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## “THE INFLUENCE OF THE BAR IN THE ADVANCE OF CIVILIZATION”

SAMUEL RUBIN<sup>1</sup>

In all the outstanding revolutions which have destroyed despotism and arbitrary power lawyers have been in the forefront of leadership. History confirms the statement that wherever people have rebelled against tyranny and arbitrary power, the lawyer has stood out as a champion of the rights of the oppressed and downtrodden. In the United States no other profession exercises an influence in the affairs of the American people equal to that exercised by the members of the Bar. This is not only true in the nation as a whole, but is equally true of the individual states.

The government of the United States is, and always has been, a lawyers' government. Our government is composed of three branches, the executive, the legislative, and the judicial. The judicial is, of course, given over exclusively to lawyers. All our presidents, with the exception of five or six, had at some period of their lives been either practicing lawyers, or members of the bar. Those who were not lawyers, with the exception of Harding, were for the most part, swept into office as a result of the glories of war. Of the fifty Secretaries of State, all but two had been lawyers. About four-fifths of our cabinet officers, and an overwhelming majority of both houses of Congress have always been lawyers. The State-governments are run by lawyers in about the same proportion as the Federal government. Lawyers draw every statute and construe same. They administer every rule of law made by the judges, who previously had been practicing lawyers. Under the circumstances who can doubt their great influence and obligations. It has been said, and it is undoubtedly true, that this is a lawyers' country, for without the lawyers at the helm this country could not exist.

It was a lawyer, Gambetta, who proclaimed the present French Republic. The English constitution, Bill of Rights, Petition of Rights and Habeas Corpus Acts must, of course, necessarily have been drawn by lawyers. It was a lawyer, Richard Henry Lee, who introduced into the Continental Congress the famous resolutions, "That the United States are, and of right ought to be, free and independent

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states," and it was Thomas Jefferson, another lawyer, who as chairman of the committee drew, the "Declaration of Independence." Alexander Hamilton gave this country a financial system that created admiration everywhere, both here and abroad, while at the same time he was so poor he scarcely had a place to lay his head. Apropos of this, the story is told that Tallyrand, the great French statesman, was walking on the streets of New York one night, and chanced to glance up at a building. He saw Hamilton's shadow on the office curtain, indicating that the lawyer was busy at work. Tallyrand the next day remarked, "Last night I saw one of the wonders of the world, a man laboring at midnight for the support of his family, who had the fortune of a nation."

Where in history can we find a more pronounced patriot than John Jay, the first Chief Justice of the United States Supreme Court, who framed and negotiated the first treaty in which the principles of the settlement by arbitration of disputes between nations was first recognized. It was a lawyer, Abraham Lincoln, who wrote and made effective the Emancipation Proclamation. Of the fifty-six signers of the Declaration of Independence twenty-five were lawyers. Of the fifty-five members composing the Constitutional Convention thirty-four were lawyers. Jefferson, Madison, Adams, Randolph, Webster, Clay, Calhoun, Thomas H. Benton, Seward, Clinton, Summers and James G. Blaine were all lawyers. John Marshall and Joseph Story were lawyers.

Almost all the great leaders in the early days of American history were lawyers. Among the outstanding figures were Samuel Adams, who was by some called "The John the Baptist of the American Revolution." Fiske speaks of him as "being second only to Washington." For more than twenty years before the revolution, and over fifty years in its entirety, he preached the gospel of freedom without pecuniary reward. James Otis, of Massachusetts, threw all the energies of his great mind and soul into the struggle for independence. "Otis" said John Adams, "was a flame of fire." From Virginia came another lawyer—Patrick Henry—with "give me liberty or give me death."

Nearly every effort of social and religious liberty which has taken place has been consummated through the assistance and leadership of lawyers, and to the legal profession the world and the race owe more for the establishment of human rights than to all other classes combined. Lawyers have always been on the side of the great masses

of the people whenever arbitrary power attempted to deprive them of their inalienable rights of life, liberty and happiness.

Speaking for England, Mr. Gladstone, when Chancellor of the Exchequer, is quoted as saying: "I have always felt that the Bar was inseparable from our national life, and the security of our national institutions. But never so long as I looked at England alone, did I understand the full extent of its value. Some years ago, it was my lot to be a witness of cruel oppression in a country in the south of Europe. There the executive power did not merely break the law, but deliberately supplanted it and set it aside, and established in its stead a system of pure arbitrary will. To my astonishment I found that the audacity of the tyranny which had put down chambers and municipalities, and which had extinguished the press, had not been able to do one thing—to silence the bar. I found in the courts of justice, under the bayonets of soldiers—for they bristled with bayonets—in the teeth of power, in contempt of corruption, and in defiance of violence and arbitrary rule, lawyers rising in their places and defending the cause of the accused with the freedom and fearlessness which could not have been surpassed in free England."

This is a glowing tribute, and coming from Gladstone, the legal profession need, indeed, be highly honored.

Our constitution—our right of trial by jury—the petition of rights—the bill of rights—the Habeas Corpus, and all the great safeguards of human liberty, were gained by the constant efforts of the legal profession after centuries of trying. If it were not for the lawyers no person today accused of crime could testify in his own behalf, for the reason that the clergy had taught, and had kept the rule in force until a comparatively recent period, that if this were allowed the prisoner must necessarily perjure himself.

In the days of Imperial Rome her first citizens were followed from their homes to the Forum by crowds of admiring clients, where they were as such enthralled by their eloquence as at their homes they had been guided by their advice. Rome showed her appreciation of her lawyers when she declared in her civil law, that armed warriors, whose weapon was the sword, were not the only soldiers of the Empire. Advocates, too, fought for Rome, when they exerted their glorious gift of eloquence in defending the lives and fortunes of their fellow beings, in upholding the cause of the poor and needy, and helping those to secure rights who had suffered wrong.

Cicero, writing in the *De Oratore* concerning the influence of lawyers, said: "For what is more noble than for an old man, who

has held the highest honors and office in the State, to be able justly to say for himself that which the Pythian Apollo says in Ennius—that he is the person from whom, if not natives and kings, yet all his fellow citizens solicit advice . . . uncertain how to act; whom by my aid I send away undoubting, full of counsel, no more with rashness things perplexed to sway. For without doubt the honor of an eminent lawyer is the work of the whole State. Of this fact the gate and vestibule of our friend Quintus Marcius is proof. Even in his very infirm state of health and advanced age, it is daily frequented by a vast crowd of citizens, and by persons of the highest rank and consequence.”

The lawyers of Rome contributed materially in placing Rome in the front ranks of civilization, and the names of her great orators such as Cicero, Cato and Quintilian stand out among the greatest names of their time. Woe to the country whose lawyers fail it. In saying this I am thinking of Mexico in the present, and of Rome in her decline and fall. History warrants the statement, that no class has greater responsibility than the lawyers, and that none excel them in meeting and discharging its obligations.

Lawyers have never been popular with kings. They flourish only in free countries. It is as champions of freemen, and in pleading for the rights of men, and in resisting the lawless sway of despots that they have won their greatest renown. As long ago as 1332 Edward the Third in issuing writs for the return of members of Parliament, ordered that no lawyers be returned. In 1404 Edward the Fourth did the same, and this Parliament was called the “fools Parliament,” for the reason that there were no lawyers in it. Henry needed money very badly and was afraid the lawyers would expose his excessive demands, and hinder his illegal purposes.

James the First demanded of his judges that in any particular case they should not render judgment until they had consulted with him, if he so desired. But Coke had the courage and manliness to refuse James to his face, saying, “When that occasion shall occur, I trust, as a Judge, I shall do what it then becomes me to do.” Peter the Great, when in London, witnessed the power of the courts in restricting the scope of despotism, and the influence of the lawyers in shaping the decisions of courts. He expressed surprise at the large number of lawyers in Westminster Hall, and said that although he had but two lawyers in his entire domains, he intended to hang one of them upon his return home.

Thinking people fear autocracy in government, regardless of whether it is by unprincipled leaders, as for instance the French ruling

classes before the French Revolution, or by the ignorant masses as in Russia after the overthrow of the provisional government. The lawyer in active practice knows how true it is that the individual needs protection against the aggressions of society, equally as much as society needs protection from the transgressions of the individual. When France was being torn asunder as a result of the reckless extravagance and licentiousness of her king and nobility, there arose in France an order known as that of the NOBLESSE DE LA ROBE, whose members were learned and honorable advocates; an order which alone effectively protested against further prostitution of the liberties of their fellow citizens. In the States-General of the French Revolution (May 1789) lawyers played an important part. Carlisle says that, in the Commons, out of 560 members, 374 were lawyers; and Jefferson, in a letter to Madison, written in June of the same year, says there were 344 lawyers out of 554 members. In the first Parliament in October 1719, out of 745 members, Carlisle says, 400 were lawyers.

Although Napoleon was the son of a lawyer he hated lawyers. In his conspiracy to overthrow the French government and make himself master of the people of the country he proposed to his military conspirators that they drive out the lawyers. Of course the man who spilled enough human blood to float a large modern battle-ship did not want lawyers. They were always stepping on his corns; they were a thorn in his side. Despotic rulers always have feared those who have opposed them in their criminal designs. And yet, it was this same Napoleon who considered it the highest honor of his Imperial reign, and it was also his greatest boast, that he had been the author of a code of laws which would always reflect upon his name the highest honor of his reign.

The history and power of England is to a large extent due to her lawyers. Coke, Bacon, Matthew Hale, Lord Mansfield, Pitt, Chat-ham, Canning, Burke, Fox and Gladstone, are but a few of the lawyers who have helped to make England what it is. Asquith and Lloyd George in England and Raymond Poincare in France are lawyers standing out in English and French statesmanship in the present.

#### *Obligation of the lawyer:*

An obligation rests upon every lawyer to uphold the best traditions of the bar. It is his duty to guard with jealous care the rights of the poor, the ignorant and the helpless. Every lawyer stands in a dual relation. The rights of his client must be protected, as well

as the interests of society safeguarded. Where there is a conflict between these the obligation to society comes first. Lawyers should try to improve the law wherever possible, and point out to the people the reasons for occasional miscarriages of justice, placing the blame where it belongs. If this were done the public would understand and appreciate the silent protection which the law affords, and the people would entertain a higher respect for law, and those by whom it is administered. Said Woodrow Wilson to the American Bar Association in 1910. "We are lawyers . . . we are servants of society, officers of the courts of justice. Our duty is a much larger thing than the mere advice of private clients. In every deliberate struggle for law we ought to be the guides, not too critical and unwilling, not too tenacious of the familiar technicalities in which we have been schooled, not too much in love with precedents and the easy maxims which have saved us the trouble of thinking, but ready to give expert and disinterested advice to those who purpose to progress and the readjustment of the frontiers of justice."

#### *Criticism of the lawyer:*

The legal profession has been subjected to the severest criticisms and prejudice from the earliest times to the present. Fanaticism of every kind develops strong hostility to the legal profession. The lawyer predominates in public life. This very fact is one of the reasons for the attacks upon the legal profession by the less fortunate professions. It arouses jealousy, which always accompanies consciousness of inferiority. Said William Allen Butler to the law school of the City of New York some years ago; "The law is the most positive of science, and the most vigorous of human forces. In its practical application to the affairs of men, it is perpetually compelling an unwilling submission to its demand. It makes men give up property which they want to keep; to pay debts which they prefer to owe, and to perform obligations which they seek to break. . . . Those who practice it as a profession are necessarily placed in an attitude of perpetual antagonism to members or classes of the community, to individual or bodies of men. It must, therefore, needs be that offenses come, and the profession as a class has often to assume the defensive against criticism and attack, and to re-assert the principles by which its action is guided and governed."

While deploring the existence of prejudice against the legal profession, ought we not to ascertain whether there is not some foundation for criticism? Is it not true that many people, including lawyers,

believe that the character of the bar is not what it ought to be? Is not public morals generally to blame for this, the morality of the bar being but a reflex of the morals of the community? The law is practically what the Bench and Bar make it. If you want sincere adherents in any profession or vocation you must have enlightened and upright men, not only in the profession, but in the community which the profession serves.

There is a story told of the attempt of the people in a remote country town of New England to organize a church. At the meeting called for that purpose Mr. A's name was proposed, but Mr. B arose and explained why he did not think Mr. A was the right sort of man to organize the church. Mrs. D then suggested a name to which Mrs. C objected. In this manner the entire list became exhausted, every man and woman being ineligible. At this point a level headed old gentlemen arose and said; "Brothers and Sisters"; "If it please the Lord to organize a church in this town we must make it of such as there are." The same principle applies to the legal profession. It is not absolutely immune from members who are unworthy. They exist in every society and organization.

"The science of jurisprudence," said Burke, "is the rule of human intellect, which, with all its defects and errors, is the collected reason of ages; it is one of the first and noblest of human sciences—and it does more to quicken and invigorate the human understanding than all other kinds of human learning put together. Certainly no other class possesses such extensive knowledge of men and affairs, of history, literature, philosophy and government as lawyers." And of the common law Mr. Justice Wendell Holmes has said: "The life of the law has not been logic; it has been experience; the necessities of the time, the prevalent moral and political theories, intentions of public policy . . . even the prejudices which judges share with their followmen . . . it embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."

#### *Necessity for lawyers:*

Neither civilization nor public order can exist without lawyers, and their assistance is required by the greatest as well as by the lowliest, in those matters which concern life, liberty and property.

Lawyers are sworn officers of the court, and the attempt to administer justice without them would lead to chaos, as has been

the case in Russia and Mexico. The legal profession exists to help people secure their legal rights, not to aid them in committing legal wrongs. Where the strong rule regardless of law there is no need for lawyers.

"Some of the greatest and most important interests of the world are committed to your care," said Sydney Smith in one of his addresses referring to lawyers. "You are our protectors against the encroachments of power. You are the preservers of freedom, the investigators of artifice, the humblers of pride, the scourgers of oppression. When you are silent, the sword leaps from its scabbard and the nations are given up to the madness of internal strife." And Woodrow Wilson in the address to the American Bar Association heretofore referred to emphasizes the statement that "The country never needed lawyers who are also statesmen more than it needs them now. Needs them in its courts, in its legislatures, in its seats of executive authority. Needs lawyers who can think in terms of society itself."

The legal profession will shine as brilliantly in the future as in the past, even more so, if lawyers by their character and ability show that they deserve the respect of the people and bear in mind that character is more valuable than rubies, and that truth is beyond all price.