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# Progress of Law

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## PROGRESS UNDER LAW

The pathway of the law is the history of civilization. Notwithstanding the contempt for the legal mind, expressed by Mr. Wells, in his "Outline of History," or the jibes of Shakespeare, Dickens and numerous other men of letters, the material progress of man finds its highest expression in the law. The problems of modern society have their basis in social and economic forces. In the solution of those problems the bar is in a position to render the greatest service in connection with the judicial interpretation of the law. Politics is the *modus operandi,* or the machinery by which these problems may be worked out for the benefit and advancement of mankind. (In Kentucky, politics might be termed the *modus obstructionis.*)

## WHAT IS THE MISSION OF THE LAW?

The writer likes the English expression "Called to the Bar." The "call" carries with it the thought of some mission in life, beside the obvious necessities of earning a livelihood. To answer the call fills life with a purpose and gives us a high conception of our profession without which the labors of the lawyer seem to be devoid of any real compensation.

As civilization advances its problems become more and more intricate. The industrial revolution of 1848 marked the beginning of the great era in which we live. It was the mechanical genius of man which revolutionized the world's work, cast in the discard the labor of men's hands, in the individual sense, and created the demand for organized capital and labor. The combination of these two factors together with the wealth of the land, constitute the basis of modern society. This is the fact. We can not turn back. We must accept life as it is and make it as liveable as possible. The individual in such a society as that in which we live is submerged in the mass. We are but cogs in the wheels of modern life. The governing motives of men, in peace

and war, are economic. The contacts of life are increasingly social and less individualistic, less isolated and closer together, both nationally and internationally. We are the creatures of circumstances beyond our control, the willing or unwilling victims of forces, not of our own making, but of mankind as a whole. The infant industries which sprang up in the reconstruction period following the Civil War, have now grown hoary with age and corpulent with profit and power. Under the strain of economic necessity, hamlets have grown into cities, and cities have grown into congested communities larger than states in point of population, within the same period. A certain judge on the bench once remarked that he wished the courts could return to the standards of earlier days and write law after the nobler fashion of Owsley, Boyle and Robertson. When those great lawyers sat on the bench Fourth street and Broadway in the City of Louisville were well on the way, if not actually, out in the country. Today that corner is the center of a circle of but a few miles in circumference, within which is embraced a population of nearly 500,000 persons, all of whom must be fed, clothed and protected from the ravages of crime, poverty and disease, not to mention the traffic. The expenses of government have increased from a few millions of dollars annually to figures running into billions. Statistics on the subject stagger the imagination of all but mathematicians. Taxes are as certain as death and loom on our horizon as large as life.

We are told that the life of the nation depends on the uninterrupted operation of the railroads. The regulation of commerce over this net work of steel is so stupendous a problem that were it not for Federal control and supervision life in the great cities would be impossible within but a few hours. The functions of the Interstate Commerce Commission, the Federal Trade Commission, the Federal Reserve Board, the Revenue Department, the administration of the pure food and drugs act, and the details with reference thereto, go to make up that new and vast piece of legal machinery which is termed "administrative law," the existence of which the enemies of prohibition are so prone to condemn as a menace to our "liberties." Administrative law is novel but necessary. It is in effect a legislative delegation of the police power. It is the legitimate outgrowth of Marshall's

constitutional theory of implied power, without which the nation could not have developed under the Constitution. The nation would have developed, because economic forces are greater than political institutions, but the Constitution, strictly construed, would have passed away. The liberal construction of Marshall and his illustrious followers on the Supreme Bench has made possible progress under law. But under this policy the dual form of our government has undergone great pressure, and with the coming of the World War the functions of the state governments have been absorbed by the government at Washington to such an extent that the national capitol casts a mighty shadow over the states; so much so, that the life of every man, woman and child in the republic is directly touched by the hand of the Federal government. The nice distinctions between Federal and state sovereignty, concerning which constitutional lawyers and historians have written volumes are now in many instances merely academic theories of politics, entirely wanting in practical application.

The fathers of the Constitution were able lawyers and political students, but under the press of economic and social forces, which they did not and could not foresee, the political fabric which they erected, is today threatened with disaster unless the powers of the states and of the Federal government can be readjusted to meet existing conditions. New definitions must be arrived at by the courts, whose duty it is to interpret the fundamental law. The limitations of legislative power must be carefully scrutinized, in the light of the past, and with a vision of the future, tempered with an intelligent grasp upon existing public questions. And so it is that the call to the bar involves a great mission and requires ability on the part of its members to think things through to logical conclusions. Successful men of business are too busy producing these problems to give thought to their solution. Literary men, scholars, and students in the arts and sciences, are capable of grasping the nature and causes of these problems, but it remains the task of the lawyers to provide some effective machinery by which government can function smoothly and in harmony with both the social and economic interests of the nation, among which are finance, banking, public utilities, industrials, agriculture, and indeed all of the various

factors which keep the wheels of labor and capital in motion. These are the problems of peace.

Again there is the overshadowing problem of war. With the sound of shot and shell still ringing in our ears, with over half the nations of the World War struggling to pay the interest of their war debts, we still hear talk of the next war. It is for the lawyers to provide some form of machinery by which the human race may be saved from self-destruction. The most practical form of machinery yet devised is the Permanent Court of International Justice known as the World Court. For this reason we should no longer decline to participate in the labors of that tribunal under proper reservations.

The young lawyers of today are facing an age of development and progress far beyond the dreams of the fathers of the republic. As pointed out by Mr. Beck in his recent utterances on the American Constitution, and by Senator John Sharp Williams, some years ago, in a series of lectures on Jefferson at Columbia University, the framers of the Constitution were far from desiring to effect by that instrument any social or economic changes differing from the then existing order of English and Colonial society. The fact is that the Constitution, proper was so ultra conservative as to create, as you know, an immediate popular demand for an abstract declaration of civil and political rights, resulting in the adoption of the first ten amendments. It is in the concrete application of these amendments to the various stages of our national development that the conflict between economic and social interest arises, and this is particularly true of the Fourteenth Amendment with its famous "due process" and "equal protection" clauses. The fathers of the republic, the framers of the Constitution, were, as I have said, brilliant lawyers, and the glory of their achievement will ever remain with imperishable lustre upon the pages of history. Gladstone characterized the Constitution as "The most wonderful work ever struck off at a given time by the brain and purpose of man;"[1] but we must not overlook the fact that as that instrument was original, in the sense that it had no political counterpart in the civilized world at the time of its adoption, so it is yet in its infancy in point of comparative time. It has been characterized by that distinguished lawyer, Lord Birkenhead, as a "con-

[1] Taylor's Origin and Growth of the Am. Const., p. 18.

trolled" Constitution, in contradistinction to the "uncontrolled" British Constitution. The one is written, rigid and a limitation upon legislative power, both present and future, subject to judicial interpretation of the limitation imposed; the other is unwritten, flexible, and without limitation upon the law making power. "But the difference between the two constitutions is profound," said Birkenhead in his recent address before the American Bar Association. "It may ultimately prove to be a difference altogether creditable to the genius of your forebears." And then his Lordship made this significant observation, "The last verdict upon this issue will not be pronounced until your industrial and social questions have reached a longer and more sophisticated test."[2] These are the questions of importance which really most concern the stability and permanence of our Constitution as an effective instrument of government. Whether or not the Constitution is sufficiently flexible to meet the tests of modern society, depends largely on the capacity of the bench and bar to arrive at sound and intelligent constructions in preference to the process of change by amendment. Judicial interpretation is the safe method, by which our controlled or rigid constitutions, both Federal and state, can be made living monuments to progress under law, and by which these instruments may be so shaped and patterned as to become the heritage of the ages. On the other hand it may be said with reference to the Federal Constitution that the present desire to legislate by way of amendment threatens to wreck the whole fabric. A splendid illustration of this is found in the Child Labor Tax Case[3] and the recently proposed Child Labor Amendment. In the case referred to Mr. Chief Justice Taft, writing for the Supreme Court of the United States, said:

"The good sought in unconstitutional legislation is an insidious feature because it leads citizens and legislators of good purpose to promote it without thought of the serious breach it will make in the ark of the covenant, or the harm which will come from breaking down recognized standards. In the maintenance of local self-government, on the one hand, and the national power, on the other, our country has been able to endure and prosper for near a century and a half.

"Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the

[2] Am. Bar Association Report, 1923, p. 225.
[3] 259 U. S. 20, 66 L. Ed. 817.

states have never parted with, and which are reserved to them by the 10th amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the states."

Such was the calm and mature judgment of the Supreme Bench. Immediately, Congress, in order to circumvent this obviously sound conclusion, proposed an amendment permitting it to "limit, regulate and prohibit the labor of persons under 18 years of age." The amendment failed of ratification by the necessary majority of the state legislatures, thus showing an encouraging tendency to abide by the more conservative method of judicial interpretation in preference to legislative caprice, as exemplified in the proposed amendment.

Before and since the great opinions of Marshall, by which the power of the Supreme Court and of the courts generally to disallow legislative acts, which in their judgment contravene the fundamental law, became a recognized part of our legal system, that power has been the subject of attack. The recent attack of the late Senator LaFollette in the form of a bill proposing an amendment limiting the power of the Supreme Court in this respect, was not a new thing. Senator John Breckinridge, of Kentucky, in 1802 challenged the power of the court to review the constitutionality of statutes, and in 1821 it was proposed by Senator Johnson, of Kentucky, that all cases involving the validity of state constitutions and statutes the power to review should be vested in the Senate of the United States, sitting as an appellate tribunal. The controversy on this subject now seems to have been set at rest, for the present, when the last curtain fell upon the dramatic political career of the late Senator from Wisconsin. As in the past the attacks upon this principle will recur, but it will never gain popular favor so long as the bench and bar continue to keep abreast with the social and economic development of the nation. In the words of Dean Pound, "The legal ordering of society is a series of great tasks of social engineering. The jurist of today is seeking to discover and ponder the actual social effects of legal institutions and legal doctrines, and he is indeed a social engineer."[4]

[4] Am. Bar Assn. Rep. 1919, pp. 448-449.

Let us review briefly the labors of lawyers and judges in "the debatable field of the police power" by way of practical illustration. This power has ever been one inherent in government and corresponds to the right of self-preservation in the individual. It has been termed "the law of overruling necessity."[5] It is thus broadly defined by Judge Carroll, writing for the Court of Appeals in the second workmen's compensation case: " . . . the power to regulate and control by legislation all matters affecting not only the health and the safety, but the general welfare of the people individually as well as in classes into which they may be reasonably grouped."[6] Police power is "the name given to that inherent sovereignty which is the right and duty of the government or its agents to exercise whenever public policy, in a broad sense, demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires."[7] According to Mr. Justice Holmes, "It may be said in a general way that the police power extends to all the great public needs."[8] It is to be observed that these definitions have a broader basis than merely the protection of health, morals and safety. They include the social welfare and the economic interests of the nation and this is necessarily so since "the police power is not a fixed or known quantity, but the expression of social, economic and political conditions. As those conditions vary, the police power must continue to be elastic and capable of development to meet those changes."[9] Progress under law is made possible by the practical application of these principles to the life of a free people. On the other hand, the abuse of the power thus conceded may result in great danger to the constitutional guaranties of liberty and property, but as said by the Supreme Court in *Munn* v. *Illinois*,[10] "That is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts." A large

[5] *Ingram* v. *Colgan*, 106 Cal. 113, 46 Am. S. R. 221, 228, 12 C. J. 907.
[6] *Greene* v. *Caldwell*, 170 Ky. 571, 582.
[7] *Stettler* v. *O'Hara*, 60 Ore. 519, Ann. Cas. 1916A 217.
[8] *Noble State Bank* v. *Haskell*, 219 U. S. 104.
[9] Freund's Police Power, sec. 3; *Carr* v. *State*, 175 Ind. 241, 32 L. R. A. (N. S.) 1190, 1198.
[10] 94 U. S. 113.

discretion is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.[11] The exercise of that discretion, of course, presupposes that the legislature has not acted unreasonably or arbitrarily and it is in the determination of this condition that the courts have played such an important part in limiting and releasing the police power. The decisions of the courts in determining the line of demarcation between what is reasonable and what is arbitrary, in relation to the exercise of this power, are filled with conflicting conceptions of economic and social theories and the application thereto of settled rules of law. The history of these decisions is the history of social and economic progress. In 1911 the New York Court of Appeals held the Workmen's Compensation Act of that state unconstitutional as violating the liberty of contract as regards both the employer and employe.[12] Subsequently that court adopted a different view of compensation legislation,[13] and three decisions of the Supreme Court of the United States,[14] together with numerous decisions in the various states,[15] finally set at rest all controversy as to the validity of workmen's compensation laws.

Twenty-eight years ago an act of the Utah Legislature fixing an eight-hour day for workmen in smelters, was sustained by the Supreme Court as a valid exercise of the police power, in the leading case of *Holden* v. *Hardy*.[16] At a later day the New York Court of Appeals sustained an act to regulate the hours of work for women in factories.[17] This decision, although based on considerations of sex, was then thought to be rather advanced, but this was followed by an opinion of the Supreme Court applying the same principle to both male and female workers in factories, as a health measure.[18] The Supreme Court has, with

[11] *Lawton* v. *Steele*, 152 U. S. 133, 136; *Holden* v. *Hardy*, 219 U. S. 570; Hughes J. in *Chicago, Burlington and Quincy R. Co.* v. *McGuire*, 219 U. S. 570.

[12] *Ives* v. *South Buffalo Ry. Co.*, 201 N. Y. 271, 94 N. E. 431.

[13] *Jansen* v. *Southern Pac. Co.*, 215 N. Y. 514, 109 N. E. 600.

[14] *New York Central R. Co.* v. *White*, 243 U. S. 188; *Hawkins* v. *Bleakly*, 243 U. S. 210; *Mountain Timber Co.* v. *Washington*, 243 U. S. 219.

[15] *Borgnis* v. *Falk Co.*, 147 Wis. 327, 133 N. W. 209; *Greene* v. *Caldwell*, 170 Ky. 571, Ann Cas. 1918B 611, 615.

[16] 169 U. S. 366.

[17] *People* v. *Chas. Schweinler Press*, 214 U. S. 395.

[18] *Bunting* v. *Oregon*, 243 U. S. 426.

perhaps one exception,[19] uniformly sustained statutes which regulate hours of labor in industry. On the other hand, in the Adkins case[20] and the Kansas Industrial Court cases[21] the court has consistently refused to extend the police power to include the compulsory fixing of wages. These cases went off on the theory that the compulsory fixing of wages is a matter of purely private concern, *i. e.*, not affected with the public interest, and is, therefore, an invasion of the liberty of contract, but even this position is not undisputed, for as said by Mr. Chief Justice Taft and Mr. Justice Holmes, dissenting in the Adkins case, there seems to be no logical reason why the police power should be construed to include statutes regulating *hours* of labor and to exclude those regulating payment of *wages* for labor done. Perhaps this distinction is based on this difference. The regulation of hours is purely a health measure long ago recognized as a legitimate subject of police legislation. Whereas the regulation of wages can only rest on the more or less vague, and, perhaps, novel theory, that the public has an interest in the harmony of capital and labor, without which production is seriously impaired, as by boycotts and strikes. The courts have not yet fully recognized that theory as a proper basis upon which the police power may operate, and yet it is significant that courts of equity have produced a most strenuous controversy by granting injunctive relief to organized capital in restraining secondary boycotts or "sympathetic strikes" involving the same subject, *i. e.*, wages, and apparently on the same broad theory, *i. e.*, that the public interest was affected.[22] Therefore, where is the distinction, in reference to the police power, between statutes regulating hours of labor and payment of wages? Perhaps the Chief Justice and Mr. Justice Holmes were right when they intimated that there was none.

State regulation of so-called *public callings* found recognition in the law as early as 1683 in the case of *Jackson* v. *Rogers*, wherein Chief Justice, Sir George Jefferies, held that an action would lie against a common carrier for refusal to carry goods from London to Lymmington. The carrier was placed on the

[19] *Lochner* v. *New York*. 198 U. S. 45.
[20] 261 U. S. 565.
[21] 45 Sup. Ct. 441, 262 U. S. 522.
[22] *Duplex Co.* v. *Deering*, 254 U. S. 443, Brandeis, Holmes and Clarke, J. J., dissenting; 32 C. J. 167.

same footing with innkeepers and blacksmiths.[23] And the law on this subject has become firmly established by the statement of Lord Hale that when private property is affected with a public interest it ceases to be *juris privati* only.[24] This was the foundation of the celebrated case of *Munn* v. *Illinois*,[25] wherein the power of the Illinois legislature to regulate warehouses for the storage of grain within the state, and incidentally to fix by law maximum charges for such storage was sustained as a valid exercise of the police power. This decision was so sweeping and comprehensive in defining the extent of that power that the history of railroad regulation, first by the states, then by joint state and federal control, later by the Interstate Commerce Commission, and now by that commission under the Transportation Act, may be said to have had its inception in *Munn* v. *Illinois*.[26] As a result of federal control in the matter of uniformity of intrastate rates, the Railroad Commission of Kentucky, while preserving its constitutional status, has been largely shorn of its powers.[27] The principle of regulation has subsequently been extended to include public service corporations generally, such as telephone and telegraph companies. But it will be noted that public utilities operate under special franchise rights and are therefore in the nature of a monopoly. In return for special privileges, granted by the state, they come under the burden of state control, else their operation might become a detriment to the people, instead of a benefit.

The doctrine affirmed in *Munn* v. *Illinois*, and followed by the Court of Appeals of Kentucky and by courts elsewhere, namely, that when the owner of property devotes it to a use in which the public has an interest, he in effect, grants to the public an interest in that use, and must submit to public control, for the common good, to the extent of the interest he has created, goes further, in its application, than control of public service

[23] *King's Bench*, 2 Shower 332.
[24] *Hale's De Portibus Maris*.
[25] 94 U. S. 113.
[26] *Chicago, Burlington and Quincy R. R. Co.* v. *Iowa*, 94 U. S. 155; *Peik* v. *Chicago & Northwestern Ry. Co.*, 94 U. S. 164; *Wabash, etc., R. Co.* v. *Illinois*, 118 U. S. 569; *Louisville & Nashville R. Co.* v. *Kentucky*, 184 U. S. 516; *Kentucky Traction & Term. Co.* v. *Murray*, 176 Ky. 601, 195 S. W. 1122; 9 Rose's Notes, U. S. Rep., p. 510, and 2 Supp. 149; Address of Judge R. V. Fletcher, Kentucky State Bar Association Rep., 1925, p. 113.
[27] *Houston East & West Texas R. R. Co.* v. *United States*, 234 U. S. 342.

or franchise corporations. In passing, it is interesting to note that the Court of Appeals in *Nash* v. *Page*,[28] wherein the constitutionality of an act to regulate the sale of leaf tobacco was sustained, did *not* regard *Munn* v. *Illinois* as a pioneer case.

There are numerous examples of the legitimate regulation of trades or occupations, which, while private in character, are quasi-public in operation. Legislation regulating the sale of leaf tobacco by warehousemen,[29] the sale of corporate securities, commonly known as "blue sky laws"[30] the business of plumbers,[31] of barbers,[32] and of real estate brokers,[33] has been sustained as within the police power. Referring to this power, in the King case, the Court of Appeals, in an opinion by Chief Justice Clarke, said:

> "There is nowhere among free people any doubt of or disposition to contest the right of the individual to freely contract with reference to his property, or that this right is fully protected by the state and Federal Constitutions, but as one individual's absolute right of freedom in all matters ends where another's begins, it is universally recognized that in order to secure the right to all and for the common good, the sovereign state within its indefinable police power may and often must prescribe reasonable regulations for the exercise thereof."

But notwithstanding all that has been said in favor of its exercise, still there are limits beyond which the police power cannot lawfully be invoked. As said by Judge Clay, in the trading stamp case, "When it is sought, not merely to regulate by reasonable restrictions, but absolutely to prohibit, a particular business, the act cannot be sustained."[34]

In 1886 the financial operations of the railroads in combination with the oil trust and other industrial trusts led to the creation of the Interstate Commerce Commission, to which Congress delegated sweeping powers in the matter of railroad rates to which we have already referred. This form of government control resulted in the adoption of a similar public policy with respect to all forms of monopoly, as expressed in the Sherman

[28] 80 Ky. 539, 547.
[29] Note 28, *supra*.
[30] *King* v. *Commonwealth*, 197 Ky. 128; *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539.
[31] *City of Louisville* v. *Coulter*, 177 Ky. 242.
[32] *Commonwealth* v. *Ward*, 136 Ky. 146.
[33] *Bratton* v. *Chandler*, 260 U. S. 110; *Riley* v. *Chambers*, 185 Pac. (Cal.) 855; *Hoblitzel* v. *Jenkins*, 204 Ky. 122, overruled in *Rawles* v. *Jenkins*, 212 Ky. 287.
[34] *Lawton* v. *Stewart Dry Goods Co.*, 197 Ky. 394.

Anti-Trust Act of 1890, and as reinforced by the provisions of the Clayton Act, the latter being considered one of the outstanding legislative achievements of President Wilson's first administration. The Clayton Act, with its attempted exemption of organized labor from the operation of the anti-trust laws, is illustrative of the conflict between economic and social interest, with which modern courts and lawyers are forced to deal in connection with injunctions in industrial disputes, already adverted to.[35]

Ideas, such as co-operative movements formerly frowned upon as fanciful and socialistic, have now found sanction in the law, as a result of enlightened judicial interpretations.[36] The law has drifted away from its ancient moorings—the fixed standards of the Roman law and of the early common law—when courts took the view that those standards should be maintained at all hazards, notwithstanding the facts. Today the courts are seeking intelligently to interpret the law in relation to cause and effect. This great endeavor has been described by John W. Davis as "the struggle to translate into law economic ideas both new and old."

The smoke of battle at the close of the World War lifted as a curtain upon a new heaven and a new earth. As lawyers we should, like the spectators at a play, attempt to get a detached view of this new act in the long drama of history There is plenty of comedy in the quack remedies of the demagogues and fanatics. Legislative cures for the ills of society are peddled to the mob by the bottle like patent medicines. Such are but cheap and superficial remedies to divert the attention of the public from the problems of deeper consequence. There are the schemers and political manipulators who play upon the prejudices and passions of men. There are the criminals and the near criminals, seeking to plunder, murder and rob. In the same scene we can behold the splendor of great wealth, and the pathos of a poverty from which there seems to be no release, some living in ease and luxury, while others exist in the waste places of life, where even the well of tears has long ago run dry. These are the social inequalities of modern life. The law cannot transform human

[35] *Duplex Co.* v. *Deering, supra; Lowe* v. *Lawler*, 208 U. S. 274, 52 L. Ed. 488, 235 U. S. 522, 59 L. Ed. 541.

[36] *Potter* v. *Dark Tobacco Growers' Co-operative Assn.*, 201 Ky. 441, 447.

nature nor remedy all the ills of society, but it can be and has been so shaped and patterned by the brain and heart of great lawyers, that there may be less pain and a more abundant life among the children of men.

When the Supreme Court announced its decision in *Munn* v. *Illinois*, the business interests of the nation "viewed with alarm" the dangerous consequences which might follow, and the New York Times regarded the decision as "mischievous" and fraught with danger to the investing public.[37] You will recall the long struggle by the government to enforce the Sherman Act and to "bust the trusts," Mr. Chief Justice White's famous "rule of reason" in the Standard Oil and American Tobacco cases,[38] and President Roosevelt's castigation of the "malefactors of great wealth." When the Supreme Court held valid the New York and District of Columbia rent laws, and the Adamson Eight-Hour Law, those who still slept in the peace of the nineteenth century had a rude awakening, when the highest court of the nation disturbed their cherished notions as to the nature of property.[39] These are the days when such subjects as the socialization of the means of production and distribution are discussed. During the war the government, in effect, did socialize essential industries, under the war power. Such a program in times of peace is incompatible with American legal and political doctrines, and of course absolutely contrary to the existing economic order, but considering the ease and frequency with which the Constitution has been amended in recent years, the proposal, however radical, is not impossible. As Disraeli said, "In politics nothing is impossible." Party government is everywhere showing marked signs of weakness. Blocs, based on economic interest, are creeping into our political system. We have learned from experience that conservative opposition, entrenched behind tradition, will not operate as an effective barrier to revolutionary theories. It is only by liberal interpretations and the free application of the law to the facts of life, as they arise, that unwise and radical changes may be averted. Extremes may thereby

[37] New York Times, March 29, 1877.
[38] 221 U. S. 1, 106.
[39] *Block* v. *Hirsch*, 256 U. S. 35; *Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Wilson* v. *New*, 243 U. S. 332.

be made unnecessary if we live in the sunlight of progressive thought and breathe the atmosphere of liberal ideals.

As to definite conclusions they are for the courts. It is merely the function of the lawyer to persuade and to guide as best he can, in brief and argument, the reasoning of the judges. But happily it is the genius of the law to expand in ever widening circles of practical application. As the tides of the sea ebb and flow through the ages, ever refreshed by streams of living water, so the law, while embracing the wisdom of the ages, changes as the tides and is refreshed by streams of human experience. Such able and distinguished jurists as Mr. Justice Holmes, Judge Cardozo, of the New York Court of Appeals, Judge Learned Hand, of the Circuit Court of Appeals, and our own Chief Justice Clarke, have blazed the way. It is for the young lawyers of today, who will be the judges of tomorrow, to measure the immensity of the task which lies ahead and to carry on the great work of progress under law.

On the other hand, the conservative minds have a place in the profession. It is their influence which makes democracy safe for the world, but in these days when all of our preconceived notions as to the nature of personal and property rights have been revolutionized, I contend that the true conservative is he who would apply the law to the needs of society, as they arise, to the end that order may prevail under changing conditions of life and that the law may be as a lamp to guide the feet of mankind unto the goal of liberty, justice and peace.

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