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Justice Limited by Law

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JUSTICE LIMITED BY LAW.

"It may be law, but it isn't justice," is a phrase frequently heard when a case is decided that attracts public attention. This is the protest of the individual sense of right against the crystallized thought expressed in the adjudication of a rule of civil conduct.

The student of the Law starts with the idea that Law ought to be Justice.

Sooner or later the student of the Law as it is—or as it seems to be—finds out that he has not learned what it is, and then he finds out that he can never—try as he may—learn what it is. Later, he discovers that the Law as it is is not identical with Justice; and, on the contrary, it often expresses what the community believes to be injustice. Then the lawyer is discouraged, and unless he has a brave heart and an inquiring mind, he is tempted to give up in despair, and settle to the conclusion that the practice of the law is a mere game of chance, in which the boldest gambler wins the stakes.

When such time comes, he should pause and take a reckoning. Let him first search his own soul, to be sure that his sight is clear, and then search the history of humanity through the ages, and it shall be given to him to know, as the Sages have taught us, that Truth is eternal, always old, yet ever young. He shall learn from Moses and the Prophets, from Hammurabi the Babylonian, from Justinian the Roman, from Pufendorf and Vattel, from Bracton and Fleta, Coke and Blackstone, Kent and Story, that the principles of law are perpetual; that it is the forms of their application that change. For the Law is always uncertain. It is always changing.

Law may be likened to the sand-beach on the shore of the sea, shifting its particles from hour to hour, as the tides of the ocean come lapping upon it with gentle murmur on the soft calm days; or beating and pounding it down with the mighty waves in time of storm.

So with the Law! It is made out of the same qualities of human nature in all ages, yet always shifting in adjustment to the needs of humanity. In the normal tides of daily life, when the sky is serene and the sea is smooth, the law appears to be fixed and settled. But with the storms come sudden shiftings and changings of the public mind. New laws are passed. New and undeveloped theories are put in motion. Some of them tend to ruin and desolation, some are quickly swept back to the normal.

Yet always the Law has in it the same essence; the essence of Justice.

Justice is not to be tested by the momentary emotion of the individual. It is not what you and I may think we feel under the impulse of a sudden passion. It is not expressed in the mutterings of the mob.

Justice is a conception of the Ideal. It has no limitations. Law seeks to limit it. Therefore Law is the struggle of Humanity to define Infinity.

It is like the effort of a man to reach the sun, when he can only feel the influence of its rays.

No one can perfectly define Justice. Cicero said: "The foundations of Justice are that no one shall suffer wrong; then, that the public good be promoted."

But the most wonderful attempt at a definition, and one which has been an inspiration to all true lawyers since, is that of Ulpian, adopted as the first title of Justinian's Institutes:

"Justice is the constant and perpetual wish to render to every one his due,"

or, as it is better expressed in the original Latin:

"Justitia est constans et perpetua voluntas jus suum cuique tribuendi."

The word "*voluntas*" means more than "wish," as we understand that word, but has in it the idea of will, desire, intention and purpose.

How obvious it is that the will and wish of the minds of Everybody, the Universal Mind, can never be defined.

And yet Humanity requires Law to govern its conduct, to enforce the rights of some, and punish the wrongs of others.

As Burke defines it—

“In effect to follow, not to force the public inclination; to give a direction, a form, a technical dress and a specific sanction, to the general sense of the community—is the true end of legislature.”

In other words. it is the true end of concrete law.

Then, what is Law? Blackstone says it

“Is a rule of civil conduct, commanding what is right, and prohibiting what is wrong; or as Cicero, and after him our Bracton, have expressed it, *sanctio justa, jubens honesta et prohibens contraria.*”

According to more modern notions I should say: “Law is what the community wants, defined in a form that can be enforced.

Unless the community wants an idea to become law, it cannot be defined to the satisfaction of that community, and when the community does not want the law enforced, it ceases to be law for that community.

And this, whether the community be small or large, a town, a state, a Republic or an Empire.

Clayton, the County Seat of St. Louis County, has voted itself a city; Missouri has adopted the initiative and referendum; the United States has amended its constitution to provide for direct election of Senators by the people; China, the example in all ages, of a hopelessly fixed absolute Empire, became—over night, as it were—a Republic.

Did these changes represent Justice? Who shall say? In one sense none did, since none completely achieved it. In another sense all did, since all expressed the struggle of Humanity toward something better. Yet, in their concrete form, the rapid changes of the times call for intelligent interpreta-

tion of the law by lawyers, and in the interpretation of these new governmental principles in America, there is a demand for young lawyers of the present, and coming lawyers of the future, who shall bring to their work the highest ideals of Justice, and the strongest training of the reason.

For, while Justice is abstract and ideal; Law is concrete and real. We live today. We deal with the things of today, and though we may look to the past for the wisdom of experience, and to the future with the inspiration of hope, we interpret the law with the reason of today.

Coke says:

“Reason is the life of the law; nay, the common law itself is nothing else but reason. * * * *”

“The law which is the perfection of reason.”

According to Froude:

“Our human laws are but the copies, more or less imperfect, of the eternal laws, so far as we can read them.”

With the rising of every sun comes a change in the day; with every breath of every human being comes a new inspiration, not only to the body, but to the soul; and in the myriad changes, beyond the power of any but omniscience to know, must come the perpetual adjustment which will always be defined in some form of law, and which, guided by reason and by the ideal of Justice, is exemplified in the thought expressed by Richard Hooker:

“Of Law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power.”

CHAS. CLAFLIN ALLEN.

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