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## Citation Information

Yarmolinsky, Adam. "The Role of the Lawyer in Today's City." *Osgoode Hall Law Journal* 8.2 (1970) : 393-399.  
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol8/iss2/16>

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# THE ROLE OF THE LAWYER IN TODAY'S CITY

ADAM YARMOLINSKY\*

I think I should begin by saying I am not and never have been an ecologist. My thesis this evening is that cities have always needed lawyers, but they haven't yet fully recognized what lawyers can do to help deal with the most pressing problems of cities today, because the most important tasks for lawyers in dealing with these problems are the least traditional. I propose to describe briefly the major urban tasks for which lawyers are needed, and how it seems to me law study must be oriented or re-oriented to prepare students for these tasks.

But, first let me offer the proposition that the role of the lawyer is and always has been essentially an urban role. There are no lawyer hermits — and no hermit lawyers. Lawyers' habits of mind are responses to the dynamics of urban society. We employ, or try to employ, rational, analytical approaches designed to cope with a multiplicity of phenomena by a highly refined process of selection. We have a concern with social interaction as our primary subject matter, and we seek general but easily modifiable rules to deal with large, complex and rapidly changing situations.

Melvin Webber, who by the way is an ecologist, has argued that the United States is now a wholly urban nation, in the sense that the urban condition is no longer geographically limited except perhaps to exclude a few atypical areas like Appalachia and the hill country of the Ozarks. He argues that the Dakota wheat rancher is more like a city dweller than he is like an Appalachian mountaineer or any other traditional country dweller, in his pattern of life, in the sources from which he derives his ideas about the world. He looks at television programs that originate in cities. He reads newspapers and weekly and monthly magazines that are produced in cities. He eats food that is designed and processed according to plans and programs worked out in cities. He moves around a good deal if he's at all successful in his occupation. And he doesn't really think of himself in any meaningful sense as confined to his Dakota ranch where he happens to have established his headquarters. Because they are essentially urban, his mental processes, his life-styles are ones in which the law has a much larger role than it might otherwise have. In a rural setting or a small town, laws are given, while in an urban setting, law-making, in the broadest sense, is a constant and a continuing process.

Indeed, we ought to think about the city as a process rather than a place, as something that happens to the people who move through it or who

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are affected by it. And the urban process is very closely intertwined with the legal process although, as Lawrence Friedman suggested this morning, the legal process has been inhibited by a maldistribution of power from keeping up with the urban process and the social process generally.

But it's not just that lawyers have a natural affinity for the urban life-style. Cities have needed lawyers. I planned to review the reasons why it seems to me this is so, but Lawrence Friedman outlined the reasons this morning and I don't want to repeat what he said. I was particularly struck by his point that the urban condition involves a dependence on strangers — a dangerous interdependence which puts so much emphasis on the functions of law. I do want to mention very briefly three reasons, which perhaps re-arrange what he said — a physical reason, an economic reason and a social reason why cities have needed lawyers.

The physical reason is simply that as people are crowded together in cities, where they occupy less physical space per capita, or per corpora, they bump into each other more. They have more conflicting contact, and, by analogy to the Brownian movement of elementary particles, they have more occasions for the kinds of encounters which produce the kinds of troubles or potential troubles in which lawyers tend to be involved.

The economic reason is that urban functions, as they have developed over time, throughout the history of cities, have evoked a response from lawyers and the legal system which suggests that there is a close connection between the kinds of economic functions the cities have taken on and the need for legal assistance and legal advice. If we think of a sequence beginning with the city as an entrepot, a trading center, then as a center of finance and credit, and then, with the industrial revolution, the city developing as an industrial center and finally as a center of government-business relations and fact-to-face meetings for decision-makers of all kinds, we can see that in each of these capacities the special economic function of the city has brought out a concomitant legal function. Law and lawyers have been a necessary adjunct at each stage of economic development.

And the social reason is simply that the city is a source of social innovations, and it is a source of social innovations which over time have required the assistance of lawyers. If we look simply at the leading edge of the law as it has moved from corporation law in, say, the 20's, to administration law in the 30's, to international law in the 40's and 50's, and on to urban poverty law, we can see that in each of these instances the primary concern of the most advanced segment of legal thinking has been with an activity thought of at first as extra-legal or non-legal, and having its seat in the city. I suppose that this social reason for the relationship between the urban process and the legal process overlaps to some extent with my economic reason, but it also extends somewhat beyond economics, to take in the role of the city as a center of social change, and the need for law to integrate social change into the historic order.

Despite the fact that cities need lawyers, it seems clear that cities have not made very effective use of lawyers to deal with their own problems, and particularly with their most current and urgent problems. What we call urban

law today was customarily described, in the good old days, as the law of municipal corporations, and it was generally recognized as a kind of back-water of the law. Perhaps this was so because it was thought of at the time as a distinct field of substantive law, rather than as a set of problems to which legal principles can be applied, and I don't think that urban law can stand up in that separate capacity even today. Perhaps it was so because we defined it too narrowly, or selected less important issues for discussion in treatises on the subject.

But to offer these reasons for the relative unimportance of municipal corporations is merely to push the question back a step or two. Why were the potentialities of urban legal studies overlooked, and why did the really challenging legal problems not emerge? Perhaps we had to wait for the disjunction between the urban process and the legal process to become more apparent — for the gap to become a wider one before the problems of cities became apparent as a major set of legal problems. Not only was municipal corporations a second class field — perhaps even a third class field — but it has also been true that high powered legal talent has largely avoided the field of urban problems up to now, with some notable exceptions, to mention the present Attorney General of the United States as only one example. It may have been simply a question of fees and billings. It may have been an inability to see ways of using the law to deal with the most pressing urban problems, because the most pressing of these issues seemed not to have ripened into justiciable controversies.

The two urban issues that have emerged as primary in the American economy and polity are the economic gap between urban revenue needs and urban revenue sources, and the political gap between urban government and the urban citizen, especially the urban citizen who is black and poor. These two gaps have been widening and the increase in each one aggravates the other. As the city is less and less able to find the funds to maintain its plant and its municipal services, there is growing discontent among its citizens. The better off and the more articulate tend to leave, thus reducing the cities' economic and political resources, while the poorer and less articulate become even more disaffected. At the same time, as tax rates are increased the tax base is eroded. These are not legal issues, but they are issues which it is within the competence of lawyers to affect, and indeed without the special competencies of lawyers, it is unlikely that much progress can be made to close these gaps.

Lawyers may not be the best people to focus attention on urban deficiencies as measured in human terms, but their skills are certainly necessary in order to refine the instruments, the governmental and quasi-governmental institutions and devices, that can bridge these gaps. Lawyers are not necessarily the best people to call for a reordering of national priorities in order to provide the fiscal and human resources that can supply the cities' most pressing needs, but in working out the details of any new order of priorities, lawyers will inevitably be involved. Politicians, who may or may not be lawyers, will be concerned to put together the critical mass of political power that will be necessary to change national priorities, but to the extent that this task involves redrawing boundaries or setting up special geographical

authorities or entering into ad hoc agreements, lawyers will be drawn in to work on it. Lawyers may not engineer the crucial confrontations between contending forces in the urban arena — indeed they may make extraordinary efforts to avoid confrontations wherever possible, but if confrontations are to be channeled into useful results, lawyers will have to do a good deal of the channeling.

Clearly, lawyers are experts — if they're experts in anything at all — in organizing confrontations so as to achieve a little light along with the inevitable heat, or, to shift the figure, so as to ensure that the parties to the conflict don't pass each other by like ships in the night, to see to it that the issues are narrowed to the point where decision is possible and that the confrontation is not merely an emotional exercise but results in a decision on a relevant issue.

If there are proper ways in which lawyers can and should be involved in the problems of cities, what does this mean for the urban lawyer's job today? I suggest that the lawyer as an urbanist is needed today in perhaps four different ways.

First, he's needed as a technician — to draft ordinances and regulations, to draft instruments for individual clients, and to advise them on routine problems, to provide community corporations and equivalent organizations with day-to-day technical advice and assistance, as business lawyers do every day for corporate clients. These are clearly lawyers' functions, and lawyers are needed to perform them. You may not need the most skilled and imaginative and energetic lawyers in the world, but you need lawyers.

Second, and in ascending order of importance, the urban lawyer is needed as an advocate in traditional forums, in the courts, in the administrative agencies, in the legislative halls. The urban lawyer must be the advocate in individual cases, particularly where people in cities have traditionally lacked representation, as slum tenants, as installment buyers (no down payment needed) as welfare recipients. He is needed also to undertake test cases, but the issue of distribution of urban lawyers' energies between test cases and litigation that matters only, but perhaps critically, to the individual litigant is one that must be reserved for discussion in another place.

Thirdly, the urban lawyer is needed as what I would like to call an institution-doctor. I choose the metaphor of the physician deliberately, because the most important problems of institutions with which urban lawyers must deal are essentially organic problems. The lawyer must see these institutions as organisms, which respond in complex organic fashion to any change in one of their component parts.

A program to give more authority to local school boards has to take account of teachers' fears of losing their tenure in a city-wide school system. A bus link between the ghetto and the suburban industrial parks may be ineffective because its schedule does not permit workers to put in overtime or to move easily from plant to plant in search of employment. A civilian review board limited to complaints against the police may polarize police-community resentments. Because lawyers are often called on to write the

constitutions of new organizations or the rules for changing old organizations, they have a unique opportunity to look at the institutions themselves and to ask whether the new institution as proposed will really work, or whether the changes to the old institution have taken proper account of its internal dynamics. Instead of prescribing what the patient asks for, the lawyer, like the doctor, must first find out what's wrong.

The fourth function that the urban lawyer is particularly needed to perform also relates to institutions, but here it relates to the involvement of people in institution building. Most people in urban slums and ghettos see institutions only as obstacles, or as enemies. The lawyer who helps them in their battles against the institutions that oppress them is well situated to impress them with the fact that it does little good to tear down one institution unless a better institution can be set up to take its place. This process of building bridges from disorder to ordered liberty is one for which the lawyer is specially qualified. He can show urban citizens how to develop new institutions and how to change old institutions to serve their needs — including the need for an institutional setting in which urban citizens can engage in useful dialogue with each other and with the outside world.

The problem of working out a system for the choice of a citizens' advisory board has been described earlier by Norman Redlich. The way of involving residents in planning for a new urban school, the dialogue between the police in local station house and the citizens who deal with and are protected and/or abused by them, the role of local residents in managing a community development corporation—these are all matters in which lawyers' skills can play a vital role.

It should be clear, I trust, from the foregoing that I don't see lawyers — including urban lawyers — primarily as technicians. Lawyers are or should be, in my view, more consumers than producers of technology, and I include even legal technology along with other kinds of technology. Because I believe that, I have no trouble with the notion of lawyers consuming economic, social, and political technology, and I believe that the lawyer must ask the question that Lawrence Friedman asked this morning about the lawyer's own contribution: "What difference does it make?". If he doesn't ask that question, he will be unable to make the kind of contribution and play the kind of role in today's city that the city offers him.

What do these observations mean for the teaching of urban legal studies? First, basic lawyers' skills are of course essential, a point very properly underlined by Professor Levi earlier this afternoon, but lawyers' skills are already in the curriculum, and, so far as I know, we are not proposing to take them out.

Second, teaching students how to apply traditional lawyers' skills to particular urban problems that are already ripe for the application of those skills is a fairly interesting but, it seems to me, not a terribly exciting nor troublesome aspect of the teaching of urban legal studies. We can do that. We know how to do it, and I don't think we need to spend a great deal of time on it.

Conveying some understanding of substantive urban problems is the third aspect of teaching urban legal studies. Understanding what are the major problems of the people who live in cities is the first step toward trying to shape solutions in which lawyers' skills can play a part. I don't think that law students come to law school with a ready-made acquaintance with these problems, or any great depth of understanding of their impact on the people who suffer from them. Understanding the problems does involve other disciplines. Some knowledge of urban economics including particularly the economics of housing, welfare, the job market, and urban transportation is essential to a grasp of the substantive problems. Equally important is some acquaintance with urban politics and government including the concept of bureaucracy, decentralization, community control (which is not quite the same thing as decentralization), the problem of veto groups, and the construction of constituencies for particular purposes.

Understanding the clients who have the problems involves clinical work and imagination. I don't think understanding can be achieved without clinical work and I don't think it can be achieved without imagination. This too is a subject which in detail is to be put over to another place.

One further point may be worth making here: understanding the problems of cities and figuring out what lawyers can do about them, involves learning to subordinate, but not to extinguish, the skills of the lawyer, and this process of learning to subordinate but not extinguish his skills should, I believe, begin in law school, both because failure to learn this art — it really is an art to be helpful in a practical situation but not to dominate it — can result in early disasters, and because it is of the essence of the lawyer's role in today's cities.

The last and perhaps the most important aspect of the teaching of urban legal studies is conveying some understanding of urban institutions and their internal problems, teaching students something about how to be institution doctors. Law students and lawyers need to have their instincts sharpened to break through the husk of institutions, where institutions are as much obstacles as they are instruments for social change. In today's cities, even more than in other social settings, nothing can be accomplished in the social process without changing institutions. But the odds that the institution designed to accomplish the particular end is going to be the greatest obstacle to accomplishing that end are very high indeed. Good lawyers understand the problem of institutions as obstacles, and that's why they dream up the collapsible corporation, the horizontal slice mortgage, or the compulsory commercial arbitration clause to get around the system of courts that they created in the first place. Lawyers are accustomed to dealing with the peculiarities and foibles of institutions which have been created and still exist to serve the people who created them. Lawyers also traditionally have defended individuals against institutions gone wrong. But urban lawyers are perhaps facing a new and peculiarly difficult kind of institutional problem. Professor Friedman has said that law had kept pace with the social and technological change even when that change is accelerated. But now, the rate of change in the growth of political power in the cities is growing faster than the development of institutions. We need only look at the prevalence of veto groups in the city.

We need only look at the power of dissident elements to prevent anything from happening in a problem situation. We need only look at the dissolution of the bonds of society in an urban setting to realize that what we're facing is a new kind of institutional problem, and a new kind of institutional obstacle. Lawyers know, and certainly law students must learn, that urban institutions are particularly subject to this kind of degenerative disease. Therefore, the most important thing that has to be taught in urban legal studies is the shaping and developing of new institutions for new constituencies. If I can put in a nutshell what I see as the most important function of urban legal studies, it is to convey a better understanding of what institutions are for, how they tend to defeat themselves, what are their most common internal diseases and organic difficulties, and how new institutions can be created and nurtured in an environment that is both extraordinarily hostile and extraordinarily challenging.

