

## THE TRIUMVIRATE OF THE LAW

SEVERAL years ago I heard Judge Learned Hand say that "the teaching of lawyers is indeed as distinct a vocation from the practice of law as law is from engineering or science." The acceptance of this as a fact is evidenced by the number of law teachers who are devoting themselves exclusively to their calling. The change was necessary because the busy lawyer had no time for students and the teacher, if he performed his duty, had no time for clients. It was advantageous in that it developed the science of teaching law and pointed the way toward a systematic, scholarly understanding of the law.

But the evolution of law teaching as a distinct vocation does not mean that the teacher is divorced from the bench and bar. They are still members of the public profession of the law and share its responsibilities.

It is for this reason that I have chosen to refer to the practitioner, judge and law teacher as the triumvirate, using that term in the sense of a coalition or association of three in office or authority.

The authority of this group is challenged by certain lay

agencies. On the face of the matter such a situation is neither unusual nor alarming. The lay attitude towards the lawyer is traditional. There is a bit of mediaeval verse which illustrates the tradition,

"Sanctus Ivo erat Brito  
Advocatus sed non latro  
Res mirando populo"

which is translated thus: Saint Ivo was a Brittany lawyer but not a robber, a wonder to the people!

It was this same Saint Ivo, so the ancient story goes, who, on petition by the lawyers, was permitted by the Pope to choose the patron saint of the lawyers. The choice was to be exercised in this fashion. Ivo was to be blindfolded and turned loose in the Lateran to feel the statues of the saints. He was to embrace one statue, the saint whose statue was thus selected was to be the patron saint of the lawyers. Ivo wandered about, lawyer-like, feeling of various statues, until he came to the one of Saint Michael overcoming Satan. Then, as fate would have it, he threw his arms about the statue of Satan, who, according to the clergy, thus became our patron saint.

This traditional attitude dates back to the twelfth century dispute between law and theology, disputes which have arisen from time to time since and just lately have shown signs of revival. The clergy did not relish the thought of handing over the practice of the law and the places of authority to non-clerical lawyers and, in jealous rage, poured maledictions upon the heads of our unfortunate brethren to the evident joy of a credulous populace.

The extreme hostility of the clergy did not disappear until it gave way to the pressure of economic conditions. Many of the age-old controversies over law and morals have awakened desires for temporal leadership in some members of the clergy.

Other learned professions are making demands for leadership. The doctor, the engineer, the scientist and the journalist strive for a place in the sun and, naturally enough, do not hesitate to revive lay tradition in order to remove the lawyer from his place of authority.

The challenge by other professions, the repetitions of the slings and arrows of lay tradition and other manifestations of professional jealousy are not matters of grave concern so long as the practice of the law remains a profession as distinguished from a trade or business. Jessup defines a profession

as being "a calling in life based on special training and ability contemplating public service, and differentiated from ordinary business vocation by its subordination of pecuniary returns to efficient service." The emphasis is on service. For the lawyer this means service in the proper administration of justice.

I speak with careful sincerity when I say that the legal profession does not receive the approval of the ordinary man.

The ordinary man, who is not a criminal, has respect for law, using that term in the sense of justice or the legal order. He loves it. It is his life. But he is disgusted with "sacred" rules and principles which are antiquated and do not secure the justice which he desires. He respects the Constitution when it proves to be the guarantee of life, liberty, and property, and when it actually promotes the general welfare.

He knows what a man like Henry Brougham means when he uses these words in the House of Commons: "It was the boast of Augustus that he found Rome of brick and left it of marble. How much nobler will be the sovereign's boast when he shall have to say that he found law dear and left it cheap; found it a sealed book and left it a living letter; found it the patrimony of the rich, left it the inheritance of the

poor; found it a two-edged sword of craft and oppression, left it the staff of honesty and the shield of innocence!"

I was forcibly reminded of this a few days ago when the conversation turned to a discussion of administrative boards and commissions. One of the lawyers present remarked that he had about given up the practice of the law and was spending his time making the rounds of boards and commissions. Then the tirade began. I had the temerity to suggest that most of these boards and commissions were the result of lay efforts to meet needs unsatisfied by our administration of justice.

The most vigorous challenge of present day administration of justice has to do with criminal law and procedure. Civic and professional organizations, newspapers and magazines, ministers and lecturers, three out of five of the individuals on the street seem to regard the securing of more efficient justice as the most important public question.

One other complaint the ordinary man makes of the administration of justice is expressed by this embarrassing question: Why must he break a contract to find out what it means, and why must he violate a statute to test its validity? It is no answer to whisper some-

thing about the possibility of a declaratory judgment. Some day he may find that civil law jurisdictions have a system of preventive justice. It would be wise to satisfy his crying needs in this regard before he makes the request or devises a system for himself.

Unless the legal triumvirate is able to satisfy the ordinary man's demand for efficient, living justice it will be swept from power as were the triumvirate of Rome, as were our brethren in other days. Over a century and a half of leadership is no guarantee of perpetual authority. A leadership which does not justify itself cannot long endure. Client caretaking is only one phase of a lawyer's duty. Public service of a high order is the distinguishing mark of the profession as long as it deserves that classification.

The law school of today is something more than a trade school. Training competent lawyers is its primary and most important task, but it must also provide a place for productive legal scholarship and research. Law is a science and, like any other science must have those who work in the field of pure science as well as those who work in the field of applied science.

We must look to the law school for creative work in legal scholarship. The courts,

with overflowing calendars, have no time for writing. The able practitioner cannot lay aside his clients' interests. The hackwriter is intent on quantity rather than quality production. Most of the work in the pure science of the law must be done in the law schools, where there is a guarantee of training and scientific attitude. But in all these matters, the participa-

tion of the members of the active profession is necessary. Theirs is the important task of making productive legal scholarship possible through adequate support and of directing the work of research as well as making the practical application of the findings.—*Condensed from an address by U. S. High Commissioner Paul V. McNutt before the members of the Philippine Bar, March, 1939.*

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### *Too Late to Ask Questions*

A MAN who had lost much money in a Stock Exchange crash once asked a Sage this question: "Yesterday my holding in shares was very great. Today it has vanished like the snow. How can such things happen?"

And the Sage answered him: "A certain powerful Chinese mandarin came into the Shanghai Exchange and loudly proclaimed the tidings that his wife had presented him with a little son. Lo and behold, all shares on the Shanghai market went up, and there was universal rejoicing.

"A year went by, and the mandarin once more came to the Exchange and told everyone that his wife had now given birth to a daughter. Up again went prices, and again everybody was delighted.

"A third year passed. Again the mandarin appeared on the Exchange. But this time his news was that his wife had just bestowed twins on him, two girls. Yet, lo and behold, shares all went tumbling down."

"What!" interrupted the other. "The market suddenly went down. What had the mandarin's twins to do with the market?"

"Ah, now you show interest," replied the Sage. "But while the market was rising, you did not ask me that questions. That is always the way of it. People only ask questions when the market falls."—*Magazine Digest.*