

Graduating Thesis

subject

LAW ^{and} MAN

by

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Law is the social tie between men, and by its use man is enabled to accomplish more and more. When a law is properly made interpreted and applied for the one great purpose, to make it possible for men to live happier, to live better, and to induce men to care for and help each other it is truly a blessing to humanity. But what shall we say of a law which is made for the sole purpose of aiding self by making one class ruler over others, by taking away one man's just rights and giving special privileges to others? Shall we call it a curse to humanity? In a highly developed society it may truly be called such but in a barbaric society it is not so bad, for there, in one sense it is a benefit because it makes a man's lot a hard one, whence he begins to ponder the questions "What rights has this king to rule us in this manner?" "Are these laws just?" The consideration of these questions would arouse their energy, awaken their slumbering intelligence, and start them on the road from barbarism to civilization and as a result, a union of the oppressed would follow and more just laws would be framed.

As society develops, its people are restricted more and more. In early times the king or chief ruler, made only a few laws, and these were principally that

his subjects should give so much to him each year. People were then allowed to get their living and their wealth in whatever way they could and by whatever means they chose. But as the social organism grew the time came when it would no longer tolerate the killing of a human being for the purpose of getting wealth so this right was soon denied them and later on the right to steal was forbidden. And so on day after day, year after year, and century after century laws were continually added until now we have our complicated machinery of law which enables us to do wonders in this world. The early laws were oppressive principally because such high taxes were levied and then a severe punishment inflicted if they were not paid. But this was not all. The taxes were to be paid by the laboring and agricultural classes while the priestly and the warrior classes were exempt from taxation in ancient Egypt, France and Rome. This recognized difference caused the feeling of animosity to rise between the classes.

The oppression was so great at times that the people revolted against their government. According to Livy the citizens of early Rome (494 B.C.) while the Sabines were threatening the city with war, refused to take up arms until more favorable laws were promised.

A man who was favored by the plebeians was appointed dictator and they followed him against the Sabines, On their return the senate refused to grant more favorable laws whereupon the plebeians quietly marched out of the city and encamped in the mountains nor were they induced to return until they were allowed to have their own magistrates. The Physiocrats in France as late as the beginning of the eighteenth century revolted and declared that their low condition was due to the laws and that they desired to go back to the condition of primitive man where no law would restrain them. It is no wonder they desired to go back for every thing except a man living was taken from them and given to other classes who worked but little and were simply parasites living on the fruits of the peasant's toil. Facts and statistics of the time tells us that the peasants lived in houses of stone or earth, dressed in rags, never tasted meat, and that thousands lived upon grass and the bark of trees. He could not protect his crop from the rabbits or deer except under pain of heavy punishment for the lord must have the pleasure of the hunt, when the hunt comes, horse and hound may trample down the only wheat field. His land worth \$800 may be taxed \$800 and surely \$400. They knew that they could get as good a living in the barbaric state as they could under their present conditions. They could not bear the thought of

having to work so hard, live so poor, and see others living extravagantly who never turned their hand over to produce anything.

In this feudal system of France the laws kept increasing in severity until in 1792 it resulted in a complete overthrow of the government. The history of this revolution tells us that laws which are too severe upon the people are dangerous, and that no at all are fully as bad.

The history of Greece shows the inconsistency of educating the brain alone. The history of Rome reveals the weakness of mere physical force in a social organism. The history of France bears evidence that wealth getting alone is not good policy. Mediaeval history teaches us that ignorance and superstition are twin enemies of social law and order, and English history tells us that it is dangerous to legislate against classes.

As civilization advanced the power of making and enforcing the laws was gradually extended from the individual to the people. At first the chief was sole ruler of his tribe but he was guided to a more or less extent by the custom and wants of his subjects. Its extension is very well shown in the history of England. The early king or queen made and enforced the laws. It was an absolute rule of king or queen. Later his or her

favorites became a part of the law makers, next a right was extended to the noblemen and the priests, and so on until now the franchise and greater rights are given to all classes, but some classes with less rights than others, and the king or queen now has but few rights, the rights having been given to the Prime Minister, the Cabinet, and Parliament. In the United States the power is extended still farther, here all male citizens, except minors and a few mentally defective, elect delegates to make their laws and they elect the chief ruler himself. In some of the states the franchise has been extended to the women. The chief ruler or President must now put away selfish interests and have the welfare of the people to be his aim or else he steps out and a more qualified man takes his place. Executive offices are now filled, and the duties of the offices discharged by men who are selected by the people for that purpose.

To day the law is becoming a part of our every day life, and entering into every occupation to such a degree that we are often confronted with the expression. "Laws are becoming so numerous and are restricting us so much that we will soon be able to do nothing" such expressions convey to our minds this important question are we approaching by means of our laws and are we restricted by them so much that we are

less free than primitive man? Though early man was free to roam at will, go where he would and do whatever he wished, provided he had the physical strength to back him, and had no laws to restrain him, he was nevertheless a slave to his passions and to nature. His right to live in this world was quite limited unless he was the strongest and the fiercest. When he traveled he was a slave to other men's passions for blood, he was in constant fear of being killed. His right to own property was the same! it was subject to being taken at anytime with no hopes of ever being recovered, and in every pathway of life he was checked by the fear of being molested, he had no protection except that which he himself could give. How different all this in a highly civilized society where law is ruler! There a man may travel far and wide with no fears of being molested, which he could not do in Kansas as late as 1860. His life and his property are all protected, if he is killed his friends do not have to revenge his death, but society punishes the criminal, if his property is stolen he need not spend time and money in hunting the thief for the officers of the law do this for society. And then in the court room where justice is administered the thief is given a trial and the property returned to its owner. Our railroads, our telegraph and telephone lines, our great manufacturies, our extensive

system of agriculture and education, all these and others are made possible only by the workings of law and order.

In the primitive state, men did not remain isolated from each other very long they were soon formed into clans, tribes etc for mutual protection and they had a few crude and simple laws to guide them. R. C. Elphinstone brings all this out very clearly when he says "Early man was a slave to nature, human law did not restrain him. There was no law as there is no law to day in the 'heart of Africa' nevertheless the modern man whose daily life in a thousand ways is guided directed and controlled by statutes framed by himself and others in a thousand times fewer and worse laws even increase freedom" Sir John Lubbock in his Prehistoric Times says "The true savage is neither free nor noble, he is enslaved by nature more pitilessly than by Draconian laws"

Primitive man could not farm nor raise stock, he could build no house to protect himself from the storm, he must live by the chase which was very uncertain, he could not preserve his meat from one successful hunt to another but must nearly starve in the meantime, he could not store away crops of one bountiful season to be used in times of drought, and all this because he was not satisfied that he could do so without being molested at all

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times. This was true only before they organized into tribes so as to protect each other.

Though laws may put many restraints upon us they are now general and are for the interests of a whole people not a class nor a few privileged individuals. They are on the whole applied to prevent abuse of liberty and to extend to us freedom in our greater wants, as are necessary in a peaceful land and a civilized society.

The function of law is to define the rights of individuals; to guide and direct society, to protect the weak, suppress the strong and restrain the vicious, to preserve peace and to produce harmony among men. If it is to perform its function in society it must keep pace with civilization, for as society progresses there are new conditions, and new conditions in society require a change in duties, hence it necessitates a change in the laws for laws must conform with the mind, opinion, and requirements of men.

It should adjust the punishments to the crime and to the individual, this is where the law has failed to a very great degree. "As late as 1806 no less than one hundred and sixty acts which men were liable to commit daily were declared by the English laws to be felonies without the benefit of the clergy. or in other words to be worthy of instant death without trial. a few of these crimes were transporting sheep

or wool twice out of the kingdom, smuggling, to accept a reward for restoring stolen goods, for tearing down fences etc" says the Law Reform. But later the people begin to make a great reform in the laws. In Kansas to day we make quite a distinction between the punishment for the first crime committed, and the second we also distinguish between the hardened criminal and the timid criminal. We have our Reform Schools, our jails, our reformatories, and our penitentiary for the different grades. The certainty that the law will be enforced is more effective than the severity of the law. If you doubt this, look at our our liquor law, They tell us that we cannot enforce it because we cannot get enough evidence, and "Even if you do catch us two or three times a year, we can pay the penalty cheaper than we can a high licence." But both enforcement and severity must go hand in hand, to insure success.

For a law to be well made and justly applied the maker should study the character of the people and frame the laws accordingly; and in order that these laws should work well they should receive the approval of a majority of the people to whom they are applied, then they should be obeyed by all the people and if any one individual or several disobey the laws, the others should see that the punishment is in-

flicted for the same. For if the individuals are not punished or given attention they will become a lawless set, and a lawless set is to be avoided by all nations. If a law is worthy a place on the statute books it is worthy of being obeyed.

The law should so guide, direct, and control man as to urge him onward and upward; and to so alter conditions that he will not want to retrace his steps, and if he should desire to go back to have the way so hedged in with public opinion that he will find it very difficult. It should be his guide in life by encouraging that which is uplifting in morality, decency, knowledge, invention, manliness and godliness, and discouraging that which debases or obscures literature, gambling, and the satisfying or creating of injurious passions.

The laws should be both feared and loved by all, feared, because of the severe consequences which will follow if they are disobeyed, and loved because of the liberty, prosperity and peace you will receive if they are in good running order. We should encourage the making of laws for the people and discourage the making of laws for the benefit of classes, and we then need have no fear of the law restraining us. Says Ben Johnson

"The good need fear no law."

It is his safety and the bad man's awe."

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