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Herbert C. Hirschboeck**

Henry VI was king of England from 1422 to 1471. It was during his reign that the English were defeated in France by the army led by St. Joan of Arc. It was a reign in which the English people suffered from almost total lack of government while heads of great factions contended for power through control of the weak king. Such was the disorder that even a lesser rouser of the people could dare to aspire to the same power. One such leader, known as Jack Cade, led a band of rebels in a march on London until he was stopped in a battle with citizens on London Bridge.

Shakespeare, in his tragedy, Henry VI, has put in the mouth of one of Jack Cade's henchmen a cry against lawyers which insurgents and social rebels have echoed in later uprisings in later generations in many countries. Shakespeare has Cade addressing his followers:

"And when I am King, (as King I will be)"

The followers all shout:—

"God save your majesty!"

Cade continues:—

"I thank you good people,—there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers, and worship me their lord."

Then the famous shout from their henchman:—

"The first thing we do, let's kill all the lawyers!"

And Cade agrees:—

"Nay, that I mean to do. Is not this a lamentable thing, that the skin of an innocent lamb should be made parchment?—that parchment being scribbled o'er should undo a man?"

"I did but seal once to a thing, and I was never mine own man since."1

Cade's rebellion of 1450 failed and the lawyers of that time were saved. About 27 years later a very famous lawyer was born in London. His father was John More, a butler at Lincoln's Inn. This was not a menial post. Being a butler at one of the inns of court was an

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1Shakespeare, King Henry VI, Second Part, Act IV, Scene II.
honorable position. In later years this butler was admitted to the bar and appointed to the bench and finally to the King's Bench. The son of the butler was called Thomas, and he followed his father into the practice of law and became prominent in the legal profession and distinguished himself in parliament. In 1529 he was made Lord Chancellor of England and is known in secular history as Sir Thomas More. This was in the reign of Henry VIII, and when the king had failed to obtain from the Pope the annulment of his marriage with Katherine of Arragon and had himself proclaimed Supreme Head of the English Church, the Lord Chancellor resigned because he saw in this a subversion of the nature and position of the kingdom and of the traditional legal system. He sacrificed an income of what today would amount to about $50,000 a year. Following his resignation he devoted his life to writing and to the defense of religion. Because he refused to acknowledge the ecclesiastical superiority of the king which Parliament had proclaimed, he was arrested for treason, imprisoned and beheaded. This martyrdom, crowning a life of devotion to principle, gave him titles in Catholic histories of incomparably higher significance than merely Lord Chancellor or Sir Thomas More. He became Blessed Thomas More in 1888 and was canonized St. Thomas More in 1935 by Pope Pius XI.

The most widely read of St. Thomas More's writings is his story of the mythical idealist's country, Utopia. The name of the story survives in a common adjective, "utopian," which our dictionaries define as "visionary or impractical." Scholars consider that the laws and customs of this fictional people were not his personal ideals but that the story presents a fanciful society freed from all those things commonly blamed for the existing social ills of his time. But he is often cited as one of the most eminent of lawyers condemning our own profession by the quotation from his Utopia:

"They have no lawyers among them for they consider them as a sort of people whose profession it is to disguise matters as well as to wrest laws."

We may take comfort in the thought that the author was merely echoing, as a writer of fiction, the same popular outcry which Cade's followers had shouted a generation before. But, coming down to our present generation, we have seen the abolition of the legal profession, not only advocated, but carried out in the Russian Revolution of 1918 and the National Socialist regime which took over Germany in 1933. The legal profession, functioning like our own, was extinguished from these countries of the modern world. They

\[^2\] Hollis, Thomas Mor (1934), pp. 55 et seq.
did not kill all the lawyers, but they created conditions under which lawyers could not be of any service and were compelled to seek bureaucratic positions or practice some other trade or perform common labor.

My theme tonight is: “Let’s let the lawyers live!” and, at the risk of telling you very much that you already know, I want to give you some reasons why the rebel cry: “Let’s kill all the lawyers!” is sheer madness.

This nation was born in revolt against imperialism and against denial of representation in government. Because the revolt succeeded, history called it the American Revolution, not merely a rebellion. The Declaration of Independence had 56 signers and 30 of them, a substantial majority, were lawyers. Those who think of lawyers only as shielders of vested interests should be reminded of these 30 patriots of our profession who courageously defied the political and proprietary power of that day. The dramatic birth of this nation might well be called an achievement of lawyers.

And, when the declared independence had been won, the task of establishing an enduring government was entrusted to a body of citizens in which, again, lawyers were the majority. The Constitutional Convention of 1787 was attended by 55 members and 28 of them were lawyers. They wrote the greatest charter of the liberties of man and of a government to maintain them ever conceived in the history of mankind.

Let us never forget the debt which we owe to these great lawyers among the founders of our country.

Throughout our history members of the legal profession in great numbers have represented the people in the House of Representatives and the Senate and many presidents and vice-presidents have risen from the ranks of the profession. In the 80th Congress there were 228 lawyers in the House and 64 in the Senate. The same may be said of the legislatures and executive offices of the states. The people of America continue their confidence in lawyers in political life.

But the service to civil society of lawyers in private practice and on the bench, while less glamorous, is as fully deserving of the regard of the people.

The years which followed the adoption of the constitution reaching to the Civil War have been called America’s Silver Age. This was the generation of the Websters, Calhouns, Clays and Marshalls—whose part in great political events the histories have made familiar. But these men were, first of all, lawyers, and, with hundreds of other lawyers, applied to the society of their time the great principles of
liberty and order and made constitutional government a living, functioning reality.

This was not done alone in celebrated cases or great debates, but mostly in the day to day work in the law offices and ordinary litigation in the courts. It is easy to promulgate a rule of law, but to make it known and understood and observed requires more than a police force, particularly in a society of free men.

As now, it was in those early days the task of the lawyers to advise the individual citizen of his duty and his right, to secure observance of both and to work out the conflicts of his rights with the rights of his fellow man. The painstaking investigation, analysis, negotiation and litigation in tens of thousands of cases in hundreds of law offices and courts made the constitution and the law known and made them work and preserved social order and securely established this republic with its unique personal liberties.

There was recently published a biography of a great lawyer of that generation. Although he was a North Carolinian and may seem remote to us, his life is of interest to us of Marquette University because he was the first student of our sister university, Georgetown. He was William Gaston of whom Daniel Webster said:

"The greatest of the great men of the War Congress was William Gaston. I myself came long after him."

While he distinguished himself in Congress during the War of 1812, the largest part of his career was spent in service in the ordinary practice of law and on the bench. Of the hundreds of daily applications of law to facts, unceasingly making the law function in the lives of the people, biographers do not write. But dozens of noted cases attest his ability, courage and humanity, such as the case of State v. Will—establishing justification of homicide in self-defense for slaves. In an era and state which accepted slavery as an established institution, he was bound as a lawyer and judge to contend for and decide rights within the framework of that system. To overthrow the system would be a legislator's privilege to attempt. It took the 13th Amendment to the United States Constitution adopted after the Civil War to abolish the system of slavery. In the judicial forum, constitutions and written laws are not overthrown. They are interpreted, exceptions defined and conflicting rules and laws reconciled and accommodated one to the other. In this area of determination as well as in the growth of the unwritten common law, lawyers and judges have ever contributed ably to the endurance and progress of the nation. In the case decided by Gaston, to which

4 18 N.C. 121. (1834)
reference has been made, an overseer had shot a slave with a shotgun, wounding the slave, but not fatally. The slave turned on the overseer and stabbed him to death with a knife. The slave was prosecuted for murder and convicted on the theory that the master's unlimited power did not admit of self-defense as justification for the slave's act. There is not time to follow Gaston's reasoning in support of reversal of the conviction. His decision, within the established laws of slavery, but developing a limitation and exception, was stated thus:

"Unconditional submission is the general duty of slaves. Unlimited power is, in general, the legal right of the master. However, there are exceptions. It is certain that the master has not the right to slay his slave, and I hold it to be equally certain that the slave has a right to defend himself against the unlawful attempt of his master to deprive him of life."

Thus the slaves of the South in this decision of 1834 won a privilege of freemen—justification of homicide in self-defense—which had been denied to them.

Gaston did not take an amoral approach. He did not heed what the people of North Carolina wanted at the moment. To him the quest was for a sound applicable principle of a philosophy grounded in natural law. The slave, whatever his station in the society of the time, was a human being—a man—endowed with the inalienable right to defend his life.

This feature of our legal system which provides an area of adjustment, development and compromise in interpretation and application of law has served and continues to function as an ameliorating absorber of social shocks. It has saved and will continue to save the people from the oppression of an absolute, unyielding, cold constitution, but it has saved and will also save that constitution from the wrath of an oppressed people.

To lawyers and judges is entrusted the task of making constitutional government workable and successful and, in this area of accommodation of abstract rules to the realities of life, our greatest service is rendered. To performance of this task we must bring, not only scientific knowledge and rhetorical skill, but a true philosophy and appreciation of the obligations involved in declaring precepts for human society.

Many examples could be cited of famous decisions in which new rules of conduct were declared or adjustments made between statutory expressions of the current popular will and the fundamental rules of the constitutions, both state and federal. The famous cases necessarily are identified chiefly with the judges who decided them. But the judges gave final expression in their opinions to, not only
their own thinking, but to the work of many lawyers which contributed to the result. It is not given to many of us to serve our fellow citizens in high judicial office, but, as lawyers we participate in many ways in the attainment of ultimate judicial sanction for a new principle or socially desired adjustment of an old rule of law.

The idea for the new law may have originated with a lawyer, but whether it was a lawyer's or a layman's idea, it surely took a lawyer to give it expression—to write it in the form of a bill for the legislature. Before it was enacted there were perhaps hundreds of lawyers who gave it analysis, developed amendments, argued for it or opposed it. Many of these lawyers were serving individual clients or groups and brought to the deliberations their knowledge of the facts and conditions under which the law would have to function. After the legislative process was completed, other hundreds of lawyers began to advise their clients, the people to whom the law would apply. Issues of interpretation and application were resolved or, if not, they reached the stage of litigation. At least two lawyers contended in each case and, as adversaries, each presented the best evidence and most cogent argument for a decision of the issue favorable to his client. The work of all of these lawyers usually goes unsung. The public learns little of it. The newspapers seldom report it, for it is not news. It is merely the lawyers performing their day to day work—doing only what is expected of them. But from their collaboration has come a new principle or altered rule of conduct; not merely imposed on subjects like an imperial decree, but developed for freemen out of a deliberative process designed to respect their liberties and maintain the constitutionally ordained social order.

The famous cases have immortalized the judges who wrote the opinions; but few remember the lawyer who developed the new concept and so ably argued for it and gained acceptance of it by the court. It is the lot of the advocate to submerge his pride in his success. His achievement rests in the approval of his theory by the constituted authority and to that authority, the court and its judges, the credit must go.

The famous cases which have been concerned with political conflict have been read by historians and have been recorded by them. Many examples of the finest work of lawyers in making our constitutional government a living preserver of our liberties have never come to the historians' notice; many are written only in supreme court reports, but many, many more are not recorded at all for posterity. But every case in court, whether involving great or little interests, has not merely disposed of the particular conflict of the
moment between two parties. It has served to make known, to the laymen concerned, much about law and about government with which they were unfamiliar. It has illustrated the working of our body of laws under our constitution for the keeping of good order. On how well or how poorly the lawyers and judge discharged their duties in the process, depends the degree of respect these lay participants have, not only of the lawyers, but of the law and the courts as institutions.

The part played by lawyers in little as well as big litigation is important in many indirect consequences, and the adequate preparation for service in the profession and the requirement of proper ideals of service are most important.

William Gaston was a friend and teacher of young lawyers of his day. His admonition to one of his students is given by his biographer as follows:

"To gain the qualifications of an illustrious lawyer Gaston laid down four requisites. It was necessary to devote much time to study, knowledge being evanescent. He must acquire a thorough knowledge of legal science, a facility in expressing thoughts clearly, correctly and agreeably and so arrange them as to illustrate, convince and persuade; he must give an unremitted attention to the interests of his clients and, finally, have an incorruptible integrity. Gaston advised him to make plain, short briefs at first, and always go to original sources. He must read the classics to aid his style. Finally, he warned him that the most dangerous pest of society was the wicked unprincipled lawyer, whose reason was a slave to his appetite, whose honor was but a fashionable honor, whose religion was pride, revenge and sensuality."5

Such are the qualities required of those who would enter upon careers devoted to making our constitutional government real and functioning in the lives of the people, to preservation of their liberties and maintenance of social stability.

Lawyer's work in private practice may be classified as preventive, conciliatory, forensic and constructive. Perhaps the largest service is preventive of disorder and controversy. By analysis of facts, able interpretation of law and prudent advice, the clients come to know and observe the laws and conduct their affairs in harmony with the rights of others and of the public without controversy or litigation.

But, when a client asserts that another has wronged him or seeks defense from charges of another, the lawyer's functions change from counselor to attorney. By skillful negotiation he pursues the conciliatory function in endeavor to compromise the conflict.

5 Supra, note 3, at p. 36.
Most conflicts are compromised or settled by the negotiations of opposing attorneys; but, for those which cannot be disposed of by agreement, recourse to litigation becomes necessary. Law without a sanction is meaningless. For every wrong there must be a remedy. In enforcing the sanctions of the law and securing its remedies for wrongs the lawyer serves as advocate. He becomes pleader and champion of his client's cause in the judicial forum. Here he is an officer of the court, assisting the judge in the solution of the issues; but he is also the attorney of his client, bound by the highest duty of unswerving loyalty to the interests of the client. He and the opposing attorney are adversaries and their contest and skillful debate as adversaries will serve to present all of the considerations to be weighed on each side from which the court, fully informed and aware of all aspects of the issues, is enabled to make an enlightened decision.

But constructive service brings to lawyers, as to others, the greatest satisfactions. To be the organizational architect of a new enterprise is interesting work—to develop the part and function of each participant—to write its charter—to guide the planning of its directors—to see it launched and watch it grow—are all rewarding experiences. The proposal and drafting of new laws is a field in which many lawyers serve to build new and better units into the structure of government. The invention of new instruments of commerce, new securities and new plans for the protection and free flow of credit are all in this field. The creation of pension and profit sharing plans, the writing of fair labor contracts which promote industrial harmony and progress are no less gratifying to the lawyer than his victories in intently contested cases. The victories are soon forgotten, but the lawyer's handiwork that endures for economic and social good, is his lasting pride.

To laymen of an earlier day much of this was obscure. To Jack Cade's rebels, lawyers were the instruments of autocratic oppression, not the defenders of the people's liberties and the preservers of a social order in which those liberties could be enjoyed. A demagogue could rouse an ignorant mob to urge liquidation of the legal profession; but in our country in this day of universal education we may justly hope that our lay fellow citizens will understand what we are and what we do and say to any demagogue: "Let's Let the Lawyers Live!"

We may justly hope that all that lawyers have done in the founding and building and preserving of our nation of free men will be remembered; that the service of lawyers in rearing and maintaining for the American people a living organic republican government
under a written constitution, unequalled in any other place or time, will be appreciated.

And, to assure the legal profession of such regard in the years to come, let the lawyers continue to be good guardians of the social order and so serve every client and so perform every professional appointment that the people will see, by their living example, how well respect for law and lawyers is deserved in this land of freedom and justice under law.