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Legal Education: A More Optimistic View

*Robert B. McKay**

While few would disagree with Dean Forrester's statement that "America is now in the midst of an attempted revolution," several questions naturally arise. Dean Forrester does not identify the nature and goals of the "attempted revolution," but the inference is that he disapproves. One wonders whether he objects to change because it challenges the status quo; whether he disagrees with the direction of the proposed change; or whether he opposes the method, particularly the abruptness, with which change is being forced upon us. Each possibility merits response.

Change Versus the Status Quo. It would be unfair to Dean Forrester to suggest that he opposes change for the sake of preserving the status quo. Assuredly he favors change that advances approved objectives and resists change only when it is mindless. The proper question thus goes to the merits. We must inquire as to the nature of proposed change and the methods by which its accomplishment is sought.

Change as Revolution. Dean Forrester never describes exactly the direction of the revolutionary changes that he sees on the horizon, other than campus disruption; but it is entirely clear that he finds the prospect alarming. And so do we all. Since the former stability of the educational world is being increasingly challenged, those of us who were the beneficiaries of the unrocked boat must of course be concerned. But that does not make us automatically right and the challengers necessarily wrong.

Although Dean Forrester professes optimism near the conclusion of his remarks, the dominant theme is despair. For reasons suggested later, I would emphasize the positive. From the perspective of the campus it is easy to be pessimistic about the state of the world; but that perspective may be too narrow. Similarly, I find too limited, even too simplistic, Dean Forrester's allocation of blame for the difficulties of our time. The universities, he says, are "at the center of the revolution," a revolution that is "the product of a generation of university teaching and writing which has created the intellectual atmosphere and the state of mind that sustain the conflict." In blaming the "professional fault-finders and

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relentless critics" for changing the "self-image of America," he apparently defends an earlier period, unlocated in time but presumably happier, when fault-finding was not required.

If the proper reading of Dean Forrester's remarks is that complaints should not have been made—at least not in the universities—about war, poverty, discrimination, pollution, and defects in the criminal justice system, he assumes a heavier burden than I should want to carry.

The truth is that there is much fault to find in American society; it does no good to pretend that all is well, or even that all *was* well before critics voiced their complaints in universities and elsewhere. It is also true that the rhetoric of complaint has often been needlessly strident, and the violence that has too often accompanied the complaints is inexcusable. But is it not preferable to sort out the valid complaints from those that lack merit, seeking remedies for the former and reasoned answers to the latter?

No one doubts that the present is a troubled time that causes anxiety to all. But periods of turbulence are not unique to our time or to America. Since 1776 we Americans have never been altogether free of the revolutionary urge. That is not necessarily good, but it is not assuredly bad. From this time of uncertainty there should emerge new accommodations to limit discrimination, deal more effectively with poverty, control pollution, improve the judicial system, and perhaps even lead to a world less racked with violence and warfare. It is no help to pretend that these problems were not with us when the critics were more subdued. Until we deal more effectively with the most blatant injustices, we cannot expect, and should not ask for, silent acquiescence.

The Technique of Change. The real cause for present concern is that much contemporary "criticism" does not seek the competition of the market place in the world of ideas, but employs techniques of disruption, violence, and terrorism. All must join Dean Forrester in condemning acts of this character, whether they occur on university campuses, in courthouses, in places of business, or at the seat of government. It is important to avoid overreaction to these episodes of violence; but we should not ask for a moratorium on criticism. Calls for a return to "law and order" are entirely appropriate, but we must remember that justice is the ultimate goal. Faithful adherence to the first amendment requires that all voices be heard.