

## JUSTICE, ITS NATURE AND ACTUALIZATION.

BY THE EDITOR.

IN the present number of *The Open Court* Dr. C. A. F. Lindorme, of Atlanta, Georgia, discusses in an article entitled "Law and Justice," problems which again and again present themselves to people who have to complain about "the law's delay," and other wrongs inflicted on poor suffering mankind in the attempt to do justice; and the cure which he proposes is so simple that at first sight it would seem an outrage on the intellect of our legislatures that it was not introduced long ago. Similar propositions have been made before by reformers all over the world, but the case is not so simple as it appears, and there is a good reason why mankind continues to remain in the same sorry plight.

Though progress has been made in details, the main point of complaint that justice is a mere approximation, a makeshift, sometimes a compromise, remains as before,—as it was from the beginning, and we may boldly prophesy, as it will be so long as time endures.

Dr. Lindorme looks back upon a long life rich in experience and perhaps in disappointments, but if he had the power to alter our legal institutions, our court proceedings, the practices of our lawyers, and the methods pursued in obtaining legal decisions, he would presumably give no relief, and we fear that instead of redressing the wrongs committed, he would only aggravate the present evils of the system, the existence of which we would be the last to deny.

Our legal institutions are far from perfect. Whoever has any acquaintance with courts and the administration of justice, will find much truth in the words which Goethe puts in the mouth of Mephistopheles when instructing the freshman who interviews him on the different university courses. Concerning the study of law Mephistopheles says:\*

\* This version is adapted from Bayard Taylor's translation of "Faust."

"All rights and laws are still transmitted  
 Like an infection of the race;  
 To the preceding generation fitted,  
 They shift and move from place to place.  
 Wisdom turns folly, good to bad and worse,  
 Beneficence is changed into a curse.  
 Thou art a grandchild; woe to thee! The right  
 Born with thee is not yet in sight."

When thinking of the shortcomings of human affairs we ought to consider a truth that is stated with perfect clearness only in the great religion of the Buddha, viz., that suffering is an inalienable part of existence; imperfection is inherent in the constitution of life; what is compound will be dissolved; what is born must die; and ideals can only be approximated, never fully attained. We will not stop here to philosophize on the arguments of the Buddhist doctrine, and will not discuss either their justification or their verification from the standpoint of modern science. The fact may be conceded that life is a struggle and all the blessings which we enjoy must be procured by constant effort. Schopenhauer, the pessimist, claims that there is no permanent enjoyment, and that life's pleasures oscillate between tediousness and pain. We do not intend to advocate pessimism, but we wish to have this special truth of pessimism well understood. Goethe, who was assuredly no pessimist, utters the same truth, though from the standpoint of manliness ready to combat the evils of life, when he makes Faust express the following sentiments at the moment of his death:

"Yes! to this thought I hold with firm persistence;  
 The last result of wisdom stamps it true:  
 He only earns his freedom and existence,  
 Who daily conquers them anew."

—Tr. by Bayard Taylor.

The freedom of a republic can only be bought by the price of constant vigilance; and a high standard of morality, civilization and culture is to be maintained by continuous drudgery. Life is not an essence, a thing which can be kept like a rare gem in the show-case of a museum; life is a function involving perpetual activity, and so the continued sustenance of life means constant labor.

Schopenhauer is right in claiming that the life of mankind is always an eking out of existence from hand to mouth; the wealthy are only comparatively, not absolutely, secure, for the totality of life depends upon the constantly renewed work of harvesting and distributing crops and changing raw materials into food and raiment. Faust's conclusion is not to give up in despair but to accept

the conditions with the assurance of a fighter, strong enough to take up the struggle. He wants to see an energetic race able to cope with the problems and difficulties of life, and so he has founded a new colony gained by dykes from the marshy districts. He continues:

“Thus here, by dangers girt, shall glide away  
Of childhood, manhood, age, the vigorous day;  
And such a throng I fain would see,—  
Stand on free soil among a people free!  
Then dared I hail the moment fleeing:  
‘Ah, still delay—thou art so fair!’  
The traces cannot of mine earthly being,  
In æons perish,—they are there!—  
In proud fore-feeling of such lofty bliss,  
I now enjoy the highest moment,—this!”

—Tr. by Bayard Taylor.

Dr. Lindorme, seeing the wrongs of the law, thinks that they can be righted, and we gladly grant that there is much room for reform; the law can become preventive instead of curative. It can be made so as to encourage virtue and other good deeds and qualities instead of pouncing on the wrong-doer after the evil has been committed. Hygiene has reached the stage when the spread of contagious diseases may be avoided, and there is no reason why our legal institutions should not imitate the progress actualized to some extent at least, by the medical profession. But with all possible improvements (which are most devoutly to be desired) we shall not be able to square law and justice, and to abolish what Dr. Lindorme calls the “three rights,” the right of the plaintiff, the right of the defendant, and the right of the judge,—to fuse them into one, a harmonic union of civilized justice.

Dr. Lindorme says: “Nothing is easier in the world than to do justice if the parties only want to do it.” This is a mistake and exactly for the reason that nothing in the world is more difficult than to do justice, do we have law and courts of justice.

Dr. Lindorme continues: “There is never a party going to law except for lack of justice.” It would be more correct to say, “except for the clash of different rights,” for justice is an ideal and the views of justice will be found to be a compromise between two contending parties, both of whom insist on what they call their rights. In other words justice is based upon a truce made between two parties waging war, and, and in the same way it will be seen that justice as it presents itself in the real world is ultimately based on power, the power to enforce one’s rights. A party which has no

power has no right. This may seem barbarous to those who condemn struggle in itself as immoral and regard bodily existence as the taint of original sin; but let us look at facts squarely and recognize them without equivocation. There is no case of law between the lamb and the butcher. The sheep could gain a right only by protection. Being unable to defend itself it is at the butcher's mercy. The Humane Society steps in to protect dumb creatures against the brutality of cruel human beings, but its right to interfere is, properly considered, based much more upon the advisability of restraining the brute in man, than of sparing the animal pain. Its main purpose, so far as law and the enforcement of law goes, is concerned with the prevention of cruelty that by being committed or being witnessed would brutalize human nature, rather than with the protection of any right on the part of animals. The ultimate right of ownership is a possession that can be maintained. The primitive right to land is by occupation, just as the hunter's right to his prey is by capture. If occupancy is disputed we have a collision of rights which, in the age of savagery, was commonly decided in battle, and the victor lays down the law.

On a close inspection it will become apparent that the power to enforce one's claims can not be omitted from the conception of justice, and it is not absent either in the courts where the common will of society for good reasons, has definitely excluded any self-assertion by the mailed fist. Mankind has found out by experience that a state of universal war is not desirable and so the common will replaces the club right still sanctioned in the Middle Ages by the right based upon law; but the right based upon law still remains the right of the stronger. The common will which has created the law, steps in to protect the weak in their claims because it is in the interest of all,—of the tribe, of society, of the commonwealth, or whatever be the greater power which enforces the law,—that the weak should enjoy equal advantages with the strong. So long as life remains a struggle, justice will be based upon the power of maintaining one's right and any settlement of right or wrong will partake of the nature of a truce made between two or several hostile camps, of a compromise of conflicting interests, of an agreement arrived at by opposed parties.

The idea of removing the struggle of the contending parties from our courts of justice is not new. It has been attempted again and again by idealists who deemed it wrong to settle a dispute by the force of argument. It is obvious that he who has his case most effectively represented is not always the man who is right, and so

it happens that justice is sometimes thwarted. Yet the idea of justice is so simple! Why not drop all red tape of arguments and have justice done in the most direct and straightforward way?

It is said that the second king of Prussia, Frederick William I, a typical monarch of paternal government, who had the best of intentions to be a father to his people, was dissatisfied with the delay of the law and the ponderous machinery of justice. Like Dr. Lindorme he thought nothing easier in the world than to do justice, so he went into court to teach his judges a lesson and sat on the bench to hear the arguments of the plaintiff and defendant. He listened to the plaintiff and nodded assent to his claims. "That man is right," he exclaimed, "and he must have justice done," but when the defendant came presenting the other side of the case, the king arose in indignation and left the court room with the words: "That fellow is also right. Judge, see to it that the case be decided." This ended his tampering with the administration of justice in the courts.

History repeats itself. Frederick the Great, too, was impressed with the idea that the method of deciding right and wrong by a conflict of arguments between two parties was not the proper way, and so he introduced a new method in which the courts took the decision into their own hands; and the judge instead of acting as an umpire between two combatants whose weapons are not clubs but arguments, should investigate the question without reference to the parties and pronounce his decision purely from the standpoint of justice.

The reform was introduced and tried for some time, but had finally to be abolished because the system did not work. Under it both parties were dissatisfied because they appeared now as two criminals before a sovereign, and Frederick the Great soon recognized that the contending parties had a right to have their views represented as they saw it, and not as the court would have them see it. The ability to make one's own view of the case plausible, is part of the struggle for justice. Misrepresentations are used to make right appear wrong, but the judge is expected to see through the machinations of tricksters, and if decisions are wrong it becomes apparent that the fault is not in the system of justice but in the insufficient qualifications of the personnel.

The best way after all is to let the parties struggle for their rights, although an able misrepresentation may now and then prove successful. In criminal cases misrepresentation is even deemed the weapon of the defendant which it would be psychologically wrong

to take away from him. Upon this consideration is based the principle that it is wrong to have a defendant make his statements on oath lest he aggravate his case by perjury. A defendant in a criminal case may insist on being sworn, but no one can compel him to be.

It almost seems as if justice were a sham and right were nothing but the power of the stronger to enforce his will, either directly by his own power, or by utilizing the authority of the state to have his view of the case presented with convincing ability. This is true only in a limited sense. It would be a mistake to think that justice is a mere random settlement between the contending parties, for there is justice in the world. But justice is not a fact. It is an ideal which must be worked out by humanity and is approximated more and more in the progress of human civilization.

All events of nature, the movements of the starry heavens as well as the atomic dances of the molecule, are subject to law, and the actions of man are no exception. In the domain of human society it is natural for the strong to make use of their power, yet their power is checked by laws imposed upon them by the common will of all, and the wise who possess foresight restrain themselves and do not make a full use of their power when they see that they will not be able to maintain an advanced or aggressive position. He is called just who voluntarily concedes to his opponents what they could enforce in a struggle for justice.

In the animal world the natural impulse of making immediate use of power is freely followed. The tiger does not stop to consider the results of his action, but pounces on his prey and feeds on living animals with ruthless cruelty. A new condition, however, sets in with the rise of intelligence. It is beneath the dignity of man,—nay more, it is against his interests to follow the blind impulses of his own power, and the recognition of the laws of social interconnections teach him that it will be wiser to make a limited use of his power and not enforce it to its full extent. Experience teaches us that a reckless disregard of the rights of our neighbors leads to our own discomfiture, sometimes even to our own destruction. Society with its intricate interrelations is like a living organism where one hand can not lacerate another limb with impunity, for all must work in harmony for the sake of their own welfare, and there are certain underlying laws (i. e., laws of nature) governing the welfare of a social body. These natural laws of the welfare of the whole organism teach a mutual respect for the several individuals constituting it, and they form the eternal prototype of ethics and of the institutions of justice.

Some modern jurists as well as ethicists have come to the conclusions that the old ideas of a natural right, of eternal justice, of an ideal moral law, are mere fictions, and that all our notions of right and wrong are based solely upon a traditionally established custom of law and of social habits. But this view comes as a reaction against a wrong formulation of the old idea of divine law, or natural law, or by whatever name the conception of an eternal prototype of right may go. Though the interpretation or formulation of a prototype of right may have been too mythical or dressed up in fantastic allegory, it is after all not incorrect; for just as natural law guides the development of the world, there is a natural law that dominates history and the evolution of human society.

A man from the ranks of practical life who has no experience as yet with the intricacies of law, naturally feels that there is an eternal rule of justice though we may be unable to formulate it. His interpretation of it may be erroneous, but at bottom he is right, and indeed all our law is nothing but an attempt to incorporate the maxims of this eternal justice based on the natural laws that govern the development of human society.

The philosophy of law has made great progress and we have no doubt that the scientific world-conception which is now spreading will usher in a new period in the administration of law. We agree with Dr. Lindorme that the law of the future will be more preventive than punitive. It will tend more to encourage the good than to retaliate on evil-doers. In addition, it will make the law agree more with the demands and needs of the present generation instead of making justice lag behind the times, as was the case with our blue laws made a century ago in accordance with the views of a distant past. But after all, actual justice in the world will remain a settlement between contending parties, and so long as life remains a function, an activity, a struggle in a bodily world of conflicting interests, we will not be able to avoid the clash of different rights. There will always be three rights, as Dr. Lindorme says: one of the plaintiff, one of the defendant, one of the judge; or, as we would prefer to say, three aspects, the views of the two parties and the view of the judge. All we can do is to have our legal institutions so constructed and the judges as well as the jurors so well prepared for their duties that the court's decision will be as near as possible to the living interpretation of the eternal law of justice which has produced not only our ideal of justice, but also all our legal institutions.

We do not doubt that civilization is a powerful movement which

leavens mankind more and more; but the development of justice must grow gradually and we can not cut it loose from the root from which it springs. Justice remains rooted in power, and the development of international law can only be the outcome of a further development of the civilized nations. Peace on earth can not be established by idealists who as self-appointed apostles of peace request the great powers of the world to disarm. The effect of their conferences is not greater than if a lamb would go among the wolves to preach a universal goodwill among all creatures. Peace on earth can be established only when those powers themselves feel the need of peace, when they find that wars are too expensive and that the method of compromise is preferable. These powers themselves must become the advocates of a peace policy; peace can not be established by persuasion, it must be enforced by the threat of war,—of a war which would mean sure defeat to the recalcitrant and unruly. Every single power might be unwilling to bring about the result of an assured state of international peace, but in the measure that international relations develop enormous interests by peaceful trade, the common will becomes a factor which can less and less be ignored, and this common will develops an international conscience of right and wrong, which of late has become incorporated in the Peace Conference of The Hague, which will exert its influence more and more upon the amicable settlement of international disputes. But even here as everywhere justice will always have its ultimate foundation in power, and justice will remain forever an ideal approximated by a comparison between conflicting rights.