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Law and Lawyers

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LAW AND LAWYERS¹

J. A. VAN OSDOL*

If we could be convinced that we were each the owner in fee of something that man has ever regarded as one of his most precious possessions, a thing for which he has been and still is willing to lay down his life; something that has come to us as a precious heritage, made possible through the blood and sacrifice of our ancestors, would we be interested? Were it a question of our title to a few feet fronting on one of the principal streets of this city, would there be any doubt about our being interested?

If we could be further convinced that our title deed to this precious heritage contains a condition upon the breach of which on our part, either by overt act or mere neglect, our title would become forfeit, would we lose any time in acquainting ourselves with the conditions on which that title rests? To such an estate every American citizen can rightfully lay claim.

This precious heritage is Human Liberty; our title deed thereto is the Constitution, and the condition in that deed with which we must comply, if we would be secure in the enjoyment of our heritage, is merely the duty of True American Citizenship.

Ours is a "government of laws," where life, liberty and property are protected by law; where the real source of all governmental power abides in the people, hence the necessity for an enlightened electorate. In the language of Dr. Lyman Beecher,—"We must educate, we must educate, or we must perish by our own prosperity." In short, a true American citizenship is an enlightened one.

To be properly enlightened we must know the truth. "Know the truth, and the truth shall make you free." And when the citizenship of this country learns the truth about our form of government and the history of the conditions which brought it into being, it will not be so easily led astray by demagogues. The crying need of this hour is to instill into every man, woman and child in this land, an intelligent appreciation of law. Then there will be more real respect for law.

¹ An address delivered to the Fort Wayne Bar, June 13, 1930.

* See biographical note, p. 109.

Some people respect the law because they have to; the measure of their respect is the fear they have of its penalties, but that is not the quality of respect we must have. If our government is to endure, the dominant portion of our citizenship must entertain a respect for law that comes from an intelligent understanding of the part law plays in our scheme of government.

To lead in this work of enlightenment is the duty of the American lawyer.

When the cause of human liberty in America saw that the only true liberty was liberty made secure by law, and set itself to the task of framing a government of laws instead of a government of men, then the need of men trained in the law and able to properly interpret and apply it became a necessity. So the American lawyer stands today, if true to his profession, the guardian and the defender of the legal rights which the law guarantees.

It is no mean function to guard the legal rights of one hundred and twenty million people. What class of citizens performs a more important service? What would the effort of all the rest of the population be worth if legal rights were not protected?

Our government, great as it is, is not free from peril. The liberty it guarantees can be lost, for it can be destroyed as surely by erosion as by assault.

The statement is oftentimes made that "the enemy is within our gates." Before dismissing that as a false alarm, we should look into some of the facts that give rise to that belief.

There are forces at work today in a deliberate attempt to destroy the landmarks set by the fathers who planned constitutional government as the citadel from which we must defend this heritage of human liberty. If those forces can create doubt and uncertainty in our minds regarding the true location of the boundaries of our political possessions, encroachment on their part is made easy. First they would destroy our ancient landmarks. Are there any evidences that the landmarks set by the fathers are being destroyed; and that this citadel of constitutional government is being undermined? Let us see.

Note the present tendency to govern through groups, blocs and classes, a willingness to hand over to the federal government, powers that rightfully belong to the states; the disposition of the individual to ask the state to do for him the things he should do for himself; note the activities of communism, that avowed enemy of constitutional government; that enemy is now working

in an organized and systematic way to get its apostles into places of influence; now and then one is elected a member in one of our legislative assemblies, not infrequently one is found an instructor in some of our educational institutions, where exists a fertile soil in which that enemy sows the "tares" of radicalism while we sleep.

Note the growing impatience with all legal restraints, indifference respecting the duties of citizenship, and the increasing disrespect for law and the courts.

The things just enumerated are the danger signals that are flashing a warning to every American citizen who believes in constitutional government; who believes that ours is a government of laws instead of a government of men, and that we must keep it so.

Crime in this country is so thoroughly organized, so brazen and arrogant that the government, state and national, has created commissions and committees to investigate and devise ways and means for more effectively dealing with it. Indiana has such a committee, which is endeavoring to make such a study of crime and its causes, as will enable it to recommend measures that will substantially aid in abating this evil. This is a complex problem, for crime is not due solely to any one cause, and not any one thing can be said to be the cure. On this point I undertake to say that the solution of this problem will be found not so much a matter of legislation, as it is that of getting into the American mind a higher concept of citizenship.

Here rests a special duty on the American lawyer, for which he is or should be well fitted by education and experience. He knows the Constitution not as an abstract theory of government, but as a code of fundamental principles successfully applied to human affairs.

Half a century ago the home and the church and the school were the dominant instrumentalities for fostering and moulding the ideals of American citizenship. Today those agencies have been largely superseded by the daily press, the movies and the stage. Valuable as those agencies are, they all too often carry the lower rather than the higher view of life and its responsibilities.

It is not my purpose to discuss how efficiently the church and the school have performed their parts; that question I leave to others. However, I do want to call your attention to one respect in which the home is failing to perform the part it once played

in moulding and shaping American citizenship, and to one of the reasons why it is failing.

A social and an economic evolution is taking place which you and I are powerless to prevent, if we would; it is inviting the woman to enter the professions, in fact, into all lines of industrial endeavor; when you take the mother or the sister out of the home to fill some position in the professional or industrial world, you have taken a refining, civilizing factor from that home which must be supplied from some other source, if we are to maintain that nice balance in our educational and civilizing forces, that once prevailed when that trio, the home, the church and the school, worked in such delightful harmony to produce in America, a civilization, the highest the world has ever known. Here we are forced to the conclusion that the disintegration of the American home is one of the most important factors in this problem of crime control.

What we need in this country today is more respect for law for the law's sake. If a law is unwise, don't nullify it, repeal it. The false doctrine of nullification has already cost this country so much in blood and treasure that it should no longer be necessary to inveigh against it. Respect for the law is the strength of the law; and respect begets obedience. President Hoover stated the whole truth recently, when he said, "Respect for law must rest upon the education of our citizen."

It is the duty of every true American citizen to obey the law, whether he likes it or not. It is the duty of every officer to enforce the law, whether he thinks it a wise or an unwise one. We can not indulge the practice of nullifying the laws we do not like and expect everybody else to respect and obey the laws that we happen to like.

We can not concede the right of a citizen to disobey a law simply because he doesn't like it, without conceding to him the counter proposition, that is, the right to make for himself the laws he would like to obey. To do this is to surrender the basic proposition on which this government rests; namely, that "this is a government of laws." When a law is found to be unwise, then wipe it out by the methods provided by law.

If you would avoid the danger of enacting unjust and unwise laws, the remedy is yours—exercise more care in selecting those you send to make the laws. Tear down those constitutional guarantees by which life, liberty and property in this country are protected by law, and what have we? The answer is—anarchy.

It never was so important as now that we should know the background of our country's history and become better acquainted with the origin, the traditions, the progress and the philosophy of our government, and get a higher appreciation of the ideals of the fathers who framed it, and of the valor of those who saved it.

The story of our federal constitution is rich in history, worthy of our careful study. Do not think of the Constitution merely as a legal document, struck off under the impulse of the moment by those patriots who, in May, 1787, assembled in Philadelphia, in the same hall where eleven years before the Declaration of Independence had been signed, and there framed the Constitution. To view it in that light is to fail entirely to grasp its deeper meaning.

Our federal constitution is the product of centuries of struggle and sacrifice by the liberty loving Anglo-Saxon on the other side of the Atlantic, and continued for nearly two centuries by those who came to this side, before they saw their ideals embodied in the written basic law of a new nation. Now there is evidence of an increasing desire on the part of the people to know more about this basic law, and that is an encouraging sign.

If you would inquire why this recent demand for a study of the Constitution, this is the answer. So many of our citizens have forgotten, and so many know so little or nothing about our Constitution, there is a feeling that it is time to check up on our course. For the last fifty years we have strayed so far from the fundamentals of constitutional government, that we have but lately realized the need for a "calling back to the faith of the fathers." We have wandered so far into the wilderness of radicalism and its many kindred isms, that there is danger we may not be able to find our way back.

We have been so long enjoying the blessings of constitutional government, that we have almost forgotten the thing which makes those blessings possible. We have taken them for granted, as we do the air and the sunshine. If we are interested in the question of how and when we became indifferent regarding this vitally important matter, here is a partial answer.

For the first seventy years of our national existence, the citizenship of this country was endeavoring to adjust itself to the new experiment of constitutional government. Very early two distinct schools of thought appeared, each friendly to constitu-

tional government, but differing widely in their interpretation of the Constitution. That difference brought into existence two great political parties, the lineal descendants of which are the two major political parties of this day. The questions which divided those two parties were fundamental to constitutional government. They were of almost daily discussion in the public press, on the stump, and about the family fireside. So that the Constitution and how to conduct the government according to its tenets, became a vital force in shaping the thought of the people of that day. Then the Constitution was a popular subject for study and discussion.

Then came the Civil War, and when the people saw constitutional government survive that ordeal, they resigned themselves to the conviction that constitutional government has successfully passed the supreme test and was no longer in danger; and the Constitution and its interpretation ceased to be a matter of popular concern; such constitutional questions as were involved in the problems that grew out of the war and the reconstruction period which followed, the people complacently passed over to the courts and the lawyers. A new era was dawning; the country was entering upon a period of commercial and industrial expansion never equaled by any other nation on earth, and in this the popular mind became so occupied that the people well nigh forgot the Constitution.

Then came the World War, and in the readjustment of our affairs following that experience, we were made aware of the extent to which the seeds of radicalism had been sown in American soil. How our national safety was imperiled by the rapidly spreading doctrine of communism, aided and abetted by the ignorance of the foreign born that had been so indiscriminately admitted to our shores, and by the indifference of our own citizenry. Then we began to realize that surely the enemy is within our gates.

Now, what is our defense? Truth is the answer, for it is the antidote for the poison which radicalism is injecting into our body politic. To know the history of our country is to understand the fallacies of that radical preachment which is now being directed against it. A knowledge of history is as essential to an intelligent citizenship as are chart and compass to the mariner. The would-be statesman who thinks to guide the ship of state and at the same time ignore the teachings of history,

would soon send this craft upon the rocks on which misguided governments have always been wrecked.

“To appreciate the Constitution we must view it in the setting of its historic background. The spirit of that document shines through the text only when illuminated by the torch of history.”

In all this a special duty rests on the legal profession. We can't escape it, if we would. When the public mind begins to dwell upon the question of law and law enforcement, it just naturally thinks of the courts and the lawyers.

The conviction now in the mind of the general public that the criminal laws are not properly enforced, is a challenge to the legal profession to do its part toward finding a remedy, and this our profession can do by individually and as an organization, stand for a more intelligent respect for law; throw the weight of your influence in favor of every agency and every movement that aims at a higher standard of American citizenship. If our profession fails to do this, it will deserve the penalty which will follow in further loss of public confidence. Can we afford that?