

LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

The grant of exclusive privileges to a licensed profession necessarily involves the exclusion of the unlicensed from their exercise—and, with this, controversy as to the scope of the privileges granted. That problems of this nature should be a major concern of the legal profession today can be best explained, perhaps, by reference to the dynamic, constantly changing nature of legal business and, of course, this, in turn, is but a reflection of the historical and economic development of the institutions which the law serves. Matters which formerly constituted an important part of the lawyer's work have in some instances simply ceased to exist or, at least, to present legal problems. On the other hand, with the increasing complication in industrial and governmental functioning, new types of endeavor have been opened up, and, frequently, have been claimed by lawyers as their own. Still other lines of activity, formerly engaged in almost exclusively by lawyers, have been turned into profitable, specialized businesses by laymen. Under such circumstances, it was inevitable that controversy should develop between the legal profession and the lay groups which had "encroached" or which were seeking a foothold in the same new fields which the lawyers considered as falling within "the practice of law."

The problem does not permit of easy solution. Those criteria which would be practically automatic in their application would not give satisfaction to any group. For instance, if "practice of law" is to be considered as synonymous with what lawyers do (and have done) then its scope is so broad that the multitude of "unauthorized practitioners" would be overwhelming. On the other hand, if the exclusive privileges of the lawyer are to be defined in terms of exclusiveness presently existing, then it would be difficult to find any general type of activity which the unlicensed person does not share with the lawyer to some extent. To the uninformed this whole matter might be regarded as of little concern to anyone except the controversialists, but when it is remembered that complaints are being made by the bar against such diverse groups as accountants, banks and trust companies, abstract and title companies, automobile clubs, insurance and other claim adjusters, collection agencies, notaries public, justices of the peace, real estate men, and undertakers, then it is clear that a large percentage of the public will be affected either immediately or potentially by the way in which these controversies are settled.

It was not until about twenty-five years ago apparently that lawyers first began to

feel apprehensive over the "unauthorized practice" situation. Then it was corporate practice of the law that was considered to be particularly menacing. A lawyer, writing in the *Yale Law Journal* in 1913 under the title, "The Passing of the Legal Profession,"¹ sets forth the manner in which the corporations were taking away the lawyer's business and concludes, woefully: "The lawyer as such is being devoured by his own Frankenstein." At about the same time the bar associations and other groups became concerned with the matter, and the result was a flurry of activity, concentrated largely in New York City and certain other metropolitan centers.

During the 20's there were occasional manifestations of interest in this subject over widely scattered areas—but it was not until after 1929 that the present widespread movement can be said to have begun. Economic depression brought growing discontent to a head, although doubtless the movement would have started sooner or later anyway. Apparently the American Bar Association did not particularly concern itself with the matter until 1930, when its Committee on Unauthorized Practice of Law was appointed. To a large extent this committee has been the directing force in the resulting campaign against unauthorized practice of law, to which great impetus was given in 1933 by the fact that the subject was made one of the four topics of the National Bar Program of the Association, formulated to bring about a greater coordination in the work of the national, state, and local bodies. There are now more than 400 bar associations which have committees on the subject. Their activity may be judged by the fact that in Brand's *Unauthorized Practice Decisions*, a 1937 compilation of virtually all the cases in this field, only the first 98 pages are devoted to decisions prior to 1930 and the rest of the 838 pages contain cases since that date.

In this symposium an attempt has been made to present some of the more general aspects of the unauthorized practice of law problem in its present stage of development, as well as a more detailed study of certain fields of controversy. Naturally, it was impossible to include similar studies on all points of friction, but the three groups chosen, automobile clubs, collection agencies and real estate brokers, in each instance present not only a controversy now existing, but problems typical, in the main, of those throughout the whole subject. The representative of the bar and of the particular lay group involved were requested to develop the factual bases of their respective contentions, a phase of the controversy which has been somewhat neglected for the legal issues which have arisen. The latter have been considered in separate notes dealing with the court decisions affecting each particular field.

The titles of the other articles are perhaps self-explanatory, but a word of comment as to Professor Llewellyn's may be in order. In a sense this article is introductory to the entire symposium for the author seeks to place the unauthorized practice of law problem in relation to the broader social and economic problems which confront the bar in its effort to adapt its traditional methods to a changed and changing society. Professor Llewellyn's proposals for constructive group action reach well beyond the remedies and procedures which have been availed of thus far.

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¹ Bristol, 32 YALE L. J. 590.