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OUR LITIGIOUS SOCIETY*

A.E. DICK HOWARD**

I want to begin by quoting what a French traveler had to say about American lawyers two hundred years ago. You may assume I mean Tocqueville because he is often quoted for his commentaries on American life, but I have in mind St. John de Crèvecoeur, who wrote *Letters from an American Farmer*,[1] published in 1784. One of his letters was written from South Carolina. It had this to say:

> The three principal classes of inhabitants are lawyers, planters, and merchants; this is the province which has afforded to the first the richest spoils, for nothing can exceed their wealth, their power, and their influence. They have reached the *ne plus ultra* of worldly felicity; no plantation is secured, no title is good, no will is valid, but what they dictate, regulate, and approve. The whole mass of provincial property is become tributary to this society, which, far above priests and bishops, disdain to be satisfied with the poor Mosaical portion of the tenth. I appeal to the many inhabitants who, while contending perhaps for their right to a few hundred acres, have lost by the mazes of the law their whole patrimony. These men are more properly lawgivers than interpreters of the law and have united here, as well as in most other provinces, the skill and dexterity of the scribe with the power and ambition of the prince; who can tell where this may lead in a future day? The nature of our laws and the spirit of freedom, which often tends to make us litigious, must necessarily throw the greatest part of the property of the colonies into the hands of these gentlemen. In another century, the law will possess in the north what now the church possesses in Peru and Mexico.[2]

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1. J.H. ST. JOHN DE CRÈVECOEUR, LETTERS FROM AN AMERICAN FARMER AND SKETCHES OF EIGHTEENTH-CENTURY AMERICA (Penguin 1986) (London 1783) [hereinafter LETTERS].

2. J.H. ST. JOHN DE CRÈVECOEUR, *Letter IX: Description of Charles Town: Thoughts*

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This is a rather pessimistic picture of what lawyers had become not only in the province of South Carolina but in the American nation generally. Those words were published in 1782, and we raise the question this morning, two hundred years later, whether we have indeed come to the state that St. John de Crevecoeur predicted.

While I embark upon a topic about which the popular press and media have had much to say, Chief Justice Burger has inveighed frequently against the costliness, the destructiveness, and the inefficiency of our legal system. He says he sees "hordes of lawyers, hungry as locusts."[3] The figures are, I suspect, very familiar ones: in twenty years time, the number of lawyers in America has doubled, and the number of law students in America has multiplied by four times. According to Commerce Department figures, in 1985 the law "industry," if I may call it that, counted as its receipts about $54 billion. That is more than the hotel industry made by $10 or $12 billion, far more than the movie industry made, less, of course, than health, but still it is a substantial share of the gross national product.

As we talk about litigiousness, let me pose four questions. First, how litigious have we in fact become? Second, what factors have encouraged litigiousness? Third, if one sees this as a problem, what responses might one make? Last, what would be the appropriate standards for evaluating those responses?

The first question—how litigious, in fact, are we—is a really tough one. One hears comparative figures suggesting that Japan and other countries use far fewer lawyers than we do, and one assumes that somehow we are more litigious than everyone else. If one analyzes historical data, the data are fragmentary to be sure. Studies of nineteenth-century St. Louis suggest that, on a per capita basis, people in St. Louis went to court twice as often in the nineteenth century as they do today. Another study, of seventeenth-century Accomac County, Virginia, suggests that the people of that day and time were four times as litigious in proportion to population as would be true of American counties

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on Slavery; On Physical Evil; A Melancholy Scene, in LETTERS 166, 167-68.

3. Remarks of Chief Justice Warren E. Burger, ABA Minor Disputes Resolution Conference (May 27, 1977), *reprinted in State of the Judiciary and Access to Justice: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm.*, 95th Cong., 1st Sess. 287 (1977).

in the twentieth century.

If one turns from historical data to contemporary data, the figures remain a bit elusive, especially if one considers state courts. It is hard to compare the statistics from one state to another because the reporting is incomplete. Indeed, what does it mean that "x" number of disputes are filed in a court? Many of those disputes are disposed of by being withdrawn or settled, and those that go to adjudication often really do not involve any contest at all. In divorce cases, for example, the matter has been largely settled and all that is needed from the court is an authoritative disposition. Perhaps the most telling figures, and they relate directly to the focus of this Symposium, are those which relate to federal courts because the figures are complete and susceptible of comparison. Let me take as my benchmark the last twenty-five years—the years 1960 through 1985. During that period of time, the population of this country increased by about thirty-two percent, from 180 million people to about 238 million people. During that same twenty-five year period, the docket of the United States Supreme Court increased by approximately 227 percent.[4] The number of civil filings in federal district courts increased by about 469 percent, and the filings in the United States Courts of Appeals increased by approximately 794 percent.[5] One would expect, of course, some increase in percentage of cases based on population growth, but the difference between thirty-two percent population increase and 794 percent increase in filings in the courts of appeals is geometrical. Therefore, the raw figures suggest that something *is* going on—that, whatever may have been the case in the nineteenth century, a surge of filings has occurred in the last two or three decades, especially in federal courts.

Another way of measuring the problem would be to look not

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4. In the Supreme Court's October Term, 1960, 1940 new cases were filed with the Supreme Court. 1961 ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 218, table A-1 [hereinafter ADMIN. OFF. REP. preceded by year]. In the October Term, 1985, 5158 cases were on the Supreme Court's docket; 745 of these were carried over from the previous Term. 1986 ADMIN. OFF. REP. at 135, table A-1 (draft copy).

5. For the fiscal year ending June 30, 1961, 58,293 cases were filed in federal district courts, 1961 ADMIN. OFF. REP. at 234, table C-1, and 4204 appeals were filed with the federal courts of appeals. *Id.* at 222, table B-1. For the fiscal year ending June 30, 1985, 273,670 cases were filed in the district courts, 1985 ADMIN. OFF. REP. at 276, table C-1, and 33,360 cases were appealed to the courts of appeals. *Id.* at 244, table B-1.

at the raw figures, but at the *kinds* of cases that are filed. Here one becomes anecdotal, and the media have picked up on many of these examples. One reads about the case in which the Washington Redskins fans at a St. Louis football game were disappointed by the referee's call and filed a case in federal court challenging that decision. Apparently, civil rights are caught up even in what happens on the football field. I remember in the 1960s when every one of the ten federal judicial circuits had cases challenging high school dress codes, specifically how long boys' hair must or could be in those high school districts. The circuits, as I recall, split five-to-five in those cases. The Supreme Court never resolved that question. I recall Justice Black complaining that the federal courts had better things to do than to decide how long boys' hair ought to be in high school. There are other examples: clergy malpractice, academic standards, and wrongful life suits. Causes of action are filed today that probably would not have gone to court or would not have been the subject of litigation even twenty or twenty-five years ago.

Let me not linger on the anecdotal because I think that is very familiar to all of us. Let me pass instead to a somewhat more thorough-going consideration of my second question: Assuming there is some phenomenon of litigiousness, what are the factors in American life that prompt Americans to sue and to go to court as frequently as they do?

One of the factors is surely institutional, including the activity of government itself. In the 1970s alone, there were some seven new federal agencies created, such as EPA and OSHA. The Federal Register in the past fifteen years has grown from something like 10,000 pages annually to approximately 50,000 pages, a five-fold increase. Washington, D.C., is a lawyer's boom town these days; I believe something on the order of 35,000 people belong to the D.C. Bar Association. There has been, during this same period of time, the marked rise of the public interest law firm. To be sure, public interest groups were litigating before my benchmark year of 1960, the NAACP Legal Defense Fund being one, but the appearance of these firms became manifest in the 1960s and covered a great many fields. What distinguishes these firms, of course, is that they exist with litigation as their purpose. They go to court to raise questions. It was during this period that the growth of Legal Aid was spurred partly by

Gideon v. Wainwright,[6] the Supreme Court decision giving indigent defendants the right to demand lawyers in felony cases. The creation of the Legal Services Corporation, of course, gave more representation for the poor. These were some of the institutional factors.

Additionally, I think the courts themselves have played a very essential role in increasing opportunities for litigation. Certainly, judges in the modern age appear disposed to a willingness to fashion and explicate rights. Those rights sometimes are substantive rights, such as privacy and autonomy rights in cases like *Griswold v. Connecticut*,[7] *Roe v. Wade*,[8] and *Eisenstadt v. Baird*,[9] or they may be procedural rights, such as the right to have review of welfare agency decisions to discontinue entitlements. Beyond explicating rights, courts have shown a willingness in our time to fashion more sweeping remedies. In particular, judges have become very famous supervising public institutions in institutional litigation cases. Two examples of this are Judge Arthur Garrity in Boston and Judge Frank Johnson in Alabama. At one time Judge Johnson had so many cases involving the State in his court that people down there used to refer to him as the "real Governor of Alabama" as his court was where policy was in fact being made. Therefore, from the traditional lawsuit, A suing B, one finds that frequently the paradigm suit today is the public law litigation. This includes institutional litigation involving class actions, sweeping remedies, and ongoing supervision in which judges, having handed down decrees, then go into the business of administering and overseeing the final results of those decrees. The courts also have devised new standards of review. Perhaps the best example is the Supreme Court's *Brown v. Board of Education*[10] decision in which strict scrutiny standards of review in equal protection cases was spawned. In short, it seems to me that the modern judge, and this often does not really depend on who put him on the bench, displays a willingness to be a problem-solver. You lay a problem before the bench, and the judge's reaction is that, if there is a

6. 372 U.S. 335 (1963).
7. 381 U.S. 479 (1965).
8. 410 U.S. 113 (1973).
9. 405 U.S. 438 (1972).
10. 347 U.S. 483 (1954).

problem, it should be solved.

We remember well the Warren Court from the sixties for its judicial activism: one person, one vote; school desegregation; and criminal justice. Now we embark upon the era of the Rehnquist Court. If you look back over the seventeen years of the Burger Court, it is apparent the predictions that the Burger Court would somehow cut back on the activism of the Warren years proved unfounded. For all the activist jurisprudence of the Warren era, the Burger Court found yet more things for judges to do: abortion, capital punishment, gender discrimination, prison cases, and commercial speech. The list of areas where even the Warren Court had not gone or had barely gone and where the Burger Court opened up new judicial terrain is really quite a long one.

Let us not overlook Congress' role in all of this. Congress in the modern age has created causes of action by way of federal statutes or, in many cases, has simply passed unclear legislation, leaving it for judges to interpret such a statute to determine, for instance, whether a private party may sue by way of an implied cause of action. If one were to sit in on legislative debates, congressional or otherwise, one might hear a legislator questioning the constitutionality of a bill, and some other legislator will say, "Well, do not worry about that. The courts will take care of it." There is a passing-the-buck syndrome in the legislative branch. Also, there has been a failure of the political branches to solve problems with these problems finally winding up in the laps of the courts. The states' unwillingness or inability to deal with desegregation certainly brought the federal courts into that picture in a very broad way. The decline of the party system certainly has had its impact. Also, we have watched with fascination as black successes in the course of the civil rights movement during the fifties and sixties were quickly and widely imitated by a number of other groups—prisoners, women's rights groups, and others.

Finally, among the factors that I find most fascinating—though I surely am not competent to judge—are the social factors. Perhaps a sociologist or political historian ought to treat these, but they ought not to be omitted. I would think the conditions of modern life have a lot to do with litigiousness. We do live in a more complicated time. There are simply more opportunities for interaction and for conflict. Take the example of tech-

nology. We would not have the so-called "right to die" cases, such as Karen Ann Quinlan's case,[11] unless we had the technology to keep people alive, at least in a technical sense, pending resolution of the dispute. Thus, courts in Massachusetts, New York, New Jersey, and others have had to deal with questions of whether extraordinary measures should be discontinued. Modern technology in the medical field has given rise to widespread expectations of what people think their doctors and hospitals can do for them. If those expectations are not fulfilled, then medical malpractice suits are the result. It seems to me that, in a social sense, there is an unwillingness to accept or tolerate injuries that might have been accepted as part of the rough spots in life in another time—an unwillingness to "lump it," so to speak. Litigiousness is partly, I suppose, a result of the publicity that is given to lawsuits and to awards in individual cases. Also, there has been, I would submit, a rise of what one might call a "rights" syndrome. A good example would be the spread of the antidiscrimination principle, beginning with race as the most obvious application of that principle. That notion has spread to any number of other areas—gender, national origin, religion, physical or mental handicap, sexual orientation, and so forth. As one turns to the extraordinarily knotty problems of affirmative action, one finds played out once again the question of how many groups should be entitled to what kinds of preferences.

There might be another social, even personal, kind of factor at play. It is one that Judge Motley pointed out very well at a dinner conversation we had last night. Individuals may well prefer to go to court than deal with a faceless bureaucracy. In a court, whether you win or lose, at least you know with whom you are dealing. When you go to court you come face to face with a specific person in whose hands the resolution of your dispute lies. Indeed, it may be a much quicker resolution than would be true of a bureaucratic organization. When you deal with the Internal Revenue Service, for example, you do not know who is finally handling the problem and you may never get a final answer.

Beyond this, and here I touch the jurisprudential level, I would think that one of the factors at play has been a changing

11. *In re* Quinlan, 70 N.J. 10, 355 A.2d 647 (1976).

notion about the nature and function of law itself. We had once upon a time the old Blackstonian myth about law: that judges discovered law, or that judges reached into the heavens and plucked down the standard and simply applied it to a case. We have, of course, discarded that belief today, partly due to the influence of positivism, for the notion that law is made by human beings for solutions of problems. We also have had the influence of legal realism, that movement in the twenties, thirties, and forties in this country, which emphasized the role of the judge—what it is the judge does in making law. We have divorced rather completely in American jurisprudence—I say completely, but this may be returning—the old relation of law and natural justice, where law and justice were seen to be a naturally interlocking mechanism. Perhaps we have done that because constitutional phrases such as due process or equal protection are a nice substitute. They certainly are as malleable and as infinitely elastic as natural law ever was.

There may also be another social factor at play here: a shift in American attitude to authority. The old authority centers —the family, the school, the church, and so forth—simply seem to have less command upon the obedience of American people. Opinion polls suggest as much. Perhaps law and courts have become a substitute for those old authority centers. There certainly has been something of a decline in the sense of community; there is more confrontation and less accommodation. There is more emphasis on legal formalities and procedures and less on working out problems in an informal fashion. One of the men who preceded me at this platform, a university president, surely would testify to what any university president will know. Universities are not the kind of places they were twenty-five years ago, when one did not draw codes of rights and responsibilities. A university president does well to have his lawyer at his elbow when he makes major policy decisions because universities, like the society at large, are miniature bodies politic in which one must think in legalistic terms of rights and responsibilities.

That is a short sketch of what strikes me as some of the factors that are at play in American life.

Let me turn to my third question: assuming one judges something to be going on, something we might call litigiousness, and assuming one thinks that there is perhaps more of it than there ought to be, what possible responses might one make to

the problem? Here I am going to be fairly sketchy because it strikes me that much of what will be taken up in this Symposium will deal with questions of responses, specifically in the federal court context. Let me simply group these responses under generic headings and suggest ways of thinking about the problem.

Some of the responses or proposals that one might hear are essentially technical, managerial, or organizational—for example, such things as dividing circuits. When the old Fifth Circuit was divided into the Fifth and Eleventh Circuits, that was a managerial response to the problem. Hiring court administrators is another managerial response, which Chief Justice Burger has supported. Also, the idea of creating specialized courts, such as a tax court, is a specialized way of dealing with the managerial side of the problem.

Second, one might deal with how attorneys must behave in court. Proposals have either been made or adopted dealing with such things as limiting the abuse of pretrial discovery, the endless dragging out of the discovery process in a way that may simply enhance the power of those who have the money to endure that process.

Third, one can deal with the problem on a larger plane—dealing with substantive law itself. One might, for example, abolish a substantive cause of action. If there is no cause of action, the court has nothing to do. One could simply leave particular issues to private resolution. This is how the modern age has dealt with the old cause of action of alienation of affection. It used to be a cause of action, but it does not exist anymore. Also, one might substitute legislative solutions for adjudication. Workers' compensation surely would be the classic example. Another example would be no-fault proposals, which are often rejected or are adopted in a watered-down form. Deregulation would be another approach. Trucking and airlines, of course, have seen a good deal of this.

A fourth response, which may, no doubt, surface in one form or another deals with the overarching question of how easy it should be for people to go to court. This response is on the border between substantive law and procedural law. It is what I would call controlling access to the courts—what their jurisdiction and powers are. This response pertains to questions concerning the class action, standing, implied causes of action, and

so forth. For example, one might deal with the question of expenses and costs of litigation. Who finally pays for fees and costs obviously will affect very much what kind of cases are brought and how often. Also, Congress has article III power, surely one of the more contentious areas of dealing with court jurisdiction. That article III power on its face seems quite sweeping, but, as we know, there is a lot of uncharted territory here because sweeping proposals to limit the courts' jurisdiction have typically been rejected. Certainly, many bills have been proposed seeking to alter the jurisdiction of the courts, most notably on questions like school prayer, abortion, and school busing. I might say parenthetically that this route obviously is fraught with some dangers, but it is certainly a part of the checklist. Furthermore, one could set out to limit the courts' remedial powers. This tool has been used sometimes. Perhaps the best example would be the federal laws that limit the granting of injunctions in labor cases, a device of some decades standing. Busing has been the subject of this kind of proposal, the thought being that busing might be viewed as simply one remedy among others to enforce the substantive constitutional right. Obviously, once again this proposal is fraught with some significant implications for the constitutional right itself. Other proposals advocate adjusting the relative role that federal and state courts play in the federal system. There was a time in the sixties, during the full flood of concern about civil rights, that state courts were thought to be part of the problem. I think twenty years ago that was not an unfair judgment. Twenty years later, however, I would submit that state courts are far better able to function, to manage problems, and to interpret rights than they had been in the sixties. Therefore, perhaps it is time to take a fresh look at questions like diversity jurisdiction and duplication in criminal cases. Should diversity jurisdiction be abolished or at least modified? To what extent should one have recourse to habeas corpus and collateral attack of state convictions? Finally, in dealing with the courts, one might think about alternative forums such as arbitration or mediation, proposals sometimes adopted at the state level.

Last, in thinking about responses, and here one does emerge onto a very broad plane, proposals for reform should address other institutions as well as the courts. It may well be that the litigation takes place in courts, but, by my analysis of the factors

that give rise to litigiousness, much of the problem begins somewhere else, with what other institutions do and do not do.

Legal education is a candidate for study. The typical law school curriculum, and I speak here as a professor who obviously is part of that ongoing process, is one which inculcates subtly or overtly certain attitudes and values about the norm in the litigation process. Most of us who teach in law schools teach from case books that use appellate cases. There is an emphasis on litigation as a process of yielding answers and on appellate courts' reasoning in resolving and answering those questions. It may well be that law school curricula overemphasize the process of litigation, that law schools are to the process of law in this country as television is to what goes on in the real world. Maybe the curriculum fosters preoccupation with conflict and, therefore, tends to overlook other ways of working out society's problems.

Second, one certainly can look at the health of political institutions and their procedures. Take Congress, for example. There are times when one wonders if article I has not been written out of the Constitution. Congress often seems to be at a standstill. One wishes that Congress would simply write statutes in a way that one could read them and understand them. I may not be the brightest lawyer around, but I certainly bog down in them, and I suspect some others do as well.

State governments are also candidates for revitalization, and I am delighted to acknowledge the contributions of South Carolina's Governor Dick Riley in this respect. He belongs to a generation of governors, including Bruce Babbitt of Arizona, Richard Snelling of Vermont, Charles Robb of Virginia, and some others, who have exemplified the resurgence and renaissance of state government in America. I think state governments, like state courts, generally are in far better shape today than they were twenty years ago. It may be coincidental that states are now being asked to do and obliged to do more because of the Reagan administration's incentives towards decentralization. Whether it be because they want to or because they are being made to, I think the states are better able to handle problems today.

Last, although this is beyond any prescription that a symposium like this can deal with, I would certainly mention thinking about ways to reinvigorate the family, the church, and the school. These are other social mechanisms where problems are

worked out. One cannot force solutions upon those institutions, but judges and courts can be sensitive to and aware of how their decisions will impact upon those institutions. In the arena of the academic process, for example, if every final examination grade were a potential lawsuit, it seems that both the courts and the schools would be the losers.

Finally, I want to turn to my fourth question, one which is fundamental. Assuming that one were to conclude that there is too much litigiousness, that it is a problem, and that there ought to be responses to it, I do not think that ends the inquiry. It seems to me that one is obliged to fashion a set of criteria or standards by which to judge those responses. Litigiousness, whatever the problems associated with it, is by no means all bad. I do not wish my remarks to be construed to be that, if there are too many cases, too many lawsuits, and too many lawyers, one can simply cut back in a wholesale manner. One surely can be more sophisticated than that. Therefore, let me suggest, although in the confines of a brief talk one cannot be exhaustive, that there are ways to think about standards.

Certain factors, I would submit, argue prima facie against judicial intervention. I use "prima facie" to suggest a rebuttable presumption that when these factors exist one should be slower to urge courts to take on a particular problem. One factor I have in mind is the occasion when the cost of the court's action is excessive in relation to the benefits that one may perceive in the adjudication. Lack of authoritative standards against which to judge is another factor. I have recourse again to the world of academics; the standards of scholarship are simply not very amenable to resolution by judges. A third factor is the deleterious effect a court's action might have upon other institutions, such as when a decision supplants family decisions or school decisions. This may weaken those institutions, and accordingly, society pays some price. Fourth, the complexity of the subject matter may be a reason for hesitation. Medical malpractice may take courts into areas that are simply so complex that, at some point, this should be a cause for concern. Allocation of resources ought, it seems to me, to be prima facie a legislative question. The need for ongoing supervision ought to be a matter for concern as well.

Other competing factors may support judicial intervention or the availability of access to courts. These would include the

need for integrity or independence in a decision because an issue ought to be worked out in some reasoned and principled way that is not typically manifest in legislative decisions. There may be a need for particularized consideration of a problem—looking precisely at a set of facts and seeing how they ought to work their way out, especially when one deals with fundamental rights. Where a minority is involved, particularly those who are powerless or unpopular as potential plaintiffs, I would err on the side of access to courts. In that respect, courts are, in effect, safety valves for what might otherwise be explosive resolutions of problems.

Factors of this kind are, of course, subjective, and one could complain rightly that the checklist is not going to help one finally decide which things should go to court and which should not. Your list of fundamental rights might not be the same as mine, just as Justice Peckham in 1905 thought liberty of contract was a constitutional right[12] and Justice Blackmun in 1973 thought that the right to privacy was a fundamental right.[13] As we debate litigiousness and weigh its cost, however, and we seek to keep the uses of courts and law within some bounds, we should not be blind to the gains that have been made precisely because of increased recourse to the courts. It is hard to believe that a nation that calls itself devoted to the principles of justice would want to go back to the days when minorities were largely shut out of the legal system, or, because of poverty, a deserving citizen could not, in effect, have his or her fair day in court. We should not overlook the gains that reliance on courts and on litigation have brought in areas such as freedom of conscience and unfettered press, remedies against racial discrimination, personal privacy, and other important values. Therefore, if we are to do some pruning, it seems to me that the pruning ought to be selective. If too much law or too many lawsuits is a problem, let us not lose sight of an equally important concern—too little justice. If litigiousness is a problem and remedies ought to be explored, any response should be tempered with moderation.

I opened with St. John de Crèvecoeur. Let me close on what may strike you as a mildly whimsical note by quoting from Sir

12. *See* Lochner v. New York, 198 U.S. 45 (1905).

13 .*See* Doe v. Bolton, 410 U.S. 179 (1973); Roe v. Wade, 410 U.S. 113 (1973).

Arthur Conan Doyle's *Hound of the Baskervilles*.[14] This is not usually referred to as one of the sources of legal authority, but I invite you to think about the relevance of one particular passage. This is a passage about Mr. Frankland, a neighbor of Sir Henry Baskerville. Dr. Watson describes Mr. Franklin as follows:

> His passion is for the British law, and he has spent a large fortune in litigation. . . .Sometimes he will shut up a right of way and defy the parish to make him open it. At others he will with his own hands tear down some other man's gate and declare that a path has existed there from time immemorial, defying the owner to prosecute him for trespass. He is learned in old manorial and communal rights, and he applies his knowledge sometimes in favour of the villagers of Fernworthy and sometimes against them, so that he is periodically either carried in triumph down the village street or else burned in effigy, according to his latest exploit.[15]

Here is Frankland speaking of himself, talking to Watson:

> FRANKLAND: It is a great day for me, sir—one of the red-letter days of my life. . . .I have brought off a double event. I mean to teach them in these parts that law is law, and that there is a man here who does not fear to invoke it. I have established a right of way through the centre of old Middleton's Park, slap across it, sir, within a hundred yards of his own front door. . . .We'll teach these magnates that they cannot ride roughshod over the rights of the commoners, confound them! And I've closed the wood where the Fernworthy folk used to picnic. These infernal people seem to think that there are no rights of property, and that they can swarm where they like with their papers and their bottles. Both cases decided, Dr. Watson, and both in my favour. I haven't had such a day since I had Sir John Morland for trespass because he shot in his own warren.
>
> WATSON: How on earth did you do that?
>
> FRANKLAND: Look it up in the books, sir. It will repay reading—*Frankland v. Morland*, Court of Queens Bench. It cost me £200, but I got my verdict.
>
> WATSON: Did it do you any good?
>
> FRANKLAND: None, sir, none. I am proud to say that I had

14. A.C. DOYLE, *The Hound of the Baskervilles*, in THE COMPLETE SHERLOCK HOMES 783 (Doubleday, Doran & Co. 1936).

15. *Id.* at 836.

no interest in the matter. I act entirely from a sense of public duty.[16]

16. *Id.* at 863.