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The Cravath Firm and Its Predecessors, 1819-1948

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REVIEWS

ERRATUM

IN the review of UNITED STATES CODE ANNOTATED, TITLE 15, SECS. 81-1113, by Ralph S. Brown, 58 YALE LAW JOURNAL 511, the first two sentences should read:

A truly "unusual feature . . . is the practical and scholarly article in this volume, by Daphney Roberts on the Lanham Act, which revised the trade-mark laws effective July 5, 1947." The author, whose name is correctly spelled "Daphne Robert" at the beginning of her twenty-three page "Commentary" is described as "a recognized national authority on trade-marks."

The errors herewith corrected were solely the result of fallibility in the editorial process; the JOURNAL extends its apologies to the author of the review.

THE CRAVATH FIRM AND ITS PREDECESSORS, 1819-1948. By Robert T. Swaine. 2 Vols. New York: Privately Printed, The Ad Press, 1946-48. Vol I. pp. xxi, 782. Vol. II, pp. xxvii, 798.

THE histories of law firms, like those of villages or regiments, are generally too parochial to be of much use. Occasionally some one writes a piece of local history which has value not only as a deposit of raw information, to be mined through a heavy layer of reverent prose, but as a work of genuine historical insight. Mr. Swaine's account of his famous law firm has already become a classic of its type. The *Cravath Firm* makes a substantial and original contribution to our understanding of American law, the American economy, and the life of the American community. Originally written for members and former members of the firm, it should be made generally available, perhaps in a one volume edition minimizing biographical detail, to all who are interested in understanding how the twentieth century developed from the nineteenth.

The Cravath Firm is primarily a study in the evolution of a modern Big-City, Big-Business, Big-League law firm. But it is a good deal more. It presents the materials for a critical analysis of the changing role of the lawyer in relation to modern business and government.¹ With considerable

1. Especially when supplemented by Mr. Swaine's carefully considered article, "Impact of Big Business on the Profession: An Answer to Critics of the Modern Bar," 35 A.B.A.J. 89 (1949), which brings together reflections on the public responsibilities of lawyers and law schools scattered throughout his two volumes. It should be read as the concluding chapter of his work. In tone it is more balanced than many of the comments in the book itself, and takes a rather less heated view of the development of contemporary social legislation.

frankness it sketches the personalities and the major professional work of the men who led the firm: the Blatchfords and the Swards, in the days when the firm was rooted both in New York City and in up-state Auburn; Griswold, Da Costa, Guthrie, Morawetz, Cravath and the elder Henderson, to mention only the dead. Written with crisp precision, and not a little humor, *The Cravath Firm* fills in the background and the unrecorded substance of many celebrated lawsuits, and of many more negotiations of great importance to the growth of contemporary business institutions and practices. It succeeds remarkably in conveying a sense of the manner of men these lawyers were, and of the way in which they worked, lived and took their (occasional) ease.

Naturally, the most important question raised by Mr. Swaine's book is whether the modern Big Law Firm is a good thing. Chief Justice Stone and others have expressed their doubts. And there is always a popular suspicion of lawyers, going back at least to Jack Cade, which is more readily roused by great Wall Street law firms than by individual lawyers and their individual "cleverness," however conspicuous.

Mr. Swaine's study is not a polemic but a history. Like all history, however, it inevitably has an hypothesis. And, as a good historian, Mr. Swaine meets the obligation to make his hypothesis clear. He does not smuggle his theory in between the lines, nor does he pretend that it doesn't exist.

Mr. Swaine's thesis is that the great modern law firm is the inevitable counterpart of business and banking on a national and an international scale. In a business system which has grown in complexity as well as in size, law firms competent to carry through major transactions or major law suits must have a considerable staff. The business law of the United States has become almost unbearably elaborate. An effective law firm must therefore be equipped with specialists and working parties—tax men, labor men, accountants, economists, anti-trust experts, trial lawyers, business-getters, scholars, negotiators; men with political and governmental know-how; and often also with men of outstanding personality whose reputation, either within the profession or with the public, constitutes a firm asset. *The Cravath Firm* pictures the process by which the big firms developed, and by their strength and reputation became bigger. Unfortunately it cannot present the materials from which one could determine whether such firms actually earn more than their smaller fellows, and whether their members live fuller, more influential or more independent lives.

Of itself, a great law firm is neither moral nor immoral. Its members are, if anything, less likely to lose their freedom of judgment than lawyers dependent on a single client. What standards, however, have governed their work, and govern their work today? To what extent are they mere technical servants of their clients? Can they (or indeed should they) bring their experience and judgment to bear in the formulation of advice which is wise from the point of view of the community as a whole, as distinguished from that of the special interests they serve? Could lawyers who kept such a

standard also keep their clients? Is a rule of professional conduct which puts great emphasis on the public responsibility of the lawyer too much to expect even of strong-minded and independent men? After all, though many big business lawyers were and are highly individualistic personalities, they are all mortal lawyers, subject to the normal and on the whole beneficent psychological process which forces most attorneys to believe strongly in the righteousness of their client's case. In Mr. Swaine's gallery of colorful and devoted men, there are very few—perhaps only Cotton—who were capable of real detachment towards the work they were doing.

The history of the Cravath firm epitomizes the revolutionary shift which has taken place in all our thinking about the social limits on business freedom. The bar is inevitably conservative, and the part of the bar representing considerable wealth finds it hard to avoid reaction, at least on issues related to its own work. In the period between the Civil War and World War I, it was rare for a corporate lawyer to conceive of his job as more than the creation of tools which would permit his clients to do what they wanted. "The corporate executives and bankers of the old days usually resented any political, social or economic advice from their counsel as beyond the proper field of the lawyer."²

One may doubt whether Mr. Swaine's comment is the whole story. In the palmy decades of business growth which followed the Civil War, there was little possibility for a difference of view between the big business client and his lawyer. Cut off from the currents of public opinion and politics which were a vital part of the lives of Seward and Blatchford, the lawyers who commanded the confidence of business at the end of the century were not afflicted with doubts about their course, nor with much sympathy for social reform. Their job was difficult, creative and exciting. They were architects of new forms, and new empires. That was enough for a man to do, without worrying about issues of ultimate policy. Thus Guthrie could with deep faith write a defense of the Pinkertons at Homestead which shocked the *Herald*, although apparently Mr. Swaine retains a certain lurking sympathy for its principle.³

In the middle of the twentieth century, however, the world of business is far less stable and assured. Both business leaders and their lawyers are far more conscious of the pace of social change, and of the new and complex dimension which social change has added to all business planning. Intelligent conservatism understands that abuses of power, and failures to utilize power in the general interest, are the real sources of social protest, and of political movements which can threaten the continuity of our social development.

"Today the American lawyer deals with the problems of his business clients on a much broader basis, considers substance as more

2. Swaine, *supra* note 1, at 171. See also 1 SWAINE, THE CRAVATH FIRM 667; 2 *Id.*, at 131.

3. 1 *Id.* at 483-4.

important than form and attempts to relate legal problems to their political, economic and social implications. The teaching of our law schools is accentuating this broadening function of the modern lawyer. The clients of today also generally recognize the interrelation of legal questions with political, economic and social questions

“Big Business, Big Labor and Big Government are all here to stay. But in the gigantic concentrated power of their aggregate collectivism there is real danger that they may be leading us along the road to state collectivism. If we believe that such an end would be a tragedy, and that individual freedom of opportunity in a system of private enterprise should be maintained, it behooves all of us who render ‘specialized service to business and finance’ to seek such solutions of the legal problems of our clients as are compatible with changing social concepts and as will avoid the abuses of economic power to which our profession too often contributed in past decades.”⁴

This conception of the business lawyer's responsibility is not an easy one to maintain. Most lawyers, like most men in other walks of life, cannot function on so detached a level. On the other hand, there have always been business men and business lawyers capable of statesmanlike leadership within their own realms, as well as of last-ditch fighting against all change. An occasional lawyer for big business reports that he has more difficulties persuading his clients to accept the legitimate claims of government than in persuading government officials to appreciate the legitimate claims of his clients. But such a view of the lawyer's job is still far too rare.

Nonetheless, the conception of the lawyer as an intermediary between business and the public, educating both sides in the general interest of compromise, mediation and progress is a challenging ideal. In articulating it, Mr. Swaine comes extraordinarily close to the principle of a lawyer's obligation which Brandeis defended a generation ago. If a substantial part of the leadership of the bar can school itself in Mr. Swaine's moral, and accept its challenge in works as well as in faith, our chances of orderly social development will be greatly improved. Societies find themselves in revolutionary predicaments when there is too wide a gap between the ideas and aspirations of different groups and classes of the community. The normal pattern of healthy social competition can become uncontrollably violent if dominant groups fail to meet their responsibilities, or to compromise with insistent and generally agreed demands for social change. The secret of the continuity in British life has been the centuries-old willingness of the British ruling classes to understand and finally to accept the ambitions of other classes as they gained in strength.

In this respect the state of American opinion today is far more encouraging than it was fifteen years ago. The area of agreement on policy between the

4. Swaine, *supra* note 1, at 171.

political parties, and between those who speak for business, labor and government is far greater on essentials than was the case during the tempestuous early administrations of Franklin D. Roosevelt. The right of labor to organize free trade unions is no longer resisted with Pinkertons, spies or goons. The principle of regulating the securities markets and a good many other aspects of business life is accepted without debate. The broad idea of the Employment Act of 1946 is supported, apparently without notable dissent. The impact of the National Association of Manufacturers is tempered by the work of the Committee for Economic Development, and there are signs of progress even in the American Bar Association. There is plenty of disagreement about particulars. But the vigor of such disagreements, often explosively stated, should not be allowed to conceal the fact that there is a large zone of common understanding and common purpose about the respective roles of business, government and labor in American life.

The business bar can perform an immense service, both for its clients and for the community, if its members can effectively keep business thinking abreast of events, and business policy within reasonable reach of public aspiration. The lawyers of business are well placed and well equipped to carry out that function of persuasion. Occasionally a Disraeli, a Bismarck or a Theodore Roosevelt can even bring the thinking of "conservative" groups to anticipate the emergent problems of society, and to lead in their solution. Leadership on that level may appear from time to time, but it cannot be expected as a matter of course. It would be a great deal if the lawyers who specialize in the problems of business and finance accepted it as part of their professional responsibility to help bridge the gaps of interest and ideas which divide society. In our threatened world, any lesser conception of the lawyer's job is hazardous to the point of irresponsibility.

One can trace the growth of this dynamic conception in Mr. Swaine's study. The pressures on Mr. Swaine and his partners are conspicuously different from those which Guthrie and Cravath faced. There are new participants and new ideas in the process of railroad reorganization, the flotation of securities, the promotion of enterprises and the development of business policies towards prices, patents, industry relations and labor. Mr. Swaine calls for an attitude towards these and like problems which would have shocked some of his worthy predecessors. His is an attitude of enlightened, if still decidedly conservative self-interest, which is the antithesis of the Liberty League position of the middle 'thirties. The next volume of his history may tell us how well such ideas can be translated from the level of abstraction into working reality. The entire community has a stake in the acceptance and the practical fulfillment of his views.

So far this review has been concerned with a process of change in which the whole corporate bar participated. But Mr. Swaine's book is of great interest also for its portrayal of a particular firm, its people, its law suits and its policies. While most of the cases and negotiations he reports concern corporate, financial and industrial problems of high seriousness, there is a

good deal of well-written drama about spectacular will contests, forgery trials and human frailty in general. There is much too about the life and organization of the law firm. The Cravath firm was a pioneer in the practice of recruiting large numbers of young men from the law schools, many of whom were expected to go on to other careers. In a sense this policy has made the big firms valuable graduate schools in law, particularly desirable at a time when law school faculties are staffed more and more by full-time teachers, rather than by practicing lawyers. The Cravath policy has given the big firms some useful apprentices, and a wide choice of permanent personnel. And it has provided large numbers of lawyers with an unrivalled chance to cap their academic work with an internship at the highest level of professional training.⁵

What will these great legal institutions be like twenty years from now? What kind of lawyers will then command the loyalty of business and financial clients, and the respect of the profession? Cravath said in 1920, of the qualities required for success at the bar, that:

"Brilliant intellectual powers are not essential. Too much imagination, too much wit, too great cleverness, too facile fluency, if not leavened by a sound sense of proportion are quite as likely to impede success as to promote it. The best clients are apt to be afraid of those qualities. They want as their counsel a man who is primarily honest, safe, sound and steady."⁶

This was doubtless shrewd insight for a stable society, if not altogether fair to some of his partners. In a world where disaster may be the price of misjudging the forces of social change, will business men be led by their instinct of self-preservation to choose lawyers of imagination, or even of brilliance, suspect as such qualities commonly are? It remains to be seen. Surely business and the business bar will need counsel of imagination and brilliance, resting on a broad understanding of society and its development, as well as a sound sense of proportion, if it is to retain even its present qualified position of leadership in our community.

EUGENE V. ROSTOW†

A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750. THE MOVEMENT FOR REFORM, 1750-1833. By Leon Radzinowics. London and New York: The Macmillan Company, 1948. Pp. xxiv, 853.

IN this first of several projected volumes of his *History of English Criminal Law* Professor Radzinowics has, I believe, contributed a classic to Anglo-American legal literature. Its quality will surprise none acquainted

5. Perhaps the reviewer should disclose that he had the pleasure and benefit of this process for a short time.

6. 2 SWAINE, THE CRAVATH FIRM 266.

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