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Law Students and a Constructive Approach to the Future of America

*John W. Wade**

In years past, many intellectuals adhered to a theory of laissez faire. They believed that the way to maintain our economic system in good health was to keep our government and laws from interfering with its natural working. In those days, judges did not make law; they discovered through legal reasoning what the law was and what it had always been. In both fields the theory fell into decline and disfavor. As Justice Cardozo put it, the concept of laissez faire in law went the way of laissez faire in economics.¹

Another theory, of more ancient origin, is that of determinism. In the realms of philosophy and theology, it became very deep and abstruse. In the realm of history, it has been used to explain the rise and fall of nations. In the realm of economics, it led to the doctrines of marxism. Writers predicting the impending decline of America seem to be reviving ideas of determinism and giving them immediate and controlling application. More than that, a large number of college teachers in the social sciences today seem to be filled with deterministic ideas. According to them, a society and its condition are controlled by the inherited or acquired characteristics of its people, or by the climatic or topographical conditions of its environment, or by something else which the people themselves are unable to alter. The nature of the government, the substance of the laws, the efforts of officials and individuals are not only not particularly helpful, but they are actually useless—or powerless—in altering our predestined course.

A college student who has been imbued with these ideas can either become complacent and not care, or become completely frustrated. And that frustration may well culminate in an attempt to tear down the whole system to permit a fresh start.

Dean Forrester makes a telling point when he suggests that law professors are too often negative and destructive in their criticism. It is easy to build a sense of one's own superiority in pointing out all that is

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1. B. CARDOZO, *The American Law Institute*, in *LAW AND LITERATURE AND OTHER ESSAYS* 121 (1931).

wrong in an opinion or a statute—particularly if no effort is made to solve the problem in the most satisfactory way. Criticism of this sort, without more, is largely irresponsible and may promote an attitude of irresponsibility on the part of many students—especially those who came to law school half convinced by deterministic teachings. Raising for discussion the question of how the problem should have been solved produces an entirely different attitude.

I am reminded of a quip of an English law professor that “the American lawyer finds a solution for every difficulty while the English lawyer finds a difficulty in every solution.”² Would that the first clause were entirely true! We know all too well how often the American lawyer’s advice is completely negative, on why a solution will not work. This is one of the things the members of the public do not like about lawyers.

We who deal in legal education surely believe in the efficacy of effort. We also believe in the usefulness of seeking to make our government and laws good and just, and we must transmit this belief to our students. Students who are seeking to utilize the law to improve our society do not suffer the frustrations of those who regard the law as useless. We must be vigilant to see that the sophistry of determinism does not invade legal education too. Our approach must be constructive, not destructive.

Dean Forrester’s title is “The Future of America and the Role of Law.” I believe that law will play a very significant role in the future of America and that the content of that law will affect the course that the country follows. Science and technocracy are making truly giant strides, and are far in front of the law and the other means of having people live together in harmony and well-being. This should be a stimulating challenge to those of us in the legal profession, not an excuse to give up on a hopeless task. I am convinced that America’s finest hour lies yet ahead.

2. Wheatcroft, *The Education and Training of the Modern Lawyer*, 7 J. SOC. PUB. TEACH. L. (n.s.) 1, 7 (1962).