AMERICAN JURISPRUDENCE: AN ADDRESS DELIVERED BEFORE THE GRADUATING CLASSES AT THE SEVENTY-FOURTH ANNIVERSARY OF YALE LAW SCHOOL

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American Jurisprudence: An Address Delivered Before the Graduating Classes at the Seventy-fourth Anniversary of Yale Law School by Charles Andrews

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CHARLES ANDREWS

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AMERICAN JURISPRUDENCE.

AN ADDRESS

DELIVERED BEFORE THE GRADUATING CLASSES

AT THE

SEVENTY-FOURTH ANNIVERSARY

OF

YALE LAW SCHOOL,

ON

June 27th, 1898,

BY

HON. CHARLES ANDREWS, LL.D.,

EX-CHIEF JUDGE OF THE NEW YORK COURT OF APPEALS.

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ADDRESS.

Mr. President and Gentlemen of the Graduating Classes:

Modern jurisprudence has reached its present development as the result of the combined forces which have operated from the organization of primitive society with steady uniformity, though in varying degrees, during the whole historical period, to improve human conditions and secure human rights. It is the product of innumerable conflicts and the degree of development of the jurisprudence of a nation is in a real sense a measure of its moral, material and intellectual advancement. The science of jurisprudence is a department of human learning, the history of which is the history of civilization itself. It connects itself more nearly than any other with pervading human interests, in that it relates to the security and preservation of the civil, political and personal rights of every member of the community. It marks in its gradual advance the progress of the race. It has its basis in the laws and institutions which regulate the reciprocal relations of the state and the citizens, and of citizens to each other, and the mutual rights and obligations of independent nations. They are its concrete expression. The laws and jurisprudence of a state furnish the most fruitful aid in historical investigation. They form the most material and instructive portions of its history. The law, and the science which treats of it, are indissolubly connected in every government based upon written or unwritten rules

prescribing the power of the state and the duties, obligations and rights of its citizens; in short where, as expressed in the simple but comprehensive language of the preamble to the constitution of Massachusetts, the government is "one of laws, and not of men." The law is the ligament which binds society together. Without it there could be no social order, no adjustment of relative or personal rights according to a fixed standard, no security for family or property, no opportunity for the development of the graces and courtesies of life, no progress towards higher ideals in the social, intellectual and moral condition of the race. Liberty regulated and restrained by law is the great acquisition of the later centuries and the most notable and hopeful fact in modern civilization. The general rule that the laws and jurisprudence of a people are an index to their character and spirit is more especially true in states where the people are closely connected with the framing of their institutions and the making of the laws by which they are governed. In these, their tendencies and the spirit which animates them and their moral and mental characteristics are most distinctly reflected. When you become acquainted with the institutions and laws of a people you know the value they put upon human rights, the sacrifices they were willing to incur to secure them and how far in framing them they comprehended those principles of immutable justice which are the only true basis of government.

The growth of jurisprudence has followed the same law of development which has governed the growth of all social and political institutions and the factors which enter into modern civilization. There are found in the records or traditions of every organized community, however

primitive or embryonic, traces of government by law, that is to say, the exercise of a supreme authority which imposed its will upon the governed and exacted obedience. In archaic societies, rights of property were connected with tangible possessions. Executory rights based on contract were unknown. The complex questions arising out of executory interests, the solution of which has been the prime consideration in modern jurisprudence, had not been suggested.

Sir Henry Maine in his masterly treatise on American Law, traces historically the development of the Roman law from its crude beginnings until it became by gradual accretion and growth consolidated under Justinian and the commentators, into that system known as the civil law, the imperishable monument of the constructive genius of the Roman people. The law grows because the world moves. Despotic authority is compelled to stay its hand when peoples come to know their strength. The creation of a tribunal for the decision of causes takes the place of arrogated authority. The primitive methods of administering justice, when each case was considered by itself and judgment pronounced at the discretion of the judge, give place to its administration according to principles fundamentally established in the written or unwritten constitution of the state, or prescribed by custom or statute, or deduced by judges, where the statute is silent, from precedents and general considerations of convenience and equity. Indeed, the law cannot from the nature of things be stationary. It must keep pace with the demands of a progressive society. It must supply from time to time, by new arrangements and new applications, rules adapted to the changing conditions and complexities of

organized communities. The growth of jurisprudence has, perhaps, its most striking illustration in that department of the law known as Equity. In England, it was introduced for the purpose of modifying the harsh and inelastic doctrines of courts of law, especially in their relation to the law of property. The rigid rules of the ancient common law took no notice of equitable rights in land. The legal title was the sole test of interest and ownership. Under this doctrine, great injustice was often perpetrated and palpable wrongs in many cases were without remedy. The Chancellors adopted the fiction that there might be two titles to real property, one legal and the other equitable. By the aid of this fiction, they were enabled, through the process of the court, to give effect to an equitable as against the legal title when in the forum of conscience justice required it.

It is foreign to my purpose to enter into the history of equitable jurisdiction, and I refer to it simply as illustrating the growth of the law. Courts of equity have modified the rights of property in many important particulars. They have taken cognizance of what before were mere moral obligations, and have given them a legal sanction and compelled their performance. They have entered the wide field of fiduciary relations and established rules for the protection of the confiding or dependent against overreaching or fraud. In various and wide departments of the law, the principles of equity, formulated and applied by courts of chancery, have worked radical and beneficent changes in our jurisprudence.

In the domain of customary law, the law of development has also had signal illustration. The maritime discoveries of the fifteenth and sixteenth centuries opened new

fields for human activity. Commerce was stimulated, and with its vast extension arose the necessity for new adjustments and adaptations of the rules governing commercial transactions. Out of this necessity the law merchant gradually took its present form. Customs established by common consent or acquiesence and having no basis in statutory authority became the rules regulating affairs of trade. In time, those usages were hardened into statutes, or were adopted by the courts. The law of mining in this country furnishes an apposite illustration of customary law springing from new conditions. The discovery in California, in 1849, of deposits of the precious metals, aroused intense interest, and people in great numbers went to this land of promise. The territory was part of the public domain, unsurveyed and not open for sale or settlement under the laws of the United States. But this did not prevent the eager quest for gold. Mining locations were made on the public lands and exclusive claims asserted between the miners on the ground of original discovery or occupancy. Mining camps were formed into territorial districts and rules were adopted by the miners regulating the location and extent of mining claims, their designation, prescribing the conditions under which the title should be continued, and the grounds of forfeiture. In short, the body of rules enacted by the miners regulating their respective rights, was an intelligible system covering the whole subject, and they were enforced with the stringency of statutory enactments. In 1866, Congress, for the first time, enacted a law providing for the sale of the public mineral lands and regulating mining thereon. In this and subsequent statutes, the rights of miners on existing locations were recognized.