

Respect for the Law The Real Greatness of a People May Be Measured by Their Respect for the Law

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Upon a lofty terrace, surrounded by a consecrated grove and overlooking the ancient Greek city of Rhamnus, there stood two temples, of white Pantelic marble, erected to the worship of Themis and Nemesis.

To me this picture has always been an interesting one, not because of the beautiful temples, or the consecrated grove, or the many-voiced sea; not because of the ships in the port, or the sailors who manned them, or the busy streets, or the city's turmoil; but, because an active, intelligent and commercial people could turn from their affairs of peace or war and do reverence to the law.

A historian has said, that the Greeks as a nation united a complete subordination to establish authority with a high sense of personal independence, and we can understand how this may have been true when we reflect that Zeus, lord of all, clothed with supreme dignity and authority, was the guardian of the law and the protector of justice and virtue. It is a beautiful fable that Zeus had for his wife and truest counselor, Themis, the source of law. It was this respect for law that filled the own, or with prejudice, interest or favor, for party or counsel, or friends of either, does not engage in criticism of parties, counsel, witnesses, jurors and even judges. It is not necessary to attribute wrongful motives to these writers-up of sensational reports of pending cases. It may be assumed that the underlying motive is simply, to get a story to print. Yet, the evil results of the publication of reports of pending cases, reports founded upon *ex parte* statements, made necessarily without due investigation, and most frequently of a highly sensational character, are productive in the public mind of a disrespect for the law. I do not, of course, refer to accurate and truthful reports of legal proceedings, but these are too tame and prolix to appease the morbid appetite of the public, and therefore they are highly

seasoned to suit the vitiated taste. Only a short time ago, in one of the cities of the State, a man was on trial for a most horrible murder. The evidence was almost entirely circumstantial. On the morning of the trial, the leading daily, came out with great headlines, declaring the prisoner to be an outlaw, and publishing a story that he had committed a previous murder in a distant State; that he was a fugitive from justice, a member of a notorious gang, and was going under an assumed name. The details of the alleged crime were given to the minutest circumstance. The facts were: The prisoner had never been in the State where he was alleged to have committed the murder; he was never a fugitive from justice; he was never a member of a notorious gang; he had never borne the false name attributed to him; and his wife, who had been published as having stamped upon the dead face of her husband's victim, was a simple, inoffensive and entirely innocent country woman, the daughter of a local Georgia preacher. A most respectable and conservative journal, in its striving "not to miss a good story," did the prisoner irremediable harm, and what is worse, when the prisoner was subsequently acquitted, caused unintentionally the public to believe that there had been a miscarriage of justice. It is not only, by the mere publication of inaccurate reports of pending cases, that there is shown a disrespect for the law, but leading journals will undertake to criticise the decision of courts of last resort, and of the highest dignity. There is no possible objection to fair criticism, but where a decision has turned upon the construction of a technical legal question, the layman, whether he be printer or preacher, is not a competent critic. No subject seems to have a greater fascination for the sensational preacher than the failure of the courts to suppress all forms of immorality. The right of a prisoner to indictment, to trial by jury, to move for a new trial, and to file bills of exception, are all either not understood, or not appreciated. And hence, we have day after day the severest denunciation of courts for not doing things which, if they did do, would be in violation of the simplest principles of law.

But, it must not be inferred from what has just been said that there are not existing causes for what I fear is a growing disrespect for the law. If there be one vice more marked than another in the legislative life of this country, it is in the number of statutes that are enacted by the several lawmaking bodies. Almost every member of a legislature imagines that he will lose caste with his constituents unless he introduces and has passed one or more bills. The younger, the less experienced, and the more self-satisfied the member is with his own importance, the greater are the number of laws he inflicts upon a suffering people. Hundreds of local statutes vicious in principle, and impossible of execution, are enacted for no better reason than that some member asks their passage, and that they will have no effect beyond the limits of a particular locality. These wretched monstrosities are frequent causes of litigation, taking up the

time of courts and juries, engendering strife, creating expense and bringing the law itself into disrespect.

As far as possible, the law should be reduced to the form of a statute, clear and yet sufficiently comprehensive to avoid the necessity of local or special legislation. No greater work than the simplification of the law can command the brain and heart of the patriotic statesman. No work brings more lasting fame or confers more permanent benefits. We never turn to Jewish history but that we see the stately figure of the lawgiver, Moses. We never think of Greek art or arms, but that there loom up Solon and Lycurgus. We remember Justinian and forget Rome's great captains. The glory of the Code Napoleon will live after the sun of Austerlitz shall have sunk beneath the horizon of man's memory, for "the law embodies the story of a nation's development."

It would seem that at no time, and among no people, should the judges of the courts be of greater learning, experience and ability than at this time, and among the people of this country. The vast changes that have been wrought within the memory of living men, make the truths of to-day stranger than the fables of antiquity.

We travel now from Joppa to Jerusalem by steam. We telegraph or telephone to our friends at home, and cable to those beyond the seas. We no longer ride in the one-horse chaise, or the old stagecoach, but in palace cars or automobiles.

Fulton's Clermont has become the Oceanic. The rude bridge of wood or stone is replaced by one like that over the Firth of Forth. The spinning-wheel has developed into the modern factory, with its thousands of spindles, its army of operatives, its stupendous power of corporate wealth. The agricultural chemist has restored the worn-out soils. The hydraulic engineer has made fertile the arid lands. The mechanical engineer, by a thousand forms of labor-saving machinery, has enabled the "man" to throw away the "hoe," and to stand erect, in the image of his Maker. The village water-wheel has become Niagara chained, and the tallow dip is lost in electric glory. The stylus has been succeeded by the typewriter, the printer by the Mergenthaler, the hand press by Hoe's Octuple. The mad rushing train is stopped in an instant by compressed air, and we no longer fret the marble with the sculptor's chisel, but summon the same wizard of the air to do our bidding. The possibilities of this power, compressed or liquid, reach far beyond reason's ken, or imagination's vagrant fancy.

Anesthesia, the Rontgen ray and antiseptic surgery, together with a knowledge of the laws of hygiene and sanitation, have minimized pain and suffering and have increased the duration of human life. To such a degree of perfection has science attained that we can get from the laboratory an egg or a beefsteak, a ruby or a diamond. From the waste product of the gas retort, come the most delicate colors, the perfume of flowers, the flavor of fruits. It is a far cry from the bows and arrows of our ances-

tors, to the high explosives, the smokeless powder, the Krags and Mausers of to-day; from the war galleys of Diodorus Siculus to the modern battleships of Schley and Dewey. It is a far cry, indeed, from Morse to Marconi.

Hundreds of books have been written, and thousands of decisions delivered, upon these new, interesting and complicated subjects of which our fathers never heard. The variety of questions arising out of these constantly increasing developments of our ever-advancing modern civilization press hard upon the judges, requiring from them not merely a knowledge of positive law, but a broader scholarship and a higher culture. The time has now come, when, in order to secure the services of the foremost lawyers upon the bench, and to retain thereon the services of the ablest Judges, that just and adequate compensation should be paid. The most expensive administration of law is by cheap judges. Ability, learning, experience, industry, integrity and executive power bring good prices in the markets of the world, and if a people will not properly compensate able and upright judges for the valuable services rendered, then judges will have to leave the bench and return to the bar, or enter upon other fields of human endeavor. It is true that the bench is the most dignified and honorable position that any man can occupy, but dignity will not clothe women and children and honor is not accepted by tradesmen in payment of bills.

There is nothing more destructive to a wholesome respect for the law than the impecunious judge, who is notoriously unable or unwilling to pay his debts. Crime may awaken sympathy or pity, and sometimes its very audacity may excite a certain degree of admiration, but the shabby, debt-excusing, payment-avoiding judge is the object of ridicule, and the cause of a distinct lowering of respect for the bench, which represents the administration of law.

As the civilization of a people is marked by their respect for the law, so the salaries paid to judges measure the energy, activity and just appreciation of a people. We learn to associate the law with the judge. Many of us have to-day the impressions formed in our youth by the bearing of certain judges. Now a people associates with a great and able judge who has been long upon the bench, much that is high and noble, wise and great in the law. Such a judge becomes an inspiration and a living, breathing embodiment of the law.

But when such an one has been cast down by some pettifogger, who has appealed to the prejudices of a people and the arts of the demagogue, then lawyer and layman feel that violence has been done, not so much to the individual, as to the majesty and dignity of the law.

The tenure of the bench should not be uncertain, and the present uncertainty of judicial tenure and the method of election deter many a self-respecting lawyer from aspiring to the bench.

It has always been a surprise to me that under circumstances so unfavorable, so high a standard of judicial rectitude and ability has been maintained. It must be confessed that at times we have had judges without dignity, just as we have had judges whose excess of dignity was insufferable. In either case the effect is to lessen that respect for the law which is essential to its regular and orderly administration.

Absence of executive ability—that power to proceed with the prompt dispatch of business without unnecessary delay and yet without indecent haste—destroys the efficiency of otherwise able judges, and brings the court into disrepute. Objectionable though the Judge may be who makes the law's delays, yet far more objectionable is that judge who imagines that clearing the docket, is dispensing justice. He it is who listening to the cries of the mob, calls extra sessions of his court in order that a prisoner may be executed under the forms of law. I know of no more splendid spectacle, to higher exhibitions of judicial courage, than that which was presented by the decision of our own court of last resort in the Woolfolk case. Most horrible was the tragedy. A man, his wife, his six children, and a guest were all murdered in a single night. The prisoner was indicted for the murder of his own father. Public indignation ran high, and during the trial there arose in the court room the cry: "Hang him! Hang him!" The prisoner was convicted, a new trial was refused, and in reversing the judgment of the court below, referring to the failure of the judge to ascertain and punish those who had cried out, the Supreme Court said: "He should have taught them that the law was supreme; that the trial of a man for his life, however heinous the crime charged against him might be, was a serious and solemn thing, and that the law would not permit a mob to interfere, either by applause, or by threatening and exciting cries. By so doing, he would have upheld the supremacy of the law, and would have shown to the jury that whatever verdict they might find, the law would protect them. It would also have shown them that the court was uninfluenced by the feelings and demonstrations of the crowd; that it was still able to administer justice and give the accused a fair and impartial trial." "There is no nobler spectacle than that of a judge and jury who quietly, but firmly, in the face, it may be, of a public sentiment and popular clamor, go forward and do their duty and their whole duty." And I may add that there is no more revolting spectacle than a judicial murder.

Prompt, efficient and intelligent administration of the law depends not alone upon the judges, but under our system where questions of fact must be submitted to juries, the character and capacity of the jurors promote or retard judicial progress, and inspire respect for the law, or bring it into contempt. There is no good reason for drawing a distinction between grand and petit jurors, and certainly the qualities which fit jurors to pass as final arbiters upon the lives, liberties, properties and persons of their fellow citizens are as high as those necessary to be possessed, by a body of

jurors, who simply inquire into county affairs, or pass judgment upon *ex parte* evidence.

Too little regard is paid to the fitness of clerks and sheriffs, and yet, without efficient officers of court, there is not only delay in the work of the court, but failures in doing substantial justice. A careless, not to say a corrupt, clerk and a weak, not to say a cowardly, sheriff can render valueless the efforts of the ablest Judge, and can bring into disrepute the administration of the law. Personal popularity elects to these important offices persons frequently not possessed of a single qualification for the place, and to make matters worse, about the time that the officers have learned to discharge their duties with a fair degree of promptness and ability, they are displaced to make way for others, who in turn must be educated to the work.

There was a period in the history of judicial administration when the niceties of special pleading obstructed remedial justice, but that time has passed, and now it is that with the possible exception of the fictitious form in ejectment, the layman may understand the nature of the complaint against him. It seems to me that there is no good reason why that form should be permitted longer to exist. It is true, that in the hands of an astute ejectment lawyer, it gives an advantage to the plaintiff, in that, it conceals from the defendant the true nature of the title, and permits frequency of amendment by the laying of new demises. But it may be well questioned, if the true title can not best be ascertained by requiring both the plaintiff and defendant to attach to the petition and answer respectively an abstract of the muniments of title upon which they rely. I remember well how, many years ago, a simple but honest client of mine grew indignant because John Doe, of whom he had never heard, brought ejectment against him. His indignation against John did not, however, equal his resentment against Richard Roe, for my client knew Richard, who lived in an adjoining county. What the aforesaid Richard had to do with my client's house and land, that client was never able to see or understand. And when there was a verdict for the plaintiff, my client's contempt for the law extended beyond the limits of the county. He believed to the day of his death that by some collusion a foreigner named Doe had conspired with a man in an adjoining county named Roe to defraud him out of his land. This misapprehension at least could have been avoided, and respect for the law preserved, if the petition had set out the name of petitioner, and there had been attached to the petition an abstract of the title.

But, at last, it is the lawyer who inspires respect for the administration of the law, or who degrades it. A single ignorant clown admitted to the bar lowers the level of legal scholarship, while one disreputable character causes to fall into disrepute a great and noble profession.

While the causes which I have discussed have had a greater or less ef-

fect in engendering a disrespect for the law, yet, they have always existed, and are probably no more efficient now than they have been at previous periods in the history of jurisprudence. There seems to be a conviction in the public mind that there has grown up a power greater than the law. That the law is no longer supreme, and that her chosen ministers are but the servants of this new master.

That these mighty combinations of capital are believed to be fraught with danger to the republic is best evidenced by the fact that both political parties demand legislative action, that the messages of president and governors direct attention to the threatened peril and that State and Federal legislatures have passed various Acts seeking to prevent these combinations, which "may add field to field, wealth to wealth, power to power, till they become too strong for government itself."

I had fondly hoped that each State would by appropriate legislation provide relief against the evils existing or apprehended, but certain States have made it possible to obtain a charter when there is "no franchise tax; no limit on capitalization; no amount of stock required to be subscribed; no State control; no examination of books; stock non-assessable; keep office anywhere; do business anywhere."

We can not, I apprehend, obtain relief by separate State action, for "a State can not exclude a corporation engaged in interstate commerce, nor tax such commerce, nor tax agents engaged in it, nor fix the rates for carrying it; nor exclude articles of such commerce, or persons coming into or going out of the State." The remedy, I fear, is only to come from Federal legislation, and it will never come from that, or any other source, until all our people are taught to reverence the law. This education of respect for the law must come from the mothers of the land, the teachers in the schools, the pulpit and the press.

All persons should be required to render a prompt discharge of every legal duty, and from this liability neither lawyer nor jurist should be exempt. A high standard of judicial efficiency and integrity should be demanded, and for this service just and adequate compensation should be paid. The tenure of office should be long enough to give experience, and to prevent frequent elections or appointments. Simplicity of pleading and conveyancing should be required, and admission to the Bar should only be granted to those whose education and talents fit them to become useful members of the profession. Over and above all there should exist between bench and bar that accord without which there can be no administration of justice. Courtesy from counsel to counsel, and from counsel to the court, is no more important, and is no more essential to the proper trial of causes, than is courtesy from the bench to the bar. Disrespect from counsel shown to the court is vulgar and punishable; disrespect from the bench to the bar is contemptible and cowardly. And the same respect with which counsel treats the court should be shown to the humblest wit-

ness or party, unless there be some strong and sufficient reason to the contrary.

If we wish to inspire respect for the law, we as lawyers in our daily walk and conduct, in our offices, in the trial of causes, and in public station, must respect ourselves.

The law is a profession, not a trade, and success in it consists in more than money-getting. The personal interest of the lawyer should be merged in the welfare of his client, and every honorable effort should be made to avoid unnecessary litigation. If litigation results, then it is war, but honorable war, and in its conduct the true lawyer, the man who deserves success, must face with a high courage every danger. The frenzy of the mob should not deter him from doing his duty as he understands it, and judicial arrogance should not overawe him into a servile submission to erroneous ruling or decision. He should be bound by no fetters of gold, blinded by no prejudices of creed or party, but deaf to all cries of ignoble self-interest, he should ever be the loyal lover of his jealous mistress, the law. He should bear reverses with fortitude and receive success with modesty. He should remember that a good cause requires no abuse of the other side, and that a bad one is not helped by it; that violence of gesture is not grace, and loudness of voice is not eloquence, that dogmatic assertion does not convince, and vituperation does not persuade.

Some there are who wage ignoble strife, and by artful cunning and low device, by falsely spoken words and falsely quoted law, make a base trade of a profession which should be reserved for those "who have a country to love, a property to defend, and some share in enacting those laws which it is their interest, as well as duty, to maintain."

That lawyer alone is the true respector of the law, who, with clear brain and pure heart, with high and noble purpose, with labor that feels no weariness, and courage that knows no faltering, guards every right entrusted to him as sacredly as he does his professional honor, in his own fair name.

May I recall to you the words ascribed by Tennyson to Pallas:

"Self-reverence, self-knowledge, self-control,
These three alone lead life to sovereign power.
Yet not for power (power of herself
Would come uncall'd for), but to live by law,
Acting the law we live by without fear;
And, because right is right, to follow right
Were wisdom in the scorn of consequence."