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THREE VIEWS OF PRACTICE.

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What ought a lawyer to do for his client? Should he do his utmost to accomplish his client's desires? Should he try to secure for him his exact rights as defined by law? Or ought he to strive to enable him to obtain and to do justice? This article offers some considerations upon these questions. It offers them by way of comment and suggestion, not as final conclusions which require no revision.

Some regard the lawyer as a mere agent. They say his business is to win his client's cases. In their opinion he is concerned with his client's rights and with the opposing party's obligations. With his client's obligations and the opposing party's rights he has nothing to do; these are to be cared for by the other party's lawyer. He must put his own case as forcibly and plausibly as he can. Every point must be made which has any chance of influencing the court, and if he happens to make a bad case appear to be a good one, so much has been legitimately gained. He leaves it for his client to determine what he wants and what he ought to have. The lawyer is not the keeper of his client's conscience, nor in these matters does he need a conscience of his own. Every case may be properly set before the court in its best light. For a client is entitled to all that the law does not prevent him from obtaining and may rightly withhold all that the law does not enable the other party to take away. In criminal practice, if a lawyer represents the State, his only business is held to be to

secure conviction. If retained for the defense, he must do his utmost for the prisoner's acquittal. With the guilt or innocence of the accused he is not concerned and he does not care to know about it. If he advises a plea of not guilty, he only means that he will force the State to attempt to establish guilt by methods recognized by law, and that he will defeat the attempt if possible. To clear the prisoner is what he is retained for, and his duty requires him to succeed if he can. For the general welfare of society, the maintenance of the law, and the interests of justice he takes no thought. These are to be cared for by the court. It is the function of the judge to preserve the balance between the conflicting forces and see that no wrong is done.

A fair criticism upon this view is that it makes the lawyer a mere mercenary who places trained powers at the service of every man who is willing to pay for their use. There is no code of ethics peculiar to the profession, which excuses him for the violation of the ordinary rules of right conduct. In becoming a lawyer one does not cease to be a man, nor does he escape from his obligations to society. If one knowingly does his best to convict the innocent or clear the guilty, he does wrong, and no amount of sophistry can ever make it anything else. Nor can he excuse himself by deliberately bandaging his eyes and trying not to know whether he is dealing with a criminal whose plea ought to be guilty, or an innocent man who ought to be acquitted. Every criminal, it is true, ought to have all his legal rights carefully upheld and every extenuating circumstance urged in his favor, but when that is said, all has been said. He ought not to be aided to escape unpunished if he is known to be rightly accused. The safeguards thrown by the law about the prisoner were intended to guard his rights, not to enable him to do wrong. They are to make it possible for every man to have his case presented on its merits and to have those merits impartially considered, and no lawyer can justify himself in uniting with his client in a deliberate abuse of those privileges. So in civil practice, the lawyer must see to it that his client's rights are maintained and enforced. But it is just as wrong for him to assist his client to evade just obligations as it is for him to try to escape from obligations of his own, and his professional duty never requires him to aid in depriving the other party of his rights.

The second view of the subject is that the lawyer's duty to his client is limited to trying to secure for him his rights as defined by law. The lawyer, we are told, is neither a moralist nor a dreamer. He does not trouble himself with the law as some

think it ought to be. He never expects to have an office in Utopia, but adjusts himself to the practice of his own State. He takes the law as he finds it and helps enforce it in the interests of his client as best he can. The client, he assumes, comes to him to have his legal rights and duties made plain to him, as well as to have his rights upheld in court, and the law, as we have it, is a good measure of those rights and duties. It is a system of rules and principles which embody the best experience of mankind and most of which have stood the tests of time and practical application. The law represents the average good sense and morality of the people. It organizes and upholds society. It furnishes the only protection to life and liberty, and it alone renders property secure. And it is for the interest of the client and of society in general that its precepts should be strictly followed. Precedents must be observed. Statutes must be so construed as to carry out the exact intent which their language expresses, when read in the light of the circumstances attending their enactment. A technical defense is as good as one which looks to the merits, if it is supported by sufficient authority. We need not modify general rules because they bear hard upon particular cases, for the law only aims at a rough average of good results, and general rules, firmly maintained, secure the greatest good to the greatest number.

This may be all very well as far as it goes, but some questions may be asked of the lawyer who stops here. We may inquire what he means by the law anyway, for what has been said does not make his views altogether clear. By the term law, does he understand a definite body of statutes, decisions and text-book authorities? Or does he have in mind something behind all these of which they are only the partial and incomplete expression? If he tells us that he knows of no law except that which has been formulated and printed in books, we may inquire again whether he regards all unrepealed statutes as laws, or whether he makes a distinction between such statutes as are supported and enforced by a strong public sentiment, and those which are appropriately termed dead-letter laws. It is probable that one answering these questions would say that those rules are laws which the government will enforce, or aid in enforcing, and no others, and this, certainly, is a generally accepted test. It is definite and, in a way, practical. But the whole foundation of this idea is force. It denies existence, for legal purposes, to all rights which are not enforceable, and comes very near identifying legal right with might. Allowing for all that may be said in support of this idea,

and of its definiteness and convenience, and admitting the difficulty of maintaining any broader view, still the limitation of legal rights to that class of rights which the government will lend its power to enforce, is not altogether satisfactory. All governments sometimes sanction so-called rights, which do violence to the real spirit of the law as understood by the greater part of the profession. And with an important part of a lawyer's business, the idea of governmental sanction, even as a last resort, has very little to do. Surely professional duty does not require a lawyer to coöperate with a client in avoiding all obligations which the government will permit him to escape, nor in maintaining to the utmost every right which the State will permit to be enforced.

The real character of this second view will appear more clearly if we look at it in the light of changed circumstances. Suppose, for example, that we imagine the lawyer to be practicing in Russia instead of the United States. The government there, both in its own action and in what it permits in others, openly and constantly disregards rights which are held to be vital and fundamental under our common law. Certain safeguards surrounding life, liberty and property, which are valued as much as any under American or English institutions, have there no recognition from the State at all. Under conditions such as these, does the lawyer's relation to his client remain unchanged? Must every right and obligation of the client still be tested by the sanction of the government? By many these questions will be answered affirmatively. Indeed, that is the only way they can be answered by those who hold consistently to the view now under discussion. Any other answer, they may tell us, requires the lawyer to adopt a standard of conduct which is in advance of his time and for which the approval of the State cannot be obtained. They may agree that the higher standard is better and that it is desirable that it should be generally adopted, but say that in general practice, if a lawyer tries to be a reformer, it will be at his client's expense. It will be time enough to conform to better standards when such standards have been generally adopted by society and have been recognized by the legislature or the courts. But even if they seem to be right in their opinion, we may ask them whether they regard the law as existing for its own sake, or only as a means to an end. They must admit that it exists for the sake of something else — and what can that something be but justice?

This brings us to the third view, that the lawyer's duty requires him, not merely to win his cases, nor to obtain for his client his

strict legal rights, but rather, in so far as lies in his power, to enable his client to obtain and to do justice. But what, it will be asked, is meant by justice? Like every term of this kind, the full meaning cannot be stated, but its essentials can at least be suggested. If a judge could have absolutely exhaustive knowledge of every fact and circumstance material to a given case, and could make a decision which, in view of every possible consideration, would be the best in all respects that could be made for all who would in any way or any time be affected by it, the decision, when carried into full effect, would give perfect justice in that case. Perhaps the best definition we can give of justice is, such action as in view of all the facts and circumstances in question, will bring about the best possible results for all persons in any way concerned. Objection may be made to this definition because it makes justice aim at the greatest good of all concerned, whereas, it may be claimed, any judicial decision which is more than a forced compromise, must involve defeat and loss to one party and perhaps to others connected with him. But the idea that perfect justice, under any imaginable circumstances, requires the sacrifice of the actual rights or real welfare of one party to those of another, or of the rights and interests of a minority to those of a majority, is clearly an error. Perfect justice necessarily gives perfect results. The sacrifice of the real welfare of anyone is inconsistent with justice itself. All rights must be sustained by it and it must require the fulfillment of all obligations. It can neither go beyond nor fall short of this. But ideal justice cannot be attained in human affairs. This is, of course, conceded by those who think that in serving his client, the lawyer's duty is to try to secure justice for him. But they believe that it is better to strive to attain the end and object of all law, even if they fall short of it, than to be content with any makeshift substitute. And their reason is that they think their opinion, if acted on, will be justified by results. They see that if the means be mistaken for or allowed to hide the end, the lawyer will probably stick in the bark and lose sight of the substance in dealing with the form.

This view of the subject is not without its critics, and some of their objections are well worth attention. In talking about justice, they say, you acknowledge that perfect justice cannot be had. You will admit further that neither lawyer nor judge can tell exactly what absolute justice calls for in a given case. Now what are you going to put in the place of it? Some idea of what should be done, which is a product of the lawyer's private imagination? In other words, are you going to set aside the generally accepted

standard and measure of rights, which is the law, and substitute for it some standard of your own? Do you propose to look into your own conscience, instead of the revised statutes, to determine what advice to give your client?

Without attempting to answer these questions directly, the person to whom they are addressed may explain himself further in this way. No man should test his client's rights and obligations merely by his own sense of right and wrong, any more than he should altogether disregard his own sense of justice to suit his client's purpose. If the law were an exact science and furnished a complete system of rules which could be applied without serious difficulty and with certain results in every case, perhaps it would be better not to look beyond the written law in determining controversies. But the law never has been and never will be fully embodied in a code, and most cases of any difficulty present questions of law on which no one can confidently predict the decision. Most important battles in the courts, which do not turn on questions of fact, are fought on the frontier of the law, where the ground is unsettled, and where new rules are being formulated and new precedents made. In this uncertain region a clear sense of justice and a strong desire to do justice will aid a lawyer more than anything else in determining how old principles are to be extended and what new rules of law will commend themselves to the court. In a growing civilization and in the natural progress of society, there is a constant moral growth to which the formal law responds. Under the influence of advancing standards, those judges who make the most respected precedents continually introduce wise modifications of ancient rules, so that justice may be more fully done and that the law may adapt itself to the new circumstances of society. The horizon of such judges is continually widening, and broader relations and more extended knowledge of the facts and circumstances in the cases before them make it possible to reach wiser conclusions and to approximate more closely to justice than was done in some cases which have come down as time-honored precedents. To this progressive spirit of the law and to the changing conditions to which the law must be applied, the lawyer must adjust himself if he is to grow with his generation and attain the best results for his work. Few things can more impair his usefulness than confirmed formalism, or, as it might be called, legalism, which misses the real meaning and character of the law and sees the relations of men to property and to each other, only as they are established by printed rules.

It is also said that the lawyer stands in his true relation to the court only when he is seeking simple justice for his client. American judges almost invariably wish to decide their cases rightly; and the lawyer's duty requires him to assist them as much as he can. He does not go into court to try to compel or persuade a reluctant judge to decide in his client's favor, but rather to make clear the facts which constitute the cause of action and to lay before the court the results of special study of the law which applies to his client's case. When this attitude is maintained, coöperation in seeking the right determination of the issues is possible, and the real interests of those clients who desire only what is fair are certain to be advanced. Moreover, if both counsel unite with the court in seeking the best possible decision for all concerned, the result will probably be much more satisfactory to all than if each assumes that the other is trying to obtain more than he is entitled to and ought therefore to be defeated. In approaching a new case, furthermore, the lawyer who is seeking justice will not be unmindful of the law. If he is trying to base his advice concerning a client's future action on a full knowledge of all the facts and circumstances which affect the case, he will remember that the most important fact is that the parties have acted in view of established laws. Their relations to each other were entered in view of laws which had secured to them certain substantive rights, and with the knowledge that other laws would require the performance of certain obligations. The lawyer who seeks justice does not assume that it can not be had under the law. He expects, on the contrary, that in a great majority of cases, the law will furnish the best solution of the questions at issue that can be obtained. The lawyer himself is supposed to be thoroughly versed in the law and to have a sense of justice derived chiefly from long familiarity with its principles and spirit. He knows that the law does not consist in hard and rigid forms to be arbitrarily applied. But that every general rule is subject to numerous exceptions and that usually a case is not to be determined by the hasty application of a single rule, but rather by testing the facts by several rules, all of which have an important bearing on the cause of action.

By far the greater and more important part of the lawyer's services are rendered out of court, and in these there are still stronger reasons why justice alone should be sought for. In the advice which determines the course to be pursued in business, in the negotiations which may clear away impending controversies, and in all the varied kinds of professional service, a disposition to

claim only what is just, will yield the best results for the client.

It goes without saying that the lawyer whose only desire is to carry his point by all means which do not involve evil consequences to himself, will never stand very high in his profession. And if one does not look beyond the strict rules of law in determining rights and obligations, he will never be qualified to deal with questions of real difficulty. But if he becomes thoroughly acquainted with the great principles and the true spirit of the law and is guided by them, his work and that of the man who seeks justice alone, will not differ greatly in their practical results. The men who have had the highest and most permanent success in the profession are the ones who have comprehended best those essential principles which always tend toward justice and who have been most intelligent and faithful in their application. Lawyers will differ about what justice in a given case requires and will often be in doubt about the means and methods which will lead to the best results. But they must agree that the law exists that the right may be upheld and that justice may be done. And in so far as they see that in all human relations, injustice is the one thing to be avoided and justice the one thing to be desired, they will measure their success by the degree of justice which they enable their clients to do and to obtain.