



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 47 | Number 3

Article 1

4-1-1969

Introduction: Law and Society the Challenge of the Seventies a Symposium

North Carolina Law Review

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

North Carolina Law Review, *Introduction: Law and Society the Challenge of the Seventies a Symposium*, 47 N.C. L. REV. 523 (1969).
Available at: <http://scholarship.law.unc.edu/nclr/vol47/iss3/1>

This Comments is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

LAW AND SOCIETY THE CHALLENGE OF THE SEVENTIES

A SYMPOSIUM

As the decade of the seventies approaches, American society faces a sizable task of reshaping its institutions in a peaceable and orderly fashion to achieve social, economic, and political change made inevitable by forces already at work in the sixties. No institution is insulated from these pressures—least of all the legal system, for the concept of law pervades the whole of society and serves to define and shape other societal institutions. Accordingly, any basic changes in our society will be reflected in the law; and, to a considerable extent, how effectively law and lawyers meet the challenge will determine whether our society is able to achieve the necessary change with minimal disruption.

The substantive content of the law has already undergone dramatic alteration. The last twenty years have seen the end of racial discrimination by law, the removal of the ancient disabilities of illegitimates, the involvement of the courts in legislative apportionment, and the judicial recognition of a constitutional right of privacy. It requires little clairvoyance to predict that the momentum of this substantive change will accelerate during the seventies, as old doctrines are swept away and new rules more consonant with our sophisticated, urbanized society are set in their place.

Although the next decade will require further substantive change, the new challenge to the legal system is directed to the bar and can be defined in terms of two crucial questions. First, can the lawyer in modern society fulfill the traditional promises of the American legal system—that there shall be equal justice for rich and poor alike, that no person shall be deprived of his liberty without a full and fair trial, and that law shall be an instrument of protection and not of oppression? Second, can the lawyer reform the legal system to make it a truly functional process for those who heretofore have had to be content with extra-legal remedies, if any, for substantial grievances?

The symposium is directed to these questions. The five articles serve largely to define the scope of the particular challenge facing our legal system in the seventies. They also suggest some fruitful approaches to meeting the challenge. While the articles are by no means dispositive of

the problems that will face our legal institutions over the next ten years, they identify and focus upon the more important of them.

The article by Dean Kenneth Pye of the Duke Law School and Mr. George Cochran, Director of the Duke Legal Aid Clinic, deals with the challenge of making adequate legal services available to the poor. Some commentators have stressed legal aid as a means of achieving institutional reform through the litigation of test cases; the Office of Economic Opportunity has employed this approach in its Neighborhood Law Offices program. Dean Pye and Mr. Cochran, on the other hand, see the chief purpose of legal aid as providing a lawyer's services to poor persons, although they do not discount the utility of test cases in selected jurisdictions. Their goal is to give every American the assistance of counsel essential to equal justice. To this end they examine existing legal services programs and construct a model program for the seventies.

The authors conclude that present expenditures for legal aid are woefully inadequate and call for greatly increased funding with the federal government bearing the major part of the cost. They urge the separation of federal legal services programs from the Community Action Programs of the OEO under which they are now administered, and recommend that they be administered and funded independently. Finally, the authors suggest that legal aid staffs alone cannot meet the needs of the poor for legal services; any effective program must involve the bar and provide a mix of staff and private practitioners' services.

In the past two decades, civil disobedience has become a widely used instrument for social change and protest. In the late fifties and the early sixties, the Negro civil rights movement developed the sit-in and mass arrests as a means to compel desegregation. The lesson has not been lost, and in more recent years opponents of our involvement in Vietnam and of the draft have turned to civil disobedience to dramatize their opposition to the established policies. Widespread civil disobedience, violent and non-violent, has become a phenomenon of our times; there is little reason to think that it will be abandoned in the next decade. In our second article, Dean Lindsey Cowen of the University of Georgia School of Law discusses the role of the lawyer in counselling those persons involved in civil disobedience. He suggests that there is a potential for conflict between the lawyer's role as an officer of the court in the administration of justice and his duty to his client, particularly in the situation in which the lawyer has been told of his client's intention to violate a statute that is clearly constitutional. In his article, Dean Cowen examines these con-

flicting duties and seeks to reconcile them. He notes that it is in the role of public official or citizen, rather than in the role of counsel to civil disobedients, that a lawyer can best bring about needed change.

Professor Samuel Dash, Director of the Georgetown University Law Center's Institute of Criminal Law and Procedure, addresses himself to the role of the criminal defense lawyer in the seventies and to the problem of breathing new life into the traditional guarantees of fair trial and assistance of counsel that are extended to the defendant by our system of criminal justice. Professor Dash observes that Supreme Court decisions on the right to counsel have heightened the public awareness of the importance of counsel in the legal process and have drawn the criminal lawyer out of the shade of mistrust and suspicion into the light of acceptance and respectability. He suggests, however, that the decisions have brought to light a mass of unfinished business for the bar. The challenge brought to focus by Professor Dash's article is that of securing meaningful assistance of counsel to every defendant charged with a criminal act—and this in a system marked by crowded criminal dockets and widespread resort to perfunctory plea-bargaining. The author suggests that the remedy does not lie in the development of more and bigger public defender agencies alone—the involvement of private practitioners together with public defender programs is necessary. Given the involvement of program attorneys and private practitioners as criminal defense lawyers, what role are they to play and what function are they to serve in the system of criminal justice? Professor Dash discards the popular myth that the function of the defense lawyer is to win an acquittal by any means at hand, and that his role is that of an alter ego, or "mouthpiece," to his client. Instead, the author sees the function of the defense lawyer as that of providing professional services throughout the entire criminal process, including pretrial plea discussions and post-trial sentencing hearings. The lawyer's role is that of the professional representative of the accused, with the attendant responsibility of controlling the ethical and professional decisions in the case.

Professor Dash's article and the article by Dean Pye and Mr. Cochran are, to a considerable extent, companion pieces, for both articles stress the challenge of making legal services universally available—Professor Dash focuses upon representation in criminal cases, while Dean Pye and Mr. Cochran are concerned primarily with providing legal services in civil matters and both conclude that the private practitioner must be actively involved in any comprehensive legal services program.

As both articles suggest, insufficient legal care is not just a lower-class phenomenon. Millions of middle-class Americans also find that the cost of the legal services they want and need is prohibitive. The development of group legal services programs, under which fraternal orders, labor unions, and similar organizations employ salaried attorneys to represent their members, has been urged as a means of helping middle-class families afford legal care. This development, however, has become entangled in the prohibitions against the unauthorized practice of law—an obstacle that the Supreme Court has recently begun to clear away.

It is to this problem of unauthorized practice of law that Professor John Sutton of the University of Texas School of Law addresses himself in our fourth article. He explores the policy considerations buttressing the prohibitions against unauthorized practice and concludes that any danger to the public interest is minimal so long as the legal services are actually performed by lawyers. Of greater significance, perhaps, is Professor Sutton's examination of the American Bar Association's proposed Code of Professional Responsibility, in which he finds a new emphasis on the public interest rather than on the economic protection of the bar in defining unauthorized practice. The approach of the proposed code to the problem of unauthorized practice may be indicative of the bar's recognition of the need for change within its own structure. If so, the prospects for restructuring the legal system to meet the challenges of the seventies are much improved.

The symposium concludes with an article by Mr. Stephen I. Schlossberg, General Counsel of the United Auto Workers, on the role of union counsel in modern society. Mr. Schlossberg writes about the activities of the UAW and its attorneys in securing reform not only in labor law, but also in such areas as civil rights, consumer protection, and electoral reform—areas outside the peculiar interests of unions and their members. The article is largely a chronicle of past efforts, yet its relevance for the seventies is compelling. Hopefully, the UAW's broad commitment to social justice through legal reform will serve as a model for other societal institutions in the years ahead. Our chances of retailoring American society to fit the conditions of the seventies are increased immensely if our large institutions—unions, corporations, universities—recognize the inadequacies and the injustices that now exist and work for their amelioration. The UAW practice of filing amicus briefs in cases involving social reform has two virtues: first, the prestige and influence of the union are thrown behind the forces of reform; second, the talent and

energies of the union's counsel are utilized to augment those of the attorneys retained by the parties. By means of the amicus brief, the UAW has involved itself in reforming the law in a way that can be imitated by other institutions. Mr. Schlossberg suggests that the UAW's social concern is largely the product of President Walter Reuther's own concern; but in light of the growing sense of civic duty on the part of American industry and labor, it is not unreasonable to hope that in the seventies others will follow the path marked by the UAW.

Taken together, these five articles sound a common theme—that there is considerable business which lawyers and scholars must be about if the law is to keep pace with the seventies. While suggestions are made and models proposed, the symposium does not pretend to issue a comprehensive set of marching orders; that is not its purpose. Rather, it serves to emphasize that basic changes are overdue in our legal system if the rule of law is to have any continuing vitality in American society, and it identifies some of the more critical areas. If these articles impress the reader with the urgency of the challenge before our legal institutions and the necessity for a commitment on the part of the bar to meet that challenge, their purpose has been accomplished.

THE EDITORS