

## The Lawyer of the Future

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# THE LAWYER OF THE FUTURE

## INTRODUCTORY.

UNQUESTIONABLY they are prophesying truly who hold that an economic era greatly different from the last is as inevitable as was capitalism after feudalism.

The most widely expressed fear is that current methods will not serve quickly enough, and that radicalism of one sort or another will be hailed before success or failure of present attempts at solution saves private rights in property or forever ends them. But whether present attempts succeed, or fail and are followed by franker radicalism, there will be in our economy planned and controlled production. To receive a fair trial as the panacea, planned production will have to be *thoroughly* planned production, and this means that we shall have a thoroughly planned state.<sup>1</sup>

Even now (when we are merely setting forth upon as yet uncharted seas), the neighborhood store, the market place where private producers or traders offer their wares as individuals, the small manufacturing shop and the local banker are already doomed. In their place, undoubtedly government-controlled, will be co-operative marketing and distribution (which will eliminate from all except history books the words "wholesale," "retail" and "middleman") and interdependent,—and so commonly planned and organized,—financing and production.

For many years it has been generally realized by intellectuals that the large majority of those engaged in the accounting (I use the term in its widely inclusive technical meaning in economics) branch of endeavor, and this includes all those engaged in financing as well as those who merely keep books and records, together with an equally large majority of those engaged in distribution, and this includes all brokers, salesmen and commission merchants, not to speak

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<sup>1</sup> "The most urgent and crucial task of our generation, both for education and for society in general, is the development of community of purpose. We must decide in whose interests our mighty mechanism for the production and distribution of goods is to be managed." From a John Day pamphlet, *A Call to the Teachers of the Nation*, by the Progressive Education Association's Committee on Social and Economic Problems.

of a smaller but still substantial percentage of the transportation group, are purely parasitical because both are non-producing and unnecessary.

The lawyer has held himself to be outside this large and ever-growing number because, though a non-producer, he has claimed to be not unnecessary. He has argued that the complexities of modern life have caused to evolve an equally complex system of rights and remedies, learning in which is the achievement of a lifetime of devotion. So, then, men other than lawyers, says he, cannot be trained to avail themselves of their privileges and to a complete awareness of those of their neighbors except by excluding themselves from other fields of training and endeavor. This necessitates a lawyer class, educated to do for the producer, the accountant, the manager, the distributor, the banker and the carrier what they cannot do for themselves.

The answer to this defensive plea is that so, too, are the accountant, the manager, the distributor, the banker and the carrier necessary. The lawyer has in common with them the world's necessity for them all and, also, the fact that there are too many of them all (including the lawyer, taking into consideration the amount of law practice of present-day type) and that their careers, endeavors and serviceability are slipshod and inefficient through waste of man-power.

Unquestionably, in the planned state of the near-future there will be fewer of all these non-producers except, perhaps, the lawyers, with a consequent release of man-power to swell the number of planners and producers. The ranks of the lawyers, too, will be reduced unless, as seems inevitable, however, the new day will show additional fields of practice. And, in any event, the lawyer who *will* practice *and* the planners will be an even larger group than the legal profession of today.

#### LEGAL EDUCATION.

There will not be, certainly, any decrease of legally trained men, for it is not true that a lifetime of devotion is necessary to the obtaining of a *working* knowledge of the law.

In the planned state of a near tomorrow will be increased leisure for all workers, a later age for the beginning of labor (child-labor will not be a problem, for only thoroughly matured adults will find it necessary to work) and a requirement for a longer formative and educational period. Upon the educators of today and of the future will fall a weighty share of the responsibility for the defense and development of the planned state.<sup>2</sup>

As part of their general education our citizens will be instructed in government and in law. As truly as Latin and swordsmanship were once necessary accomplishments of a gentleman, so will the tool of a knowledge at least of the theories (and at arm's length of the administration) of government and law be tucked away in the kit-bag of every well-appointed citizen of the planned state. There are many reasons why this will be so, not the least of which is that the American nature does not take easily to the following of suggestions (much less the performance of commands) unless it seems expedient to do so, and this involves knowing why. The universities of the future will be kept permanently busy instructing each rising generation in the new economics and its manifestations in what is bound to be an also new jurisprudence.

For a time there will be a great rush to the universities as lawyers of today, schooled in a legal system based upon an old economic structure, find that their erstwhile learning is made up largely of antiquated dogmas. They will return for training in the law and the economics of the modern day.

Even when these men have passed, however, the university law colleges of the future will be busier than they are now, for they will have to deal with the situation described briefly above, in which those knocking at our doors for legal education will be a far greater percentage of our youth than now engage our attention and labors, though most of them will not intend to practice as lawyers.

I do not want anyone to be led into the erroneous belief that my language and position indicate a conviction that we

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<sup>2</sup> "The progressive-minded teachers of the country must unite in a powerful organization, militantly devoted to the building of a better social order and to the fulfillment, under the conditions of industrial civilization, of the democratic aspirations of the American people." *Ibid.*

shall scrap *in toto* our heritage of the common law. In adopting the confident view that great changes will occur I must not be misunderstood as thinking that they have already completely occurred. Only the first citadel has been taken. It will necessitate adjustment of our forces, our lives and our law. Others remain to be taken. They will necessitate further adjustment. Adjustment, evolution, true growth, permanent change, are slow, thorough processes. The first steps may be sudden, as in our case today. But the attainment of the balanced state, the ultimate level, the reaching of the goal, is a slow, painstaking, upward climb, marked by many trials and not a few errors. Only thus will we return to the ideals of the fathers and attain freedom—freedom as our *fathers* never knew it, and freedom such as even the Greeks only dreamed of in their political humanism.

Lawyers and legal education cannot be divorced, and so in writing of the law and the lawyers of the future, I shall have occasion to refer to legal education again.

#### LAW AND LAWYERS.

A reading of the new federal blue-sky law<sup>3</sup> and the newer National Industrial Recovery Act<sup>4</sup> strengthens the conviction (which did not need their enactment for its birth) that the trend is toward an elimination of competition in industry, of class struggle and of speculation.

We may call the first of these “enforcing fair competition,”<sup>5</sup> if we desire, so as to retain the theory that our economic system and its instrument, the law, encourage free competition within limits of fairness, but toward a control which will eliminate the competitive element—toward monopoly, if you like—we are unquestionably headed. The appearance of competition may be there—the monopoly may not be a single corporation, but two or more—but a government-controlled code of regulation will make their interests one.

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<sup>3</sup> SECURITIES ACT OF 1933 (Public—No. 22—73rd Congress), approved by the President, May 27, 1933.

<sup>4</sup> H. R. 5755, 73rd Congress, approved by the President, June 16, 1933.

<sup>5</sup> N. I. R. A., title of act; also tit. 1, §§ 1 and 3.

We may say in words <sup>6</sup> that with respect to capital and labor we are not doing anything more than safeguard the right of collective bargaining long recognized by the law, but actually the government will be compelling, writing and enforcing contracts of employment providing minimum wages and maximum hours, and *giving*, through government authority, everything the law has heretofore merely *permitted* the employee class to *struggle* for unaided.

We may say that federal control of securities marketing merely protects prospective investors against fraud, but actually the government will be making the marketing of securities so unprofitable that there will be no purchase of them except with the desire and intention of becoming interested in the business whose securities they are, as the basic stimulus of the buying impulse.

Investment, then, will be *true* investment. This fact, plus planned financing (of and with planned production) will result in a new banking.

During the speculative era, bankers forgot actual values and loaned on market values. The buyer of stock for speculation at a price far in excess of its worth could procure upon it from a bank a loan for further speculation. The sum loaned might be in excess of true value. But the producer who desired to extend his business could not get, for the purpose of making that real investment, any loan at all in many instances, though the fair value of his business would have justified it. Bankers either had forgotten how to appraise values or would not take the time to do so, when all the loan business they wanted was offered to them upon collateral the so-called value of which could be ascertained from the columns of a newspaper or the excretion of a market-ticker.

Tomorrow's financing will be the antithesis of yesterday's. The banker will have to be an appraiser again. There will not be as much stock held speculatively. Loans upon such securities will not be the major business of banking. The producer who wants a loan for permitted, planned production will find that part of the planning will involve the financing.

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<sup>6</sup> *Ibid.* tit. 1, §7.

That the practice of law will differ radically then from that of the era through which we have been passing is inescapable.

After the first rush of the additional legal services adjustment will make necessary and after the statutes have been tested and construed, there will not be more than half of the old-fashioned law practice left.

There will not any longer be a group of despised corporation lawyers, for competition, fair and unfair, and class struggles, too, will be negligible if not entirely of the past.

With them and the great auk will go foreclosure attorneys, collection lawyers and repossession specialists, while practitioners of the summary proceedings statutes will be remembered with gritted teeth only in the nightmares of the grandfathers.

The legal representation of vendor and vendee in real property transactions will no doubt continue and, perhaps, even increase.

The administration of decedents' estates will also continue as a field for the lawyer. The estates may not be as large, but there will be more of them.

Until compulsory insurance against all possible personal injuries (or government insurance, or an assumption of liability or risk of loss in whole or in part by the government) changes it—as it will some day—legal practice in the prosecution and defense of personal injury actions will, as before, be a profitable field.

The change is, however, sure to come. Dean Pound has said:<sup>7</sup> "There is a strong and growing tendency \* \* \* to ask in view of the exigencies of social justice, who can best bear the loss."

Certainly not any individual. Rather the state. Better still, insurance ventures which make a business of the matter. There will not be "liability without fault," but there will be compensation without regard to fault.

Claims, however, will have to be proved. A greater field than the present one of negligence law may open, then, for lawyers. Practice before a compensation board, similar to

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<sup>7</sup> "THE SPIRIT OF THE COMMON LAW," Lecture VII.

Industrial Board practice, but, let us hope, more pleasant and more profitable, may take the place of proving liability to a jury of today.

I see new fields for the lawyer which will more than compensate for those which will no longer be fertile or arable. One of them is practice before the many new boards (of which the last illustration is but one) sure to grow up.

As government regulation continues to be extended, there will be boards established, practice before which will require special legal training and experience, as does present-day practice before the Interstate Commerce, Radio, Public Service and Transit Commissions.

This will require special legal education, a task which will fall mainly upon the universities, and this type of law study and practice will necessitate a more appreciative grounding in the political and social sciences than lawyers need (or, at least, than lawyers *have*) today.

Indeed, the lawyer of the future will have to be a scholar in the science of government and in its basic economics.

Undoubtedly, there will be a larger group of men trained in these fields than there is today. They may or may not be members of the bar, although their education will be mainly parallel with that received by those who seek a license to practice. Many in this other group, with or without admission to the bar, will be in the government service, as experts of one sort or another, notably in the planning which will be the new industrial and financial architecture. Many a young mind of the future, who, if born thirty years ago, would today be a practicing lawyer, will find his career in a planning group. And the size of this number must not be underestimated. National and even state planning boards in the various industries cannot do more than deal with sum totals. It will remain for sub-units and sub-sub-units locally to work out the details in the manner in which zoning boards act locally today.

This new field of endeavor for law-trained men will not be restricted to government service alone, for the business and industrial units will use such men too, in the planning which the government will permit them to do in their individual cases for so long as they conform to the new system

and stay within the limits the government's local planning unit will have established.

On their part, the practicing lawyers, in and out of the government service, will be enforcing and litigating codes and systems and planning them as well.

The increase in education which will be brought about by all this will enlarge the opportunity for entering the teaching profession, for the training of these groups will be a major "industry."

Since there will be a field for men of the described preparation who do not seek licenses to become actually practicing lawyers, though a large part of their training will be in the law and its background, our law schools may give a special degree in this modern science of government, to the new group, whose curriculum, perhaps, will differ from that of the group which will receive the time-honored degree of Bachelor of Laws, in substituting planning for much of the adjective law.

It is more likely, however, since even the men licensed in the actual practice of law will need the training, that the new branches of administrative law will be taught as part of the required course even for a baccalaureate degree in law. As pointed out earlier in this article, the period given to education will be longer in the planned state.

## CONCLUSIONS.

### (a) *Legal Education.*

First, many more will seek it, for it will be a much more advantageous possession to the ordinary citizen than it is today.

Second, many more will seek it professionally, for service, not as lawyers practice today, but in the allied, new field of government and business planning.

Third, many as they do today will seek it to practice professionally in the time-honored manner, though, as we have seen, not so many will practice in present-day branches.

Fourth, there will be a greater necessity for and insistence upon a proper background in the newer economics and

allied subjects. For a while our universities will be doubly taxed, as present-day lawyers seek re-education. Thereafter, legal education will settle upon a level of less feverish haste and of adjustment, but of greater activity than that of today.

Fifth, our curricula will include the new branches, which will be availed of by the prospective lawyer as well as by the prospective careerist in planning and administration.

(b) *The Practice.*

First, there will not be as many men engaged in law practice of today's type, for there will not be as much present-day law practice.

Second, there will be a law-trained group who will practice as planners and administrators in and out of the government service. This group may be as large as the group of lawyers. Into it will go those who have been legally trained especially for it, and many, trained side by side with them, whose intention to practice law has been modified by the change in types of legal practice.

Third, the practice of law by the (strictly speaking) lawyers will be greatly different from present-day practice, and the number of lawyers practicing in the branches of today, added to the number practicing in the newer fields will be nearly as great, actually as great, or greater than the number we have today.

Fourth, when we find *added* to these the number engaged in the actual planning, both those in and those out of the government service, there will be a much larger number than today of legally trained men who are using their learning in law and allied branches in their contribution to the world's work.

Fifth, the lawyer, the planner, and the law-trained, non-professional men will be truly important citizens, proud of their high position in the scheme of the future. They will make up a group of super-citizens. Upon them as upon no other unit will depend the success or failure of that most reasonable thing (so reasonable and so obvious that it is not easy to understand why it was not grasped and followed

through long ago in our great modern civilization)—the planned state.

With renewed confidence in their high calling as priests of justice and secular trustees of the first of all prizes—knowing why—and a solemn realization of all their vows and their terrific responsibilities, let the law-trained men of both groups take new stock of themselves and their state, of their minds and its needs, and, ever aware of the work which was done by their predecessors, may they hate forever the name of those whose efforts tended to impede, and strive with all the gifts of their endowment and the help of God to emulate and surpass those whose labors have been to produce, a state wherein will be made possible “a living wage for the many, in place of luxurious wealth for the few.”

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