

**LEGAL DOCTRINE AND
SOCIAL PROGRESS.
[NEW YORK-1911]**

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Legal Doctrine and Social Progress. [New York-1911] by Frank Parsons

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FRANK PARSONS

**LEGAL DOCTRINE AND
SOCIAL PROGRESS.
[NEW YORK-1911]**

LEGAL DOCTRINE AND SOCIAL PROGRESS

TO MY REVERED AND HONORED FRIEND,
JUSTICE OLIVER WENDELL HOLMES,
WHOSE FREEDOM FROM OVER-DEVOTION TO TECHNICALITIES AND WORSHIP OF PRECEDENT IS DESERVING OF ALL PRAISE, AND WHOSE PROFOUND KNOWLEDGE, BREADTH OF VIEW AND LIBERAL USE OF COMMON SENSE IN APPLYING THE PRINCIPLES OF THE LAW TO ACCOMPLISH JUSTICE ON THE FACTS OF EACH CASE, ENTITLE HIS JUDGMENTS, AS A MEMBER OF THE SUPREME COURT OF MASSACHUSETTS AND NOW OF THE UNITED STATES SUPREME COURT, TO THE RESPECT AND ADMIRATION OF THE BENCH, THE BAR AND THE PUBLIC, THIS BOOK IS AFFECTIONATELY AND RESPECTFULLY DEDICATED

PREFACE

THE stupendous social problems of this age force us to face the question—shall remedy be found by evolution or revolution? The answer to this question is of momentous importance. It determines one's attitude toward the problems and marks the essential nature of his activities. If he believes that revolution is "*the way out*" he will very likely be unsympathetic with reforms, and impatient of "*palliative measures*." He will clothe his ideals with abundance of detail and refuse to pave the road or even blaze the trail by which they must be reached. He complacently postpones all progress to that joyful day when his perfect ideal will be realized in one *grand coup d'état*. The man on the other hand who believes in reforms and evolutionary methods of social progress will do what he can each day to gain an inch toward things as they ought to be.

A man is an evolutionist or a revolutionist in the matter of pursuing his ideal, according to the view he takes of the law, the constitution and chart of present civic institutions. If he

considers the law fundamentally wrong and our present society utterly hopeless, he will be a revolutionist. If he canonizes the law of the past, making it the guide and measure of all future law, and so enslaving society to the corpses of its dead, he will be a reactionary. If, however, he estimates the law on a utilitarian basis, and without any bondage to precedent accepts it as a power for progress to be developed rather than cast aside, he will be a social evolutionist.

It was to this school of thought that the writer of this book belonged. He was a reformer, cherishing the highest of ideals yet always demanding of himself a reason for his faith and a proof of its practicability. He felt that a better and truer conception of the law was one of the great needs of the day and that it would help the cause of social progress. His wide knowledge of the law, his work as a legal writer, and his experience as an educator, coupled with his national services in behalf of true democracy, qualified him peculiarly to write upon this subject.

For several years before his death Professor Parsons accumulated notes and developed plans for the present volume, but its actual writing was not begun until the days of his final illness.

To the reader who has noted the prevailing lack of any dynamic conception of the law, or any adequate understanding of it as an evolutionary force, or who sees wrongs and social barbarism entrenched behind the courts and constitutions that are inelastic, and that try to confine the State to police functions, this book should bring a hope of better things. It reaches fundamentals. The path of democratic progress is not over a morass, but over rock.

RALPH ALBERTSON.

Boston, February 1, 1911.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

CONTENTS

	PAGE
I. THE LAW AS A FORM OF CONTROL	17
But one of various forms.—The object of law is happiness.—Leading means of control contrasted.—Law too costly to be used to enforce the whole moral law.—The law draws the line at the average man.—The law waits for crystallized public opinion.—The law enters only where proof is possible.—The form of control depends on practicability.—The law may go too far.	
II. THE LAW AS AN EXPRESSION OF THE INTERESTS OF THE GOVERNING AUTHORITY	26
The real power not always indicated by the form of government.—The law in a real democracy.—Collective ability must be employed.—The benefits of a true democracy.	
III. FIXED LAW IS BUT THE CRYSTALLIZATIONS OF ANCIENT GROWTHS	33
International law.—Domestic law.—The common law.—Equity.—The common law too rigid.—Equity requires flexibility.	
IV. THE LAW IS A LIVE, CHANGING AND ADJUSTABLE INSTRUMENT	39
The law "in the breast of the judge" is flexible.—Over a vast field the effect of the law is determined absolutely by the attitude of the judge.—Different principles of common law lead to en-	