

*Henry Winthrop*

## ARE THE LEARNED PROFESSIONS

### SECEDING FROM AMERICAN SOCIETY?

#### 1. *A Counter Culture In The Making*

THE WORLD THAT THE YOUNGER GENERATION is thirsting after will involve what Theodore Roszak has called a "counter culture". In his book, *The Making Of a Counter Culture* (Doubleday, 1969), which he has subtitled *Reflections on the Technocratic Society and Its Youthful Opposition*, Roszak has spelled out in great detail the tasks that lie ahead if the younger generation is to succeed in eliminating the pathologies of our contemporary society and usher into being *The New Society*. In the achievement of these tasks, it will be imperative that members of the teaching profession play a leading role.

But it is just as important that the members of some of our traditional professions play an equally leading role in their day-to-day professional activities in the great big world outside of academia. In particular, members of the bar and members of the clergy have a central role to play in the reconstruction of our society. If that reconstruction is to show visible signs of the counter culture to which members of the younger generation seek to act as midwives, both of these major professional groups will have to carry a burden of contrition for the mess which their professional forbears created or maintained. The coming members of the clergy will have to do penance for the sins of the Church in the past—a Church that functioned all too often as apologist for the misdeeds of princes, merchants and warriors. Attorneys have to undo much of the body of the law, particularly those aspects of law inherited from the past, which gave verbal sanction via legal rhetoric to the selfishness of special groups. They may have to discard as a professional objective the ambition to pursue wealth under the sanctimonious pretense that they are upholding the "majesty of the

law". Then, too, they must begin an effort to liquidate the archaic and pre-scientific procedure of deciding issues of litigation in terms of the adversary method.

The clergy can do penance by translating the making of a counter culture into religious conviction and by pursuing the objectives of the Social Gospel in terms of the postures they take in the future towards the major social issues of our time. The lawyer can convert his forensic skills into aptitudes employed in behalf of public service and justice, even if his services are rewarded with only a modest salary. This means that the attorney will have to cease being interested in the law as a means of amassing wealth. Interest groups that thrive at the expense of the community must be unmasked by attorneys dedicated to justice and honesty. The language of the law may have to be turned against vested interests and employed on behalf of the rights of the citizen and the consumer. The adversary method may have to give way increasingly to the congressional hearing, to arbitration and mediation, and to administrative law firmed up by top-notch sociological and economic research, as well as many other types of research. Barristers may have to become *ombudsmen* for the body politic and for judicial review of the viability of much legislation that is now on the books. Such legislation will have to be examined periodically, in terms of the consequences it produces in our fast-changing world.

In the making of a counter-culture, the notion of a value-free social science is being seriously challenged at the present time. Originally, from the standpoint of a sociology of knowledge, this might have been a necessary ideal, aimed first of all at ending and preventing the Church from interfering with free inquiry, and second, to keep special interests, economic or political, from bending inquiry to partisan ends. Today, with the increasing social complexity of modern life and the intensifying and worsening of social problems the need for whose dissipation every power group has ignored or neglected, the ideal of a value-free social science is immature and irresponsible. Today the type of awareness and concern that Robert S. Lynd pleaded for during the Depression 30's in his book *Knowledge For What?* (Princeton University Press, 1939), subtitled *The Place Of Social Science in American Culture*, is the type of attitude that is germane to an awakened conscience among educators and members of the professions.

The advocacy of a value-free social science is now both irresponsible and a major piece of intellectual folly. To be sure, partisan, personal and social values and sentiments must not be allowed to distort either the pre-

suppositions, the methods or the findings of free inquiry. Values *must not* be confused with truth. Nor must they be allowed to *infect* the ideal of scientific objectivity. But, certainly in the state that our culture has arrived at, they *must be married* to scientific inquiry and scholarship. However, this will have to be a union of free partners, neither of which submerges his personality in that of the other but, instead, complements it by alternating with it in tandem. Nor is the marriage to be a *folie à deux* in which both lock arms to reinforce the evils of the age and help to promote the immoralities ably described by Denis De Rougemont in his book *The Devil's Share*, which he succinctly subtitled *An Essay on the Diabolic in Modern Society* (Bollingen, 1944).

Members of the clergy and members of the bar, representing in themselves the union of the desire to find truth with the desire to establish justice, must also show by their actions the social significance of both science and the humanistic legacy of the west, when these sources of knowledge are undergirded by value-laden attitudes. These value-laden attitudes will, of course, be oriented towards the public interest.

Today a very drastic change is beginning to appear among educators, clergymen and attorneys. Suddenly members of all three groups are becoming profoundly convinced of the current necessity to recognize that questions of value must be married to questions of fact, particularly scientific fact. Some members of these professions who are experiencing this change of heart are members of the older generation. Many, as you would expect, are members of the younger generation, who are in the thick of the fight to remove the intellectual prison bars of the archaic and dysgenic traditions that so harshly separate questions of fact from questions of value. Thus, we see emerging, in religious and legal groups, the first signs of the making of a counter culture in those precincts that have traditionally been the keepers of the gates for the *status quo* in ideology and the privileges of The Establishment. We are witnessing the first portents of the making of a counter culture, one that may not fully make the scene until members of the younger generation are in their 40's and 50's, that is, somewhere between 1990 and 2000 A.D. Nevertheless, the beginnings are there and are being radically exhibited in religious and legal circles. Clearly, it is more difficult to engender a change of heart in these two professions than in the youth movement itself. Few are yet aware of this tremendous reversal of one of the major themes of American culture. If the trend continues we may yet be able to answer the question raised in the subtitle of Daniel Boorstin's book, *The Image*. That subtitle read *What Happened To The American Dream?* We may yet be able to answer that ques-

tion by indicating that The American Dream is experiencing a rebirth in two of our major professions.

It is the purpose of the present paper to document these initial birthpangs in the direction of a counter culture, as these birthpangs are being felt in religious and legal circles. Let us now turn to the evidence for the assertion that these two professions are becoming marginal to the old order.

## 2. *The New Clergy and Its Vision*

The church today is undergoing a radical change. This change may be less visible to the naked eye if we cast our eyes upon the established clergy. If, however, we examine the outlooks of young student seminarians throughout the United States today, the view from the top of the stairs will be quite different. Coming events, it has been said, cast their shadows before. If we recognize that the seminarians of today are the clergymen of tomorrow, then it is becoming quite clear that the clergy is moving from the traditional line of "pie in the sky by and by" to a demand for a decent life for all today. Theology students are tired of staid and hypocritical members of the establishment clergy. These are the clerics who have always talked in mealy-mouthed fashion about jam yesterday and jam tomorrow but never jam today. Young seminarians are tired of the cant of the established clergy. This cant so taxed the patience of black extremists that they have begun to demand that the church wipe out the guilt for past injustices to the Negro by free and substantial sums of money to help the black man ameliorate some of the crushing conditions under which he lives today. The new seminarians are, in a sense, the "now generation" of God. Let us take a look at the anti-establishment outlook that they are slowly developing. For the young seminarians the establishment, of course, is organized religion, together with the secular postures of the church.

The social and human issues about which we are doing little or nothing and which they consider to be of greatest urgency, though not necessarily in the order I am about to mention, can be clearly listed. They include racial discrimination and exclusion; militarism, war, violence and the draft; poverty, hunger and the plight of people in The Third World; colonialism and imperialism at home and abroad; and inhumanity, deprivation of human rights, oppression and the exploitation of other people. But these are not all. These highlight only the global sins of the West.

To these must be added social sins that are more likely to be national or regional. These geographically more limited evils, but not necessarily less important ones, consist of such matters as the failure of our educational

system; social injustices, social exploitation and social inequality; the oppression of women; overemphasis on the profit motive; lack of community; the inability of people to communicate with one another; the widespread spectrum of social hypocrisies; and the existence of narrow nationalisms and parochialisms. To this bill of particulars must also be added the wholesale tampering with the ecological relationships of the American environment and the possibility of self-destruction and the destruction of the resource base on which our lives depend; the various problems of pollution, of which air and water pollution and, with the coming of the superjets, "noise pollution", are the major types.

If asked what kind of a world they would like to see ushered into being, the young seminarians have some pretty strong convictions. Concretely most of them could furnish no detailed, constructive program for eliminating the social evils of our time and molding the world a little closer to their hearts' desire. Attitudinally, however, their goals are crystal clear. If asked to sum up the elements of the good life that, in their estimation, would move men a little closer to the gods, there is likely to be fairly widespread agreement on a number of features. They insist upon a world characterized by openness, honesty and freedom from hypocrisy, that dispenses as much as possible with role-playing and role-expectations. Because they also insist on the helping hand, together with its sister virtues of tolerance, compassion, sympathy, social altruism and social concern, they see the continuation of role-playing as a cultural lag. Furthermore, because, above all, they want a world in which an authentic sense of community can be established, free from the destruction that attends the competitive urge when it is misplaced, role-playing and role-expectations have, they feel, little social survival value. At least, they grow increasingly archaic in an age of science and technology whose promises are to be bent to the needs of men.

The new world-a-coming that the younger generation would like to act as midwife for will have to be one in which greed and the lust for power, in the form of the profit motive so uncritically accepted by the older generation, will be gone. In its stead we shall have production for use and not for profit. In this world there will be equal opportunity for all to develop themselves and to have access to the goods of contemporary civilization, both tangible goods and the intangible goods of the spirit. The prevalent culture of The New Society will be one that aims primarily at enhancing all modes of consciousness: intellectual, aesthetic, social, sexual, spiritual, and religious. It will be one in which the sexual relationship will be enlightened, honest and, hope-

fully, ennobling. It will be one in which the family will have a new and democratic lease on life, through the establishment of pluralistic forms of authentic community. In *The New Society* the religious impulse will experience a rebirth, and love and brotherhood will receive secular expression largely because men and women will have recovered the pristine meaning of Agape in their lives. They will have relearned the distinction between Eros and Agape.

In a series of 15 articles in 1969 the *Christian Science Monitor* explored the views of more than 100 seminarians. These included Roman Catholics, evangelical and liberal protestants, men and women, blacks and whites, and Northerners and Southerners. The following expressions of attitude are drawn at random from this series.

A Roman Catholic seminarian, in the spirit that is needed to nourish a counter culture, had this to say of his own church.

"It is much too centralized", he observed. "The culture that rules from Rome is not our culture. All the trappings are a lot of nonsense. The hierarchy is alienating itself more and more from clergy and laity. . . . The business and corporation aspect should be de-emphasized. There should be more outgoing aid. I am not satisfied with the American church's response to issues such as the war and its treatment of its own people. The structure allows bad people to hold sway."

A student from Union Theological Seminary had this to say.

"As the church now exists, it is no different from the rest of society. People are there largely by accident rather than conviction. They are a part of society in a particular structure, having the biases common to that society. And the church, by and large, is not asking them to 'come out from among them and be . . . separate' or different."

When seminarians were asked what tasks they thought the church would fulfill in the future, the replies were in startling contrast to what the laity usually expects from the clergy. A good many seminarians are convinced that small groups or informal communities would arise. It was expected that these would develop a creative, fluid style and a pluralism of worship and liturgical forms. Others anticipated the rise of an underground or free church, alive and able to address itself relevantly to the contemporary human condition. Some felt there would be renewal; others unity, still others disintegration and fragmentation. Some said there would be more emphasis on social concern. A number saw a greater pluralism and diversity developing. Some emphasized the decline of the church, loss of members, closing of structures,

and the church becoming a relatively small remnant. Others talked of decentralization, a less institutional, less authoritarian structure, and increasing emphasis on a lay ministry.

Of all the seminarians interviewed, all but two expressed an interest in social action. Of those who felt that the clergy should devote itself to social action, the ratio of those vitally interested to those mildly interested ran 10 to 1.

One student from the Perkins School of Theology said,

"The church should be the social pioneer, forging the way in history for all men to follow. As an institution it should be out to revolutionize the world. It should be in the front line, throwing its body on the barbed wire."

A seminarian from Union Theological Seminary revealed the extent to which he felt the clergy must be in the forefront of the fight to change this vale of tears. He had this to say,

"If the church is to have any chance of surviving, it must become involved as an institution. At times it must set itself up in opposition to the existing political structure. If it does not see this, it deserves to fall."

Commitment to social action and social change appears to be the conspicuous life style of the new seminarians. They insist *that the church as an institution* should become involved in social action. Their determination to work to alleviate the suffering of men everywhere and to raise the quality of human life accounts not only for their battle-scarred concern with race, poverty, and war, but also for their fast-developing interest in the whole question of ecology, or men's relation to their environment.

As a representative sample of prevailing attitudes, the preceding postures, I submit, are portents of contributions to the making of a counter culture that we can expect from the clergy of The New Society. Eric Hoffer has remarked in *The Ordeal of Change* that prior to the emergence of the modern Occident there was only one society in which a group of intellectuals raised their voices in defense of the weak and the oppressed and pitted themselves against the ruling elite and the prevailing social order. These were the Hebrew prophets, beginning with Amos about 800 B.C., and continuing for quite some time thereafter. I venture to suggest that this role will be taken up again over the next few decades by the clergy and that we will witness the spiritual rebirth of a clergy that will play a major role in the making of a counter culture.

### 3. *The New Attorneys And Their Contribution To The Making Of A Counter Culture*

The legal profession is on the verge of a great idealistic change—or, at least, a very small but potent sector of it is. From at least the time of

Protagoras, legal talent or forensic oratory has been offered for a fee. The right to practise law within the framework of society, for pecuniary reasons, has never been questioned. With the increase of social and legal complexity, necessitated by a rapidly burgeoning technological society, the cost of legal services has risen higher and higher and the intensity of, and opportunity for, corrupt practice has likewise risen. So, too, have the number of books exposing *in part* the lawyer's passion for money above everything else. Among such books we have had Fred Rodell's *Woe Unto You, Lawyers!*, Alvin Martin Mayer's *The Lawyers*, Murray Teigh Bloom's *The Trouble With Lawyers*, and Stanley Rosenblatt's *The Divorce Racket*. But at last the worm seems to be turning, and attorneys are reminding themselves of the fact that the majesty of the law should be bent to promote the common welfare rather than to swell their own bank accounts. A sense of social mission has descended upon a few legal groups, fired with a common purpose aimed at improving the condition of man through the spirit of the law married to a sense of social altruism. And so we find, even in a profession that has unfortunately become a symbol of corruption in the public eye, some extremely significant portents in the direction of making a counter culture. What are some of these signs of the times?

The Economic Opportunity Act of 1964 has given some humane and idealistic attorneys a chance to think about the biblical admonition to the effect that the poor shall always be with us. For under this act there was a provision that stipulated the need "to represent indigent persons against unequal treatment under law". From this relatively mild concern with those among us who were economically deprived, it was but a short step to the conviction that perhaps the sociology of both the old and the new testaments reflected too resigned an outlook with respect to poverty. The socially conscious sector of the younger generation is convinced that poverty can be *completely liquidated* in the affluent society. But meanwhile, in phase one of the fight against poverty, the rights of the poor have to be defended, and a middle-class indifference which helps to grind them into the dust of poverty, as it were, has to be opposed. And so, out of the Economic Opportunity Act of 1964 there arose a whole new area of "poverty law". This corpus of poverty law provides those who champion the poor with the opportunity to guarantee justice in the welfare relief that is so smugly distributed to the poor. This same body of law, if properly exploited, will tend to ensure many of the other rights of the poor that are so easily denied to them by the impersonal bureaucracy that administers welfare relief.



interference for the welfare bureaucracy by pushing through the legislation of alienation and irrelevance which has become a political habit. Legal Services' attorneys have also earned the hostility of some members of the judiciary who have been forced not only to become acquainted with poverty law but have also been forced to consult law books that they have not opened for years. But the young attorneys of Legal Services have been able to fight successfully all forms of legal obstructionism that are interposed between themselves and their suffering clients by being bright and competent, by being primarily humanitarian and by exploiting existing law in such a fashion that it is made to aid the economically downtrodden and oppressed. They are thus building up a body of relevant law as well as poverty law.

The types of cases which Legal Services has to handle are considerably varied. They range from heatless apartments to evictions and to consumer fraud in which their clients are legally cheated by business, through the application of dozens of dishonest gimmicks. They frequently involve divorce, homicide and hundreds of unjust accusations that are often easily levied against the poor because they neither know their legal rights nor have the money to pay an attorney to reinforce such rights.

In the legal suits that members of Legal Services file on behalf of the poor and in the legal representation that they give them before some of the thick-skinned officials of the welfare bureaucracies, we have some clear-cut contributions to the making of a counter culture. But the new attorneys of the "now generation" are engaged in the even more important activities of safeguarding the welfare of the *whole citizenry*, an activity that is an even more potent contribution to the making of a counter culture than that of Legal Services, admirable as the latter most certainly is. The young attorneys of the "now generation" are, perhaps, making the most telling legal contribution to a counter culture in the work they are doing as lieutenants of that champion of the public, Ralph Nader. Let us, then, turn to an examination of the efforts that are being made in this connection.

Ralph Nader has proved to be the one-man *ombudsman* of American democracy. Single-handed he has exposed the threats to the safety and lives of 204 million American consumers and to the lies by which those consumers are taken in, through substandard, unsafe or misadvertised goods. Nader has succeeded in forcing the withdrawal of cars that were safety hazards, in his bestselling *Unsafe at Any Speed*. One result was Federal and State regulations with respect to automobiles and tires. He has been very influential in

forcing the automobile industry to move to correct the heavy air pollution it has created and still continues to create. Almost alone, Nader has been responsible for the passage of five major federal laws: The National Traffic and Motor Vehicle Safety Act of 1966, the Wholesome Meat Act of 1967, the Natural Gas Pipeline Safety Act, the Radiation Control for Health and Safety Act and the Wholesale Poultry Products Act, all issued in 1968. And, as of the time of this writing, the chances were excellent that the Federal Coal Mine Health and Safety Act would be passed by Congress.

It would be easy to recite the long roster of Nader's accomplishments. This guardian of the American consumer is now a national hero. The Harvard Law School newspaper has called him "the most outstanding man ever to receive a degree from this institution". But it is the effect of Nader's efforts and ideals upon the young—chiefly attorneys—which is important here. Known as "Nader's Raiders", they constitute the group of law, engineering and medical students who regularly help him dig up the sins of the private corporation and the government bureaucracy. Beginning with a group of seven, their numbers have risen considerably. After all, Nader is the director of a huge morality play, in which the "good guy" regularly wins and virtue triumphs. As we move towards a counter culture we note that the dictum, "Nothing succeeds like success", is also true for moral righteousness and human honesty which is laid down on behalf of man—in this case, the American consumer. The moral fervor that Nader's *ombudsman-like activities* is producing among the young can, perhaps, best be sensed from the fact that 700 students in Texas Colleges alone expressed a desire to join Nader's Raiders in the Summer of 1970.

Nader's Raiders are his research assistants for 10 weeks, digging into the manufacturing sins of industry and the administrative sins of government agencies, by straightforward and highly competent research. For Nader's Raiders are young men of high talent and research bents and the fact that Nader can give them only \$500 to \$1000 for the 10 weeks during which they loan Nader and the country their talents, is more than offset by their remarkable idealism and sense of public service.

Nader's Raiders have helped to demonstrate with remarkable alacrity an obvious truth that most of us overlook. That is the truth that dishonesty, corruption, venality, indifference, incompetence, irresponsibility, greed and stupidity—in private industry or administrative law—are easily exposed. Just as Martin Gross in *The Doctors*, in describing these same vices among members of the medical profession, was able to discredit many members of that

profession by drawing upon the content of their own medical journals and various well-known, research reports to the medical profession, so too a similar approach has been employed by Nader and his Raiders. Digging into government reports and publications and interviewing politically appointed per-shufflers, Nader's Raiders have been able to indict the administrative sinners by drawing from their own published materials. In addition, probing interviews with agency officials have been intellectually and morally merciless. In short, both in the case of doctors and the executives of administrative law, Nader and his Raiders have been able to expose the sinners through their own self-indictments. They are hoist by their own petard.

This technique, I believe, will prove to be the undoing of a bastardized bureaucracy that has forgotten that it is the servant, not the master, of the citizens. It is the printed word, indicating all those guilty of moral and legal malfeasance in office, which will eventually tear down a sick society. The moral nausea that this exposure will create in all citizens, regardless of their race, will help to pave the way for the counter culture that is only just beginning to dawn.

It does not matter that The New Left does not love Ralph Nader because he wishes to improve the system under which we live rather than reconstruct it in order to achieve *The New Society*. The point is that the improvements that Ralph Nader, in the form of knight-errant of the consumer society, will be responsible for will still constitute a substantial contribution towards the making of a counter culture. Just as important is the fact that the current and *future* activities of all those who have been part of Nader's Raiders will also contribute heavily to the making of a counter culture. Their activities will constitute a ground swell of the future, so that each of Nader's Raiders will be a living vortex for the making of a counter culture, each influencing a large number of young men of lesser age to help to shatter this sorry scheme of things entire and mold it nearer to the heart's desire. Above all, the young attorneys among the Nader's Raiders will help to transform the legal profession from vultures who feed on greenbacks to doves who help to make complex America a land of fairness, decency, and honesty, as well as peace.

The eventual moral and managerial effects of Nader's efforts are resulting in a wholly new public philosophy, not only among would-be entrants to the legal profession but also and more strikingly, among many who are about to graduate from our law schools. Virtue and social responsibility are "in". Money-chasing is "out" and the sounds of a coming counter culture may yet become a deafening roar. This can be no better illustrated, I believe,

than to quote the words of *Time* (December 12, 1969) in this connection.

The entire legal profession must be reformed, Nader maintains, if society is to alleviate its ailments. "The best lawyers should be spending their time on the great problems—on water and air pollution, on racial justice, on poverty and juvenile delinquency, on the joke that ordinary rights have become", he says. "But they are not. They are spending their time defending Geritol, Rice Krispies and the oil-import quota."

That is changing, in no small part because of Nader. Of the 39 *Harvard Law Review* editors who will be graduated next June, not one intends to join a high-paying Wall Street law firm. Instead, most plan to enter neighborhood agencies or government service—and represent the individual against the institutions. Nader believes that the rise of the youthful protester, which began in the '60s, will accelerate into the '70s. "You watch", he predicts. "General Motors will be picketed by young activists against air pollution."

Student demonstrators, he believes, will increasingly choose to become student investigators. Many of them will move to Washington and, like Nader, spend their early careers prowling among the Government filing cabinets, searching for examples of abuse and seeking means of reform in the existing system. "This is a new form of citizenship", Nader says. At heart, he is teaching the oldest form of citizenship: that one man, simply by determined complaining, can still accomplish a great deal in a free society. (p. 98)

All the preceding material reflects, I believe, the presence of relatively new attitudes and new behavior in some of the learned professions—attitudes and behavior that constitute portents of a counter culture that is being born before our eyes. Time and the assertion of civilized impulses, particularly in an increasingly complex society like our own, have a way of playing tricks upon history, in the sense that writers like Roszak who look forward to the making of a counter culture, may find their expectations beginning to be fulfilled perhaps earlier than was expected. There are signs that the '70's will see the making of a counter culture in many areas of American life. Here I have only been concerned with the presence of some of these signs among some of the learned professions whose being, as the existentialists would say, is *in the world* or, at least, in the marketplace. Above all, it is to be noted how major a role the younger generation is playing in this connection in both these professions. There are, of course, many other important signs of a coming counter culture in other areas. These include such phenomena as the experimental communes of our time, activities that are analogous to those of the lawyers in Legal Services, but which are being undertaken by younger members of the medical profession, revolts by younger architects against the urban

blight and squalor of our time, the intensifying movement for women's rights, and the formation of new political groupings that hope to alter considerably some of the pathological themes and biases of a money-oriented culture.

The consideration that I am seeking to focus attention upon here is that members of the learned professions are also changing, and changing in the direction of a more humane and just social order. This phenomenon is numerically limited at present, but this does not mean that its growth rate will be slow. I am inclined to believe that its growth rate in the '70's will be rather high. These two considerations prompt me to believe that we are witnessing the early signs of a counter culture that will be quite unambiguous in its social scope. If I am right, then, perhaps we need to pay closer attention to the signs of the times. Not only that but assuredly we should be trying to nurse these changes until they become full-blown.