

A NINETEENTH CENTURY VIEW OF THE  
STUDY OF LAW.\*

The study of law demands not only a knowledge of legal principles and of the reasons on which they rest, but a mastery of the lawful modes of using and enforcing them. The infinitely multiplied relations of man in society, out of which spring the legal rules by which he is to be governed, demand the wisest methods for using rightfully such potent forces—methods to elicit the exact truth amid uncertainties and disputes, by eliminating every element of falsehood and doubt—which will, with clearness, directness, simplicity, and certainty, conduct each investigation to positive results, and photograph each step along the pathway trod. The labors of more than two thousand years in this direction have been recorded for our guidance. All that human intellect could do in the past has been done and the benefit of that accumulated wisdom is ours today. In our time some would-be reformers, ignorant of the science whose machineries they would change or destroy, and ignorant, too, of every part of the machinery on whose nice adjustment success depends, seem to have absurdly supposed that legislative enactments can supply the lack of common sense and sound learning—that a dash of a pen by a brainless licentiate can become a sovereign panacea for legal ills, or that the diversified relationships of human society and pursuits can be attuned to infinite harmonies by the unskilled touch of ignorance and stupidity. Such vain pretenders belong to no country and to no time. More than eighteen centuries ago an inspired apostle rebuked them and their follies, and in so doing announced one of the most vital of legal truths:

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\*From an Address delivered by the late Hon. Samuel Treat, U. S. District Judge, at the Inauguration of the St. Louis Law School (now Washington University School of Law), on October 16, 1867.

“From which some having swerved, have turned aside into vain jangling, desiring to be teachers of the law, understanding neither what they say nor whereof they affirm. But *we* know that the law is good, *if a man use it lawfully.*”

An eternal verity!—that lawful ends must be sought only through lawful means; that the lawless use of the right is not and never can be a good; that the abuse of the potent enginery of the law is the grossest violation of law—subversive, sacrilegious! That divine utterance is an ever-living command, prescribing the inexorable condition on which public and private happiness must always rest. Whoever would trample down the forms created by law for the purity of its administration, or pervert those forms to the injury of his neighbor, on the plea that the end sought was an admissible good, would assail the lawful and the right within their hallowed strongholds—behind the barriers erected as their essential safeguards.

It is gross solecism that wrong modes of action can be right, or subserve the right; that lawlessness in any form can be lawful. In matters of largest moment we are too prone to judge by the end sought, while in insignificant affairs we promptly condemn improper appliances. No mechanic would hesitate to ridicule an attempt by impossible mechanism to effect a specified mechanical result, construct the sought-for machine, or produce the needed fabric. Still some innovators insist upon the adjustment of the complicated machinery of law by processes wholly unsuited to the purpose, and impossible of success.

The ignorant physician tampers with life and health; the ignorant attorney with life, liberty, and property. The former should know the disease and its curative process; the latter the wrong to be redressed or prevented, and the appropriate remedies therefor.

It is the boast of modern philosophy that its wonderful progress is due to the Baconian system or the true law of method. No one fails now to recognize that a true mode of

investigation is essential to discovery; that none but rightful modes of proceeding are likely to ultimate in right results. Philosophically, the method of doing is a primary consideration. Instruments fit for the purpose, and the correct use of them, are indispensable to the desired progress or achievement; and that fact is peculiar to no department of labor or enterprise. It is just as obvious to the humblest laborer as to the most successful philosopher—to the farmer, as to the statesman—to the artisan, as to the general—to the hodman, as to the jurist—to the servant, as to the served.

Why, then, should it not be fully recognized and enforced in the investigation of human rights, or the administration of law? Should a system designed to secure order and harmony be without order or method—falsify its own nature in its modes of proceeding?

For centuries legal methods were comparatively well defined and accurate. They eliminated admitted from disputed points, and narrowed down litigation to the only questions demanding judicial solution. They exacted searching modes of investigation, logical statements, and the orderly conduct of a cause from its inception to its close, so that each step might be clearly seen, and follow the preceding in the right direction; marching straightforward to the contemplated end. There was very little doubt or uncertainty as to what was to be done, or how it was to be done; and when done, as to what had really been adjudicated.

It is a fixed maxim that the public good demands an end to strife—*interest reipublicae sit finis litium*; but how can strife end, if through irregular and uncertain modes of proceeding it becomes impossible to know what has been litigated or decided? It would be absurd to urge that immethodical or chaotic modes of action can lead to precision or certainty; yet ignorance and prejudice insist that the most complicated and delicate of human interests can be properly adjusted without order, method, or system.

An English statesman has asserted that it has cost Great

Britain a sum equal to its existing national debt, to bring practice and pleadings in its courts to their existing perfection. The remark is not extravagant—is far within the limits of truth. In adopting that system—the fruits of its expenditure and experience—our wisest jurists supposed we started from vantage ground. True, we could not fail to see that too rigid adherence to musty and worn-out precedents and trivial technicalities—to forms which in their origin were of great value, but which in the progress of events had become useless—tended only to conserve error and injustice, and that when the reason of a rule disappeared, the rule itself should have fallen.

Forms which were the simple outgrowth of past necessities, should have ceased when those necessities ceased. If historic causes gave them birth and vitality, the progress of history might well cause them to give place to others better suited to the new order of affairs and existing needs—still, in no age or time, and under no historic or other changes, can innovations work out wise results, if devoid of logical methods.

The true science of pleading is only the adaptation of pure logic and common sense to the successive statements of the respective grounds on which the disputants rest their claims. It is not of modern or hasty growth, though years ago marred by common counts and general issues, making a return to logical order, wise and commendable.

Its formulae, in their essence and principal characteristics, were imported, it is said, from Greece into Rome, and were cherished in the latter republic throughout its purer and better days. Although we can not accurately trace the time or manner of their transmission into English jurisprudence, yet we know, inferentially, it must have been before the “*Lex Praetoria*” in the third century; for by that law, special pleading gave place to pleadings at large, working a revolution in the administration of the law, to the confusion both of rigid inquiry and of certainty in results. The effect

may be seen in the marked differences between the nations where the common and the civil law modes respectively prevail; not that those differences are due solely, either to the legal rules by which they are governed, or the systems of administration which obtain, but that modes of investigation are generally such in a nation as suit the genius of the people, and may be considered as the reflex of its mental characteristics, while serving to mould and preserve them. They are, to no small extent, the determining forces of national character, whether considered as originally an outgrowth therefrom, or as subsequently preserving and fashioning it in the original direction. They are at one and the same time the operating formatives of character and the evidence thereof.

If the world appreciated, as fully as philosophers do, the real importance of a true science of method, a more accurate estimate would be formed of the immense value of correct rules of practice, pleadings, and evidence in the judicial forum. Before pleadings at large and inquisitorial examinations superseded in Rome the earlier, juster, and more searching system; its free constitution, and the hardy, bold, and self-reliant spirit of its citizens had begun to vanish never to return. Under doubt, uncertainty, and ill-defined laws, or under a vague, arbitrary, secret or capricious administration of them, despotism and servility are born. Those early formulae on which English practice and special pleading were founded, exacted a clear, logical, penetrating, self-reliant, and straightforward course of proceeding. There was, until they were perverted, but little room left for concealment, or shuffling, or evasion. The spirit of the common law fostered manliness and self-reliance—was in full consonance with the spirit of the Anglo-Saxon. It treated each adult as a freeman, and, if *sui juris*, as capable of managing his own affairs—as the master of his own destinies.

The philosophical student of history will find a fruitful source of inquiry into the forces, formative and expressive of

national character and changes, in the history of its laws and of the changing modes of administering them. It is not alone to the battle-fields of a nation, but also to its statute books and codes, that resort must be had for a true knowledge of its internal history and character; for the latter speak the needs of the times and the spirit of rulers and ruled.

At this hour a less extended range of inquiry is demanded—one more immediately practical in its application to a course of legal study, although the history of law is essential to a mastery of its principles.

The science of method, then, is an essential part of the science of law. If general and fundamental truths, evolved from historic and ethical causes, are to be brought into beneficent activity how shall such wise results be secured? The experience of centuries, logical order and precision, ordinary habits of thought, and common sense, equally suggest that definite, analytic, eliminating, and truthful modes of investigation ought to obtain; that parties to suits should not, instead of clearly stating the facts on which their demands are based, be permitted in their pleadings to ramble through a chaotic mass of surmises and gossip, without system, method, or legal relevancy, exacting of courts and juries the irksome and vain task to ascertain what the parties are disputing about—whether there is really any legal controversy between them—whether there is, perchance, a grain of wheat hidden in the many bushels of chaff. Before they invoke the interposition of courts, weary juries, and harass witnesses, the litigants ought to ascertain for what such aid is sought, and speak plainly and to the purpose. If they know what the controversy is about, they can state it intelligibly, simply, directly, concisely, and truthfully; and if they do not know, they should learn what they wish to have investigated before asking for investigation. It is the office of courts and juries to pass upon real controversies—the issues which the parties make between themselves—and not to invent controversies for suitors, and be needlessly harassed

with unmeaning, impertinent, or frivolous matters, which, whether true or false, are of no moment whatever, because they involve no legal rights or considerations, and can serve no useful purpose.

The primary object of pleading is to bring the litigants to an issue, so that the question controverted by them whether of fact or law, may be settled intelligently. "Pleading" in the legal sense is not the oral argument or speeches addressed to the court or jury, with which in popular use it is generally confounded, but the written statements by the respective parties litigant of their cause of action or complaint on the one hand and the defense thereto on the other; the analysis by themselves of their respective demands and defenses. It has been well styled "the voice of the law," for it utters what the parties have to say. The indispensable prerequisites are *first*, to have something to say; *secondly*, to ascertain what it is; and *then* to say it so that others can *understand* what is said. True eloquence has been variously defined and its supposed requisites stated, not by Demosthenes and Cicero alone, but by orators and rhetoricians of every age; yet no one has been hardy enough to assert that one who has nothing to utter, can do more than utter nothing; or that he who does not know accurately his own thoughts or views, can communicate them to other minds more clearly than they exist in his own. A stream can not rise higher than its source; nor water flow from an exhausted fountain, or from a cistern where no water has ever been; nor can a clear and regular flow be had through a muddy or obstructed channel. Still, modern prejudice insists that men shall be permitted to annoy courts and juries, at great public expense, and the law's delay, with meaningless disputes, involving no legal principles, rights, or duties; that "the voice of the law" shall be converted into unintelligible noises or jargon, instead of the utterance of sound thoughts and solid facts. But for the experience of our time, it would have seemed hardly "vain jangling."

If there is no fact to be stated and no thought to be expressed, silence is more becoming than idle babbling. Where nothing is to be transmitted or conveyed, there is no need of a costly vehicle; the labor of the effort is worse than foolish; it is expended in an impotent attempt to make something out of nothing. "*Ex nihilo, nil fit*"—from nothing, nothing comes.

There can, it is obvious, therefore, be no proper demand for judicial inquiry, without a clear, concise, direct, and positive statement of the case; nor can there be logical order, or method, or common sense in a system which tolerates a confused, rambling, incoherent, chaotic and senseless mass of idle talk about matters unintelligible, and valueless alike to speaker or hearer. The primary design of pleading then is to bring the litigants at once, and without shuffling or prevarication, face to face with the controverted facts or doctrines. It is a time-saving and truth-exacting process. It should, therefore, leave no opening for doubt or chance.

It is not enough, however, that issues should be clearly made up, and the *pleadings* utter to courts, and juries no uncertain sound. There must also be some efficient mode of evolving truth from the mass of confused, and it may be, discordant *evidence* offered in support of asserted facts. The allegations and proofs should correspond. The experience of ages, sound reason, and daily observation, on this head, have ripened into a system of rules, known as the law of evidence. Large innovations have lately been made in the system, and it remains to be seen with what advantage to truth or public and private morals.

All human testimony is necessarily imperfect, not alone from moral but from mental and physical causes. Tests must, therefore, be applied for the detection of error and an accurate ascertainment of facts. If the witness is corrupt, his testimony is unreliable; just as from a polluted source no purity can flow. But he may be only prejudiced or unfair, and then through such a distorted medium, a false coloring

and misshapen outlines will appear. He may be rigidly honest and impartial; yet have viewed the acts he would describe from a wrong standpoint, or only have witnessed a part of the transaction; or, from inattention or otherwise, have received at first wholly erroneous impressions; or if the details were once before his mind, correctly and perfectly, his memory may have failed to retain them; or he may lack the power of clearly portraying them in words. Hence the need of close scrutiny, direct and indirect—of testing the accuracy of his narrative by examining the witness from every standpoint at which the occurrences could have been viewed.

Take for illustration an ordinary case of collision on our western rivers—concerning which it is proverbial that a mass of seemingly contradictory evidence is generally offered. The shallow attorney jumping to the conclusion that the testimony is irreconcilable, insists that perjury has been committed, and is apt to indulge in unseemly and senseless vituperation. Thus, he too often seeks to conceal his own lack of analytic power, and his failure to master the subject. In a judicial experience of eighteen years it has rarely happened that the ordinary tests have failed to eliminate the false from the true—and especially in collision cases, supposed to be the most doubtful and difficult—in which a patient analysis generally reconciles each apparently conflicting statement with the most scrupulous regard for truthfulness. Persons on different steamers, moving rapidly in different directions, and excited by apprehensions of impending danger—especially if their attention is absorbed by their responsibility at the moment for the safe management of their own vessels—can seldom receive rigidly accurate impressions concerning each detail of the rapidly shifting occurrences crowded into a few moments' time. Mathematicians know how complicated are the elements necessary for a true solution of any one of the problems known as the parallax of the stars, and how difficult the solution is when all the sup-

posed elements of the problems are given; yet those who never heard of such problems are expected, when on the witness stand, to solve them correctly before the court and jury, without a statement of, it may be, a fourth of their essential elements. In its principles, such are the problems whenever the points of observation of even a fixed object are different, or the apparent and true position are not the same—and still more complicated are they when the observer and observed are constantly shifting places, or their actual and relative positions are momentarily changing. Neither is apt to make due allowance for such disturbing elements. Each looks at the approaching vessel as if it alone were in motion, and he were stationary, or, the impressions instantly fastened on his mind are solely from that standpoint. If the railway passenger thinks houses, trees and fences are flying past him at a speed of fifteen or thirty miles per hour, although he alone is in motion, it would not be surprising if erroneous impressions are received, when not only he, but approaching objects, are in equally rapid motion. If one of these objects were in his pathway, it might seem as if it were rushing at his train with deadly momentum. So a passenger on a steamboat, full of apprehension as to the coming disaster, takes little or no notice of the shifting movements of his own vessel, or of its constantly changed bearings; but with his gaze riveted on the other moving object, which seems steaming directly at him, is as certain at the time as of his own existence, that the "colliding" boat rushed recklessly, needlessly and directly, and solely through its own fault, to the dreaded catastrophe. It requires severe mental effort to dispel such erroneous impressions, even when we are conscious of their falsity. Hence the necessity of first establishing, by indisputable testimony, fixed landmarks as constant quantities in the problem around which, as certain and central truths, the variable, vague and shifting occurrences may be accurately grouped. Such analysis and synthesis photograph the scene through all its

changes. An analogous process is often useful, and sometimes indispensable to a true solution of conflicting testimony in other cases. The last conclusion a legal mind accepts, is that sworn testimony is corrupt. The primary duty is to reconcile it with itself and the facts, if possible.

The rules of pleading, practice and evidence, therefore, constitute, in a large measure, the machinery by which the law is to be rightly administered; and a knowledge of that machinery is essential to its correct use. True, the pure logic of the one, and the orderly and wise conduct of the others, have been sadly marred by immature and inconsistent statutes and contrivances, yet through all the diversified, disordered, mixed and confused systems forced upon courts by crude legislation, the labyrinthian clue is to be found in the pure logic of the ancient system and forms. Through them we perceive the underlying principles in which rights rest, and learn how to apply and enforce them logically and intelligibly.

In its infinite reach the law must regulate and protect every right, whether of individuals, states or nations, leaving none, however minute, unused and uncared for; and none, however wide-spread, beyond its comprehensive grasp. None is too delicate or insignificant for its penetrating vision; none too gigantic or world-wide in sweep to escape its control. Its machinery, therefore, must be susceptible of the nicest adjustments in order to meet the ever-varying phases of human rights and duties.

The views thus presented leave no room in solving the social problem for perplexing disputes about the origin and nature of the so-called "social contract," the surrender of natural rights, and other equally speculative puzzles. If man born into society is consequently born into a life of relations and of law, his social obligations are coeval with his existence. A discussion of his supposed abstract rights in a state of nature, or perfect isolation, as if he were dissevered from all connection or relationship with his fellow men, might

be profitable if man existed in the abstract and not in the concrete. Such speculations, pushed to idealistic extremes, have been, at times, worse than idle dreams; for it has been well said that Rousseau's ideas in that direction were the evangel of Robespierre and of the Reign of Terror.

The Roman satirist was nearer, though yet far from the truth, when he thus attempted to account for the origin of law:

"Jura inventa, metu injusti fateare necesse est,  
Tempora si fastosque velis evolvere mundi,  
Nec natura potest justo secernere iniquum  
Dividit ut bona diversis, fugienda, petendis."\*

—Horace Satires, Lib. 1, Sat. 3.

But if law is a science, and, as has been claimed, "the perfection of human reason," whence its uncertainties and imperfections?

First. Human reason being finite and fallible, cannot attain to absolute or infinite perfection in its system, actions or speculations.

Second. The *perfect* adaptation of human systems through fallible agencies to the ever shifting and endless modifications demanded by varying facts and circumstances, is a task beyond finite skill.

If the few lineaments of the human face are so susceptible of comparatively infinite diversity as to make nearly every face among the many thousand millions on the earth clearly distinguishable from all others; and yet mistaken identity sometimes occurs—why should not the countless combinations and the modifications necessary to a nice adjustment of almost infinite diversities in human relationships, leave room for occasional errors to creep in, even if the law were absolutely perfect? Yet, as its administration

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\*(If you consult the origin of things, you must confess that laws were framed in apprehension of injustice; for nature could not discriminate between justice and injustice, so as to distinguish good from evil and separate what ought to be shunned from what ought to be sought.)

is committed to finite agents, that administration must partake of the imperfections of its agencies.

But municipal, statutory, conventional and historic rules do not always rest on pure ethics, or sound policy, or right reason; for they are often forced by disturbing causes into the body of the law, to provide for some temporary or supposed exigency. Moral and social order, however, exacts for human happiness prescribed codes for the general conduct of life; and it is far better than even imperfect rules should exist, than that society should be left to unbridled anarchy, licentiousness and crime.

Third. Legislation partakes of all the infirmities of legislators, and is not always directed to the general good. Selfishness, ignorance, partisanship and passion may so shape or color it as to make an obligatory statute a sad anomaly in a well conceived system—the wide door-way through which untold mischiefs may enter, disturbing the general harmony and producing the very ills it was ostensibly designed to cure.

But the remedy for such ills lies within the domain of politics. When none but pure statesmen, sound thinkers and wise jurists, frame statutes and direct politics, better codes may be expected—crude and incongruous legislation will cease to mar what human wisdom has, through the experience of ages, wrought out for social happiness and the common good.

The comments by Blackstone on this point have greater force when applied to American law as disturbed by crude legislation, than they had when spoken of the then existing condition of English laws:

“The mischiefs that have arisen to the public from inconsiderate alterations in our laws are too obvious to be called into question. . . . The common law of England has fared like other venerable edifices of antiquity, which rash and inexperienced workmen have ventured to new dress and refine with all the rage of modern improvement. Hence

frequently its symmetry has been destroyed, its proportions distorted, and its majestic simplicity exchanged for spurious embellishments and fantastic novelties. For, to say the truth, almost all the perplexed questions, almost all the niceties, intricacies and delays which have sometimes disgraced the English as well as other courts of justice, owe their origin, not to common law itself, but to innovations that have been made in it by acts of Parliament, 'overladen' (as Sir Edward Coke expresses it) 'with provisos and additions, and many times on a sudden penned, or corrected by men of none or very little judgment in law.' This great and well-experienced judge declares that in all his time he never knew two questions made upon rights merely depending upon the common law, and warmly laments the confusion introduced by illjudging and unlearned legislators. 'But if,' he subjoins, 'acts of Parliament were after the old fashion, penned by such only as perfectly knew what the common law as before the making of any act of Parliament concerning that matter, as also how far forth former statutes had provided remedy for former mischiefs and defects discovered by experience, then should very few questions in law arise, and the learned should not so often and so much perplex their heads to make atonement and peace, by construction of law, between insensible and disagreeing words, sentences and provisos as they now do.' "

How forcible are such remarks when applied to American law, as disturbed by American legislation through our many States, and influenced by conflicting views and diversified interests and habits of thought.

*Again:* The administration of law is sometimes disturbed by the gross incompetency and impure motives of unworthy officers who have stolen within its hallowed precincts to minister at an altar where they are wholly unfit to serve, and also to the fact that through legislation the courts have become almost practically powerless to disrobe incompetence and vice.

The tendency, caused mainly by pressure from the laity, to throw down all barriers and open wide the doors to practice in American courts, has rendered a lawyer's license no longer a reliable indication of his fitness to minister at the altar of truth and justice. None can feel, with half the force and bitterness, as do bench and bar, the sad and calamitous fact that ignorance and vice sometimes wear the robes which rightfully belong only to sound learning and scrupulous honesty. No degree of popular reproach and indignation directed against such a stigma upon the profession of law, will fail to be echoed in full chorus from bench and bar.

It is a noticeable fact that the greatest crimes with which judicial history has been stained, and against which the verdict of ages has been recorded, sometimes find, during disturbed periods of thought, earnest yet unreflecting apologists for, and advocates of, the monstrous principles on which those crimes rested for attempted justification. "*Misera est servitus, ubi jus est vagum aut incertum*"—(wretched is that slavery, where the law is vague and unstable)—and still more wretched is it when popular rage or executive or legislative tyranny dictates the verdict of juries or judgments of courts.

A Jeffries and a Scroggs condemning the guiltless to death at the royal behest, and Pontius Pilate from the judgment seat delivering over, at the fierce clamor of the mob, "the innocent one" to be crucified, stand out prominently in history as the special monsters of our race. All that is purest and holiest in our nature and education revolt at the story of such cowardly betrayal of justice by its own ministers at its consecrated altar; yet whenever the "*popularis aura*"—the popular outcry—enters the courtroom to dictate judgments or mould decisions, without instant and stern rebuke, the same cowardice sits on the judgment seat and defiles the altar where it serves. The same principle which dictated the crucifixion, dominated over the guillotine during the Reign of Terror. It is the same Robespierrean

madness and folly that now prates of compelling courts to feel the ground-swell of surging popular passion—a principle which, if enunciated in plain language, demands of those sworn to administer the law—as much for the protection of the innocent as the punishment of the guilty—to betray their trusts at the very hour when they should be most firm—when endangered innocence most piteously and touchingly needs and implores for the only protection left (the potent enginery of the law) to save it from remorseless and unbridled hate—that courts should surrender up to vindictive fury the guiltless, yet pale, shrinking, quivering, helpless victim clinging to the robes of justice for support—a doctrine which enthrones lawless violence, and gives over unoffending virtue and purity to merciless brutality and lust. Infinite love alone could implore forgiveness for such a crime. Such monstrous heresies can only prevail where all love of freedom has died out, or all knowledge of its essential elements has ceased to be; for law and liberty are inseparable. Without law there can be no freedom or safety for virtue and innocence, no shield for purity, no conceivable good; nor can there be where its ministers fail through cowardice or corruption to defy tyranny in every form, or cease to look alone to law in its purity and wisdom as the only guide, and resolutely insist that “justice be done though the heavens fall.” It is amid the fiercest assaults upon life, liberty and property that the sanctities of the law should be most potently protective, and at the summons of right alike defy the “*popularis aura*,” though it be the clamor of a *whole* people, and the “*sic jubeo*” of the relentless despot.

In its calm and unimpassioned administration, blind to all outside passions and influences, serene in its undisturbed purity and courage, devoid alike of fear or selfishness, its magistrates should be as ready as Coke to boldly confront the King, though surrounded by his Privy Council and official decapitation be the inevitable doom; or, as was

Mansfield, to sternly utter sublime warnings from the bench, even while the infuriate rage of a resistless mob was surging all around and within the court room, and lashing with frenzy against the judgment seat, threatening *its* instant overthrow and *his* destruction if obedience were not yielded to its mad behests:

“We are to say what we take the law to be. If we do not speak our real opinions, we prevaricate with God and our own conscience. . . .

“*Ego hoc animo semper fui, ut invidiam virtute partam, gloriam non invidiam putarem.*” “The last end that comes to any man never comes too soon if he falls in support of the law and liberty of his country; for liberty is synonymous with law and government.”

Sublime truths, uttered in later times by our own Webster in nearly the same terms, but with Demosthenic force, in vindication of constitutional law and liberty, as one and inseparable!

From the earliest dawn of recorded history, even in its crudest forms, as well as from the first utterances of law “amid the thick darkness, thunderings and lightnings of Sinai,” there have come down to us over the buried wrecks of empires, despite the convulsions and upheavals of intermediate ages and intervening civilizations, the profoundest and most inspiring examples of legal probity and worth. We turn ever with grateful reverence to the sublime words of Grecian wisdom, and listen with rapture to the eloquence of her sages and jurists. We are at this remote hour thrilled with the beauties of thought and diction which nearly two thousand years ago poured forth from Tully’s lips as he advocated the humble poet’s cause, or are stirred with burning indignation as we read his portrayal of, and invectives against, pro-consular rapacity and cruelty. Whether in the Senate or forum—whether thundering against Catiline and his confederates, or earnestly pleading for his

lowly and defenseless clients—his voice comes to us with the ever-living freshness of truth and beauty, freighted with the legal sanctities embodied afterwards in the Pandects and Code—those treasure-houses of legal lore—the discovery of which, after their burial for centuries, dispelled the thickening gloom of the dark ages, ushered in the dawn of a new civilization, bespoke to free thought and justice, long entombed, the coming of their anxiously hoped and prayed-for resurrection.

From those armories of truth all after times have drawn their ablest weapons for the defense of endangered right and the triumph of justice. From those inexhaustible fountains have ever come inspiring draughts to refresh and bless successive generations.

“Across the gulf of ages we feel in their wise maxims to-day, the very heart-pulse of their lordly and almost saintly affections, and glory in their wise warnings and undying hopes.” The legal aphorisms they bequeathed to humanity, and the pregnant maxims of the common law, announced by subsequent sages, “Vibrate always as we touch them—the ever-living sentences of which as Montaigne said of kindred utterances, we feel that if they were cut, they would bleed.”

Thus from the Hebrew code as given at Sinai, or through the fabulous and poetic ages of demigods, obscured amid the dim shadows of remotest history; whether we read of Minos dispensing perfect justice; gaze at the inscriptions on Achilles' shield; pore over Solon's matchless constitutions; consult with Numa, the fabled nymph, inspired with divine wisdom; or accompany in thought the Roman embassy to enlightened Greece to borrow thence the resplendent truths embodied in the Twelve Tables; whether, awestricken, we behold the subversion of Grecian law through the arts of Pericles' polished eloquence, or of the early Roman code through the machinations of the Decemvirs—still, through all human experiences from the very beginnings of tradi-

tion and written history, systems born and nurtured in every age and clime have contributed to the grand current of modern jurisprudence, pouring into its ever-swelling flood whatever was most healthful and potent in the past; just as the tributaries of yonder river—fed from their far-away and undetected founts in snow-clad mountains, or from unseen sources along the wide-spread plains, or from many a recurring cloud and storm which have gathered, perchance, their refreshing treasures by gentle distillations from distant ocean surfaces—serve to make up the mighty flow which past your city bears to the destined gulf richer cargoes than freighted the argosies of old.

If, law, then, is a system of rules whereby the respective rights, interests and duties of all members of society are adapted to and harmonized with each other—and that, too, whether man is treated simply as a part of a social unit or of the larger social organizations which, commencing with neighborhoods, culminate, in their more extended forms, into nations and the great family of nations, and which, at the same time, through wide-spread ramifications, call into diversified but voluntary activity an almost infinitely multiplied set of rules, pertaining, especially, to the various departments of business pursuits—it must be obvious, that the system, to answer the needed ends, must be sufficiently comprehensive, as before suggested, to embrace within its grasp the well-being of *nations*, and at the same time sufficiently minute in its details to notice and care for the humblest and most petty, though often the most tormenting, of earthly annoyances, trials and wants. The primary rules pertaining to multiform organization—domestic, municipal and national—are, so to speak, the warp of the vast web; and the voluntary acts and pursuits of individual life, shooting through and inweaving themselves into the social tissues, constitute the woof of the wonderful fabric. The warp prescribed by organic laws is fixed and definite, yet there is left to personal freedom the largest activity consist-

ent with justice, for inweaving therein every pattern and hue which individual tastes, interests and passions may dictate.

Glance for a moment at the grand legal problem and the theater of its operations—the many millions on this globe—nay, thousands of millions—men, women and children—of every clime, condition and social status—harassed by daily cares and needs—moved by peculiarities of passions and tastes—affected by diversities of soil and climate—compelled by their surroundings and habits to different pursuits for daily subsistence—compacted into families with all the domestic affections clustering around their hearth-stones and tugging at their heart-strings—ruled by varied forms of governmental authority which must be obeyed—pinched by want or rioting in affluence—pushing in the fierce struggle for wealth into all openings for gain—jostling their neighbors and struggling with competitors on every hand, at home and abroad, some of whom may be of their own kin, and some aliens and strangers, pursuing their energetic rivalry, even in remote lands;—fill up the picture with the anxieties, passions, greeds, charities, struggles and ambitions of *nations* and *communities*, as well as of individuals—and lo! a seething cauldron—nay, a tempestuous ocean, in which every globule, though it have a separate existence, is merged into the common whole and moved by every other globule, all tossed and swayed by internal, and it may be lashed into fury by external forces. Imagine such a living ocean of humanity, covering the whole earth, made up of distinct and easily-yielding atoms, with ever-active influences operating from within, and more potent influences from without—and convulsed with terrible and resistless energies;—and then clothe and inter-penetrate each individual of that aggregated mass with sentient forces and personal will—impel each, first in one direction and then in another, as ever-varying causes sway it into divergent courses—intensify the picture through the utmost skill of fancy in its wildest and

grandest conceptions; and still you will fall far short of the faintest outlines or feeblest colorings of man's real position, and far-reaching yet ever-shifting responsibilities in the social universe—of his infinitely diversified relations to his fellow-men and to society—an apparently inexplicable and irredeemable chaos, out of which it would seem only divine force could summon order—over which the omnipotent fiat, as at creation, could alone command the needed light—alone could crystalize into intelligible forms the unshaped and seething mass as it lies without form and void, while darkness covers the face of the deep.

That divine command—the omnipotent fiat—spoke into being not only the physical and moral universe, but the laws of their existence and governing forces. True order, illumination and resultant harmony come only through those ever present and operative laws. Out of seemingly irreclaimable chaos, where all is discord and conflict—incessant, Titanic—the experience and wisdom of ages have, through law, evolved the existing forms of moral and social order. Unnumbered centuries have been busy with the task; each age and generation leaving to its successors the fruit of its investigations, toils and experiences, till now, in the fruition of time, we have garnered up all that the past has taught, and behold that where moral and social chaos might have reigned, the laws of peace and duty and of a benignant civilization rule—a moral universe with its myriad hosts, resplendent in their single, binary and constellated beauty, never jostling each other or forced from their true orbits, free from discord and conflict—“cycle and epicycle, orb in orb”—all in their peaceful revolutions and changes peeling forth ever the babled music of the spheres.

But it is not in such generic statements that the dearest and most touching benedictions of the law are heard. Every individual has his own life to live. It may be that, surrounded by family needs, or inspired by lofty emotions of patriotism or duty, he is willing to sacrifice himself for the

well-being of others. Still, as an individual, he is never so merged into the common humanity as to lose his personal identity: No temptations, false reasonings, or spirit of self-sacrifice, can make him forget or forego his consciousness, around which cluster ever all his hopes and fears. He is, and must ever remain, responsible to himself—to his own conscience—as well as to his fellow-men and to his God.

To him the hour of calamity may come, when, enmeshed by sorrow and treacherous fate, he and his dependent wife and children, struggling for bread or what is dearer than bread or even life, seek to rescue themselves from the toils and artifices of the spoiler by yielding their cause, in which all is involved that makes life endurable, to the arbitrament of the law. Days and months of doubt and fear may intervene—to them, it may be days and months of agony. They wait the verdict and judgment with terrible anxiety, alternating between hope and despair; clinging convulsively to each promise of rescue, or shrinking with dismay at even the faintest whisper of doubt. Thus into the most intimate confidences, where the soul opens its secret recesses as at the confessional, the lawyer is often called to enter; and around those confidences the law, in its wisdom, throws inviolable sanctity. No physician at the bedside of the dying, when the trembling patient and heart-stricken family are waiting with agonizing suspense the threatened stroke, can feel a sadder responsibility than the lawyer, when husband and father, with wife and children, cling to him with frantic terror or despair for their rescue from a *living* death. The pages of poetry and romance contain no such pathos—the myriad-minded dramatist could portray no such force or variety of passions—as are yearly involved in the more than dramatic scenes enacted in the courts, or through them in the homes of those whose fate hangs upon their judgments.

Each trial has its incidents and passions—it may be its tender, romantic or pathetic passages—many of which, all unseen by mortal eye, are pulsating with heart-throbs, ab-

sent, unknown, unthought of, yet anxious and expectant souls. Love and hate, pride and shame, avarice and unthrift, vice and virtue—all human affections, passions and aspirations, all that is noblest and purest, as well as all that is meanest and vilest, in frail and erring human nature—may underlie or be involved in the calm forensic dispute, or dispassionate judicial inquiry. To the stricken hearth-stone the verdict and judgment may bring agony unutterable, crushing out the last feeble flickerings of hope, or may come as with angelic tidings of great joy, lifting the hitherto dark and impenetrable clouds, which had settled like a pall upon wife and daughter, father and husband, as they sat breathless with anxiety for the result of the dread ordeal.

Poverty to be rescued, frauds exposed, villainies punished, innocence vindicated, suffering alleviated, dangers averted, wrongs redressed, and rights defended, are the daily legal experiences. No portrayal of sufferings, or of triumphant virtue, of crime, revenge or hate, can surpass the familiar realities of daily life, dimly veiled, it may be, yet discernible behind the seemingly stolid face, or through suppressed sobs, or assumed stoicism; or wailed forth in irrepressible anguish, as the solemn arbitrament of the judicial forum stamps them with their true and ineffaceable colors, and seals the doom or rescue of an anguished and trembling life. How terrible is the responsibility amid such scenes, of undertaking to unravel the tangled web woven by fraud and cunning to ensnare the innocent and wrong the unsuspecting,—and how inexcusable the pride, folly, avarice, or ambition of him who enters the lists for the vindication of wronged innocence or defrauded honesty, only to suffer truth and right to be borne down through his unworthy championship on an arena where he was incompetent to the contest!

Many judicial proceedings involve also the largest public consequences, and partake of the heroic interest of contending armies, where the fate of nations is at issue. The

stirring description by Macaulay of the trial of the Seven Bishops is surpassed by no known narrative of ancient or modern battles. In the conduct of that cause, on the decision of which British liberty seemed to hang, the varying phases of litigation succeeded each other with dramatic transition and rapidity, while a nation listened with suspended breath. Despite all the appliances of tyranny through corruption and servility, its asserted prerogative to suspend and dispense with the laws of the realm met with fearless resistance from skilled and undismayed barristers, and a resultant overthrow by the verdict of an upright jury—a result which, as the news thereof swept in tides of exultation through the city and rolled over hamlet and shire, surging even through the royal camp at Hounslow Heath, quickened the tyrant's fears into flight, and popular action into the entrenchment of liberty behind safer barriers and within more invincible strongholds.

The history of law, as the outgrowth of human progress, is eminently the history of civilization. Though dynasties and empires may go down on the battle-field amid the shock of contending armies, yet an almost unnoticed statute or quiet decision from the judgment seat may work out a grander and more enduring revolution. The sturdy independence of Coke was the precursor of the Petition of Right, and the verdict in the case of the Seven Bishops gave birth to the Bill of Rights, and overthrew the dynasty of the Stuarts.

Macaulay's gorgeous description of the trial of Warren Hastings has held every student of English literature spell-bound as with the sublime strains of a Milton—a trial to which the world owes the grandest exhibitions of forensic skill—the impassioned outbursts of Sheridan, the philosophical and polished eloquence of Burke, than which neither ancient nor modern records furnish aught more thrilling or cogent—more worthy of the highest conceptions of human power and greatness; displayed, too, on a field where no brute force met like force, but where mind coped with mind,

and the keenness of the conflict was illumined with more than flashes of artillery, and impassioned eloquence awoke as intense enthusiasm as the battle's roar.

It was on that occasion that Burke, appointed by the House of Commons to arraign in its name, at the bar of the House of Lords, a worse than Verres in popular estimation, announced some of the axiomatic truths on which all law must rest for sanction—truths worthy of constant repetition and of eternal remembrance:

“We have no arbitrary power to give, because arbitrary power is a thing which neither any man can hold, nor any man can give. No man can lawfully govern himself according to his own will, much less can a person be governed by the will of another. We are all born in subjection—all born equally, high or low, governors and governed, in subjection to one great, immutable, pre-existent law, prior to all our devices and prior to all our contrivances, paramount to all our ideas and to all our sensations, antecedent to our very existence: by which we are knit and connected in the eternal frame of the universe—out of which we can not stir.

“This arbitrary power is not to be had by conquest. Nor can any sovereign have it by succession; for no one can succeed to fraud, rapine and violence. Those who give and those who receive arbitrary power are alike criminal, and there is no man but is bound to resist it to the best of his powers wherever it shall show its face to the world.

“We may bite our chains if we will, but we shall be made to know ourselves; and be taught that man is born to be governed by *law*; and he that will substitute will in the place of it is an enemy to God.

“There is one thing, and one thing only, which defies all mutation: that which existed before the world, and will survive the fabric of the world itself—I mean *justice*; that justice which, emanating from the divinity, has a place in the bosom of every one of us, given us for our guide with regard

to ourselves and with regard to others; and which will stand after this globe is burned to ashes, our advocate or our accuser, before the Great Judge when he comes to call upon us for the tenor of a well-spent life.”

History furnishes many apt illustrations of the truth which Burke thus vindicated. In the progress of civilization, despotic will, arbitrary enactments, unjust statutes, and codes devoid of right, have strewn the pathway with their wrecks; intimating to the passers-by through what struggles and convulsions the world has marched forward to its present attainments. The history of exploded errors and wrongs is the great negative history of humanity; it furnishes warnings for all subsequent times, and enables the jurist and statesman to detect where injustice and falsehood lie buried, or where are the quicksands in which, if trusted, public happiness is sure to be engulfed.

Well was it said by Burke that “law and arbitrary power are at eternal enmity”; for where law ceases, despotism begins, or anarchy, the worst of tyrants, bears destructive sway:—

“Chaos umpire sits,  
And by decision more embroils the fray.”

One of the most unexpected and yet effective rebukes ever administered to servile flattery is described by Balmes: During the reign of Philip the Second of Spain, noted for his bigotry and cruelties, a priest, during a sermon delivered before that monarch and his court, announced the pestilential doctrine, that “sovereigns have an absolute power over the persons as well as the property of their subjects.” For his utterance of so detestable a sentiment, the Spanish Inquisition summoned him to trial for heresy, and sentenced him to undergo many severe penalties, and also to read in the same place and before the same monarch and court a solemn recantation in these prescribed words:

“Indeed, gentlemen, kings have no other power over their subjects than what is given to them by the divine and human *law*: they have none proceeding from their own free and absolute will.”

The truth thus vindicated by the Spanish Inquisition during the bloodiest and most bigoted reign in modern times, and in the presence of that self-willed and imperious tyrant—a truth sacred to liberty and justice—found many of its sturdiest champions in England during the stormy prologue of its great revolution, and has never lacked for them in our own land or under any constitutional and free government.

When John Pym arraigned the Earl of Strafford for his arbitrary exactions in Ireland—for tyrannies subversive of the fundamental laws of the realm and of British liberty—he uttered the same truthful doctrine:

“If you take away the law, all things will fall into confusion. The law is the safeguard, the custodian of all private interests. Your honor, your lives, your liberties and your estates are all in the custody of the law.”

The eulogium of Cicero upon the liberal arts is especially applicable to law as a science—to law in its large and beneficent action when conceived, administered, and studied in a truly catholic spirit. “*Nam caetera, neque temporum sunt, neque aetatum omnium, neque locorum: haec studia adolescentiam alunt, senectutem oblectant, secundas res ornant, adversis perfugium ac solatium praebent; delectant domi, non impediunt foris; pernoctant nobiscum, peregrinantur resticantur.*”\*

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\* (“For other studies are not for all times, ages, and places; but these nurture our youth and give joy to our old age; they adorn our prosperity and prove the needed solace and refuge in adversity; fill our homes with delight, and are none the less beneficent to us when abroad; in our rural pursuits, journeyings and pleasures, and equally in our foreign wanderings, they are still with us to bless and protect; and through the quiet watches of the night they dwell by our side or hover over us with their guardian wings.”)

But the simple panegyric of Hooker has never been surpassed:

“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; both angels and men, and creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy.”

Grand and far-reaching as are the truths thus suggested concerning the nature and office of law, yet no student, with fair general attainments and a clear intellect, need despair of mastering its leading principles, and grasping their familiar applications. Coke speaks of law as a jealous mistress; she can be won only by patient wooing. Devotion to fundamental principles and the reasons on which they rest; a discriminating judgment to apply them correctly; familiarity with legal modes of investigation; the habit of diligent study; a determination never to float on the surface when the underlying depths are to be sounded; and, more than all, sturdy manliness and unimpeachable integrity, will enable the young man to embark with safety and credit upon the voyage. The lawyer's life is one of incessant study. The great preparation is to know how to study wisely. Let, then, the students now about to enter upon the prescribed course bear constantly in mind, that no amount of “cramming” by Professors will avail! Their own minds must be in constant activity. They must so assimilate the legal truths they learn, as to make them really a part of their own being. Their vocation is to advise and support others; master perplexities and doubts; unravel entanglements; sift discordant versions of fact; detect the rules applicable to every shifting phase of business; know how to pluck out the heart of each mystery—to bring order out of chaos. If destitute of the requisite

mental training, no memory lumbered with cases and precedents will suffice. If the *meaning* of forms and the *reason* of rules are unknown, they can not be safely used; they will be hindrances instead of helps. There must be no "sticking in the bark"—no mere surface work. The broad expanse must be surveyed, and the interdependence of the parts understood. In short, law must be treated both as a pure and an applied science, with boundless adaptability and capacities. In no other way can one become a lawyer worthy of the name.

If law be thus viewed, it will be recognized as the essential basis of all social organizations—as the custodian, preserver, and fostering parent of all human interests, furnishing the indispensable elements of social vitality. Those vital elements must be as all-pervading and free as the atmosphere we breathe.

When we lie down, and when we rise up; during the silent watches of the night, while buried in unconscious and helpless slumber, as well as during the din and tumult of the day; in the weakness of infancy and strength of manhood; for feeble woman and infirm old age; in the bustle of the mart or workshop, and at the quiet fireside; in the remote cabin, lonely in its isolation from human haunts or buried in the depths of the wilderness, as well as in the thronged streets of crowded cities; whatever our age, sex, or condition, wherever situated, and however shelterless and impoverished, careworn or weary, all around and about us, above and beneath, is the ever-present, life-giving, life-sustaining, though unseen, and it may be unfelt, atmosphere of law.

Its beneficent and preservative forces, when undisturbed, are as gentle in their influences as a summer's cloudless twilight or the falling dew; but if convulsed by passion and wrong, as terrible as the whirlwind or deluge.