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New Society and An Old Calling

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A NEW SOCIETY AND AN OLD CALLING†

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I

This is a socially minded generation. Quite suddenly great numbers of our people have become filled with a consciousness of widespread unhappiness in the world and with a vague but genuine yearning to cure this distress. The young read sociological books with a somewhat touching earnestness, and use the strange vocabulary they find there to express with restrained and patient scorn their disdain for the established stupidities of collective mankind. Some older men feel the same urge, and finding no other outlet for it, combine by means of luncheon clubs the necessity for eating a mid-day meal with the opportunity for service. The adventure of exploring and subduing a continent has nearly ended; and in its place today is the adventure of finding more satisfactions for everyone. Where our grandparents, firm in the belief that salvation was spiritual, sought to satisfy an urge to serve by religious activity, thousands today have turned to politics with a trusting belief in an all-wise, all-provident father-government, strangely wiser than its component parts. They see hunger and worry and idleness and ruin; and much as their grandfathers could only account for sin by supposing a minor but hostile divinity who delighted to distress mankind, thousands of good people today can account for the existence among us of poverty and distress only by postulating that some powerful and wicked group, inimical to the father-government, has intentionally or heedlessly caused this unhappy state. To be sure, the wicked are not easy to identify; it is simpler to blame whole classes than to discover anti-social individuals. But the blame is there, and with it resentment against any group supposed to be allied with the enemies of society.

This widespread state of mind necessarily affects those studying for membership in the profession of the law and to them there must often come uneasy doubts whether the calling to which they are giving such labor is worthy of a man's life. Certainly the practitioner, busied with innumerable harassing problems of others, occasionally pauses in weariness to ask himself whether his years have been well devoted; and to wonder whether some other work might not have been more satisfying. For as necessary as bread is self-approval; and those whose analytical faculties have been sharpened by study can not help questioning their own place in the movement for more general happiness.

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These doubts are rendered more searching by the peculiar dislike which lawyers as a class seem to attract, especially in times of hardship. The tricky and grasping shyster has always been a favorite subject for novelists; and today many an audience is delighted to hear Carl Sandburg read in his deep voice, "Why does a hearse horse snicker, hauling a lawyer away?" Social workers sometimes wither a well-meant reference to some statutory right with the horrid word "legalistic", bearing its connotation of obsolete obstructionism. Distressed and resentful people are told by political orators that lawyers have expanded the meaning of restrictive clauses in the national and state constitutions until the legislatures find it almost impossible to save the nation in its trouble. When men are hurt they are rarely discerning or just; and they are quick to blame the draftsman of the complex instrument which, signed unread by the joyous buyer of a new car, proves in an evil day to contain unpleasant language preventing him from cancelling his debt by a simple surrender of the car. When the sore and disappointed purchaser finds that his car is gone and that a deficiency judgment foretells a garnishee execution against his wages, he is ready to condemn the whole race of lawyers as allies only of the rich, the bankers, the corporations, and in general of those who oppose the kindly efforts of the father-government. Do they not take money for bringing about justice which ought to be free to all? Do they not mouth big words about impartiality and a fair hearing for both sides when what is needed is vigorous and undoubting action by a vengeful people through their government against the wicked and selfish men who have caused our poverty and suffering?

These questions are not ridiculous. They do reveal profound misunderstandings; but no question asked by thousands of resentful people can be lightly turned off with a shrug. And a calling which is widely distrusted and misunderstood is not by any to be entered into unadvisedly or lightly.

The hesitation of the law-student and the reflective doubt of the practitioner as to the real value to society of his life's work are given point by the current widespread discussion of means of giving the medical profession wider usefulness through health insurance, "panel-systems," and different forms of what is described with varying emotions as socialized medicine. Public health services are receiving increased attention from laymen. The success of Victor Heiser's book, *An American Doctor's Odyssey,* is significant of the admiration of the public for a career which results in the health of thousands who would otherwise have been diseased. A lawyer who reads such an account, whether his work is all before him or whether he has already experienced the realities of practice, may well examine his own calling to see whether it offers similar opportunities for merciful help to multitudes, and for the esteem that such work earns. He sees an army of

young men crowding to be admitted to the Bar, and rightly expects that his struggle for a livelihood will be hard and discouraging. No very good remedy for this is apparent, but if the lawyer could look for popular respect and esteem to compensate for his small earnings, he could be more contented.

If he is really concerned over the public usefulness of his ancient calling, he can take heart at once. The need for his help is acute. Increasing congestion of population necessarily brings increased complexity of government, and multiplies the machinery which is used to control crowded neighbors. Conduct which was harmless in a pioneer or farming community becomes criminal in a tenement or in a subdivision of forty-foot lots. In 1813, the Revised Laws of the State of New York were printed in two small volumes each a little over an inch thick.[1] The New York Penal Law now has about twenty-five hundred sections, enforced by machinery prescribed in the thousand sections of the Code of Criminal Procedure. The sixty-three volumes of McKinney's Consolidated Laws of New York (other than the Penal Law, Constitution, and incidental volumes) would nearly fill the celebrated five foot shelf, and contain an enormous number of statutes; and fifteen hundred-odd sections of the Civil Practice Act, three hundred Rules of Civil Practice and three hundred-odd sections of the Surrogate's Court Act, with a number of minor practice acts, are required to describe some of the procedure requisite to the enforcement of civil rights in the state courts.

Supposing that a citizen has mastered these laws, he has still an inadequate knowledge of the rules of the society in which he lives. His city or other municipality presumably has in force a number of ordinances. Various administrative boards and state departments have wide powers to make rules controlling his behavior. For example, under the New York Public Health Law, a body known as the Public Health Council may promulgate a Sanitary Code, dealing with "any matters affecting the security of life or health or the preservation and improvement of Public health in the State of New York".[2] The New York Labor Law gives to the State Industrial Board the power to make rules which constitute the "State Standard Building Code", superseding all local ordinances and special statutes concerning the construction of places of public assembly.[3] The United States Supreme Court has held that a man may become a criminal by breaking a rule of a state administrative board fixing a minimum retail price for milk.[4] There might easily be added numerous other instances of such administrative rules which

[1] VAN NESS AND WOODWORTH, REVISED LAWS OF NEW YORK (1813).
[2] NEW YORK PUBLIC HEALTH LAW § 2b.
[3] NEW YORK LABOR LAW § 471.
[4] People v. Nebbia, 291 U. S. 502, 54 Sup. Ct. 505, 78 L. ed. 940, 89 A. L. R. 1469 (1934).

for the layman seem to have all the attributes of statutes, but are much less accessible. Nor would a thorough knowledge of all these things make clear to the puzzled citizen all the rules he lives under, for in addition to state regulation, he is controlled by a steadily increasing body of federal statutes, and a mass of rules prescribed by federal administrative bodies like the Federal Trade Commission and the National Labor Relations Board.

It is futile to deplore this amount of regulation, and to yearn for a simpler day when two volumes could contain the Revised Laws and a general store could supply all the needs of a township. The network of laws and ordinances and regulations that surrounds a civilized people can no more be eliminated than the tangle of pipes, tubes, cables, and beams that underlies a street in lower New York City. They are both the result of an effort to make life simpler for the individual by means of infinitely complex devices. But the person who becomes entangled with big or little laws is in serious need of help. The man who is arrested for a violation of some departmental code; the reader of an enthusiastic advertisement who has put his name to a contract in fine print, and now finds his job threatened by an execution against wages; the husband sued by his termagant wife or the wife deserted by her irresponsible husband; the owner of the uninsured car who on the day after an accident receives a suspiciously prompt summons and complaint; the excited man and wife, building themselves a house, who differ with their contractor about the price of "extra" work and find a mechanic's lien barring their progress; all these distressed people feel that society owes them some explanation of their predicament, and guidance in extricating themselves. For most this is their one contact with the system of administering justice; on most, a life-long impression of the fairness or unfairness of the government will be made by this one case. For most of them, the determination by the court of first instance will be final, as appeals are few and costly. If these litigants are turned away embittered, with the belief that society has armed only their adversaries, they will listen with agreement to suggestions that society as a whole needs a reorganization. Socially speaking, the administration of justice in magistrates courts may be far more important than in appellate tribunals, and the social importance of having able and energetic counsel available for the public in these courts is acute.

A consciousness of some such state of affairs has sent many of the best equipped young graduates of the law-schools into various departments of state and national governments where they have worked (sometimes despite their own deepening bewilderment and loss of courage) to bring about wholesale justice to multitudes. This is right and good, and these men are deserving of honor. But I suggest that the time has come to put more

emphasis on the need for service by our best lawyers, not to groups, but to distressed individuals. The pyramidal administration of justice, with an awe-inspiring appellate court at the apex, nevertheless exists for the great mass of individuals at the base; and no matter what form of tribunal is considered, if it is administering a complex regulatory system, the individual members of the public can not make effective use of it without skilled assistance. That assistance may take many forms: tax agents, "adjusters", trust officers, conscientious magistrates, social workers, or trained advocates and counsellors; but unless the public finds that fair treatment from the government is readily available it is resentful and suspicious. And while lawyerless courts are a worthy ideal, they are not likely to be achieved unless the regulatory system which they administer is so simple that the average citizen can and does easily understand it, or unless we develop a system of justice without law, administered in a sort of patriarchal innocence. As neither of these contingencies seems very probable, the administration of justice depends largely on the efforts of lawyers helping individuals who are in trouble of some kind. Its efficiency can not completely be measured in judicial statistics, for it depends on the feeling in the minds of many thousands of people that justice is easily available to them.

In one way the state and nation need lawyers as never before; that is in the guardianship of freedom, of liberty. Liberty is one of those words used so often on platforms and in somewhat inflated literature that their meaning tends to be lost; it sometimes carries only a vague cannotation of patriotic approval flavored with a bit of bombast. This is a pity; for what Dean Pound has happily called "areas of non-restraint of men's natural faculties of action"[5] have made life pleasant in England and in America for a long time. As the land grows more crowded, and as natural resources need more and more to be conserved rather than gaily spent, we shall see the necessity for government regulation of daily affairs increase. To be tolerable, a society so controlled must leave areas of freedom for the individual. When the Fourth of July orator pompously assures us that we must guard our hero-won freedom from a governmental tyranny, there is danger that we may neglect the substance of his discourse while we condescendingly smile at his manner. For the sonorous patriot may be right; and if we are driven by increased population and diminished resources to a society of minute regulation, we shall inevitably put in the hands of innumerable officials the power to make our lives miserable for motives of partisan advantage or personal spite.

One of the reasons why the public is so often out of patience with lawyers

[5]Roscoe Pound, *The Constitution; its Development, Adaptability and Future* (1937) 23 A. B. A. J. 739.

is their ability to consider both sides of a question. Great groups of laymen find this balancing of interests a waste of time, if not a form of disloyalty. At present there is much opinion in favor of changing certain provisions of the state and national constitutions which afford to those accused of crime protections deemed outworn. The grand and petit juries, and the privilege against self-incrimination, so we are told, serve only to shield the guilty, or at least to impede their swift conviction; and the lawyer who suggests delay, lest in hastily changing these institutions we part with something valuable, is apt to be told that he is only trying to retain a vested interest in pettifogging defences.

By a curious inversion, sincere advocates of humanitarian social reforms are often least patient with lawyers who urge caution in abolition of the traditional restraints in criminal procedure. Our people in their haste to get rid of gangsters, racketeers, and similar criminals forget that there have been times in our history when men were frequently charged with political crimes, and that there are places in the world today where criticism of governmental policies is apt to result in prosecution. The man who today writes to the newspapers in haste to decry trials of criminals by juries, may himself in the near future need a jury to free him on a charge of criticizing some official or suggesting a change in the form of government.

The jurors who acquitted Thomas Hardy and Horne Tooke in the Old Bailey in 1794 on a charge of high treason for urging parliamentary electoral reforms may some day have their modern counterparts.[6] The panic which swept over many thoughtful Englishmen and Americans when they read of the French Terror seems very long ago; but no one who lived through the early 1920's and recollects the alarm that filled this country at the thought of radical agitators in our midst can doubt that the trials of Hardy and Tooke might be repeated here today.

The danger of political prosecution increases with the inevitable increase in governmental regulation, and there will surely be instances where the power of the petty official over increasing areas of human affairs may render life dangerous and intolerable.

Against such oppression and the abolition of the safeguards that prevent it the lawyer with some knowledge of political history and a tempered feeling for the value of tradition can wage a good fight. The citizen who finds that mythical castle composed of his private life invaded by small tyrants must have some help to protect himself. Alone, he is filled with a sense of helplessness in the face of officials armed with substantive and procedural rules with which he can not cope.

There is, then, a need in society for the comfort and aid of the lawyer,

[6] HORACE TWISS, LIFE OF LORD ELDON (1846) Vol. I, p. 241.

fairly comparable to the comfort brought by the physician. To the individual in trouble, and to the multitudes in need of guidance the Bar is a necessity. A well body is but little satisfaction to a man who is harassed by conflicts with a governmental agency whose organization and functions are incomprehensible to him. The patient faces of people in the waiting-room of a legal aid bureau are strikingly like the faces of the people waiting their turns at a hospital clinic. The need is there; and the new society of today is increasing it. The young man about to take up the profession of the law, and the older practitioner who pauses in his work to appraise the significance of his calling, may feel heartened at the sight of a worthy task; and may ask himself what he can contribute to its accomplishment.

II

One conspicuous undertaking he can promote is the fostering of a consciousness in himself and his fellows of the social nature of his work. Because the organization of courts is directed primarily toward bringing justice to individuals, the lawyers have always found it easier to think of their work in terms of specific instances, rather than of statistical results. This is quite natural for, to the individual in trouble, the progress of society in general is of little moment compared to his own predicament. A man under indictment for grand larceny may have an interest in the general administration of justice, but in his mind it is distinctly subordinate to his interest in getting out of jail. The professional function of the defendant's lawyer calls for considerable art; for he must see that the accused is acquitted if this is decently possible, and at the same time he ought to keep in mind his duty to the administration of justice in general, and relate his specific case to it. In both respects he must be quite selfless; and while very few practitioners fail to recognize that in the practice of advocacy, the interest of the client is always to be preferred to that of the advocate, quite a number forget that the general public is the collective client of the Bar, and that where there is a prospect of the improvement of judicial procedure the Bar should be the first to welcome the change though it be at the expense of its members. Many a lawyer who prides himself on bringing about settlements, when litigation might bring him higher fees, will protest at the passage of legislation directed toward cheapening justice because he considers first the effect of the bill on the financial prosperity of his profession.

To give only one example, there is now much discussed a proposal by appropriate amendment to the New York State Constitution to empower the legislature to substitute some arrangement similar to that in the Workmen's Compensation Act, to provide payment for damage caused by highway accidents, without regard to the fault of the participants. Now this may be

a bad thing or a good thing. It may in effect tax the careful and responsible driver and reward the incompetent and heedless, and in the end prove to be more annoyance than it is worth. On the other hand, it may possibly relieve the courts of a mass of business which often turns on very insubstantial elements of fault, and which carries with it attendant evils which somewhat discredit the whole process of justice. The Bar, whose members see the problem intimately from day to day, is in the best position of any group in the community to advise the public of the social advantages and disadvantages of the plan; and it is performing this function quite conscientiously in a great number of cases.[7] The trouble is, however, that to a discussion of the public interest there is apt to be added the quite accurate comment that many lawyers subsist meagerly from year to year on their share in the proceeds of an occasional automobile negligence case and others make a somewhat better living by the defense of such cases for insurance companies; and that if this type of business disappears as master and servant cases did when the Workmen's Compensation Act was passed, many of our brethren of the Bar will have to turn to some other occupation. The fact is that the general public quite properly feels that if its interests are best served by some change in governmental arrangements, the incidental embarrassment or elimination of some or all the lawyers as a result of that change is quite unimportant. To revert for a moment to the analogy of medicine, one can scarcely imagine a speaker at a meeting of a county medical society discussing the possible elimination of some disease by public health measures, and then qualifying his observations by the statement that many practitioners make a living out of treating the disease in question; and that unless the physicians are vigilant to prevent the adoption of such measures, this source of business will be taken from them. Yet speakers at bar association meetings are frequently heard to make similar observations about the effect of proposed reforms.

Max Radin, in *The Law and Mr. Smith*,[8] observes that certain of the worst conditions in modern society will be improved if laymen in general have more confidence in the courts. This increase in confidence will be hastened by a feeling that lawyers are dissociating questions of personal gain or loss from their approval or condemnation of changes in the arbitral process. If the public comes to feel that the bar is filled with a truly disinterested zeal for the general good, and is consciously making an effort to make justice quicker, cheaper, and more certain for everyone, the lawyer will begin to enjoy a new public trust. To a large extent this sentiment can be fostered by

[7]See the Report of the Special Committee of the Association of the Bar of the City of New York on the State Constitutional Convention, April 16, 1938.
[8]New York: Bobbs Merrill Co. 1938. pp. 333.

acquainting people with the work already being done by bar associations and other groups of lawyers in studying problems in the field of justice. The Western New York Bar Federation recently made a thorough study of the extent to which jury disagreements make the jury system inefficient; but little public circulation was given to the report despite a great amount of public discussion of the general question of the value of juries. Public education on matters of justice is part of our function; but no amount of propaganda can take the place of a conscious effort by the Bar to better the administration of justice. The first step in achieving general esteem is to deserve it.

III

Another worthy task for the socially conscious lawyer is the devising of means to make available to large groups of the public the benefits of legal skill and understanding. The legal aid clinics and the public defenders have done a great deal for the groups entirely unable to pay for help; and the inconspicuous generosity of hundreds of practicing lawyers has done much for the class of people who have some means, who are ineligible for charity and are unwilling to accept it, but who must obtain counsel cheaply or not at all. Despite such efforts there are still in every community great numbers of people in need of legal help who are unable to pay much or anything for it. They have heard from their wise neighbors or have read in newspapers of the shifty character and greedy habits of lawyers; and they cannily go with their problems to a friendly bank clerk, real estate agent, or district political leader; or else, if they come to a lawyer, sit warily on the edge of a chair, eyeing him suspiciously for signs of extortion or double-dealing, and telling their stories reluctantly lest somehow they be over-reached.

The lawyer who is looking for a chance to satisfy a desire to help people can find ample scope for his work for these two classes; the dependent poor, and the bewildered people of small means. For the first, the organized legal aid movement has made a fine beginning. It has been estimated that in large cities, there may be expected one legal aid client per hundred of population annually.[9] While some of the largest legal aid societies are sponsored by the Bars of the cities where they are active, many, perhaps most of them, are controlled by boards of directors a majority of whom are laymen. They maintain staffs of salaried attorneys with the necessary clerical assistants; and for a nominal fee or none at all advice is given or litigation is conducted for people who establish their inability to pay for services. Unfortunately, with the Bar seriously overcrowded and with competition for any business

[9]BRADWAY, THE BAR AND PUBLIC RELATIONS p. 89.

keen to an unwholesome extent, occasionally there is heard in our bar associations criticism of legal aid societies as agencies which take the bread out of the mouth of the struggling lawyer. This attitude undoubtedly indicates only misunderstanding; no one could see the procession of shabby and disillusioned wives, workmen with claims for a few dollars wages, and respondents in proceedings supplementary to execution, which passes through the office of a legal aid society, without realizing that no lawyer is deprived of anything but a burden when the society takes over such cases.

Perhaps a more proper observation would be that as they are now organized, legal aid societies do not give to the young practicing lawyer an opportunity to engage directly in their work and so satisfy his desire to perform some professional service for the community comparable to that which the physician can give in a hospital clinic. In the last analysis, the responsibility for this comes back to the organized bar. Its function, the furnishing of legal service to the community, ought to include furnishing legal service to the poor; and where legal aid societies have been organized by laymen, they have done a work which the Bar should long ago have adopted as its own. To be sure there are very few lawyers who will refuse advice or help to people without means to pay, and such charitable cases must amount to a large proportion of the total legal service performed annually. But this is unorganized and casual; and because it is confidential the general public fails to give credit for it to the Bar. I recollect an amusing incident a year or so ago when a young and busy lawyer of my acquaintance went to a great deal of trouble to try to help a wife and her young child who had been deserted by the husband. Pending an effort to find the missing man, as the wife was literally penniless the attorney took her to the office of the local welfare official for relief. Here the unhappy woman was somewhat tartly told that if she could afford high priced lawyers she could be in no very acute need of relief! If she had come from a legal aid bureau, this stigma would have been missing.

Confidence in lawyers as a group is essential to the well-being of the community; and some means must be devised to make people understand that the Bar recognizes its obligation to the poor litigant. One excellent means would be for legal aid to become a branch of the work of local bar associations. This is already done in some places where contributions of money by members of the Bar support the legal aid society and pay the salaries of the staff attorneys. But a further step would be desirable. A young man joining a local bar association might well be told that for a year or two he would be expected to hold occasional "office hours" at the legal aid office, perhaps in the evening, interviewing clients and making himself responsible, under the guidance of a staff attorney, for one or two pieces of litigation. Older mem-

bers of the Bar Association could easily be brought to see the desirability of granting to young lawyers entering their employ the small amount of time necessary to carry out this program. It would result in better understanding and sympathy between the Bar and the legal aid societies, would give to the lawyer at the beginning of his professional life a contact with the poor and an appreciation of the obligation of organized lawyers toward them. Better yet, it would give to the public a much more wholesome attitude toward the law and lawyers; for the evidence would be manifest that the Bar did take thought for the needy litigant.

Somewhat like the legal aid question is the problem of the public defender. To spend Monday morning in a police court in a large city is an educational experience. As the calendar is called, police officers call to the bar a sad procession of defendants: drunks with eyes purple and closed from blows with a nightstick; pickpockets arrested on Saturday evening, unshaven and dirty after two nights in jail; men resentful and sullen charged with being disorderly persons in that they failed to provide for their wives; sometimes a flustered lady who has parked her car in the wrong place; occasionally a hard-faced habitual criminal picked up on a usefully general charge of vagrancy.

Most of these people can take care of themselves. The drunk will be turned loose; the pickpockets and the habitual criminal will probably be comforted by some jaunty young man who steps to the bar from the attorneys' bench, and pleads "not guilty" for the defendant with the confidence of one who goes through an accustomed routine in a familiar place. The flustered lady will pay her two-dollar fine and go away indignant. Out of the whole list, one or two, perhaps the husband arrested for non-support, may feel unwilling to concede guilt and may not know where to turn for help. In a good many cases the magistrate can aid such a defendant in telling his story, and deal with him justly without his having counsel. In some places there has recently been a movement to have an attorney, possibly connected with the legal aid society, in attendance at magistrates' courts to defend the accused who is without funds. This too seems to me to be an activity which the organized Bar might take over. It is doubtful, however, whether the use of a panel of young volunteer attorneys would here be very effective. Dealing with the mixture of defendants usually found in a magistrate's court calls for a person more hard-bitten than the usual new-graduated lawyer.

The civil litigant who can afford to pay something for a lawyer's help, though not as much as the lawyer might normally expect to receive, is in a hard situation. In some cities the legal aid society has maintained a list, compiled in collaboration with the local Bar Association, of younger lawyers who are willing to do work for such people at a price which they can pay, to whom the legal aid society refers such persons when they apply there.

But the great majority of these litigants must depend for their treatment on the lawyer to whom application is made in the first place. Theirs are often causes of action which no one can prosecute for profit: petty commercial frauds, small debts, little negligence cases, and the like. Yet if such people are told that justice is inaccessible to them because their claims are worth less then the cost of prosecuting them, they will go away disgusted and resentful at a governmental structure so clumsy. When the lawyer consciously resolves to devote a portion of his time to such matters, as his contribution to the contentment of the people with their government, he is determining to perform a high duty to society and to bring credit to his profession.

IV

One more duty the lawyer has, that is the study of his calling. If he is to survive and enjoy public regard, he needs a thorough and current knowledge of the law as it is and as people wish it might be, a familiarity with the state of the art of government, and an acquaintance with modern thought on social relations interpreted by history. One frequently hears the unmerited criticism of lawyers as legislators that they are restricted in their ideas to a search for precedents; and that originality of thought and breadth of view can not be sought at the Bar. While many examples demonstrate the inaccuracy of this generalization, there is probably some truth at the foundation of it. Too many of us do limit scholarship to the search of the statutes or cases having a practical bearing on some immediate problem, and feel a little guilty at using office hours to do collateral reading. Yet the lack of such study keeps our profession from considering itself truly learned.

That increased trust in the courts and the lawyers which is so necessary to the maintenance of many of our traditions can only be achieved by the prestige of learning. The mythical "man in the street" is accustomed to taking a cynical view of success; he supposes that position is purchasable by money or by influence, and is skeptical of greatness. But in the presence of learning he is subdued, for he knows that the scholar could not buy his scholarship; that it is available to all who have the capacity and the industry.

This thought is consoling in a time when the number of admissions to the Bar has so increased that, for most, earnings must be small. It has been said that for a young lawyer, a period of a few years without too many retainers is desirable as it gives him a chance to perfect the studies he began in the university. Perhaps poverty is a doubtful blessing; but as the Bar inevitably faces moderate living, its members can console themselves with the thought that eminence in learning and the consequent respect of colleagues are accessible to all who have the necessary intellect and energy to pursue them.

One reason for the failure of many lawyers to continue the study of their

own profession, after school is over, is probably the liking of most of us for taking "courses", and our distrust of independent scholarship. The curricular passion is a national characteristic. Magazines are full of advertisements of courses of instruction offered by correspondence schools, and thousands of people pay well for such tuition although the subject matter of it must often be freely available to the seeker at the public library. Some bar associations such as the Association of the Bar of the City of New York have done much to provide courses of lectures for their members, but this activity is still exceptional. One has a feeling that the proposal of ten lectures during the winter season would be met in many local associations with the objection that such cultural activities have relatively little place in the life of a practical man of affairs. Few practitioners can absent themselves from their clients long enough to attend summer courses at law schools. Perhaps some law school will undertake the guidance of graduates by a system of correspondence courses like those Rutgers is conducting with such noteworthy success for trust officers. But probably the average lawyer of today, if he wishes to keep his interest in scholarship, must do it as Kent did, by devoting a substantial part of his leisure to a course of study devised by himself.

The law could gain much from the practitioner-scholar. The decline of the custom of choosing practicing lawyers as teachers in law schools has undoubtedly been advantageous in many ways; but there was value in the experience of the man who had under his own eyes the daily operation of government on its citizens. The success of government depends so much on the reaction it produces in the governed that only a student who sees that reaction day by day can judge of the efficiency of the mechanism. There is need for the scholar-teacher, the scholar-judge, and the scholar-practitioner; and a law reform approved by all three would be apt to succeed. Possibly it is not entirely Utopian to suggest that the heads of large law firms might take the time to encourage their young men to study the history and the art of their calling for the good of us all.

V

The lawyer in the United States has played several successive roles. He has come as a young pioneer to new frontier settlements, with a ready tongue, and with Blackstone in his saddlebags for his only professional equipment. Politics, a district attorneyship, command of a regiment of volunteers in some war, a place on the bench, and finally a seat in the Senate; these or similar steps became almost conventional for the young men who went west and grew up with the country. When the West, like the young men themselves, finished its rapid growth, a new generation of eager lawyers made a new pattern of success. This time it was partnership with incredibly success-

ful industry. The graduate of a law school obtained a clerkship for a firm of lawyers with business clients and found himself particularly useful to some growing enterprize. He became a director, then general counsel to the industry whose problems he had mastered and senior partner in his multiple law firm. Perhaps he finally abandoned practice and, as president of the corporation or chairman of the board, reflected with deserved satisfaction on a well rounded life.

Today the young man who comes to the bar finds almost no place where the first of these standard careers is possible, and few places where the second is very probable. It may be that our industries will from now on be more stabilized and slower in growth. Certainly an increasing tendency is appearing for large business organizations to maintain their own salaried legal staffs just as they maintain their own engineering departments. If this tendency should continue, it might mean an eventual decline in the fortunes of the large departmentalized law firms of our cities which have thus far been necessary aids to great business organizations. And these speculations lead to guesses as to the future of our ancient calling, the practice of the law as an independent profession, in the new society of tomorrow.

Perhaps the most conspicuous feature of that society will be an increasing self-consciousness in the great multitudes of average people, and an increasing impatience with great accumulations of wealth even when these are deserved by reason of great talents and ability. In the stresses of that new society the practitioner of the law may find new usefulness and dignity. Possibly these changes may make our lawyer what his brother is today in some European nations, an individual consultant and advocate, generally having his chambers and library in his dwelling, with a much smaller amount of office machinery than we now think necessary. Perhaps the time may come when he may hold a position in the community like that of the clergyman in colonial New England society. Not rich, but respected for learning, uprightness, independence, and broad sympathy, perhaps he may be sought after as a leader of opinion because he will know the operations of a complex society and be able to consider it dispassionately. Perhaps the golden years are still ahead.