
The Law. A Business or a Profession?

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THE LAW--A BUSINESS OR A PROFESSION?

It has been stated more than once by eminent authorities in psychology that the habit of extravagant praise is a sign of mental degeneracy. Judged by this rule, there is something not altogether flattering in the entire satisfaction of the pompous professional man over the superiority of his status in the community. People have taken the professional man at his own valuation so long, that the critical instinct is rarely exercised in an effort to compare the relative merits and demerits, advantages and disadvantages of professional and non-professional pursuits.

The "average man" has the habit of accepting without question the popular and majority verdict on things with which he is not personally familiar. The lack of the critical instinct is nowhere more in evidence than in the almost universal acceptance of the statement that a professional man is *per se* of finer clay than his lay brother. When one son among many enters the law, he is supposed to be preserving the "fine traditions," to be living up to a mental and moral standard higher than the sons who enter lay pursuits. When a lawyer leaves the profession for other fields of endeavor he receives the condolences of the average man, as if he had descended from a pedestal; and if he permits it, he is on the defensive whenever his friends discuss the subject with him. Particularly among the members of the profession is this feeling of superiority manifest. Nevertheless, an assumption of superior virtue always permits a challenge, and to some minds, it always demands one.

Enough cant and hypocrisy about the superiority of the profession is indulged in every day by "old lawyers" to young ones, and by learned commencement orators to graduates in law, to excuse, if not call for, an honest challenge of these views.

At a recent meeting of the American Bar Association a law student was in attendance at the session with his father. The latter was on terms of familiar friendship with a distinguished jurist who was also in attendance. One graced the bench with his learning and integrity, the other graced the Bar with a thousand talents exerted in behalf of a large and powerful clientage. Both men had been successful in their profession, so that neither spoke a language of disappointment or defeat.

In a quiet corner one evening these two elderly men fell to

talking of the law, its trend, its influence, its relation to life and living. As the student joined his father and the Judge, the latter warned the young man that if he remained he would hear some comments dangerously different from what he had been accustomed to hear from those who pose as exponents of the theory that law and lawyers are superior to other callings and other men. But the father insisted that young lawyers were entitled to hear both sides of a discussion even though ideals were attacked. So the conversation, half reminiscent, half philosophical, was soon renewed in all its original vigor.

"The trouble is," said the Judge, "young men choose the law as a profession merely from what they see of it from the outside through eyes of impressionable youth. Every young man starts out to be 'famous' and respected, and if he be from the South particularly he is the victim of traditions that even now make a professional career a guarantee of social position and a cloak with which to cover a multitude of failings.

"He hears some jury lawyer talk mightily on the abstract virtues. His imagination is fired by the applause and prominence that come to a few leaders at the local Bar. Then he reads in the press dispatches of the great orator or inquisitor or prosecutor, or of some powerful speech in defense of a man accused of crime and, he is thus led still further along the road of unbridled imagination and fancy to false ideas about the law as a calling. Then he is told of some fee of five hundred thousand or a million dollars that this or that lawyer has secured for saying 'yes' or 'no' to a question, and visions of great wealth are seen at the end of the rainbow of his enthusiasm.

"Just as in the affairs of the heart, youth follows impulse, before experience teaches him that reason and not impulse is the world's great force, so he enters the law school with little more than an indefinite but powerful desire to be great and famous. His friends applaud his resolve. He is told of the careers of great lawyers, and he believes it is really true that the lawyer is a being to whom the world in sorrow and despair turns for help and guidance and that the lawyer dispenses it with all the fine enthusiasm of a father for a favorite child."

The law student listened as if to the recital of a portion of his own biography. His father smiled as the Judge sketched the mental process that he knew was very much like that the young man had experienced. But neither interrupted the Court, who continued:

"Once in the school, the young man is confirmed in his convictions, for where is there a more noble study than the development

of our jurisprudence as sketched in the various text books of a well arranged law course? Where is there a more elevating or inspiring field of endeavor for the human mind than the study of law, its development, and its application to the changing currents of human life?"

"But you seem to admit your opponent's case," interrupted the youth with the fine enthusiasm of one who defends a favorite conviction. "If the law is all this, why is not a man who pursues it superior in his instincts and in his ultimate development to the men who do not, and why is not a profession such as you describe far more noble than the selling of merchandise, the building of railroads or the management of banks?"

"Because," answered the Bench, "the mere thinking of great thoughts, the mere intellectual development of the mind is not of itself sufficient to deserve approval. The man who spends years learning music but who never strikes a note to inspire mankind is more unworthy than he who has no music in his soul. The soldier who studies the art of warfare but never in war raises a musket in defense of his country's institutions is less a patriot than the man who enlists but runs away. Intellectual development, the study of the philosophy of the law, may become as deadly a habit, and as useless, too, as whiskey or morphine. The study of the law, profound, philosophical, beautiful as it is, is naught until action and endeavor are mingled with it. It also carries with it the responsibility of being charged with knowledge of the duties its study makes clear."

"Then, Judge," replied the student, "you charge in effect that lawyers are intellectual, dilettanti, and not moral reformers, that they think great thoughts but do not live them."

"I bring no indictment against an entire profession," said the Judge slowly. "I think I know a few, a very few men, who have had the intellectual, and if you prefer the moral development that the law gives to its students, and who have at the same time lived their lives in a practical way entirely in accord with their teachings. But they are few, much fewer than in medicine or divinity, though the lawyer professes to be more ennobled than the followers of either of these callings. Lincoln was such a man, and in the old days when I rode Circuit, I used to meet obscure lawyers who seemed to me to live their life as one worthy of their training. Great Britain, too, has contributed a few more men who are true lawyers in life and thought than America, I think. But you and I and the Bar generally are not honest if we live in the light of their unselfish glory."

"The commercial instinct is all the more hideous in the lawyer who poses as a man of superior ideals. The client, to-day, who has no money meets practically with a denial of justice. Lawyers listen to his story, but not one in twenty lends a hand until a retainer is forthcoming. Every year a horde of young men are entering the law, far more intent on making money than on living up to professional standards. They become the political lieutenants of bosses of both parties. Receiverships and referees and commissionerships are given out by the Bench under orders from the men who nominated them and every effort to amend this system in the interest of the poor litigant who pays the bills meets the stern opposition of the Bar. Surety companies now advertise a list of lawyers under bond to make returns of moneys entrusted to them. In the conduct of cases the old dignity is disappearing. Hammer and tongs are the approved weapons nowadays. A lawyer's word now has to be reduced to writing by his opponent who has had experience in repudiated 'gentlemanly agreements.'

"Whether law be a business or profession the question of remuneration remains to the end a most perplexing and disagreeable one. But to the beginner in law, especially, who, when, how, and what to charge as a fee is a most difficult thing to determine.

"Clients generally come at first from one's personal friends. Business and friendship are proverbially most difficult to mix together. Old and experienced merchants find it very difficult to trade satisfactorily where personal friendship has to be considered, and the young lawyer, with very little knowledge of men or business, goes to defeat on questions of fees oftener than on questions of law.

"He thinks his clients come because they detect in him some great ability, but most often they come because they expect the young lawyer to serve them for much less than the older one. Let him charge a reasonable fee, and nine out of ten 'friends' think he has taken advantage of them. Ask any lawyer who is frank, and he will say that among the people to whom he never speaks, the great majority are former friends whom he sued for his fees, or who paid reluctantly and never felt any great enthusiasm thereafter for his ability.

"Clients are really no judge of a lawyer's fee. The very best work a lawyer can do for his client is just the kind of work a layman can never appreciate. Nothing is so disheartening as to execute some brilliant piece of legal strategy for a client who calmly tells you when the bill is rendered that the charge is outrageous and that he expected the work done for a nominal fee.

"Again, nowadays the lawyer is almost forced to work on the theory that if his client is unsuccessful his fee will be much less than if successful. Every other man, from the laborer to the President of the Steel Corporation, is paid according to his labor expended—but the lawyer may toil for years and if the case is lost through no fault of his own, the client expects to be allowed to go away with a very small charge. The contingent fee has demoralized clients and the practice of law both as a business and a profession.

"In older countries, England particularly, men have some independent income as a rule on entering the law. Under such circumstances it can be practised as a profession. In the United States ninety-nine out of a hundred lawyers practice it for all it is worth as a living. They are foolish enough to think that the rules of industrial competition will not operate against them in their fierce competition, but this illusion is too obvious to deceive the philosopher. Half of the lawyers who appear before me fight each other with personalities and innuendoes far more than with the real weapons of the law. All the old courtesy and gentle deportment that once characterized the profession has gone, and in its place has come a rough and tumble scramble on the floor of the forum. Anything to win is the motto, and with thousands of young men crowding the profession every year, where only a few are needed, there seems very little hope that the law of supply and demand, of economic competition will leave the law anything but a sordid trade, based still on the false pretense that it is a dignified professional calling."

"But, Judge, you forget contemporary names." In his artless way, the boy mentioned the names of several lawyers prominent in the public life of their respective communities, and who seemed to him as models after which to pattern his career.

"It is dangerous to argue from the general to the particular," answered the Judge, "I would not discuss specific cases with you, had you not mentioned the names of some men of whom I can testify without relying on hearsay testimony.

"There is your idol whom you describe as a 'fearless prosecutor.' He started in politics as a machine man. Then he left his party, for which act alone, he should be neither praised nor blamed. Choosing the psychological moment to attack an open abuse, he dealt hard blows to a petty crime and its miserable criminals. The people cheered, as they will cheer any man who fights their battles. Next he turned on the boss of his former party saying nothing new, but saying it in a way that made the people believe he was in

earnest. They backed him in the fight against the boss, something that becomes easier in our politics every year, thanks to increasing intelligence. He was elected and became your 'fearless prosecutor.' For a short season he attacked small crimes and criminals in a way so shrewdly spectacular the people thought he was fearless. Then he came up for re-election, and a mightier wave of popular approval mightier than ever went up for him.

"The people of any country, if left an absolutely untrammelled choice, will always vote on the moral side of any issue. People collectively are better than people individually, but the mountebank is often capable of associating his personal ambitions with the semblance of a moral crusade, and the people collectively are thereby swindled out of their dues.

"So your hero won again though the people never knew as I did, that he was willing to quit their battle if the 'boss' he so maligned had tendered him a nomination for the Bench. The people soon learned that any lawyer can prosecute petty thieves. They demanded that the principles of the criminal law be applied to thieves other than pickpockets and gamblers. They insisted there is plenty of law for the powerful scoundrel but your 'fearless prosecutor' has not yet helped either to find and develop the old law or to demand new laws where necessary.

"One other of your great lawyers is a professional reformer. He jumps from crusade to crusade, from abuse to abuse, long enough to get all the advertising the passing moment can furnish, but as for guiding his life by the philosophy of the law, he has forgotten there is such a thing as equal rights and fair play.

"Still another of them has great respectability—that is his capital. He is suave, of fine family, deeply learned, possesses an unquestioned social position, and speaks so beautifully in public, that the trusting people take him at his own worth. But while he accepts retainers from corrupt corporations (which alone is not sufficient to condemn him, for even a corrupt corporation has its rights) he has never yet accepted a retainer for the people's cause in any of the great moral issues through which he has lived. He has posed and presided for them, but never practised. He has succeeded, but by making the law his mistress not his wife.

"I am sorry to say it, but many of the smaller fry at the Bar use much the same methods, though on a smaller scale. They join this or that society or lodge or club, not to help on the objects stated in the charter but to make a large circle of acquaintances which they can turn into clients. He visits this home or that, both above

and below his station, not from dictates of the spirit of companionship or fraternity, but because he sees new clients ahead. The married women he meets may some day need their husband's will probated after death, or a divorce action instituted before that. Their servants may get hurt by a trolley car and need a lawyer. A dozen and one complications may occur, requiring a lawyer, and they may think of him, if he has been attentive and useful and hypocritical enough. You have no idea how many lawyers have confessed to me their cynical objects when twitted about being in queer places. It is the universal law of competition working havoc with their false pretenses about 'unselfish occupation' and 'dignity.' A young lawyer once complained to me that he had to work all night to get business, and all day to take care of it. In nearly every large firm in our great cities the indispensable partner is 'the business getter.'

"Then there is supposed necessity for the young lawyer to put up a good appearance—some honest ones call it a 'false front'—in any event, it is usually synonymous with living beyond one's means. This sounds very well as a story of hardship. But the economic waste of time and talent through the period of 'getting on' in the profession in a great city should be a matter of great regret. A little of it may develop character, but continued for months and years it makes a tragic story. If there be any great reasons for the hardship and the sacrifice, there need be no murmur but it is only for purpose of living till 'law business' begins to pay. If young men only knew what was in store for them during this period, many of the most sensible would go into callings where their best years do not have to be spent in a great waste of time, with much useless suffering and many slaps at self-respect in the balance. And yet they tell young men it is the most independent profession in the world! Not even the highest men in the profession know the independence that comes to the successful merchant in an established business. Nowadays the bigger the lawyer, the more he becomes the clerk, the hired man of the business man."

"But, Judge, why take the strugglers? Why not go higher? Take the Bench. Have they not kept the faith?"

The Judge remained silent for the moment. "I promised to be absolutely honest with you. Had I not given such a promise, I would evade your question, but I shall answer it honestly. When you have practised as long as your father, you will know that not always is it the profoundest lawyer who reaches the Bench. Politics, the unavoidable bane of our elective system, puts its favorites on the Bench, who may or may not be able and conscientious lawyers.

But when you are as old as I, in a search for the real heroes of the profession, you will not look for them on the Bench, nor necessarily in the successful practitioners, but in the lawyer, who while remaining a student devoted to the philosophy of the law, has been active and uncompromising in his fight against wrong and injustice, shunning law as a business and practicing it as a profession. There are such men, considered failures by the Bar, but they are true at heart to the professional ideal."

"Then you hold up failures for us to emulate? Would you have us forget the practical side of things?"

"Not for an instant. But I would have the profession and its schools honest with the youthful enthusiast who knocks at its portals. I would have them say, choose between the law as a business and law as a profession. If you decide on law as a business, then strip the calling of its arrogance and cant. Quit posing as a superior being, as a protector of the weak, as a man who prefers the reward of duty performed to services paid for. Let the schools tell also, that as a business, it is a precarious one, and brings on the average, more labor and drudgery and less reward than any one of a dozen callings, such as manufacturing, financiering, bridge building, or exporting. There are no union hours and few divisions of labor, but many walking delegates in the law.

"If the young man decides to enter it as a profession, let him be told of what severe stuff the heroes of the bar are made. Let him realize that the sacrifices he will make and the rewards he will achieve are different, utterly different from men in other walks of life. Do not let him expect to reap both the rewards of a business career and a professional one, for the man who achieves this difficult feat is rarer than a Shakespeare or an Angelo.

"Again at the end of a law course, the school should say that it is a good thing for every man to be trained in the ways of the law—that the years devoted to its study will not be wasted years, even though they conclude they are not heroic enough to become real professional lawyers, and not skillful enough as captains of industry to make law business pay. Training in law school will make better men and broader ones in whatever walk of life the student may go. There is a growing list of philanthropists, just plain hard-headed men of affairs, who without much fine talk about unselfish callings and noble ethics have left their imprint on their country's history, and benefited mankind to an extent few lawyers are willing to admit, if suggested by way of comparison with their own profession.

"Indeed the American Plutarch will find little material for his pen in the lives of modern American lawyers, but among the lives of

bankers, manufacturers, pioneers, railroad men and other men of business, material of the richest kind awaits him. Indeed, where would our universities, our art, our music, our ideals be to-day, if not for these non-professional men who have dreamed great dreams as they worked with their hands or toiled at their desks? What has the lawyer to urge that can compare in lasting good to our country what has been done for her by mere men of business?

"As for influence on public affairs the people are beginning to understand that governmental problems are not alone for technical lawyers. A lawyer out of touch with the practical callings of men is unfit to pass laws by which practical men must live. They are the demagogues of public life. The outworn doctrine of states rights that carried to a logical conclusion makes our government a thing of shreds and patches, has its praises sung at every meeting of the profession, especially if a national rate bill, or pure food bill has just been passed damaging some of their clients. But the business man who knows the necessity for consolidation, and concentration and reduction of fixed charges, and uniformity of rules and regulations has long ago seen the necessity for a strong central government. He knows, too, that it is easier to fight one strong tyrant or usurper (if such there must be as the wise lawyers argue) than forty petty ones, and so he goes on planning ahead for the national life while the lawyer cries aloud in the wilderness to preserve the present because it came out of the past."

When the conversation was ended, the student looked quizzically at the judge and said: "You do not give very encouraging advice to young lawyers."

This time it was the father who spoke:—

"No, my son, the Judge believes as James C. Carter* once said to me, 'No one should ever give encouraging advice to a young man about entering the law or coming to New York to practice it. No man is fitted to do either unless he does it in spite of all the discouraging advice that can be given him.'"

And the Judge rejoined:

"But did Mr. Carter protest against the destruction of so many sterling young men who each year are lured into the maelstrom of the profession by the false cloak so many of its followers throw around it? The tragedies of their lives far outweigh the success of a dozen or so of the money makers of the profession."

Champ S. Andrews.

Of the New York Bar.

*Mr. Carter once made this remark in the presence of the author of this article.

C. S. A.