WOE UNTO YOU, LAWYERS!

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.

WOE UNTO YOU, LAWYERS!

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 the 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.

CHAPTER VIII

MORE ABOUT LEGAL LANGUAGE

"*They have no lawyers among them, for they consider them as a sort of people whose profession it is to disguise matters*." — Sir Thomas More

The Chief Justice of the Supreme Court of the United States, several years ago, was elucidating in the course of the Court's opinion a little point of Law. "Coming

to consider the validity of the tax from this point of view," he wrote, "while not questioning at all that in common understanding it was direct merely on income and only indirect on property, it was held that, considering the substance of things it was direct on property in a constitutional sense since to burden an income by a tax was, from the point of substance, to burden the property from which the income was derived and thus accomplish the very thing which the provision as to apportionment of direct taxes was adopted to prevent. . . .

Moreover in addition the conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary, recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it . . . . From this in substance it indisputably arises, . . . that the contention that the Amendment treats the tax on income as a direct tax although it is relieved from apportionment and is necessarily therefore not subject to the rule of uniformity as such rule only applies to taxes which are not direct, thus destroying the two great classifications which have been recognized and enforced from the beginning, is wholly without foundation since the command of the Amendment that all income taxes shall not be subject to apportionment by a consideration of the sources from which the taxed income may be derived, forbids the application to such taxes of the rule applied in the Pollock case by which alone such taxes were removed from the great class of excises, duties, and imposts subject to the rule of uniformity, and were placed under the other or direct class."

This could go on for hours. As a matter of fact is did. And incidentally, the legal point which the learned justice was making so crystal clear had not the slightest bearing on the decision in the case.

But it would be far too easy to pile up example after example of the nonsense that is legal language. The quoted tidbit is, of course, an exaggerated instance. But it is exaggerated only in degree and not in kind. Almost all legal sentences, whether they appear in judges' opinions, written statutes, or ordinary bills of sale, have a way of reading as though they had been translated from the German by someone with a rather meager knowledge of English. Invariably they are long. Invariably they are awkward. Invariably and inevitably they make plentiful use of the abstract, fuzzy, clumsy words which are so essential to the solemn hocus-pocus of The Law.

WOE UNTO YOU, LAWYERS!

Now it is generally conceded that the purpose of language, whether written, spoken, or gestured, is to convey ideas from one person to another. The best kind of language, the best use of language, is that which conveys ideas most clearly and most completely, Gertrude Stein and James Joyce notwithstanding. But the language of The Law seems almost deliberately designed to confuse and muddle the ideas it purports to convey. That quality of legal language can itself be useful on only one supposition. It can be useful only if the ideas themselves are so confused and muddled and empty that an attempt to express those ideas in clear, precise language would betray their true nature. In that case muddiness of expression can serve very nicely to conceal muddiness of thought. And no segment of the English language in use today is so muddy, so confusing, so hard to pin down to its supposed meaning, as the language of The Law. It ranges only from the ambiguous to the completely incomprehensible.

To the non-lawyer, legal language is, as mentioned before, to all intents and purposes a foreign tongue. It uses words and phrases which are totally unfamiliar to him. Or it uses words and phrases which he can find in his vocabulary but uses them in such a way that he is immediately aware that they must mean, in The Law, something quite different from what they mean to him. Or, on the rare occasions when a whole legal sentence seems to be made up of familiar words taken in their accustomed meaning, the sentence itself is likely to be so constructed that it doesn't make common sense. Oh well, the non-lawyer will say with a shrug, I suppose it means something to a lawyer.

That is why people rarely bother to read insurance policies or mortgages or acts of Congress. They know perfectly well that they will never be able to grasp most of the ideas that are allegedly being conveyed. Even if a legally-phrased document of one kind or another is of the upmost personal importance to the man who signs it or hears of it, he will seldom make the painful effort of trying to get clear in his head what the funny language in which it is written is supposed to mean. He will just trust his lawyer – or somebody else's lawyer – that it does mean something, that it means something definite, and that there is a good reason for saying it in a way that prevents him from understanding it. Sometimes, moreover, he will later have cause to regret that blind trust.

Yet why – if you think it over for a minute – should people not be privileged to understand completely and precisely any written laws that directly concern them, any business documents they have to sign, any code of rules and restrictions which applies to them and under which they perpetually live? Why should not the ideas, vitally important to someone as they always are, which are said to lie behind any glob of legal language, be common property, freely available to anyone interested, instead of being the private and secret possession of the legal fraternity?

WOE UNTO YOU, LAWYERS!

As pointed out previously, The Law, regardless of any intellectual pretensions about it, does not at bottom deal with some esoteric or highly specialized field of activity like the artistic valuation of symphonic music or higher calculus or biochemical experimentation. If it did, there would be reason and excuse for the use of language unfamiliar and unintelligible to ninety-nine people out of a hundred. Nor would the ninety-nine have any cause to care. But the fact is that Law deals with the ordinary affairs of ordinary human beings carrying on their ordinary daily lives. Why then should The Law use a language – language being, remember, no more than a means of communicating ideas – which those ordinary human beings cannot hope to understand?

Certainly a man who enters a business deal of any kind, whether he is buying a radio on the installment plan or setting up a trust fund to take care of his family, would seem entitled to know, to his own complete intellectual satisfaction, just what he is getting out of it and just what he may be getting in for. The legal document he signs won't tell him. Certainly a man whose democratically elected government enacts a law which will regulate him or tax him or do him a favor would seem entitled to know, if he wants to know, exactly how the new statute is going to affect him. His lawyer may "advise" him – and may be right or wrong – but reading the statute won't tell him. Certainly a man who loses a law suit would seem entitled to know why he lost it. The court's opinion won't tell him. Why? Why doesn't and why shouldn't legal language carry its message of meaning as clearly and fully as does a cook book or an almanac or a column of classified advertisements to anyone who wants to know what ideas the words are intended to convey?

The answer is, of course, that the chief function which legal language performs is not to convey ideas clearly but rather to so conceal the confusion and vagueness and emptiness of legal thinking that the difficulties which beset any non-lawyer who tries to make sense out of The Law seem to stem from the language itself instead of from the ideas – or lack of ideas – behind it. It is the big unfamiliar words and the long looping sentences that turn the trick. Spoken or written with a straight face, as they always are, they give an appearance of deep and serious thought regardless of the fact that they may be, in essence, utterly meaningless.

Moreover, as has been mentioned previously, the lawyers themselves, almost without exception, are just as thoroughly taken in by the ponderous pomposity of legal language as are the laymen. They actually believe and will stoutly maintain that those great big wonderful ideas – to the initiated. If you can't talk Greek, they say, in effect, to the non-lawyers, then you really can't expect to understand us when we talk Greek. But don't for a second suppose that we don't understand each other, perfectly and precisely.

WOE UNTO YOU, LAWYERS!

The catch is, of course, that the lawyers are not talking Greek – or Russian or Sanskrit either. They are talking, in a fashion, English. Moreover they are talking about matters – business matters, government matters, personal matters – which any non-lawyer is quite capable of comprehending. Furthermore, if they *were* talking Greek, they could presumably translate it accurately and intelligibly into a familiar tongue without spoiling or losing any of the sense. But they can't – or won't – translate the jargon of The Law into plain workaday English. The communication of legal ideas, it appears, cannot be trusted to any conveyance but the lawyers' private patois. Which is, unfortunately, all too true.

For The Law, as you may have heard before, is entirely made up of abstract general principles. None of those principles has any real or necessary relation to the solid substance of human affairs. All of them are so ambiguous and many of them are so contradictory that it is literally impossible to find a definite and sure solution (regardless of whether it might be a good solution or a bad solution) to the simplest, smallest practical problem anywhere in the mass of principles that compose The Law. And the sole reason why that fact is not generally appreciated by either lawyers or non-lawyers is that the principles are phrased in a language which is not only bafflingly incomprehensible in its own right but which is composed of words that have no real or necessary relation to the solid substance of human affairs either.

Thus the whole abracadabra of The Law swings around a sort of circular paradox. Legal language – in statutes, documents, court opinions – makes use of strange unfamiliar words because those words tie up to the abstract principles of which The Law is composed. Except in reference to those principles the words, as used, mean even less than nothing. But the principles themselves are utterly unintelligible except in terms of the legal words in which *they* are phrased. Neither words nor principles have any direct relation to tangible, earthly things. Like Alphonse and Gaston, they can do no more than keep bowing back and forth to each other.

No wonder, then, that the lawyers can never translate their lingo into plain English so that it makes any sense at all. Asked what any legal word means, they would have to define it in the light of the principle, or principles, of Law to which it refers. Asked what the principle means, they could scarcely explain it except in terms of the legal words in which it is expressed. For instance, the legal word "title" doesn't signify anything except insofar as it refers, among others, to the abstract principles that are said to determine to whom "title" belongs. Whereas the legal principle that "title belongs to the mortgagor," or the legal principle that "title belongs to the mortgagee" – for either may be "true" – doesn't signify anything either unless you know what "title" means.

WOE UNTO YOU, LAWYERS!

Of course there *is* one way, and only one way, to explain something of what a legal principle is supposed to mean in plain English. That is to describe the specific lawsuits in which courts have made specific decisions and have said they were making them on the basis of that principle. But the necessity of such a procedure immediately gives away the fact that the principles are intrinsically meaningless. For how on earth can a principle be the *reason* for a decision if it can only be defined by listing the decisions it was the reason for?

No matter which way you slice it, the result remains the same. Legal language, wherever it happens to be used, is a hodgepodge of outlandish words and phrases because those words and phrases are what the principles of The Law are made of. The principles of The Law are made of those outlandish words and phrases because they are not really reasons for decisions but obscure and thoroughly unconvincing rationalizations of decisions – and if they were written in ordinary English, everybody could see how silly, how irrelevant and inconclusive, they are. If everybody could see how silly legal principles are, The Law would lose its dignity and then its power – and so would the lawyers. So legal language, by obstructing instead of assisting the communication of ideas, is very useful – to the lawyers. It enables them to keep on saying nothing with an air of great importance – and getting away with it.

Yet the lawyers, taken as a whole, cannot by any means be accused of *deliberately* hoodwinking the public with their devious dialectic and their precious principles and their longiloquent language. They, too, are blissfully unaware that the sounds they make are essentially empty of meaning. And this is not so strange. For self-deception, especially if it is self-serving, is one of the easiest of arts.

Consider the fact that the lawyers – and that includes the judges – have been rigorously trained for years in the hocus-pocus of legal language and legal principles. They have been taught the difficult technique of tossing those abstract words around. They have had drilled into their heads, by constant catechism, the omniscience and omnipotence of The Law. They have seen and read that important people like Supreme Court justices and Wall Street law partners treat The Law as seriously and deferentially as they treat the Scriptures. They discover, too, that all non-lawyers seem terribly impressed by this language which sounds so unfamiliar and so important. So why ask questions? Why doubt that the world is flat when everyone else takes it as a matter of course? And especially, why doubt it if it is to your own personal advantage to accept and believe it? Why not, instead, try to become a Supreme Court justice or a Wall Street law partner yourself?

WOE UNTO YOU, LAWYERS!

Every once in a while, however, a lawyer comes along who has the stubborn skepticism necessary to see through the whole solemn sleight-of-mind that is The Law and who has the temerity to say so. The greatest of these was the late Justice Holmes, especially where Constitutional Law was concerned. Time and time again he would demolish a fifty-page Court opinion – written in sonorous legal sentences that piled abstract principle upon abstract principle – with a few words of dissent, spoken in plain English. "The Law as you lay it down," he would say in effect, "sounds impressive and impeccable. But of course it really has nothing to do with the facts of the case." And the lawyers, though they had come to regard Holmes as the grand old man of their profession and though they respected the Legal writing he had done in his youth, were always bothered and bewildered when he dismissed a finespun skein of legal logic with a snap of his fingers.

Strange as it may seem, it is his similar unwillingness to swallow the sacredness of The Law that has turned the lawyers, in a body, viciously against Justice Black today. They do not hate him because he is a New Dealer; so is Justice Reed whom they respect. They do not hate him because he was a Ku Kluxer; Justice McReynolds' notorious and continuing racial intolerance has brought no squawks from the legal clan. The lawyers hate Black because he, too, without the age or the legal reputation of a Holmes to serve him as armor, has dared to doubt in print that there is universal truth behind accepted legal principles or solid substance behind legal language. "Why," they say of him, "that Black doesn't even know The Law." Which only means that he knows The Law too well – for what it really is.

What the lawyers care about in a judge or a fellow lawyer is that he play the legal game with the rest of them – that he talk their talk and respect their rules and not go around sticking pins in their pretty principles. He can be a New Dealer or a Ku Kluxer or a Single Taxer or an advocate of free love, just so long as he stays within the familiar framework of legal phraseology in expressing his ideas and prejudices wherever they happen to impinge on The Law. A lawyer who argues that sit-down strikes are perfectly legal, basing his argument entirely on legal principles and phrasing it in legal language (and it can, of course, be done) will be accorded far more respect by his brethren than a lawyer who argues that men ought to be made to keep their business promises but neglects to drag in the Law of Contracts to prove it.

The kind of lawyer who is never lost for legal language, who would never think of countering a legal principle with a practical argument but only with another legal principle, who would never dream of questioning any of the process of The Law – that kind of lawyer is the pride and joy of the profession. He is what almost every lawyer tries hardest to be. He is known as the "lawyers' lawyer."

WOE UNTO YOU, LAWYERS!

Except in a purely professional capacity, in which capacity they can be both useful and expensive, you will do well to keep away from lawyers' lawyers. They are walking, talking exhibits of the lawyers' belief in their own nonsense. They are the epitome of the intellectual inbreeding that infests the whole legal fraternity.

And since lawyers' lawyers are the idols of their fellows, it is small wonder that lawyers take their Law and their legal talk in dead earnest. It is small wonder that they think a "vested interest subject to be divested" or a frankly "incorporeal hereditament" is as real and definite and substantial as a brick outhouse. For the sad fact is that almost every lawyer, in his heart and in his own small way, is a lawyers' lawyer.

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?

There is one more argument that lawyer is likely to make in defense of the confusing and artificial words that make up legal language and, through legal language, legal principles, and, through legal principles, The Law. Watch out for it. Of course, he will grant, The Law is built of abstract ideas and concepts and principles. And abstract ideas have to be expressed in special words. And the special words, because they deal with abstract ideas, cannot be as precise of meaning as words that deal with solid things like rocks or restaurants or kiddy-cars.

But what, he will ask, is wrong with that? Men are always thinking and talking in abstractions and using words like "love" or "democracy" or "confusion" or "abstraction" to convey their ideas. A "contingent interest" means as much to us lawyers as a "friendly interest" means to you. You can't define "friendly interest" very clearly or precisely either. "Due process of law" is just as definite as "dictatorship." "Constitutional" or "unconstitutional" isn't any more ambiguous that "good" or "bad."

WOE UNTO YOU, LAWYERS!

Moreover, he will go on, the whole ideal and purpose of The Law is to maintain, in human relations and affairs, a well-known popular abstraction called "justice." Try to define "justice" any more accurately than you can define any legal concept you can think of! As a matter of fact, the chief intent of The Law, as a complicated science, is to make the idea of "justice" *more* precise, to make it more readily and more certainly applicable to any fact situation, any problem, any dispute that may ever arise. And you can't split an abstract ideal into separate parts – you can't reduce it to principles and sub-principles – without phrasing them in abstract and therefore somewhat imprecise terms. Hence, legal language.

The answer to this defense of The Law and its language is contained right in the defendant's own plea. Even leaving aside the obvious fact that The Law time after time produces results that strike most people as wickedly unfair or "unjust" – in which case the lawyers invariably say: "Th, th; too bad; but that's The Law all right" – the answer is still there. The answer is that you can't split an abstract ideal into separate parts – you can't reduce it to principles and sub-principles. Period.

The whole business of trying to split up "justice" into parts, or principles, in order to get a better, surer grasp of it is absurd as cutting up a worm in order to get a better hold of it. In the first place, the original animal is quickly disintegrated in the process. In the second place, each new little piece, each sub-principle, becomes a squirming abstraction in its own right. Each is now as hard to grab hold of, as hard to pin down to preciseness, as was the mother abstraction.

Thus you will rarely find the lawyers, or the judges either, trying to apply the concept of "justice" to the settlement of a legal problem. Instead, you will find them fighting over a dozen equally abstract concepts, all phrased in legal language of course, and trying to decide which of those should be applied. And, as noted before, the choice of the "right" concepts or of the "controlling" principles is a highly haphazard and arbitrary business, no matter how simple the facts of the problem. For facts don't fit into "consideration" or "affection with a public interest" any more automatically or certainly than they fit into "justice."

Moreover, and this is even more important, the concentration of The Law on its own pet brood of concepts and principles has meant the sad disintegration of the old-fashioned non-legal idea of "justice." Lawyers are always so absorbed in their little game of matching legal abstractions that they have all but forgotten the one abstraction which is the excuse for there being any Law at all. They take "justice" for granted and stick to their "contracts" and their "torts." But you can no more take "justice" for granted than you can cut it up and stuff it into cubbyholes of legal language.

WOE UNTO YOU, LAWYERS!

The lawyer who would defend the abstract language of The Law is right as rain when he says that people think and talk of human conduct in abstract ways, in terms of "right" and "wrong," "fair" and "unfair." But he is dead wrong as soon as he asserts that the strange-sounding abstractions of The Law have any more real or necessary relation to ideals about human conduct than they have to the facts of human conduct. Legal words and concepts and principles float in a purgatory of their own, halfway between the heaven of abstract ideals and the hell of plain facts and completely out of touch with both of them.

Any that is why, in the last analysis, the language of The Law is inherently meaningless. It purports on the one hand to tie up in a general way with specific fact situations. It purports on the other hand to tie up in a general way to the great abstractions, "justice." Yet, in trying to bridge the gap between the facts and the abstraction, so that "justice" may be "scientifically" and almost automatically applied to practical problems, The Law has only succeeded in developing a liturgy of principles too far removed from the facts to have any meaning in relation to the facts and too far removed from the abstraction to make any sense in terms of "justice."

Still, legal language is a great little language to those who live by it – and on it. And you don't even have to use words like trover or assumpsit to have a lot of fun out of it. For instance, a bill recently before Congress contained this charming provision: — "Throughout the act the present tense includes the past and future tenses; and the future, the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural the singular."

Only to a lawyer might, "The men are beating him" mean, among other things, "She is going to beat it."

CHAPTER IX

INCUBATORS OF THE LAW

"*The legal apprentice he sweats and he strains*
To memorize every principle;
He'd learn a lot more in the end for his pains
By studying something sinciple." — Anon.

As every good fascist knows, the perpetuation of the fascist fraud depends, in the long run, on the training of fledglings in the faith. The dictators catch their conscripts young and discipline them to think in goose-step. Promises of reward for the faithful and ominous warnings about the dangers of nonconformity play

their part in making apprentices firmly believe a mass of lies, half-lies, and nonsense. Doubt, even the tiniest wondering doubt, is the cardinal sin. There are few heretics.

The Law cannot catch its communicants so young. But the same mental goose step and the same kind of hopes and fears are used, perhaps not so purposefully but just as efficaciously, to instill a fighting belief in the nonsense of The Law. And of course it is on the rigid training of apprentices in the art that the perpetuation of the legal legend depends.

There was a time when The Law, like other more substantial and more useful trades, was learned in the shop of a full-blown practitioner. An aspiring lawyer studied his precepts and his principles while serving a term as office assistant to some member of the bar. Today the members of the bar must usually pay for their assistance with something more than a lot of legal language dressed up as words of wisdom. The trade has acquired academic pretensions, and those citadels of logical legerdemain known as law schools are not the incubators of The Law.

Consequently, the hope of The Law – that is, the hope of the lawyers that their game will go on indefinitely, undiminished and undisputed – lies with the law schools. And conversely, the one slim hope that the big balloon of inflated nonsense may ever be exploded by internal combustion lies with the law schools too. Once the professional gibberish-jugglers have proceeded beyond the training stage, it is almost always too late. They have to be caught young-in-The-Law to be turned into disciples – or heretics.

In order to teach apprentices how to talk the language and how to reason in the proper abstract circles, the law schools have divided The Law's mass of principles into big chunks. Each chunk represents a "field" of Law and is taught in a separate course, or courses. There are Contracts and Torts and Trusts. There are Constitutional Law and Criminal Law and Labor Law. There are "fields" and courses by the score. Of course, an actual case may fall into several "fields" at the same time. It may involve, for instance, the Constitution, and a crime and a labor dispute. But that will not faze the law schools. So far as they are concerned, it is the principles, not the cases, that really matter. And so the same case will show up in Constitutional Law and in Criminal Law and in Labor Law. It will not, however, show up in the same way. In Constitutional Law, the relevant principles of Constitutional Law will be examined. In Criminal Law, the relevant principles of Criminal Law will be examined. In Labor Law, the relevant principles of Labor Law will be examined. In each one of the courses, the aspects of the case that fall into the other two course-categories will be either glossed over or omitted entirely. A student may thus have to take three courses in order to understand thoroughly,

even from the legal standpoint, what one decision is all about. But not in order to learn any one "field" of Law. Thus, law school courses, since they are cut out of the pseudo-science of Law, inevitably focus on generalities and abstractions rather than on the solution of specific problems. A student might even study a case in a dozen different courses – and thus learn all about The Law of the case – and still not have the slightest comprehension of, or insight into, the real down-to-earth factual difficulty or controversy that brought the case into court.

Sometimes a "field" of Law is too big to be stuffed into one course. For example, Property Law is commonly divided into Real Property and Personal Property (neither "real" nor "personal," of course, means what it means in everyday conversation) and Wills and Mortgages and Negotiable Instruments and several more. But then, Property Law is for the most part only a big branch of Contract Law. Moreover, Corporation Law, a "field" extensive enough to have various subdivisions of its own, is in essence nothing but a branch of Property Law. It is almost as hard to keep straight the hierarchy of legal "fields" and courses as it is to sort out the abstract principles of which the different courses are constructed. And either process is like trying to cut water with a knife.

One of the biggest and strangest "fields" of legal learning is something known as Pleading and Procedure. The law schools divide Pleading and Procedure into many courses, and some of these courses, like Evidence, are rated as "fields" unto themselves. But the strange thing about Pleading and Procedure is not its size; Property Law is at least as big as full of principles. The strange thing is that the lawyers and the law schools do not even pretend to themselves that the principles and rules of Pleading and Procedure have anything to do with the solution of practical problems. Pleading and Procedure is, *admittedly*, just a lot of verbal complications and technicalities that lawyers have to memorize – or know where to look up – before they can practice their trade. And that admission is, of course, unique in The Law. As a matter of fact, the lawyers and the law schools lump the whole remainder of The Law together – Contracts and Criminal Law and Trusts and Torts and the rest of the card catalogue of abstract principles – and call it all "substantive law," as opposed to the "adjective" or "procedural law" of the Pleading and Procedure courses. The term "substantive law" is supposed to imply that the principles of Contracts and Torts and the rest really cope with the substance of human or social problems. But even the lawyers can't make such a claim for Pleading and Procedure.

Pleading and Procedure covers all the principles and rules of Law which govern the way lawyers may make use of other principles and rules of Law. If that sounds complicated, so is Pleading and Procedure. For P. and P. encompasses the code of precepts according to which the legal game is played, once a dispute actually starts

on its way into court. And when you begin dealing with a lot of abstract principles about the proper manipulation of other abstract principles, you can't help getting somewhat confused.

Don't suppose, either, that the principles and rules of P. and P. are, for the most part, any more precise or any less ambiguous than other principles of Law. A bit of evidence at a trial does not fall into the famous "irrelevant, incompetent, and immaterial" classification any more automatically than a killing falls into "second degree murder." A legal dispute does not involve "two separate causes of action" – which only means that it will probably have to be tried in two separate lawsuits – any more readily or scientifically than a piece of paper with writing on it involves an "executory contract." The principles of P. and P. are just as slippery when you try to apply them to the facts of trying a lawsuit as are other legal principles when you try to apply them to the facts that lie behind a lawsuit.

Moreover, even though the P. and P. principles admittedly contribute nothing at all to the actual solution of the problems that The Law is called on to solve, the decision in any law case is as likely to be hung on a "procedural" rule as on a "substantive" principle. All too often, not only "justice" but also the regular principles of "substantive" Law are thrown out the window simply because some lawyer, in handling his client's case, has forgotten or violated a "procedural" rule. Thus a killing may be, without so much as a legal doubt, a punishable murder, and still the murderer may go free, for a time or even for good, just because a bit of evidence used in the trial is labeled "irrelevant, incompetent, and immaterial." A man with a legal claim so clear and valid that neither a lawyer nor a non-lawyer would question his right to have that claim satisfied may get nothing out of it except a bill for counsel fee, simply because his lawyer, at some stage of the case, has been caught using the wrong words, according to the principles of Pleading and Procedure.

Perhaps all this discussion of the P. and P. "field" may seem irrelevant, incompetent, and immaterial to the question of how the law schools go about producing consecrated devotees of The Law. Yet, there is this to remember: — The Lawyers, and the law schools, admit that P. and P. – or Practice, as this alliterative "field" is sometimes called – deals exclusively with the tricks of the trade. The legal neophytes are told that what they learn under the heading of P. and P. constitutes the technique of the lawyer's art. As a dentist learns how to handle his drill so a lawyer learns his P. and P.

By contrast, the rest of The Law, the "substantive" principles of Property and Quasi-Contracts (oh yes, there is that, too) and Corporations and all, are pounded into the young legal brain as Ultimate Truths about Life. Even after the apprentice

graduates from law school, when he comes to take his bar examination, he will find the distinction carefully preserved. One part of his ordeal will test his knowledge of "substantive" Law; the other part will test his knowledge of Pleading and Procedure. One represents wisdom; the other represents skill.

What The Law's apprentices rarely learn and are rarely given half a chance to find out is that the *whole* of The Law is nothing but a technique to be mastered, an adroitness to be achieved. That technique, reduced to its simplest terms, is the technique of using a new language. That is all the law student learns in his courses on P. and P. That is also the law student learns in his courses in "substantive" Law. But because the former are frankly labeled Technique and the latter are labeled Truth, the student comes to believe implicitly that there is a gaping difference in kind where actually there is scarcely so much as a difference in degree. "The original burden of proof is on the plaintiff" is a principle of P. and P. and may help a lawyer win a lawsuit. "If the defendant's action was not the proximate cause of the injury then the defendant is not legally responsible" is a principle of Torts and may help a lawyer win a lawsuit. All that a student ever learns about either of these principles – or about any other principle of either division of Law – is how to say them and when and where it may be useful to say them.

The point is that the law schools, by admitting that one segment of legal education deals with the devices of the trade, make quite plausible the fable that the rest of The Law represents something much more solid. With the procedural courses frankly set to one side as technique, the big empty words and the vague abstract principles of the other courses assume a more credible aura of depth and reality to the newcomer. He can – and does – then believe that the words have meaning and that the principles are nuggets of wisdom – and it is essential to the perpetuation of the legal legend that he should believe this. For it would be fatal to the profession – to its self-respect and its solemnity and its power – if any generation of rising lawyers were allowed or encouraged to discover the real truth about the stuff they study. Which is that *all* the legal principles they ever learn amount to no more than tricks of the trade and that *all* the courses they ever take are courses in P. and P.

And so the law schools stick to their principles, and to the pretense that the principles stand for eternal verities which lawyers – after learning how to do it – graciously apply to the hurly-burly of man's earthly affairs. The principles, as a matter of fact, used to be dished at the students without so much as any trimmings around them. That was when law schools were an innovation, scorned by most lawyers as an effete and none too efficient preparation for the practice of law, just as schools of journalism are scorned by most newspapermen today.

WOE UNTO YOU, LAWYERS!

In those days, and for some time after, law students learned practically nothing but naked principles. The principles of each "field" of Law were sorted out and arranged by sub-principles and counter-principles in a "hornbook" of Torts or Trusts or whatever. The students studied their hornbooks, listened to lectures devoted mainly to explaining and "reconciling" the principles so that they appeared to fit into one neat little ball of abstract knowledge, and religiously memorized the principles. They might never so much as read the record of a single lawsuit. Why should they clutter their minds with disconcerting and trivial facts when they were engaged in learning great and general truths?

But late in the last century, a reputed revolution in the manner of teaching Law began to take the law schools by storm. The new idea was to feed the students the opinions written by judges in actual cases and let them fish for principles among the judges' words. Obviously, it was not the intention of this new approach to legal education to minimize the importance of principles as such. The purpose was to let the students ponder how The Law in action made use of its principles, for judicial opinions amounted to no more than explanations of actual legal decisions in terms of the principles that "controlled." The students still had to learn their principles but they had to find them first.

Of course, the students did not have to fish in the dark. In each "field" of Law, a big bunch of opinions was gathered together by some recognized authority in that branch of legal learning and was then arranged, according to the principles illustrated by the opinions, in a "casebook." The students then read the right cases in the right order and the principles practically popped out at them from the pages. The facts behind any case did not really matter and were often omitted entirely from the reprint of the judge's opinion, as were the parts of the opinion that dealt with other "fields" of Law. What was important, still, was to learn the deathless principles, enhanced a bit in impressiveness by the fact that they were now taken right out of the judges' mouths.

The "casebook method" of teaching Law is still the vogue in the law schools. Fledgling lawyers are no longer encouraged to take their principles straight. In order to learn that Acceptance of an Offer is essential to the validity of a Contract, they must plough through half a dozen verbose judicial outpourings which say just that in one thousand times the space. In order to learn that it is unconstitutional for a state to attempt to tax property outside its "jurisdiction," they must worry through five or ten judicial gems like Senior v. Braden. But when they have finished, they will usually have learned no more than that Acceptance of an Offer is essential to the validity of a Contract, or that it is unconstitutional for a state to attempt to tax property outside its "jurisdiction."

WOE UNTO YOU, LAWYERS!

In many ways, the old-fashioned hornbook method of legal education made more sense. It was more direct and more straightforward and you could learn more principles faster. Law students today pay tribute to it when, after taking a course from a casebook, they study for their examination in the course from a hornbook. Moreover, it is an interesting commentary on the most "advanced" law schools, which have carried the casebook method to such extremes that the principles do not always come quite clear to the students, that their graduates invariably have to take special "cram courses" in the bare principles of Law in order to pass their bar examinations and be admitted to membership in the legal fraternity.

As a matter of fact, these "advanced" law schools – and there are only a handful of them – with their extreme use of the case method of teaching, deserve a special word. Despite the fact that they do not teach their students The Law any too well, they do teach something else. In so doing, they are traitors to the legal legend and a potential threat to the perpetuation of the racket of The Law. For they actually encourage their students to dig out of the cases a little more than abstract legal principles. The bald human facts that bring any dispute into court are rated as worth consideration, not merely as an excuse for the application of The Law, but their own right.

These few law schools still divide legal education into courses based on different "fields" of Law. But the courses and the "fields" are more likely to be cut out according to types of practical problems – Government Control of Business, or Corporation Management – instead of according to tables of abstract principles. More significantly though, regardless of course names, the courses themselves (or most of them, for even the most "advanced" law schools cannot entirely avoid Law-consecrated teachers) are taught with a different emphasis. That emphasis is on the non-Legal aspects of earthly affairs and problems which the facts of any lawsuit bring to light. Students are trained not to discard these matters as irrelevant but rather to concentrate on them, to think about fair and reasonable solutions that might be applied to various kinds of problems, still from the practical standpoint.

If, for instance, a milk company goes to law to protest against a state statute setting the price of milk, the past profits – or lack of profits – of the milk distributors, the medical need of milk for slum children, the present financial shape of dairy farmers, the personnel and liability of the government agency doing the price-setting, all may be treated as just as important as the "due process clause" of the Fourteenth Amendment, the "police power" of the state in question, or the "affectation" or non-affectation of the milk industry with a "public interest." If a widow sues a railroad company because her husband was killed at a grade crossing, the annual toll of grade crossing fatalities and the cost of eliminating such crossings altogether and the well-known weakness of both judges and juries when

confronted with weeping widows may all come into the discussion along with the doctrines of "contributory negligence," "proximate cause," and "the last clear chance."

Not that the principles of Law are altogether neglected in these "advanced" law school courses. The students, inevitably, still read and memorize and try to "reconcile" the same old concepts and abstractions. But the tough meat of factual problems is mixed into their educational diet. The cases become more than settings for the sanctification of legal principles.

Now the results of this kind of teaching are strange and varied. In the first place, the fledgling lawyers do not learn their principles nearly so well as their predecessors used to learn them by the hornbook method nor as their contemporaries learn them by the regular casebook method. The intrusion of factual issues and of other considerations which touch The Law only remotely make the principles harder to concentrate on and harder to remember. That is why they have to take cram courses after they graduate from law school in order to pass their bar examinations. The bar examination – and the cram courses – deal almost exclusively with The Law.

Moreover, the attempt to tie together the real problems that lie behind all law cases and the abstract principles on which decisions in law cases are said to be based usually results in one of two things. For the less intellectually sturdy students, the result will be utter confusion. They will neither understand the problems nor learn the principles. But for the brighter boys, the result will likely be a realization that the problems and the principles have very little in common. From that realization, it is but a short step to a sort of unformulated contempt for The Law and its principles. And if legal neophytes should ever begin to realize, *en masse*, that legal principles are largely constructed of long words and irrelevant abstractions, it would be the beginning of the end of the legal legend.

That is the way and the only way that the inflated mass of hokum known as The Law might ever be exploded from the inside. But it is a possibility so remote that it is ridiculous to contemplate. For the vast majority of legal apprentices in the vast majority of law schools still go blissfully on pulling principles out of judges' opinions, being taught in mental goose-step the sacred language of concepts and precepts, to emerge as doughty and undoubting defenders of the legal tradition and perhaps to become eventually Wall Street law partners or Supreme Court justices.

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?

CHAPTER X

A TOUCH OF SOCIAL SIGNIFICANCE

"*Laws grind the poor, and rich men rule the law*." — Oliver Goldsmith.

In case it should not yet be perfectly apparent, it may be worth stating here and now that the purpose of this inquiry into The Law and its mysterious ways has not been – and is not – what today would be called a "socially significant" purpose. That is, it has not been to prove that The Law, in terms of its results, oppresses the poor and favors the rich and is a tool of the big corporations and is almost always found on the side of wealth, Wall Street, and the Republican Party. Practically every critical book on The Law ever written attempts to prove just that -–and there are hundreds of them. The trouble with them all is not by any means that they are

not, for the most part, quite right. The trouble is that they get just that far and no farther. Their authors, who are usually lawyers, have no basic quarrel with The Law as a method, a science, a technique of running the world. They merely want to see it work for their side. They are not out to tear down The Law. They are out to remodel it slightly so that its results suit them better.

The purpose of this little inquiry has rather been to show that the whole pseudo-science of The Law, regardless of its results, is a fraud. It is just as much of a fraud when it sends Dick Whitney to jail as it is when it sends to jail a starving man who steals a loaf of bread. It is just as much of a fraud when it favors share-croppers as when it favors coupon-clippers. It is just as much of a fraud when it protects civil liberties as when it protects the profits of holding companies. It is just as much of a fraud when handed down by a "liberal" court as when handed down by a "conservative" court. It is a fraud, not because of its results but because of the manner in which it purports to arrive at them.

Yet no inquiry into The Law could pretend to be complete without at least some slight consideration of The Law's famous tautological boast about "equal justice for all." For the boast is a lie. The Law not only can be bought – although usually not in so direct a fashion as it was bought from ex-Judge Manton – but most of the time it *has* to be bought. And since it has to be bought, its results tend to favor those who can afford to buy it.

Moreover, the fact that The Law is constantly for sale, and generally to the highest bidder, ties right into the fact that The Law as a whole is a fraud. For The Law could not be bought and it would not favor those who can afford to buy it if the vaunted principles of which it is fashioned really were the ready keys to certainty and justice which the lawyers claim them to be. It is because those principles are so many and so meaningless – because they can be chosen and twisted and sorted out to support any result under the sun – that The Law does *not* produce justice (which, in itself, implies equality of treatment for all).

In considering how and why The Law has to be bought, it might be well to remember once more that The Law is not the laws, as most people think of the laws. It is true that legislatures and members of Legislatures and members of Congress have been bought, or at least paid for, so that they would vote for or against proposed statutes which would affect the interest of those who did the paying. But this practice, though deplorable, is a minor phenomenon compared to the day-in-and-day-out purchase of The Law. For The Law is that body of abstract, amorphous rules which supersede written statutes and even constitutions and under which the lawyers and the lawyer-judges resolve all our problems, settle all our disputes, and run all our lives. It is well worth buying.

WOE UNTO YOU, LAWYERS!

How, then, is The Law bought? How is it regularly turned to the account of those men and those companies who have money enough to pay what is costs? The Law is bought, to put the answer bluntly and briefly right at the start, by hiring the services and the advice of the smartest lawyers, of the professional soothsayers who are most adept at manipulating the principles of which The Law is made. It is bought by paying a premium, in court and out of court, to the twentieth century medicine men who can best cast spells of legal language to protect and defend the personal and financial interests of those who would be hard put to protect and defend such interests in terms of justice, undiluted by Law.

Now most people, if they think at all about what money can do in the way of legal protection, think exclusively about criminal law. They think about Leopold and Loeb being able to hire Clarence Darrow to keep them from the electric chair. They think about the Mitchells and the Insulls, the captains of industry who get caught doing strange things with other people'' money, and who can then buy the services of the cleverest and yet most respectable members of the bar to save them from legal punishment. People contrast such goings-on with what happens daily to the ordinary murderers and ordinary thieves who can only afford the cut-rate prices charged by poorer lawyers, or who have to have their lawyers supplied them free, and third-rate – just so that the outward appearance of the justice-for-all ceremony may be maintained. And most people realize that there is something distinctly unfair about all this. There is – but it is only a very small part of the story.

In the first place, criminal cases, although they take up most of the newspaper space devoted to The Law, take up only a fraction of the time of the courts. The bulk of the business of the courts is given over to what the lawyers call “civil” suits, in which one person sues another person or one company sues another company, usually over some financial or business squabble. In these cases, just as in criminal cases – and it is particularly noticeable when a corporation is on one side of the dispute and a lone individual on the other – the most money buys the best legal assistance. And the better your legal assistance, the better your chance of ending up with The Law in your favor.

For, as cannot be repeated too often, The Law is not by several long shots the certain and exact science as which it masquerades. If it were, even the richest corporation in existence would not throw its money away on the tremendous fees that the leading lawyers charge their clients. Any lawyer, or perhaps no lawyer at all, would do just about as well. But the corporations know and the lawyers know that a master manipulator of legal mumbo-jumbo is a far more useful thing to have on your side in a lawsuit than all the certain and impartial justice in the world.

WOE UNTO YOU, LAWYERS!

True, in a great many legal disputes, there will seem to be more principles of Law or more compelling – in the abstract – principles of Law available to one side than to the other. But the other side will always have some principles left to play with. And just as in the game of bridge, so in the game of Law, an expert player will beat a run-of-the-mill player nine times out of ten despite the fact that he may hold worse cards.

Yet it is not only and not chiefly in the purchase of smart counsel to represent you in actual court cases that The Law has to be bought. The Law, although it oversees all human affairs, does not apply itself automatically to the settlement of human grievances. The man who thinks he is being cheated in a personal or business way, who thinks he is being deprived of his just rights so clearly that it is even a violation of the legal system of far-fetched principles, must go to court to try to get any satisfaction at all from The Law. And it costs money to go to court. It costs money even before the bills for lawyers' fees begin to come in. That is why most people never in all their lives become plaintiffs in a lawsuit. Farmers and factory-workers and housewives and unemployed people have their legal grievances just as rich men and big corporations have their grievances. But they cannot afford to buy so much as a shot at The Law.

A man who is pretty sure the agreement he made is being broken, when the finance company takes away his car or his radio because a couple of payments have been delayed, would not think of hiring a lawyer and going to court about it. It costs too much. A clerk in a big department store who thinks that some new government statutes hits him in an unfair and perhaps illegal way would not dream of going to court about it. But the store would go in a minute if *it* felt cheated by some written law. A workman's wife who is desperately unhappy with her husband and has perfectly adequate grounds for divorce will not sue for one. Divorces, like suits against the government and legal efforts to get a fair deal in ordinary business arrangements and like almost every kind of law case in the book, are the exclusive luxuries of those – and there are very few of them – who have money enough to pay for The Law.

A several-million-dollar corporation recently complained in print about the terrific cost of carrying to and through the courts a protest against a ruling of the National Labor Relations Board. The point was well taken. Yet it serves quite nicely to emphasize the utter helplessness of the ordinary man with a grievance that he would like to expose to The Law. The corporation at least could and did afford to pay the thousands of dollars necessary to get a legal hearing on the wrong that it thought had been done it. But what chance, for instance, would an employee, or a customer, of the corporation have to air his complaint in court is he thought he had been unfairly and illegally treated by the U.S. Government – or, for that matter, by

the corporation itself? The disadvantages of the corporation, up against the U.S. Government in a matter involving The Law, are as nothing compared to the advantages the corporation holds over every individual who works for it, buys from it, or invests in it wherever The Law is or might be concerned.

Still, it is not in buying smart soothsayers to talk for you in court, nor even in buying your way into court in the first place, that The Law is most commonly and most effectively sold and purchased. Most of the business that lawyers handle and live on is made up of matters that never get near a courtroom. Most of the business that lawyers handle and live on is made up of what is called legal advice, usually about financial matters, that is tendered, at a price, to those men and those companies that feel it will be well worth-while to get The Law safely on their side before they embark on any money-making or money-saving deals of any kind. Any legal advice amounts, for the most part, to casting spells of legal language over the wording of business documents so that the documents, if they ever *should* be dragged into court, will show that, regardless of where non-legal justice may seem to lie, The Law is pretty clearly on the side that bought the legal advice.

To take a very simple example, suppose a man should set up a parking lot and hand out plain numbered tickets, like the checks you get when you check your hat in a restaurant, to everyone who parks his car in the lot. Suppose a woman should park her care and leave her fur coat in the back seat and should come back to find the fur coat gone. Suppose, moreover, that she should be mad enough and wealthy enough to sue the parking lot owner for the loss of her coat. The chances are strong that The Law, after tossing abstract principles around in profusion, might hold him responsible for the loss and make him pay her the value of the coat.

Yet most people who lose articles out of cars left in parking lots have scarcely a Chinaman’s chance of getting a cent out of the lot owners. Most parking lots are owned by people or companies with money enough to buy legal advice beforehand. And so most parking checks are not plain pieces of cardboard with numbers on them. They have numbers on them all right, but on the back of the check or at the bottom is printed in small type “The owner of the car covenants that the bailee will not be held liable or responsible for the loss, theft, and/or damages of articles, etc.” – or words to that effect. Courtesy of the legal advice, The Law has been carefully placed on one side of the potential lawsuit – without so much as the knowledge of one of the “parties to the contract” that it has been placed there – just in case.

It is the same – on a much larger and more complicated scale – with leases. It is the same with mortgages. It is the same with insurance policies. It is the same with stock issues and bond issues and all the other legal devices by which business

concerns of all kinds and shapes earn, beg, borrow, or steal other people's money to use for themselves. There is always that big block of small type, sometimes running to several pages, which the ordinary purchaser or tenant or borrower or lender or investor does not bother to read and probably could not understand if he did read it. That block of small type is put there at the advice of lawyers, and what it means is that is any trouble should arise over the little business arrangement, the ordinary purchaser or tenant or borrower or lender or investor is almost surely going to lose if he should be fool enough to carry his complaint to The Law. For the other fellow – the company or the individual with money enough to afford it – has been canny enough to buy The Law in advance.

Of course it often happens in the world of finance and industry that both sides of a business deal are able to hire legal advice right from the start. That is the lawyers' heyday. Counsel for each side, without so much as a minor lawsuit anywhere in prospect at the time, will fight to outdo each other in the clever manipulation of legal language and the careful building of legal fences, so that their clients' interests may later be defended, if necessary, in strict accordance with principles of Law. Yet unless one set of lawyers is much smarter than the other set of lawyers, both sides might just as well dispense with their lawyers altogether, so far as driving a reasonable and profitable and fair business bargain is concerned. The hitch is that as soon as one side resorts to legal advice, the other side has to use it too in self-defense. Thus everybody loses except the lawyers, who go merrily on selling The Law.

But since most business transactions involve a big fellow and a little fellow – a company, for instance, that can afford legal advice and a customer who can't – The Law is usually weighted to one side from the very beginning. It is weighted by lining up beforehand, in the written terms of the transaction, the legal language that will fit right into legal principles in any lawsuit that might later arise out of the transaction. And it is in this fashion, even more than by the hiring of smart word-jugglers to represent you in court or by the purchase of a court hearing to begin with, that The Law is regularly bought and, therefore, regularly tends to favor those with money enough to buy it.

That is why the center of the nation's law business is in New York City and why the bulk of the nation's influential and profitable law practice is carried on in the Wall Street law factories. People and companies in other parts of the country have their legal grievances and disputes and their court squabbles, and they have them in much greater proportion than the proportion of the nation's law business that is carried on outside New York. But the richest people and the biggest companies make almost all their financial arrangement and their important business deals in

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New York. And financial arrangements and important business deals, even more than actual legal disputes, are what the lawyers thrive on.

Most New York lawyers spend most of their time working out legal advice for the business titans that make their financial headquarters in the city. It may be advice about how to word a series of mortgages or conditional-sale contracts or leases or stock certificates, so that the little fellows on the other side of the deals will have little or no chance for legal redress if they should later feel themselves cheated. It may be advice about an intercorporate transaction, where the sole real usefulness of the advice will be to counter any tricks of legal language that the other side, also advised by high-paid lawyers, might try to pull. It may be advice about how to get around a bothersome government regulation and still keep on good terms with The Law, which of course is more almighty than any government regulation – advice that thousands of smaller companies or less wealthy people would love to have too, if only they could afford it. It may be advice about how to make use of legal language so as to get out of paying taxes – as when J.P. Morgan, for all his yacht and his grouse-shooting, perfectly Legally avoided the federal income tax for a couple of years while hundreds of thousands of $1500-a-year men had to chip in to the U.S. Treasury.

In any case, it will be advice which has a dollars-and-cents value, to the person or the company that buys it, somewhat greater than the stiff price the lawyers charge for it. And the direct or indirect losers in the whole affair will be the companies and people by the millions who cannot afford thus to buy The Law. There is no more striking parody of The Law's boast that it represents "equal justice for all" than in the work of those top men of the legal trade who cluster and prosper in New York City.

Moreover, most good lawyers go to New York before they die. They go to New York because that is where they can make the most money out of their knack of tossing around legal principles and legal language. As a matter of fact, herds of them are coaxed straight to New York from the law schools every year. And thus, incidentally, the profession gets in another telling blow for the perpetuation of the legal legend. For whatever slight doubts about the reasonableness, practicability, and majesty of the legal process may have been left in the smart youngster's heads, after three years of rigid drilling in the sacredness of abstract concepts, quickly evaporate in an atmosphere where The Law is acknowledged king – and the king and his pet courtiers are so handsomely rewarded.

Here too is the kernel of another reason why The Law is kinder to the rich than to the poor. Not only are the most promising young hocus-pocus artists immediately lured to the service of those who pay them the highest wages for the magic, but out

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of this group spring, eventually and almost automatically, most of the acknowledged leaders of the profession. For, as in other trades and professions, earning capacity is universally and blindly accepted as the hallmark of real ability. (Benjamin Franklin once paid tribute to this fact when he suggested that the lawyers appoint the judges, on the ground that they would always pick the *ablest* of their clan so that they might most *profitably* divide each new judge's practice among themselves.) And – despite the fact that Franklin's scheme has never been put to the direct test – it is out of the acknowledged leaders of the profession, who are acknowledged to be leaders because they make so much money, that most judges are chosen.

Now when a lawyer becomes a judge, he no longer has a direct financial incentive to manipulate The Law in favor of the rich people and the big corporations. But he will usually have spent most of his professional life, before he became a judge, doing just that. What is more, he will not have admitted, even to himself, that he was doing anything other than apply an exact and impartial science to the orderly management of men's affairs. In inevitable protection of his own self-esteem he will perforce have swallowed most of the legal legend whole. And consequently he will have hardened into a habit of mind whereby justice and the legal principles he is used to using are just about synonymous.

When he becomes a judge, he cannot easily shake off this set slant toward The Law. The principles and concepts he once flung about and fought for, mouthed now by other lawyers trying cases before him, will still have a familiar and authoritative ring. Such phrases as "freedom of contract" and "*caveat emptor*" and "the sanctity of written (by lawyers) agreements" and "deprivation of property without due process," along with all the minor and equally vague abstractions with which lawyers customarily defend, in and out of court, the interests of their wealthy clients, will strike the eyes and ears of the judge as good sound legal doctrine. By contrast, the phrases and principles of Law customarily used to argue against such interests will seem less familiar, less orthodox, less compelling. Conditioned by his own past habits of legal speech and thought, the judge will unconsciously lean, in laying down The Law, toward the side that talks his old brand of legal dialect. Which means that he will lean toward the side where the money lies – and The Law will lean with him.

There is one more important reason why The Law regularly tends to favor the rich, the conservatives, the people and companies with plenty of money and property who, not unnaturally, want to keep all their money and property and keep on getting more of it in the same old ways. This reason is inherent in the very nature of The Law itself. For The Law, you may remember, purports to be a great body of changeless abstract truths. Times change, and ways of living change, and the facts

of human affairs change, but the principles of The Law remain unmoved and steadfast. In short, The Law, by its own definition, is a stand-pat science.

And of course it is the wealthy and well-to-do who are always stand-patters; the poor and the not-so-well-to-do are the progressives and the radicals. The moneyed groups are for the most part very nicely satisfied with the old arrangements of things. Justice or no justice – in the original Christian sense of the word – they don't want to see the rules shifted in the game of getting ahead in the world. And they find in The Law a philosophical and less obviously selfish defense of their resistance to change.

They also find in The Law something more solid and more useful than a philosophical defense of conservatism. For The Law, mysteriously brought to earth by lawyers and judges, does control all earthly affairs. And in being transmuted from abstract principles into specific decisions about human disputes and problems, it retains its reactionary flavor. New rules of the game, new arrangements in men's activities, new considerations of what is practical and what is fair, fit less smoothly and less snugly into The Law's scheme of principles than do the old considerations, the old arrangements, the old rules.

That is one reason why so much "progressive legislation" – meaning laws that try to change the rules to favor the poor at the expense of the rich – is either damned entirely or "interpreted" into ineffectiveness by the courts. The novel arrangements just don't slide easily into the old unchanging principles of Law. For instance, the newfangled notion that a worker ought to be paid a living wage didn't stand a chance when it first came up against the age-old Law-encrusted right of a corporation to pay its workers as little as it pleased. There might have been a law about it, but The Law had never heard of such a thing. Similarly, the idea that a homeless man might be legally justified in breaking into an empty house to sleep – an idea that could certainly be argued from the standpoint of pure, unadulterated justice – would be laughed out of court today. As would the idea that a bond salesman, whose glib assurances had led an old lady to invest her savings, could be sued by the old lady for what she lost when the bonds later became worthless.

For the judges will not, if they can help it, go to the trouble of reshuffling The Law's huge deck of abstract principles in order to reach, and rationalize, a radically different set of practical results. Only rarely and reluctantly will they turn the stream of legal logic in a really new direction. Only rarely and reluctantly will they tolerate, in The Law's name, far-reaching or basic changes in the manner of adjustment of human problems. Thus not only The Law but the general trend of legal decisions remains the same. And by remaining the same it favors the interests

of those who stand to benefit by a retention of the old rules. It favors the conservatives. It favors the rich.

Yes, the "socially significant" books about the inequalities and injustices of The Law in action are right – as far as they go. And incidentally, a prominent member of the bar recently summed up a large part of their theme in a phrase when he described the ideal client, the lawyer's dream, as "a rich man who is scared to death."

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.

The Law is indeed a menace when it works so as to pervert its own boast of "equal justice for all," when it favors the rich and oppresses the poor, when its results, in the mass or in the particular, seem to be plain denials of ordinary non-legal impartiality and fairness. The point is that even when The Law works, as it sometimes does, so as to produce fair and impartial and practical results, it is nothing but an unnecessary and expensive nuisance. Those results might have been achieved much more simply and easily and painlessly without recourse to the metaphysical nonsense of The Law. And it is the point which the "socially significant" boys invariably miss.

The "socially significant" plot has grown stale in the telling. It always revolves around the conventional triangle of the rich, the poor, and The Law. And the villain always walks off with Lady Law in the end. Which is supposed to show that she is a villain too, whereas actually she is only an empty-headed fool who neither knows nor could be taught any better.

CHAPTER XI

WOE UNTO YOU, LAWYERS!

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.

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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?

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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. The lawyers themselves have often done it with a whole body of written laws; they call it "codifying" the laws. There is no reason why a chosen group of non-lawyers should not codify the present laws of every state, and of the federal government as well, and codify them so that it no longer takes a lawyer to translate them into significance. Any law that means something definite and tangible in relation to human affairs can be written so that its meaning is plain for all to read. Any law that means nothing except as lawyer and lawyer-judges put content into its inherently content-less language has no business staying on the books.

Furthermore, any law which, instead of laying down rules itself, turns over the solution of certain factual types of problems to a group of experts or administrators should say perfectly frankly what it is doing and should define in factual instead of legal language the field within which the experts are to make rules and decisions. Why conceal behind vague generalities the fact that the Securities and Exchange Commission has been given, within vague limits, the power to make rules for the running of the New York Stock Exchange? Why not make the granting of power simple and direct; and why not make the limits of the power specific instead of leaving their determination to the lawyer-judges' subsequent and haphazard "interpretation" of the statute's legal language?

Similarly, any written law which, though laying down a broad rule, leaves to a court or some such deciding body the precise application of its rule to the fact of any particular problem should say that it is doing just that. "First degree murder is punishable by death" makes no real sense as a statute because "first degree murder" makes no sense except in relation to the abstract legal principles which are said to define it. "When a court (whether judge or jury or both or some other kind of deciding body) finds that one person has killed another person and believes that the killer deserves to be electrocuted, the court may order that he be electrocuted" is equally descriptive of the rule and much more accurate. Why not phrase the statute that way, so everyone would know just what it did mean? Then, if we should want the rule to be more precise, the written law could be made more precise – instead of pretending that the words "first degree murder" contribute toward preciseness or toward anything but obscureness and unintelligibility.

For, of course, there would still have to be courts, or judges, or decision-makers, under any orderly system of social control, even though written laws were made intelligible to all. There would have to be decision-makers to determine the true facts behind any dispute, and then to apply to the dispute the terms of any written laws, whether those laws were so precise that their application was almost automatic, or whether they left room for the decision-makers to exercise their own

discretion and their own sense of justice. There would have to be decision-makers, too, to settle any disputes which were not covered by written laws. And it is as decision-makers that men trained in the technicalities of factual problems, rather than in the technicalities of legal language, would come in.

Suppose today a problem in the regulation of utility rates comes before a court of Law. The company will argue that its property is worth a great deal of money because the more money it is worth the higher rates it can charge, since it is allowed to make "a fair return on the reasonable value of its investment." The utility commission, out to defend the rates it ordered the company to charge, will argue that the company's property is worth considerably less than the company's figure. Both the company and the commission will bring in engineers and accountants to testify about the value of the company's property. The company's experts will set a high figure and the commission's experts will set a low figure. And the court, unable to understand or gauge intelligently the basis of either set of figures will, more than likely, split the difference and let it go at that. But why – if the commission, which is a government body just like any court, is not to have the last word in applying a written law entrusted to it for enforcement – should not the dispute at least be brought before a court of engineers or accountants or both who, unpaid by either side, could apply their technical knowledge to an examination of both sets of claims and an intelligent choice between them?

Suppose today a man accused of a crime pleads before a court of Law that he is insane and, therefore, cannot be held responsible. The prosecuting attorney will produce psychiatrists who insist, and explain in medical terms why they insist, that the defendant is sane. The defendant's attorney will produce psychiatrists who insist, and explain in medical terms why they insist, that the defendant is crazy. The court will listen uncomprehendingly to both sets of psychiatrists and will then go into a huddle with itself over the question whether the accused man can "understand the difference between right and wrong." If he can, he is sane according to The Law, and if he can't, he is sane according to The Law, no matter how ridiculous the basis of distinction may seem – and does seem – to any psychiatrist. But why should not the dispute be brought immediately before a court of psychiatrists, or before a single psychiatrist-judge, who, unpaid by either side, could apply technical knowledge to an examination of the defendant's claim and make an intelligent decision as to its validity.

Suppose today a complicated dispute over the internal management of a corporation comes before a court of Law for solution. Lawyers for both sides will defend their client's actions and interests in elegant legal language. The court, in making its decision, will choose between two proffered sets of legal principles. Why legal language and legal principles? Why not considerations of business

efficiency and business ethics? And why should not the dispute be brought before a court of men experienced in corporate management, who could apply their technical knowledge to an examination of the claims of both sides and to an intelligent and practical as well as fair solution of the difficulty?

It is no answer to say that a lawyer-judge understands better than does an engineer or an accountant or a psychiatrist or a business executive the "other issues" involved in these cases, or in any other of a thousand types of cases that might be named. The only real issue ever involved in any case is the intelligent formulation of a fair decision to a factual problem, either within the framework of some relevant written law or, if necessary, without reference to any written law. The only understanding helpful in formulating such a decision, granted that the words of any relevant statute makes sense – and if they don't they should be ignored – is a practical understanding of the problem involved. An engineer or an accountant or a psychiatrist or a business executive, remember, has just as keen and impartial a sense of justice where his own interests are not concerned as has any judge where *his* interests are not concerned. Moreover, if two or more kinds of specialized knowledge are pertinent to the settlement of any problem, why should not two or more kinds of technical experts compose the court which settles the problem? Why, in any case, should the real issues ever be obscured by the fake issues of The Law?

In any common-sense system of social control, or government, the courts – the law-applying and decision-making bodies – would be built of men trained to an understanding of the different fields of human activity with which they were to deal. The exact mechanics of such a scheme could be worked out in any one of several ways. Perhaps permanent courts of experts in different fields of practical knowledge might be set up, each to handle all disputes and problems that centered around their own fields. Perhaps, instead of taking men permanently away from the work to which they had been trained and making specialized judges out of them, there might be panels of experts on call for part-time court service in the settlement of disputes involving their separate fields of knowledge.

Perhaps – for any such scheme would have to include a central directing bureau to arrange for the hearing of each case before the right court – there might be central courts composed of a dozen different kinds of specialists: — an ex-business executive and an ex-doctor and an ex-labor leader and an ex-engineer and an ex-banker and an ex-farmer and an ex-public administrator and so forth. And each central court might assign the handling of every case that came along among its own members or among other specialists it had available for service, or among a relevant combination of the two. Perhaps each field of dispute might have its own central court and its own outside part-time judges. Thus a central criminal court

might include an ex-penologist and an ex-financial expert and an ex-doctor and an ex-police official and a couple more, with a chemist and a psychiatrist and a ballistics expert, among others, on call to sit in certain cases where their special knowledge would be of help.

Even the Supreme Court, composed of course of non-lawyers (and this, incidentally, would not even require an amendment to the Constitution which says not a word about the judges having to be lawyers) might well make use of outside specialists as part-time judges. And since most of the problems that come before the Supreme Court involve, and would probably continue to involve, practical problems in government, most of its members – as well as the members of any other courts devoted to handling such problems – would be men trained and qualified in the efficient and wise administration of government affairs.

As a matter of fact, abolition of the lawyers and their Law might eventually lead to the virtual disappearance of courts as we know them today. Every written law – written, you remember, in comprehensible language – might be entrusted to a body of technical experts, to administer and apply it and make specific decisions under it. As the Interstate Commerce Commission applies the Interstate Commerce Act, as the Federal Trade Commission applies the Clayton Act, so each state would have, say, a Killing Commission to apply its laws about what are now called murder and manslaughter. Moreover, the decision of the technical experts who made up each commission would be final. There would be no appeals and super-appeals to other bodies of men who knew and understood less about the real matter in dispute than the original deciders.

There would be a Supreme Court – or a Supreme Commission or such – to settle important inter-governmental or intra-governmental squabbles to which the written laws did not contain the ready answer. But just about all that would be left for courts, or something like our present courts, to handle would be disputes to which no written laws directly applied. And where no written laws directly applied, arbitration of the dispute by picked specialists in that field, or that business, would serve the ends of efficiency, justice, and also economy far better than a formal trial before any kind of court.

If even the remote idea of the eventual disappearance of our courts has a shocking sound, it is only because of our blind faith that the mysterious processes of The Law do somehow work inexorably toward certain justice. Well, for the tenth time, they don't. When the courts happen to produce justice it is as likely to be despite the irrelevant processes of The law as because of them. Nor, for all the legal legend, are judges infallible arbiters of right and wrong, fair and unfair. Judges are men, not gods. Moreover they are government servants, government employees.

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Why should not another group of men, another group of government employees, be equally able to decide what is fair and what is unfair? Why should not another group of men, given equal responsibility and trained to an understanding of complicated practical problems, be *better* able to decide what is fair and what is unfair, within the limits of an intelligible statute, than those who have been trained mainly in the manipulation of abstract principles? Why should not a commissioner's word be as good as a judge's word?

True, the mechanics of any such system as has been suggested to replace the lawyer-judges would be complicated in the extreme. But no more complicated than the present confusing, overlapping, and wasteful hierarchy of trial courts and appellate courts, state courts and federal courts, courts of law and courts of equity, police courts and magistrate's courts, common pleas courts and special claims courts, and all the rest, all of them manned by exalted lawyers.

And if the whole idea of taking the settlement of our disputes and problems, in one fashion or another, out of the hands of the lawyer-judges sounds too fantastic, too far-fetched and unfeasible, a couple of little points are worth considering. For small steps in that direction have already been made in the field of government and also in the field of business.

In the field of government, the growth of commissions and boards and all sorts of administrative bodies has served to deprive the courts of Law of some of the decision-making business that used to be theirs. Today, most new statutes are put in the charge of special decision-making agencies instead of being entrusted directly tot he courts for interpretation and application. It is true that today an appeal to a court can always be taken from any commission's decision. But the commission really stands in the place of a trial court – and appeals are comparatively few. It is true, too, that these commissions are now usually manned in large part by lawyers. But even the lawyer-commissioners are coming, more and more, to be chosen for their familiarity with the practical problems with which the commission has to deal, rather than for their adeptness at The Law. At the least, it is a trend.

In the field of business, the first halting step away from the lawyer-judges has been the growth of arbitration as a means of settling disputes. Arbitration means nothing more than the voluntary turning over of a dispute for fair settlement to a man or group of men, trusted by both sides and equipped by specialized knowledge to understand the question at issue. Lawyers are not necessary, either as arbitrators or as advisers, and experience has proved that their presence is all too likely to hold up and confuse the whole proceedings. They just can't forget their abstract principles – nor their Pleading and Procedure – and get down to business. Most

judges, incidentally, disapprove heartily of arbitration, and say so whenever they get a chance in a lawsuit, as when a contract provides for it. They well know in what direction arbitration, as a system, is heading.

As a matter of fact – to go back for a minute to the possible mechanics of setting up substitutes for the present courts of Law – one scheme might be the tremendous extension of the arbitration device. Thus the two sides in what The Law would call a "civil suit" – an ordinary case not involving the government – might be required to pick their own expert or experts to settle their dispute for them, perhaps from among a qualified list of arbitrators in that field, or perhaps not. Certainly such a requirement would fit in perfectly with the complete abolition of courts as we know them, with the use of commissions or such to decide matters arising under written laws. For all disputes *not* covered by written laws could then be turned over to arbitration.

At any rate, regardless of the exact details or mechanics, the important thing in any common sense system would be to get rid of the abracadabra of The Law as an alleged basis for the settlement of human and social problems. That would mean cleaning all the vague and essentially meaningless legal language out of constitutions and statutes. It would mean taking the settlement of specific disputes out of the hands of the lawyer-judges. And finally – or perhaps first of all – it would mean getting rid of the lawyers, as lawyers.

Getting rid of the lawyers would mean no more legal counsel to talk for you before the courts or commissions or arbitrators or whatever bodies were given the job of handling specific problems in the orderly management of human affairs. People who got involved in disputes or got hauled up for alleged violation of some written law would have to tell their own stories and produce their own proof – in the form of written evidence or witnesses or whatever kind of proof was necessary and available. Companies would have to send to court a responsible company official, to talk facts and not Law. Why not – since the decision-makers would no longer be concerned with balancing abstract principles but only with applying justice, straight, to the problems before them?

Not – despite what the lawyers will immediately howl –- would it be one whit harder to determine the true facts behind any dispute without the "help" of the lawyers and their principles of P. and P. As everybody knows, at least one of the lawyers in every case in which the facts are in dispute is out to hide or distort the truth or part of the truth, not to help the court discover it; and his is always able to use the accepted principles to help him do it. The notion that in a clash between two trained principle-wielders, one of whom is wearing the colors of inaccuracy and falsehood, the truth will always or usually prevail is in essence nothing but a

hang-over from the medieval custom of trial by battle and is in essence equally absurd. Why not let the people really involved in any squabble tell, and try to prove to the satisfaction of the decision-makers, their own lies? Commissions have often found it far easier to discover the true facts behind any dispute by dispensing with the lawyers' rule; arbitrators have found it easier still by dispensing with the lawyers.

Getting rid of the lawyers altogether would also mean no more legal advice, for those who can now afford it, in the making of financial arrangements and the drafting of business documents. People and companies who made financial plans and business agreements would have to word them – or have them worded by non-Legal draftsmen – in intelligible language. Why not? Why should not a man who wants to leave his property to his wife at his death say in his will, "I want everything I own to go to my wife when I die," instead of having to hire a lawyer and go through a long rigmarole of legal language? If the written law about wills says, for instance, that three other people have to sign a person's will, to help prove later that he signed it, then let the written law be not only intelligible but as readily available as a guidebook or an article in an encyclopedia. And why should not two people or two companies or a company and a person, who want to enter into a business agreement, be both entitled and required to state in plain words just what each of them is promising to do or not to do?

If constitutions and statutes were all written in ordinary English and if the lawyer-judges were ousted from their decision-making seats, the practicing lawyers would soon automatically disappear. There would be no more use and no more place for their magic. The practical men in charge of dispensing justice would neither understand nor be interested in the abstract principles of The Law. Legal language, thrown out of the new courtrooms or commission chambers, would serve no possible function in the wording of business documents. Neither as advisers out of court nor as representative in court would the lawyers be able to sell their special brand of verbal skill. Then too, the law schools would be forced to close their doors – or else to turn themselves into schools of practical government or business administration. The breeding of word-jugglers would come to an end.

Yet it might be just as well to get rid of the lawyers directly, along with the lawyer-judges and the legal wording of written laws. At the least, they would have to be voted out of Congress and the state legislatures before it would be possible to redraft constitutions and statutes and set up a new decision making system. And if the lawyers, as lawyers, were abolished directly and immediately, then the other changes would go into effect more smoothly.

WOE UNTO YOU, LAWYERS!

How abolish the lawyers directly? Well, why not make the practice of law for money (or for anything else) a crime? The lawyers would of course insist that anything so unheard-of could only be done by amending the Constitution – but why not amend it? And incidentally, only a lawyer would quibble about what "the practice of law" meant.

Absurd? Preposterous? Think it over for a minute. Suppose the nation were suddenly to wake up to the fact that all its affairs were being supervised and controlled according to the language and principles of astrology, by a smart bunch of astrologers. Would making the practice of astrology a crime seem absurd? Go back and read over again the solemn judgment of the Supreme Court of lawyers in the case of Senior v. Braden – or pick some other court opinion at random – and see where the absurdity lies. Or are we just to go quietly and unquestioningly and stupidly on, submitting the management of our entire civilization to the modern medicine men?

The immediate answer is undoubtedly yes, but it need not be a permanent answer. And if any popular movement to get rid of the lawyers and their Law, and to put our system of social control on a common-sense basis, should ever make enough headway for the lawyers to have to face it instead of scoffing at it, their chief arguments against it – other than those already considered – would probably boil down to two.

They would argue, in the first place, that even if the time-tested legal system, with all its principles and its precedents, were scrapped and another sort of system set up in its place, the new system would soon develop its principles and its precedents too, and even its special language. Now if the new system were put in the hands of lawyers, or of men trained and skilled principally in abstract logic, that would unquestionably be so. But it would not be so if the new system were entrusted – as it would be entrusted – to men trained and skilled in coping with practical human problems. And it would particularly not be so if those in charge of the new system were aware – as they would be aware – that there need be no pretense of preordained certainty and consistency about their decisions, taken in the mass, but rather a direct effort to deal intelligently and justly with each problem or dispute as it came along.

Finally, the lawyers would argue that if The Law were scrapped and it became generally known that fallible men rather than infallible and impersonal abstract principles were dictating decisions which other men had to obey, then all respect for law-and-order would vanish, and revolution or anarchy or both would ensue. But in this argument – a typical magician's argument in its conjuring up of frightful imaginary hobgoblins – is displayed a strange and contemptuous mistrust

of the civilized tendencies of the nation. It implies that the whole structure of our society would automatically go to pieces if it were put on a practical rather than a mystical basis – an unwarranted assumption at best. Moreover, in this argument lies the crux of the whole fraud of The Law.

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!
