

## VI. LAWYER AND PRESS

The riddle of administration is the most subtle of all those that the would-be prophet of the things that are coming must attempt. We see the great modern States confronted now by vast and urgent necessities, by opportunities that may never recur. Individualism has achieved its inevitable failure; "go as you please" in a world that also contained aggressive militarism, has broken down. We live in a world of improvised State factories, commandeered railways, substituted labour and emergency arrangements. Our vague-minded, lax, modern democracy has to pull itself together, has to take over and administer and succeed with a great system of collective functions, has to express its collective will in some better terms than "go as you please," or fail.

And we find the affairs of nearly every great democratic State in the hands of a class of men not specially adapted to any such constructive or administrative work.

I am writing here now chiefly of the Western Allies. Russia is peculiar in having her administrative machine much more highly developed in relation to her general national life than the free democratic countries. She has to make a bureaucracy that has not hitherto been an example for efficiency into a bureaucracy that will be constructive, responsive, liberal, scientific, and efficient; the Western countries have to do the same with that oligarchy of politicians which, as

Professor Michels has recently pointed out in his striking book on "Political Parties," is the necessary reality of democratic government. By different methods the Eastern and Western Powers have to attain a common end. Both bureaucracy and pseudo-democratic oligarchy have to accomplish an identical task, to cement the pacific alliance of the Pledged Allies and to socialise their common industrial and economic life, so as to make it invulnerable to foreign attack.

Now in Great Britain, which is the democracy that has been most under the close observation of the present prophet, there is at present a great outcry against the "politician," and more particularly against the "lawyer-politician." He is our embarrassment. In him we personify all our difficulties. Let us consider the charges against this individual. Let us ask, can we do without him? And let us further see what chances there may be of so altering, qualifying, or balancing him as to minimise the evil of his influence. To begin with, let us run over the essentials of the charge against him.

It is with a modest blush that the present prophet recapitulates these charges. So early as the year 1902 he was lifting up his voice, not exactly in the wilderness but at least in the Royal Institution, against the legal as compared with the creative or futurist type of mind. The legal mind, he insisted, looks necessarily to the past. It is dilatory because it has no sense of coming things, it is uninventive and wasteful, it does not create, it takes advantage. It is the type of mind least able, under any circumstances, to organise great businesses, to

plan campaigns, to adventure or achieve. "Wait and see" crystallises its spirit. Its resistance is admirable, and it has no "go." Nevertheless there is a tendency for power to gravitate in all democratic countries to the lawyer.

In the British system the normal faults of the lawyer are enhanced, and his predominance intensified, by certain peculiarities of our system. In the first place, he belongs to a guild of exceptional power. In Britain it happens that the unfortunate course was taken ages ago of bribing the whole legal profession to be honest. The British judges and law officers are stupendously overpaid in order to make them incorruptible; it is a poor but perhaps a well-merited compliment to their professional code. We have squared the whole profession to be individually unbribeable.

The judges, moreover, in the Anglo-Saxon communities are appointed from among the leading barristers, an arrangement that a child can see is demoralising and inadvisable. And in Great Britain all the greatest salaries in the government service are reserved for the legal profession. The greatest prizes, therefore, before an energetic young man who has to make his way in Great Britain are the legal prizes, and his line of advancement to these lies, for all the best years of his life, not through the public service, but through the private practice of advocacy. The higher education, such as it is, in Great Britain, produces under the stimulus of these conditions an advocate as its finest flower. To go from the posing and chatter of the Union Debating Society to a university laboratory is, in Britain, to renounce ambition.

Few men of exceptional energy will do that.

The national consequences of this state of affairs have been only too manifest throughout the conduct of the war. The British Government has developed all the strength and all the weakness of the great profession it represents. It has been uninventive, dilatory, and without initiative; it has been wasteful and evasive; but it has not been wanting in a certain eloquence and dignity, it has been wary and shrewd, and it has held on to office with the concentrated skill and determination of a sucker-fish. And the British mind, with a concentration and intensity unprecedented before the war, is speculating how it can contrive to get a different sort of ruler and administrator at work upon its affairs.

There is a disposition in the Press, and much of the private talk one hears, to get rid of lawyers from the control of national affairs altogether, to substitute "business men" or scientific men or "experts." That way lies dictatorship and Caesarism. And even Great Britain is not so heedless of the experiences of other nations as to attempt again what has already been so abundantly worked out in national disaster across the Channel. The essential business of government is to deal between man and man; it is not to manage the national affairs in detail, but to secure the proper managers, investigators, administrators, generals, and so forth, to maintain their efficiency, and keep the balance between them. We cannot do without a special class of men for these interventions and controls. In other words, we cannot do without a

special class of politicians. They may be elected by a public or appointed by an autocrat; at some point they have to come in. And this business of intervening between men and classes and departments in public life, and getting them to work together, is so closely akin to the proper work of a lawyer in dealing between men and men, that, unless the latter are absolutely barred from becoming the former, it is almost unavoidable that politicians should be drawn more abundantly from the lawyer class than from any other class in the community.

This is so much the case, that when the London Times turns in despair from a government of lawyers and looks about for an alternative, the first figure that presents itself is that distinguished advocate Sir Edward Carson!

But there is a difference between recognising that some sort of lawyer-politician is unavoidable and agreeing that the existing type of lawyer who is so largely accountable for the massive slowness, the confused action, the slovenliness rather than the weakness of purpose, shown by Great Britain in this war, is the only possible type. The British system of education and legal organisation is not the last word of human wisdom in these matters.

The real case we British have against our lawyers, if I may adopt an expressive colloquialism, is not that they are lawyers, but that they are such infernal lawyers. They trail into modern life most of the faults of a mediaeval guild. They seem to have no sense of the State

they could develop, no sense of the future they might control. Their law and procedure has never been remodelled upon the framework of modern ideas; their minds are still set to the tune of mediaeval bickerings, traditionalism, and State blindness. They are mystery dealers, almost unanimously they have resisted giving the common man the protection of a code.

In the United Kingdom we have had no Napoleon to override the profession. It is extraordinary how complete has been their preservation of barbaric conceptions. Even the doctor is now largely emancipated from his archaic limitations as a skilled retainer. He thinks more and more of the public health, and less and less of his patron. The more recent a profession the less there is of the individualistic personal reference; scientific research, for example, disavows and forbids every personal reference.

But while everyone would be shocked at some great doctor, or some great research institution, in these days of urgent necessity spending two or three weeks on the minor ailments of some rich person's lapdog, nobody is scandalised at the spectacle of Sir Edward Carson and a costly law court spending long days upon the sordid disputes that centre upon young Master Slingsby's ear--whether it is the Slingsby family ear or the ear of a supposititious child--a question that any three old women might be trusted to settle. After that he rests for a fortnight and recuperates, and returns--to take up a will case turning upon the toy rabbits and suchlike trifles which entertained the declining years of a

nonagenarian. This, when we are assured that the country awaits Sir Edward as its Deliverer. It is as if Lord Kitchener took a month off to act at specially high rates for the "movies." Our standard for the lawyer is older and lower than it is for other men.

There is no more reason nowadays why a lawyer should look to advocacy as a proper use of his knowledge than that a doctor should make private poisoning the lucrative side of his profession. There is no reason why a court of law should ignore the plain right of the commonweal to intervene in every case between man and man. There is every reason why trivial disputes about wills and legitimacy should not be wasting our national resources at the present time, when nearly every other form of waste is being restrained. The sound case against the legal profession in Anglo-Saxon countries is not that it is unnecessary, but that it is almost incredibly antiquated, almost incredibly careless of the public well-being, and that it corrupts or dwarfs all the men who enter it.

Our urgent need is not so much to get rid of the lawyer from our affairs as to get rid of the wig and gown spirit and of the special pleader, and to find and develop the new lawyer, the lawyer who is not an advocate, who is not afraid of a code, who has had some scientific education, and whose imagination has been quickened by the realisation of life as creative opportunity. We want to emancipate this profession from its ancient guild restrictions--the most anti-social and disastrous of all such restrictions--to destroy its disgraceful traditions of over-payment and fee-snatching, to insist upon a scientific philosophical training

for its practitioners, to make the practice of advocacy a fall from grace, and to bar professional advocates from the bench.

In the British trenches now there must be many hundreds of fine young lawyers, still but little corrupted, who would be only too glad to exchange the sordid vulgarities and essential dishonour of a successful lawyer's career under the old conditions for lives of service and statecraft....

No observer of the general trend of events in Europe will get any real grasp of what is happening until he realises the cardinal importance of the reactions that centre upon this question. The current development of political institutions and the possible development of a new spirit and method in the legal profession are so intimately interwoven as to be practically one and the same question. The international question is, can we get a new Germany? The national question everywhere is, can we get a better politician?

The widely prevalent discontent with the part played by the lawyer in the affairs of all the Western Allies is certain to develop into a vigorous agitation for legal reconstruction. In the case of every other great trade union the war has exacted profound and vital concessions. The British working men, for example, have abandoned scores of protective restrictions upon women's labour, upon unskilled labour, for which they have fought for generations; they have submitted to a virtual serfdom that the nation's needs might be supplied; the medical



profession has sent almost too large a proportion of its members to the front; the scientific men, the writers, have been begging to be used in any capacity at any price or none; the Ministry of Munitions is full of unpaid workers, and so on.

The British legal profession and trade union alone has made no sign of any disposition to relax its elaborate restrictions upon the labour of amateurs and women, or to abate one jot or one tittle of its habitual rewards. There has been no attempt to reduce the costly law officers of the Government, for example, or to call in the help of older men or women to release law officers who are of military experience or age.

And I must admit that there are small signs of the advent of the "new lawyer," at whose possibility I have just flung a hopeful glance, to replace the existing mass of mediaeval unsoundness. Barristers seem to age prematurely--at least in Great Britain--unless they are born old. In the legal profession one hears nothing of "the young"; one hears only of "smart juniors." Reform and progressive criticism in the legal profession, unlike all other professions, seem to be the monopoly of the retired.

Nevertheless, Great Britain is as yet only beginning to feel the real stresses of the war; she is coming into the full strain a year behind France, Germany, and Russia; and after the war there lies the possibility of still more violent stresses; so that what is as yet a mere cloud of criticism and resentment at our lawyer-politicians and

privileged legal profession may gather to a great storm before 1918 or 1919.

I am inclined to foretell as one most highly probable development of the present vague but very considerable revolt against the lawyer in British public life, first, some clumsy proposals or even attempts to leave him out, and use "business men," soldiers, admirals, dictators, or men of science, in his place--which is rather like throwing away a blotting fountain-pen and trying to write with a walking-stick or a revolver or a flash-light--and then when that is found to be impossible, a resolute attempt to clean and reconstitute the legal profession on modern and more honourable lines; a movement into which, quite possibly, a number of the younger British lawyers, so soon as they realise that the movement is good enough to risk careers upon, may throw themselves. A large share in such a reform movement, if it occurs, will be brought about by the Press; by which I mean not simply the periodical Press, but all books and contemporary discussion. It is only by the natural playing off of Press against lawyer-politician that democratic States can ever come to their own.

And that brings me to the second part of this question, which is whether, quite apart from the possible reform and spiritual rebirth of the legal profession, there is not also the possibility of balancing and correcting its influence. In ancient Hebrew history--it may be a warning rather than a precedent--there were two great forces, one formal, conservative and corrupting, the other undisciplined, creative, and

destructive; the first was the priest, the second the prophet. Their interaction is being extraordinarily paralleled in the Anglo-Saxon democracies by the interaction of lawyer-politician and Press to-day.

If the lawyer-politician is unavoidable, the Press is indispensable. It is not in the clash and manoeuvres and mutual correction of party, but in the essential conflict of political authority on the one hand and Press on the other that the future of democratic government apparently lies. In the clearer, simpler case of France, a less wealthy and finer type of lawyer interacts with a less impersonal Press. It is in the great contrasts and the essential parallelism of the French and the Anglo-Saxon democratic systems that one finds the best practical reason for anticipating very profound changes in these two inevitables of democracy, the Press and the lawyer-politician, and for assuming that the method of democracy has still a vast range of experimental adjustment between them still untried. Such experimental adjustment will be the chief necessity and business of political life in every country of the world for the next few decades.

The lawyer-politician and the Press are as it were the right and left hands of a modern democracy. The war has brought this out clearly. It has ruptured the long-weakened bonds that once linked this and that newspaper with this and that party. For years the Press of all the Western democracies has been drifting slowly away from the tradition--it lasted longest and was developed most completely in Great Britain--that newspapers were party organs.

In the novels of Disraeli the Press appears as an ambiguously helpful person who is asked out to dinner, who is even admitted to week-end conferences, by the political great. He takes his orders from the Whig peers or the Tory peers. At his greatest he advises them respectfully. But that was in the closing days of the British oligarchy; that was before modern democracy had begun to produce its characteristic political forms. It is not so very much more than a century ago that Great Britain had her first lawyer Prime Minister. Through all the Napoleonic wars she was still a country ruled by great feudal landlords, and gentlemen adventurers associated with them. The lawyers only came to their own at the close of the great Victorian duet of Disraeli and Gladstone, the last of the political gentlemen adventurers. It is only now, in the jolts and dissatisfactions of this war, that Great Britain rubs her eyes and looks at her government as it is.

The old oligarchy established the tradition of her diplomacy. Illiberal at home, it was liberal abroad; Great Britain was the defender of nationality, of constitutionalism, and of the balance of power against the holy alliance. In the figure of such a gentleman as Sir Edward Grey the old order mingles with the new. But most of his colleagues are of the new order. They would have been incredible in the days of Lord Melbourne. In its essential quality the present British Government is far more closely akin to the French than it is to its predecessor of a hundred years ago. Essentially it is a Government of lawyer-politicians with no close family ties or intimate political traditions and

prejudices. And its natural and proper corrective is the Press, over which it fails to exercise now even a shadow of the political and social influence that once kept that power in subjection.

It is the way with all human institutions; they remain in appearance long after they have passed away in reality. It is on record that the Roman senate still thought Rome was a republic in the third century of the Christian era. It is nothing wonderful, therefore, that people suppose that the King, the Lords, and the Commons, debating through a Ministry and an Opposition, still govern the British Empire. As a matter of fact it is the lawyer-politicians, split by factions that simulate the ancient government and opposition, who rule, under a steadily growing pressure and checking by the Press. Since this war began the Press has released itself almost inadvertently from its last association with the dying conflicts of party politics, and has taken its place as a distinct power in the realm, claiming to be more representative of the people than their elected representatives, and more expressive of the national mind and will.

Now there is considerable validity in this claim. It is easy to say that a paper may be bought by any proprietor and set to put what he chooses into the public mind. As a matter of fact, buying a newspaper is far more costly and public a proceeding than buying a politician. And if on the one hand the public has no control over what is printed in a paper, it has on the other the very completest control over what is read. A politician is checked by votes cast once in several years, a

newspaper is checked by sales that vary significantly from day to day. A newspaper with no circulation is a newspaper that does not matter; a few weeks will suffice to show if it has carried its public with it or gone out of influence. It is absurd to speak of a newspaper as being less responsible than a politician.

Nevertheless, the influence of a great newspaper is so much greater than that of any politician, and its power more particularly for mischief--for the creation of panic conditions, for example--so much swifter, that it is open to question whether the Press is at present sufficiently held to its enormous responsibilities.

Let us consider its weaknesses at the present time, let us ask what changes in its circumstances are desirable in the public interest, and what are likely to come about. We have already reckoned upon the Press as a chief factor in the adequate criticism, cleansing, and modernisation of the British lawyer-politician; is there any power to which we may look for the security of the Press? And I submit the answer is the Press. For while the legal profession is naturally homogeneous, the Press is by nature heterogeneous. Dog does not eat dog, nor lawyer, lawyer; but the newspapers are sharks and cannibals, they are in perpetual conflict, the Press is a profession as open as the law is closed; it has no anti-social guild feeling; it washes its dirty linen in public by choice and necessity, and disdains all professional etiquette. Few people know what criticisms of the Lord Chief Justice may have ripened in the minds of Lord Halsbury or Sir Edward Carson, but we

all know, to a very considerable degree of accuracy, the worst of what this great journalist or group of newspaper proprietors thinks of that.

We have, therefore, considerable reason for regarding the Press as being, in contrast with the legal profession, a self-reforming body. In the last decade there has been an enormous mass of criticism of the Press by the Press. There has been a tendency to exaggerate its irresponsibility. A better case is to be made against it for what I will call, using the word in its least offensive sense, its venality. By venality I mean the fact, a legacy from the now happily vanishing age of individualism, that in theory and law at least anyone may own a newspaper and sell it publicly or secretly to anyone, that its circulation and advertisement receipts may be kept secret or not as the proprietors choose, and that the proprietor is accountable to no one for any exceptional incomings or any sudden fluctuations in policy.

A few years ago we were all discussing who should buy *The Times*; I do not know what chances an agent of the Kaiser might not have had if he had been sufficiently discreet. This venality will be far more dangerous to the Allied countries after the war than during its continuance. So long as the state of war lasts there are prompt methods available for any direct newspaper treason, and it is in the neutral countries only that the buying and selling of papers against the national interest has occurred to any marked extent.

Directly peace is signed, unless we provide for the event beforehand,

our Press will pass under neutral conditions. There will be nothing to prevent, for example, any foreseeing foreign power coming into Great Britain, offering to buy up not only this paper or that, but also, what is far more important, to buy up the great book and newspaper distributing firms. These vitally important public services, so far as law and theory go, will be as entirely in the market as railway tickets at a station unless we make some intelligent preventive provision. Unless we do, and if, as is highly probable, peace puts no immediate stop to international malignity, the Germans will be bigger fools than I think them if they do not try to get hold of these public services. It is a matter of primary importance in the outlook of every country in Europe, therefore, that it should insist upon and secure responsible native ownership of every newspaper and news and book distributing agency, and the most drastic punishment for newspaper corruption. Given that guarantee against foreign bribery, we may, I think, let free speech rage. This is so much a matter of common sense that I cannot imagine even British "wait and see" waiting for the inevitable assault upon our national journalistic virtue that will follow the peace.

So I spread out the considerations that I think justify our forecasting, in a very changed Great Britain and a changed Europe, firstly, a legal profession with a quickened conscience, a sense of public function and a reformed organisation, and, secondly, a Press, which is recognised and held accountable in law and in men's minds, as an estate of the realm, as something implicitly under oath to serve the State. I do not agree with Professor Michel's pessimistic conclusion that peace will bring



back exacerbated party politics and a new era of futility to the democratic countries. I believe that the tremendous demonstration of this war (a demonstration that gains weight with every week of our lengthening effort), of the waste and inefficiency of the system of 1913-14, will break down at last even the conservatism of the most rigidly organised and powerful and out-of-date of all professions.

It is not only that I look to the indignation and energy of intelligent men who are outside our legal and political system to reform it, but to those who are in it now. A man may be quietly parasitic upon his mother, and yet incapable of matricide. So much of our national energy and ability has been attracted to the law in Great Britain that our nation, with our lawyers in modern clothing instead of wigs and gowns, lawyers who have studied science and social theory instead of the spoutings of Cicero and the loquacious artfulness of W.E. Gladstone, lawyers who look forward at the destiny of their country instead of backward and at the markings on their briefs, may yet astonish the world. The British lawyer really holds the future of the British Empire and, indeed, I could almost say, of the whole world in his hands at the present time, as much as any single sort of man can be said to hold it. Inside his skull imagination and a heavy devil of evil precedent fight for his soul and the welfare of the world. And generosity fights against tradition and individualism. Only the men of the Press have anything like the same great possibilities of betrayal.

To these two sorts of men the dim spirit of the nation looks for such

leading as a democracy can follow. To them the men with every sort of special ability, the men of science, the men of this or that sort of administrative ability and experience, the men of creative gifts and habits, every sort of man who wants the world to get on, look for the removal (or the ingenious contrivance) of obstructions and entanglements, for the allaying (or the fomentation) of suspicion, misapprehension, and ignorant opposition, for administration (or class blackmail).

Yet while I sit as a prophetic amateur weighing these impalpable forces of will and imagination and habit and interest in lawyer, pressman, maker and administrator, and feeling by no means over-confident of the issue, it dawns upon me suddenly that there is another figure present, who has never been present before in the reckoning up of British affairs. It is a silent figure. This figure stands among the pressmen and among the lawyers and among the workers; for a couple of decades at least he will be everywhere in the British system; he is young and he is uniformed in khaki, and he brings with him a new spirit into British life, the spirit of the new soldier, the spirit of subordination to a common purpose....

France, which has lived so much farther and deeper and more bitterly than Britain, knows....[2]

[Footnote 2: In "An Englishman Looks at the World," a companion volume to the present one, which was first published by Messrs. Cassell early

in 1914, and is now obtainable in a shilling edition, the reader will find a full discussion of the probable benefit of proportional representation in eliminating the party hack from political life. Proportional representation would probably break up party organisations altogether, and it would considerably enhance the importance and responsibility of the Press. It would do much to accelerate the development of the state of affairs here foreshadowed, in which the rôle of government and opposition under the party system will be played by elected representatives and Press respectively.]