



## David M. Schizer

Dean and the Lucy G. Moses Professor of Law

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It's a pleasure to welcome all of you, our Class of 2010. You are a remarkably gifted group, and we are very proud to have you. You come to Columbia with a rich variety of backgrounds and life experiences, and also with a range of reasons for being here. Some of you have wanted to be lawyers since you were three—maybe because your mother is a lawyer, or because you love to watch *Law and Order* reruns on TV. Some of you put on a sorting hat, and it told you that you belong here in Gryffindor—sorry, I think I've been reading too much *Harry Potter* lately. Seriously, though, a lot of you have come to law school because you aren't sure what you want to do, and you have heard that a legal education opens a lot of doors—and doesn't involve any math. Well, the truth is that you won't escape numbers by coming to law school, but you can indeed do whatever you want to do with a Columbia Law degree.

## I. Economic Specialization, Individual Freedom, and the Law

We take for granted that it makes sense to devote years of your life to becoming a lawyer. Given the world we live in, this is an extremely wise step. The fact that we receive more than 7,000 applications for 365 places—more than any of our peer schools—is strong evidence that you are making a sound choice.

Yet this commitment makes sense only if we assume a certain type of society, like ours, in which people are free to specialize. You must be able to depend on other people to meet your basic needs, so you don't need to attend to them yourself. After all, everyone has to eat, and you will not learn anything here about growing crops. We all need shelter, and Columbia Law School will not teach you to build a roof. We need protection from violence, and you will not learn to use weapons here. We are fortunate in our society to have computers and cars and iPods, but this school will not teach you to build these handy devices.

Unlike us, billions of human beings have had to meet basic needs for themselves. A thousand years ago in Europe, for example, a person had to be a farmer, a soldier, and a craftsman, all in one. Life there was isolated, poor, and parochial because people did not have the luxury of specializing in the way that you do, and of interacting with a broader world. The truth is, people weren't so very different from us, except in the time and place of their birth. Why is our life so different? Our first thought might be that their technological capabilities were vastly inferior to our own, and there is truth in that. But we should then ask *why* technology is so much better now. These technological advances didn't happen by accident.

To attain the level of prosperity and freedom we enjoy, we need to cooperate with each other and to depend on each other. A society of experts can achieve a degree of quality that is inconceivable in a society of jacks-of-all-trades. If you had to learn torts and build your own computer at the same time, do you think you could produce a computer as fast and reliable as the one you bought? Also, some of us wouldn't much enjoy building our own computer—to be sure, it wouldn't be a pretty sight if I tried. It is much more satisfying to do what we love, and to rely on others for what we don't like to do. Some people want to be doctors, and others want to be farmers, or fashion designers, or chefs—indeed, we learned this summer that even a rat can cook. When individuals can pursue their dreams, they do better work and are happier.

But specialization requires cooperation, and cooperation is not always easy. The human spirit is complicated and, unfortunately, honesty and generosity are not universal. It is especially hard to trust people we don't know, and will never meet. In our global society, when we rely on a computer to work during an exam, we are depending on a team of people from all over the world—since the software and parts are manufactured in stages that may occur in Bangalore or Beijing or Boston. Although this diverse group of people is working on the same endeavor—making our computer work—they don't know each other either.

In any economic relationship, there is a disparity of information that can produce distrust. Anyone who has ever bought a used car knows this all too well. The seller knows more than the buyer, and if the seller is willing to sell, the buyer is likely to assume that there is a problem with the car. Why else is it being sold? The seller has very little credibility in saying, "Don't worry about it—it's a great car." So how can a buyer ever get comfort-

able? The same dynamic operates in the sale of a house, or a computer, or a business. When you first think about this information asymmetry problem—the fact that sellers have better information and are willing to sell—you might think that no one should ever buy *anything*, ever again! Well, that would mean the end of specialization, since we'd have to meet our needs by ourselves.

To an extent, we can get comfortable in dealing with people we know and will see again. If they deceive us once, we won't believe them again. We all have some incentive to cultivate a trustworthy reputation, and that incentive is enough to make others trust us—but only within an economic community that is intimate enough for us to know each other.

To have the kind of broad-ranging specialization that we enjoy on a global scale, we need something else. And here is the punch line: We need a sophisticated and well-functioning legal system. Law is the bedrock of specialization, and of the creativity and freedom it unleashes. We need enforceable contracts, so that people believe us when we say, “This used car works well, and I have told you about all its defects.” We need a criminal justice system so that we feel safe without investing in self-defense. We need ways of resolving disputes peacefully, so that we can accept the result and go on living and working together. The legal profession—our profession—is the indispensable element in a community dedicated to individual freedom. Our job is nothing less than to channel the creative and noble ambitions of humanity, while constraining baser impulses. We empower people to pursue their dreams.

## **II. Columbia's Leadership in a Dynamic World: 1910–1960**

This is a fascinating challenge, and a never-ending one. As new technologies are invented, as new ideas take hold, as new dreams are imagined, the world changes and the law needs to adapt. I do not dare to guess what the world has in store for you in your careers, but I know with absolute certainty that the people in this room—the future graduates of Columbia Law School—will play a leadership role in meeting these challenges.

It has always been this way. This year our Law School begins celebrating the 150th anniversary of our founding, and the school's long history is a tale of leadership through dynamic—even turbulent—times. Let's think for a moment about your predecessors one hundred years ago. What did the world look like to the Class of 1910 when they arrived on campus in the fall of 1907? The world was witnessing an era of unprecedented technological change. Industrialization was revolutionizing manufacturing, agriculture, and transportation—indeed, the Wright brothers had flown the world's first airplane just four years earlier. A wave of globalization was cresting, as widespread immigration brought millions of people to new shores. The old geopolitical order was showing signs of strain. An up-and-coming Japan had recently defeated a declining imperial Russia, and the United States, a growing presence on the world stage, had mediated an end to the conflict, earning a Nobel Peace Prize for President Theodore Roosevelt, a Columbia-trained lawyer from the Class of 1882. In those exciting times, the Class of 1910 could sense dynamics at work that will feel familiar to you: an economy that was changing, a world that was becoming more global, and a geopolitical order that was in flux.

The Class of 1910 came to this Law School to train for positions of leadership in challenging times, and the world they inherited did not disappoint them. The fifty years after they graduated—from 1910 to 1960—were filled with momentous developments, and it should not surprise you to learn that Columbia Law School played a central role in the most important trends of the time.

### ***A. Corporate Governance***

Let's begin with the economy. The Class of 1910 lived through volatile economic times, as the roaring 1920s gave way to the Great Depression—a decade-long economic morass that tested the ingenuity of another Columbia-trained president, Franklin Roosevelt, Class of 1907. Toward the end of their careers, the Class of 1910 enjoyed the prosperity that followed World War II. Through it all, your predecessors helped steward a global economy dominated increasingly by the modern corporation.

Understanding this trend better than perhaps anyone else, Columbia Law Professor Adolph Berle famously crystallized the challenge of corporate governance in the new era. Unlike small businesses, large corporations involve a separation of ownership and control. These firms are run by professional managers, not by the owners (who are dispersed shareholders), and there is a significant risk that managers will run the firm for their own benefit at the shareholders' expense. "The 'free market' . . . has been completely displaced as the infallible god, has been substantially displaced as universal economic master," he wrote, "and increasingly ceases to be, or to be thought of as, the only acceptable way of economic life." Berle was a key adviser to FDR, helping to craft the New Deal's securities and banking legislation. An important adviser to Mayor Fiorello LaGuardia of New York, he also had a keen interest in international relations and,

as assistant secretary of state for Latin affairs and as ambassador to Brazil, was an architect of the Good Neighbor Policy toward Latin America.

This year, 2007, marks the seventy-fifth anniversary of the publication of Berle's pathbreaking book with economist Gardiner Means, *The Modern Corporation and Private Property*, which is perhaps the most important book on business law ever written. In December Professors Jack Coffee and Jeff Gordon are hosting a conference at Columbia exploring the legacy of this great book, which remains topical as corporate scandals unsettle our economy and as global economic competition intensifies. Obviously, business law remains a core strength of Columbia Law School, which we have reinforced this year by hiring Ronald Mann, a distinguished expert in commercial law from the University of Texas.

### ***B. Civil Rights***

Just as the Class of 1910 witnessed stark economic changes, they also saw remarkable social changes as well. The nation was becoming a more diverse place as the Class of 1910 arrived at Columbia, with millions of immigrants bringing their energy and their traditions to our shores. This new pluralistic ethos, along with economic and geopolitical trends, combined to inspire another historic development that is closely tied to this school: the civil rights movement.

Just four years after he graduated from this Law School in 1948, Jack Greenberg became Thurgood Marshall's co-counsel in *Brown v. Board of Education*. Some of you will study civil procedure with Professor Greenberg. His colleague at the NAACP Legal Defense Fund, Constance Baker Motley, Class of 1946, was the first African-American woman to argue a case before the U.S. Supreme Court, where she won nine of the ten cases she brought there.

Connie Motley also sued the University of Mississippi to force them to admit their first African-American student, James Meredith. As you can imagine, this was no easy task. Even though Motley won before a three-judge panel in the Fifth Circuit, another circuit judge who was not on the panel, Ben Cameron, intervened to stay the decision. The panel reinstated their order, terming Cameron's odd intervention "unauthorized, erroneous, and improvident." A staunch segregationist, Cameron did not back down. Three times the panel issued their ruling, and three times Cameron issued his own order staying their decision. Finally, Motley filed a petition to Justice Hugo Black, who threw out Cameron's stays.

Even that did not end the matter. The governor of Mississippi, Ross Barnett, personally came to campus to keep Meredith from enrolling. After a riot in which two people lost their lives, Meredith entered Ole Miss under the protection of U.S. Marshals, and Governor Barnett was held in contempt after a week-long trial before the Fifth Circuit. What happened to James Meredith? After Ole Miss, he graduated from—you guessed it—Columbia Law School in the Class of 1968. Constance Baker Motley, meanwhile, became the first African-American woman appointed to the federal bench. She served with distinction for thirty-nine years on the U.S. District Court here in Manhattan until she passed away in 2005.

Building on our school's close historic ties to the NAACP Legal Defense Fund, we are embarking this year on a new research collaboration with LDF called the Center for Institutional and Social Change, which will be led by Professors Susan Sturm and Jeff Fagan. Obviously, the question of how we can make our democracy and our criminal justice system more representative, more just, and more effective lies at the heart of this school's



mission, and we are fortunate to add two outstanding experts in these fields this year. Nate Persily, who joins us from the University of Pennsylvania, is an expert on voting rights who holds a Ph.D. in political science, and Dan Richman, from Fordham, is an expert on criminal procedure who has served as chief appellate attorney in the U.S. Attorney's Office in Manhattan.

### ***C. Human Rights and National Security***

Just as the economic and social fabric of the United States changed dramatically during the careers of the Class of 1910, so too did the nation's position in the world. In the heroism and trauma of two horrific world wars, new ideas were forged about the law's role in constraining genocide abroad, and in balancing national security and personal liberty at home. Once again, Columbia graduates and faculty were at the center of it all.

One was a Jewish immigrant from Germany, Henry Morgenthau Sr., who graduated from the Law School in 1877 and then made a fortune in real estate. Morgenthau, by the way, was the first in a line of prominent U.S. public servants. His son, Henry Morgenthau Jr., became secretary of the treasury for Franklin Roosevelt, and his grandson, Robert Morgenthau, is currently our district attorney in Manhattan. Henry Sr. was a strong supporter of Woodrow Wilson, who named him ambassador to the Ottoman Empire in 1913. There he bore witness to the mass murder of hundreds of thousands of Armenians in Turkey, publicizing the atrocities in a well-known memoir, *Ambassador Morgenthau's Story*. He described how Armenian soldiers were stripped of their arms and assigned to "work gangs" that were sent to remote locations and murdered. He detailed the treatment of women and children, who were told they were being relocated and then were killed on the road. "I am confi-

dent that the whole history of the human race contains no such horrible episode as this,” Morgenthau wrote. “The great massacres and persecutions of the past seem almost insignificant when compared with the sufferings of the Armenian race in 1915.” These horrible events raise difficult questions for lawyers. If the local government is complicit, such that they will not punish the offenders, is there an international authority that can be invoked?

Obviously, the issue arose again in World War II, shortly after the Class of 1910 celebrated their thirtieth reunion. As you know, the Nazis murdered millions of Jews, Gypsies, and others in concentration camps. After the war, the Allies prosecuted the Nazi leadership for war crimes in a tribunal convened in Nuremberg. Did you know that a member of this faculty, Telford Taylor, served as the lead prosecutor at Nuremberg? Taylor was forceful in arguing that Nuremberg was not about punishing the losers, but about establishing standards of conduct that apply to the winning side as well. “The laws of war do not apply only to the suspected criminals of vanquished nations,” he wrote. “There is no moral or legal basis for immunizing victorious nations from scrutiny. The laws of war are not a one-way street.” Taylor’s service at Nuremberg was meaningful and exciting for all the obvious reasons, and for one more that you probably don’t know: At one point, Taylor and his family had to parachute out of a plane over Berlin when it developed engine trouble. You can’t make this stuff up.

In any event, for the Class of 1910, the world seemed to be an increasingly dangerous neighborhood as the years went by. They lived through two world wars and the beginning of a cold war with the Soviet Union, another nuclear-armed power. Although they could still remember when the United States felt protected

behind two oceans, the feeling disappeared at Pearl Harbor when a Japanese surprise attack destroyed much of the U.S. Pacific Fleet. The prospect of a nuclear first strike was even more alarming. So the need for a national intelligence service became clear.

This task fell to a graduate of this Law School, William Donovan, Class of 1908—or “Wild Bill” Donovan, as he was called. If you saw the movie *The Good Shepherd*, the character played by Robert DeNiro is based on Donovan. He won the Congressional Medal of Honor during World War I for leading an infantry assault in France while he was seriously wounded. Donovan had a distinguished career as a lawyer—as U.S. Attorney in Buffalo and as founder of the prominent law firm Donovan Leisure—but his passion was for intelligence. “The door for intelligence work opened for me,” he recalled, “when I undertook my first secret mission while on my honeymoon in Japan in 1919. The United States government asked me to take a two-month trip to Siberia to report on the anti-Bolshevik movement in the aftermath of the Russian Revolution. Well, it wasn’t your usual honeymoon, but Mrs. Donovan was very understanding. The mission was successful and opened doors to many more missions for the government. I was heading down the intelligence path and I was loving it.”

Shortly after Pearl Harbor, FDR tapped Donovan to be the ranking intelligence officer in the United States—first as “coordinator of information” and then as head of the Office of Strategic Services. Donovan was sensitive to the difficult questions raised by intelligence work. “Espionage is not a nice thing, nor are the methods employed exemplary,” he said. “Neither are demolition bombs nor poison gas. . . . We face an enemy who believes one of his chief weapons is that none but he will employ terror. But we will turn terror against him.” After

the war, Donovan was a crucial presence among those urging President Truman and Congress to establish the CIA. Donovan also worked with Telford Taylor on the Nuremberg trials.

This year the Law School is hosting a conference celebrating the legacy of Bill Donovan and exploring the weighty issues he faced—problems that still confront us today. What institutional mechanisms can be most effective at encouraging cooperation among various intelligence services? How can we ensure that they are accountable, while still preserving the necessary degree of secrecy? When should their work be regarded as law enforcement, and when is it military in nature? More generally, how do we balance the demands of national security and personal liberty? What should the role of human rights be in international relations? What role should international law play in safeguarding human rights? To my mind, a nation is much like a human being, needing a commitment to national security to safeguard its physical well-being—the nation’s “body,” if you will—and a commitment to human rights and personal liberty to safeguard the national “soul.” The soul cannot live without the body, and the body should not live without a soul.

The legacy of Morgenthau, Taylor, and Donovan is a powerful one here at Columbia, and these issues have long been at the core of our faculty’s agenda. This year we have added four more scholars with expertise in international aspects of public law. Philip Bobbitt, who joins us from the University of Texas, is a leading scholar of national security with a new book called *Terror and Consent*. Another national security expert, Matthew Waxman, joins us from the U.S. State Department, where he is currently the acting director of policy planning. Sarah Cleveland, also from the University of Texas, is a prominent scholar of international human rights law, and Christina Burnett is a legal historian who focuses on the constitutional implications of being an imperial power.

### III. Your Life at Columbia Law School

Just as Columbia Law School has helped to define the world of the present, so too will it help to define the world of the future through all of you. But for now, you will not focus on finding your place in history, but on finishing your reading for contracts. The coming weeks will bring many exciting new experiences and will introduce you to marvelous friends. You are in a transition now, and transitions can be exhilarating and anxiety producing at the same time. You won't enjoy yourself every minute, but your time at Columbia will help shape who you will become. Your professional life begins now. With that in mind, I want to offer some advice.

Do you know the feeling you have on the last day of a vacation? Or the feeling in the last five minutes when you have rented a tennis court for an hour? You want to get the most out of every second you have left. I wish we could have the same sense of urgency about every moment of our lives—and I would encourage you to feel that way about your short time here at Columbia. Savor the intellectual challenges you will face here and the friends you will meet. This is your time. In the blink of an eye, you will be back for your fiftieth reunion, and you won't understand why everyone else has changed so much, when inside you are the same as you always have been.

While you are here, you will master a rigorous style of thinking, in which you question premises, respond to arguments, and learn to analyze complicated problems. You should use this mental discipline not just to *pursue* your goals, but also to *define* them. You have many options before you, and you need to choose for yourself. Students sometimes act as if there is a single path that they all are supposed to follow, but nothing can be further from

the truth. Some of you will be advocates, others will be deal-makers, entrepreneurs, or scholars. You are all different—scintillatingly, inspiringly different—and you need to discover, over the coming years, where your own professional passions lie.

You also need to decide how you will pursue those goals. Some people claw their way to the top, and others ascend with dignity and compassion. No one ever looks good by making someone else look bad. Treat your colleagues as friends, not as rivals. Having colleagues who trust and value you is enormously gratifying—it makes your professional life worthwhile—and it also is a great asset to you, which can help you succeed. Just as your professional life begins now, so too does your professional reputation. The other people in this room will join you at the heights of our profession, and their good will matters to you. When they hear your name, they should speak of you as a person of good judgment, integrity, and generosity.

While your professional life begins now, be sure your personal life does not *end* now. You will need to work hard in order to make the most of your talent, but you cannot, and should not, work all the time. Your energy will wear out, your judgment will fray, and your spirits will flag. You also owe it to yourself, and to those close to you, to be devoted and attentive to the people you love—nothing is more important—and to remain the unique and well-rounded person you are. If you like to go running, tutor children, watch movies, play poker, or get manicures, you should keep doing these things. Life is about more than work, just as happiness is about more than professional success. If you play your cards right, though, you can have both success *and* happiness. This should be your goal. You are beginning a magnificent adventure, and I wish you a glorious time here at Columbia Law School. Welcome to the Columbia family.

