

COMMON- SENSE IN LAW

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649001859

Common-sense in law by Paul Vinogradoff

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Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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PAUL VINOGRADOFF

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SENSE IN LAW**

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NEW YORK
HENRY HOLT AND COMPANY



COMMON-SENSE
IN LAW

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COMMON-SENSE IN LAW

CHAPTER I

SOCIAL RULES

1. WHEN Blackstone began his Oxford lectures on English law (1753), he felt himself under the obligation of justifying a new academic venture. "Advantages and leisure," he said, "are given to gentlemen not for the benefit of themselves only, but also of the public, and yet they cannot, in any scene of life, discharge properly their duty either to the public or to themselves, without some degree of knowledge in the laws."

Things have moved fast since Blackstone's day, and significant changes have certainly occurred in the educational aspects of law. To begin with, the circle of "gentlemen" who ought to give some thought to laws has been greatly widened: it comprises now all educated persons called upon to exercise the privileges and to perform the duties of

citizenship. One need not be a barrister or a solicitor, a member of parliament, a justice of the peace, or even an elector, to take an interest in and feel responsibilities towards laws: all those who pay taxes and own property of any kind, who hire and supply labour, who stand on their rights and encounter the rights of others, are directly concerned with laws, whether they realize it or not. Sometimes a knowledge of law may help directly in the matter of claiming and defending what belongs to one; on other occasions it may enlighten a juror or an elector in the exercise of his important functions; in any case, every member of the community takes his share in the formation of public opinion, which is one of the most potent factors in producing and modifying law.

Again, we must try nowadays not only to acquire some knowledge of the legal rules obtaining in England, but also to understand the aims and means of law in general, to obtain some insight into the processes by which it is formed and administered: for it is only in this way that the meaning of enactments can be realized in a rational and comprehensive manner. Nobody would think it possible to obtain a reasonable view of the causes and

conditions which govern economic facts without some knowledge of economic theory. And similarly it would be preposterous to reason on juridical subjects without some insight into jurisprudence.

In view of these obvious considerations, I should like to explain as briefly and simply as possible the main principles which underlie legal arrangements. Although the details of legal rules are complicated and technical, the operations of the mind in the domain of law are based on common sense, and may be followed without difficulty by persons of ordinary intelligence and education. Jurisprudence may be likened in this respect to political economy, which also is developed from simple general principles and yet requires a great deal of special knowledge when it comes to particulars.

In order to realize the aims and characteristics of jurisprudence, it may be useful to consider, in the first instance, what place it occupies as a branch of study. Now study is knowledge co-ordinated by reflection, and as such it is peculiar to mankind; for the most fundamental difference between man and animals consists in man's power of reflection. A dog feels pain and pleasure, is moved

to anger and joy, remembers blows and caresses, may exercise cunning in achieving its ends, *e.g.* in opening a gate or in pursuing game. But its notions, desires and acts spring directly from its emotions or from their association by memory. With man it is different. We also are subject to the direct impulses of our emotional nature, but by the side of this direct driving apparatus in our mind we are conscious of an entirely different mental process. We are always, as it were, holding up the mirror to our emotions, ideas and resolves, and as a result of such self-consciousness we are living through the events and actions of our existence not only in their direct sequence, but also as through a reflected series. In a direct way the chords of our spirit are touched from the outside by the various impressions made by the objects we meet on our way, as well as by the physiological and spiritual happenings of our own organism. The process of reflection makes it possible for us to rearrange our stores of impressions and memories, to coordinate them in accordance with conscious aims and deliberately selected standards. It is from this reflective element that men draw their immense superiority over animals, that