The Lawyer in Society--A Value Analysis

Karl Krastin

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SHORTLY AFTER the Survey of the Legal Profession was initiated there appeared in print what may be taken as a relatively official defense of the approach and technique of the Survey directors. The author, after undertaking to argue that the initiation of the project by a section of the American Bar Association, the preparation of its plans by the section and Association, the granting of funds for its conduct by the latter body, and the appointment of the executive council of the Survey by the president of the Association did not entitle one to say that the Survey was “under the auspices of the American Bar Association,” recognized the existence of criticism based on the interlocking prejudices and predispositions as between the Survey personnel and those of the American Bar Association. This criticism was not answered except by suggesting indignantly that the Survey would not be “craven.”

The author then proceeded upon the task of demolishing the “emphatic advice from eminent professional research experts” to the effect that (a) a specialized group ought not to study itself, (b) trained researchers and analysts should be used, and (c) lawyers are rarely versed in modern research. The demolition consisted of four points: (1) “modern research techniques and social scientists are being used in the survey,” (2) good lawyers today are acquainted with “worthwhile” research techniques, (3) the lawyer’s biases have been considerably diminished, and (4) one must “feel” a profession in order to investigate it.

With reference to the “how” of the Survey, questionnaires and interviews were deprecated; essentially men “of experience and insight are being requested to express their opinions on their lifelong specialties.”

1 Porter, Surveying the Legal Profession: In Whose Interest, How, and to Test What Hypotheses, 32 J. AM. JUD. SOC’Y 134 (1949).
2 Without specifying who they were.
3 Although, further on, it is proudly proclaimed that only four research men were paid salaries.
The author's discussion concerning the operating hypotheses of the Survey at least did not take the position that the investigation would seek to prove nothing. However, an examination of the tabulated hypotheses which the author has "inferred" from the opinions of the Survey leaders indicates that the word "hypothesis" has been used indiscriminately to cover value judgments as well as working factual constructs and these at differing levels of abstraction. The author seems vaguely aware of the necessity of contrasting "ideals and actuality" but almost nowhere in the list of hypotheses and their subsumed queries is the dichotomy made explicit.

Now that the Survey has been all but completed it would appear proper to construe ante-Survey utterances such as the foregoing as apologiae. The prediction of the research experts who were consulted that the results of the study "will not itself be a survey of the profession" appears to have been uncannily correct. When, however, these experts ventured that the results "... cannot help but be an informed, ably written, sophisticated self-analysis" they probably overplayed the technique of irrelevant praise, particularly with respect to the word "sophisticated."

Actually, the Survey has emerged with a monumental compendium of unrelated, individualistic essays largely on conventional professional problems, techniques and areas of limited self-consciousness. These form the base of a pyramid whose apex consists of handsome books generally epitomizing, summarizing, and drawing pedestrian conclusions as to the same generally trite subject matter. There have been occasional individual forays into what might pass as the scientific method, to be sure, and there are contributions to the scant literature of legal insight and awareness, but these have been due to the chance giftedness of the writers chosen. Other than the statistics set forth in the "Statistical Report on the Lawyers of the United States," which has been the subject of only cursory digestion and analysis, there has been presented virtually no new empirical knowledge. Moreover, even on the prosaic level of simple routine competency in the handling of an assigned area there has been some incredibly superficial and naive writing. Curiously, several top-flight legal writers have employed the vehicle of a report to do little more than aimlessly reminisce and discourse in the manner of an address to the homecoming banquet of their legal fraternity.

There are a sextet of divisions into which the individual reports and

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4 E.g., "hypothesis" D states "Lawyers have a duty to participate intensively in the selection of judges and in the framing of judicial rules" while "hypothesis" B states "A lawyer's services are very diversified."

5 Ensuing references in these introductory paragraphs to Survey reports are, with a few exceptions, not footnoted but citations may be found in 39 A.B.A.J. 551-555 or in BLAUSTEIN AND PORTER, THE AMERICAN LAWYER 342-350 (1954).
treatises are made to fall. Presumably the titles of these divisions exhaus the field of survey. While it is not the function of this article to discuss the more than 150 "reports" which have either been specially prepared or singled out of existing literature for the curious distinction of being "adopted," a few observations may be appropriately recorded under the Survey headings.

"Division I. Professional Services by Lawyers and Availability of Services": This division has been broken down into the two categories explicit in the title. Curiously, two of the better reports are found within the subject of the professional services of lawyers. These are Segal's report on labor union lawyers and Maddock's on the corporation law department. The former, particularly, is illuminating with its analyses and descriptions of a composite picture of a labor lawyer, his professional associations, salary levels, the distinctions between AFL and CIO lawyers, and attitudes toward and by labor lawyers, as well as the services rendered by such lawyers. The counterpart piece on corporation counsel makes interesting contrast.

But what of the scores of other specialities of lawyers, some recognized, some amorphous and in need of delineation? Other than two reports dealing with little more than brief numerical tabulations of the numbers of lawyers at two governmental levels, an article entitled "Workmen's Compensation and the Lawyer," which is largely on workmen's compensation and not the workmen's compensation lawyer, and three other generalized pieces of small relevance to the area, there is nothing. Nothing of the tax lawyer, the admiralty lawyer, the personal injury lawyer, the real estate or corporate (non-salaried) lawyer, nor to mention international, theatrical, constitutional, trial, appellate, criminal, divorce, bankruptcy, or insurance lawyers.

On the other hand, there are seventeen articles and two books dealing with the subject of legal aid or lawyer reference plans. These, of course, have to do with the subcategory concerning the availability of lawyers' services. This particular plethora will undoubtedly be viewed as indicative of the bar's overwhelming concern for the indigent and low income groups. Most of the individual authors are quite likely altruistically motivated. A realistic evaluation of this trend would, however, take account of the specter of socialization lurking behind the rampart building.

"Division II. Public Service by Lawyers": The conventional implication of such a title is that only positive public service performed by lawyers is to be discussed; and, in fact, disservices have not been consciously surveyed in this division or elsewhere. Almost all articles prepared have been in accordance with this expectation. There are five reports having to do with varying degrees of the magnificence of the law-
yer's contribution to the armed forces and national defense. These are headed by a three and one-half page report by Professor Leach to the effect that some lawyers made fine operations analysts in the Air Force in World War II. Mr. Reginald Heber Smith felt compelled to compose an introduction to this report because, it is, in his words, "so significant."

The single outstanding exception to the encomiastic perspective in this division is the report by Seasongood on public service by lawyers in local government. While presented in a vivid literary style unburdened by statistical documentation, it nevertheless is penetratingly unequivocal in its castigation of the local government lawyer.

"Division III. Judicial Service and Its Adequacy": It is somewhat curious that the Survey officials have chosen to regard judicial "service" in the isolation of a separate division; although the concept of the judiciary as a servicing institution has undoubted merit, its independent treatment in the Survey context would appear to reaffirm the outmoded dichotomy between substantive law and procedure. The interrelationship between the lawyer's demands and the expectations and the responses and counter-expectations of judges is obscured. The legal profession, meaning the lawyers in the main, is thus able to escape responsibility for important deficiencies in the total legal process by dwelling on the technical inefficiencies in the judicial process.

The matter is brought into some focus by the inclusion in this division of an article dealing with the cost of litigation. This article stresses the costs inherent in the delay of a final decision. It is not included, nor is any similar work, in Division I dealing with the "availability" of lawyers' services. It would not appear necessary to be a highly conscious devotee of realism to conclude that a considerable measure of the unavailability of lawyers' services is due to the personal expense of invoking the litigatory apparatus. Yet the causal connection is never made.

The bulk of the reports in this division represent the labors of Justice Vanderbilt. These are in the best tradition of procedural reform with the principles set forth generally acceptable to all but the most reactionary members of the bar. It must not be assumed that even these have been brought forth especially for the Survey; they represent "adoptions," the previously mentioned technique by which the Survey has incorporated non-sponsored individual efforts.

"Division IV. Professional Competence and Integrity": Under this heading the reports are diverse and highly unsystematic. There are four reports concerning loans to students, an exposition on the case method of instruction, a book on law libraries, and about six articles on bar examinations. In the subdivision dealing with legal education, there are reports dealing relatively intensively with legal education in the four
states of Georgia, Pennsylvania, Tennessee and Texas, but no others. Each is an individual effort in discursive style. There also happens to be an article setting forth the requirements for practice in England, Ireland, Australia, New Zealand and Canada but other areas of the world are untouched. In the subdivision governing professional ethics, discipline and disbarment we are told of efforts at inculcation of ethical standards at the University of Illinois and Southern Methodist University, but not at other schools except quite incidentally.

"Division V. Economics of the Legal Profession": Herein are found the various statistical tracts prepared largely through the information collected for the well-known Martindale-Hubbell Law Directory. Several reports are also included which purport to digest, summarize and analyze these figures. These, however, in the main, only recapitulate the gross manifestations evidenced by the figures.

Included in the subdivision on the income and expenses (though, strangely, no article deals with his expenses) of lawyers is another report by Porter, entitled "Lawyer Bankruptcies." This report seems to find the lofty professional character of the lawyer in the absence of many lawyer bankruptcies. Scrutiny of the figures employed would indicate, however, that with the exception of druggists, virtually no other professional persons went bankrupt either. Whatever conclusions this calls for, it is open to doubt whether a group moral accolade is one of them.

Another report indicative of the spasmodic approach is that dealing with women in the law. This was disposed of by two newsy pieces published in the Harvard Law School Record on successive weeks in December of 1951.

"Division VI. The Organized Bar": The reports gathered here are largely historical and descriptive treatments of various geographically organized and specialized bar associations, capped by an inspiring but uninspired volume by Roscoe Pound, "The Lawyer from Antiquity to Modern Times." Needless to say, in none of these works appears any research on the subject of the internal power complex of the organization. There is apparently no report on the National Lawyers' Guild nor on the National Bar Association, the society of Negro lawyers. Law school legal fraternities are discussed and found not wanting by an author who thinly

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6 The subject of legal education is capped, however, by a prosaic historical and analytical recapitulation of the standard literature of legal education, Harno, LEGAL EDUCATION IN THE UNITED STATES (1953). The nature of this work is exemplified by the one-paragraph disposal of Lasswell and McDougal, Legal Education and Public Policy; Professional Training in the Public Interest, 52 YALE L.J. 203 (1943), as having "oversimplified the problem," a characterization likely to produce acute anxiety symptoms as to intellectual adequacy in those students who pursued courses of the authors on the basic thesis of the article.
disguises his impatience with critics of the discriminatory policies of some of these secret societies.

The sub-rubric "The Bar in Other Countries" covers descriptive material only as to the following countries: England, Wales, France, Italy, Russia and Switzerland.

In addition, there are fourteen reports characterized as "General Reports About the Survey." Other than periodic progress reports which consisted mainly of time-to-time box scores on reports completed, the reports here included consisted principally of reassurances as to the objectivity, nobility, and monumentality of the Survey.

Still due to be published is the Director's Final Report. Meanwhile there has appeared a volume summarizing the Survey, blessed by Reginald Heber Smith, Director, in a foreword, but published independently of the Survey. Wherein this summary, ably prepared by two of the energetic report-writers for the Survey itself, will differ from the Zenith Director's Final Report is somewhat difficult to envision. Perhaps it lies in Mr. Smith's characterization of this work as a summary and his projected effort as "not in the nature of a summary but . . . a synthesis," together with the promise that there will be "an integrated plan for improving our administration of justice, for making the legal profession a strong force for the public good and a more splendid instrumentality to serve our national welfare."

We still do not know what lawyers do what. Had any plausible framework been erected for painstakingly pursuing such a basic inquiry there would be far less cavil with the usefulness of the product. When we speak of what it is that a lawyer does we mean to exclude a description that is cast in any sense in terms synonymous with or derivative from the word "law," a term of the highest ambiguity. Ultimately there should be described the resultant overt and subjective behavior of people traceable to the operations of lawyers. As an intermediate step, institutions fostered or furthered by lawyers might be investigated. This must be done with a high emphasis on realism and the complete absence of an "accomplishment" perspective. There is every reason to include the yellowdog contract as the past handiwork of the same profession that insists on adulation for having fathered the Constitution; and it must be reminded that for every lawyer successful in establishing a landmark principle in the judicial arena another lawyer was in bitter opposition to such establishment. Who among the lawyers in the past were the pro-

7 In addition, there was to have been a Laymen's Final Report on the Survey by a Dallas banker. He has died in the interim and it is the writer's understanding that there will be no such report.

fessional renegades, who the knights in armor? Who now? The bar with some frequency has gathered unto its bosom posthumously those lawyers most roundly maligned at the time of their productivity. This is, of course, not unique among professions but the bar's phenomenon seems singular in that the embrace frequently can in no sense be taken as a final general acceptance of a theory or philosophy once doubted. Perhaps the closest parallel lies with the medical profession's constant claim to the medical researcher as its own thus identifying the working profession with the experimenting profession.

It has become hackneyed to observe that the lawyer of the past century lent his skill to the development of the aggregations of wealth and power of his period. Has this phenomenon ceased? Are the "best brains" otherwise occupied now? By what techniques and practices are such institutions developed? What are the specific roles of lawyers for governments, for private industry, labor unions, churches, the press, cultural institutions? Are there discernible groups of specialists classified by institutions served? What impact have the fostered institutions had on what groupings of people? To what extent has the legal apparatus erected by lawyers affected one's access to material possessions, to positions of importance, to health and peace of mind, prestige and dignity, technical proficiency, knowledge, and the regard of his fellow man?

What manner of men (and women) make up the legal profession? From what social strata? If diverse, to whom go the spoils? Has membership in the bar become more or less hereditary? What personal characteristics are common to lawyers? What common background is shared with the members of other talking professions? With rare exceptions, and these seemingly quite by chance, such questions are not remotely touched upon in the Survey of the Legal Profession. No word, by way of prosaic example, is mentioned of educational and professional discrimination by race or creed.

Who wields power within the organized bar? Is the nature of the leadership of the bar, organized or unorganized, meaningful so far as the layman is concerned? There comes to mind the American Bar Association. Inquiry might well be directed to the question of whether it is regarded as a symbol of detached professionalism or a protective association. Further ample room for research exists in ascertaining the degree of internal democracy which pervades this association and, if power be found not to be widely shared, the means by which the continuity of the elite is maintained. There is little more in the Survey than overt history,

*Those familiar with a policy-oriented approach to law will recognize in this sentence a popularized paraphrase of the eight value postulates: wealth, power, well-being, respect, rectitude, skill, enlightenment and affection.
face value acceptance of bylaws, constitutions, minutes and proceedings, and tributes paid to inspiring administrators.

There are countless other avenues open to a quantitative investigation into the functions, techniques and practices of members of the legal profession, individual and collective. This is on the assumption that a survey is intended to contribute to knowledge on the nature of the social process generally and not merely to effect minor administrative improvement, promote esprit de corps and solidarity, and improve public relations. While several different approaches to investigation are possible, the major operating premise must consist in holding the lawyer responsible for the effect of the law. This does not entail a pedantic self-contained elaboration, summary or restatement of the law itself but it does involve an emphasis on realism to the extent that "the law" becomes in essence such human behavior that is tolerated, permitted or required irrespective of formal prescription or proscription.

No better point of departure than the role and functioning of the legal profession exists for securing a mid-twentieth century estimate of the state of realization of the values sought by people. Such an evaluation would measure the degree of achievement or retrogression in terms of the past and would serve the purpose of prognosis.

What is needed, in short, is a survey of the legal profession.

Suggestions for Analysis in Terms of Value Responsibility

Any analysis of the role of the lawyer must be prepared to investigate the gamut of human relationships. It must study his impact on individuals as physiological mechanisms reacting on other such individuals; it must deal with social persons as they relate to other social persons; with complexes of individuals and social persons; and with the institutions, resources, and values of such entities. There can be many bases for such an investigation. Taking into account the scope of the task, the verbal complexity of modern western society, and the utility of adopting terms generally in use, it is conceived of as profitable to investigate the lawyer as he relates to institutions. One of the most influential institutions is that commonly conceived of as government, functioning in the United States at the three conventional levels. Some mention will be made here of the lawyer at the level of local government and a brief reference to the lawyers for the state; no examination will be made of the lawyer for the federal government.

Notwithstanding a body of miranda to the contrary, it is probable that were all lawyers for all governments to die suddenly a decay in the social process would commence instantly and proceed rapidly. Who, then, are these people, what precisely is it that they do, and what is the
effect of their activity? Is it the massive effect of large numbers of them that is of greatest importance — or the specialized efforts of a select few? Does the lawyer for government possess the same perspective toward his “client” as the lawyer for a private institution? Or does he fail to conceive of government as the ultimate client and may he, in fact, even sabotage his employer?

It is considered essential to define “impact” in terms of effects upon values sought by people. It is not sufficient to define a lawyer’s job in traditional terms such as “renders advice,” “prepares briefs,” “interprets statutes,” “prepares legislation,” etc. This is the seemingly neuter approach which accentuates skill and technique and purports to be relatively indifferent to the end product. It is axiomatic that the lawyer deals with the law, however conventionally defined. It is similarly obvious that the law affects the distribution of values among their seekers. It therefore follows that any descriptive inquiry into the pattern of value participation involves an analysis of how the law works. This is, of course, a monumental undertaking not to be assayed by any individual or small group of individuals. In short, a workable distinction must be maintained between the effect of law and the effect of lawyers upon the law. The most difficult area for making the appropriate separation lies in the operations of the judiciary; that is, assuming that the members of the judiciary are identified with lawyers. Judges are almost invariably lawyers and so they are the objects of inquiry. But they need not have been lawyers; legal craftsmen might have been employed to ritualize the policy determinations of lay judges (as is done in part in aspects of the administrative process). Therefore, attention may properly be directed to ascertaining the effect on judicial policy making occasioned by the fact that the judge is a lawyer. Similarly, it would seem worthwhile to ascertain, otherwise than by resort to myth, the consequence of the lawyer’s participation in other spheres of government. A prerequisite is of course some knowledge of his concentration in government. In addition, a sum-

—With reference to regulatory commissions, a trend toward more laymen-commissioners has been observed as of about 25 years ago. As of 1954 it is stated that the “tendency has crystallized into a pattern.” Smith, Lawyers as Regulatory Commissioners, 23 Geo. Wash. L. Rev. 375 (1955).

—Some idea of the numbers of lawyers occupied at the various governmental levels is in order. The somewhat detailed working out of the ensuing figures is contained in the writer’s dissertation, Observations as to the Incidence and Role of Lawyers at Three Levels of Government, unpublished (1955), Yale Law Library. (1) It is estimated that 20,000 lawyers could be reasonably allotted full time to the task of “representing” local government. (2) The state level commands an additional 5,000 lawyers, representing approximately 25 per cent of the legislators and a somewhat higher percentage of policy-making positions in the executive branch of state government. (3) The national government employs the services of from
marization of his duties, considered conventionally and by value classification, is important for clarification. Equally necessary is examination into the essential techniques by which he operates, his varying roles under differing circumstances.

One matter to be resolved in collating statistics about lawyers is the significance to be given to the lawyer who occupies a position in government not calling for a lawyer.\footnote{12} At the federal level, in point of fact, there are no ready figures as to the numbers of attorneys occupying jobs open to persons without full legal training. A manageable count of such position holders may be taken of relatively top level employees, however, from available biographical literature. Are the numbers of such attorneys relevant to an inquiry of the kind undertaken here? It would be possible to disregard them as in the nature of professional renegades and conclude that since they are not required to do "legal" work the factum of their professional background or training is fortuitous. Such a working basis would ignore several useful points of relevance, however. If it can be shown that lawyers occupy influential positions (at least) in government well beyond the limits of fortuity we must ask what it is in their training, or the characteristics of those who seek such training, or in their post-education activities, which enables them so successfully to compete for power with others. Moreover, it would seem legitimate to become interested in the manner in which such a specially skilled group would in fact react to policy choices as distinguished from those with differing occupational backgrounds. The abandonment of the vocational aspects of lawyering need not signify a loss of the vocational attitudes.

Can any generalization capable of verification be made with respect to a correlation between the level of government and the incidence of lawyers? Will the national government attract a greater percentage of lawyers than local government? If so, we might well expect a world government to name lawyers almost exclusively as its policy-makers.

The classification in realistic and useful fashion of what lawyers do presents further difficulties. It is not enough to say that they enforce and interpret the laws generally. How many lawyers interpret what laws with what effect? Who enforces with how much zeal which laws with what coercive technique? It would be possible for most lawyers

\footnote{10,000 to 20,000 or more attorneys, the limits depending upon whether the emphasis is placed on the doing of "legal" work or on exposure to legal training.}

\footnote{Much the same problem exists with reference to law trained men who are not in private practice. The numbers of these may be much higher than is assumed in any numerical surveys of lawyers. One of the problems of legal educators has been to determine what non-legal postgraduate occupations are completely irrelevant to the legal education and thus not the subject of curriculum accommodation. The line has usually been drawn below any activity not designated "the practice of law."}
to be employed for the enforcement of revenue measures; or to guard vigorously and affirmatively against encroachments on the civil liberties of citizens. In the case of either of these hypothetical contingencies it would be relatively easy to state the role of the lawyer. However, the governmental counsel are dispersed so widely and their duties so manifold, yet undefined in terms of direction, that some framework must be erected for analytical and classificatory purposes. One can say that a chief function of the private counsel is to keep his client out of trouble. Is this similarly the chief function of the governmental lawyer?

This study utilizes as its framework for the assessment of the conventional functions of the lawyers under consideration a value structure made explicit chiefly in several of the works of Lasswell.\textsuperscript{1a} It is not intended to labor its advantages beyond the observation that it provides as a predicate for appraisal the basic desiderata of people for whom, it is assumed, the whole panoply of government and its entourage exist.

Lawyers exercise power by the manipulation of authoritative formulae, chiefly those of government. It may be exercised so as to influence the distribution of power (e.g. a brief validating an unusual asserted presidential prerogative); the distribution of wealth (e.g. the interpretation of tax legislation); of respect (e.g. a brief agreeing to the unconstitutionality of state segregation statutes); of rectitude (e.g. by final argument in an important criminal trial); of well-being (e.g. the hearing of a complaint for violation of the Pure Food and Drug Act); of enlightenment (e.g. the promulgation of a regulation governing licensing of television stations); of skill (e.g. the preparation of an amendment to the law affecting veteran training); and, finally, the distribution of affection (e.g. a contest between divorcing parents as to the custody of children.)

The army of government lawyers is constantly engaged on many fronts with a formidable opponent, the army of private practitioners. The battle should not be conceived of as confined to the courtroom. Maneuvering for position is never-ending. Crack federal law troops draw an extremely tight system of tax regulation fortifications; but the line is outflanked or infiltrated and new defensive techniques developed.\textsuperscript{14} The role and characteristics of nongovernmental lawyers need also to be studies not only vis-a-vis private industry\textsuperscript{15} but, as well, associations,\textsuperscript{16}

\textsuperscript{13} See footnote 29, infra.

\textsuperscript{14} Occasionally a major battle looms, viz. current efforts to limit by constitutional amendment the income tax ceiling. Military terminology is not out of order in other areas of legal conflict. See, e.g., the “battles” in the “war” between the railroads and express companies of the last century as chronicled in I Swaine THE CRAVATH FIRM 335 (1946).

\textsuperscript{15} In WHO'S WHO IN FINANCE, BANKING AND INSURANCE (1924-5) the writer concluded from sampling that 17 per cent of the total listings are lawyers. Similarly
political parties, labor unions, the church, the press, the miscellaneous cultural institutions and organizations. One of the questions to be answered is whether there is anything resembling a fundamental difference in the role of the government lawyer and that of the private attorney other than that arising from the differing objectives of the respective employers. It is suggested as a hypothesis that, despite much that has been written to the contrary, the private lawyer, as a lawyer, has not occupied the top bracket of policy-makers. It is submitted that he has largely taken orders from the power elite who do not in the main consist of lawyers. This is not to detract from the importance of the imple-

it has been ascertained that 10 per cent of the listings in Who's Who in Commerce and Industry (1936) are lawyers. Also, a rather extensive sampling of Poor's Register of Directors and Executives (1948) indicates that of the 90,000 persons listed, about 5,000 are identifiable as lawyers. Certain information was ascertained by resort to the biographical descriptions as to 163 of these lawyers (all those found in a certain consecutive group of pages): it appeared that 31 per cent of these lawyers were “doing business” in the same state in which they were born; the geographical movement of these lawyers was generally eastward, although about one half the total were located in six cities: New York (25 per cent of the total), Chicago, Boston, Cleveland, Detroit and San Francisco; about two thirds of the states represented the business addresses of only 13 per cent of these lawyers, in 17 of which states there were none of the lawyers in the sample. Thirty-three per cent of the lawyers attended law school in the state where they were doing business; Harvard accounted for the law degree of 26 per cent of these lawyer-executives,—Columbia, New York University and Yale combined 20 per cent. See also Mills, The Power Elite (1956) for references to and recapitulations of more exhaustive surveys.

Forty-two practicing attorneys in the town of Gainesville, Florida, held 83 memberships in typical civic, service and fraternal associations. See Merriam and Gosnell, The American Party System (4th ed. 1949) for analysis of the role of the boss and the functioning of spoils wherein the heavy reliance on the manipulative aspects of the law, judges and lawyers may be detected. For more microscopic examinations of the role of the lawyer ward leader see Salter, Boss Rule: Portraits in City Politics (1935) wherein we may note that the local political attorney often exchanges services that would be of considerable value in the open market for nothing more than party loyalty. Another similar work, involving case studies of Chicago precinct captains, is Forthal, Cogwheels of Democracy 35, 36 (1946). The author states that of the party officials studied nearly 7 per cent were lawyers; however, an occupation of “in governmental service” commands 70 per cent of the total, rendering low the lawyer percentage, obviously reserved for active practitioners. Subject to the same difficulty are the tables set forth of occupations, for comparative purposes, of New York and Chicago precinct committeemen in Gosnell, Machine Politics: Chicago Model 54 (1937).

E.g., as a related inquiry, an examination of an authoritative listing, i.e. Directory of Arbitrators (1948) of labor arbitrators, by sample, discloses that approximately 55 per cent of the total are lawyers. For a somewhat unconventional presentation of suggested techniques for a labor lawyer see Mamet, The Role of the Labor Lawyer in Labor Relations, 6 Ill. L. Rev. 575 (1951). Mamet suggests that the labor lawyer must reject “normal connotations of the word ‘law’” (p. 580) and outlines specifically (pp. 602-3) his rejection of formal Aristotelian logic.
menting work of the lawyer nor to suggest that the face of our society today would have been the same had he not obeyed the commands. The point, however, lies in the distinction between the exercise of choice as to policy and the execution, however skillful and ingenious, of decisions made by others. The private lawyer as a lawyer, has been the lieutenant, not the captain. Perhaps a better analogy would be with the advertising man, the "huckster." This evaluation of the role of the private lawyer functioning traditionally need not negate the importance, powerwise, of his demands as (a) a semi-influential member of the community, (b) a member of his professional organization, the bar association, and (c) as the occupant of a position of power not expressly calling for legal skills. Nor is this offered thesis of the subservience of the lawyer to be obscured by his almost inevitable adoption of the perspectives of the power elite or by spasmodic and minor shows of independence. No systematic trend analysis is undertaken here. Certain time phenomena

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20 A close analysis of GORDON, BUSINESS LEADERSHIP IN THE LARGE CORPORATION (1945) does not negate this point except as to lawyers holding top-level executive positions and, possibly, the "top-flight" New York law firms.

21 Most investigations into status-rank accord lawyers a high position. See, e.g., Webb, The Ranking of Occupations on the Basis of Social Status, XXVII OCCUPATIONS 237, where lawyers are shown in the third position (after physicians and bankers, respectively) in a ranking made by 400 teachers' college students of 26 occupations on a basis of social status. For evaluation by higher echelons of prestige dispensation see EPLER, HONORARY DEGREES, A SURVEY OF THEIR USE AND ABUSE (1943) where lawyers as lawyers (not as "judges" or "politicians") are said to have declined in honorary degree favor after 1900, though the Western, Catholic and public institutions still emphasize the lawyers. Another point of reference might be the number of lawyers relative to the whole in WHO'S WHO IN AMERICA which purports to be a directory of "leaders." By sample of the contents of the 1940-4 volume, the writer found that slightly over 10 per cent were lawyers. The 1912-13 edition has been stated to contain 17.6 per cent lawyers. TAUSSIG AND JOSLYN, AMERICAN BUSINESS LEADERS 120 (1932).

22 E.g., see MARTIN, THE ROLE OF THE BAR IN ELECTING THE BENCH IN CHICAGO 150 (1936) wherein correlations are shown between bar-desired measurable characteristics in judges and responses of the bar association membership and the public. (Interestingly, Republican candidates were overwhelmingly favored by the bar though this fact is minimized by the author.) For organized and important lawyer opposition to administrative tribunal concepts see SWISHER, AMERICAN CONSTITUTIONAL DEVELOPMENT 988-89 (1943). For the thesis that the bar's "outlook" has always been middle class, predominantly upper middle; and examples of the American Bar Association's extreme conservatism toward Negroes and women see HURST, THE GROWTH OF AMERICAN LAW, THE LAW MAKERS 252-55 (1950). In New Jersey the Bar Association has a legislative committee whose function is to examine pending bills and express its views thereon in a mimeographed bulletin sent to the legislators. MCKEAN, PRESSURES ON THE LEGISLATURES OF NEW JERSEY 72 (1938). See also ZELLER, PRESSURE POLITICS IN NEW YORK (1937).

23 Standard literature which has concentrated on the lawyer throughout American history uniformly concludes that he has descended from a past status of prominence as a dedicated "leader." This thesis insofar as it relates to his role in the past has by no means been proven. For a picture of an early lawyer as a business professional
have made themselves felt however. The most obvious of these is the phenomenal growth of the lawery in the executive branch of all governments within the past 50 years. No inexorable logic compels this simply because of the rapid rise in technology and the "complexity" of modern civilization. Nor may it be dismissed as simply a case of more laws — *a fortiori*, more lawyers. In part it is due to the latter-day nature and verbal complexity of the laws, such change itself roughly paralleling the growth of the administrative process. Regulatory and revenue measures have acquired gloss upon gloss to a degree that amendments thereof, made in the awareness of the numerous interpretative connotations of each controlling word, are directed almost exclusively to the cognoscenti, one of whose principal functions then becomes the translation of this authoritative formula into a restriction understood by those affected. The cognoscenti, in the main, consist of members of the legal profession conversant with the restricting domain in question. Even this, it is submitted, does not account fully for the rise in the incidence of lawyers. It is suggested, but not here investigated, that the same personality characteristics that early found the study of law attractive are those that are drawn to a power vacuum where it exists.

What does this lawyer increment portend for the future so far as government is concerned? Parts of the answer to this complex question depend upon conceptions of the drift of our society generally. The rise of the nuclear age is marred by the hostilities of a bipolar world. If the march of men and events culminates in a garrison state the lawyer's role will be reduced to a minimum; the normally quiescent hostility of the military man will see to that. Paradoxically, all stages of internal security-seeking short of overt assumption of control by the military will probably draw heavily upon the services of the lawyer. Such a statement carries with it no necessary implication as to the quantum of libertarianism with which the lawyers will approach their tasks. The government

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see Seymour, *A Lawyer of Kent: Barzillai Slosson and His Account Books, 1794-1812* (Yale University Press). Note the following observation made in 1907:

"In the great financial centers like New York, a practice has grown up. . . . Firms of lawyers will undertake to draft a bill for a certain purpose, have it introduced, watch its progress, argue it before committees, prepare written statements, and finally after it has been passed, defend its constitutionality, which they guarantee." (Remuneration up to $100,000 is charged for this "service") Reinsch, *American Legislatures and Legislative Methods* 292 (1907).

*23* A rough comparison of the business of the First Congress with that of the 78th may be noted in Galloway, *Congress at the Crossroads* 50-52 (1946).

*24* Many of these tend to cluster about the seats of government, particularly the federal capital. 2757 persons are reported to have been admitted to the bar of the District of Columbia in the ten-year period 1920-1929 and over 500 per year each year thereafter. *The 1937 Report of the Committee on Professional Standards of the Federal Bar Association*, 3 FED. BAR ASSN. J. 190.
lawyer may be increasingly used to provide formulae, procedures and
decisions appropriate for screening persons as to their loyalty character-
istics and related inquiries as to heterosexuality, temperance and tac-
turnity. This currently entails denying entry through our borders, eject-
ing undesirables within, scrutinizing applicants for public posts, removal
from such posts, and incarcerating those especially undesirable. It is also
possible to detect a relative lessening of lawyer influence in spheres of
governmental regulation pervaded by highly technological aspects, par-
ticularly those concerned with the national defense. These agencies will
probably for some time speak an imperative that will brook but a few
lawyers' niceties and those largely concerned with organizational frame-
works. To the degree that the world crisis impedes domestic social ex-
perimentation it is conjectured there will be a lessening of the lawyer
influence in executive government since (1) it is chiefly initial social
regulation that calls frequently for large numbers of lawyers and (2) as
existing regulatory systems gain acceptance routinization of techniques
affords employment for few more lawyers than the highly select special-
ists.

The theme in the immediately foregoing discussion has tended to em-
phasize the federal lawyer. We are interested as well in the concentration
and role of lawyers at the state and local levels of government. It is diffi-
cult to weigh the impact of each of these several groups of lawyers against
the others, so far as the values of people are concerned, since no adequate
criteria have been evolved for measuring the relative influence of these
governments themselves and their systems of legal restrictions and benefi-
cences. Although many undiscriminating statements are uttered, on the
one hand, about the ever increasing "effects" on people of federal inter-
vention and, on the other, that "after all, what we do right here is our
greatest concern," it still remains to be demonstrated what governments
bear what proportion of influence on the lives of the primary actors. An
attempt has been made in this essay to classify the major functions of the
lawyers concerned into a "value affected" category. But the value is not
affected as to all members of the community equally — e.g. the city
solicitor's and municipal judge's real ability effectively to incarcerate
drunks does not ordinarily extend to the upper classes. If other of the
lawyer's powers are not the subject of class and caste distinctions their
effect may, nevertheless, fall somewhat fortuitously on certain inhabitants
and not others. Some of the criminal laws affect criminals profoundly;
to others the impact is slight. We have then passed into the realm of
the meaning of chance and the theory of probabilities.

Mention has been made of the possibility of regarding the private
lawyer as a huckster of the manipulative strategies of his client in the
market-place of purveyors of authoritative decisions through the media of brief, argumentation and agreement supplied with skillfully arranged but tried and tested copy. One of the vital problems in analyzing power in a community is to ascertain in whom it realistically resides, who the elite actually are. Perhaps the task of ascertaining who the overlords of power are is not so exacting as spelling out the operational complex by which important decisions are formulated, agreed upon, and then passed down for execution. At any rate, the job calls for field study similar to those that have been made of social structure generally. It is submitted that the role of the lawyer, qua lawyer, is at the executive level. The government lawyer, however, cannot be regarded as one whose formal duty is to execute policy choices emanating from without the governmental framework. In actuality there is probably little evidence of a contrived puppeteering of the government attorney. As has been

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25 In this connection see Miller, American Historians and the Business Elite, IX JOURNAL OF ECONOMIC HISTORY 194, spiking effectively the myth of the humble, poor and immigrant origins of American business leaders. See also Miller, American Lawyers in Business and Politics, 60 YALB L.J. 66 (1951). Undoubtedly the most provocative survey of the composition and structure of the American power elite with particular reference to the national scene is MILLS, THE POWER ELITE (1956). Mills discerns a triumvirate making up the national power elite; the high-ranking military man, the corporate executive, the politician. Antecedent-wise and occupationally, the last two are heavily involved with the legal profession. Id. at 131, 248, 291, 400 (note 3). “When you get a lawyer who handles the legal work of investment bankers you get a key member of the power elite.” Id. at 289.

26 See, HUNTER, COMMUNITY POWER STRUCTURE (1953), A survey in Janesville, Wisconsin (population 6,000) discloses that since the first council under the manager plan, the council has been controlled by the members nominated and elected by the business and professional men considered “leaders” and who band together ad hoc at election time, this group being “a nameless and unorganized one,” in 1939 consisting of one newspaper editor, a local bank president, a Republican National Committeeman, a lawyer formerly city attorney and counsel for General Motors Corp., a president of Kiwanis, and another ex-city attorney. PUBLIC ADMINISTRATION SERVICE, CITY MANAGER GOVERNMENT IN JANESVILLE (WISCONSIN) (1939).

A “City Manager Form of Government Club” was formed in Lynchburg, Virginia prior to 1920 to “push” city manager government. It consisted of 6 members, 2 of whom were lawyers. The opposition was a group of 4, 2 of whom were also lawyers. Whom did these lawyers represent in their “private” practice, etc.? PUBLIC ADMINISTRATION SERVICE, CITY MANAGER GOVERNMENT IN LYNCHBURG (VA.) 13 (1939).

27 Hurst in his THE GROWTH OF AMERICAN LAW, THE LAW MAKERS 342 (1950) presents both an effective argument that the lawyers of late in the last century were policy-makers and an approach stressing the expectation that a “good” lawyer was one who told his client not what he couldn’t do but “how to do it.” It might be useful to consider the latter as expressive of implementation policy making as contrasted with primary policy making.

28 If we include attorney-legislators it is possible that the statement is overly charitable. Note some of the references to the inability of the lawyer-legislators to dissociate themselves from their clientele as found in the excellent collection of rela-
elsewhere observed, however, much the same result as would be possible with hirelings may be accomplished through predispositional favoritism. This is almost axiomatic but frequently overlooked. By predispositional as used here we need not even concern ourselves with attitude shaping factors other than relatively recent occupational and educational experiences. The lawyer, more than one with any other occupation, becomes the victim of the peculiar empathy created by being a partisan in an adversary atmosphere. The attorney-general who has been previously a private utility counsellor can be expected to have acquired, or at least fortified, a differing perspective on public power proposals from an attorney who had long been associated with the law department of a modern city.

Functions of the Local Nongovernmental Lawyer

Lasswell and McDougal define law in terms of the power process as being the flow of authoritative decisions in a community. The lawyer's familiarity with the instrument of power known as law and his access to the arenas where it is exercised permits him to make impact upon the values men seek.\(^9\) Values are categories of preferred events, goals, desired conditions. A convenient set of values of a relatively consistent level of abstraction made use of by the writer are the following: power, enlightenment, wealth, respect, well-being, skill, affection, and rectitude. We may proceed then to discuss the lawyer's role in shaping and redistributing these values, at this time quite without full reference to the degree to which he sees to it that they are widely shared.

In a sense the average lawyer, the general practitioner, can be conceived of as an official at the lower than primary level of government. He is, at least theoretically, available to any individual or small group of individuals who consult him seeking advice on or intercession in their conflicts with other such individuals or groups. In this connection the lawyer acts by virtue of a specific franchise secured from government. It has been repeatedly emphasized that he is an officer of the court from which fount the pattern of orderly dealings among men is supposed ultimately to emanate.

In the following few paragraphs some consideration is given to the local nongovernmental lawyer, largely for the purpose of contrast with his counterpart in local government, whose functions are thereafter delineated. But first, what is meant by "local" lawyer? In the sense that each practitioner in the United States is, to some extent, restricted by his franchise from the state to the territorial confines of the state and, in addition, maintains generally a single base of operations in a particular locality, all lawyers could be said to be local lawyers. There is, however, an obviously vast difference between the Main Street lawyer and those localized to Wall Street.

No studies appear to have been made of the class (class here used most generically) structure of the bar. Economic surveys indicate clearly that there are sufficient disparities in incomes to enable classification on that basis alone. Ratings in law directories, notably Martindale-Hubbell, indicate that a continuum based on net worth, length of time in practice and certain intangibles could be established. Law graduates seeking connections sense a hierarchy among lawyers based on overall valuations reflected by statements such as "top firm," "leading lawyer," "good outfit," etc. Every community supporting at least a half dozen lawyers will enable their stratification, as with class in general. What criteria are used for this purpose? Relevant, of course, are considerations of income. Less meaningful are emphases placed on skill for one must then ask skill in what? The relevance of knowledge of "the law" or even intelligence in the sense of legal astuteness is susceptible to the same ambiguity as to the field of operation. It might be extremely difficult to go about the business of proving less brains or command of legal doctrine among the select of the city police court bar than among the leaders of the entire bar.

It would appear of crucial relevance to the problem of establishing status within the profession that the nature of the clientele be understood. This project is not here undertaken but a few observations at a

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30 The writer recalls a Stork Club television presentation of several years ago in which four members of a "top" New York law firm all admitted they had never tried a case.
relatively high level of generalization may be made as applicable both to
the American lawyery and those within a given local community. It is
as true now as ever, if not more so, that the greater the net worth of the
clientele the higher the prestige of the lawyer. A corporate clientele earns
the lawyer higher rating than an individual one. Among individuals
seeking lawyers those who seek him for protections he can afford to
accumulations of wealth (e.g. wills, trusts, real property transactions)
provide more status than those who retain him to seek recompense for
injury to person (it is submitted that rarely, if ever, will the personal
injury firm receive top prestige in any city). In the tort area generally,
the defense earns more rank than the plaintiff's side. In spite of all
exhortation about the necessity and nobility of the endeavor, those who
undertake the representation of persons accused of crime (with the ex-
ception of anti-trust infractions and others of a similar nature which pre-
vailing mores do not regard as "criminal") cannot aspire to high status.

When one speaks of legal representation it is often important to indi-
cate for what purposes. For the lawyer to become identified with the
prestige giving client sufficiently to take his place among the elite of
the bar he must function in matters of greatest importance to the client.
To the uninitiated the recitation of an imposing list of blue chip corporate
clients by a lawyer included in a commercial lawyer's directory would be
impressive. Such representation, however, is of minor significance. Up
the prestige hierarchy would be the lawyers chosen to represent such a
corporation in a twenty thousand dollar breach of contract action and,
perhaps above these, the firm chosen to negotiate a one hundred thou-
sand dollar government contract; and, at the top, the law firm retained to
effect a fifty million dollar merger.

By the term "local lawyer" we largely exclude those who handle the
type of transaction suggested by the last two examples in the preceding
paragraph. Essentially the term is used to designate the lawyer whose
clientele is generally within the functional limits of an urban community
or, if from beyond, whose interests are for purposes of representation
peculiarly local.

Functions of the Local Governmental Lawyer

Several descriptions of the work of local governmental lawyers have
been set forth in recent years. A routine job analysis of the functions

1 These range from the highly generalized "listing of professional activities . . .
nor of consistent level of abstraction" set forth in Lasswell and
McDougal, Legal Education and Public Policy: Professional Training in the Public
Interest, 52 Yale L.J. 203, 209 (1943), to the relatively detailed treatments of
organized urban law departments in such works as SiebenschuH, The Adminis-
tration of Municipal Legal Services: The Chicago Law Department
of a local government lawyer can best be gleaned from the defined specializations contained in the large city law department. To the degree that the urban community is smaller are these specialized functions combined in fewer lawyers, culminating frequently in toto in a single individual.

Current specializations are a hybrid of functional, doctrinal and documentary classifications. Thus trial lawyers may be contrasted with appellate experts, a tort staff with a contracts section, and there may be charter and ordinance experts as compared with constitutional lawyers. There are even alignments, unconscious to be sure, on a value basis; consider the line attorneys with the Department of Safety or Department of Health.

More accurately, it might be said that all lawyer activities are uniformly classified on the basis of skill and that the shifting taxonomic approach lies in the lack of a systemization as to what the lawyer is skilled in or for what purpose he is skilled.

Nevertheless it is profitable to set forth the "jobs" performed by lawyers in relatively conventional terms. In so doing it must be conceded that the number of functions can be regarded as arbitrary. What is meant by this is exemplified by pointing out that the "jobs" can range from one ("He represents the municipality in all matters which pertain to the law") to a vast multitude if we can envision the narrowest degree specialization in substantive law (e.g., "Position X-64: This position calls for skill in claims arising from falls due to accumulations of snow and ice in municipal thoroughfares"). For the present it may


This is not as outlandish as appears. There develop in most private and public law firms extremely fine-spun specializations through contact with two or three previous matters in the given area. These specializations are relatively ad hoc, however, and replacements for the holders thereof are not likely to be specifically sought. "Functions, therefore, can be repeatedly classified and subclassified from the most general to the most specific, from the major to the minor. In the field of public administration, the results of a thorough analysis of this nature would be encyclopedic in volume. Nothing of this kind has yet been accomplished; and popular conceptions and scientific statements concerning functions are naturally somewhat vague." Millsbaugh, LOCAL DEMOCRACY AND CRIME CONTROL 35 (1936).

Actually in all but the largest cities duties are not clearly defined due to a high degree of decentralization. This has been deplored by students of public administration. See, for example, Flowers, MUNICIPAL OFFICIALS IN TEXAS (University of Texas Pub. No. 3929, 1939).
be said that certain functions have been relatively clearly defined in the large metropolitan law departments.

It is obvious that at all levels, including local government, the lawyer possesses power — under the law, within the law, and without the law. To what end is this power used? By that question it is not at this time intended to inquire into the lawyer's enhancement of his own value position (power as a personal base value) but rather to consider his impact on the shaping of values of others.

A. Affecting the Distribution of Wealth. The main function of the lawyer for a local unit of government can be conceived of as involving techniques for minimizing monetary demands upon the polity by the constituent members thereof and maximizing converse demands by the polity. Essentially this is a redistribution of wealth process. Taxation may be thought of as an exaction from each member of a community to be shared by all the members. Individual responses to techniques for ascertaining the amount of such exaction frequently show, however, that the taxpayer's expectation is not that a percentage of his wealth be shared but that he be assessed on a value received basis. This has reference to the ultimate communal use to which his tax will be put. In addition, the taxpayer expects that the amount of the tribute will be measured either in terms of a specific practice (transaction) in which he engages or a specific accumulation of wealth as of a fixed point in time. Again, he feels that these practices or accumulations should be fair indicators of the extent to which he is presently benefited by the web of government. This quid pro quo has reference to feelings of the immediacy of the value received.

At local levels of government, problems of fiscal intake revolve almost exclusively about the first expectation set forth above. One of the primary activities of the municipal lawyer consists of practicing and evolving techniques for eliciting a favorable response from the judiciary on the issue of whether the intended use of derived or to be derived funds is or is not communal. Some of the traditional language employed in posing this issue consists of: "municipal purpose," "public purpose," "municipal affair," "governmental power," "public use," etc. A strategic advantage

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Some idea of the extent of the operations of a large city's law department in gross numerical terms may be obtained from the following:

"During the past twelve years, the Chicago Law Department disposed of 1,562,942 quasi-criminal cases and 9,462 civil suits. It examined 754,183 police reports, conducted 15,549 legal investigations and 3,775 investigations of suspicious fires. It participated in 9,311 hearings before administrative bodies, rendered 2,543 formal opinions and examined 20,342 legal documents. It represented the city in 414 actions before the Illinois Appellate, the Illinois Supreme and the United States Supreme Court." CHICAGO'S REPORT TO THE PEOPLE, 1933-46, 79 (1947).

Some of these expressions relate to the standard legal questions concerned with
lies with the city attorney in this area of the propriety of the intended use of funds if tested in advance of the tax exaction. This is the case in the event of the issuance of general revenue bonds for an intended project, such bonds being "validated" in a suit brought for the purpose of securing a favorable judicial imprimatur as to, among other things, the publicness of the intended use of the funds. The advantage lies frequently in the lack of a real anticipatory opposition.

Niceties of drafting skill and acute technical awareness are necessary attributes of the lawyer in his preventive role of forestalling attack on future tax exactions to meet bonded indebtedness. These attacks, given a slip, would be predicated on procedural errors leading to the issuance of the bonds. Here the attorney must deal, in conventional terms, with general obligation bonds, special assessment or revenue bonds, negotiability, medium of payment, place of payment, interest, coupons, maturities, redemption, registration, denominations, seals, debt and tax limitations, bond elections, sale of bonds, validation, execution, mandamus, accounting, receivership, etc.

In recent years increased emphasis has been placed on revenue bonds. The ability of the lawyer to think and operate in terms of revenue security in lieu of the general taxing power has given increased impetus to public improvement largely by removing a substantial obstacle to general obligation borrowing — the necessity for approval by the public, or selected segments of the public, through the electoral process. By this device, exactions from users of the revenue-producing facility are shared with all members of the community, assuming that the facility would have been provided as a public function by normal taxing techniques. Doubts can be cast as to the device, despite the seeming windfall for the polity, when it is employed to provide basic public services which are "sold" to the public (e.g., water, electricity) for it may readily then become a technique for exactions from lower economic groups in not substantially dissimilar amounts with the higher groups, to be redistributed to all in the form of the facility itself. This may realistically amount to tax regressiveness as against normal ad valorem exactions.

The special assessment deserves particular mention as well. It is another technique for particularizing the cost of a public improvement

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36 In the case of smaller local entities the lawyer involved can hardly be considered a local lawyer as the necessary fine tooth combing is usually in the hands of specialists who operate from large metropolitan areas, often New York.

37 E.g., freeholders only.
which can be identified as advantaging the few in greater degree than the many. Its use has been restricted to projects beneficial to real property owners by virtue of physical proximity to the property. Here too a careful doctrinal, administrative, and policy path must be trod by the lawyer charged with regularizing the exactions.

The municipal lawyer must be constantly prepared to do battle whenever an appropriation or expenditure be made by the governing body which presents possibilities of upset by virtue of being legally unusual or a deviation from concededly legitimate custom. Skill in handling the overtones of the procedural weapons of injunction and mandamus (and archaic variants or modern equivalents) will often enable the city's counsel to prevent the judiciary from "reaching" the merits of the expenditure; or, more exactly, such skill will afford the court an opportunity to favor the cause for expenditure without risk of verbalizing a policy collision with the opponents. There is some evidence of the fact that so lucrative is successful attack on municipal expenditure or municipal taxation that there has evolved a special small branch of the profession devoted to such vigilante suits on behalf of the readily found taxpayer. The parallel with a group of lawyers specializing in minority stockholders' harassing actions is quite exact.

Conversely, the lawyer or law department is frequently called upon to resist attempted depredations on the city treasury. Here he invokes a full panoply of procedural formalities designed to insure against the deliberative body or executive creating valid obligations in the absence of deliberateness, merit, and publicity. Legal terms dealt with here are such as "authority," "estoppel," "ratification," "restitution," "interest in the sale," "competitive bidding," etc. It is in these areas that the lawyer finds himself arrayed on one side or another in the struggle over the use of power as a base for the realization of wealth.

What of intergovernmental relations and the shifting about of wealth? An acute emphasis is today being placed on the area of intergovernmental tax immunity and competition. Much elaborate examination of doctrinal and historical bases has been undertaken and under mounting pressures of expediency reexaminations are in progress. The lawyer, of course, has fostered and kept alive the peculiar concepts of governmental tax immunity and the major victories have gone to the higher echelon counsel. Thus, as an example, physical property "owned" by the federal government is still immune from taxation by local governments on the theory that non-immunity would interfere with governmental operations. In the ultimate sense, however, non-immunity could

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38 For gist and some basic citations consult FORDHAM, LOCAL GOVERNMENT LAW, TEXT, CASES AND OTHER MATERIALS 176-180 (1949).
be regarded as a shifting of the individual holdings of all members (150,000,000) of the federal polity (after having been "deposited" in the federal treasury) to a lesser collectivity, e.g., a small city of 25,000. That is to say, the problem is mainly an accounting one. The point here made is not precisely for nor against immunity but is to suggest that an increasing amount of the intellectual substance of lawyers, particularly at the local level, is being dissipated by the legal exploration of local tax sources because of preoccupations with the verbiage of sovereignty overtones in lieu of incidence analysis.

The remaining major area of work by the attorney for the local unit involving the redistribution of wealth lies in the traditional field of torts. Although claim might be made for the inclusion of these activities as affecting the distribution of safety as a value, it is submitted that primarily the law of torts as it pertains to units of government is concerned with assessing all the members of the governmental unit and paying over the assessment to a few members selected with reference to complex rules as to entitlement. That the theory of the payment over rests on a principle of making the recipient physically whole again does not alter the essential transaction. Nor, obviously, does the presence of insurance for it must be paid for. The local lawyer, completely consistent with the tort doctrine that he has evolved, bends his effort to minimizing the outflow from the fisc. This he does in part by invoking the defensive doctrines usual to controversies between private persons. Some of the terms manipulated are "contributory negligence," "assumption of risk," "statute of limitations," etc. In addition to these the city lawyer has available to him a few verbal measures gainsaid the private tortfeasor. Of these, still potent is again the concept of sovereign immunity. The principle applies to functions of government labelled "governmental" but room for municipal liability is permitted as to activities termed "proprietary." Extant law on the subject, countryside, is confused. The lawyer also has available on occasion for appropriate manipulation special principles of scienter by the local unit. In large cities the law department has also in its favor, particularly useful in driving settlements, the crowded court docket.

Counsel for all but the smallest local units are engaged from time to time with fixing utility rates. Here the primary competition from an allocation of wealth is between the many consumers and the few investors. The lawyer must possess a working familiarity with alternative bases for determining the prices to be paid for the utility's commodity. Some dis-

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40 As an example of the detached professionalization of skill involved in this particular, see the discussion among city attorneys set forth in MUNICIPALITIES AND THE LAW IN ACTION 522 (1946).
advantage has accrued to the local attorney in relatively recent years by the removal of the pricing marketplace to the seat of the state government (i.e. to a state administrative tribunal). Usually the lawyer will seek minimum rates on behalf of the members of his community although the situation is constantly fraught with the possibility of only nominal or ostensible advocacy. Difficulties are multiplied by the fact that he will with certainty be opposed by the best talent of the legal profession. Nevertheless, vigorous bargaining for lower rates is one of the favorite vehicles employed by lawyers as a means of self-advancement.

The local lawyer plays the major role in the acquisition by his government of property necessary to implement the realization of community values through public improvement. This is either as a result of the legal process essential in asserting eminent domain or from negotiation strengthened by the potential of condemnation. With respect to actual litigation seeking to fix price, the government lawyer enjoys the usual advantage of comparatively unlimited access to the appellate courts and their corrective mandates should the pricing of first resort be too high. On the other hand, counsel for the local unit is inhibited in the event of an ambitious "taking"41 by restricted judicial perspectives on the subject of public purpose, though a clever urging of fairly modern doctrines on "excess condemnation" may counter in part the restrictions.

The lawyer's role in condemnation proceedings will be relevant in ensuing discussions as to other values affected by his operation. It is included here only because the result of these functions is the acquisition by the community of a resource not readily liquidated. But the resources so acquired are paid for hence there is fundamentally no re-allotment of wealth if we assume agreement or verdict at the approximate market value. The value essentially effected under such circumstances is dependent on the use to which acquired resources are put.

B. Affecting the Distribution of Power. Governments are created by lawyers. This can be demonstrated as true of American governments in the direct sense of an overwhelming participation by lawyers in their formation. It is readily observable in indirect form when one considers the complex legal formulae which have been established in large part by lawyers as well as interpreted, attacked, and defended almost exclusively by them, necessary to establish governments of lesser stature, viz., counties, cities, school districts, authorities, and special function units in profusion.

Particularly at the local level is the structure of government beholden to the lawyer. Essentially what the lawyer has built and builds is a complex of power relationships. There are two sets of such relationships. The first is the complex internal to the government. These primarily in-

41 See Comment, 52 YALE L.J. 634, 636 (1943).
volve power hierarchies and collateral interplay between individuals (or small groups of individuals) and other individuals. The second concerns itself with questions of supremacy, autonomy, and equality, power-wise, between the governmental entities themselves. Stripped down, the second involves determinations of ascendancy between large groups of persons bound in geographical community.

For purposes of abstraction let us consider an American city. Its power position has universally been worked out as subservient to the state government. By long standing legal formula it is a “creature of the state.” As has been pointed out many times it must seek power from its superior ("go begging, hat in hand, to the state legislature"). Not the least of the functions of the lawyer for our city is to obtain power concessions, specific or general, from the legislature. He must be prepared to play the lobbying game albeit with more dignity than those representing purely private interests. He must draft, usually, the precise verbal formula to carry the grant of power. This requires the additional skill beyond technical draftsmanship of playing down the grant of power lest his cause be made an issue between competing political or geographical ideologies or rivalries. Needless to say, he also should possess adeptness at rolling logs.

"Home Rule" is a slogan which has captivated all but the most sophisticated students of government. It is supposed that by statute or constitutional mandate power could be delegated to our municipality sufficient to enable it to maintain governmental autonomy and thus do as it pleases. In point of fact the same extraordinary projects of an important nature as to which a non-home rule city would have to secure legislative acquiescence could with high probability be attacked in the judicial arena on deficiencies in constitutional “due process,” “equal protection,” “unlawful taking without compensation,” “impairment of contract,” etc. In addition, home rule does not purport to allow municipalities to pass laws of a general nature, nor in conflict with state mandates, nor as to matters which are of "state concern" rather than "purely local," nor laws not for a "public purpose." Thus the effect of home rule, as has been aptly put, may "achieve little more than shift troublesome political prob-

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42 For some of the techniques evolved in New Jersey note the informal observations in a gathering of municipal law officers set forth in NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, MUNICIPALITIES AND THE LAW IN ACTION 522 (1946).

43 One might ask why court attack on a municipal project could not equally be predicated on such grounds in the case of legislative approval as where attempted under home rules powers. One answer rests in the use of the population device, to secure the theoretical "general law." Another seems to be in the judicial tendency to react more favorably to state legislation than to that of a city council.
lems to the judicial forum." Whether our (i.e., governmental) lawyer would be more or less successful with the arena thus shifted is difficult to ascertain though it may be conjectured with plausibility that he would fare worse due to the inevitable presence of worthy law-trained opponents as distinguished from sporadic skilled opposition in securing legislative acquiescence.

Mention might also be made of the fact that in all states there exist examples of state self-abnegation (through constitutional provisions) as to powers over municipal bodies. These do not thereby enlarge local powers but serve to create a legislative no-man's land unless circumvented by skillful lawyers. Some of these were enacted to allay a complex of cross fears of groups with various identifications, others as a result of deep-rooted historical morality.

The lawyer operates directly and traditionally in the establishment of new local units. His work is quite well cut out for him in statutory enactments as it is with private incorporating processes. Little activity remains by way of the creation of counties but there is still a fairly brisk trade in new municipal corporations and the special function units. The primary objective of the attorney is to insure that the proceedings and the culmination will indicate that the incorporation is the result of a more or less spontaneous desire for government by the major portion of the inhabitants of a given area. Crude showings of governmental incorporation for private advantage through the acquisition of general taxing power to obtain funds to be used to enhance the value of the private holdings will probably meet with judicial disapproval.

A prime problem of the times for the metropolitan attorney lies in the utilization and development of techniques for matching the geographical growth of a municipally organized area with a corresponding political control. Peripheral control is generally intensely resisted, particularly in the high value sections, largely because of unwillingness to suffer the central entity's taxing power, though also, in part, because of the loss of power positions by the holders thereof in such satellite subs. Lawyers may be among those threatened by any form of amalgamation. Privately owned islands of extra-municipal character also may be expected to do vigorous battle to prevent engulfment by organized urban power.

The lawyer is frequently interested in mediating between conflicting

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44 Fordham, LOCAL GOVERNMENT LAW 74 (1949).
45 E.g., see State ex rel. Davis v. Town of Lake Placid, 109 Fla. 419, 147 So. 468 (1933).
46 See American Bemberg Corporation v. City of Elizabethton, 180 Tenn. 373, 175 S.W.2d 535 (1943).
claims to positions of power and emoluments. Advocacy for the one or the other involves skill in interpreting the formulae of the electoral process and haste and decisiveness in dealing with fraudulent distortions and aberrations born in ignorance. On the verbal legalistic level he must deal with questions of incompatibility of dual office-holdings, the distinction between public office and public employment, selection, tenure, nepotism, de jure as distinguished from de facto office, accountability, power of removal, recall, suspension, etc.

More recently has the governmental lawyer, including that of the city level, become interested in problems of the recruitment, selection, retention, promotion, and investment with tenure of governmental personnel. He is frequently called upon, however, to expedite hiring policies in contravention to the merit framework. His success depends on the degree to which he can impress a court with the notion of "impracticability" of applying the system to particular personnel. If the position sought to be exempted is relatively high in the hierarchy of administration he is further favored by invoking the doctrine that policy makers or advisors can only be selected by the personal devices of the superior executive.

Efforts of municipal employees to unionize have been conceived of as antagonistic to the municipal entity as a consequence of which the city lawyer has sought to curtail such activity. In recent years he has succeeded to a large extent.\textsuperscript{47} Again, the essential opposition springs from the shifting concept of sovereignty, embellished by pleas warning of expectations of violence and chaos in the event organization were to be permitted.

The local lawyer possesses an impact on the exercise of municipal power generally by and through his intricate involvement with the constituency and procedure of the law-making body and its techniques for making law. Ordinarily, the local lawyer has one power over power not available to counsel for the higher levels of government; he can remove questions of the qualification of members into the familiar judicial arena and there defeat or uphold claims. This prerogative is rather jealously guarded by the legislatures themselves in the case of the higher units.

The lawyer has control of a rather large and meticulous body of law, often contained in the recesses of his domain of the common law, in connection with the conduct of public deliberative bodies. This has to do with factors affecting the publicness of the meeting, appropriate notice,

\textsuperscript{47}See Fordham, Local Government Law 333-337 (1949). Note the impact of lawyers as expressed in the rather uninhibited discourse among city lawyers as found in National Institute of Municipal Law Officers, Municipalities and the Law in Action 493 (1946).
appropriate time sequences, distinctions between regular and special meetings, agenda, absence of members, abstention from voting, place of meeting, number of readings of proposed legislation, the presence of a quorum, and the numerical tally requisite to an effective decision. Manifestly, there are many seizure points useful for undermining or thwarting action. On the other hand, the skillful lawyer can treat all such technical requirements as formal embellishment and can render effective the most casually arrived at decision by an impeccable written record, usually unimpeachable (through the legal doctrine that such a record “imports absolute verity”).

Mention might be made of a final step in the process of rendering authoritative the pronouncements of the rule-makers. This consists of the codification of extant rules, a process which serves to publicize, dignify, and in some measure crystallize the official law. Though the word codification is here used loosely as synonymous with systemization, in point of fact the attorney may make considerable impact depending on the degree of assiduousness with which the task is pursued. The removal of “obsolete” ordinances or the elimination of others for a real or fancied subsequent repealer is of some moment in this connection. Of greater importance is the opportunity at hand to suggest hiatuses in the comprehensiveness of the new code with the consequent chance of suggesting “model” ordinances or even model sub-“codes” (plumbing code, building code, etc.)

The local lawyer also plays a role in the use of the initiative and referendum. Frequently it consists of minimizing attempts by the electorate to thus share power with its representatives. This is accomplished by careful scrutiny of the technical jurisdictional requirements of the initiating petition and by subsequent legislative manipulations to counter a successful move.

C. Affecting the Distribution of Respect. The ways in which the lawyer commonly influences the access of individuals to the value of respect is not so easily delineated as in the case of wealth and power. Moreover, in the case of the lawyer’s traditional activities the granting or withholding of respect is seldom accomplished in pure form. The deprivations and indulgences of this value are almost inevitably by-products of consciously expressed efforts to affect other values. Our task is therefore to attempt in many instances to lay aside the rationalizations and discover whether in essence certain overt legal processes have as at least a strong subsidiary purpose the keeping of people in their places. Though the private lawyer is of more importance in preserving respect stratifications, the local government’s lawyer plays some role as well.

The municipal lawyer, as a public prosecutor of local criminal or-
ordinances, preserves caste and class patterns. This is particularly a phenomenon of the southern lawyer (and, to some extent, of the southwestern and western counterparts). It is important that the jurisprudence of lesser courts bear steadily on the Negro. Its mysteries cannot be comprehended and the resultant confusion provides a ready base for the inculcation of white prestige through the not inconsiderable minor largesses meted out by actors in the legal process. At this level of government it is quite likely that the city solicitor’s indulgences following routine police action serves better the cause of caste maintenance than inexorably sure and severe deprivations. The southern city attorney must, however, learn with subtle exactness how to recognize the objects of bounty from those of denial. He must learn enforcement distinctions between inter- and intra-racial misdemeanors; toward the former severity is indicated, toward the latter, indulgence. He must know, be able to read, or have access to knowledge of the personality and reputation of individual Negro culprits.

In all sections of the country the city prosecuting attorney must be able to recognize the elite and reject of society. He is not expected to process through legal channels the white-haired widow of the town founder for a violation of a plumbing ordinance in the same manner as the quasi-alcoholic proprietress of the Last Chance Tavern for selling beer after hours. One of the prime sources of embarrassment for the city solicitor is the occasional situation where through overzealous police action coupled with public disclosure a prestigeful figure is caught in the preliminary toils of municipal law. Here skill in the technique of delay and the nolle prosequi is essential. Demands of the community in the name of “equality before the law” sometimes require the city attorney to seek vigorously the full measure of the law for an errant member of the elite. Such situations are usually fully dramatized and exploited by organs of enlightenment and serve to maintain an atmosphere of community righteousness. It is probably fair to say that the phenomenon is of more frequent occurrence the larger the metropolis. The aftermath of such cases is less frequently scrutinized for the presence of post-operative amelioration.

In his role as an advocate the city prosecutor (and prosecuting at-

48 For the subtleties involved in the maintenance of the formula “equal justice for all” in juxtaposition with a caste system see DAVIS AND GARDNER, DEEP SOUTH 504 (1941).

49 One quantitative study covering two almost successive twelve-year periods (1910-1922, 1926-1938) of prosecutorship in a Southern rural community indicated a pronounced increase in the nolle prosequi in the second period, with concomitant decrease in acquittals. BOSWORTH, TENNESSEE VALLEY COUNTY, RURAL GOVERNMENT IN THE HILL COUNTRY OF ALABAMA (1941).
The lawyer in society) must exercise numerous skills in the trial encounter. Not the least of these is the "art" of jury-picking.50

Mention has previously been made of the attorney's concern with the merit system in the power context. With reference to the functioning of civil service as it affects the rank and file employee there can be little question that respect is accorded by the security of tenure if for no other reason than the fact that common labor remains unclassified. On the other hand, the system may serve to single out special aggregates for distinctive treatment, as for example, veterans — favorably, and married women — unfavorably. The attorney's chief work with the merit system, insofar as respect is concerned, has been to resist demands for superclassification and to legalize demotion, suspension, and dismissal.

Also previously considered has been the problem of unionization of municipal employees. To the degree that unionization promotes respect for and among its members by dignifying a position securitywise, so have the lawyer's efforts in opposition, previously recounted, affected the value under discussion.

D. Affecting the Distribution of Well-Being. Included in the value of well-being are safety and health, physical and mental. There can be little question as to the local lawyer's influence in providing or retarding accessibility to this value. Furthermore, one would expect less cavil with the postulate of wide sharing with respect to physical and psychological integrity than with any other value. Yet realistically it is suggested that there is as great a disparity in the realization of this value between the some and the many as with the other values, though manifestly there would be difficulty in measuring the comparison.

The term "police power," as used at all levels of American government, embraces in preponderant part the concept of health and safety. The legal record has not, however, been crystal clear for the proposition that affirmative governmental measures for broadening the base of health and safety are entitled to legal sanctuary. The American legal profession has contributed its share in asserting the dominance of other values over well-being. Even today, often compromises must be effected and a health or safety enactment must be palliated with other objectives. And it is still a prevailing part of the ideology that the well-being of the individual should be individually purchased in a free market.

50 In their study of a Southern community, Davis and Gardner refer to the selecting of a jury as being of "crucial significance" and see the defense counsel and prosecutor as assembling a "configuration of relations" involving the most subtle interpersonal discriminations. DAVIS and GARDNER, DEEP SOUTH 514 (1941). This phenomenon, of course, grows weaker as the community becomes larger. In metropolitan areas efforts must be directed at ascertaining the presence of depersonalized prejudice.
The local lawyer is the enforcement medium, potential or in being, for a variety of local enactments ostensibly affecting health. An examination of a fairly typical small city code reveals that of a total of 352 pages, 201, or 57 per cent, can be said to be concerned predominantly with health and safety. Such a figure is admittedly of small concrete meaning in view of the mixed motivations mentioned for many of the ordinances. For example, an entire chapter consisting of 37 ordinances, is devoted to "Animals and Fowl." Those sections which interdict running at large, the crowing of roosters, the artificial coloring of animals, the howling of dogs, can be said to bear only remotely on considerations of the physiological welfare of members of the community. Similarly, traffic regulations, usually accorded exhaustive treatment in city codes, are a blend of the considerations given to the values of wealth (parking regulations designed to maximize return to retail commercial establishments), power (special parking and locomotive privileges to dignitaries and officials), respect (rules of the street affecting celebrations, parades, and funerals; and various procedures affecting the flexibility of the "ticket"), rectitude (roping, etc., of streets for churches).

The city lawyer, as prosecutor, must deal daily with these measures. He must be schooled in the judicial susceptibility of many of them. His sympathy toward particular enactments is the cue to the police network as to what to pursue, what to abandon. He can also be said to cue the judicial officer by his attitude toward a pending case: hostile, blasé, merely routine, eager, highly indignant. It must be remembered that the private citizen may initiate a minor prosecution and to the degree that this is tolerated by the law enforcement complex of the city the city attorney's power is weakened in some measure.

It is entirely possible for the city attorney to lend his talent to securing private economic advantage over competitors through a skillful disguise in form of a health measure. Certain food commodities lend themselves well to this technique. Of recent years, for example, milk has been the subject of fairly extensive regulation by local authorities. Whether such regulation is designed to protect the community or to create "little trade colonies reminiscent of the middle ages" is often difficult of ascertainment if the regulatory procedures have been drafted by a skillful local lawyer.

Can it be said that the city solicitor's role in the fining and incarcerating of misdemeanants contributes to the well-being of the other

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61 CODE OF THE CITY OF LAKELAND, FLORIDA (1949).
62 For this characterization and a discussion of methods for distinguishing the "sincerity" of milk ordinances see Hopper, The Legality and Enforcement of Milk Ordinances, NIMLO MUNICIPAL LAW REVIEW 174 (1953 ed.).
members of the community? Although the criminal laws, petty and otherwise, are conventionally justified on this basis, it seems more plausible to regard such laws, particularly of the more minor variety, as more directly affecting the individual's search for rectitude. Our criminal jurisprudence does not yet provide an accepted formula for removal of an individual from the social milieu solely for protective purposes; the talion and deterrent principles still hold considerable sway. While it may safely be estimated that millions of individuals suffer conventional sanctions yearly for errant behavior behind the wheel of an automobile it is yet to be demonstrated that this legal activity appreciably contributes to the safety of others; in fact, affirmative concepts of accident proneness and psychogenic motor behavior would indicate the futility of much of these current techniques.

Do the attorney's labors vis-a-vis tort claimants against the local entity impinge on the degree to which safety is shared? Do the evolved tort doctrines inspire private volition to strengthen the network of safety devices protective of the public? Again, casual reaction might be in the affirmative, but it is suggested that so flexible, ambiguous, and dependent on infinite factual permutations of unplanned human fault are the principles of tort law that preventive measures can not plausibly be taken by individuals except those of obvious and gross form. More direct methods of protecting the well-being of the public are indicated and available than a reliance on the policing effect of potential tort liability.

E. Affecting the Distribution of Rectitude and Affection. One of the city attorney's jobs is to identify himself with the community's sense of righteousness. Conversely, he must not overplay this role by waxing morally indignant in opposition to the prevailing mores. At stipulated civic intervals reform movements in the name of order, honesty and decency are of well-known advantage. Equally well known are the levelling off periods when his behavior is not expected to be that of a "boy scout." Partly in order to mediate between these extremes does the attorney develop a detached, analytical, legalistic style of response to live legal prob-

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63 Lasswell regards criminal statutes as essentially intending to say, "You ought not to hurt him; but if you do, I ought to hurt you, and I will" rather than the alternative imperative "If you hurt him, we'll hurt you." LASSWELL, THE WORLD REVOLUTION OF OUR TIME 22 (1951).

64 The City of Seattle for the year 1952 disposed of 144,627 traffic cases. These resulted in fines and forfeitures of $725,079.50; 594 drivers' licenses were revoked, 1187 suspended; there were 66 jail sentences. CITY OF SEATTLE, ANNUAL REPORT 6 (1952).

65 "Chicago has what has been called the 'Bible Belt conscience.' It wants its vices to be beyond the pale of law. But it wants them easily available." OUR FAIR CITY 177 (Allen ed. 1947).
lems posed of him. This is particularly useful in the written opinion. In such communications one may often search in vain for the slightest effectively toned verbalism on even the most emotionally charged of issues.

Apart from isolated specific legal practices which affect the church and other institutions devoted to rectitude, the local lawyer, in common with all lawyers, can be said to devote a very considerable portion of his efforts to providing evaluations and characterizations in terms of rectitude. The causes, principles and doctrines espoused by him are very frequently not only expedient but "right." While most lawyers today would probably not express a philosophical adherence to the transcendence of "natural law," it is suggested that as to many high level legal propositions an undifferentiated and vague identification with purveyors of revelation is present. It is a part of the lawyer's function to see that individuals get right with the law as it is that of the minister that they "get right with God." It is most often the lawyer who sees to it that various citizens also receive the accolade "law-abiding."

Though the effect of the lawyer's activity is to characterize many individuals as good or bad, the lawyer characteristically takes pains not to verbalize a personal moral judgment in formal encounters other than in a courtroom. The law school illusion of persons as A, B, P and D is preserved. It must be made to appear as simply a question of within or without the proscriptive formula. This phenomenon is particularly true at the rural and small city level. It is even enhanced as to the lawyer for a small governmental unit because of the ever-present possibility of upsetting interlocking affectional relationships. Certain aggregates of individuals may however be regarded as beyond the pale of non-evaluative treatment and, in fact, are expected by the community to be castigated by any lawman who confronts them. Some of these found at the local level are wife and children neglecters, sex "deviates," unruly alcoholics, speeders through school zones, persons cruel to animals, and outsiders who interfere with local patterns.

F. Affecting the Distribution of Skill. The attorney for local government affects access to skill chiefly among his governmental confreres. If he implements successfully the technical programs of the city engineer, health officer, fiscal officer, or welfare department, as examples, he contributes immeasurably to the continuing maturing of such specialists. Should his approach be formal, negative apathy and technical mediocrity will tend to inhere in his co-workers.

Appropriate to mention again in this context is his acceptance, development and enhancement for rank and file workers of tenure pro-
visions, retirement plans, organizational protections, and civil service. All contribute to the cultivation of skills through maximizing security.

G. Affecting the Distribution of Enlightenment. It is appropriate to consider as the function of enlightenment the lawyer's vast occupations of a counselling and advisory nature. These are directed, in the instance of the city's lawyer, to a relatively small group of persons influential at this level of government. While it might be considered that the lawyer's role as an advocate equally involves the giving of intelligence to a judge, a point of distinction needs briefly to be made. In spite of judicial statements to the contrary the advocate does not in the main "enlighten" the judicial tribunal. He provides it with a script for opinion; strictly speaking, with propaganda. That portion of the argument or brief which supplies the judicial officer with pertinent past utterances of other judicial officers is of negligible import as is the advocate's duty to present lucidly the facts of a particular controversy. Our advocate in addressing himself to a court from whom he expects a decision is most usually stating opinion buttressed by normatively ambiguous language until the court speaks. It seems useful not to speak of enlightening the law-maker as to the law.

Turning to the lawyer's traditional counselling services rendered to all others, however, we may see that the element of prediction is, or should be, added. Based on skill in the knowledge of judicial response, the counsellor is enlightening the counsellee in the statistics of past official utterances relevant to juridical expectation. His statements of expectation will be found in most formal communications to be based on the well-known doctrine of stare decisis. Such handling is the counsellor's safest refuge, not to mention the only type in which he has been adequately trained. Experientially, however, all but the most orthodox and rigid attorneys are aware of bases for prediction other than a complete reliance on supposed adherence to prior precedents. Informal advice will often reflect legal prognostication based on educated feel.

The local lawyer must be prepared to cope with the most casual oral query put by a member of a small board of county commissioners sitting in informal session as well as elaborately worded requests for rulings by the chief executive himself. He must learn the art of guarded unequivo-

58 "The city attorney or one of his staff attends all meetings of the Council, the Civil Service Commission, the Traffic Committee, the Traffic Safety Committee, the Public Relations Committee, and the Industrial Safety Committee." CITY OF GLENDALE, CALIFORNIA, ANNUAL REPORT OF THE LEGAL DIVISION 11 (1951-1952). "The general tempo of activity of the other divisions is reflected in the volume of written or oral requests for opinions and advice received by the City Attorney and his staff. There is hardly an activity of any division which does not frequently involve legal questions, and these questions are generally propounded to the City Attorney and his staff for immediate consideration." Id. at 12.
calness. Reservations from full warranty must be made with the similar care of the attorney preparing an opinion of title. In the past several decades increasing emphasis has been laid on an activist approach by governmental attorneys, long a forte of the most able counsellors of private enterprise. In essence, this means that the inquiry to be put to the attorney will tend to take the form of "How can we provide a civic auditorium?" rather than questions of the legality of a precise course of previously conventional projected activity.

Thus far we have emphasized as the local government lawyer the city lawyer. Included at this level must also be the school district attorney, be the district of county size, larger or smaller. It is rare that such an entity retains or hires an attorney on a full time basis. It is therefore difficult to estimate the number of lawyers engaged in representing such districts. They are ordinarily recruited from the ranks of the private practitioners and often one attorney will represent many school districts, thus acquiring considerable expertise in "school law." This subject has been deemed of sufficient body to warrant a separate course in some law schools though this area as an educational specialty appears to be on the wane. The voluminous statutory treatment of the subject matter is, however, studied in some detail in schools of education.

Essentially this lawyer's role is to guide and to foster the attitudes and programs of the prevailing members of the boards of instruction or trustees of the district in antagonisms with teachers, pupils, parents, taxpayers and, occasionally, the state.

H. Affecting All Values: City Planning. It has been deemed expedient to include the currently nebulous field of city planning under the above heading without explicitly separating out from the undifferentiated mass the myriad of components into our value classification. Not that such a project would not be useful; but rather it is not done here because the primary emphasis is on the lawyer's role as is as contrasted with delineations of ideal types. And it is maintained that the lawyer's contribution, taken as a whole, to advanced concepts of planning has been slight, undistinguished, lacking in leadership, and marked almost wholly by hidden technical craftsmanship. Other than the work of a few lawyers at the federal level, and less than one per cent of the legal...
teaching profession, almost all the activity of the few who have exercised
talent in implementing projects of some boldness have been on behalf of
arrangements by private volition.

Many of the classic works on planning, as well as much of the serial
literature on the subject, disregard the lawyer by an almost contemptuous
silence as to his role. Again, perhaps, some evidence that a lawyer func-
tion may be crystallizing can be gleaned from the presence of two scholar-
ly legal articles, by lawyers, in the 1953 report of the Urban Redevelop-
ment study. And without question, much soul-searching is being and
will be engendered by the pioneer legal "casebook" of MacDougal and
Haber. However, unless the tendency is arrested or parallel work under-
taken, the major force of formal planning education will continue to be
in the schools of architecture, engineering, and public administration,
rather than in the law schools. Even Segoe, in his comprehensive guide
to local planning is strangely silent with respect to the city law depart-
ment's function.

Essentially the local lawyer's role in urban planning must be a positive
one. He can no longer bask in the ambiguities of "police power" and
"public purpose" as related to a single petty control device or small syn-
drome of such devices. Nor can he abdicate from any real concern for
the implementation of planning by others since he knows full well that
the least novelty of design, finance, use or amenity control will ultimately
have to receive the imprimatur of a court, before which he, the lawyer,
is alone the master director. This is a truism which seems to be ig-

See, e.g., STEIN, TOWARD NEW TOWNS FOR AMERICA (1951).
URBAN REDEVELOPMENT STUDY, URBAN REDEVELOPMENT: PROBLEMS AND
PRACTICES (Woodbury ed. 1953). The articles referred to are Ascher, Private
Covenants in Urban Redevelopment, at page 223, and Robbins and Yankover, Eme-
nent Domain in Acquiring Subdivision and Open Land in Redevelopment Programs:
A Question of Public Use, at page 463.
McDOUGAL AND HABER, PROPERTY, WEALTH, LAND: ALLOCATION, PLANNING
AND DEVELOPMENT (1948).
A special section of the Proceedings of the Annual National Planning Conference
of 1951 dealt with the topic "How Shall We Train the Planners We Need." Of
the four participants only Charles Abrams gave recognition to the necessity for
lawyer participation in the planning process. AMERICAN SOCIETY OF PLANNING
OFFICIALS, PLANNING (1951).

SEGOE, LOCAL PLANNING ADMINISTRATION (1941).

This statement is applicable to the city lawyer's functions generally. In one of
the few outright denunciatory "reports" prepared for the survey of the Legal Pro-
fession, Seasongood takes the local government lawyers to task ("The role which
lawyers in the United States have played on the local government stage has not been
glorious. . . . his (the lawyer's) participation in local political affairs evinces lack
of understanding, callous indifference, or sometimes hostility.") Seasongood, Public

Consider the fate of the planners' plans when the Supreme Court of Florida ruled
noted or overlooked frequently by non-lawyer members of the planning profession.

Confining the discussion at this juncture to the lawyer for the local unit, we may say that vis-a-vis planning his major function is to validate municipal ownership of land for housing and other public works so as to maximize control and, if followed by a return of such land and improvements to private members, or aggregates of members of the community, to so restrict the use of such property as to governmentalize it for virtually all purposes except the realization of profit thereon. Finally the city lawyer must implement use control devices in futuro as to land not passing through a stage of municipal ownership. In order to accomplish this the lawyer must broaden the scope of the following authoritative concepts, particularly in responses of the judiciary: public use, use by the public, eminent domain, public welfare, taking, due process, and police power, as these relate specifically to housing, streets, traffic, sewers, blight, industry, drainage, water, schools, parks, transportation, etc. The customary circular confusion in so doing has been ably laid bare but it is probable that the legalization of value maximization will be accomplished for some years yet within the labyrinth of syllogistic convulsion.

Manifestly, no city plan can be born and particularly be translated into consummation without the lawyer. To begin at the beginning: lawyers draft enabling state legislation leading to the establishment of the planning board or commission, local legislation by charter or ordinances establishing the agency and setting forth its composition; state legislation empowering municipalities to regulate the private subdivision of unconstitutional an urban redevelopment act invoked by Daytona Beach. Adams v. Housing Authority of Daytona Beach, 60 So.2d 663 (Fla. 1952).

A citizen's committee, laden with lawyers, formed to assist in the administration of a New York zoning plan formulated early in this century, recognized that the necessary judicial extension of the police power depended on country-wide adoption of the zoning idea and so sought to extend zoning. See BASSETT, ZONING 8 (1940).


Though some functional enlightenment may be increasingly worked into briefs. See "Social and Economic Material" to accompany "Memorandum of Law" in Robbins and Yankover, Eminent Domain in Acquiring Subdivision and Open Land in Redevelopment Program: A Question of Public Use, WOODBURY, URBAN REDEVELOPMENT: PROBLEMS AND PRACTICES 463, 494 (1953).

E.g., the model act prepared by attorney Alfred Bettman in BASSETT, WILLIAMS, BETTMAN, AND WHITTEN, HARVARD CITY PLANNING STUDIES, Vol. VII (1935), or SEGOE, LOCAL PLANNING ADMINISTRATION 671 (1941).

See, e.g., NATIONAL MUNICIPAL LEAGUE, MODEL CITY CHARTER §§ 165 et seq. (1941).
land within and without the municipality;\textsuperscript{71} state legislation "enabling municipalities to preserve the integrity of municipal plans by the regulation of buildings in mapped streets";\textsuperscript{72} state statutes enabling zoning to be accomplished;\textsuperscript{73} local legislation by ordinance or resolution setting forth detailed zoning, traffic, licensing, building, streets, and nuisance regulation, all of which, as \textit{ad hoc} activities, have previously been mentioned. The difference between drafting such legislation pre-planning era and in the modern context lies, of course, in integration and a conscious desire to shape usefully the future. It is in the projective and integrative function that the city lawyer is still largely deficient, awaiting the prod of the engineer, the architect, and the professional public administrator. In some instances he may yet even resist the efforts of his colleagues for new forms of community intervention.

Nevertheless, it is probable that the city lawyer (and perhaps "city" should be stressed as against "town") is one of the more likely vehicles for the attainment of a wider sharing of the values people seek. There are several reasons for this. The government lawyer, as distinguished from the private practitioner, of necessity acquires a statistical perspective. This affords greater insight into the law in action than is usually obtained by his private adversary whose conclusions as to a legal efficacy are drawn from a relative handful of perhaps atypical and whimsical outcomes. Then, too, the city lawyer is in daily contact with other professional skills in public administration, which serves as an enlightening process not frequently, or at least not systematically, available to the non-governmental lawyer. Finally, the often observed tendency of any lawyer to identify with his client causes the city lawyer to adopt the perspective of his own city administration and to share interests with all cities. He must espouse the municipality in the first instance whether he relishes its cause or not and from espousal grows partisanship.

\textit{The Lawyer for the State}

Legal representation of state government is, with rare exception, less conscious and positive than that of local government and the federal entity. Highly skilled organization is usually lacking. Two figures conventionally speak in the name of the state, the attorney-general and the district attorney, the latter generally in the state's role as penalty demandant for individual transgression.

\textsuperscript{71} SEGEB, \textit{LOCAL PLANNING ADMINISTRATION} 674 (1941), for a model also prepared by Mr. Bettman.

\textsuperscript{72} As taken from the title to the model Municipal Mapped-Streets Act as in SEGEB, \textit{LOCAL PLANNING ADMINISTRATION} 678 (1941).

\textsuperscript{73} See SEGEB, \textit{LOCAL PLANNING ADMINISTRATION} 681 (1941).
Less cohesive as a group than either city lawyers or federal lawyers are those whose clients are the 48 states. This amorphous aggregate of counsellors must constantly face in two directions although not simultaneously. They are expected to man the ramparts against the centralized power emanations from Washington; and they are expected to expedite central control directed toward the lesser polities and inhabitants of their state's geographical domain. They must construct, resurrect, and rationalize the slogans of legal authority which preserve power in the state elite as against the elite of the federation and the local community. To resist the former has been the far more formidable task. The interlocking nature of local and state elite and elect has rendered quite often ineffectual any threat of a grass roots claim to power.

The office of counsel for the state is, of course, under the formal leadership of the attorney general, an office, curiously enough, still predominantly elective. In addition to the department operated by the attorney general there are three other groups of attorneys who can be said to espouse the cause of state government in any of its ramified activities. There are (1) attorneys employed by some state agencies who are independent of the attorney general, (2) "private" attorneys retained ad hoc by the state or any of its agencies, and (3) the decentralized body of lawyers, advocates principally, known as county solicitors (prosecuting attorneys, states' attorneys, etc.) whose primary function is to enforce individually the criminal sanctions.

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74 There commences, of course, to be discernible at the state capital level a group of specialist non-governmental lawyers, although they are difficult to delineate and do not necessarily maintain offices in the capital city. These lawyers often have political power. E.g., support of the governor may often be translated into pardons for clients. See OUR SOVEREIGN STATE 48, 154, 342 (Allen ed. 1949).

75 "The Attorney General (of Arkansas) was a member of several state boards; and it was his job to look after the dignity of the office, on formal occasions, and generally; and he attended to the great volume of correspondence of a political, rather than a legal, nature. But it was not excepted that the Attorney General should personally bother his brain with the purely legal work of the office. That was the work of the assistant . . . (who was to) . . . write all the purely legal opinions that went out of the office, the Attorney General, himself, writing those opinions that were more political than legal." CAMPBELL, ARKANSAS LAWYER 153 (1952).

76 For the thesis that attorneys-general are assumed to have a versatility which in fact they do not possess see MILLSPAUGH, LOCAL DEMOCRACY AND CRIME CONTROL 25 (1936).

It is somewhat curious that in none of the observational or critical works of the political scientists or public administration students on the attorney general has attention been directed to the fact that 21 state attorneys-general are permitted private practice (this figure not including those not practicing because of custom only). See THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES, 1950-1951, 629 (1950).

77 Traditionally the attorney-general is vested with little or no control over criminal prosecutions. For a state by state discussion and a detection by the author of a trend
Left in abeyance was consideration of the "opinions" rendered by all attorneys general. While conventional doctrine in essence ranks such opinions as non-authoritative (as against judicial pronouncements) it can scarcely be gainsaid that official action is taken or withheld as a result of such opinions. Frequently no court action ever follows to test the validity of the opinion. Somewhat the same deference is paid to what the attorney general "finds the law" to be as is paid the court. One might expect, then, that an attorney general's opinion would be more liberally sprinkled with bolstering case citations than would be judicial opinions. This is often not the case. Many opinions represent basically a linguistic interpretation of statutory or administrative wordage fortified by a predispositional philosophy shared with the judiciary of the region. For this reason the predictive value of such opinions is probably high.

An analysis of the first 50 reported opinions of the Attorney General of South Carolina for the fiscal year 1949-50 reveals that in only 13 were any cases cited. In a further analysis of the same 50 opinions the following words or phrases indicative of some policy choice were found to have been used in 25 opinions:

- I agree . . . should be . . .
- Our opinion is that . . .
- In our opinion . . .
- As a final argument for our position . . .
- It is my opinion . . .
- I think . . .
- We do not think . . .
- We are of the opinion . . .
- From the facts . . . it would appear . . .
- We feel . . .

Of the first 25 opinions of the New York attorney general for 1950, 17 were devoid of case citations, though these opinions involved matters of some magnitude, being characterized as the "formal" opinions, and were prepared with a high degree of care. It might also be added that further inspection of these opinions discloses much less reliance on words toward centralization see De Long, Powers and Duties of the State Attorney-General in Criminal Prosecution, 25 JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY 358 (1934).

See, e.g., BEARDSLEY AND ORMAN, LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS 166 (1947).

See ANNUAL REPORT OF THE ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA TO THE GENERAL ASSEMBLY, for the period beginning July 1, 1949, and ending June 30, 1950 (John M. Daniel, Attorney General) beginning at page 101.

of choice as in the case of South Carolina and the corresponding adaptation of much more unequivocally toned language.

With what are the opinions of attorneys general concerned? The number of specific legal points upon which they have been asked to pass are legion. There is scarcely a proposition involving even an extended definition of public law that would not be germane to their opinion-rendering function. This is particularly true of attorneys general who do not confine their advice to state level officials but who advise as well functionaries at the local strata.

The prosecuting attorney has been considered, as he is traditionally, a state official. It is not intended to labor the category, however. In point of fact, the less urbanized the geographical district in which he operates the more does he identify with the local group; in such cases the appellation "state's attorney" is almost solely dependent on the fact that the laws which he is charged with enforcing emanate from state rather than local sources. The creed of uniformity of laws and the American pattern of government dictate that the more important the conduct to be outlawed the higher the level of government at which the outlawing is to be accomplished. Furthermore, the more densely urbanized the community in which state (or federal) laws are to be applied, the more is skill exhibited in their breach. Hence, as a corollary, the greater is the counterskill demanded of the prosecutor. By and large, state law enforcement in low density districts is confined to individual psychopathologies with occasional excursions into crude, small-scale criminal campaigns. The flowering of the profession of the public prosecutor is in the metropolis, as is true with most flowerings.

In the main governmental counsel render orderly distribution or retention of wealth chiefly in the form of money or claim to physical property. As distinguished from the private practitioner, whose basic activity is the same, the governmental lawyer usually acts on behalf of larger

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81 "... the most powerful single official in the administration of the criminal law. ..." MILLSPAUGH, LOCAL DEMOCRACY AND CRIME CONTROL 17 (1936).

82 The non-urban state's attorney has been found typically to be either a zealous young attorney using the office as a political springboard or an older man undistinguished in ambition or vision; the office has not lent itself to career endeavor. Apparently the zeal of the young attorney is roughly an equivalent in effectiveness (measured by convictions) to the unspectacular experimental skill of the older man. The works of Baker and DeLong represent the most meticulous examination of the office of prosecuting attorney. Their joint works may be found in each volume of 23-26 J. CRIM. L.

83 In an Alabama hill county it has been ascertained that criminal cases in the Circuit Court "relate more frequently to the manufacture, possession, sale, and immoderate consumption of liquor than to any other offense." See Bosworth, TENNESSEE VALLEY COUNTY, RURAL GOVERNMENT IN THE HILL COUNTRY OF ALABAMA (1941).
aggregates of the general population (i.e. those consisting of from a few hundred to several million individuals). The government lawyer also is instrumental in the manipulation of power although probably not to the degree that the non-governmental lawyer is. It has also been ascertained that counsel for government bears a major share of the responsibility for exacting deprivations from clearly and complexly defined anti-social behavior. The degree to which this latter role has in fact become a real function of government may be used as one measure of advancing civilization. Mention has been made of the difficulty of characterizing this sanction-imposing role in terms of the value structure employed in this study.

It has been considered pertinent to inquire wherein the governmental lawyer's power differs from that of other lawyers. Despite conceptions as to the subservience of a salaried or bureaucratic class as distinguished from the members of an "independent" profession, it is submitted that the lawyer in government possesses a greater power of policy initiation than his private counterpart. Lawyers "run" governments to a much greater extent than they "run" private industry. A lawyer is quite likely to sit at the head of the table at a top level conference of a higher echelon government; he is usually found flanking the chairman of the board at the mahogany directors' table.

No area of human social behavior remains untouched by the counsel with whom we have been concerned. Questions of the supremacy of authority and those involving the susceptibility to sanction of important projected and past behavior are never ending. Furthermore, contrary to popular supposition, the vast labyrinth of legal formula, often internally self-contradictory, provides a considerable latitude in the delineation of proscription and prescription. Of greater moment is the fact that the lawyer himself is often lacking in awareness of the capacity for choice inherent in his role. So, as an implication for legal education, there has then been built up little professional pressure for pedagogical approaches that take conscious account of the lawyer's role as policy-maker.

Have there arisen other groups to challenge the lawyer's hegemony in policy advising or formulating? The answer to this question is complex and in large measure depends on the type of policy involved. The writer is not aware of any comprehensive analysis or classification at high levels of abstraction of kinds of policy requiring formulating by major institutions as, for example, government. We have mentioned one: delineations enhancing or restricting the authority (power) of office-holders. It is doubtful whether any aggregate will usurp the major aspects of this power-conferring policy prerogative from the lawyer.

However, that there have arisen particularly at the federal level spe-
cialized groups of policy-advisers, if not policy makers, other than lawyers, cannot be denied. In general, these groups consist of social scientists of the classic disciplines and hybrids thereof. To these might be added the professional politicians, no new group certainly but always to be reckoned with. Closely allied to the professional politician, yet even more antithetical to the approach of the policy scientists, is the informed or pseudo-informed layman. Sustained by descriptive slogans such as "venerable," "respected," "quarter of a century of experience," he still may affect the decision process by emotional hunch masquerading as profound knowledge of "human nature." It is not intended here to begin to assess the trends in or the current status of these groups but a few observations may be made as to the distinctions between the lawyer as governmental policy shaper and all others having to do with policy alternatives.

The lawyer is advantaged in his impact on choice in that he is one of the last in point of time to render his advice. Whereas the social scientist is often faced with the problem of conceiving a policy the lawyer has the less pleasurable but more acutely vital task of determining whether to abort or deliver the quite well formed foetus. Although a more activist and enlightened approach on the part of the governmental lawyer of the past few decades has rendered the problem less crucial, it is still essential for all others who have ideas relevant to policy to remember that the lawyer possesses the power to discard the most meticulously researched policy choice by pronouncing the fatal word "unconstitutional," supporting the utterance by his bag of citations.

Why does an unfavorable response from the lawyer usually cause the nominal decision maker to foreclose the alternative? The reason lies still in the assumption that the lawyer merely paraphrases inexorably relevant "law," without preference, without prejudice. As a voice of authority he stands almost on a plane with the physical scientist. It is a prime negative expectation that no one is competent to pronounce "law" but a lawyer. The reliability of the lawyer's pronouncement is, of course, his stock in trade and in recent years has become increasingly emphasized in attacks on the "unauthorized" practice of law. Although many non-lawyers, particularly persons in academic circles, have demonstrated skill in extracting principles from cases and nuances from statutes, it is still highly probable that a second rate lawyer's opinion would be heeded as against the best of these. The exception among the deferential is the sophisticated or passionate administrator; the course still open to him is to search for another lawyer or to disregard the advice. These courses were followed fairly widely in the early days of the New Deal.

Their present roles, status, problems and professional frustrations are succinctly set forth in Merton and Lerner, Social Scientists and Research Policy, LERNER AND LASSWELL, THE POLICY SCIENCES 282 (1951).
A further advantage of the lawyer generally in maintaining political leadership (this has particular applicability to the securing and retention of non-legal positions of power such as elective and high-level appointive office) lies in the availability of personal time. This increases rather than decreases as material and prestige success rise and the result makes for a benign circle. It is doubtful whether the social scientist can leave his labors and still preserve income with the regularity that a lawyer can. A great part of this time independence of the lawyer is due to the organization of his revenue producing activities. The momentum of an established firm is able to carry several individual members for considerable periods of time without their day to day presence. It may be anticipated that where social scientists are able similarly to combine for profit as, for example, the commercial research specialists, they will be freed for competition with the other quasi-leisure groups. Still to be reckoned with as another point of distinction between the lawyer and other actual or potential governmental policy making classes is the lawyer's traditional skill in the judicial and pseudo-judicial arenas. With reference to the courts alone, the lawyer's domain is exclusive. He and his fellow professional, the judge, are captains of the entire decision making process. As to other adversary arenas, here labelled loosely as pseudo-judicial, the lawyer is still in overwhelming ascendancy, although other participants are allowed a hand in varying degrees. A glance at the principals in any of the investigatory processes of the Congress, notably the Army-McCarthy hearings, will amply demonstrate the supremacy of the lawyer. Actually, in these non-orthodox litigatory processes, again the lawyer's primacy is due to a strong expectation that only he is competent to direct the affair. Actually the skills involved are relatively uncomplicated and could be mastered quickly by many non-lawyers. They consist, in the main, of knowledge of a few simple rules of evidence, coupled with some experiential adeptness at framing interrogatories, plus a self-confidence in the superior position of the interrogator.

If the above assumptions are correct it would appear appropriate, in seeking to foretell shifts in the composition of the dominant governmental power class, to be aware of the potential rise of new groups of professional entrepreneurs able to sustain various of their members through lucrative combinations whereby their specialty is commercially "practiced." In addition, a watch would be kept for areas of specialization that seem to give rise to expectations that only the purveyors thereof speak authoritatively. One might suggest in this connection, as examples, economists (fiscal experts principally), military men, certain physical scientists, and public opinion analysts.

Unfortunately, however, predictions as to who might arise to challenge
the lawyer's political preeminence are also subject to a more ambiguous
variable, one which involves shifting from the socio-economic to the
psychological. Its essence lies in ascertaining the nature of the personal-
ity characteristics common to a significant number of the members of a
professional aggregate which would cause a relatively constant tendency
to seek positions of power given a fair chance for success. Will, in short,
the personally mobile social scientist in a "field" capable of eliciting de-
ference in fact seek out a position of power? Or is his personal power-
as-a-value threshold low? Finding answers to such questions requires
research into the sublimatory potentialities of the various professional
callings with which we are concerned. Such research must be conducted
on relatively deep psychological levels and must reject most of the super-
ficial literature of vocational guidance. The compromise, for example,
implicit in the legal system's scheme of verbalizing antagonisms affords
aggressive drives and compulsive symbolic behavior a meeting ground
of maximum public acceptance. It might be suggested that a society
which widely utilizes in positions of power individuals predisposed to,
and later rigorously schooled in, the use of words as weapons has ad-
vanced a considerable step in the elimination of more primitive forms of
conflict. On the other hand, the march toward a maximization of the
values sought by people may be slowed in no small measure by the very
sanctity accorded words and phrases of high abstraction.

Aside from his activities as a craftsman, which consists largely of
regularizing traditional transactions, the American government lawyer's
role in the ongoing political process has been that of a brakeman. Like
the engineer who may veto a project because of assumed physical im-
possibility, the lawyer, despite rationalizations and sophisticated preten-
sions to the contrary, tends to measure a proposed governmental inter-
vention against supposed immutables. In so doing he is a conservative
force. This is not, however, by virtue of any estimates of his as to public
acceptance, denial or demand but rather rests within the domain of antici-
pat ing responses from a select few, the judges. While a conservative
factor is of value in government it by no means follows that other stu-
dents of the social process cannot scientifically perform this function.

While acceptance of the guiding role of the policy scientist appears
to be increasing, in part because of the practical problems posed by war
tensions, it still remains true that the lawyers must be assured that cer-
tain constitutional phrase symbols have not been violated. The absence
of such sanctuaries for negation in the British system leaves room for re-
search into the comparative role of the British policy lawyer (if such there
be). The problem becomes one in part of ascertaining the ingenuity for
resistance to social novelty maintainable by lawyers shorn of authoritative written restrictive formulae.

There is nothing to indicate any lessening of the numerical representation of lawyers in government. In fact, the converse appears to be true with respect to the federal government although it is difficult to ascertain whether the increase in the numbers of lawyers has proceeded at a more rapid rate than would normally be expected for this burgeoning establishment. Certainly the lawyer representation in the deliberative assemblies has remained relatively constant and high for at least a century. It has appeared that the "taking over" process has occurred largely in the state and federal executive branches.

Does this large group of government counsel (excluding the lawyers in the judiciary and legislatures) possess any cohesiveness? With whom should they be identified, the bureaucrats or the "independent" legal profession? While the self-identifications are apparently still with the latter, there is some evidence at the federal level that some identifications are with the policy formulating government employee. And even at the local level the associational tendencies are with the in-group. It might be prosaically suggested that common skill problems account for this sub-professionalism. In addition, it is quite likely that the traditional loyalty of lawyer to client rapidly brings about a difference in perspective from that of the private lawyer with respect to governmental intervention in the social process; this cleavage from the regular ranks portends at least no diminution in the continuing activeness of the government's role in the affairs of its citizens.

The demands of today's government for the validation of complex schemes looking toward the regulation of resources and a wider sharing of values sought by people have tended to alter the role of the governmental lawyer from that of taboo interpreter, preserver, and creator to one of dispensation rationalizer, dialectician, and catalyst. The final step yet remaining to be taken by the government lawyer, qua lawyer, consists of the elimination of the archaic language still largely deemed necessary to support governmental intervention, and the substitution of more direct and measurable verbal criteria of legality which essentially stress values sought by wide segments of society.