

**THE LAW OF THE LAND: ADDRESS
DELIVERED BEFORE THE
EDINBURGH PHILOSOPHICAL
INSTITUTION AT THE OPENING OF
ITS SESSION; NOVEMBER 1886**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649331628

The Law of the Land: Address delivered before the Edinburgh Philosophical Institution at the opening of its session; November 1886 by E. J. Phelps

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E. J. PHELPS

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A D D R E S S

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EDINBURGH PHILOSOPHICAL INSTITUTION

AT THE OPENING OF ITS SESSION

November 1886

BY
Edward John
E. J. PHELPS

ML
London:
HARRISON & SONS, ST. MARTIN'S LANE,
Printers in Ordinary to Her Majesty.

1887



IN the Magna Charta of King John, the most significant expression in its most celebrated clause, appears a phrase familiar now, unknown till then, "*per legem terrae*"—by the law of the land. It indicates there, at once the criterion and the bulwark of the liberties of Englishmen. And with its context, introduces for the first time into the theory of civil government, and crystallizes into language not destined to perish, the idea long moulding and shaping in the un-

lettered Saxon mind, that human rights are the foundation, and not the concession, of human authority.

Whose phrase it was, we do not know. It was inscribed there by a forgotten hand. It has not been rare in the growth of the English tongue, that some new form of words, struck as this was out of the heat of a critical time, and compressing as this does a great thought into small compass, has entered at once and for always into the general speech of men. But it is the meaning rather than the origin of the words I have quoted from the Great Charter, that I desire to consider. They are repeated oftener than they are understood. It may be useful, possibly, in this day of many novelties, to recur to their original significance,

and to trace their relation to the political fabric which is the common inheritance of all our race.

I ask your attention therefore, to some observations, of necessity very general and very brief, upon "THE LAW OF THE LAND."

The term is often made use of in a vague way, as including all the law which has force or is administered in the country. I do not so understand it. I regard and shall employ it as embracing only that which is fundamental. I conceive the law of the land to be the law that runs with the land, and descends with the land. Not the general mass of changeful legislation, or judicial decision "perplexed in the extreme;" but that higher law under which legislation

itself obtains its authority, and courts their jurisdiction.

It was in this sense, beyond doubt, that the words were employed in Magna Charta. Otherwise the guarantee of personal liberty there contained would altogether lose its force. It would no longer stand declared that the liberty of the subject shall be inviolable by government; but only that it shall find its measure and its superior, in whatever may have the form or force of law for the time being. And the charter would merely have served to re-establish the old system of arbitrary power, which it was designed to put an end to.

In the written constitution of the United States, this distinction is clearly brought out. The fundamental personal

and political rights which may not be infringed, are enumerated and set forth, and are placed beyond the reach of any department of the government. The domain of constitutional law is thus completely separated from that of statute law.

The unwritten constitution of Great Britain, as universally understood, is of the same effect. Though its ultimate construction is entrusted to Parliament, that body is equally bound to refrain in legislation from infringement of constitutional rights. It has never in recent times disregarded the limit thus imposed upon its action.

It is to be remembered therefore, as the starting point necessary to a clear comprehension of the law under which we live, that it consists of two

great component parts, differing widely in their character, the one raised upon the other; the law that changes, and the law that does not change. The unchangeable law is that which protects the necessary and superior rights of man.

The theory upon which our system of government rests, is that mankind possesses certain natural rights, usually described as those of life, liberty and property, indispensable to human freedom and happiness. That these rights are not derived from, but are antecedent to government, which is instituted for their maintenance as its first and principal object. That it can never be allowed therefore to infringe or disregard them, nor to fail to offer redress for their invasion. And that