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THE ROLE OF AN ATTORNEY IN SOCIETY: A HIGHER CALLING

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“The first thing we do, let’s kill all the lawyers.”¹ Dick, “the Butcher,” says this to the traitorous Jack Cade in Shakespeare’s *Henry VI*, as his idea of how to begin an overthrow of the government. This often misapplied quote, in reality, is a statement underscoring the importance of lawyers in our society. Society, like a quilt, is made up of many pieces. I submit that lawyers are not just another square on the societal quilt; their importance is that they are the stitching holding the pieces of that quilt together.

This essay explores a higher duty a lawyer owes society so that the stitching creates a new and desirable design. Someone must have the integrity and courage to stand up for what is right, not what is merely politically, financially, or socially expedient. As I wrote this essay, an article appeared in the Denver Post, reporting that several Republican lawmakers filed an amicus brief in the Tenth Circuit Court of Appeals supporting the right to gay marriage. One lawmaker acknowledged the political risk, but stated, “it’s the right stance for the sake of personal freedoms.”² I suggest it is a lawyer’s obligation to follow this type of action and assume a leadership position regarding society’s moral responsibility to those who live within our borders and act as a change-agent to ensure that basic human rights are afforded to others. As leaders, lawyers cannot stay within society’s comfort zone but must take some risks.

Historically, the “best and the brightest” have been drawn to the law for a variety of reasons, including the idealistic reasons that are the topic of this essay. However, it is the education and training to examine issues from all sides, to think critically, to solve problems, and to look at the bigger picture, which cause others to ask lawyers to join and be leaders in their communities, groups, and organizations. A lawyer must take advantage of those opportunities to be in a position to ignite the passion in others to address the human rights issues of today and tomorrow.

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1. WILLIAM SHAKESPEARE. THE SECOND PART OF KING HENRY THE SIXTH act 4, sc. 2.
2. Kirk Mitchell, *A GOP Defense of Gay Marriage*, DENVER POST, Mar.5, 2014, at 2A.

It is axiomatic that lawyers have a duty to represent their clients and their clients' causes zealously.³ Lawyers also have a professional responsibility to participate in *pro bono* activities.⁴ As noted in the Preamble to the Colorado Rules for Professional Conduct, "[a] lawyer should strive to . . . exemplify the legal profession's ideals of public service."⁵ However, being an advocate, advisor, and counselor is only part of a lawyer's responsibility to the profession and society and although *pro bono* activities are vital to a community, they may not necessarily change the way others treat those who are being deprived of basic human dignities.

The Preamble further challenges lawyers by stating, "[a] lawyer . . . [is a] public citizen having a special responsibility for the quality of justice"⁶ and "[a]s a public citizen, a lawyer should seek . . . access to the legal system, the administration of justice and the quality of service rendered by the legal profession[.]"⁷ Seeking ways to improve the justice system, such as is done at the Institute for the Advancement of the American Legal System (IAALS) at the University of Denver or through committee work with local and state bar associations, is essential. The justice system, however, is largely a reactionary body; it is not designed to be a leader of the changes necessary to make the design of society better.

A lawyer's responsibility does not end there. More is required of lawyers who, as the Preamble states, "play a vital role in the preservation of society."⁸ The majority position often will dictate how we treat others unless someone stands up for morals and values which may not be the same as the majority's position. Protection of our basic human rights must come from the grass roots. It must take place in the community. It must be reflected in the laws that are passed.⁹ It needs leadership which can stand up to the majority. If the lawyers in our communities lead the way toward basic human rights and values, I am certain others will follow.

I once saw a protester's placard that read, "A Moral Wrong Cannot Be A Civil Right." Where was the moral voice when the majority government sanctioned the horrible treatment of African-, Native-, Chinese-, Japanese-, Irish-, Catholic-, and Jewish-Americans (and the list, which includes minority non-Americans living in America, goes on and on)? Biographical descriptions of the lawyers representing the anti-minority

3. COLO. RULES OF PROF'L CONDUCT Preamble [2] (2011).

4. *Id.* at R. 6.1.

5. *Id.* at Preamble [7].

6. *Id.* at Preamble [1].

7. *Id.* at Preamble [6].

8. *Id.* at Preamble [13].

9. *Id.* at Preamble [7] ("[A] lawyer should seek improvement of the law . . . [and] [a]s a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients [and] employ that knowledge in reform of the law.").

position in cases like *Dred Scott*,¹⁰ *Plessy v. Ferguson*,¹¹ *Korematsu*,¹² *Brown v. Board*,¹³ and other noted civil rights cases, show those people were not just lawyers representing their client.¹⁴ They were respected citizens and leaders in their communities. While I cannot criticize their efforts on behalf of their clients, I believe they fell short of their overall obligation as a lawyer and a citizen. Why? The human factor. In our quilted society managed by the majority opinion of the time, human realities—greed, power, politics, fear, perceived superiority, embarrassment, etc.—may interfere with doing what is right.

In the past few years, Congress and a number of states have offered public apologies for their legislatures not taking action regarding the treatment of groups of people noted above. For instance, in 1988, the United States Congress apologized for the internment of Japanese-Americans during WWII;¹⁵ in 2005, the United States Senate “apologize[d] to the victims of lynchings for the failure of the Senate to enact anti-lynching legislation;”¹⁶ in 2008, an apology resolution was passed for the treatment of Native Americans;¹⁷ and in 2009, the United States Senate unanimously apologized for “the wrongs committed against [African-Americans] and their ancestors” and for the deprivation of “life, human dignity and the constitutional protections accorded all citizens of the United States.”¹⁸ Communities often supported these deprivations when they occurred. If lawyers had acted in accord with their “higher duty” to society, perhaps these dark spots in our history could have been ameliorated and these apologies, which are now both too little and too late, would not have been needed.

Although there may be no moral absolutes, I suggest there are basic measures of humanity and minimum standards of human rights. These are not just pre-1950’s issues. Segregation and racism lasted long after *Brown v. Board of Education*¹⁹ and continues in a more latent, but equally destructive, way today. Is yesterday’s argument against interracial

10. *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

11. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

12. *Korematsu v. United States*, 323 U.S. 214 (1944).

13. *Brown v. Board of Education*, 347 U.S. 483 (1954).

14. For a description of attorneys, *see generally*, RICHARD KLUGAR, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* (2004); JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY* (2000); DON FEHRENBACHER, *THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS* (2001); HARVEY FIRESIDE, *SEPARATE AND UNEQUAL: HOMER PLESSY AND THE SUPREME COURT DECISION THAT LEGALIZED RACISM* (2005).

15. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 904 (1988) (codified as amended at 50a U.S.C. § 1989b (2012)).

16. S. Res. 39, 109th Cong. (2005).

17. Apology to Native People of the United States, Pub. L. 111-118, § 8113, 123 Stat. 3454 (2008).

18. *Id.*

19. *See, e.g.*, MICHAEL K. HONEY, *GOING DOWN JERICO ROAD: THE MEMPHIS STRIKE, MARTIN LUTHER KING’S LAST CAMPAIGN* (2007).

marriage the same as today's argument against same-sex marriage? Has our treatment of and prejudice toward Native Americans changed? Are the anti-Islamic or immigration issues just the majority's prejudice *du jour*? Why is there mass incarceration of our minorities?²⁰ Is there still gender bias in the workplace? Why is Sunday morning the most segregated time in America? Are the types of laws proposed, for example in Arizona requiring Hispanics to prove citizenship or giving businesses the right not to serve gays or lesbians, any different than the "Black Codes" of the Jim Crow South? Do people really not see why the Washington "Redskins" nick-name is offensive? Where are the lawyers today leading the way in our communities to address these issues from a deeper, moral standpoint and exposing the effect on human rights that the political or popular position causes? The societal quilt cannot be held together when these issues remain unresolved. The quilt needs stitching.

People disparagingly talk about "political correctness," when, in fact, the discussion should be about human sensitivity and dignity. Lawyers can take a leading role in making sure the majority political and cultural responses to issues do not dehumanize and degrade other human beings. Educating the public through discussions at schools, religious gatherings, service clubs, chambers of commerce meetings, and with any group imaginable is essential. Corporations and philanthropic organizations are always looking for intelligent and wise lawyers to sit on their boards. Legislators need lawyers to assist in the legislative process to examine potential laws for unintended consequences and collateral effects on human rights.

A Juris Doctor degree is something more than a ticket to make money. Lawyers take an oath to "use [their] knowledge of the law for the betterment of society."²¹ Lawyers have a higher calling and must take the lead in stitching together the pieces of their community and society, and protecting humane values and basic human rights.

After the Senate apologies noted above, Senator Harry Reid stated, "[w]e should live in a way so that 150 years from today, those who come after us will not have to apologize for our actions."²² What are you, as a lawyer, doing today to ensure apologies are not needed tomorrow? The American quilt needs you.

20. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012).

21. *Colorado Attorney Oath of Admission*, COLO. BAR ASS'N, <http://www.cobar.org/index.cfm/ID/1653/CLPE/Colorado-Attorney-Oath-of-Admission/> (last visited March 11, 2014).

22. *Reid Statement on Senate Resolution Apologizing for Slavery and Segregation*. U.S. S. DEMOCRATS (June 18, 2009, 8:00 AM), <http://democrats.senate.gov/2009/06/18/reid-statement-on-senate-resolution-apologizing-for-slavery-and-segregation/#.Uw1bwfRdXTU>.