

Spring 3-1-1948

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Recommended Citation

Donald R. Richberg, *The Lawyer Of Tomorrow*, 5 Wash. & Lee L. Rev. 1 (1948),
<https://scholarlycommons.law.wlu.edu/wlulr/vol5/iss1/2>

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Washington and Lee Law Review

Volume V

1948

Number 1

THE LAWYER OF TOMORROW

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Each generation has an intimate acquaintance with three worlds, the one in which its parents lived, the one in which it is living, and the one in which its children will live. For the other worlds of yesterday and tomorrow we only know what we are told; we only imagine what may be. Even that tomorrow of our children can be seen only as the probable extension of the road along which we came out of yesterday and seem to be moving today.

So I will begin a discussion of the lawyer who is to serve the coming generation, with a brief review of the lawyer of my father's time. Indeed, it may particularly interest you for me to produce a little sketch that might well be entitled, "Life with Father."

My father's preparation for the law was typically irregular according to modern standards. After a brief stay in Knox College he spent three years at Annapolis and then three years of active service in the Navy. After this he read law for a year in an office and then was admitted to the bar in 1868. During the first ten years of his practice the typewriter and telephone played no part in the operations of a law office. The first crude, but practical, typewriter was produced in 1874; and Bell's first telephone was one of the outstanding "jokes" of the Centennial Exposition in 1876. I think I am also correct in assuming that few lawyers made any regular use of shorthand aid before the "Gay Nineties"—a decade which perhaps received that designation from the invasion of business offices by an enlivening horde of female stenographers and typists.

In going through the old files of my father's practice, some years ago, I was startled to realize that the transformation from the horse-and- buggy era to the age of electricity had occurred entirely within the fifty years of his practice from 1868 to his death in 1918. All the

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earlier documents in his files were written with pen and ink. They were all folded into wrappers and envelopes and filed in inconvenient boxes and pigeon holes.

Frequently I would find telegrams from clients out in the stockyards—which are now regarded as close to the heart—or should I say, the stomach—of Chicago. The client would telegraph that he was driving in that afternoon, or ask father to drive out. These messages reminded me that we always had a horse and buggy—and that all interurban travel in that day was by such means or by horse drawn street car.

My childhood home in Chicago was lighted first by oil lamps, later by flickering gas jets, then by Welsbach gas mantles. Not until I went to college did I read by electric lights. After more than twenty years of practice my father had a telephone installed on the wall of his outer office. This showed he had an adventurous nature because even years later, in 1895, there were less than 350,000 telephones in the entire country. At the time of the last census, by the way, there were over 21 million.

In those early days, however, any lawyer had to handle a great number of small matters and a lawyer as active and successful as my father necessarily had a large number of clients and a long docket of pending cases. Since telephones were rare and life comparatively unhurried, most clients came to the office without warning and patiently waited their turn. So I have many amusing recollections of father impatiently bursting out of his private office to shout over an exasperating wall phone in the outer office, arguing with some client or lawyer, while a crowded room of waiting visitors enjoyed the show.

It may be difficult for anyone born in the present century to understand the mental atmosphere and the tempo of a world in which there were no universal means of quick communication and transportation, in which the telephone, the radio and the automobile were not accepted and dominating factors of everyday existence. It may be difficult to understand how completely the use of electricity for light and power has made over the living and working conditions of the nineteenth century. Most of all, it may be difficult to realize how much smaller and interrelated and interdependent is the world in which we are now living, compared with the world of my father's generation.

All of this has had a profound effect, not only upon the work of a lawyer, but even more upon his opportunities and responsibilities. The lawyer of yesterday was essentially the aid and champion of rugged individualists. His theoretical responsibility to the community, to society,

to the government, could be the subject of glittering avowals in bar association speeches; but how far was it recognized or fulfilled in private practice?

My own entry into the field of law came at the turn of the century, came at a time when the oil-lamp, horse-and-buggy world was being visibly transformed into the high-speed, electrified civilization of today. Looking backward I can understand better than I did then my revolt against the ruling influences in the legal profession.

The social and political responsibilities of the lawyer were conspicuously increasing. Yet it seemed to me that in the office we were continually wrangling over which dog should get a particular bone, with little thought about how many bones there would be tomorrow and whether the big dogs ought to get more than they could chew while a lot of little dogs went hungry.

So I swung away from the old political organizations in which every successful lawyer had his respectable graft and conventional privileges. My father shook his head sadly. Yet mixed with disapproval was a little pride, because he had been something of a crusader in his younger days. He scoffed at the progressives who were fighting the old guard in both the democratic and republican parties; but he was surprisingly tolerant of my personal ventures.

One of his old cronies gently advised me one day not to get "too far ahead of the crowd." But I believed then and now that that is the place for youth. As men get older, rheumatic, and short of breath they slow down under accumulating burdens. Their minds may still leap ahead, but they lack the physical energies and robust self-confidence that sustain a pioneering spirit.

The young lawyers of my day organized political campaigns for social justice. Their philosophy came from a clearer vision than their elders that the world was being made over—although not by radical theorists or agitators for a more abundant life. It was being made over by scientific discoveries and popular education—and by irresistible social and economic forces. It was being made over by rising rivers of energy and emotion fed by millions of little springs and by the melting glaciers of ancient prejudice now moving under the suddenly focussed sunlight of modern science.

The young lawyers saw a business world of typewriters and telephones and electric power in which a billion dollar corporation could be organized, employ a hundred thousand workers, have offices and factories scattered across the country, and yet operate as one enter-

prise without being strangled by red tape and paralyzed by intolerable delays in coordinating its activities. The young lawyer saw huge profit making and vast injustice and cruelty, a new discipline and a new irresponsibility developing in this industrialized civilization which was dominated by man-made cooperative mechanisms—called soulless corporations.

For a time the popular reforming thought was to re-create an individual, human responsibility. We attacked the “trusts” with demands for criminal punishment of officers and directors, epitomized in the slogan that “guilt is personal.” We had not yet come to realize that even successful men were slaves of their environment and that the competition which we called “the life of trade” was the master of us all, lashing men into risks of law-evasion and the cruelties of exploiting other men, in order to escape from being trampled under foot by managing somehow to keep on top of the struggling crowd.

My generation of lawyers has been called upon to write and enforce laws to make men behave like public servants, in a political economy which requires them to engage in a ruthless struggle for existence, laws requiring them to work together for the good of others, under the crippling restraint of other laws that forbid them to work together for self-advancement. We have been demanding a ruthless competition in self-service as the means of achieving the self-sacrificing objective of social justice.

There are mental and physical survivors of my father's generation by whom such a program is still regarded as intelligent. I hope and pray that the lawyer of tomorrow will be wise enough and candid enough to know and to say that it does not make sense. Of course, many of those on whom my hopes are based are going to demand that we turn our society upside down. When our reputed forbears began to walk upon their hind legs they probably made a poor job of it. Conservative apes probably suggested they had better go back to the good old four legs that had been good enough for grandfather. Radical apes probably argued that they had better give up trying the hind legs and walk on their fore paws.

The prevailing theory for several thousand years has been that social organizations are created to aid the individual life, to add to individual happiness and achievement. The upside down proposition that the individual is created merely as the servant of society has no appeal to me, because I can not see how a human being, supremely conscious of his individual stomach and brain, is going to get sufficient

satisfaction out of feeding a social stomach and thinking with a social brain. I grant you that, after casting aside the flesh and becoming only a vagrant thought, he might find great happiness in becoming an infinitesimal fraction of a grand idea. But I am concerned with a program of human cooperation which can be made effective in this world by the voluntary working together of individuals all primarily interested in the mental and physical enjoyments of life which they individually experience. If such human beings are going to achieve a good society, I believe it will be because they are persuaded that they will individually benefit by such services as they contribute to maintaining that good society.

In any event, as I read the records, the only alternative to such persuasion is the use of organized force by a despotic oligarchy regimenting a citizenship either for servitude and exploitation, or for the ostensible object of their own good. No historic experience encourages me to the belief that either form of slavery has any permanent value to humanity. Indeed, I question even a temporary usefulness.

As previously suggested, it is inevitable that some of the lawyers of tomorrow will want to write laws and to advance revolutionary programs for the purpose of turning society upside down. They will become convinced that individual desires and ambitions are so unimportant, and that self-service is such a petty aim, that men and women should be conscripted and regimented into industrial battalions to serve their common needs. And it would follow, I assume, that the amount and variety of recreation, education and social activities of the individual would also be determined, if not by governmental decrees, at least indirectly by the amount and division of individual income as officially allotted.

You may think that I am seeking to attack the project of the authoritarian or totalitarian state, the project of absolute state socialism, by unfair exaggeration. But that is not my purpose. I merely wish to urge my conviction that when you abandon faith in a competitive system of private enterprise supported by a democratic form of government, the implacable alternative is the submission of your lives to the control of a ruling class. Under modern conditions such rulers must add regulations to regulations and enforce them more and more rigorously until human life becomes only a servitude to A PLAN—an inhuman plan to reach a mystic, inhuman goal.

It is not difficult to persuade ourselves of the virtues of a well-ordered economic system which would distribute its benefits fairly or

even altruistically. The ideal of a human brotherhood in which the stronger will carry the burdens of their weaker brethren is more appealing to generous souls than the principle of the survival of the fittest. But when we strive to enrich human life, to relieve distress and to increase common satisfactions, our difficulties are not found in stating our objectives but in finding methods to achieve them.

The simplest example can be taken from censorship. Who shall be the censor? Parents lose their censorship over children with each passing year. And each wise parent wonders if his censorship was wise. Who is fit to plan the lives of others? The judgment of every human being reflects his own morality, his own ideals, his own fears, hopes and ambitions. What man or group of men are competent to be the brains and heart of a society? How shall such a ruling class be chosen?

Mr. Justice Holmes once wrote that "the best test of truth is the power of the thought to get itself accepted in the competition of the market"—and that "the ultimate good desired is better reached by free trade in ideas." That is a fundamental theory of our government and our economic system: There is no clearer path to truth and the ultimate good than the one which goes through a competitive market for individual ideas and individual ambitions.

Most of the lawyers of tomorrow will, I think, agree with that lawyer of yesterday whom I have quoted. But, in the industrial world of giant enterprises, huge banks, enormous labor organizations and far reaching government agencies, they will find many obstacles to free competition and to the free expression of individual desires. They will find that concentrations of economic power in the hands of a comparatively few people have created a good many autocracies that exercise a paternalistic control over thousands of lives. They will find that millions of people are considerably regimented in the service of private enterprises over which they can exert individually little influence. They will find consumers trained into standardized habits of eating, reading and playing, by reason of the mass production of standard goods and services.

Instead of the earlier competition of a multitude of small enterprises we now find that production, prices and wages are largely determined by a sort of collective competition between organizations of thousands of investors represented by managers, and between business groups, and between thousands of workers represented by labor union officials. We see in retail trade that department stores, chain stores and mail-order houses have transformed merchandising methods that had lasted for centuries.

A conservative lawyer of yesterday, Elihu Root, stated very compactly this changed relationship and its effect when he said:

“The relations between the employer and the employed, between the owner of aggregated capital and the units of organized labor, between the small producer, the small trader, the consumer, and the great transporting and manufacturing and distributing agencies, all present new questions for the solution of which the old reliance upon the free action of individual wills appears quite inadequate.”

This means more than a change in the sort of clients with whom a lawyer must deal. It means a great change in the problems which must be solved, not only in protecting private interests, but in safeguarding the public interest. It means that the lawyer of tomorrow must constantly bear in mind the public effect of business transactions and relationships. This is something which the lawyers of my generation have been learning so slowly, so reluctantly, that they have been unable either in law-making or private counsel to meet fully their private and public responsibilities. For the most part this failure has been a natural consequence of inadequate education.

The lawyer of my generation had as a rule little training in economics, in political science, in sociology, in labor relations or in administrative law, to name only a few of many subjects concerning which the lawyer of tomorrow should be informed. The average business man who consults a lawyer today needs to find in his lawyer a far better understanding of the economic, social and political effects of his activities than he himself will have; and the same need will persist tomorrow.

The executives of large business may have the aid of economic and public relation advisers of their own corporations, or of business associations to which they belong. But the ability to interpret and to make effective use of such advice depends on one's own knowledge and also upon giving proper consideration to the legal factors entering into all general business problems.

Day after day in the complicated cooperative labors of the N. R. A. it was made evident that the legal advisers of business men are the persons preeminently responsible for success or failure of group efforts to harmonize the promotion of self-interest with the protection of the public interest.

It was this N. R. A. experience, by the way, that inspired me with confidence that the rising generation of lawyers would be far better equipped to deal with their problems than my own generation has been.

This generation of mine has had too many strange experiences crowded into fifty years. To speak the simple truth we have been taught more than we could learn. We have seen the whole material world transformed by electrical energy, scientific discovery and mechanical invention. Methods of transportation and communication utterly unknown to mankind have come into common use. Our capacity to produce and distribute necessities and comforts of existence has been developed beyond even the dreams of a hundred years ago. The habits of thought, and the ambitions of great masses of people have been made over in one generation. Racial, religious and social traditions, the folkways of centuries, have been swept away in a flood of new interests and new fears that dominate our daily lives.

In the most highly artificial and upholstered civilization that the world has ever known men and women have been stripping themselves of all possible clothing on almost every possible occasion. This gives vivid evidence of the much more important fact that they have been stripping their minds rapidly of protective coverings that have been used from earliest history. And—just as you will find a good many tanned and blistered bodies among rash sun-worshippers—so you will find an increase of tough and of supersensitive minds among the young and more adventurous of the present generation.

But this exposure of young minds to infinitely more knowledge of the natural world and its possibilities than any previous generation ever had, must improve human capacity for meeting human needs unless we take the pessimistic view that science has given us powers too great for human minds to control. We have extended our eyes, our ears and our voices so far, we have so increased the strength of our legs and arms in our powers of locomotion and manufacture, that today we resemble a race of giants endowed with incredibly vast powers of collective physical action who find themselves struggling to organize a collective brain.

But one of the tasks ahead of the lawyers of tomorrow is, in my judgment, to organize the collective thinking needed to control giant powers, without making the hopeless effort to discover or to create a group of men with super-brains, which would be required in any autocracy which attempted to direct the economic system of a modern nation.

The lawyer of today who seeks to bring about the cooperation of any group of business men or public officials, or both, soon learns that a business or political super-man does not exist, except so far as some

men have exceptional ability to get other men to work with them and to confer upon them limited powers of eventual decision. The supposed Czar of a business or political organization is only the man who represents to those outside, the collective judgment of his co-directors.

In talking recently to one of these supposed autocrats in the field of big business, I was interested in his comment that he had never come into contact with what he would call a brilliant mind. Of course, he recognized the infinite variations from slow, untrained mental processes that may be called "stupid," to the steady, reliable reasoning of men who would be called "intelligent." But he confessed his lack of acquaintance with any mentality so extraordinarily superior to the average that it could be properly called brilliant.

It has been my own experience that many men tower above average ability and comprehension in a special field of work. But when I find the "brilliant" mathematician pathetically ignorant of biological facts; when I find the "brilliant" executive pathetically ignorant of physical or political science; when I find the "brilliant" politician pathetically ignorant of economic conditions, I am forced again to realize that most men must choose between the apparent superiority which comes from a one-sided development of their facilities and the apparent mediocrity which comes from a balanced education. And so I am forced to realize that when we seek a super-man or a super-brain, we are looking for an ill-balanced man, who will have a warped point of view.

In discussing public problems with many people, this philosophy will become more and more impressed upon one. The financial expert is sure that prosperity can be advanced or retarded by some credit device or currency manipulation. The business man is sure that the heart of the problem lies in some restraint or competition which particularly affects him. If that could be relieved then he is confident everybody would be better off. The labor leader sees progress only in higher wages and shorter hours—although also much interested in lower prices and increased purchasing power. Lawyers are always ready to propose new laws or to repeal old laws. Clergymen are naturally inclined to emphasize the need for a spiritual awakening. Protected industries seek tariff barriers. Surplus producers clamor for free trade. And so all the brilliance of the brilliant specialists is directed into the special channels of thought wherein they feel able to shed a brighter light than their competitors.

The one answer to all these rival guides which seems to me to make sense, is that the only way out which can be safely chosen is the way of

collective thinking; that is, getting a great many men to collaborate in the effort of producing a common thought which probably will not be a particularly brilliant thought but a rather old idea, newly applied, which will meet with general approval.

One obvious way in which we attempt to think and act collectively is through law-making by elected representatives who, despite human limitations and weaknesses, do generally reflect fairly well prevailing trends of public opinion. But, in the formulation of such public opinion, we need also a great variety of associations of men having common economic interests or common social objectives, who will work out programs to advance the interests of their separate groups which must be modified and harmonized into larger programs to advance the general welfare.

The lawyer of tomorrow must play a large part in the organization and representation of group interests, in the expression and publicizing of group opinions, and finally, in the creation of a sound public opinion and its translation into the rules of good conduct to which good citizens are expected to conform. The lawyer of tomorrow will remain the protector of individual interests in money-making and the advancement of other private ambitions. But his major function and his major opportunity of service to his time will lie in the field of public service, whether performed as a public official or as the adviser of private interests.

There are two outstanding problems which the lawyer of tomorrow must help to solve. First is the problem of devising the social, political and commercial organizations which are necessary to establish and maintain a sound political, economic system. The antiquated character of many of our political agencies is apparent. In comparison with them the executive organization of a modern, big business is enormously efficient. But business is not yet organized sufficiently to co-ordinate its mechanisms of production and exchange, because if this had been accomplished we would not have recurring periods of vast unemployment.

Underlying this first problem is the second problem of establishing the moral and ethical standards necessary to maintain an essential and adequate cooperation in advancing the general welfare. It has taken us several thousand years to arrive at the place where the fist or the sword is not a conventional instrument of self-service in earning a living. Yet today, in industrial warfare, both employers and employees frequently resort to force, and physical force, for the settlement of

their difference. This is simply a survival of ancient methods which we cannot tolerate much longer.

We have also outlawed the cruder forms of lying and deceit, and established some standards of fair competition. We need to establish many more. And we are now confronted with a need for a new set of economic morals under which we can insist that no one shall be permitted to exercise economic powers affecting other lives without accepting and fulfilling a corresponding responsibility. We are beginning to impose obligations on those who, because of the ownership or control of private enterprise, have a responsibility to those dependent upon them for employment and to those dependent upon them for goods and services. But as we impose these obligations upon management we must also recognize the workers and consumers have a corresponding obligation to protect the ability of private enterprise to meet its responsibilities.

In order to accept the opportunities of public and private service presented to the lawyer of tomorrow, he must be equipped with a well-grounded knowledge of the actual conditions under which people must live in the interdependent world of today—a different world from any in which mankind has previously lived. On the basis of that knowledge he must have an understanding of the ethical obligations which rest upon every one in this new world. When those ethics are commonly understood and accepted, they can be appropriately translated into legal obligations, in order to compel that small fraction of every community which is essentially un-moral to meet their share of the obligations which rest on all.

So much that I have said seems to be heavily serious that I should add one word of praise and thanks for the American sense of humor. It is comforting to observe its persistence in each generation, in the biting, yet tender, humor of children who always become fully aware of the deficiencies of father and mother—and sometimes partly aware of their own.

This sense of humor, which reflects an inner sense of proportion, should protect the lawyer of tomorrow from the bias of either too much respect for his elders and all older things, or too much confidence in himself and all things that are new. All that is old is not outworn. There is much beauty and wisdom that has mellowed and ripened through the ages and which it is a privilege to transmit, as a blessing, from one generation to another.

The lawyers of today are passing on their heritage to the lawyers

of tomorrow. They are passing on some political tools and economic mechanisms that are not working well because they are obsolete and inadequate for modern tasks; some that are not working well because they have been mis-used; some that never worked very well, but to which men still cling; some that have always worked well, even despite abuse and neglect—social tools and mechanisms of incalculable value to mankind.

A sound philosopher wrote some years ago that a wise leader would not try to impose even a correct solution of a problem on people who do not understand or sympathize with it because, he said: "Even a wrong solution which those concerned have worked out for themselves may be better than a more enlightened one imposed from above."

As one lawyer of today I pass on the tolerant wisdom of that advice to other lawyers of tomorrow. They will serve their generation somewhat in efforts to compel people to work together and to deal fairly with each other. They will serve their generation most in persuading themselves and their clients to play a better part in a world in which each man is, in some measure, his brother's keeper, and in which, more than ever before, we all go up or down together.