

AMERICAN JURISPRUDENCE.¹

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As we enter on the fifth century of American history, we are preparing to show the world, at Chicago, whatever of the best results of our industry and invention can be put into visible form. But how little of a nation's achievements can be thus set forth! The currents of thought, the way of looking at things, the way of putting things, the drift of opinion, the growth of institutions, that individualize the character of a people, cannot be boxed up and shipped to Chicago. The Columbian Exposition may tell the material side of American civilization, but its real life and spirit must be sought elsewhere, and can perhaps only be understood in their full depth by those who feel them as part of their own existence.

The truest gauge of a nation's civilization is its system of jurisprudence. If there has been built upon our soil an American jurisprudence, it has been mainly the work of American lawyers, and its characteristics can nowhere be better studied or appreciated than in an association like this.

The name of American may belong, by geographical right, to every dweller on this continent; but the great nation of which we are citizens has made it, by right of history and conquest—conquest, I mean, by predominance in arts and learning, in literature and commerce—especially her own. It is, then, to the jurisprudence of the United States, and of the States of which it is composed, that I ask your attention.

The great stretch of territory to the north of us is a dependency of a distant government, and looks for leadership there. Our sister republics to the southward have been content, for the most part, to follow the lines of the Roman law. But to us, the spirit of independence that

¹ An address delivered before the Ohio State Bar Association, July 14, 1892.

came so early to give life and character to forms of government and judicial establishments, brought with it a transforming power. Latin civilization had lent color to the far south and southwest. The Dutch had brought something of it, and more of their own rugged republicanism, to New York. The Puritans had learned in Holland much that they afterwards put into the institutions of New England. But it is not what we owe to Spain, or France, or Holland, that has made American so different from English jurisprudence. The nation that has governed itself for more than a century, that has within it States that have governed themselves for more than two centuries, cannot but have a law and life peculiar to itself, the fruit of the soil on which they grew.

It has been said that there is a Great Britain and a greater Britain. But no one land can now be called our mother country. Time was when Boston and Philadelphia might well give that name to England, and New Orleans and St. Louis to France; but in the time that is, when, if we count by nationalities, there are few cities in Germany containing more of German birth than do New York or Cincinnati, and few in Norway with a Norse population like that of some of our Northwestern towns; when the best half of Ireland is in America; when the face and tongue of the Italian and Hungarian have become familiar on our streets, we may say with CICERO that we have ourselves commenced our line of ancestry. There is to arise here, HERBERT SPENCER tells us, from the mixture of allied varieties of the Aryan race, a finer type of man than has hitherto existed—a type more plastic, more capable of the modifications needed for the completer social life that is to come. For this new race we are to prepare the way; and we and those who went before us have prepared it by the foundation of a broader and humaner jurisprudence.

Into the law of nations we of America have introduced the principle of voluntary expatriation. It is, indeed, the condition of our existence. The doctrine of perpetual allegiance was undisputed in the Old World. Its

application to Americans by the British Crown was one of the grievances recited in the Declaration of Independence; but we ourselves asserted its obligation long after independence had been achieved.

JEREMIAH MASON once said that the development of an American jurisprudence could only be looked for from the courts of the National Government. Upon this question, however, it was a court of a State, that of Pennsylvania,¹ which, following the language of her constitution, framed by FRANKLIN, first declared expatriation an original and indefeasible right of man; and this at a time when those of the United States adhered to the rules of the common law.² Thus it was left to Congress to affirm by statute the American principle, as soon as the nation felt strong enough to assert it against the world,³ and treaties which have been made, in pursuance of this declaration, have now obtained its recognition in almost every country that can call itself civilized. This new rule of American jurisprudence is the work of the Bar, rather than the Courts. Its earliest supporters were ADAMS and JEFFERSON, and to our attorney generals and the great lawyers who, from time to time, have had the direction of the Department of State; we owe especially its international authority.

For ourselves, also, we have changed the law of nations as to treaty obligations, in its fundamental conception. Treaties are not for us mere contracts, with no other sanction than the military power of the other government. The Constitution of the United States has raised them to the position of the supreme law of the land, as binding as an Act of Congress in every American court.

Passing from the relations of States to States, to those of the State to its own citizens, we find a distinctively American system of criminal procedure. We have viewed the punishment of crime from a new standpoint, that of

¹ *Murray v. McCarthy*, 2 Munf. 393.

² *Williams' Case*, Wharton's State Trials, 652.

³ U. S. Revised Statutes, 1909; Act of 1868.

the reformer. Nine-tenths of those who in England a hundred years ago, would have been hanged, have been here instead condemned to labor for a term of years in what we have named, with kindly hope, a penitentiary. Pennsylvania was the first of civilized communities to inaugurate this change, under her Constitution of 1776.¹ Reformatories for young offenders, also, are distinctively an American innovation.

It is difficult for men of our day to believe how much of "man's inhumanity to man" was shown in the criminal law of England, when the institutions of this country first took shape. The common law was rigorous enough, but in the days of the Stuarts and the Georges the number of capital offenses was increased by nearly two hundred. It was not until the beginning of this century that hanging ceased to be the punishment of a pickpocket. To arrest a man on a charge of crime was almost equivalent to a conviction, for he could produce no witnesses in his own behalf, nor have counsel to plead his cause. It makes one's blood boil in his veins to read one of the shorthand reports of the state trials of the seventeenth century; such, for instance, as that of Stephen College, at Oxford. If a conviction did not lead to the gibbet, the criminal was either transported or turned loose on the community after some mark of bodily degradation, perhaps with his ears cropped, or a hand struck off, to fix the memory of his shame upon him as long as life should last. Degrees of punishment for the greater crimes were marked simply by the degrees of barbarity with which the wretch was executed. Hanging, was, indeed, a mild penalty, when compared with burning, quartering and disemboweling.²

Not until the great popular movement which found voice in the Reform Bill, and has made England more of a democracy than the United States, were these cruelties

¹ 2 Poore's Charters and Constitutions, 1547.

² For a development of the subject of the English Criminal Laws, see the paper by Hampton L. Carson, Esq., in the June number (1892) of this periodical.—ED.

swept away from English law. But in guarding against their presence here, American jurisprudence may have gone too far. To forbid the examination of the accused by torture, or under any form of compulsion, was right; but was it necessary to forbid the committing magistrate to ask him anything, except whether he admits or denies the charge? I believe we have put the State at a disadvantage in preventing it from calling upon the prisoner to give an account of the transaction out of which the charge arose—to tell his own story in his own way, knowing that whatever he says may be used against him on the trial. And is there a reason which is really good for giving the convict an appeal to our highest courts on the most trivial points of law, when the rights of the public are generally determined finally by the trial judge? It is this over-kindness to the individual, to the prejudice of the state, which renders possible, and, as many say, defensible, such things as the killing of the Italians at New Orleans, and the lynch-law executions that in some of our States outnumber every year those had pursuant to the sentence of the courts.

In one respect our criminal law is, perhaps, less favorable to the accused than was that of England. We adopted early the Continental method of prosecutions by public officers, instead of leaving them to be brought or dropped according to the dictates of personal feeling, or the desire for pecuniary reparation.

The strength and value of government by party have led us to place party conventions under the protection of the criminal laws. Fraud in balloting at a nominating caucus is punished in the same way as frauds at public elections. A new order of rights is recognized: those which flow from the duty of political organization; for it is the duty of every citizen to use his elective franchise in the most effective way. That way, the law feels, is through party combinations, and therefore our jurisprudence is enlarged to embrace their recognition and protection.

The law of libel, in any government, is one of the surest tests by which to estimate its hold upon the people.

The United States was the first to renounce, for its rulers, the protection of this law. When the decemvirs were framing the Twelve Tables of Rome, few as were the subjects they thought it important to cover in their code, they were careful to make libel against the State a capital offense; for they were the State, and they were turning a republic into a despotism. When the people of England were beginning to demand a greater share in her government, it was the law of libel to which the Crown resorted for its surest weapon of defense, and it was the pride of the English Bar that, in criminal cases, they nullified it by the aid of the jury. With us, to the United States, the law of libel is unknown, because it has no common law, and because the only statute ever passed by Congress to replace it, on this subject, was swept away in the first change of administration, and, indeed, in no small part was the cause of that change of administration, while in our States we have almost everywhere come to the position that, both in civil and criminal cases, truth is a justification, unless actual malice is proved.

We have ventured farther than any nation ever dared to go before in forbidding all *ex post facto* laws, and this and other guarantees of individual right we have woven into our written constitutions, so as to make them the supreme law, as unalterable as the frame of government itself.

In the same irrevocable way we have severed the relations of Church and State. The famous definition of jurisprudence given by the Roman law, that it is *divinarum atque humanarum rerum notitia, justī atque injustī scientia*, has been sharply attacked by modern critics, as confusing notions of law and religion. But in what nation, before our own, were law and religion ever separated in their relations to the State? From the first beginnings of patriarchal society the world has looked at them as coming from a common source, upheld by a common sanction, and forming parts of the same administration of government. The authority of each was deemed necessary to support the other.

First of nations, the United States, without the least reflection on religion of any form, severed the Church from the State, and freed the current of its jurisprudence from all ecclesiastical control. Nor has this mutual independence been found incompatible with restraining power in the civil courts where private rights were affected by unjust acts of those in ecclesiastical authority. In the organization of the great mother church of Christendom, the bishop has the power to remove any priest in his diocese from his parish at his discretion. An American bishop exercised this power, for what seemed to him sufficient cause, but without notice or hearing. The priest applied to the courts for redress, and it was held, in granting it, that though it might be according to the laws of that church to deprive a man of his livelihood on a charge of failure in duty, unheard, it was not in accordance with the laws of the land.¹

The jurisprudence of most countries has been based on the conception of the rights of the State as against individuals. American jurisprudence rests equally on the rights of the citizen against the State. We believe that the State owes an active duty to its people, and that its welfare is only important as reflecting theirs.

I have spoken of our public prosecutors for wrongs to individuals. Their appointment is but one illustration of a principle of American government which demands that all business, in the well doing of which the public have an interest, shall be done by or under the inspection of a public officer, and so that the public may have a full knowledge of it. This has brought a new security to landed interests. It makes it possible for any man of ordinary education to trace a land title, because the material is at his command,² systematically arranged, in a public record office, not stored in some muniment chest in an old tower, nor even buried in the files of a notary, whose position is but half official.

Our rules of civil procedure are our own. A few States may still adhere in name to the cumbrous methods of

¹ O'Hara v. Slack, 90 Pa. St., 477.

English origin, but in most we have, and in all shall have, the simple rules of what, for want of a better name, we call Code Pleading. Originating in New York, not fifty years ago it has, in the lifetime of its distinguished author, DAVID DUDLEY FIELD, not only overspread a large part of our own country, but supplanted the forms of the common law in the very land of their birth.

Our attachment to the principle of personal liberty has modified the law of civil process. Insolvent debtors had been treated in most countries as a kind of criminals. America began to open their prison doors, at the area of the Revolution.¹

The law of evidence has been changed in a vital point. In no country before our own has every man been admitted as a witness in court. There have been distinctions of class, exclusions from interest, exclusions for infamy. American jurisprudence is unwilling to condemn the lowest or worst of men unheard: it is unwilling to believe that pecuniary interest necessarily leads men to forswear themselves, or to assume that every party to a suit would naturally perjure himself to get a verdict. The Roman law and the rules of English Chancery allowed you to force an oath upon your adversary, but only at the cost of making him, so to speak, your own witness. We have done more wisely, I think, in admitting testimony from all, on equal terms, leaving it for the triers to give it, in each case, such weight as it may deserve. The first statute of this kind in America was enacted in Connecticut, in 1848. Its author,² soon afterwards went abroad in the diplomatic service, and, when in England, brought it to the attention of some men of influence, through whose efforts an Act of Parliament, of a similar nature (14 & 15 Vict., chap. 99), was passed in 1851.

We have given a new character to trial by jury. The right of the jury to judge of the law we have extended to

¹ See the Constitution of Pennsylvania of 1776, art. 1, sec. 28; 2 Poore's Charters and Constitutions, p. 1546.

² Hon. Charles J. McCurdy, LL.D.

all criminal cases,¹ and the Continental plan of giving them partial control over the sentence, in case of conviction, has been extensively followed. The authority of the Court has also been weakened in civil cases, by securing greater privileges to the Bar in shaping the terms of the charge. The dangers of these changes in the jury system were forcibly portrayed, a few years ago, in a paper read before the American Bar Association by one of your guests on this occasion, Mr. Justice BROWN. This mode of trial, as it existed at common law, was well adapted to secure the rights of the masses against the classes. But it was a system of exact balances. It demanded a free and fearless judge as well as a free and fearless jury. The jury may drag the car of justice, but the judge must drive, or they will drag it to destruction. The inroads of the bar upon his prerogatives seem to me a mark of what, even here in a State that has produced great judges, I venture to term, on the whole, the degrading effects of the American plan of an elective judiciary. It indicates a distrust of the independence or the intelligence of the Court. It foreshadows the gradual extinction of the jury trial in civil causes, because that can never be permanently satisfactory unless a large discretion, not to say despotism, is left in the hands of the thirteenth man.

We have given, I cannot but think, an undue prominence to judicial precedents as a natural source or annunciation of the law. The multiplication of distinct sovereignties in the same land, each fully officered, and each publishing in official form the opinions of its courts of last resort, bewilders the American lawyer in his search for authority. The guiding principles of our law are few and plain. Their application to the matter we may have in hand it is the business of our profession to make, and if we spent more time in doing it ourselves, and less in endeavoring to find how other men had done it in other cases, we should, I believe, be better prepared to inform the Court and serve our client.

¹ For a denial of any such right to the jury, see *Comm. v. McManus*, 30 AMERICAN LAW REGISTER, 731 and the annotation thereto.—ED.

There have been lawyers bold enough to attack bad precedents in our highest Courts and to destroy them. You recollect that conspicuous instance of coming to a right decision by overturning a wrong one, which is furnished by the history of the Supreme Court of the United States.

In 1825, a libel in admiralty for seamen's wages, earned upon a steamer on the Missouri River, was dismissed for want of jurisdiction, and, on appeal, Mr. Justice STORY delivered the unanimous opinion of the Court, that admiralty furnished no remedies for services that were not rendered on tide-water. There was no better authority for this than that such had been the rule of the English Admiralty. But, a quarter of a century later, the same Court, speaking through a greater, though less learned judge, and with but one dissenting voice, reversed their position, and declared that America could not adopt the English definition, by which, in the terse phrase of the Chief Justice, "the description of a public navigable river was substituted in the place of the thing intended to be described."

This case of the *Genesee Chief*¹ is one of the half dozen decisions that stand out as the great land marks of American jurisprudence. I should put first in time that of *Marbury v. Madison*,² in which Chief Justice MARSHALL asserted the right of the Courts to declare any statute void which was in conflict with the Constitution. The second place I would assign to *Fletcher v. Peck*,³ where a private individual was protected against the revocation of a public grant. Then comes *Dartmouth College v. Woodward*,⁴ in which Chief Justice MARSHALL read into the words of the Constitution a meaning which he admitted might never have been thought of by the men who framed, or the people who ratified it. It made the subjection of the sovereign State to the performance of its obligations, at the

¹ 12 How. 455.

² 1 Cranch 137.

³ 6 Cranch 87.

⁴ 4 Wheat. 518.

command of the civil court, a rule of our jurisprudence. It brought a new theory of corporate rights into existence. If they rested on a public contract, that contract the public must perform. To Milligan's Case¹ we turn when we seek the limitations of individual liberty in time of war; to *Cummings v. Missouri*,² for its safeguards against *ex post facto* legislation. The Slaughter House Cases,³ brought sharply out the distinctions between the citizen of a State and the citizen of the United States. In *Loan Association v. Topeka*,⁴ those limitations on the legislative power, which are inherent in the nature of a free government, are stated with telling force, in their bearing on questions of a public use.

There are other decisions of the Supreme Court which are as often referred to as these, because they settle hard-fought controversies over the meaning of our Constitution in its political aspects; but those that I have mentioned seem to me especially noteworthy in their bearing on the subject we have now before us—the relation of the law to the individual.

That a woman is an individual, even if she be a wife, and does not forfeit her personal identity by marriage, is another of the positions of American law. Our treatment of the property relations of husband and wife, as it is now fixed by the statutes of most of our States is almost as far from the Roman or Continental as from the English rule. Its principle is not community, but independence. This separation of property rights is but one of the inroads made by American law on what had been regarded throughout Christendom as the natural characteristics of the marriage relation.

The Church of Rome had declared marriage to be a sacrament, and indissoluble except by its authority. The Protestants of the Reformation denied this, and, under the

¹ 4 Wall. 2-124.

² *Ibid.* 277.

³ 16 Wall. 78.

⁴ 20 Wall. 655.

Puritans, civil marriages and civil divorces were early American institutions. The gradual extension of the causes of divorce, and the gradual abbreviation of the trial of a divorce case in our courts, you are all familiar with. There have been countries before in which divorce was as free in law, but none where it has been so free in fact. For five hundred years the Roman husband could put away his wife at will, and for five hundred years only one availed himself of his right, and he was, like NAPOLEON, unwillingly driven to it by the demands of the State.

It seems to me that the number of causes of divorce recognized in American law might well be substantially reduced. Indeed, a movement in this direction has been made, which within the past twenty years has had considerable success. By the last report of the National Divorce Reform League, it appears that only three States¹ now retain the "omnibus" clause in their divorce statutes, which permits divorces for any cause satisfactory to the Court. But the evils of our divorce system lie quite as much in our method of procedure. The recent report on this subject by the Commissioner of Labor of the United States shows that a fifth of all American divorces are granted to parties who were married in some other jurisdiction. We all know how short a residence on the part of the petitioner is generally made sufficient, and on how slight a notice to a non-resident respondent, the Court proceeds. Such a notice is always dictated in the first instance by the petitioner's attorney, and his discretion in the matter is seldom revised, if he keeps within the letter of the law, however improbable it may be that the other party has in fact any knowledge of the proceeding.

So far as divorces obtained on default, upon newspaper publication, against non-residents, are concerned, I suppose the rule of jurisprudence, here and everywhere, to be that they are totally void, unless the petitioner was domiciled within the jurisdiction of the court, or the marriage was

¹ Washington, Kentucky and Rhode Island.

celebrated there. Just such American divorces have been disregarded in England and Canada, and a second marriage by the divorced party treated as bigamy.¹ The American Bar Association, ten years ago, drafted a statute to remedy this evil, by making domicile, instead of residence the test of jurisdiction. It has already been adopted in two States (Minnesota and New Hampshire), and I venture on this occasion to ask you of the Ohio Bar if your State ought not, under your advice, to place itself on the same ground.

I have sought to state only such of the leading features of American jurisprudence as are not found in other systems or not found under similar conditions. I add one of minor importance, but interesting, as the natural and spontaneous growth of the soil. It is the new rule of partnership law, by which the death of a partner in a mine does not dissolve the partnership. The rough and dangerous life of the mining camp demanded the innovation, and obtained it, at the hand of the courts, without aid from statute.

The drift of American jurisprudence is towards the expression of the law in an orderly and official form; in other words, towards codification. It has approached the question from the practical side and in a practical way. The early colonies soon put their scanty statutes into print, arranged in some convenient way for ready reference, the various heads often following each other in alphabetical order, as in our digests of reports. New York led the way towards a more systematic and comprehensive treatment of the subject, by her Revised Statutes of 1827, a revision which, though in many points revolutionary, was so well considered and well done that it has held the ground for over half a century, while in most of our States revision succeeds revision every ten or fifteen years. But there is nothing distinctively American in codification. It is simply un-English. It is the natural aim and end of every system of jurisprudence—of jurisprudence itself, apart from any particular system of it. Jurisprudence is the science of law,

¹ *Briggs v. Briggs*, L. R., 5 Prob. & Div. 163.

and the orderly statement of its rules can be called by no better name than Code.

The term "American jurisprudence" has been taken in this address as meaning the scientific conception of that system of law judicially administered within the United States—not alone the science of American law or the science of law as applied to America. It is the judicial administration of law, which, with us especially, gives it a character and vitality of its own.

It was a true and profound remark of DE TOCQUEVILLE that the extension of judicial power in the political world ought to be in the exact ratio of the extension of elective offices; for if these two institutions do not go hand in hand the State must fall into anarchy or into subjection.

Our country courts, our justices of the peace, with combined administrative and judicial functions, our judge-made law, our constitutions, as interpreted and expanded from the Bench into something far wiser and better than their builders knew, these, quite as much as our printed statute books, are the sources and safeguards of our rights and liberties.

There are few countries where the removal of public officials is as difficult, often as impossible, as with us. There is no country where the power of the courts to direct their action and to punish their misconduct is as great. Nor is it the executive office only which is thus amenable to judicial control. The subjection of the Legislature to written rules, enforceable by the courts, is a feature peculiar to American jurisprudence.

The honor of framing the first written constitution of government which deserves that name, belongs, I believe, to the early settlers on the banks of the Connecticut; but it was not till another century that we find the judiciary recognized as the guardians of constitutions, and, as such, the superiors of the Legislature.

The occasional and peaceful exercise of the active sovereignty of the people in direct legislation is an American idea.

In our constitutional conventions they resume, at long intervals, for a few weeks' time, their delegated powers, and re-found the State. Conventions of the people, national assemblies, are common enough in history, but their work has been, or come to be, that of revolution. Our sister republic, France, has not ventured to follow us in trusting the people with this great power, and in waiting for them to act, whatever the emergency may be. Her plan is that if each house of the Legislature deems a revision of the Constitution necessary, they may meet at once in joint assembly and effect it by a bare majority.¹

This system of American jurisprudence, whose lines I have tried to trace, is the living voice of the American Bar—of the American Bar of many generations. The spoken word, uttered by a THOMAS LECHFORD, or JAMES OTIS, or PATRICK HENRY, or JOHN MARSHALL, in other days, may be forgotten. But, if it stirred men's hearts; if it sank into men's minds; if it carried conviction; if it was the foundation of verdicts, and judgments, and statutes, the circle of its influence is widening still.

There are those who tell us that all that is said on earth, when it dies to the human ear, floats on, upon the wings of air, to remain forever a witness for or against us in the life beyond. It may be so; but whether physical force be or be not eternal and inextinguishable, it is so that the influence of human thought in the development of institutions will last as long as the history of civilization.

The science of American jurisprudence is just beginning to crystallize into form. The new race, whose character it speaks, is still but half developed.

To most of us the days pass all too swiftly in the common routine of the office and court-room; and as we are advising our clients or advocating their causes, we hardly feel that we are doing anything which can outlive the occasion that calls it forth. But the consultation, the argument, the opinion, by which the conduct of men, the

¹Lois Constitutionnelles, Feb. 25, 1875, Sec. 8.

disposition of controversies or their prevention, is determined, have an influence wider than we think. These are the materials from which is being built up, by slow and imperceptible accretion, a new jurisprudence. The philosophy of the law must be founded on the practice of the law. Wiser men than we may be the ones to trace out the succession and growth of general ideas, to formulate propositions, to array conclusions in scientific arrangement; but, after all, what they give is only form. The substance was our work—the work of the plain average American lawyer. It is a monument, like the great pyramid, to perpetuate, not the names of those who made it, but, what is better, their work; and, better still, it is not to perpetuate all their work, but only what was best in it.

It has been finely said by one of the first of living American jurists, Judge OLIVER WENDELL HOLMES, JR., that, "The glory of lawyers, like that of men of science, is more corporate than individual. Our labor is an endless organic process. The organism whose being is recorded and protected by the law is the undying body of society." This work in America began with the first beginnings of its history, and will continue till it ends. It has had at times the stamp of individuality. It has called no man master. It has never copied where it served its purpose better to originate. It struck out primogeniture because it believed an equal distribution of property the best foundation of republican government. It forced every deed on record, without respect to feelings of family pride. It brought justice within the reach of every man by a system of county courts and magistracies, under which the judge comes to meet the parties, instead of forcing them to travel to the seat of government. It is now perplexing the National judiciary as they are called on to declare the limits of public management of private property.

Must a man, whose business has been established under one law, submit, uncompensated, to its destruction by another? Can a State demand of its railroads that they shall reduce their fares or freight-charges so low as to pre-

clude a dividend upon their stock? Can it require them to build new stations, or reconstruct their roadbed, with no regard to their financial ability? Is the police power of a State susceptible of legal definition—that is, to legal restraint? Such questions are now dividing the Supreme Court of the United States. They are peculiar to our system of government. They illustrate its merits and defects. They are but the latest instances of a long series of great judicial problems which have arisen under our institutions, and which could have arisen nowhere else. For the first of the series we may look back to the very beginning of colonial records.

We need not be surprised that American jurisprudence should have taken, so early, a trend and aspect of its own.

The general circulation of ideas, the general diffusion of knowledge, that was rendered possible by the invention of printing, was not rendered practicable until books became so plenty as to be cheap, and instead of being published in Latin, were given to the common people in their own language. This time came to England about three hundred years ago. The Elizabethan age was a creative age in literature and philosophy, and the English, who planted our first colonies came here under the influence of its inspiration. Their business was to found governments; their literature was statute law; their gathering-place, if not the church, was the courtroom or the town meeting. Such men, thrown upon their own resources, under new conditions of society, could not fail to make a better law for themselves than they could find anywhere, whether in use or in history.

The political and commercial differences between the English Colonies and England, which showed themselves as soon as property began to accumulate here, and which culminated in our independence, kept alive this spirit of free inquiry into the reason and causes of things.

The repellent influences of the Revolution taught us to look more to the Continent for our examples. MONTESQUIEU'S *Esprit des Loïs*, published about the middle of

the last century, had a profound effect throughout America. The same may be said of BECCARIA'S work on Crimes and Punishments, which appeared twenty years later. Then came the French alliance, and the French ideas that JEFFERSON and FRANKLIN brought home from a long residence abroad. And from those days to these, not only have Americans been familiar with what comparative jurisprudence has to teach, but they themselves have been growing more and more into a new, composite nationality, the roots of which strike back into every land whose institutions are in sympathy with the spirit of modern civilization.

Our system of jurisprudence has been built up during an era of ever-increasing power and prosperity—the glad youth of a new race. It has served us well so far. Will it be found equally adapted to those other days that are sure to come, when a denser population will crowd the land; when immigration is discouraged or repelled; when there are no more virgin forests or virgin fields; when, perhaps, the growing duties of the General Government give it a still greater weight, relatively to the States? So far as we can forecast this future, it may, I believe, be our hope and our confidence that the forces of universal education, and of universal suffrage, bringing individual responsibility, will be found equal to the strain.

The American race has built up an American jurisprudence. It knows its value. It will modify it, as new conditions arise, but it will never surrender its essential characteristics, its spirit of self-reliance, its principle of equal, even-handed justice to all.

NEW HAVEN, CONN.