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The following contribution from a member of this Association was gratefully received—not alone for its worthwhileness, but also because it came at a most appropriate time for the Editor, a week's combat with the elements having left him neither mentally nor physically active:

The brief discussion with which this issue of Bar Briefs opens as to the criticism of the judiciary because they uphold certain legislative enactments which may seem to be against the common sense of the people, brings to the fore again the whole question of legislative enactments, and the more fundamental question, What Is Law?

This latter point is frequently discussed in print these days, and is brought up, in particular, in an article entitled *Officialism and Lawlesness,* in the December Harpers, which, by reason of its clarity of statement, is here summarized: The author says that when Mr. Hoover, Mr. Taft and Senator Capper reprove us for law-breaking, their complaints logically run back to this question. What is law? What they really mean is statute-breaking, and there seems to be an essential difference between a law and a statute. Average human instinct is aware of this distinction, and we all know that this instinct is logically sound. The testimony of instinct comes out negatively in the degree of respect paid public servants according as their duties lie with enactments which common conscience does not support. Witness the indifference or repugnance towards agents of the prohibition service. Human nature cannot be preached out of this assent to the testimony of instinct. The discrimination which we instinctively exercise toward enactments which do not command the common conscience of mankind is not attended by the slightest consciousness of wrong-doing. We know that fundamental human instincts, as Thomas Jefferson declared, are sound and trustworthy and no one has the right to arraign our allegiance to them as immoral.

Someone has said that "law in the United States is anything which the people will back up." Man could not live without being a statute-breaker. The average man's instinct prompts him to a just sense of proportion in this matter. A beaurocracy exists chiefly for the purpose of impeding a citizen in his legitimate pursuits.

Individually, instinct warns us to keep beaurocracy in its place by warding off the evil incidence of officialism as often as we can. But how can society collectively withstand progressive incursions of officialism? Strict attention is the first thing, but mere vigilance is worth very little unless the way is open for immediate action on the delinquency that vigilance discovers. We have no remedy against beaurocrats except to turn them out of office at the ends of their terms when they are followed by others of their kind. Society therefore resorts to collective lawlessness, which seems to many to be the only thing that will check the inroads of the cancer of officialism in our body politic.

The article in Harpers suggests that this remedy of bouncing them out of office every four or seven years is extremely unsatisfactory. It points out that in France officialism is not possible because people watch their office-holders and the concern of the individual instantly becomes the concern of the community. The author believes with Thomas Jefferson that the only way that incursions of offi-

cialism can be withstood is by keeping the officials in constant fear, not for their jobs, but for their skins. There is a steady, considered and highly sensitive spirit of repression which by coming out with promptness against the feeblest beginnings of officialism's attempts against public dignity, never needs to be called on to resist its more daring enterprises.

The author suggests that Americans, searching for available recourse in a now humiliating situation, might demand a plain discussion of the fundamental question, What is Law, by those who now lightly undertake to reprehend them for lawlesness.

We admit that the foregoing selection by our contributor, may sound somewhat radical, but we are reminded, at this point, of the last message of Judge Bagley, prepared, just prior to his death, for a district Bar meeting at Grafton; and Judge Bagley was not a radical, in the accepted sence of the word. Hence, we clip a few disconnected paragraphs from that address:

"Laws are the rules which bind men together. Those rules are man made and man enforced. They can be enforced only by the sovereign power of the State, and that sovereign power, in a modern state, is the general support, moral and physical, of a majority of the people. When that majority is large, the law enforces itself. When it is small, obedience is hard to secure. When it is doubtful, it is almost impossible. When there is no majority for a law of vital importance, then that law ceases to exist—though it remains in the Constitution or on the statute books until the day of doom. . . . To believe that there is anything sacred about written laws, poorly drafted and hurriedly passed by a few dozen untrained farmers and small business men, is sheer superstition. Read over the enacted laws of North Dakota from 1889 to 1929. Dozens of them are the passing expression of a political whim or delusion. More dozens of them are the children of sheer stupidity. Which ones of these laws are sacred? Which of them, in truth, are laws at all? The answer is —those which are Common Law—just those which the great majority of sensible men agree to observe and obey. . . . What I am trying to say to you sums up into this: Society is a growth, a growth ever evolving into higher forms. That growth is slow, it is gradual, but it is sure as the growth of an ox or of a tree; and as long as men live in organized society that growth will continue."

REVIEW OF NORTH DAKOTA DECISIONS

Billingsley vs. McCormick Transfer Company: Plaintiff was one of four passengers in her brother's Ford coupe. It collided with the defendant's truck, which was standing still on the extreme right side of the road. Plaintiff and her brother were injured, and started separate suits against the defendant company, of which defendant driver was an employee and in the course of his employment at the time of the collision. The defendant alleged contributory negligence. The evidence introduced in the case raised the question of the negligence of the driver of the car in which plaintiff was riding, also of the plaintiff's contributory negligence, and whether the driver's negligence was the proximate cause of the injury. The trial court refused to instruct the jury that plaintiff could not recover if such negligence (of driver and plaintiff) was shown to be the proximate cause of the in-