

# Bar Blatherings

by Michael Kelly\*

John L. Hopkins' "The Lawyer in Government"<sup>1</sup> is a pompous, self-righteous, and insufferably pretentious piece of nonsense. It is a speech, not about lawyers and government, but about the primacy of the practice of law among all mortal institutions. Hopkins moves from a brief review of the purposes of government enshrined in the Constitution of Georgia to the "judicial department," which he asserts as the "highest and most valuable" of all the activities of government.<sup>2</sup> The judiciary "lies at the very inner core of society," and has the "means of accomplishing or defeating the entire purpose of government" because it deals with interests of "inconceivable magnitude."<sup>3</sup> Hopkins then draws a conclusion from the fact that a seven-year practice requirement is imposed as a qualification to become a judge.<sup>4</sup> The practice requirement includes a criterion for extraordinary moral character because (as he says, rather sensibly) "a judge is but a lawyer called from the [b]ar to the [b]ench," a person "intellectually and morally the same man with the same limitations."<sup>5</sup> Thus, "the people [of Georgia] have practically delivered their government into the hands of . . . lawyer[s]," and the success of the entire enterprise of government turns on the "patriotism of lawyers."<sup>6</sup>

Hopkins then warms to his real subject, the importance and significance of the legal profession. His tone is unabashedly adulatory. For example, he draws this conclusion from the fact that a license to practice law requires good moral character and learning in the law:<sup>7</sup>

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1. Hopkins, *The Lawyer in Government*, in REPORT OF THE TWENTY-THIRD ANNUAL SESSION OF THE GEORGIA BAR ASSOCIATION 125 (1906), reprinted in 41 MERCER L. REV. 601 (1990).

2. Hopkins, *supra* note 1, at 125.

3. *Id.* at 126.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at 128-29.

No one but a lawyer can appeal to such a record. All this means the consecration of an individual to public service. When the State was formed, his coming was foretold, and a place was prepared for him. In theory, he is the hope of the State, and that is why his character has been scrutinized, and why, in the act of his consecration, he has vowed the strict observance of rectitude, honesty, and that he will not deviate from correct moral principles.<sup>8</sup>

To Hopkins, the lawyer is a Christ-like figure, a kind of priest whose mission is to redeem the state.

Although we can catch a hint now and then that all is not perfect with the profession, Hopkins' rhetoric in praise of lawyers flows relentlessly, oblivious to the possibility that lawyers are human. At one point we learn that some miserable lawyer in an out-of-state dining room uttered the unthinkable proposition that a Georgia judge was "bought by the railroad."<sup>9</sup> We hear of a client who hired a lawyer because the client wanted a "bulldozer."<sup>10</sup> There are hints of criticisms of the legal profession and its verbosity. And clearly Hopkins is not altogether happy with the contingent fee.<sup>11</sup> But, to Hopkins, these are utterly unfounded charges or small matters indeed. The overall effect of the speech is to pile vacuity upon vacuity about the glorious historical heritage and the current noble work of that "loftiest type of patriot—one faithful to himself, his country, and his kind,"<sup>12</sup> namely a lawyer. In short, lawyers are a "distinct class . . . essential to [a] civic life, and without it the present governmental structure would fall."<sup>13</sup> "No other class has an equal opportunity of calling out and putting in motion the moral forces of life."<sup>14</sup>

The elitism is unashamed. Hopkins' celebration of the character of the lawyer as the upholder of truth and justice suggests that he views the lawyer much like David Hoffmann in the early part of the nineteenth century, as committed to discovery of the truth, never to be sullied by "any artifice."<sup>15</sup> The lawyer never rejects "for a consideration personal . . . the cause of the defenseless or oppressed."<sup>16</sup> A lawyer "abstain[s] from all offensive personalities" and does not advance facts "prejudicial to the honor or reputation of a witness, unless required by the justice of the cause . . . ."<sup>17</sup> Hopkins' lawyer is less an advocate than an arbiter of

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8. *Id.* at 129.

9. *Id.* at 131.

10. *Id.* at 133.

11. *Id.* at 134.

12. *Id.* at 136.

13. *Id.* at 135.

14. *Id.*

15. *Id.* at 130.

16. *Id.* at 131.

17. *Id.* at 132.

moral values, a pillar of righteousness who engages in self-negation and devotion to the truth that never carries the lawyer beyond the limits of justice.

Certainly, a case can be made for the importance of lawyers in our culture and the character-building nature of lawyering. Anthony Kronman<sup>18</sup> at Yale Law School is systematically developing the thesis that being a lawyer calls for qualities of judgment, sympathy, and detachment that make the profession an eminently desirable way of life, a career worth choosing. But reading speeches like Hopkins', suffused with superiority and priggishness, leads me to think better of the idea. This is a man oblivious to the possibility that the Georgia Bar and judiciary is less than perfect. There is a kind of moral blindness here. What could possibly possess a man to make such preposterous claims? The problem is not an excess of pride, but sheer stupidity, the blatherings of a windbag to the effect that the legal profession is the best that mankind can offer. A few more readings of people like Hopkins will lead me to lose my belief that law is a calling that makes special demands on (and builds) a person's character. Better that we were a "mere" trade than the marble statue (complete with fig leaf) carved by Hopkins in this speech.

I am loath to elaborate any further criticism of Hopkins. As an excuse, I will offer a euphemism coined (I believe) by one with similar frustrations: It is impossible to criticize relentless imbecility.

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18. See Kronman, *Living in the Law*, 54 U. CHI. L. REV. 835 (1987). Kronman is at work on a book-length exposition of his thesis.

