WOE UNTO YOU, LAWYERS!

A lusty, gusty attack on "The Law" as a curious, antiquated institution which, through outworn procedures, technical jargon and queer mummery, enables a group of medicine-men to dominate our social and political lives and our business, to their own gain.

FRED RODELL

Professor of Law, Yale University

Written in 1939

Available in fulltext at
http://www.constitution.org/lrev/rodell/woe_unto_you_lawyers.htm

"Woe unto you, lawyers! For ye have taken away
the key of knowledge: ye entered not in yourselves,
and them that were entering in ye hindered." — Luke. XI, 52

Preface

No lawyer will like this book. It isn't written for lawyers. It is written for the average man and its purpose is to try to plant in his head, at the least, a seed of skepticism about the whole legal profession, its works and its ways.

In case anyone should be interested, I got my own skepticism early. Before I ever studied law I used to argue occasionally with lawyers – a foolish thing to do at any time. When, as frequently happened, they couldn't explain their legal points so that they made any sense to me I brashly began to suspect that maybe they didn't make any sense at all. But I couldn't know. One of the reasons I went to law school was to try to find out.

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CHAPTER I

MODERN MEDICINE-MEN

"*The law is a sort of hocus-pocus science*." Charles Macklin

In TRIBAL TIMES, there were the medicine-men. In the Middle Ages, there were the priests. Today there are the lawyers. For every age, a group of bright boys, learned in their trade and jealous of their learning, who blend technical competence with plain and fancy hocus-pocus to make themselves masters of their fellow men. For every age, a pseudo-intellectual autocracy, guarding the tricks of its trade from the uninitiated, and running, after its own pattern, the civilization of its day.

It is the lawyers who run our civilization for us – our governments, our business, our private lives. Most legislators are lawyers; they make our laws. Most presidents, governors, commissioners, along with their advisers and brain-trusters are lawyers; they administer our laws. All the judges are lawyers; they interpret and enforce our laws. There is no separation of powers where the lawyers are concerned. There is only a concentration of all government power – in the lawyers. As the schoolboy put it, ours is "a government of lawyers, not of men."

It is not the businessmen, no matter how big, who run our economic world. Again it is the lawyers, the lawyers who "advise" and direct every time a company is formed, every time a bond or a share of stock is issued, almost every time material is to be bought or goods to be sold, every time a deal is made. The whole elaborate structure of industry and finance is a lawyer-made house. We all live in it, but the lawyers run it.

And in our private lives, we cannot buy a home or rent an apartment, we cannot get married or try to get divorced, we cannot die and leave our property to our children without calling on the lawyers to guide us. To guide us, incidentally, through a maze of confusing gestures and formalities that lawyers have created.

Objection may be raised immediately that there is nothing strange or wrong about this. If we did not carry on our government and business and private activities in accordance with reasoned rules of some sort we would have chaos, or else a reversion to brute force as the arbiter of men's affairs. True – but beside the point. The point is that it is the lawyers who make our rules and a whole civilization that follows them, or disregards them at its peril. Yet the tremendous majority of the men who make up that civilization, are *not* lawyers, pay little heed to how and why the rules are made. They do not ask, they scarcely seem to care, which rules are good and which are bad, which are a help and which a nuisance, which are useful to society and which are useful only to the lawyers. They shut their eyes and leave to the lawyers the running of a large part of their lives.

Of all the specialized skills abroad in the world today, the average man knows least about the one that affects him most – about the thing that lawyers call The Law. A man who will discourse at length about the latest cure for streptococci infection or describe in detail his allergic symptoms cannot begin to tell you what happened to him legally – and plenty did – when he got married. A man who would not dream of buying a car without an intricate and illustrated description of its mechanical workings will sign a lease without knowing what more than four of its forty-four clauses mean or why they are there. A man who will not hesitate to criticize or disagree with a trained economist or an expert in any one of a dozen fields of learning will follow, unquestioning and meek,

whatever advice his lawyer gives him. Normal human skepticism and curiosity seem to vanish entirely whenever the layman encounters The Law.

There are several reasons for this mass submission, One is the average man's fear of the unknown – and of policemen. The law combines the threat of both. A non-lawyer confronted by The Law is like a child faced by a pitch-dark room. Merciless judges lurk there, ready to jump out at him. ("Ignorance of the law is no defense.") Cowed and, perforce, trusting, he takes his lawyer's hand, not knowing what false step he might make unguided, nor what punishment might then lie in wait for him. He does not dare display either skepticism or disrespect when he feels that the solemn voice of the lawyer, telling him what he must or may not do, is backed by all the mighty and mysterious forces of law-and-order from the Supreme Court on down on the cop on the corner.

Then, too, every lawyer is just about the same as every other lawyer. At least he has the same thing to sell, even though it comes in slightly different models and at varying prices. The thing he has to sell is The Law. And it is as useless to run from one lawyer to another in the hope of finding something better or something different or something that makes more common sense as it would be useless to run from one Ford dealer to another if there were no Chevrolets or Plymouths or even bicycles on the market. There is no brand competition or product competition in the lawyers' trade. The customer has to take The Law or nothing. And if the customer should want to know a little more about what he's buying – buying in direct fees or indirect fees or taxes – the lawyers need have no fear of losing business or someone else if they just plain refuse to tell.

Yet lawyers can and often do talk about their product without telling anything about it at all. And that fact involves one of the chief reasons for the non-lawyer's persistent ignorance about The Law. Briefly, The Law is carried on in a foreign language. Not that it deals, as do medicine and mechanical engineering, with physical phenomena and instruments which need special words to describe them simply because there are no other words. On the contrary, law deals almost exclusively with the ordinary facts and occurrences of everyday business and government and living. But it deals with them in a jargon which completely baffles and befoozles the ordinary literate man, who has no legal training to serve him as a trot.

Some of the language of the law is built out of Latin or French words, or out of old English words which, but for the law, would long ago have fallen into disuse. A common street brawl means nothing to a lawyer until it has been translated into a "felony," a "misdemeanor," or a "tort"; and any of those words, when used by a lawyer, may mean nothing more than a common street brawl. Much of the language of the law is built out of perfectly respectable English words which have been given a queer and different and exclusively legal meaning. When a lawyer speaks, for instance, of "consideration" he is definitely not referring to kindness. All of the language of the law is such, as Mr. Dooley once put it, that a statute which reads like a stone wall to the lawman becomes, for the corporation lawyer, a triumphal arch. It is, in short, a language that nobody but a lawyer understands. Or could understand -–if we are to take the lawyers' word for it.

For one of the most revealing things about the lawyers' trade is the unanimous inability or unwillingness, or both, on the part of the lawyers to explain their brand of professional pig Latin to men who are not lawyers. A doctor can and will tell you what a metatarsus is and where it is and why it is there and, if necessary, what is wrong with it. A patient electrician can explain, to the satisfaction of a medium-grade mentality, how a dynamo works. But try to pin down a lawyer, any lawyer, on "jurisdiction" or "proximate cause" or "equitable title" – words which he tosses off with authority and apparent familiarity and which are part of his regular stock in trade. If he does not dismiss your question summarily with "You're not a lawyer' you wouldn't understand," he will disappear into a cloud of legal jargon, perhaps descending occasionally to the level of a non-legal abstraction or to the scarcely more satisfactory explanation that something is so because The Law says that it is so. That is where you are supposed to say, "I see."

It is this fact more than any other – the fact that lawyers can't or won't tell what they are about in ordinary English – that is responsible for the hopelessness of the non-lawyer in trying to cope with or understand the so-called science of law. For the lawyers' trade is a trade built entirely on words. And so long as the lawyers carefully keep to themselves the key to what those words mean, the only way the average man can find out what is going on is to become a lawyer, or at least to study law, himself. All of which makes it very nice – and very secure – for the lawyers.

Of course any lawyer will bristle, or snort with derision, at the idea that what he deals in is words. He deals, he will tell you, in propositions, concepts, fundamental principles – in short, in ideas. The reason a non-lawyer gets lost in The Law is that his mind has not been trained to think logically about abstractions, whereas the lawyer's mind has been so trained. Hence the lawyer can leap lightly and logically from one abstraction to another, or narrow down a general proposition to apply to a particular case, with an agility that leaves the non-lawyer bewildered and behind. It is a pretty little picture.

Yet it is not necessary to go into semantics to show that it is a very silly little picture. No matter what lawyers deal *in*, the thing they deal *with* is exclusively the stuff of living. When a government wants to collect money and a rich man does not want to pay it, when a company wants to fire a worker and the worker wants to keep his job, when an automobile driver runs down a pedestrian and the pedestrian says it was the driver's fault and the driver says it wasn't – these things are living facts, not airy abstractions. And the only thing that matters about the law is the way it handles these facts and a million others. The point is that legal abstractions mean nothing at all until they are brought down to earth. Once brought down to earth, once applied to physical facts, the abstractions become nothing but words – words by which lawyers describe, and justify, the things that lawyers do. Lawyers would always like to believe that the principles they say they work with are something more than a complicated way of talking about simple, tangible, non-legal matters; but they are not. Thus the late Justice Holmes was practically a traitor to his trade when he said, as he did say, "General propositions do not decide concrete cases."

To dismiss the abstract principles of The Law as being no more, in reality, than hig-sounding combinations of words may, in one sense, be a trifle confusing. Law in action does, after all, amount to the application of rules to human conduct; and rules may be said to be, inevitably, abstractions themselves. But there is a difference and a big one. "Anyone who pits on this platform will be fined five dollars" is a rule and, in a sense, an abstraction; yet it is easily understood, it needs no lawyer to interpret it, and it applies simply and directly to a specific factual thing. But "Anyone who willfully and maliciously spits on this platform will be fined five dollars" is an abstraction of an entirely different color. The Law has sneaked into the rule in the words "willfully and maliciously." Those words have no real meaning outside of lawyers' minds until someone who spits on the platform is or is not fined five dollars – and they have none afterward until someone else spits on the platform and does or does not get fined.

The whole of The Law – its concepts, its principles, its propositions – is made up of "willfullys" and "maliciouslys," of words that cannot possibly be pinned down to a precise meaning and that are, in the last analysis, no more than words. As a matter of fact, the bulk of The Law is made up of words with far less apparent relation to reality than "willfully" or "maliciously." And you can look through every bit of The Law – criminal law, business law, government law, family law – without finding a single rule that makes as much simple sense as "Anyone who spits on this platform will be fined five dollars."

That, of course, is why a non-lawyer can never make rhyme or reason out of a lawyer's attempted explanation of the way The Law works. The non-lawyer wants the whole business brought down to earth. The lawyer cannot bring it down to earth without, in so doing, leaving The Law entirely out of it. To say that Wagner Labor Act was held valid because five out of the nine judges on the Supreme Court approved of it personally, or because they thought it wiser policy to uphold it than to risk further presidential agitation for a change in the membership of the Court – to say this is certainly not to explain The Law of the case. Yet to say this makes a great deal more sense to the layman and comes a great deal closer to the truth than does the legal explanation that the Act was held valid because it constituted a proper exercise of Congress' power to regulate interstate commerce. You can probe the words of that legal explanation to their depths and bolster them with other legal propositions dating back one hundred and fifty years and they will still mean, for all practical purposes, exactly nothing.

There is no more pointed demonstration of the chasm between ordinary human thinking and the mental processes of the lawyer than in the almost universal reaction of law students when they first encounter The Law. They come to law school a normally intelligent, normally curious, normally receptive group. Day in and day out they are subjected to the legal lingo of judges, textbook writers, professors – those learned in The Law. But for months none of it clicks; there seems to be nothing to take hold of. These students cannot find anywhere in their past knowledge or experience a hook on which to hang all this strange talk of "mens rea" and "fee simple" and "due process" and other unearthly things. Long and involved explanations in lectures and lawbooks only make it all more confusing. The students know that law eventually deals with extremely practical matters like buying land and selling stock and putting thieves in jail. But all that they read

and hear seems to stem not only from a foreign language but from a strange and foreign way of thinking.

Eventually their confusion founded though it is in stubborn and healthy skepticism is worn down. Eventually they succumb to the barrage of principles and concepts and all the metaphysical refinements that go with them. And once they have learned to talk the jargon, once they have forgotten their recent insistence on matters-of-factness, once they have begun to glory in their own agility at that mental hocus-pocus that had them befuddled a short while ago, then they have become, in the most important sense, lawyers. Now they, too, have joined the select circle of those who can weave a complicated intellectual riddle out of something so mundane as a strike or an automobile accident. Now it will be hard if not impossible ever to bring them back tot hat disarmingly direct way of thinking about the problems of people and society which they used to share with the average man before they fell in with the lawyers and swallowed The Law.

Learning the lawyers' talk and the lawyers' way of thinking – learning to discuss the pros and cons of, say, pure food laws in terms of "affectation with a public contract" – is very much like learning to work cryptograms or play bridge. It requires concentration and memory and some analytic ability, and for those who become proficient it can be a stimulating intellectual game. Yet those who work cryptograms or play bridge never pretend that their mental efforts, however difficult and involved, have any significance beyond the game they are playing. Whereas those who play the legal game not only pretend but insist that their intricate ratiocination's in the realm of pure thought have a necessary relation to the solution of practical problems. It is through the medium of their weird and wordy mental gymnastics that the lawyers lay down the rules under which we live. And it is only because the average man cannot play their game, and so cannot see for himself how intrinsically empty-of-meaning their playthings are, that the lawyers continue to get away with it.

The legal trade, in short, is nothing but a high-class racket. It is a racket far more lucrative and more powerful and hence more dangerous than any of those minor and much-publicized rackets, such as ambulance-chasing or the regular defense of known criminals, which make up only a tiny part of the law business and against which the respectable members of the bar are always making speeches and taking action. A John W. Davis, when he exhorts a court in the name of God and Justice and the Constitution – and, incidentally, for a fee – not to let the federal government regulate holding companies, is playing the racket for all it is worth. So is a Justice Sutherland when he solemnly forbids a state to impose an inheritance tax on the ground that the transfer – an abstraction – of the right to get dividends – another abstraction – did not take place *geographically* inside the taxing state. And so, for that matter, are all the Corcorans and Cohens and Thurman Arnolds and the rest, whose chief value to the New Deal lies not in their political views nor even in their administrative ability but rather in their adeptness at manipulating the words of The Law so as to make things sound perfectly proper which other lawyers, by manipulating different words in a different way, maintain are terribly improper. The legal racket knows no political or social limitations.

Furthermore, the lawyers – or at least 99 44/100 per cent of them – are not even aware that they are indulging in a racket, and would be shocked at the very mention of the idea. Once bitten by the legal bug, they lose all sense of perspective about what they are doing and how they are doing it. Like the medicine men of tribal times and the priests of the Middle Ages they actually believe in their own nonsense. This fact, of course, makes their racket all the more insidious. Consecrated fanatics are always more dangerous than conscious villains. And lawyers are fanatics indeed about the sacredness of the word-magic they call The Law.

Yet the saddest and most insidious fact about the legal racket is that the general public doesn't realize it's a racket either. Scared, befuddled, impressed and ignorant, they take what is fed them, or rather what is sold them. Only once an age do the non-lawyers get, not wise, but disgusted, and rebel. As Harold Laski is fond of putting it, in every revolution the lawyers lead the way to the guillotine or the firing squad.

It should not, however, require a revolution to rid society of lawyer-control. Nor is riddance by revolution ever likely to be a permanent solution. The American colonists had scarcely freed themselves from the nuisances of The Law by practically ostracizing the pre-Revolutionary lawyers out of their communities – a fact which is little appreciated – when a new and home-made crop of lawyers sprang up to take over the affairs of the baby nation. That crop, 150 years later, is still growing in numbers and in power.

What is really needed to put the lawyers in their places and out of the seats of the mighty is no more than a slashing of the veil of dignified mystery that now surrounds and protects The Law. If people could be made to realize how much of the vaunted majesty of The Law is a hoax and how many of the mighty processes of The Law are merely logical legerdemain, they would not long let the lawyers lead them around by the nose. And people have recently begun, bit by bit, to catch on. The great illusion of The Law has been leaking a little at the edges.

There was President Roosevelt's plan to add to the membership of the Supreme Court, in order to get different decisions. Even those who opposed the plan – and they of course included almost all the lawyers – recognized, by the very passion of their arguments, that the plan would have been effective: in other words, that by merely changing judges you could change the Highest Law of the Land. And when the Highest Law of the Land was changed without even changing judges, when the same nine men said that something was constitutional this year which had been unconstitutional only last year, then even the most credulous of laymen began to wonder a little about the immutability of The Law. It did not add to public awe of The Law either when Thomas Dewey's grand-stand prosecution of a Tammany hack was suddenly thrown out of court on a technicality so piddling that every newspaper in New York City raised an editorial howl – against a more or less routine application of The Law. And such minor incidents as the recent discovery that one of Staten Island's leading law practitioners had never passed a bar examination, and so was not, officially, a lawyer, do not lend themselves to The Law's prestige.

Yet it will take a great deal more than a collection of happenings like these to break down, effectively, the superstition of the grandeur of The Law and the hold which that superstition has on the minds of most men. It will take some understanding of the wordy emptiness and irrelevance of the legal process itself. It will take some cold realization that the inconsistencies and absurdities of The Law that occasionally come into the open are not just accidents but commonplaces. It will take some awakening to the fact that training in The Law does not make lawyers wiser than other men, but only smarter.

Perhaps an examination of the lawyers and their Law, set down in ordinary English, might help achieve these ends. For, despite what the lawyers say, it *is* possible to talk about legal principles and legal reasoning in everyday non-legal language. The point is that, so discussed, the principles and the reasoning and the whole solemn business of The Law come to look downright silly. And perhaps if the ordinary man could see in black and white how silly and irrelevant and unnecessary it all is, he might be persuaded, in a peaceful way, to take the control of his civilization out of the hands of those modern purveyors of streamlined voodoo and chromium-plated theology, the lawyers.

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What the judges do, actually, is what the lady pretended to do – and, for that matter, what the judges themselves pretend to do when the answer is of any concern to them. They balance – don't laugh – one set of abstract principles against another and, through some sort of trance-like transference, come out with a specific decision. They take the long words and sonorous phrases of The Law, no matter how ambiguous or empty of meaning, no matter how contradictory of each other; they weigh these words and phrases in a vacuum – which is the only way they could be weighed; and then they "apply" the weightier to the dispute in question with all the finality that might be accorded a straight wire from God.

It is as though a court were to have considered, with complete disinterest, the case of our friend, the lady; were to have balanced against each other the principles put forth by opposing counsel to the effect that what is desirable is right and that what is desirable is wrong; were to have decided, in the abstract, of course, that what-is-desirable-is-wrong was the more compelling of the two; and were then to have informed the lady that *since* it is The Law that what is desirable is wrong, *therefore* the lady must get out of bed. Certainly, time and time again, in actual law cases, opposing counsel will put forth as the bases of their arguments legal principles which are respectable and yet are directly contradictory. Equity-will-act-when-there-is-no-adequate-remedy-at-law and equity-need-not-act-even-though-there-is-no-adequate-remedy-at-law. Peaceful-picketing-is-legal and all-picketing-is-illegal. Contributory-negligence-on-the-part-of-the-plaintiff-absolves-the-defendant-of-responsibility and contributory-negligence-on-the-part-of-the-plaintiff-does-not-absolve-the-defendant-of-all-responsibility. And time and time again a court will grab one of the two contradictory principles and, with some slight elaboration, use it as the basis of decision.

For it is the legend of The Law that every legal dispute can, and must, be settled by hauling an abstract principle down to earth and pinning it to the dispute in question. The last thing any court will ever admit, even when it is being quite practical about what it decides, is that practical considerations have anything to do with the decision. To admit this would be to admit that it was not The Law – that pile of polysyllabic abstractions – that dictated the answer.

Then too, as judges are doubtless smart enough to realize, a man – or a lady – would scarcely need to be learned in The Law in order to sit and hand down practical answers to what are, in the last analysis, no more than practical problems.

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CHAPTER VII

FAIRY TALES AND FACTS

"'*What do you know about this business?' the King said to Alice.*
'Nothing,' said Alice.
'Nothing whatever?' persisted the King.
'Nothing whatever,' said Alice.
'That's very important,' the King said, turning to the jury." — Lewis Carroll

No single fact is so essential to the life and lustiness of the legal racket as the sober pretense on the part of practically all its practitioners – from Supreme Court judges down to police court lawyers – that The Law is, in the main, an exact science. No pretense was ever more absurd. The basic assumption behind the settlement of every legal dispute, whether it be settled by a judge's sacred words or out of court, is that, according to The Law, there is only one right answer, one preordained answer, to the problem. Lawyers and judges, so the fairy tale goes, are merely trained mechanics in the manipulation of that tremendous and complicated adding-subtracting-multiplying-dividing-and-square-root-computing machine known as The Law. They take a problem, any problem, translate it into the appropriate legal symbols, push the buttons on the big machine that correspond to those symbols, and the right answer automatically pops out at the bottom.

Certainly it is only because of their passionate belief in the machine-like and inexorable quality of The Law that non-lawyers continue to submit their civilization to legal decree. Certainly too, the law boys themselves are anxiously aware that they must keep up the pretense if they would keep their prestige and their power. Even the Supreme Court, from time to time in its opinions, feels it imperative to state that it is The Law, that infallible automatic machine, and not the Court, those nine fallible men, that really dictates decisions. For the lawyers know it would be woe unto the lawyers if the non-lawyers ever got wise to the fact that their lives were run, not by The Law, not by any rigid and impersonal and automatically-applied code of rules, but instead by a comparatively small group of men, smart, smooth, and smug – the lawyers.

Yet it should not, at this point, be necessary to pile up any more examples of how The Law works, nor to examine in detail any more of The Law's mealy-mouthed concepts and principles and elaborate logic, in order to show that Law is a very inexact and teeter-totter "science"; that none of The Law's answers to problems is preordained, precise, or inevitable; and that it is indeed the lawyers, with their dreary double-talk, and not The Law, that mass of ambiguous abstractions, that run the show. Even if The Law still be considered a big machine that gives automatic answers to legally-worded questions, it is the lawyers and the lawyer-judges who phrase the questions and decide which buttons to push. And anyone who has ever worked a cigarette slot-machine knows that if you want Chesterfields, you push the Chesterfield button. The machine does the rest.

Thus the Supreme Court knows that if it pushes the "deprivation of property without due process of law" button, the answer will come out – unconstitutional. If it pushes the "state police power" button, the answer will come out – constitutional. But the machine of The Law does not tell the Court which button to push.

Again, any judge, engaged in deciding a dispute over an alleged business agreement, knows that if he pushes the buttons marked "offer," "acceptance," "consideration," and a couple of others, the answer will come out – valid contract. But if he pushes the "no offer" button, the answer will be – no contract. It is just as simple as that.

The point is, of course, that in every case the real decision is made, The Law of the case is laid down, not after the machine gets to work but before. The crux of the whole matter lies in the choice of which button or buttons to push, which principle or principles or concepts to follow. In Senior v. Braden, the Supreme Court decided to push the buttons marked "property tax" and "interest in land." Whereupon the machine whirred smoothly through "no jurisdiction to tax" and "deprivation of property without due process of law," right up to the answer – unconstitutional. But if the Court had instead laid its venerable finger on the "income tax" button, or had skipped the "interest in land" button, the machine of The Law would have whirred just as smoothly to the exactly opposite conclusion.

And there are always at least two buttons, two principles, between which a choice must be made. Often there are several such choices. In no law case, in no legal dispute, is such a choice not presented.

Take one of the coldest, cut-and-dried cases imaginable. A sane man deliberately kills another man in the sight of several reliable witnesses. All the relevant written statutes and all the principles of Law which encrust those statutes seem to point toward one answer – first degree murder. Yet, as everyone knows, some lawyer will take the killer's case, will dig up accepted and respectable principles of Law which, if followed, would declare the killer innocent of crime, and may – for it has often happened – convince the court that the right legal answer is – not guilty. No wonder, then, that in less spectacular and less apparently open-and-shut legal controversies, a principle or series of principles can always be found to lend the benediction of The Law to either side of any case. No wonder there is no such thing as a legal problem which does not have, in the eyes of The Law,

two sides to it – up to the point when some judge applied just *one* set of principles to the problem, and thereby settles it "according to The Law."

What are, then, all these abstract principles of which The Law is built, these rules so diverse and complicated and contradictory that some combination of them can be used as push buttons to obtain any result under the sun? What are these great and guiding truths that can override written statutes and even constitutions? What are these indispensable counters of all legal thinking and legal action? Where do they come from – once the stork-brought-them theory that they sit in some jurisprudential sky, waiting to be brought to earth, has been dispensed with?

The simple truth is that each of them originated as the out-loud cogitation of some judge, slightly worried as to which *old* set of principles –- or cogitation's of other judges – to apply to the case before him, and still wanting to make his decision sound as inevitable, as automatic, as scientific and logical as possible. Every legal principle begins its existence as a rationalization, a justification, an honesty-this-is-why of some legal decision. And the more it is subsequently used to justify other decisions, the more respectable it grows. Legal principles, like meer-schaum pipes, improve with use and age.

There is a principle that equitable relief – a special kind of legal remedy – will not be granted to anyone who comes into court with "unclean hands." It originated, centuries back, in the desire of some judge to bolster with a high-sounding excuse his decision for the defendant in a case in which the plaintiff seemed, at first, to have the best of The Law on his side. The excuse came in handy in other cases. Today it is a primary principle of "equity law."

So with the principle that the states may regulate businesses "affected with a public interest." A Supreme Court judge, in upholding such a regulation, once helped give his opinion an authoritative sound by stating that the business in question was affected with a public interest and consequently was properly subject to regulation. The words stuck. The rationalization became an accepted principle. Moreover, by reversing the rationalization, other judges made an even more useful and more used legal rule out of the idea that businesses *not* affected with a public interest are generally *not* subject to state regulation.

So, too, with the principle that consideration is essential to a valid contract. So with the principle that Congress may not regulate industrial activities which affect interstate commerce only indirectly. So with all the thousands upon hundreds of thousand of principles of The law. Each got its legal baptism as part of the random rationalizings of some judge, trying to make a specific decision sound more learned and logical to his fellow lawyers and to himself.

And of course, once a principle has been accepted – or, as the lawyers would have it, "discovered" – as part of The Law, its use is no longer restricted to the kind of problem it was originally dressed up to deal with. It might be supposed that, even if the messianic mutterings of a judge in a specific case can become proud principles of The Law, quoted and followed in other cases, at least the legitimate use of those principles would in the

future be limited to the kind of case the judge was muttering about. Not al all. A legal principle, once let loose, is never restricted to its own back-yard, but is allowed and often encouraged to roam over the whole field of Law.

Thus, a principle born of a judge's patter in settling a financial dispute between two business men can, like as not, become a bulwark of constitutional interpretation. A principle first mouthed to bolster up a decision in a suit for slander may later turn up as the key to The Law in a murder case. In Senior v. Braden, for instance, a case centering around state taxes and the U.S. Constitution, the "controlling" principle was borrowed from a case which had nothing to do with state taxes nor with the U.S. Constitution but involved instead a little problem of property law and of proper legal procedure under a federal statute.

Not only are legal principles – and concepts – so vague and so abstract that they make as much sense, or nonsense, when applied to any of a dozen vitally different kinds of legal dispute; they are also so treacherous of meaning that the same principle can often be used on both sides of the same dispute. There is a famous legal principle which disparages "interference" with a famous legal concept called "freedom of contract." Both the principle and the concept are genuine and typical examples of The Law, in that neither comes out of any constitution or statute. They come straight out of the judges' heads, and mouths. Yet in a labor dispute arising out of a strike, the workmen's lawyer may well plead in a court that any interference with the strike will, by weakening the workmen's bargaining power, amount to an interference with their "freedom of contract," while the boss's lawyer is arguing that the strike should be stopped or crippled by legal decree because *it* interferes with the boss's "freedom of contract." Like most legal concepts, "freedom of contract" can mean very different things to different people, or even to different judges. Like most legal principles, the principle built on that concept means exactly nothing – as a guide to the settlement of a specific controversy.

The sober truth is that the myriad principles of which The Law is fashioned resemble nothing so much as old saws, dressed up in legal language and paraded as gospel. When Justice Marshall intoned "The power to tax involves the power to destroy," and on the basis of that principle declared that a certain state tax was illegal, he might just as well have said "Great oaks from little acorns grow" and founded his decision on that – except that he would not have sounded quite so impressive. "The burnt child dreads the fire" could substitute for many a principle of criminal law. And "Waste not, want not," or perhaps "A penny saved is a penny earned," would be as useful and as pertinent to the solution of a business squabble as the principle that consideration is necessary to validate a contract.

All that The Law is, all that it amounts to, all that it is made of, all that lawyers know and non-lawyers don't know, is a lot – a miscellaneous and tremendous lot – of abstract principles. And every one of those principles is, in essence, no more than a generalized gem of alleged wisdom that some judge has spoken in order to rationalize a decision of his and that other judges have later picked up and repeated.

Moreover, even if those gems of alleged wisdom were – as usually they are not – relevant and reasonable justification for deciding a legal problem one way or the other, there would still be the same old catch in the whole procedure. For the gems, as well as being so generalized, are so many, so motley, and so confusing. And the catch comes in matching the right gem or gems, the right principle or principles, to any given set of specific facts.

That is the crucial step, the key move, in the settlement of any legal dispute. That is the move that the prestidigitators of The law always make behind their backs – no matter how vigorously and triumphantly they may later flaunt the principles they have picked. That is why The law not only *is* not an exact science, but *cannot* be an exact science – so long as it is based on abstract principles and deals with specific problems. Just as the devil can always cite Scripture to his purpose, so can any lawyer on either side of any case always cite The law to his.

As would of course be expected, any lawyer will arise to the defense of his trade and hotly dispute all this disparagement of The Law's vaunted dignity, majesty, and preciseness. He will tell you that most legal principles, though abstractly phrased, have acquired, through long usage, a specific content of meaning and application – in lawyers' and judges' minds at least. He will tell you that The Law must have two qualities, continuity and certainty; (he will not put it that The Law must *seem* to have continuity and certainty – in order to survive.) He will tell you that, in order to achieve continuity and certainty, The Law must be based on general or abstract principles which can be carried over from one year to the next and from one decision to the next. And he will tell you, if you press him about the way in which abstract principles can be carried over continuously and certainly, that problems and fact situations, by reason of their similarity or dissimilarity, fall naturally into groups; one group will be governed by one legal principle, another group by another or possibly a contradictory principle. In short, each new case or problem that comes up is enough like some batch of cases and problems that have come up before to be controlled by the same principle that was used to control them. There is your certainty. There is your dignity, majesty, and preciseness.

In the abstract – and coming from a lawyer it is of course abstract – it makes a pretty theory. There are a few little practical matters, though, that it does not explain. It does not explain why – if there is a quality of certainty about The Law dependent in part on the fact that legal principles acquire a specific content, in lawyers' and judges' minds – so many hundreds of thousands of law cases seem to keep coming to court, with full-fledged lawyers arguing on opposite sides. Nor – if it be said that some lawyers just don't know The Law as well as they should – does the theory explain why lower courts are constantly being reversed by appellate courts. Nor why there are so many dissenting opinions. Nor how it happened that fifty-seven of the nation's top-ranking lawyers were unanimously wrong in advising their clients about the Wagner Labor Act.

The theory does not explain, either, why a promise by a stranger to give money to the same church is more like a cigarette than it is like a promise by a stranger to give a present to the same girl; for the first two, remember, are valid considerations for a

contract, while the third isn't. Nor does the theory explain why the tax problem of Senior v. Braden fell naturally into the same batch of cases that included the Brown v. Fletcher problem in legal procedure, and so was controlled by the same general principle. Still, it makes a pretty theory – in the abstract.

The joker in the theory is the assumption that any two, much less twenty, fact situations or legal problems can ever be sufficiently alike to fall naturally – that is, without being pushed – into the same category. The very existence of two situations or problems means that there are differences between them. And here, perhaps, the lawyer defending his craft may pop up again to say that the differences can be major or minor, important or unimportant. It is when the "essential" facts are the same, he will tell you, that the same general principles apply.

But which facts in any situation or problem are "essential" and what makes them "essential"? If the "essential" facts are said to depend on the principles involved, then the whole business, all too obviously, goes right around in a circle. In the light of one principle or set of principles, one bunch of facts will be the "essential" ones; in the light of another principle or set of principles, a different bunch of facts will be "essential." In order to settle on the right facts you first have to pick your principles, although the whole point of finding the facts was to indicate which principles apply.

Yet if the "essential" facts do *not* hinge on the principles involved, then somebody must pick the "essential" facts of any situation from the unessential ones. Who? Well, who but the lawyers and the judges? And the picking of the "essential" facts, which are going to determine the "similar" group of old cases, which group in turn is going to determine the appropriate legal principles, then becomes as arbitrary and wide-open a choice as if the lawyers or judges had just picked the appropriate principles to begin with.

Suppose, to take a simple example, a man driving a 1939 Cadillac along the Lincoln Highway toward Chicago runs into a Model T Ford, driven by a farmer who has just turned onto the Highway from a dirt road, and demolishes the Ford but does not hurt the farmer. The farmer sues, and a local judge, on the basis of various principles of Law which are said to "control" the case, awards him $100. A week later, another man driving a 1939 Cadillac along the Lincoln Highway toward Chicago runs into a Model T Ford driven by another farmer who has just turned onto the Highway from the same dirt road, and demolishes the Ford but does not hurt the farmer. This farmer also sues. The facts, as stated, seem to make this case quite similar to the previous case. Will it then fall into the same group of fact situations? Will it be "controlled" by the same principles of Law? Will the second farmer get $100?

That all depends. For of course there will be other facts in both cases. Some may still be similar. Others, inevitably, will be different. And the possibilities of variation are literally endless.

Maybe the first Cadillac was doing sixty miles an hour and the second one thirty. Or maybe one was doing forty-five and the other one forty. Or maybe both were doing forty-

five but it was raining one week and clear the next. Maybe one farmer blew his horn and the other didn't. Maybe one farmer stopped at the crossing and the other didn't. Maybe one farmer had a driver's license and the other didn't. Maybe one farmer was young and the other was old and wore glasses. Maybe they both wore glasses but one was nearsighted and the other farsighted.

Maybe one Cadillac carried an out-of-state license plate and the other a local license plate. Maybe one of the Cadillac drivers was a bond salesman and the other a doctor. Maybe one was insured and the other wasn't. Maybe one had a girl in the seat beside him and other didn't. Maybe they both had girls beside them but one was talking to his girl and the other wasn't.

Maybe one Cadillac hit its Ford in the rear left wheel and the other in the front left wheel. Maybe a boy on a bicycle was riding along the Highway at one time but not the other. Maybe a tree at the intersection had come into leaf since the first accident. Maybe a go-slow sign had blown over.

The point is, first, that no two fact situations anywhere any time are entirely similar. Yet a court can always call any one of the inevitable differences between two fact situations, no matter how small, a difference in the "essential" facts. Thus, in the second automobile accident, any one of the suggested variations from the facts of the previous accident might – or might not – be labelled "essential." And a variation in the "essential" facts means that the case will be dumped into a different group of cases and decided according to a different legal principle, or principles.

When the second accident case came to court, the judge might call entirely irrelevant the fact that a caution sign along the highway had blown down since the week before. Or he might pounce on that fact to help him lay the legal blame for the smashup, not on the Cadillac driver this time, but instead on the farmer, or on both of them equally, or on the state highway department, – according, of course, to accept principles of Law. Moreover, the mere fact that one driver was doing forty-five miles and the other forty might easily be enough to induce the judge to distinguish the second accident from the first accident and group it instead with a bunch of cases involving railroad trains that had run over stray horses and cows. The "essential" facts being similar, the judge would put it, the same principles of Law are "controlling."

As with the two automobile accident, so with any two legal disputes that ever have come up or could come up – except that most legal disputes are far more complicated, involve many more facts and types of facts, consequently present the judges with a far wider selection from which to choose the "essential" facts, and so open up a much greater range of legal principles which may be applied or not applied. And since no *two* cases ever fall "naturally" into the same category so that they can be automatically subjected to the same rules of Law, the notion that twenty or thirty or a hundred cases can gather themselves, unshoved, under the wing of one "controlling" principle is nothing short of absurd.

Yet the embattled lawyer may have one final blow to strike in defense of The Law and its principles and its supposed certainty. The Law, he will tell you, is concerned with a great deal more than the problems that actually get into court and are settled by judges. The Law is chiefly concerned with maintaining a constant code of rules and behavior under which men can live and handle their affairs and do business together in a civilized manner. Only the freak situations, the rare situations, ever develop into law cases, he will tell you. For the most part, men's affairs run smoothly and certainly along, without litigation or legal squabbles, under the trained and watchful (and paid) guidance of the lawyers and their Law.

For instance, he will go on, of all the many business contracts and legal agreements of every sort that are drawn up and signed every day, only a very small fraction are eventually carried into court. Bond issues, sales contracts, insurance policies, leases, wills, papers of every kind, all these are in constant use yet comparatively rarely do they become the center of a legal dispute. (And notice, incidentally, how claims concerning the certainty of unlitigated Law always seem to stress its use in business dealings and commercial affairs.) Why do so few legal documents end up in court cases? Simply, the lawyer will tell you, because they are drawn up and phrased by lawyers in accordance with The Law and in the light of recognized legal principles. That is what makes them safe and sure and workable and what keeps the people with whose affairs they deal from constantly going to court about them. And *that* is where the certainty of The Law really comes in and really counts.

Well, don't you believe a word of it. In the first place, those legal papers of all kinds and descriptions are phrased the way they are, not in order to keep the people whose affairs they deal with *out* of court, but in order to give somebody a better chance of winning if the affair gets *into* court. If the document is an installment-plan contract or a lease or an insurance policy or a mortgage, you can guess who that "somebody" is. If it is the result of a really two-sided business dicker, with lawyers working for both sides, then some of the clauses of the contract will be for the benefit of one side and some for the other – in case they go to court over it. At any rate, every legal agreement is drawn up *in contemplation* of a court fight. It is therefore phrased with an eye to the same old ambiguous, abstract principles that the judges use for Law. And no matter how hard the lawyers may try to make their legal language favor one side or the other, they can no more wring certainty out of abstractions than they could wring blood out of a cauliflower.

But there is a far more important reason why the lawyer is dead wrong when he claims that legal advice and guidance keep most business arrangements and affairs out of court. People do not go to court over their mutual dealings simply because their contracts are un-legally or uncertainly worded, and they do not keep out of court simply because the relevant documents are drawn up in the approved style. A man who is convinced that he is getting the raw deal, or that the other side is not living up to its bargain, or who is just dissatisfied with the way the whole arrangement is working out, will just as likely take his troubles to court though the papers involved had been prepared by a special committee of the American Bar Association. And he will find a lawyer to take his case, too – and support it with accepted principles of Law.

Most business transactions, however, run off smoothly of their own accord. Both sides more or less live up to their promises and neither side feels aggrieved or cheated. This is just as true, moreover, even though the relevant documents be written in execrable legal taste. And, very briefly, it is this fact, not the fact that lawyers are always hovering around advising and charging fees, that is responsible for the small percentage of business affairs that find their way into a courtroom.

As a matter of fact, the lawyers, with their advice and their principles and their strange language, no doubt increase, instead of decreasing, the number of transactions that end up in dispute and litigation. If they would let men carry on their affairs and make their agreements in simple, specific terms and in words intelligible to those involved, there would be fewer misunderstandings and fewer real or imagined causes for grievance. Moreover, to jump to another legal field, if written laws, statutes, were worded in plain English instead of being phrased by lawyers for lawyers, there would unquestionably be fewer cases involving the "interpretation" of those statutes and the question whether they do or do not apply to various specific fact situations.

No, the asserted certainty of The Law is just as much of a hoax out of court as in court. And how could it not be – inasmuch as the whole of The Law, whether it be glorified in the opinion of a Supreme Court justice or darkly reflected in the conversation of two attorneys about to draw up a deed of sale, is built of abstract principles, abstract principles and nothing more?

There is an old tale that is told of three men who were walking through a wood when they came upon a tremendous diamond lying on the ground. All of them had seen it at he same instant and yet, clearly, it could not be divided between them. They were peaceful men and so, rather than fight over its possession, they determined to present their claims in a logical fashion.

"You will recall," said the first man, "that as we approached the spot where the diamond lay we were walking, not in single-file, but abreast. The two of you were on my left and that fact is of the utmost importance. For as neither of you, I am sure, would care to deny, the right must always prevail. Therefore, the diamond is clearly mine."

"Indeed," said the second man, "I should not care to deny that the right must always prevail. But you have omitted, in your brief summary of the situation, one highly significant point. It is the diamond, after all, which is the crux, the center, the whole sum and substance of our problem. And from the standpoint of the diamond it was *I* who was on the right, and who must, therefore, prevail."

"You are both very clever," said the third man, "but your cleverness, I fear, has undone you. Observe that the first one of you, who walked on one side of me, and then the other, who walked on the other side, has claimed he was on the right. I too will grant that the right must always prevail. Yet it is, I believe, an accepted truth that in any contest between two extremes, the middle ground is likely to be, in fact, the right one."

It is not told which one of the men got the diamond and it does not much matter.

They must have been lawyers.

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Thus legal language works as a double protection of the might fraud of The Law. On the one side it keeps the non-lawyers from finding out that legal logic is so full of holes that it is practically one vast void. On the other side, the glib use of legal language is so universally accepted by the lawyers as the merit badge of their profession – the hallmark of the lawyers' lawyer – that they never stop to question the ideas that are said to lie behind the words, being kept busy enough and contented enough trying to manipulate the words in imitation of their heroes. The truth is that legal language makes almost as little common sense to the lawyers as it does to the laymen. But how can any lawyer afford to admit that fact, *even to himself*, when his position in the community, his prestige among his fellow craftsmen, and his own sense of self-respect all hang on the assumption that he does know what he is talking about?

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Those comparatively few students of those comparatively few law schools who do learn to recognize the great gap between worldly problems and legal principles – and who do not later fall prey to the propaganda of the trade they are practicing and forget all they once knew – can become extremely useful citizens. They have been trained to look at every legal problem as what it really is – a practical problem in the adjustment of men's affairs. They have been taught how to throw aside the entangling trappings of legal language in seeking a fair and reasonable and workable solution; and then, having found such a solution, how to wrap it up again in respectable legal clothes and work for it in terms of principles of Law. In short, they have learned how to treat the whole of The Law as a technique, as a means to an end, as Pleading and Procedure. And, more than that, they have learned something woefully rare among the modern medicine men. They have learned to concentrate on the end, which is the practical solution of a human problem, instead of on the means, which is The Law.

Nor is it merely a question of being able to phrase a desired result in legal language and to support it with accepted legal principles. That, because of the nature of legal principles, is a push-over. Every lawyer can do that. Every lawyer does that every time he handles a case, although he may not always be aware that he is using a tool rather than Fighting for the Right in the Realm of Ultimate Truth. It is instead a question of going at the solution of human problems in an intelligent and practical and socially useful way, and *then* – and only then – reverting to the medium of The Law. It is a question of applying to any set of facts a combination of common sense and technical information and "justice," undiluted by ambiguous principles – and letting The Law fall where it may.

Yet, one bothersome query remains about the rare law school products who have learned how to do this. Why should their minds and their courses and their subsequent work be

constantly encumbered with a lot of fool principles? Why, after all, should they have had to learn The Law, too?

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But still it is the fact that The Law as a whole is a fraud that lies behind all the inequalities and all the injustices. It makes it worth-while for those with money enough to afford it to buy the court services and the pre-court advice of those mumbo-jumbo chanters and scribblers who can best wring desired results out of legal language and legal principles. It makes it worth-while for those with money enough to afford it to buy their way into court, if the results they want wrung out of The Law cannot be otherwise attained. It is responsible for the myopic inability of most judges to see beyond the one-sided principles they used to use when their own services were for sale to the highest bidders. It is responsible for the inherent inertia, the congenital conservatism, of The Law in action. For if The Law were really the exact and impartial science it purports to be, instead of being an uncertain and imprecise abracadabra devoted to the solemn manipulation of a lot of silly abstractions, none of these bases of inequality and injustice would, or could, exist.

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CHAPTER XI

LET'S LAY DOWN THE LAW

"*The first thing we do, let's kill all the lawyers*." — William Shakespeare

What is ever to be done about it? What is ever to be done about the fact that our business, our government, even our private lives, are supervised and run according to a scheme of contradictory and nonsensical principles built of inherently meaningless abstractions? What is to be done about the fact that we are all slaves to the hocus-pocus of The Law – and to those who practice the hocus-pocus, the lawyers?

There is only one answer. The answer is to get rid of the lawyers and throw The Law with a capital L out of our system of laws. It is to do away entirely with both the magicians and their magic and run our civilization according to practical and comprehensible rules, dedicated to non-legal justice, to common-or-garden fairness that the ordinary man can understand, in the regulation of human affairs.

It is not an easy nor a quick solution. It would take time and foresight and planning. But neither can it have been easy to get rid of the medicine men in tribal days. Nor to break the strangle-hold of the priests in the Middle Ages. Nor to overthrow feudalism when feudalism was the universal form of government. It is never easy to tear down a widely and deeply accepted set of superstitions about the management of men's affairs. But it is always worth trying. And, given enough support, the effort will always succeed. You can

fool some of the people all the time, etc. The difficulty lies only in convincing enough people that they are being fooled.

Nor is this, in any sense, a plea for anarchy. It would not be necessary to do away with constitutions or statutes or with the orderly settlement of disputes and problems in order to do away with the lawyers and their Law. It would only be necessary to do away with the present manner of phrasing and later "interpreting" written laws, and with the present manner of settling disputes and solving problems. It would only be necessary to do away with all the legal language and all the legal principles which confuse instead of clarifying the real issues that arise between men. This is not a plea for anarchy. It is rather a plea for common sense.

And the first step toward common sense is a realization that certainty and consistency, or any close approximation to them, is utterly impossible in the supervision of men's affairs. It is in its refusal to recognize or accept this fact that The Law makes its gravest and most basic error. It preens itself as being both certain and consistent. It purports to have a sure answer ready-for-application to any factual problem or squabble that may arise. Yet even a cursory examination is enough to show that The Law's alleged certainty and consistency lie entirely in the never-never land of abstract principles and precepts. The Law has been forced to retreat from the world of facts into its own world of fancy in order to maintain the pose that it is a precise and solid science.

Moreover, it is in feigning certainty and consistency in its settlement of flesh-and-blood problems while striving desperately to keep up the illusion in the irrelevant realm of legal abstractions, that The Law has lost touch with justice unadorned. As mentioned before, justice can't be cut up into convenient categories. And The Law, in reaching for certainty with one hand and justice with the other, has fallen between the two into a morass of meaningless and useless language. As though any actual dispute could be settled either certainly or justly by reference to the words "consideration is essential to a valid contract" or to the words "no state may constitutionally tax property outside its jurisdiction!"

Since certainty and consistency are impossible of attainment in the orderly control of men's affairs, the sensible thing to do would seem to be to go straight after justice in the settlement of any specific question that comes up for solution. Now justice itself is concededly an amorphous and uncertain ideal. One man's justice is another man's poison. But that is where written laws come in. Wherever different people's different ideas about what is fair and what is right clash head-on, written laws, enacted by democratic processes, should contain, in so far as possible, the answer. Wherever written laws cannot or do not contain the answer, *somebody* has to make a decision. And that decision might better be made on grounds of plain, unvarnished justice, fairness, humanitarianism – amorphous though it be – than on any other.

Today it is the lawyer-judges who make such decisions. Even when some part is taken by a jury – that last and waning vestige of recognition that the ordinary man's ideas about justice are worth something – the jury has to act within the rigid framework of The Law

and the judges' orders. But the ordinary man knows as much about justice as does the ordinary judge. As a matter of fact, he usually knows more. For his ideas and ideals about human conduct are more simple and direct. They are not all cluttered up with a lot of ambiguous and unearthly principles nor impeded by the habit of expressing them in a foreign language.

A training in The Law cannot make any man a better judge of justice, and it is all too likely to make him a worse one. But there is one kind of training, one kind of knowledge, that can fit a man to handle more ably and more fairly the solution of specific human problems. In any common-sense system, that kind of training and that kind of knowledge, instead of adeptness in the abstract abracadabra of The Law, would be a prerequisite to the right to sit in judgment on other men's affairs.

The kind of knowledge that could be really useful, that would really equip a man for the job of solving specific problems fairly, is technical factual knowledge about the activities out of which the problems arise. Not that such knowledge would impart a keener sense of justice. Rather that such knowledge would enable him to understand the problems themselves more clearly, more intimately, and more thoroughly, and therefore to apply his sense of justice to their solution in a more intelligent and more practical way.

A mining engineer could handle a dispute centering around the value of a coal-mine much more intelligently and therefore more fairly than any judge, untrained in engineering, can handle it. A doctor could handle a dispute involving a physical injury much more intelligently and therefore more fairly than any judge, untrained in medicine, can handle it. A retain merchant could handle a business dispute between two other retail merchants much more intelligently and therefore more fairly than any judge can handle it. A man trained in tax administration could have handled Senior v. Braden much more intelligently and therefore more fairly than the Supreme Court handled it. In short, even discounting for the moment the encumbrances of legal doctrine that obstruct the straight-thinking processes of every judge, the average judge is sadly unequipped to deal intelligently with most of the problems that come before him.

And why, after all, should not the orderly solution of our business and government and private difficulties – practical problems all – be entrusted to men who have been trained to understand the practical problems and to appreciate the difficulties? Why should we continue to submit our disputes and our affairs to men who have been trained only in ethereal concepts and abstract logic, and who persist in pursuing that will-o'-the-wisp, certainty? Why should we keep on sacrificing both justice and common sense on the altar of legal principles? Why *not* get rid of the lawyers and their Law?

It would take, of course, a peaceful revolution in the system of rules under which we live. Constitutions, in part at least, would have to be rewritten, without benefit of lawyers. Why not? The machinery exists for ding it in an orderly and peaceful way. Where constitutional commands and prohibitions make sense to the average man, they could be kept unchanged. Anyone understands, for instance, what the federal constitution's requirement of a census every ten years means. Where constitutional commands and

prohibitions are completely incomprehensible except in the light of legal "interpretation,," they should be clarified so that they do make sense or else omitted entirely. Why should the lawyers have a monopoly on the understanding of any part of any constitution?

Statutes would all have to be redrafted too, again without benefit of lawyers. And that would be a tougher job, but by no means an insuperable one.

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For the average man's respect, such as it is, for our *present* system of Law, and his consequent willingness to let his life be run in mysterious fashion by the lawyers, are indeed founded on the carefully nurtured legend that legal principles *are* just about infallible and that they produce, in the judges' hands, something very close to certain justice. Which – to sum it all up in four words – they aren't and don't. It is a blind respect, born not of understanding but of fear. And the fear is built on ignorance.

If only the average man could be led to see and know the cold truth about the lawyers and their Law. With the ignorance would go the fear. With the fear would go the respect. Then indeed – and doubtless in orderly fashion too – it would be: —

Woe unto you, lawyers!