

THE CALL FOR A LIBERAL BAR*

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THE history of progress in society is a story of struggle for better law. We do not achieve improvement merely by recording a vote of the people. Their action must be reduced from political principle to a legal rule or an institution. It has been one of the tasks of lawyers to translate the aspirations of our people into law, and into living institutions. In this their function has been vital to progress, and the call for their service is a continuing one.

In 1910 Woodrow Wilson pointed out to the bar that Americans had reconstructed political society and that the liberal movement in the future would concern itself with the evils in our economic society. He set before the American lawyers a new—and still unfinished, task. Its unfinished state is partly due to the tragic intervention of the World War which diverted his own energies and deflected his leadership from home to foreign problems. After long neglect this task has been resumed by President Roosevelt, and by such leaders as Senator La Follette, Senator Wagner, and other forward looking men.

Social and economic objectives belong to society, not alone to our profession. It is not the lawyer's function, though it is his right as a citizen, if he desires, to arouse or to stay the social forces that are driving for reform. We have no special call or competence for directing them. But it is our function to know those forces and to understand those movements

which a restless day is fathering. It is not enough that we know the forces which brought about *Magna Carta* in the beginning of the Thirteenth Century, we must also understand the forces of today which demand social security and economic justice.

If we look understandingly at the liberal movement of the present we see, as Wilson predicted, that it is concerning itself more with economic rights and privileges than with political rights and privileges. Our generation is groping towards an economic bill of rights that will protect our people from irresponsible exercise of economic power, just as past generations worked toward the constitutional bill of rights which has long restrained the irresponsible exercise of political power.

It was once considered radical and dangerous to advocate that no man should become strong enough in political power to deprive another of certain rights—political rights—freedom of worship, of speech and of press, trial by jury of his peers, and due process of law. Those ideas have now become conservative, have been rescued from the field of debate, and written into law.

Still in the field of debate are other ideas which liberal men everywhere are trying to put into workable laws. These subjects include: collective bargaining for labor, the right to work free from industrial espionage, the ending of the oppression of starvation wages and sweatshop hours, the right of the willing to work, the right to a living when work is not available, the

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right to some shelter from the cruelties of impoverished age.

We begin to see that political rights, valuable as they are, too often depend on other rights. Due process of law loses much of its practical value to a man who cannot hire a lawyer. The franchise to vote for a mayor of a city may mean less than the right collectively to bargain for a fair wage. We must guard political rights by guarding the economic independence necessary to assert and defend those rights. These things our generation is trying to write into the law.

In this movement Woodrow Wilson set the task of the lawyers in these words:

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 progress and the readjustment of the frontiers of justice.¹

This call falls upon the ears of a profession deeply preoccupied with technical specialties. What Wilson called the "dwindling body of general practitioners who used to be our statesmen"² is almost gone. The specialists can never take their place. A specialist has been defined as one who learns more and more about less and less, and again as one who sharpens his mind by narrowing it. Public policy is more intelligible to the lawyer who keeps an interest in the whole sweep of our majestic subject of the law—even if he pays for his breadth of view with a bit of superficiality.

Classification as criminal lawyers, or tax lawyers, or corporation lawyers, or insurance lawyers, or labor lawyers, or negligence lawyers carries a narrowing implication. The public interest loses at the bar when so many of its best minds become intimately a part of the commercial structure, and law firms come to function like business subsidiaries. This results in a loss of the perspective and the independent position necessary to public belief in professional disinterestedness.

The call of the liberal movement for counsel is to those free enough to think as part of the general social structure, and to place commonwealth before wealth in their intellectual interests.

If a liberal bar is to help the liberal forces to write their aspirations into law, the task is not alone one of learning and logic but of experience as well.

Lawyers must guide the liberal movement within those limits which experience shows to mark workable legal efforts. We must avoid a trick liberalism which would write promises that a work-a-day world can not keep. As Justice Brandeis has said, ". . . do not pin too much faith on legislation."³ We must not try to give an appearance of reality to visions which will only disappoint, nor allow the liberal movement to be discredited by attempting the impractical.

But within the large field thus limited, lawyers must supply the legal imagination to design institutions, agencies, and rules of law, which will bring social forces under law without devitalizing them. There must be boldness to take risks of failure and

1. Address, *The Lawyer and the Community*, 1 PUBLIC PAPERS OF WOODROW WILSON (1925) 248.

2. *Id.* at 252.

3. Letter to Robert W. Bruere, 1922, quoted in Hapgood, Foreword to BRANDEIS, OTHER PEOPLE'S MONEY (1933) ix.

to face criticism and ridicule. As one of the greatest of our liberal jurists has said, "If we would guide by the light of reason, we must let our minds be bold."⁴

There must be no impairment of the substance of tried and older rights of individuals or minorities, as we struggle to extend the frontiers of justice to new fields. Progress does not mean an abandonment of the hard won gains of past generations.

We lawyers are the inheritors of a proud tradition of leadership and courage which shows the spirit in which a liberal bar must work today. The lawyers who helped to write the early legal and documentary history of the United States were concerned more about their country than their clients. They were statesmen who used their legal training and historical knowledge not to oppose change, but to guide it.

The revolt of the Colonies was given ideals and objectives by being translated by the lawyer-statesman Jefferson into the Declaration of Independence, a document without precedent.

But to give these ideals and objectives an institution to guard and foster them, there was created the Articles of Confederation, again pushing beyond all precedent.

Yet in six years statesmanship had the realism and courage to declare that task but poorly done and, in the name of the People of the United States, there was brought forth a new and unprecedented Constitution for a representative democracy.

In those days of great events even lawyers had the frankness to admit

this job inadequately done, and to formulate and submit the first ten amendments to their work, so that we might not lack a Bill of Rights.

It was this legal imagination and resourcefulness, the frank realism which faced inadequacies boldly, the willingness to explore and to experiment that helped make lawyers statesmen and leaders, rather than special pleaders. That leadership the modern lawyer has too much frittered away.

Of course there were stand pat lawyers, who opposed every step, and others who were bold and liberal at the first step, but held back from the next. But the liberal bar of that day took the chaotic social forces of revolt and helped make of them a legal structure that has the world's admiration. Its boldness started the fears and hatreds of the European courts of that day, quite as much as the liberalism of today terrifies those who have lost faith in the ability of our own day to progress safely.

But those liberal lawyers, hated, ridiculed and fought as they were, carried on magnificently in their day the work it is always the duty of the bar to do.

Those liberal lawyers extended the frontiers of the rule of law, just as certainly as the pioneers extended the frontiers of civilization.

Before their day governments were largely hereditary, based on conquest and legally permanent and unalterable. When social forces demanded a change, it could be realized only through lawlessness—revolution, resistance, or assassination.

The liberal lawyers of that day brought change in political leadership out of this area of violence and into

⁴ Brandeis, J., dissenting in *New State Ice Co. v. Leibman*, 285 U. S. 262, 311 (1932).

the realm of law. They had the imagination and the courage to substitute election for revolution, and the ballot box for violence. They brought conflicting social forces to an impact at the election booth, instead of to impact on the battlefield. They reduced the aspirations of the people of their day for majority rule to a system of law and to an institution of government.

We too are founders—founders of what will tomorrow become the tradition of our profession in this day of change. We too are makers of a nation—the nation of tomorrow. We too are called upon to write, to defend and to make live, new bills of rights.

We too may soberly but bravely advance the frontiers of justice under the law, into economic affairs where heretofore there was no right except strength, no rule except of a master over necessitous men, no order except pauses between conflicts of force.

We can advance but slowly, we must have the same readiness to submit our steps to critical appraisal that characterized the lawyers of the Revolutionary era, and we must hold as they did to what is workable and practical.

To such service the hopes of a people seeking counsel and leadership call us. To such service the liberal bar will dedicate itself.