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THE LAWYER'S LOST ESTATE

By BENEDICT ELDER

The great names in our early American history are mostly those of lawyers. In the arts of peace and in the arts of war, almost to the close of the last century, lawyers were usually our leaders. In statecraft, with a few notable exceptions, they stood alone. More than any other profession or group, they shaped the structure of the nation. Until the advent of the modern trust company they handled the great estates. Until the so-called Interests went into politics they dictated legislation. Before the great newspaper arrived they led public opinion. Though but a fragment of the people in numbers, they were the greatest single influence in directing the course of events in young America.

Yet, when our World War president, with all Europe at his feet, sought to embody in legal form the vision of a League of Nations, he spurned the advice of lawyers. From Lincoln the lawyer to Wilson the schoolmaster is a far cry. It represents the period of the Lawyer's Lost Estate.

We have distinguished lawyers to-day, men of natural talent, profound learning, wide experiences; who point for point would perhaps outmeasure many of the great lawyers of former generations; but they do not distinguish themselves as did the Marshalls, the Websters, the Storys of the Nineteenth Century,—as star-guided leaders blazing new trails in social advancement, in perfecting the rules of government, in promoting the ends of justice among the people, in quickening the nation's faith in democratic laws and institutions. They represent vast interests, try celebrated lawsuits, earn enormous fees, but they seem unable to simplify the antiquated rules of procedure in our courts, much less to direct the general trend of Legislation.

People trust lawyers to write their contracts, to draw their wills, to form their corporations, to collect and handle without bond any sum of money, but their influence on public opinion is on the whole so slight it is not visible. Their integrity is known and acknowledged to be of the highest; their professional honor

is admitted to be above reproach; but their instinct for social and political justice is held in suspicion. As leading public citizens they have been weighed in the balance and found wanting. This is the measure of the Lawyer's Lost Estate.

The Physician, within the last fifty years, has made vast strides in promoting the health of society. He has conquered one disease after another and almost entirely eliminated some of the worst afflictions which former generations suffered. The Business Man has carried civilization to the farthest ends of the earth, being preceded only by Catholic missionaries. He has turned deserts into gardens, forests into cities, brought vast areas of unknown land under cultivation. He has promoted education, thrift, industry, temperance and self respect among tribes and nations that were little better than savages, and through his efforts the world supports more people and supports them in greater comfort than ever before.

The Teacher, the Scientist, the Inventor, even the plain Workingman can point to achievements that have given to human society a greater degree of pleasure and comfort than former generations enjoyed. The Lawyer has not kept pace in this march of improvement, and society has taken reprisal in the loss of leadership that once was his.

That does not seem a very encouraging picture to hold up before students of the law; but it should not discourage those who seek to enter the profession as a field of wider service in promoting justice and peace in society. To students of a university such as Notre Dame, who are tutored in an atmosphere that breathes of devotion to high ideals, such a presentation, so far from disheartening them, will prove a stimulus to their ambition to become lawyers, good lawyers, who seek opportunities to be of service to their fellowmen, who appreciate their obligation not only to their clients but also to their community, to their state and nation and to Almighty God—who made all things, "and without Whom was made nothing that was made."

Of course a lawyer must serve his client to the fullest extent of his lawful rights. Lawful rights and legal rights, however, are not always identical and too many lawyers are ready, even if they do not feel it to be their duty, to protect or enforce the legal rights of clients irrespective of the broader aspects of

lawfulness. It may be legal, for some trifling cause, to get a divorce, break up the home, set adrift the children of the family, or put in the place of the natural father or mother, some stranger; but such disregard for peace and order and the rights of innocent children, is of the very essence of lawlessness. It may be legal for a powerful litigant to procure continuances and delays and procure appeal after appeal, in order to exhaust the resources of his weaker opponent; but such an abuse of legal procedure is lawlessness in the germ. It may be legal to employ alienists who by subtlety can lead a judge or jury to attach more than a common sense value to the quondam eccentricities of a self-confessed murderer, who therefore escapes punishment; but there is nothing lawful about it.

One may paraphrase a classic from St. Paul and say, all things are legal but not all are lawful. Shylock and his pound of flesh is an example. That the great dramatist should represent the Jew as asserting his own legalistic plea, while introducing one in the guise of a lawyer to present the larger aspect tinged with mercy, is a tribute to the lawyer of his day. A modern dramatist would have a lawyer to plead for Shylock and his pound of flesh.

But there is a false note in Shakespeare's great drama; namely, that it should appear to be necessary to find an ancient ordinance in order to prevent a court of justice from executing the murderous design of the Jew. The license of the dramatist excuses that, but nothing can excuse the actual fact when a lawyer ignores recognized principles of justice and humanity in order to plead for the letter of the bond which his client holds, as a sword point, against the throat of his adversary. That is not law, it is legalism.

Our Lord one time plucked some ears of corn on the Sabbath; the Pharisees presumed to rebuke Him for violating the law; He told them: "The Sabbath was made for man and not man for the Sabbath." Likewise, we may say, the Law was made for man and not man for the Law. This takes the rigor out of legalism and puts a heart into the whole system of jurisprudence. It dissolves the claims of a Shylock as the running waters dissolve the falling snow. It elevates the profession of

law into a means of service, not to its members merely, not to their clients merely, but to humanity.

If to be a successful lawyer means only the winning of cases, the collection of fees, the gathering of a clientele that will insure a comfortable living and perhaps wealth, our profession is not as useful to society as the undertaker's trade. Voltaire one time said, toward the end of his checkered and erratic career, "I never was ruined but twice; once, when I lost a lawsuit; and once, when I *won* one." It is a complete indictment. Mr. Wilson must have been thinking of something of the kind when he expressed his contempt for the legalistic mind.

Every lawyer should study St. Thomas Aquinas' treatise on Law. Yes, he was a Catholic theologian of the Middle Ages; but for all that, the most notable opinion handed down by our Supreme Court within the last half-century virtually quotes a whole chapter of his treatise in setting forth its legal premises. Every lawyer should study the great Encyclicals of Leo XIII, relating to social justice. True, he also was an ecclesiastic, but the impress that his writings in that sphere made upon his own and the subsequent generation, to our own time, is incomparably greater than that of any other man of his century. Every lawyer should study the writings of Bellarmine and Suarez, who by reason of their resistance to the novel theory of "divine right" asserted by James VI of England, have left us the finest outline on the rights of a community or a nation that is perhaps extant. Every American lawyer especially, should know these sources of the principles of liberty and self government which are the pride and the glory of our country.

We all take too many things as a matter of course, without a Why or a Wherefore. Lawyers who think of their profession as something more than a trade, should learn the philosophy and the vision which Law implies. The earliest known code is that of Hammurabi, written centuries before the time of Moses; there is scarcely a trace of it in existing law. Lycurgus and Solon wrote codes centuries after Moses; there is little more trace of them than of Hammurabi in existing law. The mosaic code is interwoven with existing law to an extent that is perfectly amazing to one making his first acquaintance with the Talmud. Hammurabi, lost until the beginning of this century, is little

other than a curio. Lycurgus and Solon are a part of history merely. Moses rules in the law of civilized nations. The difference between them is the difference between Law and legal enactment. Law must have a philosophy back of it, a vision before it. Legal enactment has an object merely. How Moses came by the philosophy and the vision which inspired the declaration of the Law that he left us, when even Solon was denied them, is a matter for the theologian, perhaps, but it is a poor lawyer who does not recognize the difference.

But the Law of Moses, though it had philosophy and vision, did not have a heart. Of course, human nature in Israel was what human nature is everywhere, a comingling of the harsh and the kind, of the cruel and the compassionate, of the Shylock and the Portia; but there was no established principle with which the advocate of a broader justice might confound the legalist; that is to say, there was none until the Master declared that even the law of the Sabbath, divine institution as it was, is to be construed in the light of human necessity and human welfare because the Sabbath was made for man and not man for the Sabbath. This put the heart into Law, and the student who is interested in something deeper than the million or so statutes and the ten million or so constructions of them which clutter up our legal libraries, would do well to search out the implications of that pregnant utterance of the Universal King of Society.

Just for example; take our principles of Equity, which express the heart of the law of English speaking nations; where do they come from? They are not to be found in the laws of the ancients. They were unknown before the advent of the Christian Era. The exact time of their appearance cannot be fixed, it came about so gradually. But there is a sign that speaks eloquently of their origin, and this sign is the official title of the functionary whom we call Chancellor; which by historical derivation means "Keeper of the King's conscience." To this day, that is the primary title of the Lord High Chancellor of England. It means that the first Chancellor of the realm was the King's confessor, and the first principles of Equity, which soften the stern rigor of the letter of the law and put a heart into our jurisprudence, were dictated by some priest or bishop who was con-

fessor to the King and consistently reminded him that the law was made for man and not man for the law.

The lawyers of the old school, surrounded as they were by a Christian atmosphere, devoted as they were to the Christian ethòs, instinctively recognized that all law must be subservient to the principle that gives dignity to the human being. "Faith," declared Webster, "is the tie that binds man to his Creator. Let that tie be severed or broken and man floats away, a worthless atom in the universe, with his proper attractions gone, with his destiny thwarted, with his future nothing but darkness, desolation and death." It was such a vision that made Webster a great lawyer. The tie that binds man to his Creator links with him in that tie every relationship of life, and is the supreme object of Law; all else is simply detail.

The lawyers of the new school are surrounded by an un-Christian atmosphere and many, alas, have a feeling of contempt for the Christian ethos. They do not know how man was made or in Whose Image he was made or for what purpose he was made; hence, the philosophy, the vision, the heart of Law are points of no interest to them. They think in terms of cases and clients and fees. They think of law as a collection of legal enactments. They made no distinction between a statute and eternal principles of justice. They have what Wilson called the legalistic mind; which is too narrow for greatness.

Better be a plowman, who at least sometimes turns his face to the stars, than a lawyer without philosophy, or vision, or any clear notion of the nature and destiny of human beings, who are made to the image of God and forever linked by an invisible bond to their Creator.

No, it is not enough that the lawyer should protect the interest of his client, that he should handle his cases with skill, that he should be an able and eloquent pleader, represent powerful interests and earn enormous fees. His legalistic predilections must be put aside. His willingness, whether for the fee or the fight, to lead a client to his ruin, as Voltaire was led, must be denounced as the instinct of the hireling. He must not only have a conscience but must convince the people that he does have one. Then, perhaps, he may regain his Lost Estate.