Lawyer's Responsibility to His Government

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The Bar is and always has been the auxiliary of free government. It is difficult to think of government apart from lawyers. They were active in setting up our government and have always been indispensable to its successful operation. The lawyers were among the first to give expression to the spirit of unrest among the Colonists. Two speeches made by great advocates did more to arouse the people, to summon them to the impending conflict, and to solidify the patriots into a determined opposition to the demands of the British government than all else. The first was that of James Otis in the trial of the *Writ of Assistance* cases in Massachusetts in 1761, and the second was by Patrick Henry in the *Parson's Cause* in Virginia in 1763. Each was a denial of the right of the King to interfere with the domestic affairs of the Colonies. Each was in itself a declaration of independence. The effect of these two trials was to arouse the people to join in a revolution which was inevitable. Pamphlets on personal liberty and the natural rights of man, written largely by lawyers, followed these trials and were scattered broadcast among the Colonists. The flood of public sentiment against a government in which the people had no voice rose higher and higher and resulted in the calling of the first Continental Congress in 1774. In this convention the lawyers were active. The second Continental Congress convened in 1775 and before its adjournment Richard Henry Lee, a lawyer of Virginia, had offered the first resolution which declared for American Independence. A committee composed of Thomas Jefferson, John Adams,

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*Excerpt from an address of Hon. Floyd E. Thompson, former Chief Justice of the Supreme Court of Illinois, delivered before the Bar of Indiana at South Bend, Saturday evening, April 30, 1932.*
Roger Sherman, Robert Livingston, and Benjamin Franklin, all lawyers except Franklin, was appointed to draft that sacred instrument which is now reverently read every Fourth of July as the cherished charter of Democratic government. Of the fifty-six signers of this immortal document twenty-five were lawyers. If the Declaration of Independence is the finest blossom on Liberty’s tree, the Constitution of 1767 is its most perfect fruit. This instrument was almost exclusively the lawyer’s work. Thirty-four of the fifty-five members of the convention were lawyers. James Wilson, John Rutledge, Edmund Randolph and Oliver Ellsworth, all lawyers, and Nathan Gorham, composed the committee which reported a constitution from the resolutions adopted by the convention. The final committee on style and arrangement consisted of James Madison, Alexander Hamilton, William Samuel Johnson, Gouvernour Morris, and Rufus King, all members of the Bar. As we read our history we are stirred by the patient and able Washington and by the rugged intrepid Jackson. Again and again we pause breathless, at the surrender of Cornwallis, the siege of New Orleans, and the triumph of Gettysburg. Yet we realize that these dramatic events would have served merely to adorn a thrilling story but for the quiet, unobserved and constructive toil of John Marshall and other great lawyers. When we call the roll of the lawyers who led in the establishment of this nation and find there the immortal names I have recounted and those of scores of other giants of those days whom Providence seems to have raised for the purpose, we can readily understand how our scheme of self-government proved to be not an idle and visionary dream, how the checks and balances that make it workable were put in its framework and how we were steered between the dread Scylla of despotism and the whirling Charybdis of the mob into the open but uncharted sea of a representative democracy.
There are in continental United States about 125,000 lawyers, who touch elbows with every element of our population and come in contact with every form of our activities. The lawyer speaks to the individual and to the multitude. His advice given in the sacred relation of attorney and client may be of as great importance in ultimate effect as his public utterances from the rostrum. Therefore, he must have foremost in his thought and speech a patriotic desire to serve his country. Those who spitefully and thoughtlessly criticise the lawyers as a class do not realize what the result would be if all the lawyers were suddenly removed. The great business and commercial activities of the globe, interwoven with the thousands of divergent interests which require the skill and learning of the lawyer, would immediately fall into irretrievable chaos, just as epidemics would sweep the globe if the medical fraternity were removed. But the great part which the lawyers are constantly playing, not only in harmonizing the great commercial and business interests of the earth, but in contributing to the very essence of the complex struggle which we call civilization, is known to the thoughtful and is given its proper place in the favorable opinion of mankind. This is demonstrated by the fact that twenty-three of the thirty-one presidents of the United States, and forty-three of the forty-five secretaries of state, a majority of the governors of the several states, as well as a majority of the members of the United States Congress, have been lawyers. Thus it will be seen that the legal profession is one of the most powerful forces in shaping public opinion in America, and with its position of influence comes an unusual responsibility.

There is constant change in our struggle for existence. Our people are obliged to adapt themselves to ever-changing social and economic conditions. The lawyer, above all other men, should have a quick perception of what is feasible among the new things and the experience which should be
heeded, the wrongs that should be remedied, and the rights that should be realized. He can play his part in this unending struggle of lifting society from one stage to the next of its slow development only if he has the right insight and sympathy. If he regards his practice as merely a means of livelihood, if he puts his expert advice at the service of any interest that will pay a fee, he cannot play the part of guide or moderator in the large sense that would make him a benefactor. As we look about us at the infinite complexities of the modern problems of life, at the issues of life and happiness and prosperity involved, we cannot but realize how much depends upon the part the lawyer is to play in the future in the politics of the country. If he will not assume the role of patriot and statesman, if he will not lend all his learning to the service of the community, if he will not open his sympathies to the common man and enlist his enthusiasm in those policies which will serve the common weal, less expert hands than his must attempt the difficult and perilous business. It is he who knows the limitations of the national and state constitutions and who knows the effect of new legislation upon existing law. While it is desirable that every field of human endeavor be represented in our legislative halls, legislation will be clumsily done unless the trained hand of the lawyer be employed.

There is no relationship in the business world of a closer or more confidential nature than that of lawyer and client. The very trust reposed in him arouses a high-spirited man to the full assertion of his power. Consciously or unconsciously, he comes to feel that his client's demands are wholly just, and his difficulty lies in restraining himself in emergencies against doing those things for his client which he would not think of doing for himself. No lawyer would defend a judge who would consult with a client concerning a decision or who dealt in a business way with litigants before his court. The Bar and the public alike feel that the lawyer who accepts
a place on the Bench must divorce himself entirely from private contracts which would furnish the slightest basis for contending that his decisions were influenced. Is it not as important to the public that laws be framed free of the influence of private interests as that they be administered free of such influences? Custom has inured us to a different code of ethics, but this custom has brought in its wake many inapt, inefficient statutes, timid and ineffective in their terms, shielding special interests and protecting private advantages.

A lawyer in a legislative body, while writing a law in the public interest, has no more right, as a matter of correct public service, to hold a retainer from those whose interests may be affected, than a lawyer on the Bench has to hold a retainer from those whose interests may be affected by a judgment which he enters. Axiomatic as this statement seems, yet we find those who will argue that a lawyer with a large retainer from the owner of a public utility is qualified to pass legislation which his client argues is unjust to his business interests. If all the members of Congress were employed by the business interests engaged in interstate commerce, do you think it would be necessary for such interests to employ lobbyists in order to prevent the passage of laws adversely affecting their interests? These business interests do not pay large retainers to lawyer legislators in order that these public servants may have more leisure in which to look after the public interests. They pay them because they expect such legislators to be amenable to reason in an emergency. A member of a legislative body is in an indefensible position who is called upon to legislate concerning those matters in which his clients have a pecuniary interest and which may concern them vitally.

Next to efficient and conscientious public service is the confidence placed in that service. Next to the virtue and worth of a law is the faith of the people in the law and in
those who have made and who are administering it. Without that confidence the government cannot long endure. Conceding for the sake of argument that a lawyer drawing $10,000 a year from the public and holding a $25,000 retainer from some client, whose interests are affected by proposed legislation, can tread his way with honor and satisfy his conscience, how much confidence do you think the public would have in his vote if it knew of the retainer? It is just as important that the legislator be free from entanglements and those associations which seem to direct his action in order that he may do justice to the business interests of the country as that he be free in order to do justice to the public. There is a large class of professional business which public service will not affect one way or another and this the lawyer in public service may accept without embarrassment, but from that class of professional business which deals directly with those matters concerning which lawyer legislators are constantly called upon to legislate, such lawyer must consent to be divorced wholly and completely.

Our government gives much to the individual citizen and expects much of him in return. The curse of our country is that too many of our citizens are more concerned with their privileges and immunities than with their duties and responsibilities. There are too many slackers who refuse to mix in politics. Any person who is not interested in politics and who considers himself or herself above a political struggle is unworthy of American citizenship. Politics is rotten, not so much because of the bad men who are in it as because of the good people who stay out of it. Complacency sometimes falls dangerously near complicity. Our government lays heavy responsibilities upon any citizen, but when one enters into any business or profession his opportunity to serve humanity is enlarged and his responsibility to his government is increased. Our scheme of government cannot long exist with individual initiative, individual responsibility and
individual sacrifice left out. Any scheme which dulls initiative of the citizens or lulls him into indifference to the public interests on the theory that in some way or somehow the plan itself will bring wisdom and justice in public service is a dangerous delusion. No other form of government registers so scientifically and accurately the weakness and strength, the vices and virtues of the individual citizen, as ours, and there is no relation in life which carries with it greater responsibility and places upon the individual assuming it a greater obligation to actively participate in government and to defend its basic principles than that represented by the legal profession. The lawyer is, in the broader and truer sense, a public servant. He secures the privilege to practice his profession from the State, and he depends for his success upon the favor and esteem of the public.

The menace to the continuation of our government under a written constitution is not the radical "red." Rather, it is the more plausible "pink" who seeks to undermine our governmental structure by tearing down the time-proven safeguards, or the sluggish "yellow" who is indifferent to his responsibilities and obligations. The danger to this republic is not open revolution but the insidious corruption of its fundamental principles. Our brethren of the Bar, more than any other group of citizens, set up this form of government, and with us will ever remain the obligation to steer the Ship of State in the safe and charted course. By no sort of specious argument or special pleading can we of the legal profession relieve ourselves of the grave responsibility placed upon our shoulders. Our country's great need is that the Bar as a whole take an attitude and cultivate a spirit, not of resignation to the seeming inevitable, but of aggressive hostility to every corrupting influence. The people have the right to expect from us affirmative, impersonal thinking. We must step forward as individuals and take our stand against corruption, extravagance and inefficiency in government.