

## LAW AS A BUSINESS.

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There has developed of late an idea which has found expression in the saying, "The law is no longer a learned profession, it has become a business." The distinction intended is not clearly defined in words, but it sufficiently appears that in the general estimate, there has been a marked decline in the standard of conduct which distinguished lawyers of a previous generation. That to the generality of the profession law is no longer a high and honorable calling, to the pursuit of which the devotion of a lifetime is demanded, and for the maintenance of whose noblest standards no sacrifice is too great.

On the contrary the lawyer follows his profession as a means of earning his daily bread, he is prompted by no lofty ideals, stimulated by no particular enthusiasm, and seeks only such pecuniary rewards as will bring to him the luxuries of life before old age has deadened his powers of gratification.

His motives are as sordid and his activities as mercenary as can be found in any other occupation, and the business lawyer is the prevailing type of success.

The law numbers among its followers many pure characters, many profound scholars and philosophical thinkers, but it is undoubtedly true that their influence in upholding the best standards of professional ethics is not extensive.

If it were possible to produce a composite of the legal profession of to-day, portraying the qualities which go to make up the successful type, it is to be feared that the result would not be flattering to professional self-esteem. This is the age of business; practical men of affairs are in demand in all callings; theorists of scholarly tendencies but devoid of business acumen are not wanted.

The law has not been exempt from those influences that have brought about changed conditions in other occupations. The energetic lawyer who is a practical man of business meets

with success, while his learned brother, with vast stores of erudition, but little business skill, experiences poverty and neglect.

The demand is for men of practical accomplishment. Theorists who fall short in this find it difficult to keep themselves from want, while the doer finds no limit to his income save his own rapacity.

The remark attributed to the late Jay Gould, that "brains were the cheapest meat in the market" is true only as to impractical brains. Brains that can devise successful schemes command their own price. There is always a profitable market for the business genius.

Until quite recently opportunities for wealth and independence were accessible to young men of energy, the result of natural conditions incident to a rich and rapidly developing frontier. It was the ideal post of vantage for the ambitious and enterprising man. The opportunities for independent action were practically unlimited. His own career was for each individual to make or mar for himself. The field was open and unoccupied. Youth was under no necessity to accept as a favor that which he found lying ready to his hand. Man on the frontier was valued according to his worth. Family influence was of little avail; even riches, if unearned, were a disadvantage. Successful reliance on his own efforts marked the lawyer of the frontier and made him early a leader of men and the high type of a profession which was alike honorable and profitable.

The frontier here intended does not necessarily signify the verge of civilization, but any field in which new enterprises made individual independence possible to the energetic and self-reliant. Gradually the frontier in this sense has passed beyond the reach of most young men, independence of action is impossible, and the exigencies of life have left them no alternative but to become employees.

With the appropriation of the natural resources of the country and the settlement in the courts of the questions peculiar to the new conditions, has come a narrowing field. The commercial spirit of the age demands lawyers of practical business talent, whose services will be of value to the client in schemes for making money. To call a lawyer a money-maker is highest praise and signifies success; to speak of him as impractical is synonymous with failure.

The hurry of business requires speedy results. Labor-saving methods are demanded, so that busy practitioners can econo-

mize their time. Men who can prepare briefs for busy lawyers advertise their special work and find a market for their wares. Commissions for the codification of the laws produce ready-made systems of jurisprudence that meet the superficial requirements of the times.

The idea, which in a more deliberate age met only with ridicule, has become an established fact, and every business man is his own lawyer in some sense, and brings to the matter in hand a legal knowledge that is sufficient for the time and that is the criterion.

There is no money in abstract learning in the law; high standards of professional honor, personal integrity, strict regard for the amenities of the profession, may excite respect, but in the language of the street, do not pay.

It is a contest of shrewd and alert minds. To outwit opponents at the consultation by specious arguments is the aim. The lawyer who adopts the motto "*Pro clientibus saepe, pro lege semper*" starves. His generous and fraternal sentiment meets with little return. The lawyer of the old school finds that the demands of this practical and mercenary age are not met by stores of learning which he has accumulated.

The standards of conduct in all occupations are necessarily conserved by a limited number of able and high-minded men whose motives are pure. Their lives furnish examples of the best. Their influence is based on the recognition by their contemporaries that their sense of honor is supreme. The esteem in which they are held by the public redounds to the benefit of the whole profession.

Until recently this salutary influence has been sufficient to save the legal profession from becoming a mere adjunct to the rampant commercialism of the times. But with the advent of the business lawyer has come also greed of gain as the prime incentive to professional activity. The law has ceased to hold out honors, public esteem, and the opportunity for refined scholarship, as rewards for honorable activity. The redeeming influence of the good men at the bar has declined. The suave and courteous gentleman of a former generation lingers superfluous; his presence at the bar is tolerated with ill-concealed impatience by his alert and active business contemporary. Quick results are attained more readily by the fervor of youth than by the experience of age. The counsel for which old men are useful is not required by a generation that demands action only. The practice has become in

some respects a brawl for hire, and in a contest in which physical endurance is necessary, mental equipment derived from scholarly pursuits is strangely inadequate.

The spread of popular education has reacted on the influence of the Bar. There was a time when the law and the ministry absorbed the greater number of the graduates of the colleges. Men who were destined for commercial pursuits were considered sufficiently equipped if they received schooling in the common branches. The law was called a learned profession. Its members enjoyed a prestige in the community by reason of their general culture. The uneducated man, accustomed to give weight to a learning of which he has not enjoyed the benefits, attributed to the scholar a wisdom that was frequently wanting. So long as the lawyer was one of the exclusively learned, his influence was powerful, and his scholarship enhanced the esteem in which he was held. With the general diffusion of education the law has ceased to enjoy this monopoly of learning. Educated men have gone into all occupations. The universities number among their graduates business men of great wealth and marvelous capacity.

It is a matter of common knowledge that frequently the lawyer is devoid of learning. Lack of scholarship in no way hampers him in his professional pursuit of large fees and the accumulation of wealth. The too great refinement which is frequently found present with scholarship is a handicap in the practice of a profession where success is of more importance than amenities of method.

In times when ability to accumulate wealth is the sole criterion, the practical money-maker is the object of popular regard. Learning which is accompanied by penury is not respected. If a man is learned let him show it by his capacity to gain riches; a scholarship that is not evidenced by ready cash must be rejected by reason of its own weakness.

Hence erudition is no longer the key to the popular ear. But the successful and wealthy man of business mounts the rostrum and lectures to a receptive and eager audience upon subjects that are outside his province. The possession of money is sufficient proof to the popular mind that the lecturer is possessed of all knowledge and is the oracle they seek. The graces of oratory no longer find a place in forensic discussions. Terseness of expression, and brevity of statement, save time, and time is money. The learned gentleman of the bar, courteous, of

polished manners and polite address, is obsolete. The active attorney, shrewd and unscrupulous, rude in manner, not too learned, content with existing conditions, a devotee of Mammon, whose best is always at the command of money, is the prevailing type.

Here and there some giant of his profession towers grandly. But the learned and refined are hampered by their attainments from successfully engaging in the contests of the forum. A profession in which greed of gain is the moving principle, can no longer be classed as learned. Intensity of purpose is desirable for success, but success measured in dollars presents no high ideals.

Legal principles, mouthed by the vulgar attorney, lose their refined meaning and grow repulsive. High principles of justice upon which depend all right relations among civilized men, appealed to by the business lawyer to sustain his cause lose all semblance of authority and ring false.

Specialization in the law and the devotion of years to a perfection of knowledge in one branch, results in only a partially developed man. It takes too many individuals to make one well-informed lawyer. Excessive competition is given as the reason. It is said that no man can sufficiently perfect himself in more than one specialty to meet the demands on his skill. So he grows wise in one narrow rut and intellectual breadth is sacrificed to special knowledge. Ignorance of all topics outside of his specialty is characteristic of the specialist. The result is a race of pigmies on all sides save one, and that is abnormally developed. The demand is for less classics in the universities; more practical studies to fit the student for his calling in life are sought. He must begin the narrowing process young. It has thus come about that a profession which demands the widest culture and the broadest intellectual base is retrograding into a pursuit in which the elimination of all extraneous knowledge is essential to success.

The mercenary spirit which governs the practice has made the contingent fee a legitimate source of income. The lawyer becomes the litigant himself. The relation of attorney and client, in theory the most confidential of relations, develops antagonisms arising out of conflicting interests. Freedom from personal interest in the subject of the litigation is essential to unbiased judgment. Self-interest is fatal to clear insight. It destroys coolness in the excitement of the trial. The contingent fee arouses in the mind of the attorney undue rancor at

his opponent. He engages in undignified and discourteous altercations. He at times seeks victory by a resort to wager of battle. Unseemly brawls and vituperation between rival attorneys, conducted with acrimony, disgrace the trial and bring the practice into disrepute among the laity and lower the esteem in which the profession is held. Prospective litigants are importuned by attorneys, and their business solicited by drummers for clients. The ethics of the profession are violated. The attorney loses his regard for the integrity of the Court. He seeks to triumph by means that no zeal can justify. He betrays his trust as a sworn officer of the law.

Hence arises distrust between attorney and client, ill-will among lawyers, lack of professional courtesy, hostility towards the Court from adverse rulings, ill-advised criticism of the Bench by the Bar, a lowering of professional standards, a feeling of distrust on the part of the laity and a growing contempt for lawyers as a class, developed by the unseemly scramble for the business of the client.

An increasing tendency is to be noted, to attack the character and methods of counsel conducting the case. Lawyers of high standing and great personal worth are ruthlessly defamed and are frequently forced to defend their good name against scandalous charges. A lawyer of refined instincts naturally shrinks from a contest of personal abuse; he has neither the language nor the inclination to tickle the ears of the rabble with biting and undignified criticism of his opponent. Hence the conduct of causes sinks into the hands of unscrupulous attorneys who hesitate at no atrocity to win.

With the concentration of business in large firms in great cities has come the gradual decline of the country practitioner as an influential factor. The rush and hurry of the city furnish little opportunity for the cultivation of those leisurely amenities that characterized the intercourse among lawyers on the circuit. The *esprit de corps* which has been especially strong in the legal profession is no longer in evidence. The Bar takes little genuine and sincere interest in the good name and high reputation of the profession, except as it may affect business. Lawyers do not meet on terms of pleasant social equality after the contest of the court. The fraternal style of address is richly sarcastic. There is a noticeable lack of mutual esteem. Attacks upon the honor and integrity of attorneys by others in the same profession excite only passing comment and are treated with the same disregard that prevails in other

occupations, being viewed rather in the light of business enterprise than as reprehensible tactics.

The flood of legal publications, selected cases with notes, encyclopædias of law, digests and text-books on every subject compiled with little skill and care by young men who see in authorship the most available advertisement of themselves as specialists, have enabled anyone of legal training to ascertain without difficulty the state of the decisions. This ready reference to decided cases has placed the youngest and oldest members of the profession on a level in the examination of authorities. A clerk can run down the cases and prepare as sound an opinion as the most learned scholar of the profession.

The lawyer does not profess to know what the law is but only where to find it. Hence aids to busy lawyers meet with ready sale. Counsel arguing cases before busy courts are permitted no discussion of principles, but must present a case in point, or as the expression is, on all fours with the case in hand, to secure a hearing. The practitioner who is best able to meet the requirements is distinguished for his success. Thus the most nimble searcher among the digests triumphs over an opponent who relies on logical deduction from principle. Hence the persistent continuance in practice of elderly men is viewed with ill-concealed impatience by the pushing members of a profession in which activity is more in demand than counsel.

The case lawyer is necessarily mechanical in his methods. His brief consists of excerpts from decided cases, selected with little attention to principle and prolonged to such a length by the aid of stenography and typewriting as to lose all conciseness of expression. Similar conditions prevail in the preparation of pleadings. The readiness of amendment has obviated the necessity for any special skill in statement. Books of forms supply all that is needed to make a pleader. The law has been formulated in codes which furnish access to legal principles, and the annotations give a ready reference to decided cases interpreting their provisions.

All that is essential to the business lawyer is an abundance of books, shrewd and alert solicitors for business, and the qualities that go to make success in the market. Clerks do most of the work. Men of large enterprises and great business corporations, have in their employ lawyers who occupy the same position as other employees and are essentially hired men, paid to do the legal work of the employer as the engineer is employed to run the engine or the bookkeeper to keep the books.

The independent lawyer who preserves his individuality must necessarily succumb to such adverse conditions.

The lawyer as a hired man whose best is at the command of his employer, without regard to the demands of justice or the dictates of morality, who sells his services to enable his client to evade the laws, to violate plain enactments, and to maintain false issues before the courts, has undermined the respect for the laws which is the foundation of popular government and brought odium upon his profession.

Hence mobs destroy life and property. The processes of the courts need the arms of private detectives to insure obedience. Criminals are lynched and popular sentiment is crystallized into the belief that unscrupulous attorneys can be found to provide loop-holes for the escape of transgressors if the fee is forthcoming.

Continuance of such methods is necessarily suicidal. The practice of the law under such conditions will cease to hold out great financial rewards. With the decline in the prospects of gain will pass also the mercenary tricksters who have brought the calling into disrepute. Scholarly men of culture and integrity, with lofty ideals, will always be attracted to the law as a learned profession and will counteract the spirit of commercialism.

But so long as the lawyer is too busy or apathetic to give due consideration to the essential ideals of his calling and is willing to measure his activity at the bar by the standards of the counting-house and the pawn-shop, just so long in popular estimate will lawyers rightly or wrongly be looked upon as a class of mercenary sharpers whose best is ever at the command of the longest purse.