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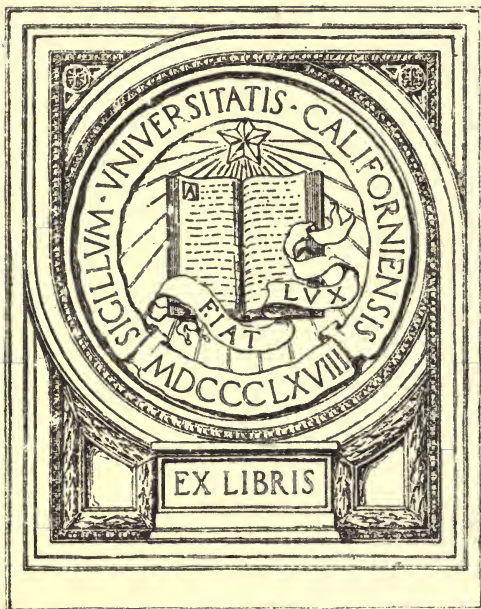
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THE LAWYER

By

C. E. McLAUGHLIN

**President
California Bar Association**

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THE LAWYER

But for human selfishness there would be no necessity for human law. Passion, pride, avarice, ambition, appetite and other manifestations of man's thirst for pleasure, power, and self-gratification constitute the elements ever waging relentless war against the potency of municipal law.

Government, necessarily, involves limitation of mental and physical power to gratify selfish desire, and through the ages men have resisted surrender of any measure of natural advantage. This never-ceasing struggle between human selfishness and human law is evidenced by the creation and destruction of many governments, the enactment, nullification, and repeal of many codes. Unselfish men, of great ability, have, for centuries, been engaged in an effort to frame and effectuate a perfect system of law protecting the weak from the strong and promoting the general good. But, ever and anon, these efforts have come to naught through the selfishness of individuals.

Governments organized to protect and secure human rights have been used by tyrants to increase and intensify human wrongs. Laws beneficent in conception and expression have been converted into instruments for increase and perpetuation of power sustained by imposition, injustice, and cruel oppression.

Earnest men have spent their lives framing laws for weal of humankind, only to suffer at the hands of those in whose behalf they labored.

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During the existence of the Roman Republic, a struggle between the plebians and the patricians engrossed the attention of Rome's ablest men. The plebians fought stubbornly for alleviation of their wrongs and vindication of their rights. None seconded their efforts more ably than Spurius Cassius, author of the first great agrarian law. Yet he was hurled from the Tarpeian rock, and as he fell he heard the cheers of the plebians applauding his unjust and terrible punishment, secretly contrived by the patricians, whose power he sought to curb.

Factions successful in forcing enactment of laws, limiting or withdrawing special privileges enjoyed by others, have, in turn, exercised special privileges, and ruthless perversion has often characterized the conduct of men entrusted with power to enforce righteous laws. The twelve tables of Rome, attesting in every line the wisdom, humanity, and unselfishness of its framers, was law of Republican Rome, invoked as warrant for the arrest of Virginia, saved from the lust of Appius Claudius by the dagger of her father, who had pleaded in vain for legal redress. Through maladministration of this law citizens were deprived of life and despoiled of property with impunity, vice laughed at virtue, and privilege exulted in the wrongs which brought wealth and happiness to the few, and poverty and woe to the multitude.

The prostitution of this great code by men selected at the instance of the plebians, was viewed with equanimity by them when its perversion affected patricians, and the latter class calmly encouraged its misapplication when rights of plebians were involved. Only the shameful treatment and martyr-

dom of Virginia aroused the whole people to full sense of the terrible consequences resulting from misapplication of beneficent laws. History abounds with similar instances. Selfishness has ever been alert to vantage ignorance and indifference, and tyranny has pointed to law as vindication for acts of rapine, cruelty, and spoliation. Persecution has rejoiced while tears and blood were shed and shrieks and lamentations heard from victims of perverted law. Craft and cunning have oftentimes been successful in having laws intended to RESTRAIN construed to FURTHER selfish aims.

The infinite variety of selfish purposes has ever been the source of perplexity and error in the enactment and enforcement of human law.

The failure of governments and codes during the course of history has been caused by man's ignorance of himself, his needs, his interests. The average man, representative of the vast majority, has never comprehended the basic legal principle that restriction of individual DESIRE is essential to the protection and preservation of individual RIGHTS. The fact that law, restraining gratification of HIS desire, likewise restrains the desire of OTHERS having greater physical and mental strength, seldom or never occurs to him. He should readily understand that removal of restraint preventing HIM from gratifying HIS passion, greed, or lust would unleash desire of OTHERS having greater power to compel gratification. But, failing to see what seems so apparent, ignoring the proposition that general security is dependent upon compulsory self-denial, the ordinary man lends willing ear to designing men who

promise benefit to him, knowing that by pandering to his desire they may gain his assistance in obtaining undue and unjust advantage for themselves. In this way arrogant selfishness, whose vantage is usually a detriment to the humble, has enlisted the aid of the latter to secure privileges which made the condition of their dupes intolerable.

This selfish attribute of man has ever furnished the opportunity of ignorance and unscrupulousness. The misguided zealot who promises happiness when chaos shall reign appeals to the dissatisfied, at war with conditions which have failed to bring individual benefit to them. Self-seeking demagogues enlist support by promising, as palliative for existing wrongs, born of special privilege to one class, the transfer of special privilege to another and larger class. The student of history is impressed with the great truth that man's effort to better his condition, and bring about his own regeneration, has had, for its most serious obstacle, the aid of vantage-seeking, selfish friends. He finds that a large number of splendid governmental systems have been reared and destroyed, innumerable laws beneficial and wise enacted, ignored, and repealed; and critical analysis of cause and effect leaves no room for doubt that demagogues have been responsible for more of such mischievous results than tyrants or ignorant fanatics. The profit-seeking friend of the people has ever been the greatest enemy of progress and of law.

Man is not omniscient. Finite limitations encompass him. Compelled to frame laws dealing with human imperfections, he has never framed and never will frame a perfect code. Each effort to control

himself by legal enactment will, to some extent, be thwarted by the very attribute he seeks to curb and control. Groping blindly, through inability to comprehend his greatest permanent good, the best he can do is to avoid the warning light, marking hidden rocks of individual selfishness, strewn with legal wreckage accumulated through the centuries; melancholy evidence that man is prone to bless or damn law according to the benefit conferred upon him individually. Compelled to rely on men, having natural impulses and weaknesses, to frame, expound, and execute the law, disappointments many and grievous will attend his efforts, for law deals with the great human problem and the universal sin—human selfishness. Great minds of all times and peoples have labored assiduously to solve this great problem. Repeated failure has not daunted, nor base ingratitude discouraged them. Steadily, surely, the great lawyers of ancient and modern times have continued to plead and plan for the advantage, security, and benefit of men, most of whom have struggled against each advance repressing or limiting individual desire, aspiration or passion.

The task of the lawyer has ever been difficult, and never have difficulties been greater than now, especially in our own land. Past experience will aid in the solution of ordinary legal problems, but extraordinary legal problems, arising from new and rapidly changing conditions, challenge the genius, originality, and patriotism of the American lawyer. Changes wrought by advancing civilization, scientific achievement and invention, and general dissemination of knowledge will tax his patience and ability

to the utmost. Our fathers were not perplexed by, nor will their methods aid in the solution of great problems involved in the control of public service corporations furnishing light, heat, power, and transportation to the public. They were not confronted with questions arising from close commercial and social relations existing between men and communities widely separated, through the medium of messages instantaneously transmitted.

The long struggle between plebian and patrician presented problems easy of solution compared with questions involving conflicting rights of employer and employed, and the conflict of these rights with rights of third persons, arising out of modern industrial and commercial intercourse and interdependence. New standards of living, with constantly changing ideals and environment; development of newly discovered resources; universal education; and growth of great corporate bodies, controlling immense volumes of wealth, combine to broaden the scope of modern legislation, and increase the responsibility of those charged with the enactment, enforcement, and exposition of the law.

The genius, patriotism, and courage of the lawyer has never failed mankind in any emergency. His liberty, fortune, and blood have frequently and willingly been sacrificed for human weal. Since Solon and Clisthenes, men of noble birth and riches, forced an unwilling aristocracy to submit to democratic constitution and laws in Athens, down to the time when a great French lawyer sacrificed health and fortune in defense of the rights of the condemned, despised, and execrated Dreyfus, lawyers have been

true to oath and trust never to forsake the cause of the defenseless or oppressed.

How, then, will the lawyer meet the great emergencies and perform the great duties confronting him at this time? That he will face this labor with clear vision, lofty courage, unyielding patriotism, and add additional lustre to the glorious record of our profession, I have no doubt. He must not only contend with new questions arising from new conditions, but must face and foil the most dangerous form of opposition ever encountered by law. The struggle of law for many centuries was against PHYSICAL STRENGTH exerted to defy and overthrow it. But now secretly, intelligently, and insidiously man's MENTAL strength is engaged in astute, resourceful effort to remove, evade, and delay restraints which law seeks to place upon avarice and greed. Special interest shamelessly brings to the struggle all the energy and skill of purchased ability. The seductive allurements which temptation affords are thrown about those entrusted with the enactment, enforcement, and exposition of the law. Paid agents brazenly swarm wherever suggestion or argument finds legislative listener. If an obnoxious law cannot be defeated, it is amended, if possible, so as to render it unconstitutional or otherwise abortive, and courts all too frequently bear the burden of blame properly attributable to secret machinations in committee room or lobby.

Unfortunately some judges seem unable to comprehend the cardinal truth that the purpose of law is to curb human selfishness, vindicate right, and redress wrong; and precedent, resting a tilt upon precedent,

finally topples, compelling attention to great cardinal principles of law which should never have been overlooked. Ingratiating, sycophantic deference, mimics obeisance in the temples of justice, and companionship of judges is sought by those who seek to make friendship the forerunner of favor. A false environment and atmosphere, intended to blind and deceive, supplements false logic, and the modern judge must indeed be wary if contamination soils no ermine or makes suspicion attach to no reputation. A false precedent, based on imperfect or erroneous conception of legal principles, is unreliable guide, especially when adroit ability seeks to make such precedent lean farther afield the true foundation upon which judicial decisions should always rest. Some judges have ignorantly, a few designedly, brought just criticism upon our courts, but, in the main, they have been true to the high responsibility and trust reposed in them.

Unfortunately, this cannot be said of some members of our profession, for it must be admitted that lawyers of great ability have participated in pollution of the source of law, and have given full measure of their ability to bring about initial distortion or ultimate misconstruction of laws inimical to interests employing them. It is a common saying that the modern lawyer is at once adviser and business agent of clients. But a lawyer cannot be true to his trust and engage in practices tending to prevent enactment or enforcement of wholesome restraints upon selfish desire, and any member of our profession thus dishonoring it should be taught that a man cannot be at once the EXPONENT and

OPPONENT of law. A lawyer may, of course, be adviser and business agent without impropriety; but, if his agency involves skilful pilotage of business bark along channels forbidden by the letter and spirit of law, his cruise should end in the penitentiary, where such advisers and business agents belong. In such a case his profession should be nemesis rather than shield. No man deserves more severe condemnation than the lawyer who uses his education and talents to undermine, defy, or destroy the system of law he has sworn to uphold and defend.

Recent disclosures prove that men and corporations controlling important special interests have contributed large sums of money to aid candidates for high office in state and nation, and the suspicion is general that such contributions were not prompted by disinterested patriotism. The aforementioned and other considerations have caused widespread discontent affording opportunity for pseudo friends and open enemies to interpose time-worn obstacles and objections to government and law. The overthrow of our whole system of government is openly advocated, the adherents of this doctrine becoming stronger numerically day by day. Those who believe that unbridled license constitutes liberty, and hence advocate elimination of municipal law altogether, are not idle and are preaching and spreading their infamous propaganda openly. The demagogue, ever the friend of the class having the greatest voting strength, the pretended ally of every faction promising aid to his ambition, rants in denunciation of those vieing with him for place and power, and promises panacea for existing ills in

something to gratify individual selfishness, age-old enemy of human law.

Not infrequently we hear clamorous demand for radical departure from our system of government, conceit and ambition combining in advocacy of many changes, seductive when viewed superficially, but extremely dangerous when studied and analyzed. Men and principles long revered, have suddenly become victims of vehement denunciation. This clamorous cry for sweeping change, unfortunate results of which echo through the ages from Rome, Athens, Carthage, to the latest of sudden revolutions, is almost invariably heard from lips of those least to be trusted if change in our system is necessary or desirable.

Amid all this din and confusion, the calm voice of law calls the American lawyer to full, unselfish, courageous performance of duty to his country and its institutions, the cornerstone and superstructure of which are cemented and sanctified by sacrificial blood and tears.

Neither seductive blandishment, specious plea, nor arrogant selfishness, on the one hand, nor the rant of the demagogue, the alluring promise of a new propaganda, or the denunciation of the anarchist on the other, should confuse, beguile, or intimidate him. Keeping steadily in mind the prime purpose of law, his eyes fixed on the beacon light of human experience, his courage intensified by the example of many great lawyers, who either stemmed a dangerous human tide or fell victim to its thoughtless fury, his voice should be heard above all clamor demanding that there be neither perversion, evasion, misap-

plication, nor dethronement of law. Recognizing that changing conditions necessitate changes, he should aid in the just and proper amendment of laws and constitutions, but his highest duty is to resist and foil the efforts of selfish men to make law an instrument promoting and protecting selfish advantage, rather than a shield and sword protecting and conserving human rights.

The latter task will require constant vigilance and exercise of all the power and concentration of the best intellects. The opposition will be tireless and aided by the keenest minds, willing to prostitute their talents, and endanger all that sacrifice has wrought for reward, which selfishness is always able and ready to offer. It will require moral courage of no mean order to purge our profession of hypocritical, sycophantic, oath breaking, treason baiting men, who stand ready to serve the highest bidder, no matter how venal or vile his cause, to lay aside truth, honor, self-respect, humanity, and weal of organized society at the bidding of those who desire to frustrate, cloud, and, if possible, defeat the design, purpose, and object of law.

The men who thus throw their manhood at the feet of those requiring prostitution of honor and talents have found it very profitable, although contemptible, to do so, and it has not always been the weakest minds that succumbed to great temptation or performed basest service for great reward.

Law is not a combination of quibbles and tricks designed to promote dishonesty and sharp practice, but a system intended to compel honesty, truthfulness, candor, and fair dealing among men. There-

fore, as prelude to the full and faithful performance of duties and responsibilities now resting upon members of our profession, we must win back the confidence and respect of men by proving the lawyer worthy of confidence and respect.

We cannot longer permit the few to besmirch the many, nor can we at this juncture be neutral, without being false to cause and country. Imbued with the patriotic fervor of great lawyers whose names illuminate the pages of history, whose services and sacrifices furnish an incentive and inspiration, the American lawyer should give to the solution of every governmental problem the best efforts of a broad and well-trained mind prompted and spurred by a loving and generous heart.



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