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Law and the Layman

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LAW AND THE LAYMAN

There is probably nothing in the country to-day that holds a more anomalous position than the law. As a theory it is admired, but in the concrete it is disobeyed and criticised. A distinction seems to be drawn between law as a theory and law as a concrete body of rules, "governing the affairs of men". No one ventures to gainsay the fact that law is necessary to protect the rights of men, but almost everyone displays an intense eagerness to criticize the administration of the law. All admit that law is necessary, but, says one, "this law is not necessary", and, says another, "that law is not necessary"; and each attacks a different law. Law as a whole is revered, but its component parts are condemned. People who are given to thinking are quite content to see law idealized and venerated, so long as it is treated as something vague, distant, and impersonal, but as soon as they

are confronted with one concrete, actual rule, established by a very real sovereign body, and enforced by a real court, they blink, view it suspiciously, and attack it vociferously. Political scientists conceive of an ideal form of judicial administration, get it accepted by the commonwealth, and "leave the technical details to the lawyers". But the scientists are pleased with no detail.

The average layman, for his part, has not even the abstract conception in which to take refuge. To him the law is merely a collection of rules, more or less arbitrary, which he must obey, but not necessarily respect. Ministers criticize the law; yet they have never studied it. Publicists urge reforms in legal procedure; but they cannot even define their terms. Business men decry the senseless technicalities of the law; yet they must admit that all reason is refined. And every layman has some pet rule to deride and ridicule at smokefests and during lunch hours. Democracy is acquiring a new definition: the right of all to criticize everything, irrespective of knowledge of the subject. Everyone is showing a tremendous interest in the law, and "all of the law is wrong".

Why not leave the law to the lawyer? Why not leave to each his own? The minister will not tolerate suggestions on the best methods to save souls. Editors must not be told how to publish newspapers. Business men resent advice on what to sell, and at what price to sell. And the workman must not be told how to conduct his home. All of these prohibitions are patent and well recognized. Why then should the lawyer be singled out, and be told how to administer law? Why convert his specialty into common property?

The excuse, we suppose, is that all people feel that they have an inherent right to control what is most essential to their temporal welfare. The prime purpose of all law is to protect the members of society; and the people claim the right to say how they shall be protected. To a certain degree this is true, of course; indeed, it is the foundation of all true democracy. But how far should the principle be extended? In a general way everyone knows what should be feared, and guarded against, and all undoubtedly have the right to voice their fears and correct the evils. But few are capable of deducing from general prin-

ciples to the niceties that inevitably follow; or, having the capability, time may be lacking,—or the inclination.

To cite a single instance, all men realize that murder is reprehensible and should most certainly be punished. Yet everyone as readily admits that a man should not be punished for a murder he did not commit. But who is to say whether the accused is guilty or not? The case soon presents many difficulties. Various contentions may arise. The man may claim an alibi, he may plead self-defense, he may claim insanity, hot blood, or any number of circumstances which, if proved, would establish his innocence. But who is to pass upon the validity of his defense? Surely not the newspapers, which are wont to extend the facts in order to lengthen a story; nor the multitude, whose investigations are never complete; nor yet the sociologists, who look for a disease, and ignore a danger. Who then, but the lawyer? He has the capability, for he has studied the law for years, and in most states, has passed a notoriously difficult bar examination; he has the time, for law is his sole occupation; and he has the desire, for he is compensated for his services. No other is so well qualified to study the circumstances and conditions of each particular case, and to present the facts before an impartial jury . . . And if this be true of a criminal case, how much more evidently true must it be of the more involved cases, such as those concerning property, negotiable instruments, and the multitude of others.

But probably all admit this, too—in the abstract. Yet when any defendant is acquitted, when any important decision is rendered, a reflection is immediately cast upon the intelligence of the court. Only the other day a large mid-western newspaper grandly "congratulated" a jury for returning a verdict of guilty in a given case, and rejoiced at the "proper spirit" shown by the court—implying necessarily that in most cases a verdict of not guilty had not been merited in that jurisdiction. Several months ago a magazine of national circulation published an article attacking the power of the courts to punish newspapers for contempt. To the lay mind the attack may seem reasonable; but to anyone interested in preserving the dignity of the judicial system the criticism is meretricious. The author apparently believes that every judgment of a court is liable to the attack of any who assume the

function of critic. As well might a kindergarten pupil question the rhetoric of Shakespeare!

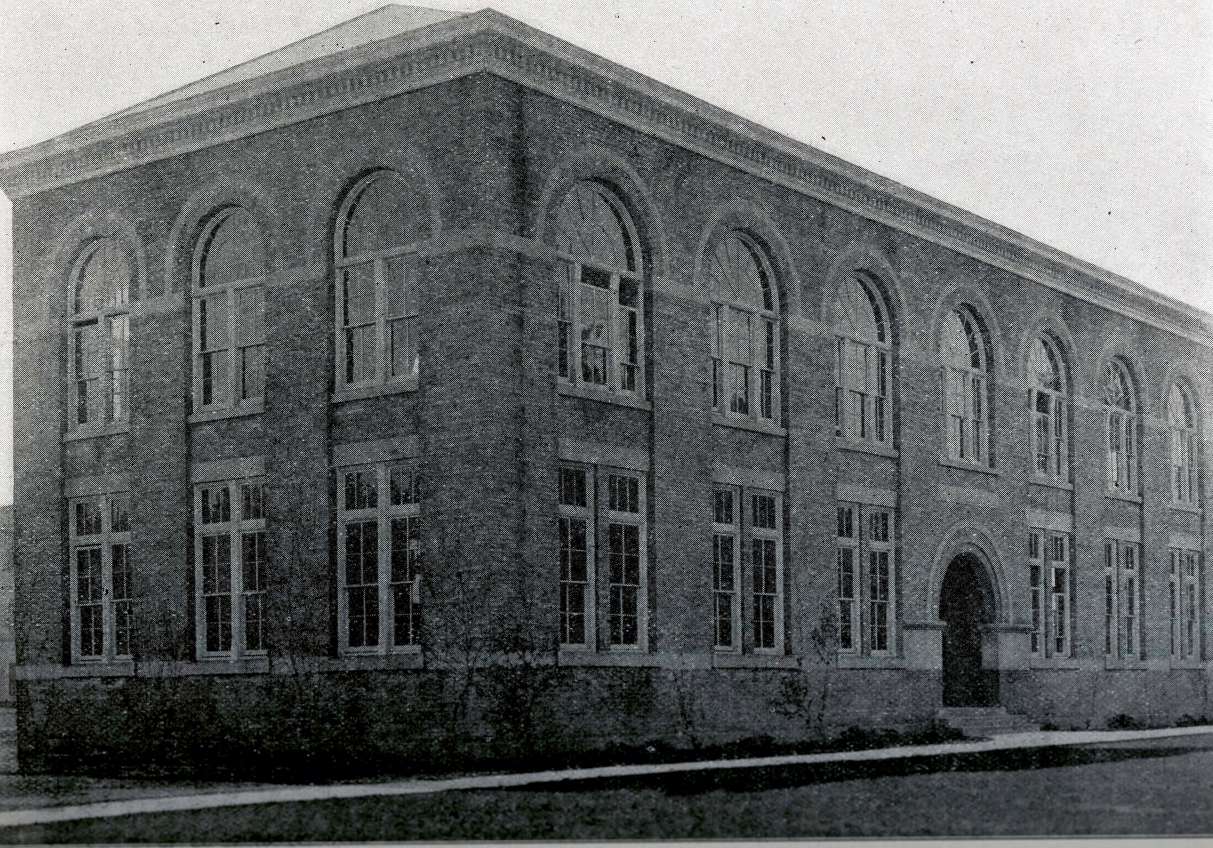
The whole administration of modern law seems to be on trial. And the tribunal is composed of men who admittedly have never studied law! To attempt to determine matters from an unknown realm is conceit, and the decision can not be otherwise than absurd.

We ask for a change of venue.

C. J. R.

GREETINGS OF THE SEASON

There is no need for a law magazine to be too impersonal. *The Notre Dame Lawyer* wishes all of its readers and subscribers, and all those who worked so untiringly to make the publication an assured reality, a very Merry Christmas.



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