

# THE LAWYER IN POLITICS

J. R. MALLORY\*

OBSERVERS from other countries are frequently shocked by things about Canadian politics that we simply take for granted. Frequently foreigners remark on the astonishing number of lawyers in public life. They say something like this: "Everywhere you turn in Canadian affairs the lawyers seem to be in a majority. They fill the House of Commons, they are numerous in the Cabinet, they occupy most of the best posts in the civil service, and even the new field of industrial relations is coming to be a preserve for lawyers. This could not happen in our country. Why do you put up with it?"

This kind of question is hard to answer just because we never think about it ourselves. It is like being asked why men wear neckties. One does, but one is unable to give a ready and reasonable explanation.

An obvious answer would be because lawyers are loved and admired by everybody. But a moment's thought will reveal that such is not the case. In North America the lawyer is ubiquitous, but he is not loved. The number of derogatory nouns, such as "shyster" and "legal eagle" and "mouthpiece", that the American language provides to designate this profession suggests the absence of warm public regard. Indeed the habits of lawyers are not such as to endear them to the public, which is baffled by their language and disturbed by their professional behaviour. Lawyers in court will put on a display of forensic ferocity that will culminate in the enraged contestants' suddenly becoming becalmed and going off arm-in-arm to lunch. Too much like the simulated passion of the professional wrestler, this does not sit well on the stomach of the client, who, with his person or his property in jeopardy, is unable to face the future with such equanimity.

In fact people on this continent have for many years expressed frequent and persistent distrust of lawyers. This attitude has led to an attempt by plain men to write plain law that a plain man could understand at a glance. And plain men, when they get their way, will often go to great lengths to prevent the lawyers from muddling up their purposes. On at least one occasion a provincial administration was so disturbed by the unreliability of lawyers that it elevated a layman to the office of Attorney-General. That was the time when that

\*Associate Professor of Political Science, McGill University.

most complicated of plain men, William Aberhart, found in his own person the only law officer whom he could trust.

And this was no single aberration. The whole of the farmers' movement in western Canada was animated by a distrust of lawyers and professional law makers. The abiding belief of the North American frontier has always been that plain men could make plain law and dispense plain justice better than the professionals. Hence the survival of the lay magistrate—the justice of the peace—and hence the devotion to such legislative gimmicks as the initiative and the referendum.

Likewise the man with the dinner pail has sought the same objective. Labour leaders have tried to gain labour legislation in which lawyers were barred from appearing at arbitration proceedings, and they have tried to work out contract and grievance procedures that avoid at every point the intervention of legal experts. Like the farmers they have an abiding distrust of lawyers and legal procedures. They search constantly for clarity and precision in human relationships without resort to the elaborate apparatus that the legal profession has worked out over the centuries for refining precise meaning out of the complex ore of everyday language.

Yet the lawyers abound. Sit for a while in the gallery of the House of Commons or of a provincial legislative assembly. Here and there a speaker will betray by his dry, didactic manner and his subconscious groping for a blackboard that he is a school teacher who has sought better things. In most cases, however, there is no doubt which profession is suggested by the manner of the legislator. He talks like a lawyer. Very often he looks like one. In fact he probably is one.

You will find lawyers everywhere. The president of the National Hockey League is a lawyer. So is the Commissioner of Professional Baseball. You read in the newspaper of a fire in a lawyer's office in a small Ontario town. You are not surprised to be told that valuable papers were destroyed in the conflagration. Perhaps they are the precious documents that protect the home of Widow Brown or possibly they refer to the claim of Farmer Jones to a disputed piece of land? But no, the loss—and a serious loss it is—is the loss of the records of the Canadian Amateur Hockey Association. How did lawyers get involved in this? It is hard to guess. Perhaps lawyers are the only people who can oversee with a straight face the complicated master-and-servant relationships of that carefree

band of amateurs. At all events here we have the lawyers again.

What accounts for the cloud of lawyers in public life? We can begin to answer the question by noticing that, while lawyers are almost as numerous as the English sparrow in Canada, the lawyer as a politician is common to all Anglo-Saxon countries. Abraham Lincoln was a lawyer. So was David Lloyd George. Seven of the eleven Prime Ministers of Canada have been lawyers, including Macdonald, Laurier, Borden and St. Laurent. To take an example at random, of the twenty members of Mr. King's cabinet in 1945, no less than eleven were lawyers. In the same year seventy-six of the 245 members of the Canadian House of Commons were lawyers. No wonder that Anthony Trollope, in inventing a career politician as the central character of two of his parliamentary novels, chose an Irish barrister.

There are several reasons why lawyers find that politics comes easy. The first reason is connected with the way in which lawyers earn their living. There was a time when politics was the preserve of the aristocracy; like ice hockey, it was once a game that was played only by people with private means, who went into it for the fun of the thing. But this was changed. It was changed in England by the Industrial Revolution, which gave wealth and power to an industrial middle class. From then on political responsibility had to be assumed by men who had also to devote some of their time to making their living. In North America we have never been able to support an aristocracy, so from the beginning politics on this continent has been the business of ordinary men who had to work to pay the grocer.

Running a great community is a complicated business and the people who have to make the decisions need to spend most of their time politicking. Naturally the majority of politicians came to be those people whose businesses could be so arranged that a man could divide his time efficiently between his political career and his business.

The business of the lawyer was ideally suited to this purpose. Much legal work can be done in any spare moment. Compiling a brief, writing an opinion, working out a line of cross-examination have not to be geared to the working hours of school teachers and the operations of shopkeepers. They can be done in the lonely vigil at night in chambers, or in the

solitude of one's garden on a fine Saturday in June. And just as lawyers can adjust their working time to politics so also parliaments have adjusted their working times to lawyers.

In England this articulation was almost perfect, since both Parliament and the Law Courts were situated in London. The allocation of parliamentary time was once no doubt set for the convenience of the social and eating habits of gentlemen, but these ancient arrangements have turned out to be equally suitable for lawyers. The House of Commons does not sit in the mornings, so the lawyer can get in part at least of his day in court. By skipping prayers and question time he can spend his whole day in court and still get to the House in time for the main business of the day. Everyone knows that the division bells will not ring before tea on a serious issue, while most of the debates as well as the votes on important issues will take place in the late afternoon and through the evening. The English lawyer could be a politician without seriously neglecting his affairs. In this he had an enormous advantage over the manufacturer in Birmingham or the farmer in Cumberland.

While it is true that this particular advantage of English parliamentary life has not accrued to Canadian lawyers, their advantage over people in other occupations still remains marked. No doubt the average lawyer from Lloydminster or Amherst will not find much legal business in Ottawa, but since Parliament sits for not more than half the year he can still spend a good part of his time catching up on his practice. Legal business is not so closely tied to regular time intervals as the manufacture of woollen underwear or the planting of grain.

Since we have no leisure class to carry on politics as a life work we must turn to those groups who can most easily spare the time from their work for political activity. In this the lawyers have an advantage over most other members of the community. Indeed the lawyer can, without damage to the interest of either the public or his constituents, even enhance his income as a result of his political affiliation. Governments have much part-time legal work to be done, from representing the Crown in court to official posts such as court clerkships. These are tasks that any competent lawyer can do, and in most cases are things that must be done by lawyers in a particular locality. It is not surprising that governments help to ease the financial burdens of their legislative supporters by a judicious distribution of these appointments.

This has become a natural and really quite harmless aspect of Canadian public life. So much is this the case that if the young student, full of ambition and a desire to hear the sound of his own voice, expresses a desire to enter law as a career the wise parent need only offer one piece of advice. He will advise the young man to pick his political party with care. He will advise him either to attach himself to a majority party that is a going concern in his constituency or to gamble on devoting his services to an opposition party with a future in his part of the world. Not only can grateful governments bestow retainers and fees, but they also have in gift the silk gown of the K. C. and the even richer garments of the judge.

There is yet another and more fundamental reason why in the Anglo-Saxon world the lawyer is drawn into politics. Not only is he by occupation the most fitted to survive the interruptions of business, which are a part of a political career, he is also superbly fitted by training to represent his constituents in a legislature. The majority of men are not articulate. They know in a general way what kind of world they want to live in, but have not the training to give their objectives precise expression. Representative government is a device by which everybody has a share in the formulation of policy, but the expert job of translating general aims into concrete terms is done by institutions like legislatures and political parties.

It is the function of the representative to give expression to the needs of his constituents. Now, the lawyer is by profession a representative of his clients, and their advocate. He is trained to make a case and to put it forward. Hence the role of the politician in formulating objectives and in pressing them on other men comes easily to him by nature and by training. If one regards the member of parliament as a spokesman of his constituents one can see the natural advantage possessed by the lawyer in competition for political leadership with men in callings that do not require the special aptitudes that he is bound to possess.

The emergence of the modern quasi-collective state has increased the value of the legal training and experience of the lawyer in politics. The modern state is engaged in framing numerous and complex rules conferring rights and obligations on all members of the community. These rules are, by their nature, impersonal and general. They are made to fit the av-

erage situation. But all men are not average. If even a small percentage of individuals are in abnormal circumstances not contemplated by the law the number of people involved may nevertheless be numerically large. Suppose the government enacts an old age pension payable to about a million individuals over the age of seventy. This would seem to be simple and straightforward. Everybody should know whether such a law affected him and when it did so. But is this the case? An obvious condition of eligibility is that applicants should be able to furnish proof of age. Perhaps ninety-five per cent of the individuals affected will have no difficulty in proving their age since they possess birth certificates, passports, family Bibles, or other acceptable evidence. But what about the people who were born before the compulsory registration of births, who may well have been born in those heroic days without an attending physician? Can they, at the age of seventy, produce witnesses who were present on their natal occasion? There may be fifty thousand such people. It is true that rules can be framed to take care of them, but this kind of situation is happening all the time. The cabinet, through Parliament, is constantly making laws that either confer benefits or impose obligations on large numbers of people, not as individuals, but as a class. These laws are framed to fit the normal case, and modified to fit as many anomalies as can reasonably be anticipated. But the special cases are numerous.

All men are not equally literate, or intelligent, or foresighted. An income tax form intelligible in the Department of National Revenue may puzzle a great many taxpayers. As the environment of the citizen becomes more complex the need for some kind of professional "fixer" becomes greater all the time. People more and more need expert help in finding out what their obligations and their rights are, and even in having someone whose job it is to listen patiently to their grievances. If the law is to remain human, if the state can achieve its purposes without forcing all, uncomprehending, through a common pattern, the individual needs a sort of "people's friend" who is able to take up the difficult cases and to bring the hardships to light.

While all this has been happening, Parliament has changed its place in the system considerably. No longer is the House of Commons the main centre of law making. Much of today's

law is either in the form of complex statutes, prepared by civil servants, that the average member of parliament could not debate intelligently even if there was time to debate them all. The considerable increase in the volume of legislation has meant that Parliament has less time to deal with individual bills and has also meant that much law is made not by act of parliament but by the more flexible technique of order-in-council.

All this development has greatly diminished the importance of the House of Commons as a legislature. It has not however, necessarily decreased the importance of the Member of Parliament. The function of Parliament today is not so much to be the legislature as to be the point of contact between the government and the public—the point at which the neat objectives of general rules must be adjusted to the peculiarities of individuals. The Member of Parliament is the spokesman of his constituents. John Stuart Mill, it will be remembered, described Parliament as the nation's congress of opinions and its committee of grievances. It is the second function that has become important today.

In all this the lawyer is suited by training and background to function efficiently. He is by profession a "fixer". He begins by having his client sit down and tell him what the trouble is. He works from the assumption that every problem is different. His business in life is the adjustment of conflicts of rights by negotiation and compromise.

So also is the member of parliament primarily a fixer. He represents a particular part of the country, and not the country as a whole. He is the intermediary between the individuals in his constituency and the collective personality of the country as a whole. He is the advocate of his constituents. It is not surprising therefore that the lawyer tends to do well as a politician. He has, on the one hand, the aptitude and, on the other, the ability to adjust his method of making a living to the necessities of a political career.

This is not to say that other groups and other kinds of people do not make good politicians. There are other people, like school teachers, and journalists, and even clergymen, who are in the business of dealing in words and who very often are accustomed to deal with people. It should not be thought that politics is the preserve of lawyers alone. But the lawyer has the advantage over these other people in the adaptability of his occupation to political life. Other people cannot so

easily enter politics without serious personal sacrifice of their normal vocation. This natural advantage and the fact that lawyers make up perhaps an unduly large part of the educated middle class cause lawyers to be very numerous in Canadian public life. The lawyer's occupation gives him an unfair lead over other groups and accounts in large part for the disproportionate numbers of lawyers compared to similarly qualified groups. Even without this head start we should admit that the special qualities of the lawyer would give him a large and important place in public life.