The ABA: The Rhetoric Has Changed but the Morality Lingers On

by Mark Green

There is in lawyers a political itch, a yearning to do more than polish off an error-free testamentary trust. This instinct especially infects the American Bar Association (ABA), that conglomeration of 170,000 lawyers which seeks to imprint its influence on public affairs. As we glance about the public landscape, the ABA's prominence is apparent. Special Prosecutor Leon Jaworski is a former president of the ABA, as is one of the men he may appear before, Supreme Court Justice Lewis Powell. Another earlier ABA head, Charles Rhyne, represents Rose Mary Woods, while the current ABA president, Chesterfield Smith, leads a public outcry against Richard Nixon's lawlessness.

The ABA also exerts its influence in less visible ways, especially through its committees and "sections," which have become a kind of farm system for government jobs. "Holding high office in the ABA is virtually a prerequisite to an important position in the Treasury or IRS," says Thomas Field, a former Treasury lawyer who now directs a public interest tax group, Taxation with Representation. The Nixon Administration's first commissioner of Internal Revenue, Randolph Thrower, was a former chairman of the ABA's Tax Section. So was the current IRS commissioner, Donald Alexander. The chairman of the Securities and Exchange Commission, Roy Garrett, once directed the ABA's section on Corporation, Banking, and Business Law. For one memorable period in 1971-1972, the two federal officials in charge of the nation's antitrust policy—Miles Kirkpatrick, chairman of the Federal Trade Commission, and Richard McLaren, head of the Justice Department's Antitrust division—were former chairmen of the ABA's Antitrust Section.

Mark Green is writing a book on lawyers in Washington and editing with Ralph Nader Verdicts on Lawyers.

The most remarkable feature of the ABA story has been its success in promoting this "public service" side of its activities. But there is more to the picture than contributing professional talents to the cause of good government. Those who have watched the Grocery Manufacturers of America struggle to defeat food adulteration legislation will not be astounded by the ABA's illustration of how public service and self-service do not always overlap. Prominent and visible? Yes, the ABA is that. But for whom? And for what?

Partners in Progress—ABA and AMA

Throughout most of its 97-year history, the ABA has shown a sensitivity to social concerns rivaling that of the American Medical Association. In the 1920s, the ABA attacked the Sherman Antitrust Act as "unsound [and] uncertain," and condemned the income tax amendment as an "encroachment on private wealth." During the 1930s, the ABA argued that the government had no constitutional right to regulate commercial production and opposed proposals ranging from child labor laws to minimum wage provisions. By the mid-1950s, the association had underwritten McCarthyism by seeking to purge from its profession suspected Communists.

For the past two decades the ABA has shown itself adept at the politics of self-interest. This is hardly unusual for a trade association, but that is precisely what the ABA insists it is not. It is "guided by a desire to serve the country and not itself" claimed Leon Jaworski in 1971 when he was ABA president. Was it sheer self-sacrifice, then, that led the ABA in 1955 to recommend limiting federal income tax rates to 25 per cent so as "to end confiscatory federal taxation"? And what are we to make of the following activities undertaken in the past 20 years:

- continuing the struggle for improved tax benefits for self-employed people (like lawyers) which, judging by the emphasis in the ABA's Washington newsletter, was the major legislative issue of the 60s;
- promoting a bill to remove the ceilings on legal fees in federal departments;
- fighting proposals to cut legal fees at HUD mortgage closings and to eliminate lawyers altogether at bankruptcy proceedings;

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- opposing the Consumer Credit Labeling Act, the Fair Packaging and Labeling Act, and citizen suits to help enforce environmental quality standards.

Perhaps the most provocative aspect of the ABA's traditional Social Darwinism is how quickly and thoroughly this impression has been erased from the public mind. At the ABA convention last summer in Washington, D. C., the lawyers were congratulated not only by themselves (this is not uncommon), but also by *The New York Times*, which ran an editorial urging legal reformers to work from inside the ABA rather than to undermine it. Inspiring this point of view were some of the ABA's more progressive resolutions, such as those recommending decriminalization of marijuana use and adult sex offenses, and exhortations by Chesterfield Smith, the ABA's new president, on legal reform generally.

But beneath the haze of reform, the ABA is still often one more association looking out for its own.

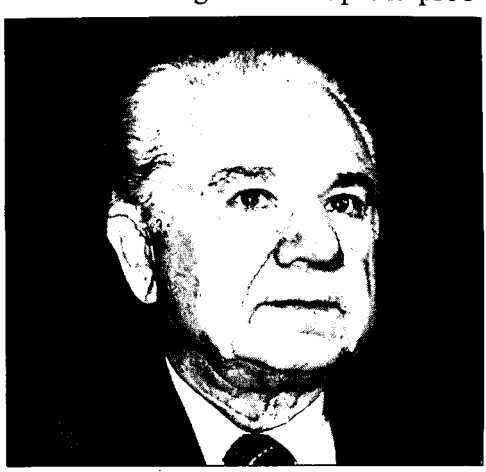
When the squeeze is on, the ABA will sacrifice subtlety and good name to protect those interests vital to its lawyers or their major clients.

Consider, for the most obvious examples, the ABA positions on the two most critical issues challenging the existing structure and income of the legal profession today—no-fault auto insurance and pre-paid legal services.

Defenders of Morality

They may hate themselves in the morning, but the lawyers keep resisting the no-fault proposals. Crash litigation is a nuisance to everyone except lawyers, for whom it produces 25 per cent of the gross legal product. So, in 1969, the ABA's House of Delegates came out against no-fault and for the "fault" system because of "the moral values which underlie the almost instinctive feeling that persons guilty of wrongful conduct" should pay—this despite the fact that it is not the wrongdoer who pays in an accident, but his or her insurance company.

The ABA again took up the problem in 1972 when it created a Special Committee on Automobile Insurance Legislation. The committee's composition gave a hint of the care and objectivity likely to go into developing the ABA's position. All 10 people who have served on the committee have been engaged in and collecting fees from auto negligence cases, the very type of litigation they have been asked to consider abolishing.



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Although ABA President Robert Meserve last year privately confided that he hoped the ABA would take no position on this controversial issue, the association declared itself "opposed to any federal 'no-fault' insurance legislation." In a memorable display of institutional loyalty, Meserve then became the Association's major witness against Senator Philip Hart's national no-fault plan. Meserve stoutly argued his group's position, but with more than a little defensiveness. "This is not a matter of lawyer protection," he said, "it is a matter of client protection."

The ABA has exhibited a similar distaste for prepaid legal insurance plans. In the early 1960s it feared such plans would undermine the fee-for-service system, the fiscal basis of the profession. The association went so far in its opposition as to file an amicus brief in the Supreme Court case of *Brotherhood of Railroad Trainmen v. Virginia State Bar*. The brief argued that a union's prepaid plan was "unauthorized practice." Why? Because the *union* would be picking attorneys for its clients; this "deprives the individual of his freedom to choose his own attorney"—a point which neglects the reality that the "freedom to choose" is worthless for those who can't afford a lawyer. And soliciting for business, continued the ABA, "would be intolerable."

Like Britain struggling to maintain its empire, the ABA has been forced to do silly things to defend its professional preserve. Bans on soliciting and advertising, along with rules discouraging price competition, keep the victims ignorant of, and priced out of, their legal rights. Thus have "ethical" rules been deployed to enhance professional income. The ABA's position was, in addition, unconstitutional. In *Brotherhood of Railroad Trainmen* and three other cases, the Supreme Court held that prepaid legal plans gave certain groups access to the courts and therefore was part of the constitutional right of assembly and

speech.

These decisions compelled the ABA to alter its opposition, and in 1969 it revised its Canons of Ethics, grudgingly. It condoned prepaid legal service groups *but* stipulated that their plans had to be non-profit and incidental to a group with a different primary purpose.

Recently the lawyers have mellowed as they have contemplated the experience of their medical colleagues. Two decades ago the AMA was calling prepaid health insurance socialistic, but today Blue Cross and Blue Shield, not to mention the pot of gold called Medicare, provide the medical profession with much of its lucrative income. The ABA is now moving toward cautious support of some prepaid plans and hopes to resolve the issue at its February, 1974, meeting.

But perhaps the ABA couldn't really help itself on no-fault and prepaid—these were issues where all the laws of self-preservation were pushing one way. But even when the pressure is not so great, the ABA has been strikingly consistent in its preference for doing well rather than doing good. Consider the ABA sections. Here Congress and the ABA have much in common: each is a bulky body which has delegated policy-making responsibility to smaller, more specialized committees. Unfortunately the parallels do not stop there. Just as many members of the House Banking Committee, for example, have significant financial holdings, so the ABA sections are marred by systematic conflicts of interest. Here are recent chairmen, with their major clients, of eight ABA sections and subcommittees:

- Committee on Aviation—Harold L. Russell, Eastern Airlines.
- Committee on Railroads—James N. Ogden, vice president and general counsel, Gulf Mobile and Ohio Railroad Co.
- Committee on Environmental Controls—Evans Brasfield, Humble Oil and General Motors.
- Committee on Forest Resources—Norman J. Wiener, Georgia-Pacific.
- Section on Antitrust Law—Thomas M. Scanlon, IBM and Shell Oil.
- Section on Insurance, Negligence, and Compensation Law—G. Robert Muchemore, vice president and general counsel, Mutual of Omaha Insurance.
- Section on Natural Resources Law—Northcutt Ely, Gulf Oil.
- Section on Public Utility Law—F. Mark Garlinghouse, AT&T.

These conflicts are not merely theoretical, as a focus on four ABA sections reveals:

Hart Attack

In 1969 the ABA's 7,500-member Antitrust Section created a "Special Committee on Consumer Legislation" to analyze pending legislation which would permit consumer class-action suits. The committee exercised its critical faculties with relish. In its report, sent to the Senate Commerce Committee, it ridiculed consumer class actions as unwise, unnecessary, and inefficient, a burden to the courts and a potential bonanza to *plaintiffs'* lawyers. What it did not mention was the financial stake that *defendants'* lawyers and their clients had in the issue. Perhaps this was because all nine members of this special committee were corporate defense lawyers who had been handpicked by section chairman Frederick Rowe, general counsel of the Grocery Manufacturers of America and a name partner in the large corporate law firm of Kirkland, Ellis, and Rowe. The stacking was a little too obvious even by ABA standards, and journalists and congressmen soon discredited the report.

A freshly chastised Antitrust Section shortly thereafter did adopt a new policy against the establishment of such ad hoc committees. When recommendations were to be made on pending legislation, the existing committees would do the job. It was a

change long overdue—and short-lived, for in 1972 the section's leadership casually appointed two new "special committees" to evaluate the two most controversial antitrust issues of the year: Senator Philip Hart's industrial deconcentration bill and Senator John Tunney's antitrust consent decree bill. In all, section chairman Julian von Kalinowski appointed seven special committees, leading one reform-minded member of the section, Gerald Kandler, to lament that his "worst fears about special committees have been confirmed, since the members appointed to serve all appear to be from the so-called 'establishment' of the section and clearly do not represent a cross-section of the 7,500 dues-paying members."

The special committees studying the Tunney and Hart proposals both recommended against the legislation. This can hardly be surprising, given the section's prior history: it has supported businesses' right to deduct "treble damage" penalty payments from their taxable income, has opposed legislation to permit government and private suits for damages and injunctions under the Clayton Act, has resisted attempts to raise the maximum fines that can be levied against individuals under the Sherman Antitrust Act, and has tried to defeat legislation that would enlarge the Federal Trade Commission's rule-making power.

On the other hand, the section has risen at least twice above its normal behavior, once to oppose a plan to exempt joint newspaper publishing ventures from antitrust provisions, and once to urge the Senate Judiciary Committee to withhold action on a bill that would have exempted soft drink bottlers from antitrust enforcement. The Antitrust Section's bottlers position so surprised one skeptical Judiciary Committee lawyer that he only half-jokingly speculated, "Maybe one reason they opposed it was that they were getting fees from that litigation."

There have been some attempts to democratize the Antitrust section. Former government antitrust lawyer and section member Jerome Hochberg wrote Antitrust Section chairman Fred Rowe after the class action report was released:

> For too many years this Section and the Association as a whole have been run by a clique of attorneys who represent entrenched interests in the various communities across the United States without regard to the views or concerns of other attorneys, both members and non-members. The procedures for running the organization are undemocratic and are geared so as to make it almost impossible for individuals with contrary views to be heard and gain acceptance for their position.

Hochberg suggested a variety of reforms, and even got the section chairman to begin circulating a quarterly report to the members. In the end, Hochberg was rebuffed; the Eph Jacobs case helps illustrate how and why. Ephraim Jacobs is a highly respected Washington lawyer who was in line to become the Antitrust Section's representative to the ABA House of Delegates. But Jacobs was also a lawyer for plaintiffs in an antitrust case that challenged some of the major drug companies. A defense lawyer for one of the drug firms, who was sitting on the Antitrust Section body choosing nominees for the House of Delegates post, eliminated Jacobs from consideration. Jacobs and his colleagues decided not to launch an all-out fight for this largely honorific post, but they came to understand who was running the antitrust show.

Hat Trick

Another example of the conflict-of-interest problem is in the Section on Patent, Trademark and Copyright Law. A former member of the section's copyright division complained that "if people ever wear two hats, they were it [sic] there. The lawyers all represent proprietary interests, not the interests of users." On the pending copyright issues, the proprietary interests always prevail, he said. This

member, essentially the only representative of user interests, eventually quit. "I was just a foil for them."

Within the section's Patent division is a small clique called "the Tuesday Group." The group first drafted the "Scott Amendments"—proposals which would legalize many patent practices now prohibited under the antitrust laws—and then convinced Senator Hugh Scott to introduce the package to Congress. One member of the Tuesday Group was attorney Arthur Seidel, from a Milwaukee corporate law firm whose clients (like Dupont and General Electric) had a keen interest in seeing the Scott Amendments passed. As chairman of the Patent Section's committee dealing with the Scott Amendments, he urged his fellow committee members to lobby for the measure. ("This education of Senators does not seem to be within the purview of our committee, but I trust many of you can devote some personal efforts along such lines," he wrote in a memorandum.)

The present chairman of the Patent Section is Theodore Bowes, former member of the Tuesday Group, former general patent counsel at Westinghouse Electric, and presently executive director of Intellectual Property Owners, Inc., (IPO), a group which objects to the "whittl[ing] away at the rights of patent owners." Bowes has shown some irritation at public criticism of his patent advocacy. "Nothing in the Scott Amendments," he has said, "was intended to or would expand the patent monopoly, as even a casual reading would make plain." Not many would agree with him. Among the doubters are 40 law professors (who sent a petition to the Senate subcommittee on Patents, Trademarks and Copyrights), former ABA president Bernard Segal, Senator Philip Hart, and former Justice Department antitrust chief Richard McLaren—all of whom understood that expansion of the patent monopoly is precisely what the Scott Amendments intend. In a private letter to Hart, McLaren warned of the ongoing antitrust cases which would have to be dropped if the bill became law; these included the prominent patent case, *United States v. Westinghouse-Mitsubishi*, a case that could not have escaped Bowes' attention, given his past position with Westinghouse. Bowes has personally lobbied on Capitol Hill to delay action on the Hart and Administration reform proposals. He offers, instead, his own Patent Section's bill, which he presents as "the ABA bill." In fact, the ABA House of Delegates has never approved his proposal.

Westinghouse, the Tuesday Group, IPO, the ABA, the Patent Section—Ted Bowes is a man of many hats. Patent reformers on Capitol Hill are not pleased with his versatility. "The ABA and the American Patent Law Association," said a Senate Antitrust subcommittee lawyer, "are the two groups consistently throwing monkey wrenches into all serious efforts to reform the patent system."

Assault Beneath the Seas

The subcommittees comprising the Natural Resources Section are headed by lawyers whose clients read like a Sierra Club enemies list. William Forman, chairman of the Hard Minerals subcommittee, represents Anaconda Copper and U. S. Gypsum; Charles Wheeler of the Oil subcommittee represents Cities Service; Terry Noble Fiske of the Public Lands and Land Use subcommittee is the lawyer for four associations of contractors and realtors, and his subcommittee's vice chairman is from a firm representing American Smelting and Refining, Johns-Manville, and Standard Oil of California.

In 1973 the Natural Resources Section sent the ABA House of Delegates a package of four complicated resolutions. The first noted that there would be a serious energy crisis and urged Congress to undertake long-range planning. Cognizant of the lawyers' role as midwife to new gov-

ernment projects, the section offered to "tender [the ABA's] good offices" to be the appropriate bodies for the "drafting and implementation of legislation designed to maximize supplies of energy. . . ." A second resolution made the same offer on non-fuel minerals. A third recommended that the government vigorously protect the contract and property rights of investors who have placed their money overseas. The fourth resolution had to do with control of the international seabed. Its importance was explained by Jonathan Adler, an environmental lawyer from California:

The final resolution is an insidious combination of motherhood, apple-pie and an audacious attempt at such a massive raid on the resources of the international seabed beyond the territorial limit that it prompted three dissents from members of the section's marine resources committee. . . . The resolution opposes admirable efforts by the State Department, in a draft treaty on deep sea resources, to recognize a "common heritage of mankind" in the oil, gas and minerals which technology is beginning to make recoverable from the deep seabed, and to establish a comprehensive international regime for their exploitation which would benefit non-coastal and less-developed coastal nations in addition to coastal nations and highly-developed technologies. It would preserve for American sovereignty, and thus for American corporations, resources of the so-called "continental margins" extending beyond the continental shelf hundreds of miles out to sea, under an elastic "exploitability" clause—claimed to be a recognized principle of international law of the sea. The rule would mean, in essence, "you can keep not only what you can get but everything landward as well."

This resolution was produced, notes Adler, by a Marine Resources subcommittee whose chairman represents Chevron and whose predecessor was a lobbyist for the American Petroleum Institute. Comprising the section's eight-person ruling council is an Oklahoma law professor, three attorneys from firms representing Humble Oil, Kaiser Steel, and other gas and oil companies, and four corporate general counsels from Marathon, Humble, Shell, and Texaco.

Rising Above Self-Interest

The Tax Section is clearly one of the ABA's most influential units. It regularly sits down with Treasury officials and congressional leaders to convey its opinions on pressing tax problems. On May 21, 1973, for example, nine leaders of the Tax Section met with 10 Treasury representatives to cover an agenda of 15 tax issues.* The obvious intimacy

* As summarized by a Tax Section memorandum, the subjects ranged from "Suits to Compel Action by the Treasury or Internal Revenue Service" ("Mr. Asbill [the recent section chairman] asked whether the Committee might be helpful to the Treasury") to the "Status of Proposed Revenue Ruling on Prepayment of Feed Expenses" ("The Treasury would be interested in participating in the meeting of the section's committee on agricultural problems with the IRS on its drafts on a ruling re prepayment of feed expenses") to a final discussion of "The Federal Advisory Committee Act" ("it would be disastrous if the Treasury could not get reactions and intelligence [from these meetings] without public meetings").

between the public and private sectors displayed at these sessions is extraordinary, but it is not rare. Thomas Field, the former Treasury lawyer, recalls that his boss invariably used to ask whether proposed Treasury actions had been screened by the Tax Section. "They had an advance veto on proposals," said Field.

The deliberations of the Tax Section clearly have an impact beyond that of the usual private association. Most often it is an impact favoring their private clients, argued Hofstra law professor Stuart Filler, a section member. "They very rarely take off their client hats as members of the ABA," he said.

Occasionally this devotion to clients can lift Tax Section members above even the imperatives of self-interest. The corporate pension issue is an example. For years lawyers had debated the question of how much money a taxpayer should be able to deduct as a contribution toward a tax-deferred pension plan. The tax code has traditionally treated the self-employed (like lawyers) more strictly than corporate officials in this matter. Recently one Tax Section subcommittee proposed a plan that would equalize the benefits by imposing a ceiling of $10,000 for pension-plan deductions; in general this would have restricted corporate pensions and aided lawyers. "But this was overwhelmingly defeated on the floor of the Tax Section," recalls Filler. "The attorneys were pressured by their corporate clients to vote against it. People who would have been for it as lawyers were against it as retained counsel."

A former Treasury tax legislative counsel and former Tax Section participant has commented:

> The Tax Section is "business" and not "charity." It is not really surprising that the Section cannot be said to be fulfilling any obligation to the public—I don't think it has even recognized such an obligation. . . . I think it should change its character. It goes without saying that it should not be used to further narrow interests of clients. It does so today even though in less crude fashion than in the good old days. . . .
>
> Had I concluded that the Section and the ABA were amenable to change, I think I might have continued to burrow from within. I concluded, erroneously I hope, that the battle was not to be won. . . .

Rushing In Where Others Tread

ABA president Chesterfield Smith disagrees that self-dealing is a problem. "A section is financed by its own dues and all work is done by individuals who, of their own volition, band together to further a common purpose," he said. "Their interest in the subject matter is self-evident and fully disclosed." Smith referred to a conflict-of-interest resolution passed by the ABA's Board of Governors in August, 1972. It requires that "every effort should be made to obtain representation of differing views" in section appointments and that any section members involved in a recommendation or report to the House of Delegates should reveal any client interest they have in the issue. Occasionally, the association has acted affirmatively to create balance, as it did in 1970, when forming a Special Committee on Environmental Law with representatives from both industry and environmental lawyers. But judging by the one-sidedness described in the no-fault, patent, antitrust, natural resources, and tax situations, as well as by the non-disclosure of client interests, the ABA resolution seems a paper tiger.

Smith went on to insist that, anyway, "no policy is a policy of the American Bar Association until it has been adopted by the House of Delegates. The Sections only recommend to the House." This is really no more persuasive than Carl Albert insisting that House floor activity is the only thing that matters, not what Wilbur Mills and that committee of his do. For ABA sections, like congressional committees, shape legislative proposals with their "expert" hands so that their respective Houses often just follow their lead. In addition, sections

often deal directly with congressional committees, despite an ABA policy against doing so.

In response to criticism, Bert Early, the ABA's executive director, stresses the ABA's commitment to further justice in America. It is true that the ABA has in the past decade supported proposals like OEO Legal Services, the Freedom of Information Act, and the 25th Amendment providing for presidential disability. Then of course, there were the reforms of the 1973 convention. Yet it is still difficult to confuse the ABA with Common Cause.

First, ABA members appear far less concerned with issues like presidential succession than with no-fault auto insurance or pension plans for professional corporations. "It's clearly easier to mobilize the bar on a bread-and-butter issue like this than on public interest issues," admits John Tracey of the ABA's Washington office.

Second, for every time the ABA's hands and feet patter progressively, it will also refuse to support the Genocide Convention, to oppose the Vietnam war, or to declare against hunger because these issues are considered "not germane" to the ABA's mandate. As a former ABA president warned during the hunger debate, "If this association starts running all over the lot, we will lose all the reputation that we have gained."

Third, even when it is progressive, the ABA seems to rush in where others already have trod. Of the major movements of the past decade—civil rights, consumer, anti-war, women—in none has the ABA played a leading or serious role. As a result, one has come to expect it to be largely a procedural technician on issues of law enforcement or an advocate of lawyers' benefits, but not an innovator for social justice.

And fourth, despite occasional decorous advocacy for often well-meaning policies, the ABA is careful not to challenge the interests of lawyers or their corporate clients. The ABA will take up issues like "law explorer posts" for the Boy Scouts, firearms control, and even marijuana, but not the distribution of wealth and income or high legal fees or dilatory practices by law firms or the anti-competitive structure of American industry. At its 1971 annual meeting the ABA recommended "the immediate establishment of a Commission on the Review of the National Policy Toward Gambling" but withdrew from consideration an earlier proposal by chairman Sam Dash's Criminal Law Section for a Presidential Commission on White Collar Crime. The ABA's sections condemn consumer class actions because they will (allegedly) clog the courts, but they do not condemn auto negligence cases which *do* clog the courts.

Still, the ABA is no mere American Petroleum Institute. It does not promise to reward the obedient with campaign gifts or punish the wayward with a loss of votes. Most of its $16 million staff budget supports projects for minority law students, prison reform, legal rights for the mentally disabled. Thus, it adds a dash of good works to its defense of the status quo, and it has the good sense to elect leaders, like Bernard Segal, Robert Meserve, and Chesterfield Smith, who are more liberal and sensitive than the membership itself. In so doing, the association has repaired its traditional obstructionist image and shown itself to be more than merely twisters of pretzels. But it has not taken the big step—moving away from a fretful concern with its own well-being to a serious exploration of how it could use its power to advance the cause of justice and legal equity. Fred Rodell, the rakish and scatological Yale law professor, has written that "while law is supposed to be a device to serve society... it is pretty hard to find a group less concerned with serving society and more concerned with serving themselves than the lawyers." Ultimately the most discernible common cause of the ABA is the needs of its lawyers and those clients whose interests they regularly attend. ■

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Ralph Nader, the Last New Dealer

by Simon Lazarus

One of the most perverse habits of the postwar liberals was their inclination to revere the New Dealers, while scorning those earlier reformers, the Progressives and Populists. Inspired by Richard Hofstadter, many liberals still understand "populism" as an epithet, connoting the naive moralism which they believe stymied early 20th-century reformers. Yet New Deal ideology was itself a variant of the populist tradition, rather than a departure from it. The New Deal version of the populist ideal was, if anything, *more* naive than the version nurtured by the old Populists and Progressives. Glib New Deal promises of a new regime conjured a moratorium on politics, during which well-intentioned reformers could actually work out new social arrangements in tune with expert definitions of the public interest.

The first generation of 20th-century reformers did not share the New Dealers' hubris about "taking control" of things. They believed that it was, as Woodrow Wilson said during the 1912 campaign, "an open question" whether government was "strong enough to overcome and rule" the private interests that dominated politics and the economy. The Progressives had a tragic sense about democracy, a sense that some inherent fault might make it impossible for democratic government to fulfill itself.

This central insight of the Progressives and the original Populists has been rediscovered. The most attractive feature of the current recrudescence

Simon Lazarus is a Washington lawyer. This article is adapted from his book, The Genteel Populists, *to be published this month by Holt, Rinehart, and Winston.*