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The Future of America and The Role of Law

Ray Forrester*

On August 22, 1970, Dean Ray Forrester of the Cornell Law School presented this paper to the Southeastern Conference of the Association of American Law Schools and the American Association of Law Libraries meeting in Nashville, Tennessee. Because the question of negativism in the academic community seldom has been raised by a highly respected legal educator, the Vanderbilt Law Review felt that these remarks were particularly significant. To test the reaction of other prominent legal educators to Dean Forrester's position, the Vanderbilt Law Review solicited the comments of the deans of various law schools. This paper and the comments that follow afford insight into the perspective from which these educators view the dissidence of American youth.

America is now in the midst of an attempted revolution. How that revolution came about and its prospects for success are questions that have much to do with the future of America. They have, in fact, as much to do with the future of America as the more precise problems of war, race relations, poverty, and the environment, which, although great problems requiring our very best efforts, are not, by any means, the sole causes of our present condition.

It has been suggested that those who work daily in the university environment have a distorted and exaggerated impression of the seriousness and the extent of the revolutionary effort. The point is made that in other areas of the country separated from such scenes of conflict, the atmosphere is serene and peaceful. In other words, most Americans are not involved in the revolution nor affected by it, and the country as a whole is at peace. This is true, but it does not diminish the high importance of identifying the revolution in its incipient stages so that humane and peaceful efforts, primarily efforts of peaceful persuasion, may be made to contain the danger.

The parallel has been drawn by a number of observers between the early stages of Hitler Germany and the present attitudes and methods of militant groups in America. More than one German refugee has given warning from personal experience.

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The universities find themselves at the center of the revolutionary attempt for the simple reason that it was nurtured there. It is in considerable degree the product of one segment of university teaching and writing that has contributed materially to the intellectual atmosphere and the state of mind that sustain the conflict. While this has been done innocently and unintentionally for the most part, it has, nevertheless, caused the self-image of America to change in recent years. This change is in large measure a product of an active corps of professional fault-finders and relentless critics who have dominated the opinion-making segments of our society. I refer particularly to those academics and to their progeny among the journalists (press, television, and radio) and the political leaders, whose approach to life in general and to American society, in particular, has been a relentlessly negative one. They have imposed upon the minds of too many Americans, particularly young Americans, the notion that America is an evil and destructive nation, with no hope for the future. This result has been accomplished slowly but surely by persistent, one-sided, unbalanced, and negative criticism. One need only read the books, the magazines, and the newspapers of today, or listen to leading commentators on television and radio, or hear the political speeches of some of our more prominent politicians, to recognize that the American people, and particularly the young ones in college, are being subjected to a constant and one-sided attack on every segment of American society. The people who do this are, for the most part, well-intentioned, but they underestimate the impact of such attack even on so strong and initially healthy a body politic as America.

Thoreau, in *Walden*, said: "What a man thinks of himself, that it is which determines, or rather indicates, his fate."¹ The same idea applies to a nation. Its present quality and its prospects for the future depend substantially on what the society thinks of itself. This opinion is created primarily by the principal opinion-makers of the society, the teachers, the journalists, and the political leaders. From these sources come the self-respect, the idealism, and the mental health of the nation. If they are unbalanced, if they can see only the negative, the future is dismal indeed, for they will have much to do with the shaping of the future that they also profess to predict. This is prophecy self-fulfilled.

Two prominent, recent books that discuss the future of America illustrate the proposition. They are *The Pursuit of Loneliness*, by Philip Slater, and *The End of the American Era*, by Andrew Hacker. The

1. H. THOREAU, *WALDEN* 7 (Mod. Lib. ed. 1965).

common denominator of these books and a stream of others like them is the negative attitude they take toward the values and attainments of American society.

Time magazine suggests that Professor Hacker "sits like an American Spengler, waiting for the fall of practically everything."² In his book, Professor Hacker concludes:

"America's history as a nation has reached its end

. . . .
 ". . . [O]ur hour of decline has arrived"³

. . . .
 "America has become an ungovernable nation whose inhabitants refuse to regard themselves as citizens of a social order in which the authority of government plays a principal role. While no society can be totally anarchic, the United States has as powerless a government as any developed nation of the modern world. Americans prefer to see their society as a conglomeration of private individuals and activities entitled to pursue profit and pleasure as they choose. Health, housing, transportation, even relations between races, classes, and sexes are deemed to be private matters: to behave as one pleases in these and countless other areas is a cherished liberty no free citizen will easily relinquish. But most prized of all an American's possessions is his money, and its expropriation for civic purposes must be resisted by all available means."⁴

. . . .
 ". . . A willingness to sacrifice is no longer in the American character; and the conviction that this country's beliefs and institutions merit global diffusion is in decline. What was once a nation has become simply an agglomeration of self-concerned individuals; men and women who were once citizens are now merely residents of bounded terrain where birth happens to have placed them."⁵

. . . .
 ". . . We have arrived at a plateau in our history: the years of middle age and incipient decline. We are now at that turning-point ancient philosophers called *stasis*, a juncture at which it be-

2. *TIME*, June 1, 1970, at 87.

3. A. HACKER, *THE END OF THE AMERICAN ERA* 230 (1970).

4. *Id.* at 142.

5. *Id.* at 226.

comes pointless to call for rehabilitation or renewal. Such efforts would take a discipline we do not have, a spirit of sacrifice which has ceased to exist.⁶

“ . . . There will be undercurrents of tension and turmoil, and the only remaining option will be to learn to live with these disorders. For they are not problems that can be solved with the resources we are willing to make available. They are, rather, a condition we must endure.”⁷

Professor Philip E. Slater is chairman of the Department of Sociology at Brandeis University. Here are some of his comments:

“I can best summarize my various predictive comments by saying that old-culture moderates or liberals will be given the choice, during the next decade or so, between participating in some way in the new culture and living under a fascist regime. The middle is dropping out of things and choices must be made. If the old culture is rejected, the new must be ushered in as gracefully as possible. If the old culture is not rejected then its adherents must be prepared to accept a bloodbath such as has not been seen in the United States since the Civil War, for genocidal weapons will be on one side and unarmed masses on the other.

“The most serious internal danger to the new culture is the insidious transmission of individualism from the old culture, in part through confusion with the new culture’s otherwise healthy emphasis on emotional expression

“Past efforts to build utopian communities failed because they were founded on scarcity assumptions. But scarcity is now shown to be an unnecessary condition, and the distractions that it generated can now be avoided. We need not raise the youth of new utopias to feel that life’s primary gratifications are in such short supply. Hence the only obstacle to utopia is the persistence of the competitive motivational patterns that past scarcity assumptions have spawned. Nothing stands in our way except our invidious dreams of personal glory. Our horror of group coercion reflects our

6. *Id.* at 229.

7. *Id.* at 230.

reluctance to relinquish these dreams, although they have brought us nothing but misery, discontent, hatred and chaos.⁸

“My main argument for rejecting the old culture is that it has been unable to keep any of the promises that have sustained it for so long, and as it struggles more and more violently to maintain itself, it is less and less able to hide its fundamental antipathy to human life and human satisfaction. It spends hundreds of billions of dollars to find ways of killing more efficiently, but almost nothing to enhance the joys of living. Against those who sought to humanize their physical environment in Berkeley, the forces of ‘law and order’ used a poison gas outlawed by the Geneva Conventions. The old culture is unable to stop killing people—deliberately in the case of those who oppose it, with bureaucratic indifference in the case of those who obey its dictates or consume its products trustingly. However familiar or comfortable it may seem, the old culture is threatening to kill us, like a trusted relative gone berserk so gradually that we are able to pretend to ourselves he has not changed.”⁹

With reference to the role of political figures in this cult of negativism let me quote passages from a recent speech given by a political candidate.

“The main issue of this campaign is to make this damn bureaucratic oaf of a government—designed in the 18th century—respond,” said the candidate. Speaking to mostly government students, he said the irony of this country is that the American civilization has the great opportunity to build a new world, but is not responding. “I think America is moving toward a repressive society, indicated by the Chicago situation, our position in relation to the Black Panther party, and what we see coming from Agnew, Nixon, and the Supreme Court appointments,” he said. “What you may be looking at is the death of the American civilization as we know it today . . . because of the failure of civilization to respond to change,” he told the group. “Those who demand change are getting more frustrated by the need for change. But as the student revolution in colleges took place—because they were irrelevant to the times—the colleges changed a little; but the institution of government doesn’t respond.”

8. P. SLATER, *THE PURSUIT OF LONELINESS* 147-50 (1970).

9. *Id.* at 127-28.

Added to these voices from the academic and political worlds are those of the journalists, where the incessant accent on the negative is also evident. One need only to listen daily to the national news programs to realize that these huge voices have joined the chorus of doom-sayers and fault-finders.

Not long ago I heard an expert on tariff law discuss the many defects and selfish implications in the tariff policies of the United States. The criticism was hard. At the end of his remarks, one of those present asked him how the tariff policy of the United States compared with that of other countries. "Oh," he replied, "it is by far the most enlightened. In fact, very little progress would have been made in the world if the United States had not gone as far as it did in the right direction." I suggest that a moment or two during such a discourse to give some recognition to the affirmative might very well lead to a healthier nation.

It is not difficult to diagnose the reason the political aspirant joins in the tactic of negativism, as more than one political campaign has been won by the device; but for journalists and educators, the explanation is less obvious. One answer may be that criticism is so popular because it is far easier than the affirmative and creative task of developing constructive programs through which, within a realistic period of time, the bad conditions will be corrected, while the good features of the society are preserved and improved. Fault finding is not only easy but it also gives the critic a feeling of intellectual superiority. In the worlds of teaching and journalism, where the production of words and ideas in constant volume becomes a daily necessity, the easy use of denunciation fills many a page and countless class hours.

Having said all this about critics and criticism let me stress the fact, however, that criticism is essential, particularly in a free, republican form of government. The basic point is that it should be balanced with the recognition of the affirmative aspects of the society. It should reflect an understanding that man, by nature, or by present stage of development, is a combination of constructive and destructive qualities, and every society born of man reflects these same human characteristics. Certainly there are many things wrong with any society, including ours, and it is easy to see them. Unfortunately too many opinion-makers are seeing only what is wrong and demanding instant correction. Intellectually mature and well-balanced people, young and old, however, know that instant perfection is not a realistic expectation, and that it is not healthy to suggest that quick solutions to ancient problems are to be found. Yet some critics consistently suggest that this is possible.

Our critics have discovered that war is evil and to be avoided. Good

people have known this always. Unfortunately, these simplistic voices have not explained how to withstand an aggressor who has not yet discovered for himself that war is evil and to be avoided. Our critics tell us that race relations must be improved, poverty must be eliminated, the environment must be saved, and justice must be done. There is certainly no quarrel with these objectives, and strong efforts are being made to accomplish them. But in order to retain a healthy self-image a nation must recognize that these are ancient problems and that even with the most vigorous efforts, they will not be solved in short order.

As human beings go, the great mass of Americans are doing very well. They are relatively stable and possessed of good intentions toward their fellows. Until our full-time critics began to make a substantial impact, the American society was the envy of the world. By massive self-criticism, we are slowly convincing others as well as ourselves that this is not justified. If this continues, the critics will prove they are right by the force and effect of their own criticism.

The role of law in our society is said to be to seek justice and to maintain order so that human progress may be effectively pursued. But in an age of great scientific and economic advancement, the role of law must be broadened to include new duties and endeavors on the part of the legal system. The search for peace, the improvement in the spirit and the facts of race relations, the elimination of true need, and the improvement of the environment must all be brought within the concept of social justice. If this is to be done effectively, however, and to lead to true advancement, rather than to merely emotional appeals, the process must be handled with good judgment and orderly methods. Otherwise, in the quest for quick justice, the basic requirement of a peaceful society may be ignored; without a stable and constructive society, it is unlikely that any true progress can be made in any of these areas.

Throughout the history of this country, the legal profession has been the source of much of our leadership. Those of us in legal education have long told ourselves how important our task is in transmitting high ideals and sound methods to the future members of the profession. But we too are guilty of negativism in our teaching. We are inclined to criticize each case presented for discussion in class. Few words of praise are spoken. We enjoy making the opinion writer look somewhat less than brilliant, often ignoring the difficulty of his task. Though it has many good values, the dialectical teaching of law, to which most of us, including the writer, are committed, can be conducive to a destructive approach. If misused, it helps to develop the nit-pickers of our profession, who often have little exposure at our hands to a more constructive and affirmative approach to life and to law. The risk is high that some

students will become corrosive cynics rather than constructive critics. We are very good at finding the heart of the problem, but we are not too successful in effecting or accepting new solutions. We are not doing the whole job.

My proposition again, and in conclusion, is that all men and women of good will who are engaged in the opinion-making professions should stress the affirmative along with the negative in the day-to-day appraisals of our society and that we should endeavor personally to maintain and to strengthen the positive things which we have accomplished while giving our very best efforts to correcting the negative conditions.

This approach will not convert the professional revolutionary, particularly those who are in quest of personal power and importance, or who are committed to a totalitarian philosophy. It will not convince the disturbed and mentally ill. If one includes those who live in the marginal areas of mental health, their number is considerable and they are stimulated and brought out by emotional and stressful times. It will not prove attractive to those who inherently have a critical and negative outlook on life and on any environment in which they find themselves. But it would be acceptable to the majority of Americans who fundamentally respect and support their nation, and it should be acceptable to that large and strategic segment of the student population which has no strong attachments to the idea of destroying the society but which has for a number of reasons, including entertainment, joined in at the call of the revolutionaries to supply the mass or mob which aids the revolutionary designs.

The affairs of men often move like a pendulum. The pendulum of negativism has moved far and may move farther before its swing is concluded, but my prediction is that the counterbalance will take place. America is still free, still relatively healthy, and still composed of human beings who, in relation to most in history, are superior in idealism, energy, and good judgment. In fact, the greatest issue of the future for our country will not be war, race, poverty, or environment, but the quality of the average American as a human being. His quality will determine the quality of American society, and in turn it will influence to a significant degree the condition of mankind worldwide. Thus far, that quality has been good. I believe it will become better.

Unless we enter into a self-induced dark age, unless the marginal psychopaths, the ignorant, and the chronic haters, who always remain dormant at the fringes of society, emerge to assume the upper-hand (certainly they have been stimulated and gained force recently), and unless the opinion-makers continue their one-sided denunciations, we are in for an unimaginable expansion of man's knowledge and understanding.