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## Preface

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## PREFACE

DAVID BARNHIZER<sup>1</sup>

We are here to challenge the belief held by many that law schools have little to do with the ideas of justice, whether theoretical or practical. That belief has begun to change during the last decade. It has changed in scholarship and in teaching. A significant number of law teachers and scholars are pursuing themes with justice implications. There is an increased willingness among law schools and faculty to commit to ideas of justice, whatever those ideas mean in specific contexts. More people are beginning to think both about what we actually do and what we *ought* to do. Many law faculty are asking themselves, "How can we contribute? What can we faculty do in our teaching, our research and our scholarship that makes a difference in our society? How ought we commit ourselves to advancing essential social change as this nation tries to address critical needs?"

The willingness to ask such questions automatically challenges the legitimacy of traditional academic scholarship and teaching as exclusive paradigms of thought and action (or inaction). Pursuit of a "justice mission" by faculty in American law schools does not, however, mean that other forms of the academic mission are invalid, although an increased orientation to justice will inevitably offend many law faculty who are anchored exclusively to the doctrinal tradition of teaching and scholarship. Nor by use of the term "justice mission" is it intended to suggest that there is a singular definition of what would be involved. The issue is the justice thesis itself and the commitment to the vision responsibly developed, not a claim that there is but one acceptable formulation.

The mission of this conference is to explore what law schools are doing, in a very specific sense, to pursue the justice mission. There is a warning that must be sounded in any situation in which concerns of justice and injustice become primary. While we are seeking to understand and advance justice, we must also recognize problems created by the pursuit of a justice mission. This is because sweeping, abstract propositions about justice can be as dangerous as they are potentially illuminating. Certainly when principles of justice are taken from idealized abstraction to specific applications, fundamental changes result that are themselves often unjust to those affected by the new choices.

The faculty of American law schools must keep in mind that when you pursue the ideas and methods of applied justice, the mission changes and defines you. The intensity of the quest can consume an individual's judgment, distorting intellect, subverting perspective, and altering the quality, direction and texture of scholarship. For the past two centuries, neutral scientific

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methodologies and dispassionate approaches to knowledge were sought as the appropriate means and attitudes through which to inquire after truth. The generations of metaphysical and religious dogma that controlled humans' ability to understand had made clear the dangers and abuses of ideologically clouded vision. We must continually fight against the tendency to become captured by the force of our advocacy for a particular ideology, interest group, or idea.

As we address the nature and implications of pursuing a justice mission (or missions), we must remember that the justice mission contains both danger and opportunity. Even while voicing this warning, however, there is no question that the pursuit of a justice mission for American law schools is vitally needed. Very few people in this country are able to communicate in a balanced way with a sense of integrity. American law faculty must therefore speak to what the law schools need to do, what lawyers and the profession need to do, about the directions of individual law courses and the overall curriculum, and the content and focus of our scholarship.

The justice mission is particularly vital because there is a very dark set of political and social movements that have bubbled up from beneath the soil of American culture. This society faces a fundamental challenge both in terms of the need to resist the drift toward intolerance and cultural darkness by challenging the power and legitimacy of those who seek to advance injustice, whether of the left or right or other special interest, and the need to understand the positive paths on which we must journey to achieve a more just society.

The justice mission is even more important because American law faculty are a unique resource for American society. Law faculty are one of the few groups with the ability and the opportunity to challenge the rising bitterness and confusion in this society. Few other academics possess the ability or the opportunity to address fundamental issues in the way that can be done by law faculty. Other university academics are generally far more constrained by their disciplines than are American law faculty. We have not yet begun to fulfill that responsibility. If Bob McKay were present today, I have little doubt he would be voicing many of these same concerns. Bob dedicated his life to the justice mission.

One of the most important recent changes in legal education is demonstrated by the fact that although my own professional role models, Bob McKay, Tony Amsterdam and Norman Redlich, are all white males, the changes in law schools over the last twenty years have produced an increased diversity of faculty and students. This has made the entire process of American legal education richer, fuller and more legitimate. That richness is a critical element of justice. The diversity and expanded opportunity it represents have brought *different kinds of people with different perspectives, values and experiences* into the worlds of law schools and law. These people are providing role models for a new generation of law students, lawyers and judges.

This richness is important because a critical function of law schools is to provide role models. That is a fundamental aspect of the justice mission not simply because people of all kinds need to be part of the process, but because the diverse backgrounds, talents, skills and perspectives of different people offer a powerful and important perspective that is absolutely vital to our understanding of and ability to respond to the looming challenges of the future.

By their values, principles, and actions, the new generation of leaders are in the process of creating many of the role models for the next generation of law professors and law students.

The richness and intensity this transformation represents contains both blessing and curse. It must occur but exacts a price on an academic system that reflects distinctly different values, rhythms and pace. In such a system, the essential spirit and language of true rightness and fairness must be extracted from texts and presentations filled with anger, indignation, pain, pettiness, self-interest and irresponsibility. There can be no true justice without the values, perspectives and data that are now emerging from the scholarship and teaching of the proponents of the various movements. But it would be both dishonest and patronizing if that work were not fully and fairly evaluated on its merits, as has often not been done for its traditional counterparts.

We must seek to truly join the dialogue of justice and injustice wherever it leads. In doing so, we must refuse to tolerate injustice and intolerance, regardless of its source. That is the value without which the "justice mission" is sterile rhetoric.

