AMERICAN LAW IN THE TWENTIETH CENTURY: SOME REMARKS

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The subject of this talk is the transformation of American law in the 20th century. This of course is an enormous topic, which is not easily covered in a short talk. Law is not, and never has been, static. It changes with changes in society, and in every society; but, it hardly needs to be said, that when change in society is more rapid and more extreme, the pace of legal change is also more rapid and extreme. And the 20th century, as is perfectly obviously, was a century of constant and dramatic change. Every field of law underwent significant change. Every aspect of both public and private law.

Clearly, I cannot cover it all —or even most of it. I will, instead, focus on a few aspects of American law in the 20th. century that strike me as particularly salient; and where the changes have been particularly dramatic. I am going to approach the subject by starting out in 1900, and asking: what did the future look like to the men and women who lived then. How did they expect the 20th century to turn out? It seems to me that respectable, intelligent people in the United States in 1900, if they thought about the future, might have made a number of predictions. I want to mention three of these. Two of them turned out to be completely wrong, in the end. The second half of the 20th century completely reversed expectations. The third prediction, however, turned out to be correct— though probably on a scale that nobody could have predicted at the beginning of the century.

The first prediction had to do with the future of what we could have called already the American empire. The United States had been expanding, in area and population, throughout the 19th century. The country nearly

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doubled its size in 1804, with the Louisiana Purchase. I hardly need to remind this audience that the Mexican War, in the middle of the 19th century, also added a vast new territory to the United States, at the expense of its southern neighbor. Later, the United States annexed Hawaii. After the war with Spain, at the very end of the century, the United States acquired the Philippine Islands, Puerto Rico, and Guam.

The period was the high point of empire in general. Queen Victoria, who died in 1901, was the symbolic head of the British Empire, which ruled about a quarter of the globe. Almost all of Africa was part of the imperial system. France, England, Portugal, and Germany had divided the continent among themselves. Belgium controlled the Congo. Only one or two countries in Africa were even nominally independent in 1900. In Asia, the Japanese were expanding their own empire. China was a huge, rotting hulk, at the mercy of the great powers, and in danger of being chopped into pieces. India was the jewel in the British crown. The Dutch controlled Indonesia. Even parts of Latin America were still part of the colonial system: the Guyanas, British Honduras, the Caribbean Islands.

Ideologies of race supported the great european powers, and the United States, in their imperial adventures. The white countries believed they were better, more civilized, more powerful than the countries whose inhabitants were people of color. It was the destiny of the great powers to rule —to spread their governance all over the world. That was a firm belief. In the United States, on the domestic side, this was the period of maximum segregation of the races. Most african americans in 1900 lived in the southern states. They were on the whole poor, largely uneducated, and economically dependent. Most of them were workers or tenants on farms owned by white landowners. Blacks had no say in their state governments. They did not vote or hold office. The Constitution, in theory, guaranteed them certain rights, including the right to vote. But this right, and other rights, were only theory. They were systematically violated. Blacks who rebelled against the system were savagely repressed. Hundreds of blacks were lynched in the early years of the 20th century, for real or imagined crimes. These brutal hangings took place in broad daylight, before huge crowds. Nobody was ever punished for these inhuman acts.

The federal government was largely indifferent to the suffering of African-Americans, and to their loss of rights. Federal policy with regard to the native tribes was also, from our modern standpoint, callous and retrograde. In the course of the 19th century, the native tribes had been driven

into remote and unpromising areas, the so-called "reservations". They had been defeated in war, and there were instances of cruelty toward the tribes, and even massacres. Whites had taken the best land away from the native peoples. Their cultures, religions, and languages were all threatened with extinction; and they were very much under the thumb of the central government. On the west coast, in states like California, there was virulent hatred of asians, particularly the chinese. At times, there was outright violence against them. The Western states agitated for laws to prevent the chinese from entering the country. The chinese exclusion acts, in the late 19th century, and the first years of the 20th century, did exactly this: it provided essentially that no Chinese were to enter the country. The law also made it impossible for any Chinese person to become a naturalized citizen. Only chinese actually born in the United States were entitled to the rights of american citizens.

The second prediction that I want to mention is not unrelated to the first one. It too relates to the progress of what people at the time considered civilization. Decent, respectable people felt that they had a right to expect that progress— the advancement of learning and education, the advancement of science and technology— would bring about the taming of our animal instincts. I refer here to a war on vice, drunkenness, gambling, and sexual misbehavior. Enlightened people expected a victory for forces of moderation and respectability. In the later part of the 19th century, and in the beginning two decades of the 20th, there was a concerted effort to fight vice. The battle took many forms. Laws against sexual conduct were tightened. For example, many states raised the age of consent— the age at which a female can say "yes" to sex. In some states, the age of consent was raised to 18, which meant that most teenage sex, even if entirely consensual, was made criminal. The Mann Act, passed in the early years of the century, made it a crime to transport a woman across state lines for purposes of prostitution or "other immoral purposes". In many cities, the vice districts were closed down, and the doors of the brothels were nailed shut. Most extreme was the enactment of national prohibition. The sale of liquor was outlawed. An amendment to the Constitution made the United States officially "dry". At the same time, attempts were made to make sure that drunks, criminals, prostitutes, and the insane did not flood the country with their rotten genetic inheritance. A number of states, in the early 20th century, passed laws that allowed or called for the sterilization of criminals or people who were mentally defi-

cient. In a famous case, Buck *vs*. Bell (1927), the United States Supreme Court upheld a Virginia law on the subject. The victim was a woman who —according to the Court— was the daughter of a feeble-minded mother, was herself feeble-minded, and had given birth to a feeble-minded child. According to Justice Oliver Wendell Holmes Jr., who wrote the opinion, "three generations of imbeciles are enough". Ironically, modern research has suggested that Holmes was wrong: none of the three women was in fact mentally retarded. But the case does show the influence of the eugenic notions of the day.

A third prediction would probably have been a prediction as to the continued rise of the welfare-regulatory state. Already, in the 19th century, there were signs of growth in this regard. The Interstate Commerce Commission Act, passed in the late 1870's, created a federal agency which had the task of regulating the interstate railroad net. The Sherman Antitrust Act (1890) was another important example of federal, that is, national intervention into the economy. It outlawed monopoly and contracts "in restraint of trade". But basically, most regulation was weak and local in the 19th century; it was at the level of the states and the municipalities. It did not take a crystal ball, however, to see signs of change. The United States possessed a gigantic land area, spreading across the continent; but railroads, telephones, and telegraph made distance much less important than it had been in the past, and it was already clear that markets were going to be national, not local.

It is interesting to see what happened to each of these three predictions later on in the 20th century. As we all know, the age of empires came to an end in the 20th century. The First World War brought about the destruction of the Austro-Hungarian Empire; and the Ottoman Empire disintegrated as well. In the last half of the 20th century, after the end of the Second World War, the imperial system collapsed entirely. The British Empire disintegrated, and so did all the other empires. All of Africa became independent. Almost all of the islands of the Caribbean and the Pacific have become independent sovereignties. British Honduras is now Belize; Dutch Guiana is now Surinam. At the end of the century, the Soviet empire also collapsed, and the Soviet Republics all became nations on their own. Only fragments remain of the old imperial system. In some ways, imperialism never died; and the great nations still have inordinate influence, sometimes overwhelming influence, in many

of their former colonies; and one can talk about the imperialism of the multi-national corporations. But clearly this is a very different kind of colonialism than the 19th century ever knew.

Inside the United States, there has been, since the 1950's, a kind of revolution in race relations. Again, it is the second half of the century that witnessed decisive change. The first half of the century was, in some ways, a low point in race relations. The Supreme Court, in 1896, had approved of segregation— provided facilities were "equal", they could be separate (of course, in fact, they were never truly equal). As we already mentioned, in the south of the United States, where most African-Americans lived, they were social and legally subordinate, deprived of full citizenship rights, and in many ways severely repressed. Slowly, the tide began to turn. The legal system played a role. The NAACP (National Association for the Advancement of Colored People), founded early in the century, brought a whole series of lawsuits, in an attempt to get through the courts what the black population could not achieve politically. The NAACP won a series of cases, but these tended to be decided on narrow grounds. The climax of the struggle was reached in 1954, when the Supreme Court took the issue of segregation head on. In the famous case of Brown *vs*. Board of Education, the Supreme Court declared that separate schools were inherently unequal; and struck down school segregation laws as unconstitutional. They violated the 14th Amendment, which guaranteed to all citizens of the states the "equal protection of the laws".

Of course, segregation did not end so easily, not in the schools, and not elsewhere. The Supreme Court followed up its decision with others that went beyond the schools, and outlawed segregation altogether. But a generation of struggle followed, sometimes violent. In 1964, Congress finally passed a strong Civil Rights law. It banned discrimination in housing, education and employment; and in hotels, restaurants, and theaters. A year later, Congress passed a very strong Voting Rights act. This was meant to guarantee black citizens in the south the right to vote. These statutes were, on the whole, effective. Blacks now vote in the south, as they do in the rest of the country; there are black members of Congress, black mayors, black judges. There are still many controversies over race relations —in particular, the debates about "affirmative action"— and relations between the races are far from ideal, but they are a far cry from what they were in 1900.

For most of american history, african-americans were the largest racial minority, and it is impossible to tell the story of the United States

without taking into account the relationships between blacks and whites. Millions of african-americans, in the southern states, had been slaves, and after the slaves were set free, they were, as we saw, still members of a kind of lower caste, especially in the south, where the majority of the african-americans lived. They were for a long time the only significant racial minority. But at the end of the Mexican War, the United States found itself with a substantial population of mexicans, most of them Indians or mestizos. In general, the hispanic population has grown enormously. There are millions of mexicans and mexican-americans in the United States. There are also millions of cubans, dominicans, and puerto ricans who have moved to the mainland. Apparently, as of now, there are more hispanics in the United States than african-americans. They too have had a history of oppression, especially in the Southwest. They too have benefitted from the fallout from the civil rights movement.

The same has been true of other minorities. There has been a dramatic change in legal and social attitudes toward members of the native tribes. There is no longer any attempt to suppress their languages and religions. At one time, many children were taken from their homes and sent to boarding schools, where they were essentially detribalized. Acts of Congress were passed to end customary land tenure systems, and force the natives to assimilate. Now this policy has been abandoned. The tribes have, indeed, a good deal of autonomy on their lands. Many of the larger tribes have their own court systems, and apply their own customary laws in such areas as inheritance and family relations.

Women are hardly a minority, but as of 1900, women did not vote or hold office. There had been other disabilities, although most of them were dismantled in the 19th century. Women gained the right to vote around the time of the First World War. At first, although many women voted, few women held public office. Dramatic changes in gender relations occurred, again, only in the second half of the century. The civil rights act of 1964, along with its provisions about race, included a prohibition against gender discrimination. It became illegal to discriminate against women in hiring and firing, in education, in housing. And in 1971, the Supreme Court interpreted the 14th amendment to the Constitution —adopted in 1868— to forbid discrimination on the basis of gender. Now the equality of the sexes was not only a matter of positive law, it was a constitutional principle. At least, so the Supreme Court held.

Case law, statutes, and regulations, have forced occupations that were once closed to women to open their doors.

Chinese exclusion had only been the first blow of a series of blows against the old policy of allowing free immigration into the United States. Open immigration, as a general principle, came under heavy attack in the beginning of the 20th century. Millions of immigrants were arriving from southern and Eastern Europe —Jews, Catholics, and Eastern Orthodox for the most part. The northern european protestants who formed the bulk of the population looked on these newcomers as a threat to their way of life. The immigration act of 1924 not only continued the virtual exclusion of Asians, it also discriminated severely against these immigrants from southern and eastern Europe— against italians, greeks, jews, and slavs. The law set up a "national quota" system, based on population figures for 1890 before the flood of new immigrants from southern and eastern Europe. This "national quota" system lasted, basically, until 1965. At the present time, of course, although the country has not returned, and will not return, to a system of unlimited immigration, the most overt discrimination against minorities in immigration law has been eliminated. Indeed, today most of the new immigrants to the United States come from spanish speaking countries, and from China. Asians and hispanics are also, in some parts of the country, of great political significance.

The war on vice raged on for a while. Indeed, its high point, as I mentioned, was national prohibition, which went into effect around 1920. Prohibition was in fact the first casualty of the counterattack against the war on vice. It did not last much more than one decade. It was continuously controversial, during its short life. There was massive evasion particularly in the cities. Illegal liquor was readily available, for anybody who wanted it, and had the money to pay. At the same time, enforcement, although sporadic, did fill the country's jails. Prohibition was something of a failure, in that it did not end drinking in most parts of the country; it was indisputably a political failure.

In the second half of the 20th century, there was a dramatic reversal of fortune. This was the period of the so-called sexual revolution; society, or large elements of it, became much more permissive in matters of sexual behavior. The law reflected this development. The details are quite complicated —necessarily so, because the United States is a federal union, and the criminal codes are state codes, not federal codes. There are,

of course, federal crimes, but the ordinary sexual offenses were always state crimes. With a few exceptions, the states got rid of laws against fornication and adultery. Legally, some regulation of pornography is still allowed— in theory. In practice, most states and cities have simply given up. At one time, there was vigorous censorship of movies and books; but this is for all practical purposes gone. Any adult can essentially see or read anything he or she wants. Same-sex behavior is perhaps the most dramatic example of this trend toward permissiveness. Most of the northern and western states repealed their laws against sodomy. The few remaining laws of this type were all in the conservative, deeply religious south. And in 2003, in a dramatic move, the United States Supreme Court— reversing one of its own decisions— declared all of these statutes unconstitutional and swept them off the statute books. In effect, whatever consenting adults feel like doing with or to each other, is now legal.

The permissive society is not just permissive about sex. It is permissive in other areas as well. Gambling was once either forbidden, or strictly limited. Casino gambling was lawful only in Nevada. Nevada was a barren desert state, with very little in the way of an economic base. Gambling became the mainstay of its economy, in the course of the 20th century. This large, flourishing industry is centered on the city of Las Vegas. Today, Las Vegas still has a vibrant, healthy economy, and is growing very fast. But it has substantial competition for the gambling business— in Atlantic City, New Jersey, for example. Not only do more and more states allow gambling; they positively encourage it. Many states have lotteries, and collect millions of dollars from the citizens who buy lottery tickets. Some native tribes, which are exempt from the laws of the state in which their reservations are located, make money by running gambling casinos. Riverboat casinos float down the Mississippi river.

Family law itself has changed, paralleling the developments we just mentioned. Since fornication and adultery are no longer crimes, "cohabitation" (which used to be called living in sin) is not a crime; and it carries very little social stigma. Hundreds of thousands of couples live together without bothering to get married. The law of divorce has also changed rather drastically. In 1900, divorce was available in every american State except one (South Caroline) in 1900. But divorce was, in theory, not easy to get. Statutes in each state listed "grounds"for divorce— typically, adultery, desertion, and cruelty. The idea was that divorce was available only to an innocent spouse, whose partner had committed an offense against marriage— provided the

offense was one of the listed "grounds". Some states were stricter than others. In New York, essentially the only grounds for divorce was adultery. But in New York, as in other states, the law was a hollow shell. If a New Yorker really wanted a divorce, the law was not as serious an obstacle as one might think. For one thing, it was easy, if you had the money, to travel to Nevada, where divorce was a simpler proposition; and Nevada required only a few short period of residence.

In theory, too, a collusive divorce was legally invalid. That is, it was unacceptable for husband and wife to agree to a divorce, usually with the understanding that she would file suit, and he would just not show up, and not contest. But in fact collusive divorces were an everyday matter; and the overwhelming majority of divorces were, in fact, collusive. The judges accepted. the situation. This system lasted for about a century. The situation was, in effect, a kind of stalemate. It was impossible to reform the law, because too many elites opposed any changes that would appear to make divorce too easy to get. In 1970, however, California broke the log-jam, and adopted a new law which began a system of so-called no-fault divorce. The law was a sharp break with the past. California eliminated any list of "grounds" for divorce. Fault or misbehavior was no longer an issue. As the law was interpreted in practice, either party could get a divorce, just by asking for it. Of course, there were still disputes —sometimes quite bitter ones— about property or custody of children. But there was no defense to the issue of divorce. Indeed, the word "divorce" was eliminated; the statute spoke about "dissolution of marriage". The no-fault statute was also a sign of the weakness in what once had been considered traditional values; traditionally marriage was supposed to be for life, and divorce, even for religions that accepted it, was supposed to be rare and difficult. And California was only the first of the states to adopt no-fault. Within a few years, it was available in most of the states.

In general, the whole structure so carefully put together in the late 19th and early 20th century, whose object was to foster respectability, traditional sexual mores, and the like, has been consigned to the ash-heap. The one exception —and it is an important one— concerns narcotics. In the 19th century, essentially, the sale or use of drugs was not a criminal offense. Not that people thought it was a good idea to be addicted to opium; but possession, use, and addiction were not subject to the penal code. The first key drug laws, state and federal, date from about the time of the First World War. Unlike the prohibition laws, and the laws regu-

lating sexual behavior, here the laws not only survive; they are harsher than ever. In some states, the punishment for major drug offenses can be as severe as the punishment for murder. Why so permissive a society is so harsh on drug laws is an interesting question. The reasons are, in fact, somewhat obscure. It is often said that race plays its usual baleful role here. It is certainly true that the laws seem to be enforced more harshly in minority communities than in white, middle-class communities. I also suspect the harsh drug laws have something to do with ideas about the fragility and vulnerability of children. The fear that evil people will seduce children into drug addiction, from which they can never really recover, absolutely terrifies people.

I have talked about the decay of traditional values. Yet America is an intensely religious country, and always has been. Religious beliefs and practices are stronger in the United States than in almost any other developed country. Other western countries have, legally speaking, traveled down the same road— abolishing laws against non-violent sexual behavior, recognizing cohabitation, accepting pornography, and so on, et religion in these countries— countries like France, England, or Italy— is very much weaker than in the United States. How can the culture of the United States be so traditional, so religiously devoted, and at the same time so permissive?

I cannot promise to give you an answer. The issue is obviously very complicated. I think part of the answer lies in the development of modern individualism— specifically, what has been called expressive individualism. This, basically, refers to the idea that a person has the right to develop his or her own unique personalities, strengths, wishes, and desires, to the maximum extent possible. Expressive individualism is a characteristic of all modern, western countries. The impact in the United States, however, is to neutralize one aspect of american religiosity. A person in the United States chooses that form of religion which best suits him or her. Religion is a *personal* quest for salvation; and the right road for one person may not be the right road for another. Americans tend to tolerate all religions except the absence of religion. Their views suit a kind of society, and a legal order, where people tolerate wide menu of beliefs and life-styles. Indeed, they are more than tolerated: they exist as alternate, legitimate forms of spiritual quest and expression.

In a sense, the whole civil rights movement may be seen as another sign of expressive individualism. The form of legal order that evolved in

the United States can be called an order characterized by plural equality. There is no state religion; there are majority religions, and majority ways of life, majority languages and cultures, majority and minority sexual preferences; but to a greater extent than ever before in the past, the State is neutral as between any of these. *Society* is neutral. Of course, this is a gross oversimplification; moreover, there are very definite limits to legitimacy. But plural equality is a strong and growing tendency, in both law and society.

We talked about the rights of minorities, as they developed in the last half of the 20th century. But the constitutional and social revolution went far beyond this. There was a general upsurge of rights-consciousness. There were, for example, important developments with regard to students' rights, and the rights of prisoners. A series of dramatic cases in federal court attacked the brutality and indifference of the prison system in a number of states— with some success. In 1964, Congress passed a law forbidding discrimination in hiring and firing on the basis of age. The original act protected workers who were over 40, and under 65. Later amendments first raised the upper limit to 70, and then removed it altogether. This had the effect of abolishing mandatory retirement. No company can fire a worker simply because he or she has reached a particular age. In 1990, Congress passed the Americans with Disabilities Act. This essentially outlawed discrimination on the job market against people with handicaps. A person in a wheelchair, for example, has to be given a chance to show what he or she can do, so long as the job is one where the handicap does not absolutely prevent performance. Indeed, companies have to make reasonable arrangements to accommodate people with handicaps— ramps and elevators, for example, for the person in the wheelchair. The idea of leveling the playing field has deep roots in the social order, in the age of expressive individualism and plural equality.

We mentioned three predictions at the beginning of this talk. The third one was the only one of the three which turned out to be correct. This was the prediction that the regulatory state would continue to grow. And in fact, it has. When we look back, this development seems quite inevitable. It was also inevitable that the regulatory state would be, more and more, a *national* matter. In the United States, there is a strong tradition of states rights, of local rule, of decentralized government. But it is clearly beyond the power of individual states to control big business— business that has branches or operations in many of the states, which

sells its products in every state, and has, perhaps, important international connections. The problem of the multi-state business was already evidence in the 1870's, when the ICC act was passed, as we pointed out. Modern transport and communication have created in many ways a single, common culture; it is, among other things, a culture of brand names, of advertising, of mass marketing, of chain stores and franchises. The market is more and more a single, *national* market.

The process of expanding the welfare-regulatory state was well underway by the 1930's; but the New Deal of this decade accelerated the process. It brought in a tremendous new wave of legislation, to repair and control a system which seemed to have broken down in a serious way. The feverish activity of the New Deal took place against the background of the Great Depression. At the height of the Depression, a quarter of the population was unemployed. Millions had lost their homes and farms as well as their jobs. Millions who had been in the middle class found themselves at the bottom of the barrel. The states were bankrupt and unable to cope with the problem. There was a tremendous public demand that something be done, and only the federal government had the power and the resources to do it. Franklin D. Roosevelt was swept into office in 1932. His government instituted a massive program of public works, in order to provide jobs for as many people as possible. Legislation tightened control over the banking system. The Securities and Exchange Act set up an agency to regulate the stock exchanges, and to try to bring honesty and transparency into the sale of corporate securities. A National Labor Relations Act established a board with power to protect labor unions and guarantee the right to organize. The government began a program of building public housing. Agricultural laws regulated the production of crops, in an attempt to stabilize prices. The federal government instituted a program of unemployment insurance. And, perhaps most important of all, the Social Security Act of 1935 brought in a system of old-age and disability insurance. Workers and employers would both contribute money. Social Security was a program of social insurance, not welfare: even millionaires could, and can, collect "social security" when they reach retirement age, if they have contributed from their earnings in the past.

The Second World War brought in still more elements of a command economy, out of sheer necessity. The country had to be mobilized. Now there came wage and price control, rent control, and rules that focused

the economy on war production. One of the more permanent, and significant, contributions of war legislation was the so-called GI Bill of Rights, a massive program of aid for veterans. The federal government undertook to pay college tuition, lend money to veterans to buy houses in the suburbs, and help them start businesses. After the Second World War, more conservative governments came into power; but they did not, on the whole, turn back the clock. Most of the programs of the New Deal had become extremely popular; and they survived.

A second burst of regulation came during the administration of Lyndon Johnson, in the 1960s. Johnson declared a "war on poverty", and also guided through Congress a number of provisions that dramatically extended the welfare state. Medicare was the most important of these: hospital insurance and other benefits for men and women who were over 65. This too became an enormous popular program. Meanwhile, the public became more and more conscious of problems that affected the environment. Since the 1960's, laws were passed to safeguard wilderness areas, to protect marine mammals and save endangered species from extinction. Even more important were acts to guarantee cleaner air and water, to fight smog and pollution. After 1980, most administrations have been conservative; under Reagan and the second Bush, very conservative indeed. There are those who are ideologically opposed to big government, and would like to dismantle the welfare-regulatory state. There has been a certain amount of deregulation. But the basic structure of the welfare and regulatory state is too popular —and perhaps too necessary— to be much affected.

One consequence of the rise of the welfare-regulatory state has been a dramatic increase in the sheer volume of law— rules, doctrines, statutes, regulations. This has been accompanied by an equally dramatic rise in the number of lawyers. The legal profession was always quite sizeable in the United States, compared to many other Western countries. Now it became even larger. At the end of the 20th century, there was something on the order of a million lawyers in the United States. More and more, too, these lawyers practiced in large law firms. As recently as 1950, there were only a few law firms with more than 100 lawyers; and these few were concentrated in New York and a few other large cities. Today the largest law firms have well over 1,000 lawyers; and even cities of modest size have firms of more than 100 lawyers. The largest firms, too,

have branches in several American cities and, more and more, in such overseas centers as London and Tokyo.

Another important change has been what has been called the feminization of the profession. No women practiced law before 1870. The pioneer women who wanted to practice law met with considerable resistance. At the beginning of the 20th century, only a handful of lawyers were women —one or two percent of the total—. Their numbers grew very slowly for the first 60 years or so of the 20th century. In the 1960's, however, the numbers began to explode. Today, in the United States, about a quarter of all the lawyers are women; and women are either half or just under half of the students in most american law schools. The number of women who are partners in big firms is still rather small; but it is growing. Before the 1970's, there were only a tiny number of women judges. Today many judges are women, including two justices of the United States Supreme Court. There are also many women law professors and a fair number of women who are deans of law schools.

Many members of the public, to be sure, look askance at the growing legal profession. They feel there are far too many lawyers for the good of society. Lawyers have never been the most popular of professional people. They are thought of as clever but conniving; as trouble-makers, rather than problem-solvers. Yet people need lawyers, and turn to lawyers for help in their affairs. It is clear that in a modern society, a complex society, law has a ubiquitous role. The american situation is far from unique. In most countries that have decent statistics, the number of lawyers has been rising steadily in the last thirty or forty years. In a few countries —very notably Japan— there are artificial restrictions on the numbers of lawyers; but even in these countries, there is pressure to increase the size of the bar. Despite their apparent unpopularity, lawyers have made themselves indispensable.

By reputation, the United States is a litigious society, a society which thrives on litigation, a society in the midst of a litigation explosion. Actually, things are not that simple; and in many ways, the evidence for a litigation explosion is fairly weak. But there is no doubt about the centrality of law in american society. The increase in the number of lawyers is evidence of this point; and so too is the fact that the total amounts expended on legal services has been growing rapidly. American society has gotten used to the idea of rights, laws, lawyers. It has gotten used to the idea that the courts are an independent agency for the protection of basic rights. I

will not repeat the mistakes of 1900, and make predictions about the future. But at least for now, I do not see much chance that the centrality of law in american society will change materially in the 21st century.

This quick survey of some changes in the 20th century legal order has focused entirely on the United States. If we look at the history of the law in other countries, in the 20th century, we see in many ways some very dramatic parallels. Among developed countries in particular, there has been a considerable amount of what we could call convergence: legal systems developing in ways that make them resemble each other more closely. There are innumerable examples— for instances, the law of divorce, which has almost everywhere gone in the direction of no-fault, the laws regulating sexual behavior, the build-up of a welfare regulatory state, the passage of laws outlawing discrimination, the movement toward gender equality.

Obviously, each country has its own unique history, and its own unique legal system. There are exceptions to every trend. Chile, for example, is a society which thus far does not permit absolute divorce. Each country has its own legal tradition. Methods of training lawyers, and the culture of lawyers, also differ markedly from country to country; the gap between common law and civil law countries at least seems particularly large. Nonetheless, modern countries respond to social facts, social forces, social developments, in ways that are basically alike. The problems are the same; and the solutions also tend to be, if not the same, at least somewhat similar. England, for example, is a common law country; Japan most certainly is not. In the middle ages, their legal systems seemed to have very little in common. And today? Of course, they differ in all sorts of ways. I know little or nothing about the Japanese legal system; but I know that it has to respond to issues of banking regulation, copyright of computer software, land-use planning, and so on— problems that did not exist in the middle ages, but which they share with England. Countries committed to democracy and the rule of law have packages of basic rights, which are quite similar on the whole; they also tend more and more to have judicial review and powerful constitutional courts. These are traits that were absent in the middle ages. The legal system of the United States, too, has many unique aspects. But in the 20th century, and in the 21st as well, it is more and more part of a recognizable family of legal systems, all of them large, active, and at the very core of their societies.