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LEGAL EDUCATION AND THE FAILURE OF THE BAR TO PERFORM ITS PUBLIC DUTIES.*

The function of a profession as such is to perform some service vital to the well-being of the community. The function of the legal profession is to administer justice. Whether at any particular time in any particular country that service is being efficiently performed must be tested by the answer of the facts to three questions. First, Are the ethical standards of the members of the profession clear and tending to improve? Second, Does the law, whether expressed in the development of "cases" or legislation tend to correspond to the felt sense of right in the community? Third, Is the law administered with reasonable certainty and dispatch?

If the first question is answered in the negative, it means that a large and increasing number of the profession are preying on the weaker members of the community. If the law does not satisfy the community's ideal of justice, class hatred and the instability of the whole social organization

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is the result; the evils which flow from uncertain or long-delayed administration of the law are of a similar character.

How does our profession answer these three tests of efficiency? Can any of us say that taken as a whole we have clear-cut ideals of professional right conduct, and purge ourselves of those who fail to live up to proper professional standards? The universal presence among us of the ambulance-chaser, unrebuked by our courts, and the fact that we practically never disbar a lawyer except after he has been indicted and convicted for a criminal offense, are significant commentaries on our ethical standards and the way in which we guard what we are pleased to call the traditions of the profession. The question is not whether the bar is worse from a moral point of view than it was; it is enough to make the answer we must give to the first test of efficiency doubtful, that we do not insist upon a high standard of conduct among our members, and that in this respect the observer finds few if any signs of improvement.

On the other hand, if we turn to the law as found in our decided cases, we can with pardonable pride maintain that our courts meet new conditions as they arise with ability. For instance, the way in which legal questions arising out of trade- and labor-disputes have been dealt with shows that we do possess the capacity to mold our common law to new conditions. In this respect I believe the present compares favorably with any period of English or American legal history. In legislation on legal subjects we have not as a profession shown any marked ability either to initiate useful reforms in substantive law or to express the existing law in statutory form. Whether a beneficial civil code can be formed is doubtful and it is therefore no reflection on the profession that, with one or possibly two exceptions, the attempts at such codification have apparently failed to prove satisfactory; but it may fairly be a subject of adverse comment that in the last fifty years we have not in America initiated a single legislative reform in substantive law. The great legislative reform in our substantive law in the last century—the change in the legal status of married women—was largely copied in its various stages

from Acts of Parliament. The same is true of our negotiable-instrument law. The fact that we have reached the stage of being able to suggest to our legislature that they follow legislation on private rights adopted with advantage by other countries, though nothing to be proud of, is in itself a good sign.

On the side of the administration of the law, both civil and criminal, our failure to perform the service which the community may of right expect is almost complete. The two fatal words "uncertainty," "delay" are interwoven in all our methods of doing legal business. The practical result of our antiquated systems in the complicated conditions of our social and business life would disgrace the early part of the nineteenth century, when practically all business was performed in a cumbersome way, but to a modern business man, accustomed to modern and efficient methods of dispatching business, the delays and uncertainties of our administration of the law have become intolerable, while at the same time affording a sure refuge to the unscrupulous. In view of the just reputation of our people for quickness and efficiency, this grotesque condition of the administration of justice would be laughable if it were not so serious. The absurdities of the administration of our criminal law have allowed the hysteria which exists in a more or less positive form in every community to find outward expression in the crime of lynching: the delay of the civil law, tending to deprive the economical work of justice, has been a potent factor in creating that widespread disrespect for law, and distrust of courts, which render it increasingly difficult for us to meet the new and complicated problems of our social life.

Though the answers to the tests of the way in which the legal profession is performing its service to our communities are not all unfavorable, taken as a whole the word *failure* predominates. Disguise it as we may, our profession is not administering justice with efficiency.

If we look more closely at the lines along which these failures occur, we will find that it is in what one may call the public duties of the profession, rather than in its private

duties. For instance, the lawyer as an individual practitioner performs his whole duty, if, taking existing methods of doing legal business, he conducts his client's case with skill. The judge performs his whole duty to the parties before him, if he properly applies to their case the existing principles of law. But on the profession as a whole falls the duty of providing methods of practice which result in the quick and certain dispatch of legal business. This last is an example of what we may call the public duty of the profession, as distinguished from the private duty of individual members. The public duty is a duty which cannot be performed by the individual lawyer in the course of his practice, but must be performed, if at all, by associate action. My point is, that it is in associate action on legal-public matters that we fail, rather than in those duties which depend solely on our own efforts. The public do not generally complain of poor lawyers, but of the delays and uncertainties of the law. The common law, as developed by our courts, each acting separately, meets new situations as they arise, but where concerted action to effect legislation is demanded we fail. Taken as a whole the conduct of individual members of the bar represents a fairly high standard, yet when that standard is violated by individuals there is not, except in extreme cases, any associate action taken to discipline the offender. In short, in a world marked for increasing efficiency in organization, the lawyers of our country exhibit the anomalous spectacle of a body of persons apparently incapable of efficient coöperation for public ends.

When the individual makes a failure of his life, he usually blames external conditions—The fates were against him, if that which happened to Jones had happened to him, he, like Jones, would have been a great success.

So with the apologists for the failure of our profession to perform its appointed work. Take our failure to force individual lawyers to conform to a proper ethical standard. It is said that when our cities were small it was comparatively easy for the leaders of the profession to come into contact with all members in active practice, and hold a strict rein over their conduct, but that to-day, in cities like New

York, Chicago, and Philadelphia, this is impossible. The explanation sounds plausible, but London is nearly as large as all those three cities combined, and the supervision of the Bar over their individual members down to the smallest detail of professional conduct is most strict. It is true that the increase in the numbers of the profession may require different machinery to deal with cases of improper professional conduct; but is not the ability to meet new conditions a test of efficiency?

Again, it is said that the delays of the civil law are due to the complicated nature of our business transactions. But do not these delays occur in the simplest cases? Our business transactions are no more complicated than those of England, and yet the English have succeeded in devising a system which disposes of legal business with reasonable celerity. But I can hear the apologist replying that England with a single Bar can carry out reforms, but for us, who are merely a collection of innumerable State and County Bars, it is impossible. It may be admitted that the fact that we do not have a single system of courts, and therefore necessarily have many Bars, renders it difficult to adopt a single plan to expedite justice, or deal with other professional problems, but the almost universal failure of the Bar of any one of our States to adopt any reform (which goes to the root of the causes of the delays and uncertainties of our legal proceedings) is not explained by the fact that there cannot be a Bar of the United States in the sense that there is an English Bar.

Again it is said that our country is new, and that our problems are therefore more difficult. Yet our country can only properly be said to be new in spots, and the failure to maintain professional standards and expedite legal business is as great, if not greater, in the Eastern than in the Western States. England, too, has colonies in which all the conditions of a new country exist, yet it is true of these colonies, as it is of England, that the people are satisfied with the celerity of administration of the law, both civil and criminal. In the colonies, as in England, in the last seventy-five years not a single life has been sacrificed to mob vio-

lence, a fact which bears eloquent tribute to the confidence of the people in the courts.

Lastly, if you will talk to a lawyer on the reasons which make for greater efficiency in the administration of the law in England, he will usually point to the high salaries of English judges, and the aristocratic origin of the English Barristers as a class, as the true cause of efficiency on the other side of the water. To one who doubts, as I do not, the ability of a democracy to govern, this last reason appeals with almost conclusive force; yet, even to the admirer of aristocracies, the reason given must disappear on examination. English judges were better paid relatively to the standard of the rest of the community in the days of Lord Eldon than they are now; but, the crying evil of the chancery of that day was the very delays which are the worst features of our own legal administration. Again the Bar of England never was distinctly aristocratic. It is less so now than ever before. Membership in it is open to any one; English citizenship is not even required. One of the leading barristers to-day is an American citizen. Indeed the efficiency of the administration of law in England seems to have increased as the Bar has become more and more democratic. If an aristocratic bar meant efficiency, why does not an aristocratic army mean efficiency? If the national administration of democratic America compares, as I think it does, favorably with that of England, why not our administration of law? Our medical profession is forging ahead of their English competitors; why do we of the law lag behind?

Though an individual when he makes a failure of his life turns for an explanation to external conditions, the real root of the matter usually lies in his character—not necessarily in his bad character, but in the fact that his character does not conform to the necessities of his external circumstances. So it is with any group of men, as the members of the legal profession. Our failure to meet with efficiency what I have called our public duties is not due to external conditions, but to our character as professional men. By this " character " I mean our ideals of our professional duty.

The reputable American lawyer, if he is typical of his class, has an ideal of correct conduct toward clients, toward the court, and toward the other members of the Bar. But here his ideals usually end. He is blind to any public duty of the profession toward the community as a whole. Even his comparatively feeble efforts to enforce some standard of professional conduct, or to relieve some local delays in the administration of justice by the establishment of new courts, seem to be largely dictated by the feeling that a Bar composed in part of criminals, or courts having a great congestion of business, increase, for decent lawyers, the difficulties of practice. Interest in the public welfare is not, apparently, a real factor. This blindness to the existence of public obligations is so general, and so absolute, that even in this presence I may be pardoned for giving a few illustrations.

Besides this American Bar Association, there is a State Bar Association in the majority of the States, and innumerable county organizations. But as far as I can ascertain no one of them ever appointed a committee to examine any question relating to the care of criminals. Even in efforts to deal with the trial and punishment of juvenile offenders the community has gone unaided by any effort on the part of these numerous legal organizations. The most unobservant person who enters at all into the life of the community in which he lives must have had forced upon his notice the growing dissatisfaction with the delays of justice. The crime of lynching has become a menace to the stability of the whole administration of the criminal law. Other common law countries, England and her colonies, have made great improvements in their legal administration, and have been working successfully under those improvements for more than thirty years. While these facts have been pointed out by individuals at our meetings, and while occasionally committees have been appointed to investigate the causes of the delays in the administration of justice, we cannot say that a single important association has, as a body, seriously taken up the work of improving the administration of the law.

Or, again, no one of us doubts that the poorest classes

of the community, especially the very poor in our large cities, are as a class largely denied justice, partly through their own ignorance, but in a still greater degree by the class of attorneys who take advantage of that ignorance. I am well aware of the practical difficulties in the way of the establishment and maintenance of what is called "legal aid." Whether the problem presented by the administration of justice among the very poor should be met as they meet it on the Continent of Europe, or on lines developed by such societies as the New York or Philadelphia Legal Aid Societies, is for my present purpose immaterial. The striking fact remains that the community has to face this problem of legal administration without the aid of any legal professional organization. It never occurs to our Bar Association that this is their problem, and that they owe a duty to the community to try to solve it.

Instances might be multiplied, but I think those that I have given prove my point, which is, that our failure as a profession to perform what I have designated our public duties is due principally, not to external conditions, but to a total absence of any idea that there exists any obligation on the part of the Bar toward the community. As a profession we lack any idea of responsibility which cannot be classified as a duty toward a court, a client, or a fellow-lawyer. Lawyers have as a rule a real sense of a duty toward clients, but little or no sense whatever of any duty toward the community as a whole for the better administration of justice. We are in exactly the position to-day that the medical profession would be in if they assumed that action by medical societies should as a matter of course be confined to problems connected with the cure of disease, and that they had nothing to do as organizations with the prevention of disease by communities, and that there was no position of leadership which it was their duty to assume, in matters pertaining to the general health of the community.

The same medical profession which a hundred years ago was recognized as a profession only to cast a shadow on the social position of those that followed it, is to-day performing its functions to the satisfaction of the community. When

the history of the present time comes to be written it is likely that the reforms and advances in the science of the protection of communities from disease will be cited as one of its chief glories. Why this success in the performance of public duties where we are failing? It is not in individual character or ability. Man for man we are as able as they, and as moral as they. Is it not rather that they have developed, in a way we have not developed, an ideal of communal responsibility? Or, again, do not our English brethren of Bench and Bar perform the function of the administration of justice better than we do, and to the entire satisfaction of the community, not because they are better lawyers but because they possess, in a degree we do not, a sense that they are members of a profession which has active public duties to perform?

Assuming that I am right in saying that we are failing as a profession in this country in the performance of services which the community has a right to expect that we will perform, and that this failure is along the line of our public, as distinguished from our private duties; and furthermore, assuming that this failure to perform our obligations to the community as a whole is due to the almost total absence of any conception that we have any duties of this character, it becomes a task of no great difficulty to show that the absence of any feeling of public responsibility among the members of our profession is due to defects in our legal education.

We have three systems of legal education in this country —the office system, the night-school system, and the University Law School system. The first needs no explanation. By the night-school system I mean that system which prepares a man for the Bar by having him attend law classes, the requirements being arranged on the assumption that the student pursues some other occupation during the period of his attendance. Many such classes are connected with universities, but this fact does not make the system a university system of instruction under the above classification. By a university system of legal education I mean a system which requires the student to be in residence at a school which

maintains not only class rooms but a library for study; which has not only lectures on law, but a resident corps of men devoting their lives to legal teaching and research, and which demands of their students, by occupying their entire time, exclusive devotion to the work of the school.

It is not my present purpose to go into the relative merits of these three systems from the point of view of the preparation which each gives for the work of a lawyer in the conduct of litigation. My present purpose is to point out that each fails to produce lawyers who come to the work of their profession with any idea that the profession, as such, has public duties to perform. That the office system, and the night-school system, should fail in this respect, seems the inevitable result of the ideals which keep these systems alive. The system which permits a man to come to the Bar after a period of registration in the office of a practitioner of his own selection, is based on the idea that all that lawyers as such need to know are the matters which come up in the private practice of the law. This very conception negatives any idea that the profession has any public duties to perform in the sense in which I have used the word public.

The office system assumes that taken as a whole the profession has nothing to learn; that the skill, knowledge, and morals of the average member of the Bar in active practice leaves nothing to be desired. For it is to be remembered that it is with the average member of the Bar of any community that the office students as a class register, not with the best or the worst. If the average is good in ethical conduct, the student product will in that respect be good. If the ideals of the Bar taken as a whole are low, the ideals of the student product will be low also. As well may a man try to raise himself by his bootstraps as to have a profession elevate itself morally or intellectually by such a system. If, as in England, the student registered in and became at once a part of a strong Bar Association, organized for the purpose of maintaining and uplifting professional standards, then we might expect progressive improvement from generation to generation, at least in moral tone, if not in intellectual equipment. But under the office system, as we know

it in this country, no improvement is possible. The best proof of which statement lies in the fact that while for generations this system has been the recognized system for preparation for the Bar, no marked improvement in morals or efficiency has taken place, if indeed, there has not been, as many contend, a deterioration.

That the night-school system fails to produce a class of men who, however honorable they may be as individuals, fail to grasp the fact that the profession has obligations to the public to perform, is also inevitable. There are many "night schools" created and maintained by charlatans for the fees. Were they all of this class even our illy-organized profession would have prevented their filling the nominal ranks of the profession with their dupes. The system taken as a whole is maintained, however, not by charlatans, but by those who have the interest of the profession sincerely at heart. As a system of legal education the night-school system is a grotesque perversion of what at bottom is an idea on which much of our progress as a nation depends. This is the idea that every man should have a chance to enter any occupation he desires. Here are a host of poor young men. They wish to be lawyers; it is assumed, and doubtless correctly assumed, that many of them will never come to the Bar if they are obliged for three, or even two years, to devote their entire time to legal studies. *Ergo,* some means must be found to get them to Bar without requiring their whole time. If we cannot fit them very well we will do the best we can. And so nearly all our large cities witness overworked lawyers and judges of our highest courts sacrificing sometimes for good pay, but often for little or no compensation, one or more of their evenings each week in order to instruct young men in the rudiments of law, who in the daytime are engaged as stenographers, clerks in government and private employ, and in other occupations. A night school here and there may try to give something not required by the Bar examination of the State in which it is situated, but the very conception which lies at the root of the whole system predestines to failure all such efforts. That conception is: We must not ask of the young

man who desires to be a lawyer too great a sacrifice. The important thing is to get him to the Bar so that he may have a chance.

And may I not say in passing that the idea that every man should have a chance is a good one? Let us hold fast to it. But remember that the chance to which you or I or anyone is entitled is the chance to become as good and useful a member of the community in the line of life which we elect as we are capable of becoming. It is not a right to a chance to become a second-class man when we have it in us to develop into a first-class man. To be specific, we have not the right to a chance to become any kind of a lawyer with any kind of ideals, but a right to a chance to become intellectually the best lawyer we are capable of becoming; and morally—for we have a right to a moral as well as an intellectual opportunity—the right to a chance to come to the Bar with those ideals of our professional obligations which will lead to the efficient performance of our moral duties towards our clients, the court, and the community.

Let us now turn to our university system of legal professional education. The profession is justly proud of the work of several of our leading university law schools along purely intellectual lines, especially their work in common law and equity. Situated at seats of learning, many of which are old enough to have "traditions," and an "atmosphere," one would imagine that students would be instilled with professional ideals which would lead them as a class, not only to have a lively sense of their duty to maintain and see that others maintained the highest professional standards in their relations to courts and clients, but that they would also realize the public functions of the profession, and be alive to those general problems of the administration of justice which the community have a right to expect that the profession make an earnest effort to solve.

I think we may admit that the students of our best university law schools do graduate as a rule with a high sense of their personal obligations towards courts and clients. This is partly due to the class from which the students are re-

cruited, partly to the effects of the prior college education which the major portion of them have had, but mainly to the daily personal contact with the resident members of the law faculty, who are usually men not only of legal ability but high moral tone. Indeed, the modern well-equipped university law school tends to preserve that personal contact between student and high-minded lawyer which was the best feature of the old office system, when the student registered with a man of high tone, who had leisure to come into personal contact with him. It may also be admitted that the product of our university law schools have as a class a feeling that the tone of the profession should be preserved by disciplining those who fall below its standards, and personal contact with the younger members of the Bar who are the products of our universities leads me to believe that as they come to leadership in our profession we may expect to see greater activity among boards of censors. On the other hand, the graduates of our best university law schools seem as utterly lacking in any conception that the profession has any duties toward the community as a whole, or that they as individuals need concern themselves with any problems not met with in private practice, as are the products of the lawyers' offices, or the graduates of the night schools. Here the fault lies not with the nature of the system. The student of the type of which I speak does not ask that the faculty prepare him to pass a Bar examination in the quickest possible time, or allow him leisure to work at other things while pursuing his legal studies. He comes prepared to devote himself exclusively to preparing for his life work. If he graduates with ideals that do not fit in with what the world wants from our profession it is the fault of the faculty, not of the student. Turn to the curriculum of any one of our great university law schools, and the cause of the failure is not far to seek. One who is familiar with the ideals which prevail in the best schools of other professions is instantly struck by three things: First, the thorough way in which the field of private law is covered; second, the meager way in which public law is dealt with; third, the entire absence of any course from which the student can

gain a knowledge of or interest in any problem relating to the administration of justice, which does not tend to answer a question which may be stated in the following form: "If a client comes into your office and brings the following case, how would you advise him?" Look at the catalogue of any one of our great schools and you will see at a glance that the faculty have one and only one conception of their duty towards their students, and that is to turn them out able to answer any legal question likely to be put to them by private clients. Now I do not wish to belittle for a moment the absolute necessity of training the law student to practice law in the world as it is. It goes without saying that it is the duty of the lawyer to serve his clients not only faithfully, but efficiently. But I do take the position that the whole duty of a lawyer is not done when, taking law and practice as it is, he gives his clients good advice, prepares his cases thoroughly, or as a judge decides them, in view of the law, properly. There is, as I have tried to show, a public duty of the profession toward the community. The problem,—How should I try this case?—and the problem,—How should cases be tried?—are distinct problems. One must be dealt with by the lawyer acting as an individual, the other by lawyers acting together. But lawyers as a class cannot be expected to meet the problems which confront them as a body of men, charged with certain public duties, unless in their student days their instructors have recognized the existence of such problems and taken pains to see that the students had some knowledge of the principles on which they must be solved.

Take some examples of my meaning. We have in all our university law schools courses in Practice. Without exception, as far as I am aware, these courses either deal exclusively with the present practice in a particular jurisdiction, or with the essentials of present practice in our State jurisdictions. Such courses, it is conceded, are a necessary part of the legal curriculum. Any law student intending to practice law should know his profession as an art as well as a science. But why not also a course on Practice dealt with from the point of view of the community—a course which

would deal with the efforts made in different jurisdictions to expedite justice, or improve the administration of the civil or the criminal law, and the result of these efforts? Such a course would at least give us a body of men who know what was going forward in the way of improvement, and we would not be confined to occasional papers at bar meetings to give us information and arouse our interest in the swift and certain administration of the law.

Or, again, many of our schools have courses, or extra lectures, on "Conveyancing." These courses deal with the methods invoked in a particular jurisdiction or with the general methods followed in those jurisdictions, where the pupils expect to practice. Again, I have no criticism. Such course prepares the future lawyer for his work. But still the question arises,—Is the duty of the profession done in respect to conveyancing when we draw proper deeds for our clients?—or, as a profession, have we a duty to see to it that the system in force in our community is the most efficient system which in view of our circumstances can be devised? And if we have this last duty, how can we expect that duty to be impressed on the lawyer, unless in his student days those who regulate the curriculum he must follow give him an opportunity to find out the changes in the system of conveyancing which have taken place in nearly all civilized countries in the last fifty years? Such a course might or might not lead him to be an advocate of the "Torrens system," but at least it would tend to enable him to take an interest in a problem which it is the duty of our profession as a profession to take an interest in.

I have given two examples. If time permitted others might be added. Enough, however, perhaps has been said to enable you to catch my meaning, which is that our great universities have an opportunity which is not open to the other systems of legal education,—the office system, and the night-school system,—to produce a body of lawyers who, while effective practitioners, are also intelligently interested in those problems which we as a profession must meet by associate action, and that those of us who, like

myself, are responsible for the curriculum of these schools are neglecting our opportunity.

But I hear some one say, You cannot get a body of young men bent on learning law so as to make a living, spend time on matters not directly pertaining to private practice. And why not?—I ask. The great medical schools of the country have in the last few years done for the medical profession exactly what I am asking the great law schools to do for the legal profession. They have added to their curriculum a number of courses which bear on the public functions of the medical profession,—that is, the function of preventive medicine, and the causes, as distinguished from the cure, of disease. And the establishment of these courses has had to meet the same kind of objection that our law schools may expect if they attempt to add to their law courses subjects of the character I have indicated namely, that such subjects had nothing to do with the practice of medicine, which was the cure of the man already sick.

Again, I hear the objection: Three years is a time all too short to fit a student to become an efficient practitioner, and addition along the line indicated means a course of four years or more. Suppose it does? The medical profession almost universally requires four years, and hospital practice besides, and yet the need for doctors is being met. Remember that the community is not interested in the number of years which it takes to make a doctor or a lawyer, but in the efficiency of the finished product. If four years, as in medicine, or five years as on the Continent of Europe, are really necessary to make a good lawyer, the public will have no sympathy with hurrying out in three years an unfinished product.

Of course, any radical addition to the scope of legal teaching means additional expense which may not be, and perhaps ought not to be, met by additional fees. If our present university law schools should undertake to turn out men not only prepared to practice law, but fitted to take their share in progressive movements for the improvement of the administration of justice, the schools must have endowments adequate for the work. To-day these endowments do not

exist. But once let our great universities prove to the communities in which they are situated that there is a necessity for widening the scope of their law teaching, and that if the scope is widened they are prepared to do work which the community has a real interest in having done, the endowment will come. Money has flowed towards our great medical schools because they have proved that the medical profession can do more for the world than give pills to the sick. Our great law schools can obtain like endowments when they can show that they are doing something more for the world than hurrying out men who can win cases. Pill-giving and case-winning are essential, but the purse-strings of the community unloose only when a profession proves that it can do something for the permanent amelioration of social conditions.

Our ideals shape our actions. The lawyer is no exception to this rule. The lawyers of the United States fail to perfrom what I have called the public duties of the profession, while the English lawyer and our brethren of the medical profession to a large extent perform their public duties, because they have and we have not any idea that we have such duties. This lack of perception has its root in our legal education. For the law offices and the night school there is an adequate excuse. But for the university law school there is no such excuse. If, as a profession, we are to awake to our failure to perform our public duties, it is the small class of men who are devoting their lives to legal teaching who must point the way.

From a professional point of view the need of the hour is a body of lawyers who know something beyond the practice of their profession; who are interested in the administration of justice in its broadest sense; who can turn with effect to those legal problems which call for their solution on associate action. I believe if the faculties of our universities widen their curriculum along the lines indicated, they can create a university law-school system which will produce a body of lawyers whose ideals and, therefore, whose actions, fit in more closely than do the ideals of their present product with the needs of the modern world.

40 *Wm. Draper Lewis.*