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THE LAWYER AS A CITIZEN—HIS DUTY TO
THE PUBLIC*

FRANK A. DANIELS

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When I received the invitation of the Wake County Bar Association, through its distinguished President, and read that he had assigned to me for discussion on this occasion, "The Lawyer as a Citizen—His Duty to the Public," I was embarrassed by the magnitude of the subject. I had something of the feeling entertained by one of our great Chief Justices, more than half a century ago, who, while at dinner with his family and his law students, was asked by a farmer neighbor who had been invited to dine with them, "Judge, what does Fearne say about contingent remainders?" and who replied: "Old friend, I regard that as a comprehensive question." Tradition has it that the great judge used an adjective then in common use to give emphasis to his reply which cannot now be found in the vocabulary of our present Chief Justice.

Manners change and morals, perhaps, with them, and we cannot in this age conceive the honored head of our judiciary giving point and pith to his conversation by the use of such a part of speech any more than we can envisage him making and selling, with the approbation of his fellow citizens, and the approval of his own conscience, the popular Alamance brandy which engaged the careful attention of another great Chief Justice of the olden time.

My embarrassment can be better understood when it is known that the letter of the President intimated that my discussion was to be confined to about half an hour; but, on mature reflection, realizing that the adequate treatment of this great topic would require a speech of four or five hours, with his usual considerateness, he added, "but there is nothing rigid about this requirement." However, in order to relieve any natural apprehension in the minds of my audience, I hasten to say that I do not regard this slight relaxation of the half hour rule as equivalent to its total abrogation. I am sure that this apprehension would entirely disappear if it was understood that I could speak with the brevity, clearness and conciseness,

* This is one of a series of addresses delivered before the Wake County Bar Association at Raleigh, N. C., on June 1, 1925. The other addresses will follow in a future issue of the *LAW REVIEW*.

with never a surplus word, yet adequately covering the case, which characterized the pleadings of the ablest lawyers of the generation which preceded mine, or that I possess the genius of John Somers, the young lawyer unknown to fame, who closed for the defendants, the Bishops of England, in the greatest libel case in the annals of English law, in an argument of ten minutes, and sat down with the reputation of the greatest constitutional lawyer of England. "O, wad some power the giftie gie us" that we might write and speak like those ancient worthies. What improvement we should see in our speeches, pleadings and briefs, and perhaps, in some of the opinions of our highest courts? But I despair of it in this busy, hurrying day, when we think superficially with the fast flying fingers of the stenographer and record too loosely and too elaborately our wisdom and our learning on her typewritten pages.

With these necessary preliminaries, I proceed to the discussion of the subject assigned, touching, under the severe restrictions imposed, only upon those phases of it that I regard as of outstanding importance.

And first, permit me to say that, if I could imagine myself old enough and wise enough to tender advice to my profession, I should urge, with all the impressiveness at my command, that every lawyer should be a politician. Do not, I beg you, be troubled by the use of a word well born and well bred that has sometimes wandered off, fallen into bad company, and in the estimation of some persons, acquired an unsavory reputation—but let us go back to its primary and noble signification. A politician may be defined as one who is versed in the science of government, and the art of governing, and who devotes himself to public affairs with the patriotic purpose to advance the safety, peace and prosperity of his country and its people. In a secondary sense, and like most secondary things, in a bad sense, he is one who concerns himself with public affairs, not from patriotism or public spirit but for his own profit, or that of his friends, or of a clique or party; a demagogue, a trickster, a petty and unscrupulous schemer. Let no lawyer or law student believe for a moment that I advise him to become a secondary politician; there have been too many of the tribe, and I do not pray for their increase. I am sure some of this latter class may have been in his view when the late Thomas Brackett Reed announced that a statesman is a politician who has died.

The lawyer who has studied government and the laws and constitutional principles upon which it is founded and who has engaged in the application of these laws and principles to the practical operations of government has gained an equipment which fits him, beyond most of his fellow citizens, for public service. He has acquired a knowledge of the fundamentals of government and their uses, and if, to paraphrase Edmund Burke, he has a disposition to preserve and an ability to improve, actively and continuously employed, he has enrolled himself among the highest type of politicians and statesmen. We have heard much of late of Fundamentalists and Modernists in the domain of religion. I have known few fundamentalists who did not have in them something insisted upon by modernists, and I have known no modernist who for the permanent basis of his faith did not hark back to essential truths for which the fundamentalists contend.

The thoughtful lawyer is primarily a fundamentalist in law and government, and his education has been largely concerned with the history of their origin and development. He has traced the beginnings of legislative assemblies and trial by jury as they have been evolved by the genius of our race. He has been present in spirit at Runnymede where the great barons of church and state, with the support of the commons, forced from a reluctant tyrant the "Great Charter," "with its guarantees of open courts, of trial by peers, its prohibition of arbitrary imprisonment, of the condemnation of person or property without due process of law, and of the sale, denial, and delay of justice;" he has been stirred by the Petition of Right, drawn by the Great Coke, the Habeas Corpus Act, the Bill of Rights, and the Act of Settlement, the splendid achievements of lawyers, statesmen, warriors and patriots, which together constitute, in the language of Lord Chatham, the British Constitution. He has studied the Mecklenburg Declaration, Jefferson's Declaration of Independence and his Statute of Religious Liberty. And he has found all these great achievements of the past, wrought out with infinite thought and labor and made forever sacred by the blood of our patriot ancestors, enshrined in our Declaration of Rights and in our Constitutions, State and Federal. Is it to be wondered at that such a lawyer, in contemplation of these principles, guaranteeing life, liberty and property, should be an unyielding fundamentalist? In his settled and matured judgment they are the productions of wisdom and experience, tested in peace and in war, and so consonant

with justice and the natural rights of man that they seem to him the last word in law and government in so far as they secure the Supreme Welfare of the citizen, and the sound and safe administration of his affairs—and he yields to them a reverence, a veneration that no writings other than the Oracles of God inspire. I have often thought it would be most wholesome if every lawyer and every layman would read once a year our Declaration of Rights, and the first ten amendments to the Federal Constitution.

A lawyer should everywhere and at all times stand for the preservation of the fundamentals of Constitutional Government. While this is true, he should remember that there are constitutional provisions of less dignity that have been and may be changed as new conditions arise; and the makers of our constitutions foresaw that this would be so, and wisely made provision for such change, but hedged this power about with such restrictions as would prevent hasty or ill considered action. Without these salutary restrictions the minority would have no protection against the tyranny and oppression of temporary majorities inflamed by victory at the polls and bent on immediate and destructive proceedings. Our Government is not and was never intended to be a pure democracy where people may change their institutions in a day, and by carrying a single election; but with us such changes must be well considered and deliberate. Some impatient people, zealous for improvement, criticize the slow steps by which our laws and especially our constitutions are changed; but thoughtful men realize that this slowness of change gives to our Government a strength and a stability sadly lacking in most of the governments of the old world, but does not prevent amendments that represent the settled and deliberate convictions of the people.

Lawyers should inculcate a respect for the traditions of government and should discourage change for the mere purpose of change, or to follow the example of some differently constituted government. Every proper alteration in constitution or laws can be effected by regular and legal processes, no change should be effected in any other way, and in America there is no necessity or excuse for mob law or revolutionary violence.

On account of the advantages they have enjoyed the precept and example of the legal profession greatly influence public sentiment. Although at times our people are humorously critical of their lawyers, and sometimes there are aspirants for office who think to curry

favor with the ignorant or unwary by denouncing lawyers, the average North Carolinian has an abiding confidence in the profession. In proof of their regard, I may cite the fact that of the fourteen governors elected in North Carolina since 1868 thirteen have been lawyers, that all our members of the present Congress, except one, are lawyers, and that at every session of the General Assembly both houses are full of lawyers. This generous confidence of the public places upon us a great responsibility.

As legislator the lawyer is under especial obligation to see to it that no legislation is enacted that violates either the State or Federal Constitution. Under his oath to support these great instruments his obligation as legislator is as binding as is the obligation resting upon our courts to protect us against unconstitutional legislation. No zeal of ignorant and impatient reformers, no insistence of special and selfish interests, and no importunity of hired lobbyists should turn him aside from his sworn duty.

He has no right to cast upon the courts the duty he has assumed. Much of the criticism which has been visited upon our Supreme Courts has resulted from the unfaithfulness, ignorance, or indifference of lawyers who have approved, or have not opposed legislation in conflict with constitutional principles. The lawyer should take for his chief and permanent guide the dictum of Jefferson, as applicable now as when it was uttered: "Equal and exact justice to all men and special privileges to none." He, more than any other legislator, should exert himself to perfect the machinery of justice. Sometimes he has failed in this respect from the influence of an unreasonable conservatism that blinds him to existing defects and their obvious remedies. I have known lawyers of the highest character, ability and learning who seem to fear that the dotting of an "i," or the crossing of a "t" in our law relating to procedure would bring down in irremediable ruin the whole structure. And I have known others so enamored of change that every new and untried experiment was regarded as the gateway to a modern Utopia.

The lawyer legislator should be not wholly a fundamentalist nor wholly a modernist, but, while holding fast to established principles, he should view with open mind the progressive and humanitarian movements of his age and espouse such as he deems consistent with such principles. This generation has seen more humane and progressive legislation than all the generations that preceded it, and the lawyer has taken his full share in advocating and enacting it.

The lawyer should lead in upholding the proper exercise of the powers conferred upon our several departments of government, refrain from captious criticism, be instant in condemnation of the abuse of such powers and lend his active support to their maintenance in all their vigor and usefulness.

He should avoid the error into which some high officers of state, some great captains of industry and some newspapers have fallen, who regard the assembling of the representatives of a great people in legislative session as a direful menace to the progress and prosperity of the country. We should do well to meditate in all seriousness upon the language of John Milton in his splendid eulogy on "A Free Commonwealth."

"For the ground and basis of every just and free government (since men have smarted so oft for committing all to one person) is a general council of the ablest men chosen by the people, to consult of public affairs from time to time for the common good," and to be intent on preventing all just complaints by the election to offices of trust and honor of only men of high character and capacity who measure up to the standards set by our laws and our institutions.

Inflated by its possession some officials forget the source of their power, and there are those among us who have yet to learn that ours is "a government of the people, by the people, and for the people," and not a government by or for any class however wise and great they may deem themselves.

The lawyer should always and everywhere support the administration of justice through and by the courts. The only tribunal yet discovered which usually and generally administers justice with success is a regularly constituted court of law, with its jurisdiction and procedure established by statute or immemorial usage and with public sessions open to all the world. These courts are human agencies and they make mistakes, but they are the best that the ingenuity of man has yet devised. Outside of the humanizing influences of religion and education, they are the only institutions that protect society from the destructive attacks of lawlessness and anarchy which are ever beating against the bulwarks of peace and order. There should be no secret trials. Every trial should be open and held under such circumstances and conditions as to invite publicity, scrutiny, and if necessary, criticism. The late Judge Bennett often said: "Justice cannot be administered in the dark." The lawyer is recreant to his duty, to his profession, and to his country, when he so far forgets

himself as to advocate the substitution of any secret tribunal or hearing of any kind, except as provided by law. Ours is a government of law not a government strictly of people. Higher than the wishes of the people is their obligation to law; and the people must not override their own law. We must remember that these laws have not been imposed on us by any outside power, but have been enacted by the people on their own initiative and in the exercise of their sovereign will. No power claiming to be independent of and superior to the Courts must be permitted to pass upon the lives, liberty or property of our people. The lawyer knows more perfectly than any other citizen that the safety and perpetuity of our government and our society lies in the reasonable, consistent, and continuous enforcement of our laws by courts whose procedure is regulated by law, and in the willing and cheerful obedience of all classes. No individual or organization can usurp these essential duties without serious and lasting injury to themselves and to the state. We have witnessed in the last few months a violation of this principle in one of our eastern counties where a mob took from the jail a prisoner charged with a capital felony, carried him to the woods, tried and convicted him, without evidence and without a hearing, and inflicted a punishment that their madness dictated. Later it was demonstrated that their victim was wholly innocent of the crime charged against him; and, after a fair and impartial trial in the county in which this inexcusable and outrageous violation of the law occurred, twenty or more members of the mob were convicted and duly punished.

Again it becomes the duty of the lawyer to guard against restrictions upon the power of the courts. It has been suggested in recent years that the power of the courts to declare a statute unconstitutional should be abolished, and that the General Assembly or Congress should be the sole judges of the laws which should be passed. Others have contended that there should be a compromise; and if the legislature or Congress twice passes the same law it should become a law, even though the courts should hold it to be unconstitutional. If either of these propositions be adopted, the division of power between the Executive, the Judicial and the Legislative departments of the government will be disturbed; and eventually the legislative power will become supreme and the other two subordinates. The judiciary is not supreme, as some would argue; it has only temporarily the power to declare a law unconstitutional, because if the people deliberately desire a change, they have it in their power at all

times to amend the Constitution. This has happened frequently. In 1895 the Supreme Court of the United States declared the first income tax law unconstitutional; but thereafter, the people decided to have an income tax law, and they changed the Constitution. We now have the income tax law, and we acquired it under regular constitutional methods, and the courts are enforcing the law and upholding the power of the government. The moment the power of the court is lessened that moment the power of some other department of the government is increased, and the balance of power can only be maintained by holding all three departments of the government strictly amenable to law.

After the Civil War, while the other sections were inflamed with indignation, and sought to impose upon us the stigma of defeat, Congress, controlled entirely by the other section, enacted laws directed against us. Among others Congress imposed a tax of 5c upon each pound of cotton grown, knowing that none was raised except in our section. It enacted the Civil Rights law; and it passed enforcement acts directed against the Ku Klux of 1868. The Federal Government undertook to enforce these laws, and the machinery of the government was directed against the South. But an appeal was taken to the Supreme Court of the United States. That tribunal then did not contain a single Southerner. A majority of that court did not agree with us politically, but when our section went before it asking justice, it was not denied; and that great court handed down opinions declaring all these statutes unconstitutional and void.

In this connection may I say that one of the speeches that stands out in my recollection among the greatest I have heard was that delivered, more than thirty years ago, by that eminent soldier, lawyer, statesman and orator, the late Senator M. W. Ransom, at Smithfield, then the home of your honored President, before an audience composed of citizens of the town, and a great gathering of the farmers of Johnston and the surrounding counties. As he stood before his expectant listeners and they marked his majestic form and manly grace, his intellectual and distinguished features, the courtesy and urbanity of his manners, and heard the tones of his marvelous voice, in an address in which his wisdom and patriotic devotion to country excited the admiration and affection of the highest and humblest of his hearers, I thought he surpassed the noblest of Roman Senators in the best days of the Roman Republic. He began his great speech with the statement that he had been grieved to read in some of our

State papers harsh criticism of the Supreme Court of the United States, but excused in somewhat gentle terms the critics because he believed their strictures came from ignorance, or that they were inadvertent to the history of that great court. He briefly sketched its career from the far off days when North Carolina was honored by the presence there of Iredell and Moore, paused to pay splendid tribute to the genius of Marshall, and pronouncing a glowing eulogy upon the character, learning and exalted sense of justice which had characterized its decisions. He referred in language of the deepest regret to the vindictive spirit of the men in control of every department of the National Government after the Civil War, and their desire to humiliate the people of the South in the hour of their bitter suffering. He traced in masterly fashion the origin and enactment of the legislation to which I have referred, the cruel and indefensible motives that actuated it, the consternation with which it filled the minds of a defeated but unconquerable people, its progress through the lower courts and its final destruction by the greatest judicial tribunal in the world, composed of great jurists whose love of justice and devotion to constitutional principles arose high above their loyalty to a party or a section. In conclusion he expressed the hope that he might never again hear from Southern men, and especially from North Carolinians, an unjust aspersion upon this palladium of our liberties.

In executive or judicial position, as prosecuting officer and in private station, the lawyer should never forget that he is a sworn officer of the law and bound by the highest obligation to teach reverence for the law and prompt and implicit obedience to its commands. And first, he is a teacher of reverence for the law. But what reverence can he have who wilfully violates the thing he professes to reverence? I could wish nothing better for my brethren than that they should resemble Chaucer's pastor in the Canterbury Tales of whom it is said:

"Christes lore and his apostles twelve,
He taughte, but first he followed it himselve."

We may be very sure that our teachings will have little effect if we ourselves are "disobedient unto the heavenly vision." It is our particular and especial duty to obey all of the laws of the land including those we do not approve. To obey those we approve is easy; to obey those we do not approve is a test of character. If a law does

not have our approval we have the right to agitate for its repeal, but while it remains in force the lawyer above all men owes the duty to himself and his fellow citizens to obey it. Suppose for the sake of illustration, improbable as it may appear, that legislators who make the law, judicial officers who interpret and administer it, and executive officers who enforce it, should become customers of the moonshiner and the blind tiger and moral accomplices in the violation of a law intended to protect society against crime, pauperism and insanity, with what assurance could they advocate respect for and obedience to any law? Their failure would greatly impair and might sometimes destroy their power to influence others to obey what they regard as "the weightier matters of the law"; and the average man listening to their preachments would laugh them to scorn.

A judicious friend suggested that in this address I should emphasize the truth that the lawyer should be a good man, and another reminded me that Sir Walter Scott on his death bed placed his feeble hand on the hand of his son-in-law, and said: "Dear Lockhart, be a good man." Human experience through the centuries has shown that without goodness no man can be permanently happy or useful. Few persons have such opportunities for either good or evil as the lawyer. There are doubtless tricksters and shysters who should be driven out; but they by no means constitute the majority, nor even an important part of the profession, nor do they in any respect represent its spirit or character. The lawyer is trusted with the secrets of families, with the most important affairs of his clients and often with their money, and it is seldom that he betrays his trust. Lawyers are sometimes represented as men who encourage litigation; but my observation is that honorable lawyers discourage a great deal more litigation than they ever commence. The lawyer can be one of the most useful men in his community. He can stimulate and encourage business by removing doubts, preventing clouds upon title, and in countless ways assist those who carry on the more active affairs of life. While his clients give general direction to business, the lawyer advises how to avoid dangers of which they are not aware. He should always be scrupulously careful to counsel them to be law abiding business men and citizens. Some lawyers have fallen under the influence of corrupt and corrupting business represented by such types as the prominent capitalist and former member of the Cabinet who is reported to have said that he did not care for lawyers who could merely tell him what the law was, but the lawyer he wanted

was one who could tell him how to get around the law. Such lawyers have forgotten that they are teachers of obedience to law and a part of the administration of justice, and have become members of a trade of money getters who bring reproach upon an honorable profession. A lawyer has it in his power, if he sees fit to do so, to become a fomenter of strife. He can sow the seeds of discord and litigation. He may lay the foundation for permanent breaches in families and communities. And, unfortunately, for a time he may appear to make money from this sort of patronage. But my observation is that lawyers of this character do not last long. The money they make by this kind of practice is earned at a fearful cost. They pay for it with their own honor and reputation, and they must atone for it by carrying to the grave the execrations of the community in which they live. Other people may for a long time conceal from the public their true character but the lawyer cannot. No lawyer can practice for any length of time in a community without disclosing to that community his innermost heart and character. The public reads him as they would read a book, and they know him as he is.

And the lawyer should bear in mind that he is a member of the brotherhood of citizens, and, that while they acquiesce in his leadership, he must as their comrade participate in all their aspirations and give unstintedly of his time, labor and counsel to advance the general welfare. He must not isolate himself nor give his neighbors cause to believe that he thinks more highly of himself than he ought to think, nor that he is wiser than they. Indeed, he will find many laymen, engaged in the various pursuits of life, whose character, intelligence, and practical good sense are superior to his own, and, if he is wise, he will gladly seek to coöperate with them. At all times he should join hands with his fellow citizens to foster the enlightenment and the education of all the people, and the promotion of their material, social and spiritual interests.

“But above all,” in the language of the closing sentence of the Code of Ethics promulgated by the American Bar Association, “a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.”