Notre Dame Law Review

Volume 10 | Issue 4 Article 2

5-1-1935

What's Wrong with Law in the Unites States

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WHAT'S WRONG WITH LAW IN THE UNITED STATES?

In glancing over a number of judicial opinions in preparation for this article, I was struck by the naive unanimity with which the law is called "an ancient and honorable profession." In itself the law should be and is an honorable profession. It is not a trade, not a job, the sole object of which is to make money; it is a profession; the lawyer is an officer of the court, charged no less than the court with the furtherance of justice. In and for this world I venture to say that it is the most honorable of the professions. Medicine is a great boon to mankind, and high is the dignity of the medical profession, but after all it touches only man's body. Law reaches into his soul, it endeavors to minister to a mind diseased, it strives to adjust men better to this world by the promotion of their happiness and the pursuit of justice. Consider, if you doubt, the influence of the lawyer in making and administering law to make or mar man in his life, his family, his property.

It seems, however, that this honorable profession has fallen upon evil days, and lest any one should misconstrue my motives, instead of my own opinion, I shall quote from one of the most respected men now on the Supreme Bench, Mr. Justice Cardozo. His opinion is taken from the case of *People ex rel. Karlin v. Culkin,*[1] decided by the New York Court of Appeals in 1928.

"A petition by three leading bar associations, presented to the Apellate Division for the First Judicial Department in January, 1928, gave notice to the court that evil practices were rife among members of the bar. 'Ambulance chasing' was spreading to a demoralizing extent. As a consequence the poor were oppressed and the ignorant overreached. Retainers, often on extravagant terms, were solicited and paid for. Calendars became conjested through litigations maintained without probable cause as weapons of extortion. Wrongdoing by lawyers for claimants was accompanied by other wrongdoing, almost as pernicious, by lawyers for defendants. The helpless and the ignorant were made to throw

1 248 N. Y. 465, 162 N. E. 487, 488, 60 A. L. R. 851, 853 (1928).

their rights away as the result of inadequate settlements or fraudulent releases. No doubt, the vast majority of actions were legitimate, the vast majority of lawyers honest. The bar as a whole felt the sting of the discredit thus put upon its membership by an unscrupulous minority."

The condition of which the learned justice complains has existed for many years, as is well-known, and in every part of the United States, and hundreds of opinions have flooded the country as to its causes and remedies. I shall submit mine for what it is worth. And in the first place the larger law schools lay a great deal of the blame at the door of the smaller and poorer ones. I shall prove that theirs is the greater responsibility. I quote from an article in the American Law School Review for April, 1933, by Elliott E. Cheatham of Columbia University.

"One of my colleagues is especially skilful as a first year instructor in smashing, by ridicule and direct attack, the old attitudes and conventional standards of his students. He has confessed to me that his work as a nihilist should be followed by work planned to encourage the student to construct a new and worth while set of standards."

I invite your serious consideration for those words. Everybody knows that this first year instructor, who is such a skilful nihilist, is the rule rather than the exception in our larger colleges. And what does Professor Cheatham mean by "the old attitudes and conventional standards?" He means all Christian ethics and religion, all ethics and religion, Christian or other. And what is offered in its place by his own confession? Nothing, absolutely nothing. And why not? Because they have nothing to offer. How can the student construct a new and worth while set of standards when he has neither foundation nor materials? And what worth while standards can there be for ethical conduct but an ethical standard? In other words these glib and clever and skilful men teach that there is no justice, no honor, no ethics in the usual sense of those terms, and the legal profession wonders why their honorable calling has fallen upon evil days. They teach that whatever "works" is just and honorable, that anything is honest and just if you "can get away with it" as the saying

is. They tear off all the decent drapery of life and leave their followers without protection from the coldness and cruelty of the world. In their teaching ethico-legal maxims are so much froth, they have no power behind them but the power of the state to punish. They lack the basis of sound philosophy, of morality and religion. They have no ethical basis because there is no ethics except the ethics of the jungle, that might makes right. Legal ethics for them is just so many rules of conduct such as you might find in Emily Post. They ought to be honest and call it etiquette and not ethics.

Another cause of the present low estate of the legal profession in this country is the influence of politics. Cheap politics and law cannot dwell together. Get our judges, every last one of them, out of politics as soon as possible and as thoroughly as possible. Let judges be appointed by the executive, and no one appointed except on the basis of ability and experience as a lawyer. You say: "That won't work." I say it does work excellently in England and Canada and in the Federal judiciary. Let lawyers know that it is by ability and merit and not by back-slapping and log-rolling that they may expect appointment to the bench and the legal profession will be reformed overnight.

There is another reason more personal and more difficult of improvement, and that is what might be called the inertia of the profession itself. A lawyer is called on all day and every day to explain to clients how they can keep just on the right side of the law but only just, in other words, to tell them how far they can go and still be immune from punishment. This advice, which he gives to others, has a tendency to drag down his own morale, to make him forget his duty to his country and his fellowmen, to weaken his love for honesty and justice, and to cause him gradually to follow the advice he gives his clients in his own life, in his own personal affairs. It is the danger of casuistry, and it is a real danger, and one which a lawyer must guard against all his life. The blame for this falls back upon a corrupt and

dishonest community, and this leads me to say that much of the blame for the faults of the legal profession falls there. What about your stupid and ignorant and wicked people who think that a judge ought to decide a case in their favor because he knows their second cousin, or he goes to the same church, or he owes them a favor, and thousands of other reasons which have no place in the administration of justice? They do not realize that the judge is sworn to uphold the law, to mete out justice without fear or favor. We need more Mansfields on the bench and we need more men who respect the principles of Mansfield in the community. To illustrate, the editor of a great daily becomes bitter and caustic because a senator says he places the welfare of the people of the United States above the welfare of the people of a particular city. If the editor of a newspaper cannot tell the difference between a statesman and a pork-barrel politician, or rather cannot appreciate statemanship, what can we expect of the ordinary citizen?

In conclusion: Give the young men in law school a chance. Apply remedies to these abuses so that they will find conditions favorable for the development of men who can keep the law an honorable profession. Our young men are as good as the English or Irish or Canadians; many come of the same stock. It is the conditions that are wrong. Let us develop men such as handled the trial of the great Cardinal Newman in England. The Cardinal describes him as trembling and breaking out into a sweat for fear the lawyer for the defense would even insinuate that he was acting from prejudice against the defendant. And well he might. Prejudice even against a Catholic and in those times would certainly have kept him from advancement and might even have had worse consequences. This is typical of the law as it *is* administered in England. What's wrong with it in the United States?

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