Cornell Law Review

Volume 25
Issue 4 June 1940

View of Woe Unto You Lawyers

Herbert D. Laube

Follow this and additional works at: http://scholarship.law.cornell.edu/clr

Part of the Law Commons

Recommended Citation

Herbert D. Laube, View of Woe Unto You Lawyers, 25 Cornell L. Rev. 581 (1940)
Available at: http://scholarship.law.cornell.edu/clr/vol25/iss4/5

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.
A VIEW OF "WOE UNTO YOU, LAWYERS!"

HERBERT D. LAUBE

"Woe Unto You, Lawyers!" is permeated with the elusive quality of nonsense. Its intense, unconventional passion makes it a riddle to its critics. One reviewer calls it a vicious tirade against the legal profession, a scathing rebuke of the Constitution and an unwarranted attack upon the law. This denunciation is in language almost as extravagant as the language used by Rodell in his inimitable book. In classic phrase, this little volume would probably be designated a philippic or a diatribe. Technically, it may be called nonsense. In its technical use, nonsense signifies "whatever cannot be verified in experience."

Rodell insists that the law is a hocus-pocus science and that lawyers are medicine-men. It is the lawyers who run our civilization and all judges are lawyers. They are the pseudo-intellectual autocrats of our age. The Law is a lucrative, powerful, dangerous, high-class racket. The lawyer’s trade is built entirely on words. The language of The Law is a foreign language; it calls a common street brawl a “felony,” a “misdemeanor” or a “tort.” This jargon, muttered in the solemn voice of a lawyer and backed by the mighty and mysterious forces of law-and-order, baffles and befuddles the ordinary literate man. What is the basis of the pusillanimous submission of the populace to the magic power of old English, Norman French and pig Latin? Every Freudian disciple can readily surmise. It is fear, fear of the unknown, fear of the policeman. That at least is the psychoanalytical secret that Rodell’s lawyer-friend must have bade him to keep locked up within his own skeptical breast and not to “give the show away.” Then came “Woe Unto You, Lawyers!” Rodell knew that it would make every lawyer bristle or snort. His courage has made him a martyr; he is now the victim of misunderstanding.

One critic sees Rodell thumbing his nose at the judges and throwing spitballs at the lawyers with “slapstick, custard pie technique,” an exhibition of
professorial cleverness. The pious hope of this critic is that Rodell's sparkling talents may survive this excursion into the field of sensationalism. However he believes that it must have been a lot of fun to write the book and the critic had the fun of reading it.

How Rodell has puzzled the critics! When the Professor says that the courts, the lawyers and the law should be abolished, one critic thinks that the Professor says it with his tongue in his cheek. What is the basis of his suspicion? The reason is "I know Fred Rodell. He is a great kidder. I wonder if he is taking us for a ride." If Rodell is merely taking the lawyers on a merry jaunt, shall we call him a humorist? That version of this novel twentieth century professorial sensation presents some little difficulty. Indeed, a problem of professional propriety is at stake. "Woe Unto You, Lawyers!" is the product of a student hunch that the whole legal process was phony. The teaching of ten eminent men, alphabetically designated, fortified his hunch. Surely professorial courtesy would not permit the honor of an invitation to be tendered to these ten men of distinction to ride in their idea-sponsored tallyho merely to carry them into the blatant realm of ballyhoo. Is that fun? Is it humor? Is it wit? That is the question.

It may be humor; it is not wit. Humor is less purely intellectual than wit. Wit is a product of wisdom. Wit denotes skill, ingenuity, art. Had "Woe Unto You, Lawyers!" been in any marked degree artful, it is not likely that the professional critics would have differed so sharply regarding the merit of the book. In the judgment of one reviewer to make out that all lawyers are a set of morons is more apt to raise doubt as to the balance of the critic than it is to convince. If "Woe Unto You, Lawyers!" is humorous, the humor seems to have miscarried. Humor is never passionate in the prosaic aligning of facts to prove that human nature has degenerated to the moronic level and that the whole racketeering tribe of lawyers exemplifies it. Humor is sympathetic in its approach. Not infrequently it is blended beautifully with pathos. Pathos is tender; morons are tough. Yet how strikingly pathos contrasts with bathos!

"Greenbaum, Book Review (1940) 40 Col. L. Rev. 353, 354, 356.
Greenbaum, supra note 11, at 353. "This is a lovely project. It is big at once with belly-laughs and with reform." Llewellyn, loc. cit. supra note 5.
Hayes, Book Review (1940) 49 Yale L. J. 974.
Id. at 976.
P. ix.
P. x.
Some critics have regarded "Woe Unto You, Lawyers!" as satire, comparing it quite unfavorably with Swift's GULLIVER'S TRAVELS and Herbert's UNCOMMON LAW. See Llewellyn, supra note 5; Radin, Woe Unto You, Lawyers: A Review (1940) 38 Mich. L. Rev. 504.
Bordwell (1940) 25 Iowa L. Rev. 394, 395.
WOE UNTO YOU, LAWYERS!

Bathos is anticlimatic. One critic says that Rodell's book is anticlimatic.\textsuperscript{10} The attempt at something constructive is felt to be the weakest part of the book. If this is true, then it is the end of the book that is the weakest part of the book. Semantically, there is much to sustain this point of view. For two hundred pages, Rodell blasts away with fury\textsuperscript{20} at words. They are the misty, magic creations that make up the clouds of jargon into which the lawyers disappear whenever they advise their clients. It is they which make up the concepts of the Law; it is they which make up the legal lingo of the judges, the textbook writers and the professors.\textsuperscript{21} Subjected to their exhausting and contaminating influence for months, the unsuspecting students in our Law Schools become the victims of this professional verbal barrage. In dazed confusion the students begin to murmur "mens rea" and "due process"; that is the symbol of tragedy; it signifies that, in thinking power, they are lost forever to society.

A single light pierces the dismal gloom. Was it not that "traitor to his trade,"\textsuperscript{22} Mr. Justice Holmes, who said, "General propositions do not decide concrete cases"? But ostensibly, the author does not delve into semantics; he didn't feel that it was necessary in order to show the silly little picture of the lawyer leaping from abstraction to abstraction with agility.\textsuperscript{23} Long, vague, fuzzy-meaning words are dangerous business. The Law deals in words, long and vague and fuzzy.

The legal incantations of the Supreme Court of the United States are ridiculed in Chapter IV.\textsuperscript{24} They are a lot of noxious nonsense. They are empty, inept and illogical rationalization based on nothing more substantial than big words.\textsuperscript{25} Thus Rodell exposes the somersaulting Supreme Court.\textsuperscript{26} All the Supreme Court does is to toss around some abstract concepts. Why does the Supreme Court do it? The judges are justyielding to temptation; The Law is so amorphous and indeterminate.\textsuperscript{27} The semantic tirade against abstractions continues in Chapter V and fatiguingly thereafter \textit{ad nauseam}.\textsuperscript{28} There it is generally shown that The Law is, as Mr. Bumble thought it might

\textsuperscript{10}Id. at 394.
\textsuperscript{21}Montaigne says, "He who establishes his argument by noise \ldots shows that his reason is weak."
\textsuperscript{22}P. 13.
\textsuperscript{23}P. 11. The same pungent humor which prompted Rodell to characterize Mr. Justice Holmes as a "traitor to his trade" impelled him to endorse as the best, that ancient caustic definition of a judge: "A judge is a lawyer who knew the governor." P. 36.
\textsuperscript{24}P. 10.
\textsuperscript{25}P. 61.
\textsuperscript{26}P. 64.
\textsuperscript{27}P. 86.
\textsuperscript{28}P. 79.
\textsuperscript{29}In result the book leaves the reader emotionally and esthetically confused; and \ldots instead of being at once funny and stimulating, becomes silly and boresome." Llewellyn, \textit{loc. cit. supra} note 5.
be, "a ass, a idiot." This appears more specifically under the caption of "No Tax on Max." Here is where the author advises his readers to hang on to their hats. The admonition seems as belated as it is irrelevant. This chapter seems no breezier than the four preceding ones. Max's sad tale had its origin in Senior v. Braden. The whole question concerned a tax: Was it tax on land? This case merely illustrates the manipulation of legal lingo by the nation's nine most expert jugglers. Now it is clear to Rodell that just because the Supreme Court insisted on applying their silly little abstract rules on "jurisdiction" to tax, they missed the meat of the problem. The Law always seems to sink its teeth into the fluff of abstract logic. Although the sinking of judicial teeth into logical fluff is a nebulous concept, still Rodell is convinced that the "due process" performances of the Supreme Court are just mystifying mumbo-jumbo.

Since the author admits that a personally conducted tour through the mazes of legal logic is apt to become confusing and tiresome, let us skip some of the futilities and the irrelevancies of the legal process to look at some Rodellian flimflam. Let us admit that lawyers can no more wring certainty out of abstraction than they can wring blood out of a cauliflower. Let us admit that the plentiful use of abstract, fuzzy, clumsy words is indispensible to the hocus-pocus of The Law. Let us admit that most lawyers are blissfully unaware that what they say resounds with emptiness. Let us rush to where the climax of "Woe Unto You, Lawyers!" would have been, if there had been a climax, which there wasn't. It is there that the reader's interest rises to the peak of expectancy. It is there that one searches for the semantic secret to be revealed to the uninitiated, to the great mass of racketeering lawyers. Of course, the reader is quite certain that secret won't lie in the Realm of Ultimate Truth. That is only the delusion which has lured astray the benighted idealist from the days of Plato. If Rodell had had a semantic secret, he would have put it on Page 222. The secret he had, appears where

---

- P. 102.
- P. 104.
- And Rodell's chapter on Senior v. Braden is, for example, superb.” Llewellyn. loc. cit. supra note 5.
- P. 131.
- P. 134.
- P. 137.
- P. 176.
- P. 193.
- "And you can look through every bit of The Law ... without finding a single rule that makes as much simple sense as 'Anyone who spits on this platform will be fined five dollars.'" P. 12.
- "Furthermore, the lawyers—or at least 99 44/100 per cent of them—are not even aware that they are indulging in a racket, and would be shocked at the very mention of the idea." P. 16.
- P. 222.
the secret he pretended to have, ought to have been. The reader must take it for what it is. What is it?

"It is a question of applying to any set of facts a combination of common sense and technical information and 'justice,' undiluted by ambiguous principles—and letting The Law fall where it may."

How terribly disappointing! Three abstractions: common sense, technical information and "justice" are to be combined in their pure form, unadulterated by the vicious fourth abstraction "ambiguous principles." These are to be applied to any set of facts. That is the semantic Rodellian secret. Did the blatant promise of two hundred pages find its fulfilment? If it did not, were Rodell's pretensions fun? Were they "humor"? Yet Rodell says that The Law is a hoax. It is not surprising that Rodell puzzles his critics! If his definition of a "lawyer's lawyer" is accepted, clearly Rodell has proven by his own performance that, upon occasion, even he may be a lawyer's lawyer. What are lawyers' lawyers? "They are walking, talking exhibits of . . . their own nonsense."

For this book to have the anticlimax where the climax should have been was an unpardonable semantic weakness; it was a fatal weakness. But the weakest part of "Woe Unto You, Lawyers!" is not at the end; it is at the beginning of the book where the artless demagogue appears in his primitive semantic crudity. In the opening chapter Rodell takes lawyers to task for their inability or their unwillingness to explain their brand of professional pig Latin to laymen. Then he says:

"A doctor can and will tell you what a metatarsus is and where it is and why it is there and, if necessary, what is wrong with it. A patient electrician can explain, to the satisfaction of a medium-grade mentality, how a dynamo works. But try to pin down a lawyer, any lawyer, on 'jurisdiction' or 'proximate cause' or 'equitable title'—words which he tosses off with authority and apparent familiarity and which are part of his regular stock in trade. If he does not dismiss your question summarily with 'You're not a lawyer; you wouldn't understand,' he will disappear into a cloud of legal jargon, perhaps descending occasionally to the level of a non-legal abstraction or to the scarcely more satisfactory explanation that something is so because The Law says that it is so."

Any child of Junior High School age could probably meet the test to which Rodell puts the doctor. If he can't, a few minutes with his dictionary will

---

40The trade has acquired academic pretensions, and those citadels of logical legerdemain known as law schools are now the incubators of The Law. . . . Once the professional gibberish-jugglers have proceeded beyond the training stage, it is almost always too late. They have to be caught young-in-The-Law to be turned into disciples—or heretics." P. 206.
41Pp. 18, 41.
42Pp. 196, 197.
43P. 8.
give him adequate aid, even pictorial assistance, in learning about the metatarsus. Many a High School boy in Physics can amply demonstrate how a dynamo works. Either test is fairly simple. The reason is that the metatarsus and the dynamo are the symbols of tangible things. But when he tests the lawyer, Rodell sneaks into the field of intangibility—into “jurisdiction,” “proximate cause” and “equitable title”—for the purpose of deriding the “racketeer.” Was it chicanery? If he did it deliberately, it is a cheap type of professorial trickery. If he did it unconsciously all later editions of “Woe Unto You, Lawyers!” ought to correct this elementary semantic error. Certainly, to the semanticist, to the psychologist and to the man of the street, the metatarsus and “proximate cause” or “equitable title” or “jurisdiction” are not on the same level of abstraction. Let him ask the doctor what “insanity” is, let him ask the electrician what “electricity” is, before the next edition of “Woe Unto You, Lawyers!” appears, that the layman may get some idea of the sound of their jargon at its non-vocational level of abstraction.

One able critic believes Rodell’s onslaught has been misdirected. His prophecy that the improvement of The Law will not be effected by the fiery curses that Professor Rodell has loosened, will probably find its justification in experience. As a satire, the verdict of time may or may not rank “Woe Unto You, Lawyers!” with “Gulliver’s Travels.” Certainly, today, there are few lawyers who would look with envy upon the doubtful distinction which this professorial performance achieves. “Woe Unto You, Lawyers!” gives credence to a pessimistic observation once made by William James.

“His satire rests at once on uncertainty and chicanery.” Llewellyn, loc. cit. supra note 5. Radin, supra note 17, at 505. *Id.* at 507. See supra note 17. Pound, The Economic Interpretation and the Law of Torts (1940) 53 Harv. L. Rev. 365, 367 n. 3, citing St. Paul: 1 Timothy 1, 6-8. CHUGERMAN, WARD, THE AMERICAN ARISTOTLE (1939) 48. Today, laymen suspect that there are a few writers who are chanting a “chorus of hate” against lawyers. Some of these chanters are of non-legal antecedents. Mart, The Lawyer’s Place in the Community (1940) 5 Docket 4078.