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A LAYMAN LOOKS AT LAWYERS

An inquiring reporter recently asked three Trenton youngsters what they would like to be when they grow up. Jimmy Mealy, the first of them—and his picture shows him to be a bright and honest-looking little lad of about twelve—answered as follows: “I think I would like to be a lawyer when I grow up. I’ve always wanted to be one. I don’t know where I got the idea that I’d like to be a lawyer. I guess it just came to me. I’ve had the idea for two or three years . . . I guess the main reason I’d like to be a lawyer is that I like to argue”.

I have found very few grown and mature men who won’t, in moments of confidence, or mellow, reminiscent moods, confess to some such attachment as Jimmy’s for the profession of the Law, or at least admit, with a becoming show of modesty, that certain relatives thought they would make very good lawyers. The reasons are often as vague as Master Mealy’s; as in his case, it seems that often the idea “just came,” Topsy-like, and without any special justification. Often the reasons alleged, as in Jimmy’s final flash of inspiration, indicate what even I, as a layman, realize, is a wrong idea of a lawyer’s work.

Perhaps I shall make myself a horrible example of this very thing by venturing these few thoughts on the lawyer’s place in the scheme of things; perhaps some psychologist may discern in them evidence of a suppressed desire to sway juries by my

eloquence or to confound the judges of an appellate court by my erudition. Be that as it may, I have had some opportunity to observe the workings of the Law and its practitioners. It has been my fortune to have been placed in some positions in which I have had to participate in the making of laws, and in others involving the execution of the law. Right now I am one of those, from the lawyer's viewpoint, rather anomalous creatures known as administrators, trying to give effect to the will of the Legislature in a vast new field of social legislation. If I dare to express a few thoughts on Lady Law and her devotees, therefore, I may not be thought so presumptuous as though I were one of the millions of people who go through life with no more education in legal language than is encompassed in the phrases, "Good morning, Judge" and "Not guilty, your Honor".

The influence of the legal profession and the degree of favor which it finds with the public have varied from time to time in our history. In Colonial days the profession was, as Edmund Burke remarked in his famous speech on Conciliation, numerous and powerful, and contributed largely to the liberty-loving spirit which eventually led to Independence. The role which lawyers played in achieving freedom from the Mother Country and in setting the new nation on a sound basis is attested by the fact that twenty-five of the fifty-six signers of the Declaration of Independence, and thirty-one of the fifty-five members of the Constitutional Convention were members of the profession.

Even during Colonial days, however, there was developing an attitude of distrust and suspicion of the Bar which was to grow great during the decades succeeding the Revolution, and to subside to a large extent only in comparatively recent years. As Beveridge points out in "The Life of John Marshall," a biography which should be read by every layman, "From the beginning of the Revolution most of the people were antago-

nistic to courts of any kind, and bitterly hostile to lawyers". The Town of Dedham, Massachusetts, instructed its legislative representatives to enact laws to check the lawyers and, if unsuccessful, "to endeavor that the order of lawyers be totally abolished".

The extreme results which this distrust of the lawyer sometimes produced are commonplaces of our legal and political history. We see traces of them even today in many of our institutions, showing the influence of this "cult of the amateur," as one Englishman has called it, this idea that any man of sound mind is competent to interpret the law, regardless of his previous training—or lack of it. The Constitutional provision for six lay judges on our New Jersey Court of Errors and Appeals is typical of this attitude. During my term as Governor, I am glad to say that I was able to show my disagreement with this ancient fallacy and to demonstrate my confidence in the legal profession by reducing to one the number of non-lawyer members of the Court.

The prejudice still existing today against lawyers as a class may be roughly divided, for purposes of discussion, into that which results from lack of thought, on the one hand, and that which represents a great deal of thought, on the other. In other words, I think that lawyer-baiting today is most prevalent, first, among the unthinking, and second, among the so-called *intelligentsia*. The second class, because they are better-informed, and because their convictions are based upon what they regard as sound reasoning, are, in my opinion, correspondingly more dangerous to the legal profession.

A great deal of the unreasoned prejudice to which I have referred results from the common fallacy of condemning all of a class because of the shortcomings of some of its members. No one will deny or fail to deplore the existence of the shyster. He exists, and in numbers sufficiently large to create a real prob-

lem for the profession and for society at large. But to permit this licensed rogue, who is no lawyer in the true sense of the word, to cast a cloud over the great body of honest, honorable and intelligent practitioners seems to me to betray a blame-worthy and dangerous lack of discrimination. That type of prejudice is, however, widely prevalent, and against it decent lawyers can only continue to wage a patient campaign of education and to strive for improved conditions within the profession itself. There is, I think, an increased realization among thoughtful lawyers that not all of the shyster's delinquencies are attributable to inherent viciousness, and that efforts to better the economic condition, particularly of the young lawyer, will cut down the number of offenders.

Aside from damning all for the sins of a few, there is also a somewhat related tendency among the unthinking to fasten certain labels on the profession, to say that all lawyers are impractical, or that all lawyers are procrastinators, and so on down the line of undesirable qualities. Apart from the lack of discrimination which I have spoken of above, this habit betrays a lack of knowledge of the lawyer's work and of what may fairly be demanded of him. The very ones who clamor most for speedy action and who are loudest in their insistence on "practical" decisions, are usually those who will be the first to call for the lawyer's scalp if some eventuality presents itself which might have been guarded against but wasn't, because of haste, or if they come to grief on some stubborn point of law which just refuses to yield to the "practical" decision they may have succeeded in wringing out of the hapless lawyer. Such people seem to me to be not only unthinking, but unfair. They impose responsibility, which no worth-while lawyer would want to shirk, but they refuse to give suitable working conditions or opportunity for study commensurate with that responsibility.

Even as a layman, I know, and I think that anyone who

makes any claim to intelligence should know that law is not divided into neat compartments, exactly labeled, to which a lawyer may go, and from which he may immediately extract the solution of every problem. I have some idea of what is involved in mastering "the lawless science of our law, that countless myriad of precedent, that wealth of single instances". I know the nice shades of meaning which must sometimes be taken into account, and the fine distinctions which must sometimes be made or appreciated before the real solution of a legal problem can be attained.

I think that the lawyer, like any other worker, is worthy, not only of his hire, but of a decent degree of understanding and cooperation on the part of those who enlist his services. Incidentally, and with regard to the charge of lack of practicality so often made against lawyers, I am reminded of, and cannot help subscribing to the words of wise old Dr. Johnson to Mr. Edwards. "You are a lawyer," said the Doctor. "Lawyers know life practically. A bookish man should always have them to converse with. They have what he wants"

I have mentioned these few types of unthinking criticism of the legal profession, not because I think that many lawyers are thin-skinned enough to resent them personally, but because I recognize and resent them as an unfair slur on a noble calling. I am even more concerned, however, as I suggested before, by the more reasoned and thoughtful type of criticism of lawyers, and by the distorted idea of their place in the scheme of things which is, I think, quite prevalent in so-called intellectual circles. Having been interested in and associated with government for so many years, I can, for example, discern a growing tendency among theorists, and even some "practical" people in that field, to regard the lawyer as too wedded to old ideas and methods to be of much value. "Legalistic" is the damning adjective, and "the legalistic approach" to any problem is to be avoided at all

costs. I am not exactly sure that I, or for that matter the people who use them, know just what those words mean. I suspect that they cover up or glaze over considerable fuzziness of thought. I know, however, that they are being used against lawyers who try to pursue lawyer-like methods and to make felt the results of their legal training on those frontiers of social and economic change of which students of government must increasingly be aware.

Personally, I cannot feel that there is anything about lawyers or their training which should disqualify them from playing a most influential part in government. Ours is, for all that may be said to the contrary, a government of laws, not of men. Why should not the men who have made a scientific study of the laws be helpful in administering that government? What is it which disqualifies them? Is it the fine mental training they have secured or the strong analytical powers their study has given them? Is it their knowledge of the law and particularly of the Constitution? To me, all of these seem advantages, not disadvantages. Can it be that the opponents of "legalism" are not so strong for a government of laws? Is it possible that this form of prejudice against lawyers merely manifests impatience of the limitations imposed by the Constitution?

It has been said that certain defects are inherent in certain qualities, and it has sometimes been argued that the lawyer's respect for rules and precedent tend to make him an obstructionist and unfit to participate in the work of government, which must be progressive and responsive to changing conditions. While it is true that anything may be carried too far, my knowledge of lawyers and of the progress in government which has been made in this State under their leadership convinces me that, for the most part, they are anything but hide-bound obstructionists or crusty, change-resisting conservatives. It is true that their zeal for progress is accompanied by an insistence on

facing facts and the realities of a situation, but if that be "legalism," I suggest that the enemies of lawyers be permitted to make the most of it.

The history of law itself is one of constant growth and intelligent adaptation to changing conditions. The leaders of the profession have always had to be economists and political scientists, as were the framers of our Constitution. They have never ignored the necessity of repeatedly re-examining the bases of our economic, political and social life, and they have joined to this attitude a respect for liberty and the rights of others which are at once inspiring and reassuring. Burke's words, to which I have previously referred, on the effect of legal studies on the liberty-loving temper of the Colonists, are not without a lesson for every day and age. "This study," he said, "renders men acute, inquisitive, dexterous, prompt in attack, ready in defense, full of resources. In other countries, the people, more simple and of a less mercurial cast, judge of an ill principle in government only by an actual grievance. Here they anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance; and snuff the approach of tyranny in every tainted breeze"

Personally, I feel that government will not be any the worse for such an attitude on the part of those who carry on its work. Arthur T. Vanderbilt, with whom I have frequently had occasion to disagree, struck a sound note in his Presidential Address to the American Bar Association at Cleveland last July, when he said that liberty "is the chief concern of the bar as it should be of a democratic government". Since their chief concern is the same, lawyers and democratic government, in my opinion, go well together. I hope that we shall have more, not less, interest and participation by members of the legal profession in the government of our State and Nation.

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