

LAW AND JUSTICE.

BY DR. C. A. F. LINDORME.

IMAGINING a deputation for the people petitioning the legislature for a reformation of the law, one might suppose the spokesman of the deputation to address the speaker of the legislature as follows:

“Mr. Speaker, it is not vanity if we declare this presence a remarkable historical moment. When, on former occasions, deputations for the people came for a hearing, the object was some special legislation. What the people petition for now is a reformation of the whole plan of the law. For thousands of years the law has been considered the wand, not to say the rod, of civilization, and what has been the upshot, morally, socially? We have not only more actual crime, comparatively, than ever before, but a general laxity of morals, which, in the very face of the startling figures of the criminal statistics, observes a dull indifference and shameless frivolity, on taking notice of the grim fact of the growing corruption.

“Two thousand years ago the Roman lawyers were in a quandary whether justice was the outcome of the law, or whether the law was the outcome of justice.

“They never could settle the question.

“How about our lawyers?

“They are in the same quandary, so much so, indeed, that they do not even try any more to get at one about it.

“There is a deluge of legislation. One law follows on the neck of another, and none gives satisfaction. Yet the mad hope is entertained to reach by forcible law-fight the perfection of peaceable society.

“It is an old dream dreamt over again by each new generation. All and everything along the line of forensic practice is moving in interminable barrenness of tradition. From the day that the law-

authority made itself practically the master of the situation, jurisprudence established theoretically an abstraction-in-and-in-breeding which precluded all fresh blood from other fields; jurisprudence supplied its thought exclusively from its own thinking, and keeps on doing so, all the momentous discoveries in nature notwithstanding. When jurisprudence laid the foundation, theoretically, of legal argument, there was no science of bodily man, no physiology, and what there was of psychology, was the outcome of uncertain experience by vague and vain introspection. There is a science of man now, and the willing scholar can find the points of connection between physiology and psychology. But jurisprudence travels on with the old theoretical running gear, and acknowledges man only as a nominal unit, an individual made first by the law, by virtue of the name given him.

"Is it then not wrong to rely on the law for the right? How can a law be acceptable which affords such miserable results, practically?"

Speaker. "Have you a remedy to propose? We must have law."

Spokesman. "Not of the kind we have inherited from our forebears. The trouble with the jurisprudence of the traditional in-and-in-breeding of wild abstraction, which makes it entirely unfit for an ethical support of civic life, is the circumstance, that the forensic practice brings the law into closer touch with the wrong than with the right; the law which we have inherited from our foregoers is a law the right of which has not the run of the public mind; it does not go before, but lies in ambush, waiting for the wrong to be done, first; then the right bounces on it in fiendish spite, and punishes the wrong for being there, and this is by everybody praised as an avenging of the wrong, although nobody knows what this avenging at the bottom of the business is."

Speaker. "How can you mend it? I repeat, there must be law."

Spokesm. "We can mend it by making the law an institution to promote the positive good, before the wrong steals a march upon the right. Why can the principle of love not extend into the sphere of the law? why can the law not be friendly to the germs of well-doing in the people? why must it be a vocation to punish and to avenge the wrong only, when it comes, never mind the straggling right, before it is caught in the meshes of the snares of illegality?"

"And the worst is, there is a perfect gluttony of false ethics in the law. The spirit of revenge is what one might call demoniacal, as if there was something intrinsically blissful in the punishment;

as if the illegal outrage were atoned for by the outrage being done over again, legally.

“There is no feeling of love in juridical actuation, let alone love of feeling; all the move in this direction is in the admonition, ‘mind, you be good, else you will see how bad I can be.’

“The physicians have preventive medicine. Why can the lawyers not have preventive jurisprudence?

“Here is an illustration. In public parks, in some countries, the happy practice has been established of distributing placards bearing the inscription, ‘the grounds are recommended to the protection of the visitors.’

“The grounds are perfectly safe. More particularly they are safer than they used to be under the old regime, ‘trespassers will be prosecuted with the utmost rigor of the law, smoked first, hanged next, and finally torn to pieces.’

“Why?

“The rowdies feel honored by being trusted to act as their own police; it raises their fraternity to a flattering level; and consequently they refrain from disgracing themselves by vandalism. Love of honesty, and honesty of love, is so thoroughly ingrained in man, and so paramount in the civic order, that gangs of scoundrels even can not dispense with it; they cultivate it and wish it to flourish in their midst, lest their fellowships crumble.

“The judiciary, if they indulge in the proud ambition to be an ethical agency, are laboring under a huge mistake: The law, by its nature, is forbidding only, and consequently merely negative. It can not do anything towards the promotion of positive good. This is a result of its organization. The ethical standard of the judiciary of to-day is as low as that of the heathen Romans; it is intellectualized in the slogan, ‘all that is not forbidden is allowed.’ It is an unavoidable outcome of the fundamental principles of jurisprudence, but disowns the law as an agency of ethics; it discourages the good actions of the better-intentioned, and provokes the bad actions of the low-minded. The law, by referring only to the negative of the wrong, never to the positive of the good, eliminates from civic life all tendency of spontaneous well-doing, and so the otherwise enigmatic fact is explained, why old peoples, with the most masterly law-system, can, and have been morally depraved, while youthful tribes, with hardly any law at all, were models of righteousness and virtue.

“An amusing anecdote bearing upon this theme, is told of a Ger-

man university. The curfew had previously rung at eleven o'clock. For some reason or other the time was extended to midnight.

"After some weeks of the new observance a *privatim docens*, who took theoretically an interest in the change, meeting one of the fast boys, asked him how they liked the extension.

"It is not liked at all," he answered.

"How is that?" the private teacher asked in surprise.

"O, you see," the student answered, "the beer-clubs must now drink till twelve, and that is decidedly too long."

"Now, there was no *must*, to guzzle their throats with beer, either before or after. By the new ordinance the tapsters were only at liberty to keep open till midnight. But there is a sort of false conclusiveness in the public at large, which induces them to coast an infringement of the law as close as they can get it, just because transgression is forbidden.

"Hence the absurdity of the syllogism of the anarchists, 'Abolish the law, and there will be no infringement.'

"But the empiricism must be admitted, for all that, the more law, and the closer the law, the less spontaneous virtue."

Speaker. "Let us hear how you want to mend it. I repeat, there must be law."

Spokesm. "If there must be law, then let it be. But do not hope for good results in its present hypocritical organization. There is no genuine morality in the right of the law. The judge exhorts the witness to tell the truth, nothing but the truth, and all the truth, and the perjured witness is severely punished. But the parties and their counsel are not ruled by such abstraction-fastidiousness. They are not guided by any moral principle at all. The juridical literature boasts of the publicity of the law-procedure as a safe-guard of honest prosecution. It is an empty boast, a sham publicity. There is at the outset of a law-fight a secret conspiracy of each of the contending parties with their legal accomplices against the judge, and this wrong is considered their right.

"Why is that so?"

"There is no honest philosophical justification of such impunity of mendaciousness. The forensic usage is mere tradition. It dates from despotic times, when the judge was a creature of the men in power, and the defendant had to be protected against hateful persecution.

"The usage is without all sense in fair popular courts of law.

"It is a fundamental maxim of the judiciary to listen in a law-case to both sides of the question. But the parties' counsel is

allowed to ignore the rule. All the interest of the attorney-at-law is that of the iniquity of the parties and their own. As in the old ordeal their concern is in their fight alone: where formerly skulls were smashed, and limbs crushed, now brains are broken, and sentences corrupted.

“Can the truth in the judge not be reached save by the lies of the attorneys? Can honesty in the arbiter not be attained save by the tricks of the advocates?”

“The greatest turpitude in a judge is to accept presents from a party that is to appear in his court. It is considered bribery, and a judge who makes himself guilty of it will be impeached. But the counsel lives on bribes, and the appetite for them has become so voracious that they rob what they can not get in a more polite manner.

“It is the attorney’s way of making a living.

“Why is this so?”

“Why at all this separatism between bar and bench? Can the right not be made out except by the wrong first having a fight over it?”

“Does this fight not presuppose that there is something foul in the forensic usage, a right which is wrong?”

“I do not want to enter theoretically upon the question, whether the law makes justice, or justice law. But thus much I maintain practically: *justice supersedes the law*: justice is not a matter of deep intellectualizing, but one of the good will of the parties. Nothing easier in the world than to do justice, if the parties only want to do it. There was never a party going to law, except for lack of justice. Is it then not damnable statesmanship to observe a system which makes it possible for shrewd individuals to make the law trickery a trade?”

“The law, as it is, is a pretext; it is the stalking horse of abuse. Abolish therefore a fraternity whose office it is to foment this abuse. It is wrong to have three rights, one of the plaintiff, one of the defendant, and one of the judge. The right is no private affair at all; it is a public concern, the concern of the civic order: When parties can not get along peaceably in mutual harmony, and go to law, to have their peace made by the authority instituted, they forfeit their independence; it is furthermore the mission of the personification of the public, to make their peace, and consequently there is one point of view only for those officially responsible, from which to consider the matter, and deal with it to the best of the general interest. Judge and jury, and counsel, must be therefore hitched

abreast, the counsels being, like the judge, compensated by a salary which makes them independent from their clients, and given the direction to consider it their duty to compromise cases, not foment quarrels by holding out the hope for a successful fight at the cost of 'the other fellow.'

"Make the law friendly to the good citizen, gratis to him who is willing to do justice to his adversary, costly to the caviler who wants to appeal, and bring the right in closer touch with the good than the bad, by ceasing to lie in wait for the wrong before attention is given to the right. If, for instance, we had houses of education for the children who receive no education at home, or have no home, fewer would grow up to be jailbirds who are a blot upon our civilization and must be housed by the State in penitentiaries at greater expense than would be incurred by suitable houses of education for the children.

"If our law-system was doing anything towards a betterment of society; if it had done any thing of the kind heretofore, it would be perceptible.

"It is not. If you want to get aware of the kind of morality which is fomented by the law, take up a newspaper and count the columns occupied by reports of crimes, wrecks, murders, and broad sensational dwelling upon the topic.

"Is it not time, then, to employ nobler means of culture and progress?

"I have finished."

Speaker. "I appreciate highly your interestingly bold exposition. If the conservative will hesitate to accept the total plan, it commends itself through its tendency to all lovers of good public order and felicity."