

THE LAWYER'S NEW DEAL

The time has come for the financially hard pressed legal profession to call upon its Bar Associations to stop lending themselves to clients who want to embarrass or prevent the “New Deal” in government and to seek a “new deal” for lawyers themselves.

Some National and State Bar Meetings have been so critical of the policies of the administration that suspicion has been aroused that the Bar Associations were not concerning themselves with the welfare of their professional brethren so much as with the interests of groups of clients.

Although many eminent and influential liberals are lawyers, the net contribution of the bar to the balance of social forces is on the conservative side. Advancement in the profession, leading to bigger and better retainers, usually means a corresponding advancement in conservatism. The tendency is to focus and magnify bar conservatism in our bar leadership, while the liberalism and progressive thought of the rank and file finds no bar association outlet or voice.

Moreover, back of the Jacob-like voice of our bar leaders we sometimes feel the hand of Essau. In the picturesque, but realistic, vocabulary of the underworld, every lawyer, even the one the criminal trusts and hires, is called a “mouthpiece.” While many lawyers do have unpurchasable convictions, there is no doubt that the public suspects the disinterestedness of lawyer groups, and when I see lawyers so much more concerned over the private interests opposed to the “New Deal” than over the general welfare sought to be advanced by it, I share the

suspicion that not all our conservatism is our own, and that the “mouthpiece” characterization is not entirely unearned.

Those who are chosen to leadership in our professional associations, too often forget that the legal profession is only a cross section of our entire population. If we regard our guild as a whole, it is not the servant nor the dependent of any single class. We have lawyers who serve wealth and trade alone. We have accident lawyers, bankruptcy lawyers, commercial lawyers, petty larceny lawyers, grand larceny lawyers, and a great body who are not specialists, but who serve faithfully, if inconspicuously, as counsellors and advocates for the people they dwell among, be they villagers, farmers, or smaller tradespeople and craftsmen of our cities. No disadvantage or misfortune can befall any group that does not reflect its somewhere at the bar. And no group at the bar will be depressed unless the group from which it draws its business is depressed.

With this relationship of cause and effect in mind, let us survey the present state of our profession. We find it mirrors the weal or woe of its clients.

Since the close of the world war, the legal profession as a whole has faced increasing economic demoralization. While prosperity has smiled upon a limited number of lawyers with fortunate business connections, while they have built up great law clinics that resemble commercial houses more than the traditional law office, the rank and file have had a losing struggle between rising overheads and declining business. The “country lawyer” from whom we used to get our statesman is no more. Large city bar associations find need among many able and once well established attorneys. In great numbers lawyers abandon efforts at practice and seek government jobs or other employment. Hundreds of young men come from

our colleges to the bar where they can find neither practice for themselves nor clerkships with others.

The legal profession has become alarmed. Bar associations lash out vindictively at trust companies, lay collection agencies and trade associations which are encroaching on law practice. Courts and grievance committees pursue ambulance chasers who bring the profession into disrepute. These things, in my opinion, are but surface symptoms of more underlying and impersonal and powerful conditions that have visited disaster upon the bar along with its clients.

It follows that every effort to promote the general welfare of our fellow men as a whole promotes the general welfare of the bar. Let us see how the economic currents that have affected our clients have also affected us as lawyers, and what those conditions the "New Deal" is struggling against have done to the bar. I believe that the interests of the rank and file of the bar are with the "New Deal" and that those who oppose it are not acting in the interests of their professional brethren.

The economic woes of the legal profession trace largely to these causes:

- 1st – The concentration of control of the nation's business is relatively few hands, which has greatly decreased the number of clients having business.
- 2nd – The concentration of income in relatively few hands and low incomes of the great number, as a result of which they have neither property interests to protect nor ability to hire legal service.

I

The period following the world war witnessed steady centralization of economic power and increasing control by a few men over industry.

Berle and Means in their book "The Modern Corporation and Private Property" show statistically the extent and rapidity of the movement. By the end of 1929 the two hundred largest corporations (not including any banking corporation) in the country controlled 22 per cent of all the wealth of the country. In the ten years between 1919 and 1929 the two hundred largest corporations had increased their holdings of the nation's wealth 85 per cent and the same two hundred largest corporations had grown at nearly twice the rate of the smaller ones.

Moreover, the concentration of management proceeded at an even faster rate than the concentration of ownership. Through the various devices of holding companies, and the classification of securities so as to represent the public's investment largely by nonvoting stocks, small cash outlays procured management of empires of wealth. Our clients disappeared by purchase, by merger and by consolidation.

Local power companies were all absorbed in vast systems, while the former local owners often took in exchange pieces of paper called "power securities" that had little relation to power and less to security. Local banks were gathered into groups or chains or, if law permitted, into branches. Locally owned telephone companies and utilities have all but disappeared. The local factories are merged or controlled by large units of the industry. The local merchant is gone and in his place is the chain store.

The social and political consequences of breaking down the small business men are not subjects of our present inquiry. But we know the effect on the legal profession. Each

separate unit was a client, each local merchant and industry helped provide law practice to the local bar. One by one the clients of the country and small city lawyer have disappeared. Even the lawyers of large cities saw their business transferred to yet larger cities by the merger process.

As the legal business was moved toward the large centers of population, so also did it concentrate in a few large offices. Law firms merged in New York City in much the same manner that banks merged. While preserving the fiction that law practice was the franchise of the individual, they actually built up law offices that resembled corporations more than they resembled individual law practices.

Perhaps the Bar as a whole has some punishment coming to it. Of all kinds of overproduction from which the country suffered, the overproduction of stock certificates was most disastrous. The overproduction of stock certificates was the work of lawyers. A large part of a big business law practice during the glorious days that preceded the “New Deal” consisted of putting 2 and 2 together and making 10 of it. The trail of no small part of the misery and deprivation which people have suffered during this depression leads back into the law offices of some of the men who are now shocked and horrified that the “New Deal” should be “interfering with business.”

No economic trend was ever so disastrous to the independent lawyer in general practice as was this concentration of wealth and its control. Yet nowhere did any professional body raise its voice against it.

Yet now we hear from eminent lawyers with the Liberty League complex that the government is about to “regiment industry.” No leagues were ever formed to prevent our small

business men who were our clients from being “regimented” into mergers and goosestepped into consolidations. Men who find nothing wrong with being governed by a “bureaucracy” of holding company executives scream at the thought of business being governed by a “bureaucracy” created in public interest.

II

The depressed and disadvantaged condition of a large part of the population of the United States is responsible, in part, for the economic demoralization of the legal profession.

The Brookings Institute has just given to the world these interesting facts about our rip-roaring prosperity year of 1929.

Nearly 6,000,000 families, or more than 21 per cent of the total, had incomes less than \$1,000.

About 12,000,000 families, or more than 42 per cent, had incomes less than \$1,500.

Nearly 20,000,000 families, or 71 per cent, had incomes less than \$2,500.

Only a little over 2,000,000 families, or 8 per cent, had incomes in excess of \$5,000.

About 600,000 families, or 2.3 per cent, had incomes in excess of \$10,000.

The 21 per cent of the families at the bottom of the scale received only 4.5 per cent of the national income. The 0.1 per cent of the families at the top – those having incomes in excess of \$75,000. – received practically as much as the 42 per cent of the families at the bottom.

“At 1929 prices,” the authors comment, “a family income of \$2,000 may perhaps be regarded as sufficient to supply only basic necessities . . . It is significant to note that more than 16,000,000 families, or practically 60 per cent of the total number, were below this standard of expenditures.”

Taking the diet found by the Bureau of Home Economics as a standard, 16,000,000 families – or 74 per cent of the nonfarm families, did not have sufficient income to spend the moderate amount required for “adequate” diet.

Whether these figures mean anything to you in terms of social justice, whether they indicate to you an inability to buy – which accounts for business stagnation, these figures should mean something to you in terms of law business.

We all know that clients with money are more desirable than clients without it. The census of 1930 shows 139,059 lawyers in the United States. Yet only 600,000 families had \$10,000 incomes – only about 4 to each lawyer. The number of desirable clients had become scarce. Plainly, we need some kind of game laws to preserve our clients.

The large part of our population has no opportunity to create estates, acquire property, enter trade or commerce, or have use for legal advice or service for property. The only use most of them have for a lawyer is in case of personal injury. The portion of the population with incomes to afford the luxury of professional service has been growing smaller and it leaves a large part of the professional men, lawyers and doctors, without paying clients or patients.

It is in vain that profound legal scholars trot out their limping legal formulas and muddled maxims to solve the problem of these disadvantaged people.

What danger of “regimentation” is there from them? The 72 per cent, or 20,000,000, of our families who have incomes under \$2,500 a year are already regimented by that very fact. They are regimented into certain kinds of dwellings, in certain quality of neighborhood. They are automatically regimented out of certain amusements, recreations and cultural privileges that mankind values. The portion of our population that in 1929 had incomes sufficient to escape the relentless regimentation of poverty was very small but very vocal.

What is the realistic value of due process of law to a family whose income will not afford a lawyer to get them justice in the court?

What is the realistic value of “freedom of contract” to the 6,000,000 families whose annual income is under \$1,000?

When a great part of our people in prosperous times linger on the very margin of existence and are then caught in a depression they could not possibly have prepared for, shall we try to feed them with proverbs and shelter them with legal principles?

Is it not obvious that economic conditions, which have no prior patterns, call for a leadership whose thinking will not be confined to prior patterns? The bar, if it is to offer an acceptable leadership, must regard its legal principles as aids to right plans, not as prohibition of plans. From the bar the people expect leadership and too often find only advocacy.

I do not, at a meeting of this kind, urge any political issue or champion the adequacy or adaptability of any particular measure. Honest difference of opinion as to measures is wholesome, refusal to face the need for any measures is deadly.

I do not urge that the Bar Associations recognize that the interests of the many lawyers in general practice are closely identified with the general welfare of their neighbors, and

that efforts to promote the general welfare is far more advantageous to the bar as a whole than efforts to protect special interests. Such an attitude of our bar leaders would be the best answer to the underworld's scornful estimate of the lawyer as only a "mouthpiece."