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A LEGAL GOSPEL FOR AN INDUSTRIAL AGE*

BY ANAN RAYMOND**

For want of a better phrase for the peculiarities of our time, we call it an Industrial Age. Whether in its objective phenomena it is or is not unique in the world's history, it is certainly unique in the history of the human mind. No other age has had the self-consciousness of this one. No other has been so introspective. No other has had the modern passion for analysis, for definition and for nomenclature.

No other period in the world's history has so thoroughly examined itself, recognized its own outstanding traits, and put a label on them. Greek or Roman may have sensed the rounded perfection and self contained harmony of his civilization, but his own historians and philosophers never realized that it was to go down in history as the classical age. That label was affixed by their successors and inheritors, and there was in the name nothing of classical antiquity's own reaction to itself. Medieval man did not himself classify and label as feudalism the regimented personal relationships under and by which he lived. The combined agricultural and mercantile economy of the Renaissance and of early modern time developed, its participants unwitting, until Adam Smith made mercantile society self-conscious.

Perhaps it is because the transformation of an agricultural and mercantile society into an almost completely industrialized one has been so rapid, that our age is so conscious of itself. In a recent and significant book, "Business Adrift," Wallace Brett Denham and Alfred Whitehead point out that many of our modern economic and social necessities arise primarily out of the acceleration of the cycle of change. Before the industrialization of Western civilization, this cycle was more than an ordinary generation, so that the rising generation has had at least some experience of the conditions under which their fathers lived and worked. Since the development of industrialism and during the last half century particularly, the process has been speeded up to the point where major changes may and do take place within the period of economic activity of a single lifetime—that is to say, within the span of an ordinary business career, we moderns,

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so to speak, see such cycles begin, develop and culminate before our very eyes. No one who has witnessed ^{the} major developments of the last thirty years needs any proof that there is more than a little truth in this suggestion.

It would be shortsighted not to give some deliberate thought to our profession's function and status in this day of rapidly shifting values. In what gospel should we believe, in order to be of highest usefulness in such an era? To answer the question, it would seem that we should first look at the actualities of human conduct, and then determine whether our legal ideas are in harmony with the changes, if any, manifested by human action itself. In what respect has human living so changed, as to give our time its supposedly unique characteristics.

Without reference to the libraries which have been written on the subject, a few of these mutations immediately occur to all of us. Whereas life once centered about the farm and village, it now has its focus in the factory, the steel mill, and the power plant. Our customs, our manner and our morals, once predominantly agricultural, have become urban. The balance of population has definitely shifted to our cities which, more and more, are the repositories of political and economic power. The once controlling influence of the countryside is now an abortive veto. The most militant agrarianism is couched in industrial terms. The farmer thinks and speaks in the terms of the city. Once land for farm settlers was the objective of American imperialism. Now, sources of raw materials, trade routes, and outlets of new capital investment are the primary concern of our statesmanship.

Mass production, once an economic theory, has become an economic necessity, and the standard of American industrial practice. Labor, once merely one of the costs of production, has become the chief factor in consumption; and capacity to consume rather than capacity to produce, is the present day measure of economic well-being. Workers no longer own the tools of their own production; by means of that masterpiece of legal metaphysics, the corporation, typical ownership is now indirect. To mobilize these tools great aggregations of capital are necessary. To use them effectively workers must be marshalled in armies, to be dealt with in the mass rather than as individuals. As a response to the necessities of such an economic system, a social organization based largely on occupation has supplanted the individualistic social structure of a few generations ago. This

new relational society has behind its social compulsions as much force as medieval feudalism ever had.

Of this type of economic organization, our country is the prototype. Business cycles and industrial depressions have not altered our conviction that here there has been a better diffusion of its advantages, and less individual suffering and social damage by reason of its flaws than anywhere else. That such a system is capable of producing and does produce large material benefits, is hardly to be denied. These benefits, it is true, are not always distributed as well as they might be. None the less, for our people industrialism has meant large money earnings, cheap and plentiful goods, cheap and plentiful means of transportation and communication, cheap and plentiful amusement and recreation, and a general concern for such social aims as education and health.

Making due allowance for shortage in times of stress, any given American generation during its period of activity has had far more of life's material reward than any similar group of Europeans or Asiatics. The American not only has realized directly more of the fruits of his own efforts, he has had handed back to him, in community assets, more of his surplus production than his European or Asiatic competitor. While opinions may differ as to the use we are making of some of these community assets, they are none the less there and available for whatever better use we may some day learn to make of them.

Americans and Europeans have assumed that the rest of the world would ultimately, almost as a matter of course, adopt this form of economic organization, with its corresponding social and political machinery. But there is now a tendency, more general than it was two years ago, to search for the flaws in the system, and to decry its benefits. In our country this search is still haphazard. In certain others it has become systematically hostile. It proceeds on two different premises. One confesses and avoids; the other denies. One says that, granting the industrial system to be capable of producing consumable goods faster, cheaper and better than any other thus far devised, it is by way of breaking down because the scheme of ownership and distribution is so defective as to keep these goods out of the hands of peoples who ought to consume them; in short, that such a scheme permits the many to be exploited for the benefit of the few. The other denies industrialism any merit whatever, and asserts that it concentrates the energies of mankind solely upon the pursuit of ma-

terial well-being, with a stultifying standardization of thought and ideas, and a wholesale denial of man's higher aspirations.

The result is that the world offers the Western system of capitalism and industrialism two rivals and competitors—one already dangerous, the other capable of becoming so. The latter is based on a view of human life so contrary to our own restless energetic one, that we have not yet begun to think of it as a threat to our way of doing things. None the less Ghandi's proposal that mankind abandon the factory, refuse to buy its products, and return to its ancient and simple village life, has captured the imagination of millions in the Orient. If it were to spread, it would confine Western civilization to its own native limits and make of it a mere local success. Our other rival is thus far very much a going concern, and controls one-sixth of the world's land area, with untold and unlimited natural resources. It adopts the major promise of industrialism in toto, but just as absolutely denies the minor one. It attempts to industrialize an agricultural people over night. In doing so, it recognizes only the state as entrepreneur, employer, and collector and disburser of dividends—if any.

No endorsement of either localism or communism, of either state socialism or state capitalism, or of any of the halfway measures various governments have adopted to forestall any of them, is implied in recognizing that we can beat our competitors only by outselling them. This is another way of saying that to survive, industrialism must continue to give those who live by and under it more than its competitors can or do. As far as our people are concerned, they have as little taste for revolution as for non-resistance. Our present economic organization is here to stay, until by the natural processes of economic evolution something better supplants it. Our people are committed to it. They expect to work out their economic destiny under it. They refuse and for a long time will continue to refuse to acknowledge that American courage, inventiveness and enterprise are not equal to the task of making it work. So long as we continue to use it, we must all share the responsibility; we shall make a great mistake if we assume that human nature has changed merely because people earn their livelihoods in new ways.

More heavily than upon any other single profession or class, that responsibility rests upon the lawyers of America. The concept of public service, which has done so much to put every call-

ing upon a higher plane of action, is to the lawyer an age-old tradition. Though he is in some respects the servant rather than the author of social and economic development, that development cannot, without his aid, take place in an orderly or logical way. Few lawyers are capitalists—or even kulaks. Few have the capitalist's and industrialist's direct responsibility to investors, to employes, and to consumers, to say nothing of their necessary pre-occupation with industrial problems requiring immediate solution. Of the professions in any way qualified to deal with the subject matter, the lawyer, like the economist and the engineer, is free to render a disinterested service. The lawyer alone by training, tradition and function, is in a position to recognize the dividing line and to maintain the necessary balance between collective needs and individual rights.

What should be his gospel, in order to be of maximum service in preserving the recognized good and correcting the recognized evils of a society organized primarily on an industrial basis? Obviously, the first thing he must do is to put his own house in order. He must first of all make sure that current legal problems are solved promptly, without obstruction, and with such clarity that no man shall be in doubt as to his rights and duties under the existing organization of society. No hypothetical future benefit can compensate the individual, or society, for the law's present delay, for its failure to vindicate a present right or punish a present wrong.

This does not mean that the administration of justice in America has broken down. Nor are the weaknesses in its administration entirely the fault of lawyers and judges. Like most other human instrumentalities, it works as well as society's immediate and absolute needs require. The administration of justice becomes "nasty, brutish and short," when taken from the hands of those trained to administer it. And that is some indication of the risks inherent in the growth of any general conviction that lawyers and courts do not adequately serve the needs of society. We shall gain in the long run, however, by admitting that, so rapid has been our industrial development, our system of jurisprudence has not, in either substance or form, kept full pace with it.

We are still victims of the assumption that when we have defined the legal relationships between individuals, we have gone far enough, no matter what may be the social implications of their conduct. We still assume that a system of personal rights

and corresponding individual remedies, is a sufficient foundation for our social and economic superstructure. We are still too prone to assume that processes and procedure devised to meet the needs of a purely individualistic state of society, and of a slowly evolving economic organism, are adequate to those of a very different economic system developing at a greatly accelerated rate of speed. We still assume that economic development must conform to its legalistic conception. The business and industrial community instinctively feels that the direct converse should be true.

The American Law Institute and the judicial councils of many states are, of course, making constructive efforts in the direction of the simplification of the law and the speeding up of legal process. There are, however, still too many laymen who feel that they are not getting value received for the public money they spend on courts of justice and the private money they spend for legal services. There are still too many of them who feel that the path to definite legal results should be shorter, plainer and freer from labyrinths in which the figure of justice may be lost sight of. We as lawyers ultimately must choose between ourselves, putting our legal machinery in better working condition, or having the layman take the job out of our hands. History is not without examples of cases in which our profession has been confronted with just this choice.

Our second gospel must be a corollary of the first. As an incident to clearing the decks for a cleaner cut and more expeditious administration of justice, we must insist upon a higher standard of individual workmanship in our own field. Wherever the secret of industrial ills may lie, it is not in technical inefficiency. The problem which industrial societies must solve is one of distribution, one of the action and reaction of group forces upon each other, rather than one of technical performance. In fact, many seem to believe that we have suddenly become over-efficient, and are producing too many consumable goods—as if there could be such a thing as over-production of any useful commodity in a world wherein millions still do not have enough food to eat, enough clothes to wear, enough shelter over their heads, or enough tools and machines to take part in the productive process on their own account.

The fact, of course, is that there has never been in the world's history so high a standard of personal efficiency as that which the modern industrialist has set for himself. However conserva-

tive his political, his social or his economic view, he is in his industrial operations the greatest of improvisers and pioneers. No vested interest is too sacred to be scrapped in the interest of better processes, better methods, better materials, better machinery, means of faster and cheaper production. His difficulty is, not that he does not know how to produce efficiently, but that, too often, he does not know what to do with his product after he has turned it out. Nor, thus far, has he been able to devise any effective way of returning to industry the man power which his very efficiency disemploys. And this flaw in the industrial process has almost reached the point where we can increase efficiency only by losing consumers. If in solving this and other problems the legal profession is to give to industry the assistance to be expected from it, its own technical efficiency must reach a standard as high as that of those it hopes to help.

The man who lives in that rarified atmosphere of practical results is entitled to insist that when he invokes the aid of our profession, it shall be given to him in such form as to make those results more workable rather than less so. He never will be able to understand why legislatures composed largely of lawyers should continue to enact statutes for the government of a country already burdened with far more laws than it can enforce. He never will be able to understand adherence to the letter of constitution or statute, in violation of or damage to the spirit. He never will approve, nor see good reason for, the law's delay. He will continue to resent the obscuring of issues, in contract or pleadings, by unintelligible or archaic language. He will continue to believe that to try an accounting case effectively the advocate ought to know something about accounting; and that to give effective legal advice on any phase of modern industrial operations, the counselor ought to know something about industry.

This brings us to our third gospel, which is that in this rapidly changing industrial world the lawyer, if he is to do more than deal with the pathological end-products of industry, must understand the industrial process itself. To ask courts to treat anything except the facts of particular cases before them would, of course, introduce endless confusion into our system of jurisprudence. Recognition of this cardinal principle, however, has never relieved any court of responsibility for the ultimate social and economic consequences of a precedent established in any case. To the extent to which the advocate makes these ultimate

consequences a part of the background of every litigation, so that the court's decision may rest upon them as a part of the pertinent facts, he equips the court that much better to discharge this responsibility. To the extent that, in advising his clients, the counselor is able to see through surface factors to basic ones, and put all elements in their proper relation to controlling social and economic forces, he aids in that effective marshalling of those forces upon which we must depend to prevent a breakdown of our industrial fabric.

The industrial process is neither so simple nor so mysterious as much popular opinion makes it. It is not, and if it ever was, then it is no longer, a simple matter of buying raw materials and hiring labor as cheap, and then selling the product as dear, as possible. Neither is it a matter of legerdemain or other hocus-pocus whereby as if by magic two Ford cars are made to flourish where but one feebly struggled for existence before. Every industry, however small or however large, must respond to the same laws. A single individual engaged in the simplest form of agriculture on the smallest plot of land, must produce enough to feed, clothe and shelter himself and, if he is going to contribute anything to the country's "capital," must have something left in the form of a profit. Whether he turns that profit into money is an incident to, and not an integral part of, the industrial process. Every other industry, no matter how great, must in the same way, first of all sustain itself and the peoples who contribute their services to it. It must if possible produce more, to be contributed in the form of profits to the nation's store of surplus wealth—that is, its capital.

The whole process is as simple as all that. On the other hand, it is as complicated as the little known laws of economics, the almost unknown laws of sociology, the changing tastes of a people, the transformation of industry from a local to a world activity, and varying degrees of efficiency, management, vision and growth can make it. In short, the legal profession must produce lawyers who know what industry is, and why; who understand the laws of economics, or at least how they operate in practice; and who, moreover, understand that the lawyer's own service must be a productive one, and that the fee paid him is just one more charge which industry itself must offset by increased production, if it is to live up to the mathematical laws which are its life and death.

Our fourth and our highest gospel must be nothing less than

a realization of our ultimate professional duty to the industrial society of which we are inescapably a part. Unfortunately, that duty must be abstractly defined. But its concrete application must be found in the relation of every lawyer to his client. The collectivism which is a logical result of industrialism is not a prospect but an actuality. Our salvation lies, not in the impossible feat of getting back to pure individualism, and certainly not along the—for us at least—unthinkable road toward a complete merger of the individual consciousness in that society. We shall have in spite of ourselves to keep the collectivism we have, and work and live under it. Our problem, then, is to preserve its benefits and eradicate its flaws; to retain the manifest good of a co-operative state of society, and at the same time protect, preserve and maintain the personal rights of the individual—not only his negative right to freedom from encroachment upon his life, liberty and property, by governmental or by superior economic force; but also that affirmative and inalienable right, postulated in the Declaration of Independence, to life, liberty and the pursuit of happiness. Wealth, whether one's own or a share of some other person's, is not essential to happiness. A reasonable degree of economic security certainly is. Co-operative living, in a factory with ten thousand others, on a co-operative farm, in a co-operative apartment, or as a unit in any other co-operative machine, in itself hurts nobody. Men will find it tolerable, however, only if they remain reasonably free from social compulsion, have a reasonable choice of co-operative modes of life, and are not punished by curtailment of social or economic opportunity for preferring one mode of cooperation to another.

All societies are "capitalistic," in the sense that somehow and by somebody surplus subsistence must be provided while industries become productive on their own account. As Americans, we still believe that insofar as practicable the means and the machinery of production should be left in the hands of individuals; and, more important, that the responsibility for initiating, for obtaining reasonable efficiency, and for results, should be in individual rather than in governmental or social hands. It matters not that certain activities have been definitely assigned to government as a representative of society as a whole; nor that others have become so impressed with a public interest that the individual's right to engage in and profit by them has been curtailed. The basic principle of dependence on and belief in

individual initiative remains the same. As Americans, we still feel and believe that adherence to that principle has accounted in large measure for our efficiency, our success, and the comparative well-being of our people.

We have found to our sorrow, however, that the economic destinies of a whole industrial civilization cannot with safety be committed entirely to the spontaneous action or the inherent wisdom of individual initiative. The one lesson of any value which the last two years are now beginning to teach is that for *laissez-faire* and the devil take the hindmost, we must substitute conscious analysis and conscious planning. If in making effective such plans, individual prerogatives must be curtailed or abandoned, compensation will be found in the better distribution of material benefits, and particularly in the higher degree of economic security, which the exercise of proper foresight will assure. There are no doubt many factors which operate from century to century and are beyond conscious human control. There is ample reason to believe that those which operate within the normal industrial and business cycle can be brought under governance, at least sufficiently to permit us to sail by chart rather than blindly. The salvation of our industrial scheme depends upon such conscious planning. Insofar as these states are concerned, our people will ask their government to exercise such control for them, only after industry itself has failed to do so.

Our history fully justifies belief in our people's ability to chart their own industrial course. They will expect the legal profession to show them how to do it. A dedication of the profession to that duty should from henceforth be its highest professional gospel. When the American people needed a political chart, they turned instinctively to our profession. That chart has stood the test of time and usage beyond all the expectations of its makers. We must qualify ourselves for the similar call which industry will shortly make upon us.

So to qualify ourselves, we must free ourselves from the accumulated rubbish of outworn postulates. Just as the economic ideas of the *laissez-faire* school are still an obstacle to effective industrial organization, so many of our individualistic legal notions impede the development of a system of jurisprudence which in its basic concepts and in its flexibility of application will be an aid rather than a hindrance to the correction of flaws in the industrial system. Legal concepts are not absolutes. In the more fluid and more easily mobilized industrial society

of the future, they must be recognized as what they are—tools to work with. Let us acknowledge once and for all that they are entirely relative and instrumental; and that the function of law in a collective society is, not so much to vindicate absolute legal rights, as to define relationships—between society and individual, and from group to group—in such wise that a full measure of stability, security and economic well-being shall become the common right and prerogative of mankind.

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