

**INTRODUCTORY ADDRESS OF
THE SESSION OF 1878-9 OF
THE LAW DEPARTMENT OF THE
UNIVERSITY OF PENNSYLVANIA**

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Introductory Address of the Session of 1878-9 of the Law Department of the University of Pennsylvania by Daniel Agnew

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DANIEL AGNEW

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*re - original, given
Hon. James I. Mitchell.*

INTRODUCTORY ADDRESS

OF THE

SESSION OF 1878-9

OF THE

LAW DEPARTMENT

OF THE

UNIVERSITY OF PENNSYLVANIA.

BY HON. DANIEL AGNEW LL. D.

CHIEF JUSTICE OF PENNSYLVANIA.

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PHILADELPHIA, *October 6, 1878.*

To the Hon. DANIEL AGNEW, LL. D.

DEAR SIR:—At a meeting of the students of the Law Department of the University of Pennsylvania, held Thursday, October 3d, remarks were made expressive of the interest, pleasure, and profit experienced from listening to your Introductory Lecture, and a Committee was appointed to ask your permission to have printed, in pamphlet form, for distribution among the students and friends of the Department, your very admirable Address. Hoping for a favorable reply, we remain,

Respectfully, your obedient and thankful servants,

H. LAUSSAT GEYELIN, *Chairman.*

LINCOLN L. EYRE,

GEO. STANLEY PHILLER,

WILLIAM J. SMYTH,

FRANCIS A. LEWIS, JR.

PITTSBURGH, *October 10, 1878.*

GENTLEMEN:—Yours of the 7th inst. has been forwarded to me at this place. I take pleasure in acquiescing in your request for publication. I delivered the MSS. to Professor Mitchell, and considered it then at his disposal.

With great respect,

Yours Truly,

DANIEL AGNEW.

H. LAUSSAT GEYELIN,

and others, Committee,

Philadelphia, Pa.

ADDRESS.

I SHALL not speak to-day upon any special topic, but shall rather attempt to impart my own thoughts on various subjects germane to the experience of a lawyer. Of topics and books a student will have enough, but of the every-day knowledge of a lawyer he can have none, unless he draws it from those who have trodden the professional pathway before him.

The fact that this is a Department of the University of Pennsylvania suggests my first thought. The University is an old institution of the State, and its Law Department leads our minds to the contemplation of Pennsylvania jurisprudence. The founder of the colony, though the subject of a king, brought with him the sentiments and notions of a republican. In all his great acts as a leader he mingled the spirit of freedom, justice, personal rights, and public good. The common law of England, as a system of *principles*, and the statute, so far as applicable to the new situation, became the basis of the colonial law, yet these were so modified as to maintain the fundamental rights of men, and to partake of the qualities which inspired his mind. When independence came, they entered into the texture of the Constitution, forming the framework of the State government.

This love of justice, untrammelled by harsh law, and

called for by the feelings and opinions of the colonists, led early to that peculiar system which administers equity under common law forms of procedure—a system, the wonder of lawyers accustomed to a court of chancery, yet now recognized and largely accepted by our mother country, whose recent reforms are even a greater wonder. This subject, itself a noble theme, might engage an entire address, but is now mentioned only to attract attention, and draw appreciation to the advantages of this Institution. None other can better lay the broad foundation on which a Pennsylvania lawyer must build his knowledge of our law. Nor do I think the basis too narrow for the rising statesman. Built on the groundwork of freedom, justice, personal rights, and the public welfare, it fits the mind for the higher conceptions of the Federal and National law.

Apart from my MSS., I feel impelled to say my heart is drawn toward this Institution by an old but cherished ligament. I hold the diploma of my father, granted by the Medical Faculty on the 31st of May, 1800, and signed by Drs. Shippen, Rush, Wistar, Woodhouse and Barton, and the separate certificate of Dr. Dewees.

The American lawyer has a peculiar experience. Coming generally from the horizontal plane of the people, before the noon of life he toils for bread, but when his sun has reached the meridian he begins the pursuit of reputation and honor, trusting that his evening rays will grow into the gorgeous light of a brilliant sunset; and in this expectation, if learned and honest, he is seldom disappointed.

Much of the success of a lawyer depends on right notions of law and government, the want of which forms the trickster and the pettifogger. But when his mind is filled with just conceptions of their true origin, and he traces all laws to their divine source, he rises to the grandeur of their import, and his conscience becomes alive to their obligation. Without a proper sense of the obligation of law, he degenerates into the common-place practitioner and the cunning advocate.

Law! grand, divine, immortal energy! Springing from the unbounded depths of Jehovah, it pursues nature into all her pathways, and invests all being with its power. Surrounding man with a divine investiture, it accompanies him at every step from birth to death, forming his code of morals, and becoming the guide of his conduct, and the true basis of right government. There is a unity and harmony centring all things natural and moral in the Creator, and binding all their systems of order in a single bond. It cannot be otherwise, unless we suppose more than one creator of matter and of mind; for the same great Author deals not in repugnant diversity, but unites all things in simple oneness.

The physical nature of man, body and brain, is governed by the natural law. These organs of life and thought are the instruments of human conduct, through which the spirit acts, and necessarily partakes of that law which governs vital and mental action. Human conduct, the special subject of moral law, is itself a necessary result of the natural constitution of man, for his relations to others spring from natural conditions—the sexes, birth, growth, and sustenance by food,

clothing and shelter, all under the dominion of natural laws. The appetites and passions of men come from body and brain, while even education arises in the existence of natural laws, as seen in the laws of beings, their varieties, habits, qualities and modes of action. Hence the natural law and the moral law, or governing principle of human conduct, come from the same divine source, are truly one, and have the same obligation.

Government—the system of law which governs men in multitude, arising in the wants and necessities of the race, partakes of the same unity. It is an extension only of the moral law to a great number of persons in new relations, whereinto they come by living together—the application of the rules of individual conduct to these relations, varied by circumstances, yet arising from aggregation. Its divine origin is seen in the nature and constitution of the race. These require cohabitation of the sexes, birth and nurture, for its perpetuation. The regulation of the sexes, and the duties of marriage, and nurture of offspring, cannot be properly maintained without government, and the inequality of persons in health, strength and capacity, makes government a necessity for *their* regulation also. Now the instant we arrive at the conclusion from nature that government is a necessity springing from the constitution of the species, as given by the Creator himself, we reach the result that it is of divine appointment; for whatever is a *natural* necessity of the race, is as certainly a result of Providential order, and this order must arise in the divine will.

Hence it is clearly an error to rest the obligation of

governmental law upon individual consent or contract. Man was designed to live in communities. The earth is covered with nations and tribes. Its topography of land and sea, mountains, rivers and plains, constituting natural barriers, and all history proclaim this divine intent, and proves the Providential order. *Forms of government* often do rest in compact, expressed in constitutions. But if the obligation of public law arises in contract or consent only, its powers are necessarily limited, for then no power can be exercised by government which contract cannot confer, and men cannot contract away their lives and natural rights. But when the rightful authority of government is found to arise in the divine will, the right follows to exercise the highest functions of government extending to the taking of life and property, in case of emergency, or war, or in punishment of crime. The necessity then determines the rightful exercise of the power. The principle of love strengthens the argument. Love inspired creation, then blessed the creature. It is the divine principle of unity revealed to man, constituting that great law which unites the race to its maker, and itself in the bond of universal brotherhood.

Hence I say that the success of a truly great lawyer depends much on his notions of law and government. He must be convinced of their harmony with the natural and moral law, and that their source of obligation is the divine will. Then his conscience becomes his powerful aid in practice; and as a result, his reputation and honor keep pace with his good conduct. Were all governed by these views, the profession would not be reproached for the misconduct of those