

THE ORIGIN AND DEVELOPMENT OF THE LEGAL PROFESSION

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649302628

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Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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BY

CHARLES S. WHEELER

OF THE SAN FRANCISCO BAR

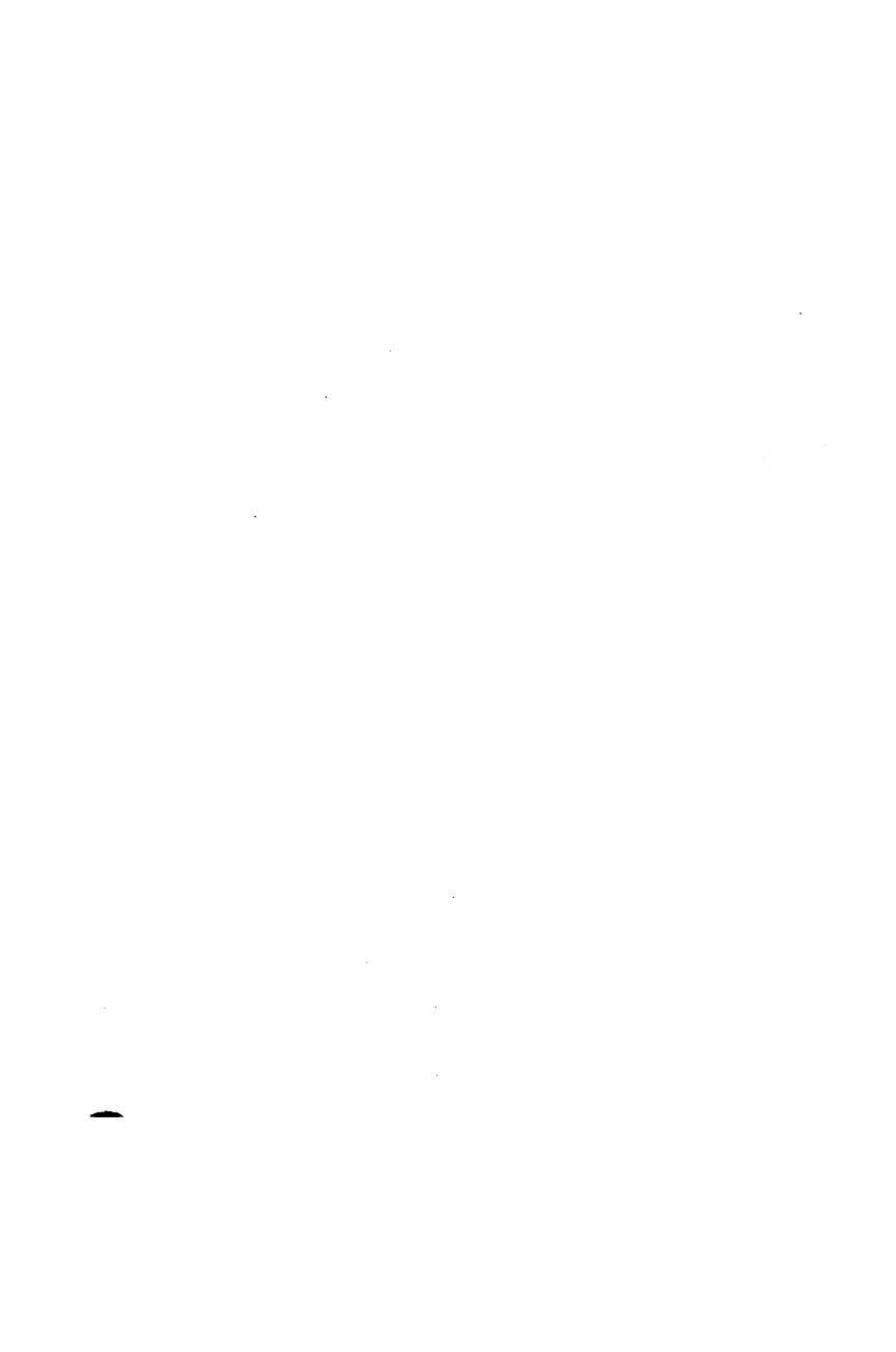
THE FIRST ANNUAL ADDRESS
BEFORE THE STANFORD LAW ASSOCIATION

STANFORD UNIVERSITY

MAY 21, 1903

SAN FRANCISCO
THE MURDOCK PRESS

1903



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LADIES AND GENTLEMEN:

At the main entrance to the yamun, or official dwelling, of each Chinese magistrate, is a raised platform. Upon this platform are a table and a magistral chair. Around the room are hung whips, bamboo rods, and other instruments of punishment.

The place is always open to whomsoever will enter, and a gong hangs within easy reach. Any Chinese subject who feels himself aggrieved may freely come by day or by night and beat the gong. The magistrate, in obedience to the ancient code, must instantly don his official robes, come forth and occupy the chair of justice, and then and there take action in the case.

This method of invoking justice is the same to-day as in the days of Yao and Shun, and had prevailed in China for more than two thousand years¹ before Christ suffered on Calvary.

When the Master was placed under arrest in the Garden of Gethsemane, you will remember that the

¹Holcombe—"The Real Chinaman."

hour was about midnight; that he was taken to the palace of Caiaphas, the high-priest and president of the Sanhedrin. There he was brought before a committee of the Sanhedrin—a sort of court of first instance; and this was ere the first crowing of the cock. He was bound over to appear before the full Sanhedrin (the seventy), and daylight was but breaking when this remarkable body—the Supreme Court of the nation—convened.¹

The Constitution of the State of California declares that "The Supreme Court . . . shall always be open for the transaction of business."

Thus, in these widely separated times and places and among these wholly different peoples, we find an idea common to all,—the courts are always open to those who seek redress. The Chinese courts of four thousand years ago and the Sanhedrin of the Jews doubtless offered facilities for invoking the court on short notice which are not at hand to-day; but the fundamental conception is nevertheless the same,—
"the eye of Justice never sleeps."

It is not surprising that we find this similarity of idea. The object of the judicial systems of the world, whatever their composition and method, is, of course, the same. Laws defining the higher crimes and felonies are, and always have been, alike the world

¹ Watson—"The Life of the Master"; Renan—"Life of Christ"; Books of Matthew, Mark, and John.

over. It is in the administration of the law, in the forms of procedure, in the rules of evidence, in the rights guaranteed to the accused, in the nature and extent of the punishment, and in the segregation of the judicial from the legislative and executive branches of government, that the great difference lies.

You will at once follow me when I call your attention to the fact that the presence of advocates in courts of justice has from the earliest times depended upon the grace or caprice of the ruling power.

And the ruling power has not always been gracious in this regard. Lawyers have not always been wanted. In More's "Utopia,"¹ he tells us that in that happy isle "they utterly exclude and banish all "attorneys, proctors, and serjeants at the law, which "craftily handle matters and subtilly dispute of the "laws."

We have at least three Utopian attempts of this kind to point to:—

Milton says of the Muscovites in his time: "They "have no lawyers, but every man pleads his own "cause, or else by bill or answer in writing delivers "it to the duke; *yet justice, by corruption of inferiors, "is much perverted.*"²

Two hundred years later Wallace writes concerning the administration of justice in Russia's lawyer-

¹ Edition London, 1808, pp. 155-156.

² Hortensius, 20.

less courts: "Suffice it to say, that in general the "chancelleries of the courts were dens of pettifogging "rascality."¹

In 1864 a new judicial system was introduced in Russia, and since that time it has had a duly authorized bar.

China has been a victim of Utopian justice for the last forty-five hundred years.

"The Chinese," says Holcombe,² "have an invincible repugnance to lawyers. Their strongest objection to all Western modes of judicial procedure is the existence and employment of lawyers in our courts. Said a distinguished Chinese statesman to the author: 'We can trust our own judgment and "common sense to get at the merits of any case, and "do substantial justice. We do not need to hire men "to prove that right is wrong and wrong right.' "

Let us look in upon a Chinese court of justice,—that abode of wisdom where they do not need lawyers to tell them that what they call right is, in truth, most dreadful outrage and wrong.

Parties litigant and witnesses approach the court on hands and knees, and must so remain while in the presence of the court. With the witness in this attitude, his testimony is taken. The magistrate himself does the questioning. If the case is a criminal case,

¹ Wallace—"Russia" (1877), p. 360.

² "The Real Chinaman," pp. 200-201.

he does his utmost to extort a confession from the prisoner. He uses all artifices,—flattery, cajolery, threats, cunning, and clever cross-examination; and if these do not serve his purpose, he resorts to torture. The unfortunate witnesses are similarly treated. It is not uncommon for a judge to stop in the midst of an examination and order the witness to be beaten across the mouth with a bamboo switch until the blood flows. Witnesses may be made to kneel for hours upon chains, or triced up by the thumbs, or starved into giving so-called "testimony."¹

The next illustration we find nearer home.

The Massachusetts Body of Liberties, adopted in 1641, undertook to discourage the building up of a legal profession, by declaring that those who pleaded the cause of others should receive no pay for it.² The result was, that down to the close of the seventeenth century Massachusetts had no bar. It was during that period that the courts of Massachusetts sank into a condition which would put to shame even a Chinese tribunal. During that period there was cast upon the pages of the judicial history of America the foulest blot they have ever suffered. I refer to the witchcraft trials.

How the blood of an American of to-day boils as he reads the story of those awful murders! The utter

¹ Holcombe—"The Real Chinaman," p. 209.

² "Two Centuries' Growth of American Law," p. 14.