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REORGANIZING MINNESOTA’S JUDICIARY

A Layman’s View

By William Anderson*

This article aims to analyze the constitutional amendment proposed in the Report of the Committee on the Unification of the Courts to the Judicial Council of Minnesota. The amendment is so drawn as to constitute a complete substitute for Article VI of the Minnesota Constitution. It will also affect incidentally a number of other state constitutional provisions.

The proposal itself is one made by lawyers for that branch of government in which they have a peculiar interest, the judiciary. Tracing back through the literature one finds that the ideas embodied in the proposed amendment have been developed almost entirely by lawyers in speeches before the American and state bar associations and in numerous articles contributed to the Journal of the American Bar Association, the Journal of the American Judicature Society, and various other legal periodicals. The committee that drew up the Minnesota plan consisted of twenty lawyers and one layman. Although the ideas are therefore almost entirely those of lawyers, the proposal is one that affects all people, and a layman may perhaps be pardoned for venturing to analyze what is proposed. As Aristotle pointed out there are some arts, of which government is one, “whose products are not judged of solely, or best, by the artists themselves, namely those arts whose products are recognized even by those who do not possess the art; for example, the knowledge of the house is not limited to the builder only; the user, or, in other words, the master, of the house will be a better judge than the builder, just as the pilot will judge better of a rudder than a carpenter, and the guest will judge better of a feast than the cook.”

The author of this article is a layman in the sense that he is not a lawyer. At the same time he brings to the analysis of the proposed amendment a certain amount of public experience and years of study of government and administration. One of the functions of a political scientist is to try to see each system of government as a whole, and each part thereof in relation to others. This article

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Politics, Bk. III, ch. 11.
will deal, therefore, not with minor and internal details of the proposal but rather with its relationship to that responsible type of popular government that is now called democracy.

THE PROPOSED AMENDMENT

The amendment provides for a drastic reorganization of the entire judicial system of the state. Four major phases of the plan may be separated out for discussion.

First. A General Court of Minnesota is created that is to replace all the now-existing courts of the state. Thus all courts set up by the Constitution (Supreme Court, District Courts, Probate Courts, and Justice Courts) and those created by act of the legislature (municipal courts, special divisions of district and municipal courts, and the office of court commissioner) will disappear as such, and their several jurisdictions will be absorbed into that of the proposed General Court. The latter will then have all the jurisdiction “at any time vested in the courts of this state.” This unification of the courts into a single highly-integrated system is in line with modern thought and a certain amount of foreign practice, especially English. It opens the way for a smoother working of the judicial system as a whole, and promises the elimination of the jurisdictional disputes and difficulties that inhere in any system of separate courts each with its own jurisdiction.

For convenience of operation the General Court is divided into three “divisions to be known as the supreme court, district court, and county court.” To each of these is assigned a certain jurisdiction, but it is expressly provided that such jurisdiction “shall not be exclusive, and no judicial action taken by any division . . . shall be void for want of jurisdiction. . . .” Furthermore an administrative council is created, to consist of three judges from each division, and this body is to have certain powers, to be noted hereafter, to facilitate the work of all divisions of the General Court.

Second. The administrative council mentioned above is something entirely new in the judicial organization of Minnesota. Each of the three divisions of the General Court is to elect for terms of two years three of its own members to serve on this council. Its chairman will be the chief justice or an associate justice of the supreme court designated by him. The council will appoint a lawyer as the administrative director of the General Court. Acting through this director the council will control and supervise the
administrative organization and operation of the General Court and its several divisions. The council will also have power, among other things, to make rules which, when approved by the supreme court, may change the jurisdiction of district and county courts, change the number and boundaries of district court districts, designate the places for the sessions of district and county courts and of the offices of court clerks, create subdivisions or departments of district and county courts, arrange for the assignment of particular judges to various subdivisions, and provide for the review of county and district court decisions at the district court level in the larger districts. The pertinent provisions are quoted in a later section.

Third. Popular election of judges and clerks in all courts is practically eliminated, and so is nearly all the discretion to fill vacancies that is now vested in the governor. (a) In each judicial district the members of the bar will elect three lawyers of the district to a district nominating committee, while the governor is entitled to appoint two laymen to make up a committee of five. When a vacancy occurs in a district judgeship this committee shall nominate three lawyers for the position. From these three the chief justice shall make an appointment to fill the vacancy. (b) The chairmen of the several district nominating committees shall constitute a supreme court nominating committee. When a vacancy occurs in the supreme court this state-wide committee shall submit to the governor the names of three lawyers, and from these three the governor must make the appointment. (c) When a vacancy occurs in any county judgeship the members of the bar of that county will submit three names of lawyers, and from these the chief justice shall fill the vacancy. All rules of procedure for any such nominations, and the terms of the members of the nominating commissions are to be prescribed and "fixed by the administrative council."

Each appointee to the supreme, district, and county courts is entitled to at least two years in office, but as the section is worded, in a state where general elections occur only once in two years, the original appointive term will more frequently be closer to four years, ending the first Monday in January of odd-numbered years. If the incumbent wishes to succeed himself, he declares his intention to that effect before the preceding November election and his name goes on "a separate judicial ballot" in his county or district, or for the whole state if he is a supreme court justice. There is
no party designation on the ballot, and the voter is confronted with this simple question:

Shall Chief Justice, Justice, or Judge ......................... of the supreme court (or district or county court) be retained in office? Yes .................. No ..................

If a majority of those voting on the question vote against retaining him, a vacancy will occur at the end of his term, in January, and a new appointment will be made as described above. If the vote is favorable to him he is retained for a term of ten years if on the supreme court, eight years if on the district court, and six years if on the county bench.

Fourth. Section 2 of the amendment proposes to transfer to the judiciary practically complete power of rule-making. This appears in several provisions. (a) The supreme court “may prescribe, for all divisions of the general court, rules of practice and procedure and of evidence, and may delegate to the other divisions or to the administrative council such rule-making power as it deems expedient.”

(b) Section 9 provides that the administrative council “shall have power, by rules approved by the supreme court, to alter the jurisdiction herein conferred upon the district and county courts; to make provision for review, by the district courts of districts having three or more judges, of defined classes of orders, decisions, and judgments of the county and district courts, and to condition the right of appeal in such cases to the supreme court upon leave of that court; to create subdivisions or departments of the district and county courts, distribute the judicial business of such courts between such subdivisions or departments, and make provision for the assignment thereto of judges to preside therein; to designate the places for the sessions of district and county courts and of the offices of clerks thereof; to change the number and boundaries of district court districts, without, however, vacating the office of any judge during his term, and, with the concurrence of the governing bodies thereof, to merge two or more counties into one county court district.”

(c) Section 10 provides: “All rules of the supreme court and of the administrative council adopted pursuant to the authority conferred by this article, and all rules adopted by other divisions of the general court pursuant to authority delegated by the supreme court, shall be filed in the office of secretary of state, and thereupon shall have the force and effect of law and shall super-
sede all statutes and laws inconsistent therewith.” Section 16 provides that existing statutes on subjects to be covered in such rules are continued in effect only until superseded.

Taken as a whole the amendment proposes the most far-reaching change in the government of Minnesota that has ever been submitted in drafted form by a group of responsible men. It is a fair inference that the proponents of this amendment are deeply dissatisfied not only with the form of government that prevails in the state, but also with the past work of the voters, the legislature, the governor, and the courts themselves. They must believe that drastic remedies are required, for otherwise they would not have proposed anything so sweeping. The aim seems to be to establish a judicial branch of the government that is almost entirely insulated from politics and from the other two branches of the state government. To achieve this purpose control over the judiciary is to be turned over in very large part to the organized bar of the state. Let us examine a few features of the proposal a little more closely.

THE RULE-MAKING POWER

Some years ago Dean Wigmore came forward with the novel proposition that the legislative body, whether national or state, "exceeds its constitutional power when it attempts to impose upon the judiciary any rules for the dispatch of the judiciary's duties; and that therefore all legislatively declared rules for procedure, civil or criminal, in the courts, are void, except such as are expressly stated in the Constitution." Although it must be admitted that many legislatures have been slow to provide modern rules of procedure for the courts, there was very little basis for this argument in favor of court-made rules. From the founding of the first state government in 1776 down to the present the enactment of procedural as well as substantive law has been a proper function of the legislature. The extent of the state legislature's power, and its central position in the state government, were well expressed by Chief Justice Redfield of Vermont many years ago:

It has never been questioned, so far as I know, that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written constitutions. That must be conceded, I think, to be a fundamental principle in the political organizations of the American States. We cannot well comprehend how, upon principle, it should be otherwise. The people must, of course,

2 (1936) 20 Journal of the American Judicature Society 159-60.
possess all legislative power originally. They have committed this in the most general and unlimited manner to the several State legislatures, saving only such restrictions as are imposed by the Constitution of the United States, or of the particular state in question.\(^3\)

Dean Wigmore’s argument ignored the need for having a single source of legislation in every state. He would stretch the doctrine of separation of powers so as to have two such sources, the legislature and the courts, on an equal footing. But if these two, then why not all three? Surely the executive needs such authority for administrative purposes fully as much as the courts do for judicial purposes, and under the separation-of-powers doctrine the same case can be made for the executive as for the judicial branch. Then there would be three equally legitimate sources of rule-making, and no one would have to yield to the other. If it be argued that the Wigmore proposal related only to matters of judicial procedure, leaving substantive law to the legislature, the obvious answer is that the two cannot and should not be wholly separated. The one must be closely related to the other, lest the procedure adopted should wholly defeat the substance.

Dean Wigmore’s central idea is now embodied in the proposed judiciary amendment for Minnesota, but the amendment puts the matter in express language and goes very far beyond what he proposed. The supreme court is to make rules not only as to practice and procedure but as to evidence. Furthermore it may approve rules made by the administrative council covering a number of other matters now controlled by the legislature: judicial districts, the places where the courts shall sit, the jurisdiction of both county and district courts, their internal subdivisions, and various other matters. It may even delegate rule-making powers to county and district courts and to the administrative council. And all rules made by the supreme court “shall supersede all statutes and laws inconsistent therewith.” What is not stated is, that if conflict be found between any legislative enactment and any court-made rule, the supreme court, not the legislature, will have the final word on the matter.

To the writer this whole feature of the proposed amendment goes far beyond what is needed, and goes partly in a wrong direction. Rules of practice, procedure, and evidence need to be modernized, and kept up-to-date. To achieve this result it is necessary to bring to bear the expert knowledge and judgment of the leaders

on the bench. This it has not been easy to do in many American states because in the short and crowded legislative sessions held usually only once in two years it has been impossible for the leaders of the bench to reach enough leaders in the legislature to bring about action. The ways of democracy are a little slow and cumbersome—but it is not necessary to push them aside so completely to achieve most or all of the result that is now desired. It is not essential to destroy the principle of legislative supremacy in legislative matters, and some day when the present wave of judicial reform has given way to other tendencies even the leaders of the bench and bar may be thankful to have left in the hands of the people's chosen legislators the power to correct the archaic rules of practice, procedure, and evidence that then prevail.

There is a simple way to achieve the expert drafting of the rules that is desired while still preserving legislative supremacy. That way is to provide that the supreme court (and no other division of the court system) shall have power to propose rules of practice, procedure, and evidence for all branches of the General Court. Such rules shall be laid before the two houses of the next legislature, and if not disapproved by a majority of each house shall have the effect of law, and shall be published with the next session laws, and in the revised laws from time to time. Care should be taken to make it clear that the legislature may at any time alter or repeal any rule so adopted. This is in effect what the British Parliament has done for judicial rule-making in its jurisdiction, and in essence is what Congress has done in authorizing rule-making by the United States Supreme Court.

What is the most likely result of such a method? Congress has not set aside any rules made by the Supreme Court. In Great Britain rules so proposed are almost automatically approved, but of course we must remember that there the courts are tied in with the legislative and executive through the Lord Chancellor, so that court rules proposed will have already come to the attention of, and have had some approval from, some one in the cabinet. In this country there are various parallels, notably the Reorganization Act passed by Congress in 1939. Under it the President could submit "plans" for reorganizing the administrative and executive agencies to Congress, and such plans if not disapproved by both houses within sixty days were to go into effect. In fact Congress, having already authorized this procedure, disapproved none of the plans, and hastened to give some of them positive
approval.\(^4\) When a legislative body knows that it has the reserve power to correct mistakes and that its supremacy is recognized, its cooperation is not hard to obtain. Furthermore the difficulty that any clique of disgruntled members would have to get a majority in both houses to reject a specific proposal is such that very few rejections would be likely ever to take place.

**The Selection and Appointment of Judges**

In the present constitution of the state there are express provisions for the popular election of Supreme Court justices, district and probate judges, and justices of the peace, and “all judges other than those provided for in this constitution.” The legislature may by a two-thirds vote establish additional courts, but it may not legally provide for anything but election as a mode of filling judicial offices. Furthermore the present constitution provides that “the judges of the supreme and district courts shall be men learned in the law,” but as to other offices it states that “Every person who . . . shall be entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election.” Thus the constitution in effect says that probate judges, justices of the peace, court commissioners, and the judges of any courts created by the legislature need not be lawyers.

These provisions represent the advanced democratic thought of nearly a century ago, and it is not surprising that the standards and the methods of electing judges that they prescribe have not produced entirely satisfactory results. The remarkable thing is that they have worked as well as they have. As a matter of fact the Supreme Court justices and the District Court judges of Minnesota have a deservedly high standing among the courts of all the states. It would be difficult to prove that any but a few states, even among those with appointive judges, have higher standards of judicial personnel. No serious scandal has ever brought disgrace upon the higher courts in Minnesota, and the Supreme Court has had some justices who were among the best legal minds of their generation. Members of the bar have assisted in maintaining these standards by inducing many able lawyers to stand for office, and the voters, when advised by bar com-

mittees, have not been undiscriminating in their choices. Equally important has been the fact that most of the judges of the two higher courts, and many municipal and probate judges, have first gone on the bench by appointment of the governor who has the authority to fill vacancies, and that the governors have taken this responsibility seriously. In 1940 one careful student of the situation wrote as follows:

"All seven present members of the supreme court came into office originally by appointment of the governor. Of the fifty state district court judges now on the bench, thirty-one were originally appointed by the governor. Four other members of the present district court bench received previous appointments as municipal judges or judges of probate, and were subsequently elected as district court judges."5

This writer pointed out also that re-elections are very common. In 1940 thirty-six of the fifty district court judges had been elected two or more times. Indeed the increasing age of the judges and numerous cases of death and incapacity in office due to age, were described as creating something of a problem.

The situation is, nonetheless, far from perfect. In some places the failure of the bar to exert leadership in promoting the appointment and election of well qualified lawyers has left the governor and the voters with inadequate guidance. No doubt a number of men of little or no judicial experience or competence have put themselves forward and have thus risen to high judicial office. Some of these were undoubtedly cases where the needed experts in the law were not even on tap, either as candidates or as unofficial nominating committees.

It has been argued, also, that it is undignified if not positively degrading to the courts to have the judges forced to seek election. Speaking still as a layman the writer of this article has never felt that way about it. One can smile a little when an obviously incompetent person seeks judicial office, and one can be considerably distressed when competent men either fail to run or are subjected to vicious attack when they do. But when intelligent and public-spirited groups of citizens including many lawyers sponsor the candidacy of an honest and able man, it is no disgrace either to the candidate or to his sponsors—and that whether he wins or loses. And when it is so easy for a good judge to get re-elected, there should be an increased incentive for local bar committees to sponsor qualified men. There is unquestionably a

certain amount of arduous and even disagreeable work that lawyers have to do when putting forward a candidate for the bench, but they should realize that in this way they are contributing to the education of the people. They are making the courts seem to be an important part of democratic government and are creating good will for lawyers and judges too. A little rubbing of elbows with common people is not undignified.

To remedy the ills in the present system and to provide Minnesota with a body of judges even better than that of today, the amendment proposes, among other things, to eliminate ordinary election entirely as a means of choosing judges. By “ordinary election” is meant the present system in which two or more candidates may strive for the nomination, and two nominees for each position run against each other in the final campaign. For all practical purposes the function of making nominations is to be turned over to local bar organizations or to committees of the bar. In the district nominating committees, it is true, two laymen appointed by the governor are to be pitted against three lawyers, but it is clear that if the ordinary layman’s deference to the man “learned in the law” is not enough to cow them into acquiescence, the two can certainly be outvoted by the three. For county court positions it is the members of the local bar who make all the nominations. The nominating committee for supreme court positions is to consist of the chairmen of all the district nominating committees. Here again for several reasons that need hardly be stated, lawyers are almost certain to constitute the overwhelming majority.

Following nomination comes appointment, not popular election. The chief justice, not the governor as at present, is to appoint to the district bench and also to the new county court. The governor is to make appointments only to positions in the supreme court. In each case, too, the appointment must be made from a list of three submitted by the appropriate nominating committee. There is no provision even for the governor or chief justice to reject an entire list and to call for a new one. Thus the members of the bar come very close to controlling the appointment.

The governors of Minnesota have done a far better than average job in judicial appointments, but the way in which their choices are to be hedged about by the new plan shows no appreciation of this fact. Quite the contrary is true. The governor is to be restricted as much as possible, and any change in the political views or social philosophies of the judges is practically prevented. Suppose a new governor comes in as a result of the defeat of a party
long in power. He will find himself more hampered than Jefferson
did after the Federalists under John Adams had created and
filled all possible judicial offices before retiring. What can the
governor do? Appoint two laymen to each district nominating
committee? Oh, no; at least not at once. The administrative coun-
cil consisting of nine judges chosen originally by the dominant
groups in the bar associations are authorized to fix the terms of
the members of nominating committees and that without time
limit. A new governor may get to appoint one lay committee
member in each district in his first term, one out of five. Even
if he could appoint two he could not greatly influence the nomina-
tions made. Yes, and even if he could appoint a majority of the
members of the district nominating committee, which he cannot,
he could not finally appoint any of those nominated for the dis-
trict bench. It is the chief justice of the supreme court who is
to do that. Thus the governor will find himself prevented from
exercising any real influence on appointments to the district bench,
without any contact at all with nominations and appointments to
the county courts, and required to take one of three nominees sub-
mitted to him by a committee of lawyers for any supreme court
vacancy. This is, of course, as drastic a change in the relation-
ship of the governor to judicial appointments as could well have
been devised.

The voters' part in the process is also radically reduced and
substantially changed. Under the proposed plan no one will ever
again reach judicial office through having been nominated and
elected by the voters. All will come in originally by appointment.
After a judge has served from two to four years by appointment,
the voters may vote to retain or reject him, but they are given no
choice as between A and B, or Jones and Johnson. They may
kick a judge out the back door but not let one in at the front.
Having no right to select a successor, how could they be other
than apathetic about removing a judge? What is offered to the
voters is not a real right of election at all.

It may be argued, of course, that the functions of the courts
are such that the judges should be entirely expert and non-
political, that the lawyers in their bar associations are non-political
experts on matters of law and courts, and that turning the courts
over so completely to control by them is the only way to insure
the desired result of having an expert, impartial, and honest judi-
ciary. The present writer finds that he must disagree in part with
both the premise and the conclusion.
In all countries the courts of law have a close and necessary connection with the government of the day. The British system recognizes this by having the Lord Chancellor, a member of the cabinet and of the House of Lords, serve as head of the court system. Our own national Constitution provides that the President shall make and the Senate approve all national judicial appointments. The states give recognition to the same principle in a variety of ways. Only very recently, as in the present Minnesota proposal and in the new Missouri method of selecting judges, has there been any effort to divorce the courts from the rest of the government.

The power of the courts in this country to pass upon the constitutionality of legislation reveals the courts as exercising the very highest political function. James M. Beck wrote of the United States Supreme Court as "this extraordinary politico-juridical tribunal." The law is not a discipline like mathematics that always comes out with exactly the same answer for the same question. There is ample room for choice, and the choice is often, of necessity, not legal but economic or political. The changes in the views of the Supreme Court from Marshall to Taney, or from White to Taft to Hughes, or from the court of before 1937 to that of this day are but a few of the most important examples.

Even in the states we hear often of political decisions by the courts, and this is no disparagement of the judges. When the law affords no precise answer to a question that must be answered, the judges need to reach into their philosophies, their social, political, and economic views, for the answers. To say that a thing is political is to make a neutral statement. Politics can produce a Declaration of Independence, a Constitution of the United States, or an Emancipation Proclamation just as readily as it can produce municipal extravagance or corruption. The important thing is not to try to eliminate entirely the political function of the courts, but to see to it that all court decisions are made as intelligently and honestly as possible and that those decisions shall not upset the necessary work of the other two branches of government. That is why the courts, at least at the top, should have a continuing and close relationship to the executive and legislature, and to the people.

The argument that bar association nomination of judges will eliminate politics cannot be accepted. Two kinds of politics here need to be distinguished, the politics of patronage and the politics of public policy. The former will certainly not be eliminated.
Judicial offices must be filled and under the new dispensation they will be more valuable than ever. Lawyers will seek preferment, and cliques and groups will organize within the bar to influence nominations and appointments. The district and supreme court nominating committees and the chief justice of the supreme court will soon learn what President Taft meant when he said that every appointment made creates one ingrate and ten enemies for the appointer. Since the proposed amendment lays down no standards whatever (whether of age, experience, learning, or ability to pass an examination on judicial functions) those who are not nominated, or who are nominated but not appointed, will find it easy to charge favoritism and even worse. The chief justice of the supreme court, with his power to appoint all district and county judges, no matter how high his standards, will find himself beset by patronage politics. The "heat" will be on him time and again.

The politics of public policy will also have its effects. Lawyers are citizens and they have views on public questions. It is unthinkable that these views will not be present when the district bar elects its three members of the nominating committee, or when the latter committee nominates to fill a vacancy on the bench. A lawyer whose economic and political views do not conform to those of the majority will get but little consideration. Is it merely rhetorical to ask how many members of the present United States Supreme Court would be likely to be in their present positions if a committee of the American Bar Association had controlled the nominations within the rule of three? Whatever any one may think of those justices, individually or collectively, it must be recognized that this court is more nearly in line with the views of Marshall than any court for several generations, and that there is less complaint against the court today than in many decades.

The conclusion of this argument is that an appointive judiciary would probably bring about a real improvement in the courts of Minnesota, but that the method of appointment proposed is untried and largely indefensible. Instead of keeping the experts (the lawyers in this case) on tap, to advise the governor on appointments, it aims to put them on top. It delegates to the organized bar, a group that is politically and legally not responsible to any one, the control of the only entry way to the entire third branch
of government. It endeavors to cut the courts off almost entirely from the rest of government instead of integrating them more closely with the other two branches. At the very time when the separation of powers doctrine is being modified in practice in the direction of more unified government, it goes in the opposite direction. With the purpose of improving the selection of judges it practically abandons over eighty years of state experience with appointments by the governor and election by the voters, an experience that has been good, on the whole, and that has given Minnesota a high-standing judiciary.

Improvements could certainly be made in many ways without the abandonment of this experience. There could be some more regular way for the bar to advise the governor on appointments and the voters on candidates for election. The bar could try to set up and publish definite standards for judicial office-holding, and inform the public more fully about these standards. A complete system of appointment by the governor for district and supreme courts, followed by some form of popular approval at the next regular election, would probably bring real improvement. Since the voters elect the governor every two years as their principal statewide leader this arrangement would probably keep them in sufficiently close touch with the judiciary to satisfy the requirements of democratic government.

**The Return of the Guild**

The proposal under consideration has one aspect that needs to be emphasized. American society appears to be undergoing a process of stratification and crystallization. The old freedom and fluidity are passing. Strong combinations of labor and of capital, with resultant monopoly conditions and rigidities in wages, prices, and employment, are already familiar facts. Specialized vocational and professional groups are also drawing ever more tightly their lines, and are attempting by various means to get monopolistic controls and thus to set their own standards for admission, for compensation, and for service.

In the ranks of business the "price-cutter" is one of the most hated of men. Jurisdictional disputes, high union dues, and restrictions on apprenticeships are common phenomena of the labor movement. Among the professions,—doctors, lawyers, engineers, dentists, and others,—there are efforts to raise entrance standards, restrict numbers, control methods of practice, forbid "unauthorized practice," set rates of charge, and bring all the
practitioners under strict control. The contagion of these ideas spreads outward into every walk of life, so that plumbers, house painters, electricians, “beauticians,” and what not, sooner or later get organized for the same purposes. Most of them try also to get legislation to support their claims. Such a law, if passed, merely takes the place of the king’s license to the ancient guild.\textsuperscript{7}

All this is done in the name of improved service and the general welfare; and in some ways no doubt the public gets a benefit more or less forced upon it. But it is also still true that organized professions develop interests that are contrary to progress and public welfare. In the case of the medical associations we have seen how their efforts to preserve old practices and protect their individual incomes stand in the way of new methods of group medicine.

The legal profession presents today one of the clearest and most advanced cases of the revival of the old guild system. Even before the recent movement began the lawyers had complete control throughout the land of the highest judicial offices, the Department of Justice, State attorney general’s offices, the most important posts as prosecuting attorneys and city and county attorneys, numerous high administrative and regulatory posts, many governorships and legislative offices, not to mention their well entrenched positions in corporate business and their almost complete control of the practice of law. This situation was as it should be because the special knowledge of the lawyers fully entitled them to these positions.

What the profession has recently been demanding is considerably more: 1. A raising of the standards of admission and a further restriction of the numbers admitted to the practice of law. 2. An all-inclusive bar organization (the integrated bar) in every state, so as to bring all practicing attorneys under stricter discipline. 3. Complete elimination of the “unauthorized practice of law,” which means in effect a prohibition against laymen and corporations operating even on the outer margins of legal practice.

The proposed constitutional amendment now before us takes two steps beyond even these claims. They are: 1. The practical elimination of laymen from minor judicial offices by the abolition of such offices as are now open to laymen, and by the express requirement that only lawyers may be appointed as judges. The edge of this proposal is only partly dulled by the provision for

the appointment of "magistrates" who may be laymen. 2. The constitutional recognition of the bar organization in counties and judicial districts for the purpose of nominating lawyers for appointment.

Much might be said of the dangers to society that are inherent in the rise of the guild system and the guild spirit, but that matter cannot be analyzed here. One thing on which men ought to be able to agree is that no group should be a judge in its own cause just as no man should be in his own case. Above all groups there needs to stand a government that, in all its branches, legislative, executive, and judicial, is not beholden to any group or guild. Just as it would be against public policy to turn all public health work over to the state medical association, or all public education over to some inclusive but still-to-be-organized guild of educators, so it is wrong to attempt to entrench the organized bar in the virtual control of judicial nominations and appointments. Lawyers are needed to serve as judges and attorneys. Lawyers should fill all such offices, but each one should go into office without any strings upon him. Each one should be responsible solely to the people of his district or the state, and not to a professional guild. The supreme court with its great authority over the practice of law as well as its great responsibility for the welfare of the state should be in no way specially obligated to the bar.

CONCLUSION

There are other things about the proposal that the writer had thought to discuss. Much of what is proposed deserves the hearty support of all citizens: the unified court, the elimination of jurisdictional difficulties, the centralized business management proposals, the retirement and pension system, for example. The committee is entitled to the thanks of all people for having worked out these provisions. Evidently the committee did not go into certain closely related matters such as a merit system for the court's employees, budgeting and accounting, the relationship of their proposal to the attorney general's office and the state department of justice idea, and the effects of their plan upon the home rule spirit and self-government in cities and counties. There is so much that is good in the whole proposal that the present author regrets he must disagree so strongly with the recommendations on rule-making and the selection of judges. As to these points he hopes there will be a thorough reconsideration before the plan is widely presented to the public.