

Washington University Law Review

Volume 1977 | Issue 2

January 1977

Reflections on the Lawyer As a Public Servant

John J. McCloy

Milbank, Tweed, Hadley & McCloy LLP

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview

Recommended Citation

John J. McCloy, *Reflections on the Lawyer As a Public Servant*, 1977 WASH. U. L. Q. 307 (1977).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol1977/iss2/3

This Tyrell Williams Memorial Lecture is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

THE TYRRELL WILLIAMS MEMORIAL LECTURE

The Tyrrell Williams Memorial Lecture was established in 1948 by the family and friends of Tyrrell Williams, a distinguished member of the faculty of the Washington University School of Law from 1913-1946. Since its inception, the Lectureship has provided a forum for the discussion of prominent and often controversial issues currently before the legal community. Former Tyrrell Williams Lecturers include some of the nation's most distinguished legal scholars, prominent practicing attorneys, and Supreme Court Justices.

The 1977 Tyrrell Williams Memorial Lecture, "Reflections on the Lawyer as a Public Servant," was delivered by John J. McCloy, leading statesman and attorney for nearly half a century.

REFLECTIONS ON THE LAWYER AS A PUBLIC SERVANT

JOHN J. McCLOY*

I have frequently been asked whether I ever contemplated writing a memoir of my experiences. I have thought of it, but a busy life and many current preoccupations have made me feel that I have never had the time to reflect on it, much less to start writing. Moreover, the difficulty of convincing oneself that what one could recall or write about would be worth preserving was always present. Mere reminiscences are apt to be tiresome. Besides, you will find if you indulge in them too much, your memory will play tricks on you. If I felt I could really distill out of my experiences some profound guidelines or principles for

* John J. McCloy, senior partner of the firm of Milbank, Tweed, Hadley and McCloy in New York City, has left the practice of law many times in his career to serve the public interest. He has been Assistant Secretary of War during World War II; U.S. Military Governor and High Commissioner of Germany after the war; President of the World Bank; Chairman of the Board of Trustees of the Ford Foundation; President Kennedy's advisor on disarmament; member of the Presidential Commission to Investigate the Assassination of President Kennedy. Mr. McCloy also was Chairman of the Board of Directors of the Chase Manhattan Bank from 1953 until 1960.

our future national conduct, I would unhesitatingly go to work. To date, these seem to have eluded me.

Some of my friends have suggested that the sheer length of my life and the historical span it has covered, regardless of its modest attainments, might justify such an effort if only as a sort of minor contribution to the history of the period. Perhaps in capsule form I can attempt a very sketchy outline of what such a memoir might cover.

I think it is appropriate to begin by appraising what part the law has played in my public and private life. I am bound to say that I consider it to have been almost a vital factor. As a student, as a practitioner, as a public servant, and as a commercial banker, the law was always an influence—a sort of disciplinary force—urging objectivity, clarity of expression, and a certain ethic of fairness which gave direction to one's actions regardless of their variety.

By going to work after my father's death and through heavy personal sacrifices, my mother made it possible for me to start my law studies under such legendary Harvard scholars as Williston, Beale, Pound, and Scott. I felt well out of my depth at the Law School initially, the top competition always well ahead of me, but I gradually became exposed to it; like tennis later in my life, I found that by constantly seeking to play with those better than I, I could frequently stay in the same court even with the good ones. I have a more than conventional sense of my indebtedness to the law and the discipline, as well as the associations and opportunities, it has given me. Moreover, I am particularly grateful that it has provided me, after my tours in government and business, with a sort of sailor's snug harbor to which I could repair after having reached well beyond what in nonlegal life is considered to be the age of presumptive incapacity.

I was most fortunate during my government service, as well as in my private practice, to have been associated with some outstanding lawyers. I have from time to time attempted to identify those qualities which the lawyers with whom I was associated in government brought to their public service. I do not know that I have the evidence to prove it, but it seemed to me the lawyers generally adjusted themselves to the government service somewhat more readily than did either the businessmen or academicians who came to Washington in wartime. The lawyers were used to longer hours, emergency pressures, widely varying problems, and they usually had a greater capacity to express them-

selves, orally and in writing, than did their colleagues. This gave them a running advantage over their contemporaries, provided they did not become loquacious. One who knows and can express what he knows is doubly armed; I frequently found that such a one was apt to be running off with the good jobs.

My advice to the student lawyer contemplating government service would be first to become a good lawyer. I have a theory that you should have a good tour in private practice before entering public service mainly because I believe that it is important to gain the perspective of the private citizen and his individual rights and problems before you take on the attitude and prerogatives of a government official. There are so many hundreds of thousands in government these days that the distinction between the government servant and the private individual may not be as sharp as it used to be. But once you are in government, you take on a mantle that sets you apart from your fellow citizen. You have the government behind your desk and those from private life who come to see you are always aware of it. More significantly, you yourself become rapidly accustomed to it. When you are in government, many are induced or compelled to come to you for favors or dispensations, and it is much healthier to gain your basic attitudes and capacities before you have this government backing behind you. I believe you are apt to have a better perspective of the problems of the ordinary citizen when you come to government after you have had time to absorb in private practice those lawyerlike qualities which enable you to compete favorably with those who come to government without the legal experience.

Of course, it is the juxtaposition of people and events that makes history, but in reflecting on one's own experience it is the memory of people rather than the memory of events which highlights my past. I had the accidental good fortune to be associated with a number of those whom history will certainly class as the great war or post-war leaders. Henry L. Simpson, my chief during World War II, was my hero lawyer-statesman. He served the country twice as Secretary of War, in 1911 and again in 1940. He was also Secretary of State and Governor General of the Philippines, as well as U.S. District Attorney for the Southern District of New York. He had been his party's nominee for Governor of the State of New York. Stimson moved from the law to public service and back again with equal aplomb and distinction. His hero-statesman had been Elihu Root, another one of the

great in and outers of the law and government. They were men of integrity, intellectual capacity, and high patriotism and they adorned a certain period of our history.

What constitutes greatness or what history identifies with greatness is sometimes a rather subtle quality not easily recognized. I once asked Mr. Stimson which of the Presidents under whom he had served he would consider the greatest. He had worked with and served under Theodore Roosevelt, William Howard Taft, Herbert Hoover, Franklin Roosevelt, and Harry Truman. He hesitated and replied that he had no difficulty in identifying the President he considered the most efficient. According to him, and surprisingly to me, it was William Howard Taft. Taft, he said, knew more about the business of government, how best to order his time and generally to administer the affairs of government, than any other President with whom he had worked. Taft conducted the most productive cabinet meetings, in marked contrast to the "Donnybrooks," as Stimson put it, that took place in the Franklin Roosevelt administration. But, said Stimson, "You did not ask me who was the most efficient. You asked me who was the greatest." After further thought he said, "I am sure his name would be Roosevelt, but I would have to give further consideration to whether his first name would be Theodore or Franklin." He then recalled a revealing incident. It seemed that after Theodore Roosevelt had come back from Africa after leaving the Presidency, he mounted a harsh political attack on his successor in office, Mr. Taft, charging him with derelictions quite shocking to those who had been friends of both men. The attack was so severe that it impelled Stimson, who had been a friend of both, to go over to Sagamore Hill in Oyster Bay to remonstrate with T.R., charging that it was most unseemly to attack his old friend in such a manner. Roosevelt, according to Stimson, shook his fist under his nose and said, "Harry, you know as well as I do, the trouble with Will is he doesn't *enjoy* power!" "This," said Stimson in his quiet way, "was an attribute that neither of the Roosevelts lacked."

Greatness is very frequently associated with the enjoyment and use of power: Consider Alexander, Caesar, Louis XIV, Napoleon, and Churchill. Lincoln, for all his compassion, gave frequent indications of his enjoyment of power and his disposition to use it. I had fleeting opportunities to observe the attributes of greatness in Mr. Churchill and Mr. Franklin Roosevelt; quite different men, but each capable of mold-

ing history and each conscious of his power to do so. I would add that General George Marshall came as close, in my estimation, to touching the mantle of greatness as anyone I knew or observed in the war or post-war period. He was never flamboyant but in a quiet way he exercised power and enjoyed doing so. I never attended a meeting at which Marshall was present that he could not dominate the minute he felt it necessary or advisable to do so irrespective of the attendants, even if they included both Roosevelt and Churchill. That he infrequently exercised that power was a commentary on his modest, but impressive character.

I would also point out that timing is an extremely important factor in how the world bestows the attribute of greatness. There was an extended period in Churchill's life, you will recall, when his contemporaries looked upon him as a spent force with little or no prospects for a distinguished future. For all his qualities as an orator, his periods then found little political echo. He tried his hand at advocating certain social reforms, but with very little resonance. The eloquence of his speeches did not regain him political recognition; it required a great turn of events in Britain before he did so.

General George Patton was another whose place in history was largely a matter of timing. In World War I he was rather embarrassingly wounded in a circumscribed tank engagement which simply did not coincide with his date with destiny. It required an open flank and a cavalry-like opportunity for him to display the genius for movement which was his great attribute. Moreover, if it had not been for influential friends such as Stimson and Eisenhower who could look through his rather painful ego to his irresistible and invaluable "drive," he might have been relegated to a garrison rather than a battlefield while his golden opportunity passed.

On this matter of timing, another name which comes to my mind is that of Konrad Adenauer. Well on in years when he was elected Chancellor of the Federal Republic of Germany by one vote, he met his time in history. A rather rigid authoritarian, inexperienced in international affairs and economics, but a strong and shrewd party man and patriot, he turned out to be the ideal figure for his country in the post-occupation period. An astute politician, he was a man of integrity and strength. He was a Rhinelander who viewed the areas beyond the Rhine, particularly Prussia, as being somewhat foreign to the traditions of the Holy Roman Empire—traditions which *Der Alte*, as he came to be called, considered very real and very rich. This had

much to do with the success of his rapprochement with France and his deference to General deGaulle. At another time and place he might not have been the distinguished leader and statesman that he turned out to be. He admirably filled the need which the precise circumstances of the time demanded.

I have attempted to give you these brief sketches of men and events out of my own experience. They are related to a critical period in our history, but today we face entirely new problems, and new individuals will have to cope with them. I have no doubt that the challenges to our new statesmen and citizenry will be at least as exacting as those that our forebearers and such men as Churchill, Roosevelt, and Stimson had to face.

One could, without much difficulty, catalogue a rather formidable list of issues and problems, foreign and domestic, that lie ahead. Certainly we can expect new tests of the viability of our Constitution. They have occurred in every generation since 1787 and there is no reason to assume they will not recur. On the domestic scene, we seem to generate, without much difficulty, our own corrosive governmental tendencies. The plight of our cities, such as New York, is an example. These, with great resolve, we alternatively seek to face up to and then evade as the decisions become painful. We are observing the proliferation of government agencies, regulations, and controls, all of which generate bureaucracies which, if unchecked, could substantially alter our governmental forms and indeed our liberties. Such bureaucracies can be debilitating and oppressive and they can become as difficult to remove as any other autocracy.

Unless the country has the relatively recent memory of a devastating inflation such as that suffered by Germany, our modern democratic governments all have a tendency to backslide into chronic deficits and bad spates of financial irresponsibility. Government retrenchment is generally unpopular with both the electorate and the politician while the promise of heavier expenditures and more borrowing seems to have a strong appeal for both. Certainly this country will have to marshal the discipline to reverse this drift toward increasing inflation if it ever hopes to afford an example of serious leadership to the Free World. Such discipline will become imperative as the massive increase in the cost of energy continues to disrupt our economy. Churchill once said the most difficult form of government to administer was a representative democracy, yet it was the form most worthy of preserving because of the

liberties it protected. But with the passing of each generation, its administration seems to become more complex and more baffling.

On the international scene, there is no dearth of problems. A time bomb is still ticking ominously in the Middle East with both the stakes and the emotions running high. There may be other latent points of danger in the world, but this is one whose ominous aspects should induce the closest attention and determination of our statesmen. There are clearly danger spots flashing in Africa and problems will continue to generate from the Third World.

The fundamental issue we all face is, of course, the problem of peace and war. The chief imperative of our statesmanship must continue to be to exert all reasonable and honorable efforts to build up distance between ourselves and any real danger of a nuclear exchange. We must never lose sight of the fact that there are now weapons triggered about the world and ready for instant use that are capable of destroying civilization as we know it.

Recently, I saw an attempt made to disparage the national contributions of such men as I have mentioned as being too closely associated with business rather than broader social interests. Their proximity to the marketplace induced, it was said, a less constructive contribution than a more detached point of observation might have produced. There was just the slightest suggestion that another base, academic for example, could have provided more enlightened services. I deplore the current propensity to pin labels on people. We all naturally embody the results of our experiences, but the lawyer-statesmen to whom I have referred and whom I would urge young lawyers to emulate, dealt with the problems that emerged in their time with integrity, objectivity and skill. Their patriotism was national and not parochial. Timing may not always be within your control, but it is within your control to develop the habit of objective, lawyer-like, non-doctrinaire thinking. If and when the exigencies of the moment arise, you will be able instinctively to apply to them what is, after all, the best all-round way of reaching a sound conclusion.

In concluding, I come back to Henry Stimson. After his retirement, he was pressed to write a memoir of his active service as a government official during a critical period of the country's history. This was his valedictory:

Those who read this will mostly be younger than I, men of the generations who must bear the active part in the work ahead. Let
Washington University Open Scholarship

them learn from our adventures what they can. Let them charge us with our failures and do better in their turn. But let them not turn aside from what they have to do nor think that criticism excuses inaction. Let them have hope, and virtue, and let them believe in mankind and its future, for there is good as well as evil, and the man who tries to work for the good, believing in its eventual victory, while he may suffer setback and even disaster, will never know defeat. The only deadly sin I know is cynicism.

I cannot improve upon it.

WASHINGTON UNIVERSITY LAW QUARTERLY

VOLUME 1977

NUMBER 2

SPRING

EDITORIAL BOARD

MARK G. ARNOLD
Editor-in-Chief

JANE A. GEBHART
SHELDON NOVICK
Article & Book Review Editors

RICHARD A. ROTHMAN
STEVEN M. SUMBERG
Managing Editors

HOWARD KEITH ADELMAN
BRUCE C. BAILEY

KENNETH W. BEAN
MICHAEL STEVEN FRIED
WILLIAM V. KILLORAN, JR.
Note & Comment Editors

ERIC S. PALLES
KEVIN JAMES PRENDERGAST

STAFF

RICHARD A. ABRAMS
THOMAS B. ALLEMAN
DONALD M. BARON
RICHARD G. BARRIER
MARK ALAN BLACK

PAUL F. BLACK
ROBERT ANGELO CREO
CYNTHIA MARIE ECKELKAMP
BRENT W. HATHHORN

DORIS C. LINDBERGH
L. RUSSELL MITTEN
FLOYD DAVID REED
DAVID A. ROBINSON
GENE W. SPITZMILLER

Senior Editors

GLENN J. AMSTER
JILL E. BISHOP
JUDITH A. CONROY
IRA DOPPELT
CELINE ELLETT DUKE
BONNIE S. GARLAND
ALAN H. GLUCK
DAVID W. GOLDBERG
ERIC GOLDBERG
JAMES M. GOLDEN

DEBORAH ELIZABETH
HORENSTEIN
BYRON LEE LANDAU
ROBERT LEE MERRIWETHER, JR.
EDWARD A. MURPHY
FRANCES L. PERGERICHT
GLORIA E. POLLACK
ALAN D. PRATZEL
ANDREW PUZDER
JUDY K. RAKER
TIMOTHY RAMSEY

PHILIP B. RICHTER
VIRGINIA K. SANDS
JEFFREY B. SCHREIER
SHELLY C. SHAPIRO
STEPHEN DOW SNOKE
ALFRED M. TAFFAE
C. THOMAS WILLIAMSON
MICHAEL E. WILSON
JUDITH BARRY WISH
KAREN ZAZOVE
BARBARA L. ZUCKERMAN

BUSINESS MANAGER: RICHARD A. ABRAMS

SECRETARY: SYLVIA H. SACHS

ADVISORY BOARD

CHARLES C. ALLEN III
FRANK P. ASICHEMEYER
G. A. BUDER, JR.
DANIEL M. BUESCHER
REXFORD H. CARUTHERS
MICHAEL K. COLLINS
DAVID L. CORNFELD
DAVID W. DERJEN
WALTER E. DIGGS, JR.
SAM ELSON
GLEN A. FEATHERSTUN

ROBERT A. FINKE
FRANCIS M. GAFFNEY
JULES B. GERARD
DONALD L. GUNNELS
MICHAEL HOLTZMAN
GEORGE A. JENSEN
LOYD R. KOENIG
ALAN C. KOHN
HARRY W. KROEGER
FRED L. KUELMANN
PAUL M. LAURENZA

WARREN R. MAICHEL
JAMES A. McCORD
DAVID L. MILLAR
GREGG R. NARBER
DAVID W. OESTING
NORMAN C. PARKER
CHRISTIAN B. PEPPER
ALAN E. POPKIN
ROBERT L. PROOST
ORVILLE RICHARDSON
W. MUNRO ROBERTS

STANLEY M. ROSENBLUM
A. E. S. SCHMID
EDWIN M. SCHAEFFER, JR.
KARL P. SPENCER
JAMES W. STARNES
JAMES V. STEPLETON
MAURICE L. STEWART
DOMINIC TROLANI
ROBERT M. WASHBURN
WAYNE B. WRIGHT