

Rodell: Woe unto You, Lawyers!

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Recommended Citation

Leo Herzel, *Rodell: Woe unto You, Lawyers!*, 7 DePaul L. Rev. 145 (1957)

Available at: <https://via.library.depaul.edu/law-review/vol7/iss1/19>

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but also in the dissenting opinion of Mr. Justice Douglas and Mr. Justice Black in *Ullman v. United States*,¹¹ where the Court sustained the most recent federal immunity statute. Mr. Justice Douglas expressed his concern that the immunity statute could not protect the witness from the infamy which "the government . . . brings on the head of the witness when it compels disclosure."¹² Professor Hook argues that this is exactly the kind of infamy against which the Fifth Amendment is not supposed to protect a witness and against which it cannot protect him, so long as the public retains its robust common sense, uncorrupted by Dean Griswold and the judges who reflect his views. On the particular point in issue, I believe that Professor Hook is right and Mr. Justice Douglas wrong. However, I suspect that the danger of corruption, as the majority decision in the *Ullman* case itself illustrates, is much less than Professor Hook fears. The main burden of Dean Griswold's argument was that a justifiable invocation of the privilege may be completely consistent with innocence of any wrong-doing. This is a proposition which Professor Hook cannot effectively refute and which is still worth remembering. On the other hand, it is also true that some people, perhaps even some judges, have been so carried away by the force of the Dean's argument, that they have come to harbor the notion that it is somehow immoral or unconstitutional to draw any inferences at all from the invocation of the privilege. For those inclined to take this additional step, Professor Hook's analysis should provide a valuable antidote.

NATHANIEL L. NATHANSON*

¹¹ 350 U.S. 422 (1956).

¹² *Ibid.*, at 454.

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Woe unto You, Lawyers! By FRED RODELL. 2d ed., New York: Pageant Press, 1957. Pp. ix, 184. \$3.50.

Woe unto You, Lawyers! was first published in 1939 by Reynal & Hitchcock. The author became Professor of Law at the Yale Law School in the same year, although there was probably no connection between the two events. Professor Rodell explains in his foreword to this new edition that the book has been unavailable for more than a decade although there is still a demand and a very considerable need for it. The present edition was published to supply this demand and need. The text is identical with the first edition except for the author's foreword to the new edition and an introduction by Judge Jerome N. Frank, in which Judge Frank compares Rodell, unfavorably, with Jeremy Bentham.

The legal trade "is nothing but a high-class racket" says Professor Rodell. The concepts of the law such as consideration, and offer and acceptance, are nebulous; the rules of the law are too abstract to be applied with any useful degree of certainty to specific legal situations as they arise. The lawyer's "racket" is that he exploits the situation either knowingly or unknowingly instead of throwing the whole job up as hopeless.

Professor Rodell's suggestion is to throw the whole job up as hopeless. He would go straight after justice in the settlement of any specific question that comes up, since certainty in the law is impossible anyway. However, he realizes that in some situations people have different ideas of what is fair and right. In

such instances written laws *in plain language* enacted by democratic processes should contain, in so far as possible, the answer. Justice Holmes' dissents are approved as examples of "plain English" and in one place the author quotes approvingly one of Holmes' plain spoken utterances: "The common law is not a brooding omnipresence in the sky," which, as you might guess, is also the author's view.

Professor Rodell does not say how extensive he thinks such written laws would have to be or how they would avoid the problem of abstraction. He gives one chilling specific example. He complains that statutes which now provide that first degree murder is punishable by death are so abstract that they give to the fact finder virtually complete discretion to determine which killings are punishable by death. His substitute faces up boldly to this difficulty:

When a court (whether judge or jury or both, or some other kind of a deciding body) finds that one person has killed another person and believes that the killer deserves to be electrocuted, the court may order that he be electrocuted.¹

Putting aside any temptation toward macabre humor which this little piece of draftsmanship induces, there are still some questions which it leaves open. Is this an example of a situation where we could all agree on a just solution, or is it an example of the new code in a situation where we could not agree? If this is, as it seems to be, a situation where agreement is impossible, I would like to hear about some where we could all agree. It looks to me as though this proposed code would be either far more abstract than existing law or far more detailed and complicated and a little less abstract.

Naturally, *we* would resist and *we* would have to be eliminated. His last chapter, "Let's Lay Down the Law," begins on this note: "The first thing we do, let's kill all the lawyers. (William Shakespeare, Henry VI, Part II)." In his first chapter, Professor Rodell fondly recalls a bit of wisdom from Harold Laski: "In every revolution the lawyers lead the way to the guillotine or firing squad." Probably, as the saying goes, Harold Laski's bright eyes used to twinkle shyly behind his round glasses when he would impart this bit of learning. Could Fred Rodell's eyes be twinkling? In a 1939 review of the book² Arthur Garfield Hayes, who was no stranger to the baroque, pondered in his last paragraph: "I know Fred Rodell. He is a great kidder. I wonder if he is taking us for a ride. I trust my language is not too legalistic, but I have been trained as a lawyer." The author's foreword to the new edition contains the answer to this question: "No."

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¹ P. 174.

² 49 Yale L.J. 974, 976 (1940).

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Handbook of Modern Equity. By WILLIAM Q. DE FUNIAK. 2d ed. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1956. Pp. ii, 269. \$4.75.

A favorable specimen of the author's manner is found in the first chapter, "Origin and Nature of Equity." He states:

I am in no better position than other writers to give a brief definition which will then permit me to embark on a presentation of modern equity, which is the purpose of this book. To understand modern equity and its application requires a knowledge of the origin and development of equity. These latter [*sic*] will be presented hereafter as concisely as possible to the probable sacrifice of what may constitute scholarship. In the meantime, the reader will have to be content with the statement, however inade-