
Franklin D. Roosevelt — “The Great Communicator”

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THE ROAD TO JUDICIAL REFORM

What Is the Problem?

It is a pleasure to greet this association. Under the forward-looking leadership of Mr. Burlingham and Mr. Davis it has in a most remarkable way realized the deep obligations that rest upon the organized legal profession to stand in the forefront of reform with respect to all things pertaining to the courts. In teaching certain members of the legal profession that their obligations if not willingly observed will be enforced by strong hand, in assisting those in authority to make wise selections in the appointment of judges and in a general way in contributing to legal reform, you have during the past few years been performing a valued and significant service.

It is unnecessary to take time in establishing the fact that the administration of justice is generally unpopular with the people of this country. Growing complaint with the law's injustices, delays and costs has to a great extent characterized every generation. The present one is no exception. At the present time, however, and in such a city as this, the problem rises in significance beyond the stage of mere dissatisfaction. It becomes a public problem of major importance. Speedy and efficient justice in a vast community like this is a public necessity, to be ranked with health, sanitation and police protection. I need not tell you that it has not yet been adequately provided. Moreover, in a time of economic distress such as this, the multiplication of legal actions involving debts increases. The necessity for relief is accentuated. It is impossible and unnecessary to consider here the extent to which this situation is caused by technical difficulty. It may be taken for granted that much of it is due to the fact that the rules of the legal game are such that in the absence of very strong administrative control it will be used not for a direct search for the truth but to permit such legal manoeuvres as will further the interests of those who do not want the truth to be found. The jury trial, for example, established in order to provide the means for trustworthy decisions on matters of fact, is used all too frequently for purposes of delay. Absurd motions likewise enter the picture. In the long run the actual issue comes to be laid over with a whole network of unessential matters of strategy.

So long as years of delay are assured by the condition of the calendars of the courts, this delay itself will be used to threaten those who have rightful claims. Such delays constitute actual denials of justice. On the other hand, those defendants who have legitimate defenses are threatened with long and irritating legal processes. It is a common thing among courts where reform has been attempted that the very fact that justice is made more expeditious means the quick settlement of many cases that should never have been in the courts at all. Thousands of cases find their way into the courts for the simple reason that to put them there, with the delay involved, is to set up a means to force an unjust settlement. Long delay is caused by non-meritorious cases, and non-meritorious cases are put into the courts because of long delay. The whole thing is a vicious circle.

The only way to attack the problem is by rigorous application of judicial efficiency. In the face of this congestion the remedy commonly proposed is to add new judges or new courts, but it will readily be seen that if the problem is what I have stated it to be, such a so-called remedy merely aggravates the complaint. There are, of course, legitimate demands for additional judicial man-power in sections of the State where the population has grown rapidly. But it is easy to see that to apply this remedy in all cases is to add to the ravages of the disease, to contribute to the confusion and, what is profoundly important at this time, to burden still further an already seriously embarrassed taxpayer. With taxes mounting in all of the subdivisions of government, the time has come for a veritable searching of heart with regard to the cost of public service, and new demands should be

most carefully scrutinized in the light of this problem of dollars and cents.

Moreover, the cost to the litigant is very serious. This applies not only to the cost imposed by the governmental authorities, but professional fees as well. An English lawyer, in a very discriminating statement concerning the administration of justice in his own country, recently said justice in no country in the world is so expensive to obtain as England, except for the United States of America. Writers and lawyers in continental countries comment severely on this feature of Anglo-American government. In Germany, according to this authority, Mr. Claude Mullins, ("In Quest of Justice") an ordinary civil action for £50 can be fought for total fees on both sides of not more than £18. On the other hand, in England and the United States the cost of litigation is still deeply embedded in the mysterious recesses of lawyers' accounts; but we may be certain that it is much, much higher. Justice, then, is not only delayed, but it is excessively costly.

Stripped of frills, the problem comes down to a question of administration. Some of the realism that goes into matters less clouded by theory and tradition needs to be applied to the administration of justice. There are, of course, important considerations of policy that distinguish the administration of justice from the administration of some of the more prosaic activities of life. But it is not too much to say that the fact that the law is a learned profession and that its exponents are men trained in theoretical wisdom and are quick to distinguish fine shades of meaning has permitted them to invest their business with an almost mystical attribute that forbids the laying of the hard hands of common sense on the things that they are doing. Yet, when you consider the vast portion of cases that come to our courts, the adjustment of these problems comes down pretty much to a consideration of the same items of everyday life that we have in other activities. It would seem to me that there is to be little of the sacrament in the problem of determining whether John Doe did actually sell a defective bill of goods to Richard Roe. The core of the matter, after all, is earthly fact, and no manner of theorizing and of the invocation of precedent is going to solve the essential issue.

What Is the Road to Reform?

If the experience of England is any guide to what we may expect in the direction of reform, our progress out of the present unsatisfactory condition will be slow and, I fear, painful. In the first place, we must divest ourselves of the hope of easy reform, participated in by a few people. The day of the great law-giver is past. A modern, diversified and almost incoherent society requires that reform be the resultant of many diversified efforts. Co-operation among the innumerable interests of such a State as ours is necessary and such co-operation means vastly detailed and patient planning and labor. The history of law reform in this State has shown this. While many marked improvements have taken place in the past 30 years in connection with the administration of justice, it has been notable that altogether too many well-planned attempts at improvement have failed. If we are to succeed now it must be by widespread co-operation and unflinching labor.

One of the difficulties has been the fact that attempts to reform have concerned themselves largely with the higher courts of the State. These courts, as the result of consistent efforts on the part of reformers and largely because of the generally splendid personnel of judges who have served in them, have been a credit to New York and to the Nation. It is a matter of pride for the citizens of New York to consider how widely throughout the various states our Court of Appeals has been placed not only in the front rank, but pre-eminent among the courts of the last resort. While these courts go far to encourage optimism, it is nevertheless true that our inferior courts have been and are vastly in need of reconstructive improvement. The great delay occasioned in some of our city tribunals, the unsatisfactory nature of justice as it is administered by justices of the peace throughout the State and the unsatisfactory condition in the administration of criminal justice, all point to the necessity for serious consideration of those courts that provide the means of justice to the poor and unfortunate.

In the quest for reform there is no doubt as to the willingness of leaders of the bar to assist not only individually as lawyers, but through the various associations throughout the State. Vast energy and sums of money have been spent in order to justify the expectation of those who believe that lawyers ought to be in the forefront of reform in this field.

But in spite of this professional co-operation and assistance, I have felt from the beginning that reform cannot ultimately succeed unless it is participated in and supported by the lay public. Consequently, in the creation of a Commission on the Administration of Justice for this State, which, after repeated requests, I succeeded in bringing into existence through the Legislature, last winter, I insisted that there be lay membership. England found in the long struggle for legal reform in the Nineteenth Century that laymen were indispensable.

Kenneth Dayton, chairman of the Committee on Law Reform of the Association of the Bar, says of the part that laymen played in law reform in England: "The lesson of the early battlers has not been lost upon the English public. Increasingly, the examination into the administration of justice and its improvement has been delegated to laymen. The first commission appointed in 1850 consisted of seven attorneys, but on petition of Parliament two business men were added to the commission. The proportion of laymen upon subsequent commissions has constantly increased.

A Parliamentary committee appointed in 1909 contained but one lawyer out of 10 members. The 1913 commission was made up of one judge, two lawyers and eight laymen. Of this commission it was said, 'even this meagre representation of the legal profession was objected to by the commission as discrediting its report.'

We should not forget the direct interest in the administration of justice that laymen have; in the last analysis they suffer most from the slow-moving courts. Moreover, laymen have no vested interests, except in unusual instances, in the administration of justice. They are not lawyers with the fear of antagonizing the judiciary, nor are they judges who hesitate to reconstruct the conditions under which they work. Moreover, the intelligent layman is able to cut through cobwebs that in some way frustrate the efforts of the lawyers.

It is now clear to all thoughtful observers that reform in the administration of justice means an attack much more fundamental than the mere alteration of rules of procedure. It is more a problem of government than of law. It is concerned with questions of administrative policy and with social welfare rather than mere procedure.

This involves a broad search for the experience of other states and most certainly of other countries. It means that we should, wherever possible, adopt the experience of other state. For example, there has developed throughout the country a system for the management of the calendar, which originated, as I understand, in Cleveland and details of which are familiar to many members of the bar here. Largely through the leadership of one of your own members Mr. Harry D. Nims, the Federal courts in New York have adopted a modification of this system, and now, as I understand it, the Supreme Court of the First Department are in like manner expediting their business and at the same time saving money for litigants and taxpayers. Other useful experiments are abroad in the land which New York should not be long in examining. It is a very gratifying thing that our State Commission on the Administration of Justice is keenly aware of the necessity for a consideration of such experience, has made itself familiar with a number of these ideas and is planning a further search for the benefits of further experience in other places. To the end that reform of this type may be provided with official State leadership we have at last created a Commission of the Administration of Justice, which has set to work this past year. As is indicated in its preliminary report, it has carried on its work with a number of sound general policies.

This commission broadly representative in interest and viewpoint has diligently applied itself to its task. It has selected its field of investigation with discrimination; but it has brought within its purview far more than

a mere tinkering with procedure. It has initiated the study of a number of significant subjects, it has called conferences of judges, held public hearings, and in a tactful but effective manner has opened the way to a genuine appraisal and reconsideration of our judicial system.

It wisely proceeded with a decorous abstention from publicity. The trouble with some types of reform is that they celebrate before the event. They are, as Chesterton drily remarks, rejoicing in the memory of tomorrow afternoon.

The commission has sought, through co-operation with the courts, and in many other ways, a reasonable program of improvement. It will, in the year to come, seek to move toward the achievement of this program. Its main results, it may be assumed, will be indirect, the courts themselves, through common thought on the subjects at issue, achieving the beneficial result sought for by all of us.

Because while some legislation, perhaps even a number of constitutional changes are desirable, the most important improvements can be achieved without new laws. To this end the commission has sought and, it reports, secured the interest and co-operation of judges and lawyers throughout the State. A few weeks ago, for example, at the request of Senator Walter Westall, chairman of the commission, the four presiding justices of the Appellate Divisions of the State, and other judges, met with the commission to consider matters of common interest. This meeting of minds, which, as I understand, will be continued, cannot help but have a beneficial effect upon the administration of justice throughout the State. Administrative readjustments of the greatest value can come by the use of customary powers or what is more noteworthy by the potent influence of suggestion and example.

A thoughtful judge of this city, Bernard Shientag, commenting upon the need for judicial statistics, says that "the absence of such statistics has, more than anything else, checked the progress of the law." One of the activities this commission contemplated for the coming year is the creation throughout the State of a system by which there will be for the first time in the history of New York, adequate State-wide statistics concerning all of the courts. It is planned that this work should be carried on and if and when a permanent judicial council is created, the present temporary commission will divest itself of this function and transfer it to such a permanent body. The value of such information, systematically gathered and intelligently presented, is of extraordinary importance. It will give officials themselves a picture of the state of litigation in the courts which will permit us to know what work the courts are doing, how much of it there is, and how long it takes to dispose of cases. It will, I hope, be a permanent and accurate guide to the Legislature in the creation of new courts and new judges. It will give us the assurance that we shall not be permitted to enact legislation adding to the expense of the courts without accurate scientific means of knowing the extent of the need and whether it is immediately necessary.

What I have said of law reform may in many respects be applied with singular appropriateness to much of public life today. The principle of fewer new laws has, it is true, been widely advocated. But it has too often been the cry of a touchy conservatism, a wish to escape the regulatory arm of the government. The general wisdom of the demand for fewer laws is undeniable. But its necessary correlative principle is to use with intelligence and energy the powers that we have. Administration, informed, energetic, and economical, is the deep need of government today. The public, particularly in these moments of deep stress, deserves of its servants an example of unselfish application to duty. Let us remember that every member of the bar has something of the character of a public servant and that he owes it to his profession and to the public to encourage and to give his efforts for important and even drastic improvements in the administration of justice.