

A LAYMAN LOOKS AT THE LAW AND LAWYERS

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The lawyer, as a character type, as an element in society, or as a factor for good or evil, used to be a very popular subject in literature. He was constantly appearing in novels and on the stage, as an important secondary character, and sometimes even as the hero or protagonist. It is true that the most important of Shakespeare's lawyers was an amateur, and a lady amateur at that, but it must be remembered that the trade had not been quite so rigidly professionalized as it has since become. Less than a hundred years later the lawyer had become a type, and for generations the English stage was filled with persons who conformed in all respects to a well-established popular concept of what a lawyer ought to be like.

The law was one of the occupations into which the sons of a respectable family, especially those younger ones who could not inherit enough of the family estate to maintain their respectability without working, were expected to go, along with the church, the army and the navy. Like them it could lead eventually to a very comfortable position in the pay of the Crown. The classes of people about whom plays and novels could be written in those Augustan days were pretty restricted, and it was inevitable that any class which had the right of entry, as lawyers unquestionably did, would be pretty largely represented in the "dramatis personae." The property owner or man of leisure was naturally at the top of the list, and the clergy, I fancy, came second; but the law must have been a pretty good third. Persons who worked for wages were of course out of the running altogether.

The contemporary literature of our own day has shifted its interest. It is chiefly concerned about members of the proletariat, and lawyers are definitely not members of the proletariat. They belong to the bourgeoisie, and while they obviously constitute a special class within that element, contemporary literature differentiates them very little from the other members. Other professions, some of them newer professions, seem to have got ahead of them. There are a great many plays and any number of novels in which professors are dealt with, in their capacity as professors, and with the special characteristics of their occupation. There are plays and novels, and there are even comic strips, in which doctors are dealt with, as doctors, or at any rate as people who function in hospitals and have special advantages in making love to nurses. There are plays and novels about clergymen, and the difficulties which they experience in preaching (and believing) an eighteenth-century (or eighth-century) faith in a twentieth-century world. There are plays and novels about politicians, who it is true are

usually lawyers but are not practising their profession at the moment. There are plays and novels about prostitutes, though the heroines tend more and more to be amateurs rather than professionals. But it is a good many years since I have read a contemporary book, or seen a contemporary play, in which a lawyer, as lawyer, was even an important secondary character, to say nothing of the hero or the protagonist.

I suspect that the rise of corporation law, and the drift towards it of so large a proportion of the best brains of the profession, have withdrawn the lawyer to a large extent from the public gaze. Nobody knows anything about the corporation lawyer except the men who run the corporations, and they are not a large enough audience to fill a theatre or to justify the printing of a novel. The corporation lawyer does not perform in the white light of front-page newspaper publicity. No crowd mobs the court-room to see him at his work. There is nothing very emotion-stirring about his performance. The results of what he does may have some effect upon the emotions of the stock-holders of his corporation, but the performance itself does not excite them in the least, and the outside public does not even know when it is going on.

The proceedings which result in the transfer of four or five million dollars from the treasury of Corporation X to that of Corporation Y are a good deal less thrilling than those which determine how many members of the infamous Red Bandana Gang may properly be hanged for the shooting of Bank Clerk Smith in their joint effort to loot his branch of a few thousand dollars; and even the Red Bandanna Case is now getting so commonplace that unless there is a sex angle mixed up in it—hence the urgent demand for “gun-molls”—the daily newspapers will not send their best feature writers to cover it, while the X-Y Case of course gets nothing more in the press than the final sentence of the decision, and that only on the financial page.

The change in the nature of money-lending, too, has contributed greatly to withdrawing the lawyer from public attention. When money was lent by individuals the individual was often not too anxious to appear personally in the transaction, and the lawyer through whom he acted looked very much as if he were the principal. This probably made little difference at the beginning of the deal, when the money was being lent, but it made a world of difference at the end, when it was being collected back again. The borrower does not pay much attention to the personality of the astensible lender when he is getting his money, but he pays a great deal of attention when the ostensible lender puts the screws on to get the money back.

and the lawyer as Shylock used to be a favorite character both in literature and in the public mind. Today the lending is done by corporations which exist for that purpose and do not in the least object to appearing as the principal both when the loan is made and when it is recovered; and the lawyer, if he comes into the business at all, does so merely as an agent acting under instructions. Nobody can get very angry with a mere agent. Being obviously an agent, he can be very polite and kindly and throw the whole onus of his unpleasant task upon the loan company; and as a matter of fact nobody gets very angry even with a loan company. In the middle of this twentieth century, indignation and resentment flow out, not towards any individual or type of individuals, not even towards any organization or institution, but towards the "system." The Social Creditors of Alberta and the Socialists of Saskatchewan do not blame the lawyers or the mortgage companies; these they admit are acting according to their kind; they blame an imaginary entity which they call "St. James Street" or "International Finance" or the "Capitalist System."

Lawyers are merely an element, and not a very important one, in these imaginary entities. They are the hirelings, not the influential members, of the Capitalists or the International Financiers or whatever the group may be that is poisoning the economic atmosphere. (If you do not want to describe the group too specifically you can always call it the "Vested Interests," and the audience can always be relied on to hiss.) A lawyer can, and frequently does, become a member of the "Vested Interests," but he does so by holding a lot of stock in something that might conceivably be looked into under the Combines Investigation Act, or by being elected to some interlocking directorates; and as soon as he has done that the public ceases to think of him as a lawyer and regards him as a "Vested Interest" just like any other director, only perhaps a little brainier. He has ceased to be a hireling and become a hirer; or in the language of the Communist dialectic he is a member of the Owners, the Boss Class, whereas when he was merely a lawyer he was something like a shop foreman or a policeman—just a mercenary in the capitalist army.

In American literature there are two types of lawyers who at first glance seem to belie this general statement of mine concerning the disappearance of lawyers from works of the imagination. Neither type, however, exists in Canadian literature or is regarded by the Canadian public as existing in Canadian real life. The first of these two types I shall firmly maintain to be no real exception to my general case. He is the kind of lawyer who functions solely in the pursuit of evidence for the purpose of convicting, or acquitting, a person accused

of a serious crime—usually murder. As the novel which deals with this pursuit is by far the most popular branch of fiction at the present time, we cannot afford to leave it out of consideration; but at the same time I think it will have to be admitted that in those immensely numerous works of contemporary literature, the “Whodunits,” the prosecuting attorney and the lawyer for the defence are alike acting far more as detectives than as lawyers, and that the interest which the reader takes in them is due entirely to their skill in ferreting out and marshalling a portentous array of relevant and significant circumstances about the crime.

Mr. Perry Mason, for example, is always acting for the defence; but he would never have attained his eminently justified fame if he confined himself to picking technical flaws in the case built up by the prosecution, like a Canadian lawyer defending somebody who has been found—well, not innocent—by the Royal Commission on Espionage. What he does is far more spectacular. It consists in slowly and very secretly weaving a net of evidence around a person whom the prosecuting attorney has never even suspected, and casting this net (if I may be permitted to mix my metaphors a little: this one can now be interpreted as being drawn either from the fisherman or from the “retarius,” but I think the latter is probably better) at the psychological moment when the whole courtroom and especially the reporters are completely convinced of the guilt of the unfortunate in the dock. But Mr. Perry Mason is not a typical lawyer even in the United States, and in Canada I suspect he would run grave risks of being disbarred.

The other type of lawyer who does actually appear in contemporary American literature in the act of doing something which bears some resemblance to the practice of law has, as I have said, no parallel in the very limited field of Canadian literature, and does not seem to be regarded by Canadians as existing in real life in this country. This is the lawyer who undertakes, either entirely off his own bat or with the aid of a small group of noble-minded friends who constitute themselves into a Good Government Society, to clean up the politics of a large municipality or a state. One reason why this type is not recognized among us is that Canadians are extremely reluctant to admit that their politics ever need cleaning up, whereas Americans are inclined to take a sort of inverted pride in the Augean character of their city halls and some of their state capitols. (There is an exception in Canada: English-speaking Canadians are willing to admit that there may be corruption in Montreal!) Where there are no dragons it is useless to expect a plentiful breed of St. Georges. The American St. George has to be a lawyer because it seems that he can only

operate with the sword and shield provided by the office of the prosecuting attorney. As he has to get elected to that office it might be supposed that he also had to be a politician, but this would be an error; the ordinary prosecuting attorney may be a politician, but the prosecuting attorney who is elected to clean up the Augean stables is an anti-politician or a politician to end all politicians.

It is a pity that his parallel does not exist in Canada, for he stands as a constant and conspicuous reminder to the American people that the law can be used to defend the public interest if only you could find lawyers who are not too busy defending private interests to do the using. And this reminder is needed. The public, in North American countries at all events, has come to regard itself as a concerned, and indeed an aggrieved, party in much litigation and in many cases which should be matters of litigation even if they are not. It feels itself being collectively trampled on by the Interests, and it feels that the Interests have much less trouble getting good legal representation than the public. All this may have no basis in the facts at all, but we are not talking about the facts, we are talking about what the public thinks about lawyers, and this is one of the things it thinks about them, and it would be a great deal better in Canada if the Canadian public had more lawyers whom it could regard as St. Georges to think about.

The result of all this is, I am afraid, that the present-day citizen of Canada is hardly aware that lawyers exist, and quite unfamiliar with the nature of their occupation. He has been told, by political parties which have not many lawyers available to contest elections for them, that they are a kind of people of whom there are too many in the various legislative bodies which run his country, and he suspects that the reasons which lead them to flock there may not be wholly concerned with the public interest. But in this respect he does not regard them as differing materially from any of the other kinds of people who seek to represent their fellow-citizens in Parliament and the Legislatures, so that he is quite prepared to vote for them just as readily as anybody else. As they are the only kind of persons, except clergymen, who make their living largely by the use of persuasive oratory, they naturally do well in the electoral contests, though they are beginning to find a serious rival in the ex-clergymen who are flocking into politics. (A fortunate tradition which has survived from the Middle Ages seems to close the political door against clergymen who are still engaged in the active work of their profession).

I think I see possibilities of a considerable change in all this, as a result of the current tendency of legislators to confer definite and litigable rights upon trade unions. This may bring

back lawyers, or at least a certain number of them, as major figures in conflicts which really excite public feeling. There is of course the possibility that the labor people will insist on having this sort of work done for them by plumbers, coal-diggers or locomotive engineers as the case may be, rather than by lawyers; but even if they get permission to do so I think they will find the results so unsatisfactory that they will speedily return to the employment of properly qualified persons.

On the other hand the importance of the lawyer in the criminal courts, which are largely the basis of his older popularity in literature, is almost certain to diminish. He is already being elbowed out of his front position by the detective, and he will shortly have to deal with the competition of the psychiatrist. The question to be determined will not be whether John Smith murdered Henry Jones within the meaning of the act, which is obviously something that a lawyer can talk about, but whether John Smith, as a person subjected to such-and-such prenatal influences, such-and-such in fantile experiences, and having begun his existence with this or that assortment of genes, chromosomes, and other hereditary equipment, does or does not need to be subjected to certain remedial or protective processes—which is obviously something entirely unconnected with the law. Whether it is better for John Smith to be in the tender hands of the psychiatrists than of the criminal lawyers is a question I shall not attempt to answer. All I want to say is that the psychiatrists are coming ahead very fast, whether we like it or not.

In the days when lawyers really amounted to something in literature there was a certain degree of fuss and feathers about their public operation. They wore a special kind of garment, differing from those worn by stock-brokers and wholesale produce merchants. On occasions they went to church in procession. They dined in state, in great halls, with mediaeval ceremonies and almost mediaeval wines. There was something about them to catch the public imagination. There is little left of all this except that they still call one another "my learned friend" and that some of them put the initials "K. C." after their names on their outgoing letters, but their correspondents usually forget to put them on the incoming ones. They are losing glamour. The profession probably needs a face-lifting, by a Hollywood expert. But of course it may be too late. If we are really headed for a more or less totalitarian state, the profession of lawyer will inevitably become considerably less important than that of street sweeper or train despatcher. The totalitarian state must have clean streets (and fairly straight ones, so that the troops can shoot down them), and its trains must start on time. But it does not have to bother about justice.

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