundaries; the scientists and engineers of other countries are generally as capable as our own. Yet some industrial countries are far more aggressive than we are in promoting international trade. In the face of all this, how are we going to restore and maintain the healthy merchandise trade surplus that has been the mainstay of our balance of payments and the foundation of the dollar as the world's principal reserve currency?

Cities and Science

What about urban growth? Are we going to build an anthill society for the children of the future? Or are we going to plan and develop viable, healthy cities of manageable size? Shouldn't government and industry develop long-range plans to disperse plants and facilities in order to avoid the diseconomies of megalopolis? One of the most important areas requiring long-range planning is development of the resources of the ocean. How do we develop the technology to explore and extract its valuable mineral deposits and harvest its food resources, and at the same time guard against pollution of the marine environment? How do we best develop the recreation potential of the oceans and the coastal zone? How do we resolve competing national interests, when the high seas are the property of no nation, but are the "common green" of all nations? All these, and many other fields, such as housing, transportation, skilled manpower, and others, demand that we develop a long-term strategy for future action. All of these also are questions to which the law and those who practice it must give searching consideration.

Attacks on Business

In addition to these long-range problems there is one immediate concern that, in my view, deserves the attention of all Americans, but especially those in the legal profession. This is the widespread and unjustified assault on the American enterprise system. We know that the vast majority of American businessmen are fully in tune with the needs and issues of our times. Their commitment to a responsible place in our society is fully evident in the American marketplace today, where there is satisfaction with 99 percent of all transactions.

But there is about one percent that tarnishes the reputation of all of business and industry—and in some quarters it has become fashionable and even profitable to attack the whole American enterprise system based on the actions of those few who are malefactors in one way or another. We find whole segments of the American enterprise system under blanket attack, sometimes by well-meaning crusaders, at other times by political interests; sometimes by those who simply do

not understand the system, and other times by anti-business economists and philosophers.

All of this may have a healthy benefit on our competitive enterprise system. It can help keep business honest and sharp and responsible. But we must also make certain that the zealots and the crusaders and the philosophers do not reform the system out of business. A crucial element of responsibility facing U.S. business today—and that includes all of you and us who are involved in it in any way—is the need to perfect our system, and at the same time protect it. We must make certain that it is not done in, in the name of reform.

Dead Issues

If this overriding issue of perfecting the system without destroying it is to be fought successfully, we must wage the battle on the issues of the future, not the issues of the past.

The irony of much of the criticism facing business today is that it stems from the past. It reflects the battles of yesterday, not the needs of today, or the great hopes for tomorrow. I suggest that the time has come for all of us to quit the battlefields of dead issues. The time has come to acknowledge once and for all that certain points have been settled, and to recognize that business and industry are looking ahead to the future of our country, as well as to their own future in the marketplace. Let me mention just a few of these battlefields of dead issues.

First, there is no longer any question about the necessity of the fair division of gains from our productive economy. We can leave behind the haunted battleground of ancient feuds between labor and management. It is long since settled that workers, managers, and investors are all entitled to a fair share of the growing American pie. To be sure, we can disagree on the technical questions of what is fair—but only those who are totally out of step with this country continue to challenge the concepts of investment and profit, incentives and rewards, competition and earnings. The time has come to quit the battleground of controversy on this point, and to join all the forces of our country together in the urgent common enterprises that call upon us for united endeavors, and that offer us unprecedented comfort and rewards.

Second, there is no longer the slightest question that American business knows it must take every possible step to assure a fair deal for consumers. The overwhelming majority of producers and sellers in the system of American commerce have made their commitment to provide the information that is necessary for consumers to make intelligent choices in the marketplace; to sell through advertising that is honest and truthful; and to provide the buyers of this country and the world with safe and reliable products, backed by reliable warranties and service. President Nixon's recent consumer message to Congress, following his declaration of the Consumer's Bill of Rights a year ago, shows his strong belief that it is possible to achieve a productive partnership of government with business in the interest of the consumer, utilizing voluntary industry actions wherever possible and mandatory actions wherever necessary. Certainly, not all that needs

to be achieved has yet been done. But in meeting the needs of tomorrow, government must not eliminate the innovative spirit and the product improvements which private industry is capable of producing. Government must not cut the creative heart out of the marketing mechanism.

The goodwill of the consumer is essential to his continued acceptance of a company or its products. Business knows this. The stifling process of standardization can be avoided by the growth of cooperation between industry and government, and the rigid regulation of advertising can be consigned to the battlefields of the past by industry's voluntary commitment to the highest ethics. So we can stop rehashing the dead issue of whether business, industry or government have made commitments to the consumers of America. The fact is that they have, and we must now move away from this tired battleground of shopworn charges and countercharges.

Third is the question of the environment. Nothing in this nation is more certain than this: that we must as a people take every reasonable step to cleanse our air, our water and our landscape, and to halt the fouling of America wherever and whenever man is guilty of doing so. The nation has begun to do this. President Nixon has committed his Administration and the country to the most effective and wide-ranging programs in history to ensure the protection, development and enhancement of the total environment. At the same time, industry has launched a multi-billion dollar campaign to clean up our air and water, and I am confident it will ultimately achieve for America the healthiest environment of any industrialized nation on earth. And yet, to hear some people talk, you would think that neither government nor industry is even aware that the problem exists. That may have been half true a decade ago, but those days are gone. America is getting decontaminated. There is a vast amount of work still to be done, but there's no longer any question it's going to be done. The big issue is settled. It is dead—and we can leave the battlefield of what ought to be done, and turn to the peaceful pursuit of doing it.

New Commitments

In all of these areas, there is still work to be done, progress to be made, to be sure. The great energies, talents and resources of this nation must have a new commitment to the human needs of tomorrow. We must find the means to make life bearable and enjoyable for all men, rich and full for the burgeoning peoples of our land and our cities, so that we are not choked in the new problems of congestion—with their new demands for power and water, roads and schools—and are not drowned in a growing morass of economic indigence and crime, bureaucracy and taxation. The great need of tomorrow is to find the courage today to walk onto the battlefields of new issues.

To accomplish our purposes, to actually get the job done in any of these areas, we must, of course, involve the private sector. And in these times, and with these problems, we need to involve it to a far greater extent than the mere achievement of growth and profit.

Traditionally in this free society, in war and peace, we have stimulated and

enlarged the services of business through the judicious use of three levers. These levers are:

- (1) the law—the use of government power to require performance;
- (2) voluntary action—willing cooperation to accomplish an objective that is in the self-interest of business as well as the national interest;
- (3) incentives—through taxation or low-cost loans or subsidies or other devices.

All three have their place. All three can be applied to meet the demands of the future.

We use the law to set and enforce fair and equal standards. The President, for example, has pointed out that in the case of the environment, “unless there are fair standards which are vigorously enforced, the responsible firms which take on the extra expense of pollution control will be at a competitive disadvantage with those who are less responsible.”

We use the voluntary action approach to secure business' cooperation in many undertakings. An outstanding example is the JOBS program of the National Alliance of Businessmen. For another, in our minority enterprise program, we are getting invaluable assistance from many private corporations, as well as groups like the National Association of Manufacturers, the U.S. Chamber of Commerce, and others.

We use a variety of incentives to accomplish public policy purposes—and this is a highly efficient lever which I would like to see used much more frequently and effectively in American life. Needless to say, as a former Director of the Budget, I do not favor incentives that are simply giveaways. Incentives must be designed to achieve a specific purpose that can be precisely defined. But if carefully drawn, they can be an extremely effective stimulus for business to carry out legitimate national objectives. During the 19th century, we used public land as an incentive to achieve the building of our great system of railroads. More recently, we have begun using the offer of rapid amortization on the installation of pollution abatement equipment. Presently pending before the Congress is a bill that would spur exports by providing more competitive taxation of export income. In our minority business enterprise program, we are matching low-cost loan money with equity money as incentives for business to form investment companies to support new minority undertakings. More than 30 such MESBICs have been licensed, with financial capacities in the millions, and scores more are pending. There are many other examples of the judicious use of incentives, encouraging industry to locate plants in depressed areas, helping industry to train the unskilled, and spurring the building of low-cost housing. Such government incentives operate in the free marketplace. They put the managerial and organizational skills of business to work in the public interest. They tap the creative talents of business and encourage the innovative solution of problems. And they help develop the scientific and technological capabilities of business which can advance the nation's interest in many ways. In sum, incentives strengthen the market mechanism in our nation, which is the most efficient system ever devised for producing goods and services. In contrast, nations which turn to state socialism virtually destroy the competitive-market mechanism. This is why it

takes 183 hours of work to buy a suit of clothes in Russia, and 24 hours in the United States.

The Role of Law

Voluntary action—incentives—the law. These are the tools we must use as we look to the long-term future and set our sights on quality as well as quantity. Not by accident do I here list the law as the third among these three stimulants to national problem-solving for the decades ahead. In most of the decades of this century up to now we have cultivated the idea that whenever there is a problem, “there ought to be a law.” Inadvertently, we have somehow related the passage of law to the fulfillment of our needs. When we have grown tired of vexing problems it has often been tempting to think that if we just had the right law, we would not have the wrong problems.

We do have the best body of laws in the world. But we also have disappointments from expecting too much of the law itself, and not enough of ourselves as free people. The force of law is an instrument for good which government should use with discretion. In solving the problems and answering the questions of these next twenty-five years, we should look first to our other capacities for national improvement. We can hold the power of the law in reserve, and use it not whenever we can, but only whenever we must. Only when the private sector fails should the law step in to implement the solutions or the progress we need. Only when incentives fail and voluntary action falters should there be a need for laws to enforce improvements in our society. Only when responsible citizenship cannot open the door to the future should we expect the law to be the country's locksmith.

Despite the street mobs and the flag burners and the building bombers, this country is rich in the security of the law to protect our lives and our property. But in the long run the system by which we live will be more effective if those who share in it find the means of achieving progress and perfection on their own. This does not mean that in looking ahead for 25 or 50 years, or to any point in our future, the law is not important among the Nation's resources. It is in fact perhaps our most important resource, for by whatever means we set out to build the better society which we seek to achieve in the face of today's great problems, the law is the ultimate resort. It is the lever at our disposal when others fail to roll the stones away. We must build a better society, and we will use that lever whenever we must.

These are turbulent times, times of great change. When we have discovered new wrongs, we have proposed new solutions to rectify them. But in the process often it has become too easy to be for change just for the sake of change. Even the law has been used on occasion as an instrument of whim. This is not the best way to the resolution of our needs. Solicitor General Erwin Griswold recently said: “The demand for relevance is . . . almost inevitably superficial. . . . Today's relevance will not be tomorrow's need.”

And so perhaps today one of the greatest values of the law and those who practice it is their constant testing of the validity of all that is proposed and all

that is done. Every lawyer is an advocate, but in looking at every proposal or every action for its strengths and weaknesses, the favorite phrase of every lawyer is, "on the other hand . . ." In a sense, this symbolizes the strength of our system. And in a very real way it symbolizes the fundamental role lawyers must play in the testing for a better America. Repeatedly I have urged businessmen to look up from their profit-and-loss statements and see what they can do to help resolve the great social problems of our times. By the same token I urge the attorneys of our country, in the daily practice of their profession, to look up from the briefs and the contracts and look ahead to the question of what part they can play, and how they can do it, in this long-range job of building a better America. It must still be an America where the law is respected instead of feared, where it is honored instead of resented.

In the actions of the legal profession, almost more than those of any other group in the country, may lie the answer to those who will ask 25 years from now, "What did they do in 1971 that we wish they had done differently?"