

Misunderstanding the increase in lawyers

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Compared to, say, TV Guide or Reader's Digest, The New Republic is a low circulation magazine. It is, however, this country's most prestigious and maybe most astute political-cultural publication. It carries articles on a wide-ranging set of topics — from daily political affairs to reviews of the most esoteric philosophical books. It has featured notable personalities such as Michael Kinsley, Fred Barnes and Andrew Sullivan. Its editorial views are not easily predicted. And it is very enjoyable to read, whatever your politics happens to be. As a co-founder of what has been aspiring to be a competing publication, Reason, I must admit that The New Republic is far and away the best read for those of us who care about public and cultural affairs.

Yet narrow-mindedness is not unfamiliar to its pages. Thus, it recently unhesitatingly embraced the doctrine of nudging as President Obama's wise public policy vis-à-vis the business community, even though the Obama administration has been about as intrusive in the American economy as any administration since FDR's.

Not very long ago, in a review of several fictional and non-fictional books of on the law, the author offers this unabashedly ignorant passage:

“To an imagination of any scope,” [Oliver Wendell] Holmes wrote, “the most far-reaching form of power is not money, it is the command of ideas.” That now has the platitudinous ring of a commencement address to which the graduating class listens patiently, all the while believing, on the evidence of nearly everything that surrounds them, that money will always be a vastly more far-reaching form of power than the command of ideas. How else is it possible to explain the enormous growth of the legal profession in the last 30 years? In this country between 1965 and 1990, writes [Lincoln] Caplan, “the number of lawyers leaped .. from 296,000 to 800,000....”

Aside from the fact that this passage supports if not confirms Holmes' observation — the belief in the power, not to mention in the corrosiveness, of money is itself a result of the command of a very ancient idea — the rhetorical question does not have the self-evident answer the reviewer believes it does. There is a very obvious alternative possibility.

Is it not just possible, indeed very likely, that the enormous growth of the legal profession is because of the enormous growth of laws, especially government regulations of the economy? We have since the 1960s increased the number of laws and regulations enormously. The federal government alone writes thousands of new laws every year. The states, counties and municipalities add their (unfair) share. And the people — all the way from the local barber to multinational corporations' CEOs — need to hire lawyers to help them navigate the resulting legal labyrinth. Just now they are all gearing up to defend themselves from the Obama administration's highly probable meteoric increase of government regulator measures of America's financial institutions.

The New Republic is, no doubt, a superb magazine. But it suffers from its own ideological blinders. The editors probably found this rhetorical question about lawyers perfectly sensible, given the command of the idea that money is something awful but very tempting and that the relentless manufacture of laws and regulations in this country is, well, the thing to be taken for granted. Had they but considered that maybe these laws and regulations are mostly superfluous, the product of politicians posturing as savers of humanity, they might have asked the reviewer to think again about that sentence, to consider that the entire drift of the review might need to be recast to reflect

not a well-entrenched prejudice about money but the reality of the enormous growth of statism in the United States. All they need to do to see this is to read reports such as that of former administrator of OIRA — Office of Information and Regulatory Affairs — in the Bush administration, “Lessons Learned, Challenges Ahead,” in *Regulation* magazine, Summer 2009.

And Ms. Dudley isn’t even a radical about government regulations, someone who considers all of it ultimately a violation of due process (bothering citizens, imposing burdens on them, restraining their actions, before they have been proven to deserve any such treatment. Even some of the friends of regulations can see that with their relentless proliferation, they must give rise to greater and greater demand for attorneys who might just lessen their vicious impact.

ABOUT THE WRITER

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