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The Law Schools and the New Profession of Social Technician

By FREDERICK K. BEUTEL

RECENTLY THERE HAS BEEN considerable discussion of the fact that there is emerging all over the world a new profession of management of both private and public business. These persons neither own the business which they operate nor win the elections to public office. Nevertheless, they are increasingly taking over the control of the operation of our social machinery because it is too complicated to be run by amateurs, whether they be stockholders or voters.¹

In the past much of this technical work of managing complicated social affairs has been done by legally trained personnel, and there are those who still believe that the law schools have the key for entrance into this new profession. Others feel that the present legal training is wholly beside the point and can offer nothing of value toward the development of this new profession.

It might be worthwhile to examine briefly the qualifications of our American law schools as centers for training the newly emerging profession of managers, or social technicians.

What the Law Schools Are Doing Now

AT THE PRESENT TIME our legal education, concerned almost entirely with court decisions, is doing little more than drill the students intensively in the technique of trying cases.² With attention in instruction directed almost entirely toward prosecution of private litigation, the great body of the cur-

¹ Cf. James Burnham, "The Managerial Revolution," New York, 1941.

² Karl N. Llewellyn, "On What Is Wrong with So-called Legal Education," 1935, 35 Col. L. Rev., p. 651; Riesman, "Law and Social Science," 1941, 50 Yale L. Jour., p. 636.

riculum is made up of cases decided in the Nineteenth Century in suits between individual business men. The field of public law, insofar as it is studied, is relegated to an examination of judicial veto of government action, based on some sort of idea that the government operates outside the legal system. It is significant that there is not a single school in America devoted exclusively or even to a preponderant degree to training public lawyers for the practice of law either as public servants or as specialists opposing the government. In fact, law students can and do graduate from leading institutions like Harvard Law School without taking a single course in public law,³ and it should be said that the Harvard Law School is not much more backward in this respect than the others, which have copied its curriculum to such a degree that the field of public law plays a very minor rôle in the great majority of schools. This state of the curriculum, badly out of line with the actual legal as well as the social condition of the nation where the government now interferes with almost every aspect of life, is simply an historic accident, based on the case method. It cannot be corrected, either for the purpose of training in the art of social control or even for the simple end of preparing students to "practice law" as we now understand it, by the expedient of adding another year to the curriculum.⁴ The difficulty lies in our theories of the nature of law and our method of study.

The Case Method

THE CASE METHOD, which is the touchstone of our system, needs re-examination even when used merely as a basis for a training to enter the narrower field of practice of law.

³ See 27 Official Register of Harvard University, The Law School, 1940, No. 29, p. 22. Criminal law, sometimes classed as a public law course, is required in the first year for two hours, one semester, *ibid.*, p. 9.

⁴ Merrill, 1939, Handbook of Association of American Law Schools, p. 97; and for a bibliography on the subject see Association of American Law Schools Program, 1939, pp. 36, 47-50.

Our law schools and law curricula have been built up around "the common law" which is a well-known assumption that law consists of a rationalization of the decided cases of Anglo-American courts. In a primitive society such as existed in the Early Roman Empire, in Fourteenth Century England, or in the frontier society of this country in the Eighteenth and Nineteenth Century where there was little or no written law, the judges' decision of a case was the best and almost only evidence upon which one could rely in determining the meaning of law. Therefore, the decided case, based on the written opinion, was the source material out of which the jurist or lawyer could fashion a set of laws for advising clients and winning future cases. The primitive condition of legislation and public records made the reported case about all the evidence there was for one desiring to study the mechanism of social control by law.

Langdell, late in the Nineteenth Century, re-vitalized this process and began what we have been pleased to call the scientific study of cases. But it is an interesting commentary on the development of culture that as soon as social phenomena are recognized and named, they have often run their course of usefulness and are already being replaced by other social devices. Just as the schools, under the leadership of Langdell, began to study the cases, society and the legal order embarked upon a tremendous development of legislative and administrative rules. This was followed shortly afterward by a complete rewriting of the common law in the form of a restatement which may supersede the unwritten law where it is still pertinent. The power to settle social disputes, the prevention of future activities against the public order and the authoritative interpretation of law began to pass from the judicial to the executive and legislative branches of the government. About all that remained to the judicial branch in the field of adjustment of social interests by government

action was a veto power that received a staggering blow in the court-packing fight of 1937.

In view of our present legal theories and sanctions, the old common law methods amount to little more than spreading superstition and encouraging a technique for settling private controversies, a technique that is often entirely irrelevant to the issues and wholly at odds with the demands of social justice.⁵ But the study of cases and the development of the case method are intriguing operations which have been developed far beyond their usefulness as a method of social control or as a device for scientific research. The emphasis on cases has been so completely overweighted that one would have no difficulty in finding honor students of the law and many teachers in the law faculties who would defend the ridiculous proposition that "legislation is meaningless without a court decision interpreting it."

In fact, the concentrated study of the cases has often caused us to conceive a "common law" where none ever existed or where it has long since ceased to have any appreciable place in the legal order. Even in the field of private law, we talk, for example, about the common law of negotiable instruments, sales, insurance, or corporations, or even property, when as a matter of fact in the first-named subject there never was any common law⁶ and, in most of the others, the basic concepts used today are to be found in ancient or modern statutes and codes.⁷

Turning to public law, this distortion is even more serious. In the United States, at least, it is silly to talk about public common law when it is a well-known fact that our public

⁵ For a further discussion of this point see, F. K. Beutel, "Some Implications of Experimental Jurisprudence," 1934, 43 Har. L. Rev., pp. 169, 180 ff.

⁶ F. K. Beutel, "The Development of Negotiable Instruments in Early English Law," 1938, 51 Har. L. Rev., p. 813; *ibid.*, "The Development of Statutes on Negotiable Paper," 1940, 40 Col. L. Rev., pp. 836, 865.

⁷ For some of the older statutory starting points see, James L. Landis, "Statutes and the Sources of Law," Harvard Legal Essays, 1934, p. 213. The uniform laws and modern statutes in the subjects named are too well known to require citation.

law is based directly upon the interpretation and administration of written constitutions and statutes drawn thereunder. The blind following of precedents has caused our Supreme Court in many cases to wander so far afield from the written text of the Constitution that it has been forced by the requirement of popular pressure to reverse its decisions and return again to concepts within the document and more in accord with social needs.⁸ But our law schools, to date, have not yielded. So great has been the over-emphasis of the case that many of the leaders of the American Bar Association seem to be convinced that litigation is the only safe means of adjusting social interests. The now happily defunct Logan-Walter Bill is a striking commentary on the extent to which this mistaken idea has gained acceptance not only among the Bar but even in the Congress of the United States, where there is a widely-held view that all of the work of the administrative bodies of the government could be handled by litigation. Fortunately, the President, who, perhaps, was not so thoroughly grounded in the case method as were some of the proponents of the bill, knew better.⁹

A still more serious difficulty with the case method in the study of law, as a means for developing a sound basis for scientific social control, is the fact that, even in such simple matters as keeping the peace, there is no correlation between the point of view of the courts as evidenced in the decision

⁸ See Mr. Justice Holmes' cryptic dissent on this point, *Baldwin v. Missouri*, 281 U. S. 586, 595, which will be recognized as the basis for a long line of cases reversing the policy of the court, beginning with *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1 (1937); *Charles C. Stewart Machine Co. v. Davis*, 301 U. S. 548; and for examples of others see, *United States v. Darby Lumber Co.*, 61 S. Ct. 451 (1941), overruling *Hammer v. Dagenhart*, 247 U. S. 251 (1918); *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937) overruling *Adkins v. Children's Hospital*, 261 U. S. 525 (1923); and see the reversal of the application of Mr. Chief Justice Marshall's dictum as often phrased, "The power to tax is the power to destroy," *McCulloch v. Maryland*, 4 Wheaton 316, 431 (1819); in *James v. Dravo Contracting Co.*, 302 U. S. 134 (1937); *Helvering v. Gerhardt*, 304 U. S. 405 (1938); *Graves v. O'Keefe*, 306 U. S. 466 (1939); *O'Malley v. Woodrough*, 307 U. S. 277 (1939); but cf. *Pittman v. Home Owners Loan Corp.*, 308 U. S. 21 (1939). Any student of constitutional law can suggest many others.

⁹ 27 Am. Bar Assn. Jour., 1941, p. 52.

of cases and the necessary requirements for social regulation. As indicated elsewhere,¹⁰ the courts deal only with aggravated cases of social maladjustment where the law has failed properly to balance the conflicting interests of the parties. The cases are all decided *ex post facto* and long after the results of the maladjustment have run their course. Using the case as a method for finding law that can act as a form of social regulation is, therefore, not only subject to the fallacy of arguing from the particular to the general, but also to the glaring defect that, since proper adjustment of interests would eliminate litigation, the method by which the litigation is settled usually offers no clues to the prevention of litigation in future cases.¹¹

Every field of law is full of illustrations of how the accidental decision of a case has become the beginning of a long line of authority which created a rule of law wholly out of line with social conditions, and totally unable to offer any solution of similar problems in a changing society.¹² It is small wonder that a search for certainty in a field of legal thought based so completely on the accidental presence of cases in courts of law has led to the school of gastronomical jurisprudence, which would solve the problems of social adjustment by examining the judge's breakfast before he goes on the bench. Still this approach is no more ridiculous in our present state of legal development than is the process of de-

¹⁰ See *supra*, note 5.

¹¹ For example, the problem of traffic accidents has been best solved by stop light, by-passes, traffic circles, and express highways; the industrial accident cases by safety devices and workman's compensation; criminal cases may be reduced by play grounds, recreation, and the like; illegal sale of liquor by state stores, see Shipman, "State Administrative Machinery for Liquor Control," 1940, *Law and Contemporary Problems*, pp. 600, 611 ff. In these and many other similar instances, generalizations from court decisions could offer no clue to the successful solution.

¹² For example: the fellow servant rule; *Buller v. Crips*, 6 Mod. 29 (1704), holding promissory notes non-negotiable, in negotiable paper; the doctrine of *Livingston v. Jefferson*, 1 Broc. Fed Cases, No. 8411 (1811) that suits for actions of trespass to real estate are local actions, American Law Institute, *Restatement of Conflict of Laws* 614, and for the manner in which the weight of precedent prevails over common sense in such matters see, 7 *Proceedings of the American Law Institute*, 1929, pp. 86-9. Any teacher of law can add numerous other examples from his own courses.

living standards of social control from isolated litigated cases, a process that now forms the basis for courses of study in our leading law schools.

Judicial Philosophy as a Basis of Social Control

EVEN IF SOME CERTAINTY could be established by the elimination of the isolated case and a substitution of statistical study of court decisions, which is not the basis of the present case method technique, judicial philosophy is a bad foundation for a legal system, or for a course of instruction in the administration of social justice. The roots of the judges' social philosophy lie in isolation, class consciousness, conservatism, and even reaction.¹³ The best the judge can offer in the way of social philosophy is usually the material that he studied when he was in school, which was nearly thirty years prior to the time of the judicial decision he is rendering. When the case in turn becomes the basis of the legal philosophy of the succeeding generation of courts and lawyers, legal thinking tends to move in a closing spiral, turning constantly in on itself in an orbit entirely out of touch with society and social needs.¹⁴ With our rules of evidence and our court pro-

¹³ The idea that the courts are the bulwarks of liberty and the defenders of the common man has been neatly exploded by Edgerton, "The Incidence of Judicial Control over Congress," 1937, 22 *Cor. L. Q.*, p. 299.

¹⁴ Even so liberal-minded a judge as Mr. Justice Holmes was not free from this type of thinking. See the horse and buggy standard for negligence of a driver of a truck, in the face of a verdict, in *Baltimore & Ohio Railroad Company v. Goodman*, 275 U. S. 66, 70 (1927). In spite of the fact that the decision of Mr. Justice Holmes, *supra*, was so out of line with social conditions that it excited a storm of protest and law review comment (see *Index to Legal Periodicals*, Jan. 1926–Sept. 1928, p. 667), mostly unfavorable, a glance at *Shepard's Citations* will show that this dictum became the basis of one Supreme Court decision and thirty-three decisions in the Circuit Courts of Appeal, either denying the injured plaintiff the right to go to the jury or depriving him of a verdict after the lower court had allowed the case to go to the jury. These lower court decisions not only following but extending the stop, look, and listen doctrine make interesting reading to one who would like to see "what a d—d fool a man has to make himself in order to conform to the decisions of the Supreme Court," 22 *Ill. L. Rev.*, pp. 800–1. They are only a part of the many hundreds of other cases which have extended this foolish dictum all through the lower federal and state courts to refuse recovery in daily accidents to an injured plaintiff under facts where a sound social policy would cover the whole matter with insurance. It should be noted, however, that this outrageous doctrine only lasted seven years, when it was abolished by Mr. Justice Cardozo, one of our most socially-alert judges (in *Pokora v. Wabash Ry. Co.*, 292 U. S. 98, pp. 104–6). If time and space permitted, similar anachronisms could be produced at random from any field of law which are still flourishing.

cedure such as they are, the judge tends more and more to operate in the rarefied atmosphere of a system carefully insulated from social control. It is small wonder, then, that a large number of the social changes that were ordered by statutes or regulations (we avoid, to limit controversy, indicating whether we think they are progressive or decadent) were declared unconstitutional when they were challenged in the courts during the last century because they were found by the judges to be "unprecedented."¹⁵

When the judicial decision becomes the basis of the study of law, as it has been in America during the last thirty years, it is not surprising that legal processes are of so little use in solving social problems. The continued study of law on this basis cannot meet the requirements of the new age of changing legal activity which is now upon us and will come even faster in the cleaning up of the debris of the present war. It is necessary to begin now, while our schools are being decimated to provide manpower for the military machine, to lay the foundation of courses which will offer scientific guidance to those who will return to pick up the loose ends of our shattered social system when peace finally comes.

Whether the law schools enter whole-heartedly into the task of developing their graduates to fill all the various requirements of the new profession of technicians in social

¹⁵ For example, see Mr. Chief Justice Hughes' conclusion in *Schechter Corp. et al. v. United States*, 295 U. S. 495, 541 (1935); and note how the expert commission, partly because it is new, cannot be constitutionally entrusted with finding the fact of value in rate cases, see *Chicago, M. & St. P. Ry. v. Minnesota*, 134 U. S. 418 (1890); *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287 (1920); but a common law jury, largely because it is old, is held entirely competent to pass upon such technical facts, *United Gas Public Service Co. v. State of Texas*, 303 U. S. 123 (1938). See also Brown, "Due Process of Law, Police Power and the Supreme Court," 1927, 40 Har. L. Rev., p. 943, where the author points out that between 1921 and 1927 31 percent of all the decisions in Due Process cases were against the constitutionality of statutes. It should be noted that this was at a time when the governments of the country were, on the whole, in the hands of the conservatives. A similar percentage would undoubtedly appear from 1927-1937 when the liberals were in power. It may also be coincidence that the increase in the percentage of cases declared unconstitutional corresponds with the appearance in the courts of lawyers trained by the case method. The more liberal attitude during the last five years is accounted for by the systematic effort of the Federal administration to place the few progressively-minded lawyers available in judicial positions.

control, or merely continue to train a decreasing segment of this profession, they must re-examine the basic legal postulates and the method whereby we seek them.

The Sources of Basic Legal Postulates

WHAT, THEN, IS THE BASIS for determining legal postulates? If the cases and the traditional common law methods will not suffice as the foundation on which to build even an adequate system of "legal education," where are the law schools to turn for the basic information necessary to provide sound training for their students, either as "lawyers" or social technicians?

History has offered many starting points for legal systems. Among these have been the will of the conqueror, the arbitrary edicts of dictators, the mysticism of divine will with its closely related source, the canons of the priesthood, and the desires of a ruling class. One needs only casual familiarity with legal history to see that the failure of these sources to provide any adequate system of social regulation has been demonstrated beyond doubt. In addition to the dicta of the judiciary, which has already been disposed of as a proper source of law and postulates of social justice, there remain only three other sources which have been recognized in the past. These are received ideas of law which are held by the professional administrators of the law itself, namely the bar; the writings of legal scholars, who are always closely connected with the bar and the courts; and lastly the democratic will of the people as expressed by popular legislation.

Recent experience with legislation and ideas of justice recommended by the American Bar Association has demonstrated that, in this country at least, where the members of the bar are a group of entrepreneurs deriving their livelihood and profit almost wholly from money fees, and relying as they do upon the favor of the courts for their prosperity, the

professional lawyers are unable to look at the problems of social adjustment with that clear, unbiased, detached point of view necessary for the formulation of any practicable system of social justice.

Although the leading legal writers in the past have offered many suggestions for improvement in the machinery of justice, they have unfortunately been so saturated with the common law technique and have become so blinded by the process of collecting and tabulating cases that they lack both the social information and the perspective successfully to project a well-rounded legal system which could hope to deal with the complicated problem of achieving social justice.

This brings us to the last historical source of legal axioms which at one time or another in the history of the world has been regarded as the basis for ultimate solution of the problem, the will of the *Demos* or the systematized expression of their will by elected representatives in the form of statutes and codes. Although it may be bad politics at a time when we have an interest in a bloody conflict in its alleged defense, careful scientific method requires the questioning of the democratic will as a basis for a successful legal system. Assuming the democratic standard, that law and social control should achieve the good of the greatest number, there has been a belief that the people somehow, by collective action, could devise the basis upon which a system to achieve this good could be built. The idea is, of course, founded upon two propositions. The first is the Eighteenth Century belief in enlightened selfishness; that is, that the common man in satisfying his wants will demand those things which work for his own good in the long run and that the sum of individual good would add up to the greatest collective good. The second is the Jeffersonian dictum, "The people are always right in the end; they may make mistakes, but they themselves rectify them."

The idea of enlightened selfishness attaining the collective good was predicated upon a simple society where each person could see and understand the results of his actions both upon himself and society. Although this may have been the case in the time of John Stuart Mill, it is no longer possible today. The complication of the modern social structure is such that no single individual can pass intelligent judgment on the result of his actions upon himself or upon the whole of society. The individual is accustomed to take expert advice on comparatively simple matters pertaining to health, repair of machinery, investment, construction of houses, education, and the like. Why, then, should he expect to be able to know the answers in the most complicated of all activities, the regulation of society? The fate of France is the best illustration of the working of the doctrine of enlightened selfishness in the Twentieth Century.

The second assumption is that the collective populace are able, somehow, to reach the truth about public affairs. This is also out of line with the facts of modern society.

Unfortunately Jefferson did not have the benefit of modern psychology which shows that more than 40 percent of the people lack sufficient intelligence to get through an ordinary course in high school. Of the remaining 60 percent who perhaps can complete their secondary education, less than one-third have the ability to do college work, and only one-third of these college students can take up professional study, where about 50 percent fail before graduation.¹⁶ Putting it another way, about one in five can even hope to go to college, and less than one in ten have sufficient capacity possibly to grasp the ramifications of the problems of govern-

¹⁶ See Garrett and Schneck, "Psychological Tests, Methods and Results," 1933, Part II, pp. 26-39, where the author correlates the Stanford-Binet tests with the results of the Army Alpha and many other studies. The Army Alpha showed that less than 5 percent of the population has the capacity for work on a high professional level. See also Bell, "Youth Tell Their Story," 1938, pp. 51, 96; and Terman, "The Intelligence of School Children," 1919, p. 89.

ing a country such as ours.¹⁷ In the light of these facts, it is pure nonsense to expect that any democratic will made up of the majority of feeling, votes, or approved ideas or ideals of an entire unselected population could possibly offer a working basis for regulating and adjusting the myriad clashes of interests which occur in a society complicated beyond the most prophetic dreams of Jefferson, Lincoln, or their associates. The common man in modern society is scarcely capable of determining what are his own interests and of taking intelligent steps to protect them, to say nothing of solving the problems of social adjustment for nations made up of millions of individuals with their myriad wants, ambitions, desires, and expectations. It is pure mysticism to believe that the collective judgment of a group who cannot individually understand the problem at hand can offer any real basis for its solution.

If any working system of social control in modern society is to grow out of the democratic principle of the greatest good for the greatest number, it must be predicated upon the scientific study by experts, drawn from the upper 10 percent of the intelligence level of the population. The work of this group should be to determine, first, the needs of the people in

¹⁷ It is interesting to note that our high schools have already enrolled the capacity of the youth able, according to these figures, to do their work; 54 percent of the population of high school age were enrolled in 1930 and about 67 percent in 1936, "Statistical Abstracts of the United States," Government Printing Office, Washington, 1939, p. 108. In like manner the colleges are reaching their capacity with over 924,000 enrolled in 1930, 1,000,000 in 1936 and 1,200,000 in 1939, *ibid.*, p. 110, p. 117, and "World Almanac," World-Telegram, New York, 1941, p. 551. This number constituted a little more than 10 percent of the people of college age in America, "Fifteenth Census of United States," Part II, Government Printing Office, Washington, 1933, p. 576. The census figures of 1930 show about 21.4 percent of people between 18 and 20 years old were in school, *ibid.*, p. 1091, while much less than one-fifth of those between 16 and 24 years were in school. Of those who finish high school less than 300 in 1000 have the ability to go to college while only 105 out of 1000 with such ability have actually matriculated, Bell, *op. cit.*, p. 96. This means that our colleges and professional schools are failing to reach over half of the population with the mental ability to do their work, while they are taking in large numbers who are financially able but without the mental capacity to handle college training. It is small wonder then, that less than half of those who undertake this work ever receive their final degrees, "Statistical Abstract," *op. cit.*, p. 110. This appalling waste of our greatest natural resource, native intelligence, is a problem for government administrators and all educators, legal and otherwise.

society, and second, the means of creating effectively legal machinery which will make possible the satisfaction of those needs. What the common man cannot do for himself must be done by scientists acting as his servants, otherwise democracy will become either blind groping in the dark or a shibboleth used to drive the common men to do the will and serve the purposes of others under the guise that he is somehow helping himself. This seems to be the state in which most of our social systems now find themselves after long experiments with government by popular vote. (It should not be forgotten that Hitler came to power in Germany by using democratic forms.)

Of course, there is always the possibility that we may have accidentally hit upon a legal system adequate to our social needs, without any guiding philosophy. It is interesting to note, in this respect, that the civilization in which our founding fathers lived and from which they rationalized in creating our present legal system, was much closer to the year 1 A.D. in all of its attributes than our present civilization is to theirs.¹⁸ The industrial revolution and all of the inventions which have abolished day and night, distance and time, which have changed the face of the earth as to make it possible for thousands of men to live in comparative comfort where before a few could exist in the most primitive squalor, have made our systems of law and government as antiquated a tool for social control as the stage coach as a means of transportation.

Just as it was impossible for the founding fathers to foresee the strain which would be put upon their governmental system, so also we are likely to find that old rules of law, except insofar as we can show scientifically that they can serve their purposes in their new surroundings, are useless for

¹⁸ Robert S. Lynd, "Middletown—A Study in Contemporary American Culture," New York, 1929.

guidance in solving our modern problems. The doctrine of *Stare Decisis* and the laws of the Medes and Persians which changeth not cannot be long expected to regulate a society so dynamic that the latest airplane is antiquated before it can be taken off the assembly line. We must admit that juridical theories of the social and legal structure, no matter how perfect they may appear in the light of logic or on the basis of legal theory, are wholly useless unless they can solve successfully the simplest of all legal problems; namely, keeping the peace at home and abroad. Even our most widely heralded legal devices have failed to meet this most elementary test, to say nothing of the larger problem now being posed: the duty, somehow, of seeing that every man gets an economic square deal.

The new age of activity which is now upon us will demand a new type of legal-social craftsman who can rebuild the legal structure to meet the needs of today and tomorrow through a process of orderly change which will preserve to society and the deserving people in it the technical gains of the last century. This is the most gigantic task yet to challenge the intelligence of man. The penalty of failure will be to turn our modern mechanical power, chemistry, bacteriology, and all of the material of science over to a governmental intelligence which has learned little since the days of Rome. In the hands of such a government we may expect modern technology not only to wreck the social order, but eventually to destroy itself.

A New Social Science as a Basis for Legal Postulates

AS HAS BEEN INDICATED elsewhere,¹⁹ there is rapidly emerging on all sides evidence that there are now available sufficient facts upon which there can be built a new science of human conduct comparable with the physical sciences both in the ac-

¹⁹ See *supra*, note 8.

curacy of its data and in predictability of future happenings when applied to the mass actions of men. Scientific laws of human behavior, and the ability to apply them in devising man-made laws for the control of society, are now becoming a dominating force in the world. No thinking person can view the rise of the Third Reich or the developments in Soviet Russia without realizing that they are awesome examples of the use that can be made of such new social sciences to rebuild society on lines never before conceived. The men who wield these new forces, directing them to such purposes as they will, have been able to make the whole world tremble.

Under the impact of intelligently, or fiendishly if you will, directed social planning, *laissez faire* is dead in the economic world and rapidly disappearing in the political and legal spheres. Pressure groups, economic cartels, propaganda, and outright gang methods directed toward scientifically predictable ends are at large both at home and abroad. We have witnessed nation after nation torn asunder by these forces directed from within or without by men who understood their use and who have turned them to their ends. We may even now be in the process of seeing our own civilization destroyed, our own people becoming the slaves of foreign purposes, and perhaps being led to their own destruction through the unbridled operation of skillful economic blocs, propagandists, and pressure groups.

The American public administrator of today and tomorrow must understand the use of these forces and be able to devise laws to control them in the interest of what we are now pleased to call the democratic good.

One illustration will suffice to show the myriad problems which must be solved. In the most sacred field of the bill of rights, freedom of expression and action it may not be sufficient to keep the avenues of expression and trade open to

all, or even to attempt to see that all views have an equal opportunity for exposition or all intellectual wares be accorded an open market. Perhaps there will have to be an intelligent evaluation of the power of ideas which are at large in society, in a manner similar to that in which we now evaluate food products. It may be that poison ideas are more dangerous than poison foods if placed in the minds of the wrong people. It seems as possible to make experiments on what 'goods' should be offered in the intellectual market as it is to determine what should become available for the sustenance of the "inner man." Freedom of speech, thought and activity may have wholly disappeared in large parts of the world, because some of the population cannot stand the impact of certain ideas. If nervous breakdowns can be induced in men and animals by the overcomplication of life,²⁰ why cannot social breakdowns be produced by over-complication of ideas? Is not this the principle upon which the dictators have operated to destroy the morale of enemy countries? May it not be that freedom of expression, thought, and action is the birthright only of the intelligent few, and is it not possible that we have at hand the means of determining who these few are, and how this principle can be applied to even "democratic" government?

The government administrator, or technician, who devises the social and legal rules for the state of tomorrow can hardly escape the task of finding answers for these and many more complicated problems. To assume that we now know the answers is to act on blind prejudice and in the face of obvious evidence to the contrary which appears on all sides.

Governments of the future, whether they be despotisms or democracies, can no longer rely solely upon the will of

²⁰ Hilgard and Marquis, "Conditioning and Learning," 1940, pp. 280-287; Cook, "A Survey of Methods Used to Produce Experimental Neurosis," 95 *Am. J. Psychiat.*, pp. 1259-76; Maier, "Studies of Abnormal Behavior in the Rat," 1939. Also see "Grewsome Tales for Children," *Time* (Feb. 17, 1941), p. 39; "Propaganda Study Used Successfully by 3,000 Schools," *N. Y. Times* (Feb. 21, 1941), p. 1.

individuals or of the *demos* to determine the course of their actions. If they are to succeed in regulating society for whatever ends the policy of the government dictates, their actions, decrees or laws must be promulgated only after careful study of the problems involved, and the social reactions which are likely to occur upon the enforcement of the projected regulation or action. The observation of social reactions, and the prediction of the results to follow upon a projected course of action, requires expert research by carefully organized departments which are now appearing in all types of governments. As the technique of observation and prediction develops, there will necessarily follow a narrowing of the field of what we now call policy determination; because it is obviously bad policy to attempt the impossible. This ever-widening demand for governmental technicians is likely, in the long run, to develop into government by experts both in the fields of observation and in policy making. Under the circumstances it is not a far cry to the day when the postulates of the law will rest equally upon the observation of a real, experimental social science developed under the guidance of experts.

The Necessity for Action

THIS FIELD OF HIGHLY PROFESSIONALIZED ACTIVITY, in the past, has belonged almost wholly to the lawyers, who, unfortunately, have used almost every device other than scientific method to solve the problems involved; but even so they have been forced by the very nature of their work to go further in the field than any other profession. It is no credit to the law schools that most of the progress has been achieved by groping in the dark.

Either the law schools must revise their program to meet the requirements of the field of activity which their graduates have preempted, or other schools must be created to train

the skilled government technicians of the future. The fact that we are late in starting simply intensifies our double-headed project, to create either within or outside of the law schools a new unified social science, and devise a means of using it as an instrument of social control through government and law. Since the law schools will be forced by the new requirements even of litigious practice to develop a large part of this field, they ought to undertake the entire task in cooperation with other departments of the educational institutions. If the law schools are too blind, too conservative, too stupid, or too lazy to undertake the task, it should be started at once by independent institutions.