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The Kentucky Judiciary

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THE KENTUCKY JUDICIARY.

BY H. S. BARKER, PRESIDENT STATE UNIVERSITY OF KENTUCKY.

Without any desire to trench on party politics, we desire to point out a fact which the politicians seem to ignore, and that is, that the great party of the independent people of Kentucky revere their judiciary, without regard either to their politics or their religion; and we believe that the time is not far distant when our judges will be removed altogether from the purlieu of politics. At the general election, the other day, the people taught the politicians two great lessons in the political truth we are trying to point out. In Fayette County, which is nominally Democratic, the Republicans had nominated for re-election, on their ticket, a judge who had served the people of his district faithfully and well and who possessed and merited the good opinion of every honest and law abiding man in the district. He was learned in the law, faithful to his duty, upright, polite and courteous and should have had no opposition. The Democratic party, however, nominated against him a gentleman of high character, a sound lawyer and a thoroughly lovable man, but who had had no judicial experience whatever. At the election the people demonstrated their ability to select the man they wished to elect without reference to party emblems by electing the Republican judge by several thousand majority, and the district went Republican for the whole ticket by several hundred majority.

Just the opposite of this happened in Jefferson County. There the Democrats had up for election a ticket composed of judges, in most part, of long experience and great ability. These men had

earned and merited the confidence of the whole community. Opposing them, the Republicans put up a ticket of very excellent gentlemen, good lawyers, but none of whom had ever had any judicial experience. The result was that Jefferson County, which, every one knowing the facts, believes would only have given a small majority for the Democratic ticket, went Democratic by nearly five thousand votes. There is not the slightest doubt but that the Democratic judges added several thousand votes to the Democratic majority. Had the Democrats not nominated an opposing candidate to the Republican judge, Fayette County would have gone Democratic; had the Republicans not nominated a judicial ticket, Jefferson County would have given so small a Democratic majority as to have insured the election of the Republican State ticket, or at least, a large part of it.

Now, there is no intention in this article to reflect upon the character or learning of any of the candidates mentioned. All that we desire to point out is the fact that our people have great confidence in their judges, and when they have found them worthy, may be counted on to re-elect them; and this is consonant with the ideals of the race from which we sprang. The Anglo-Saxon loves law and desires it to be administered without fear and without favor.

The keystone of the arch of Anglo-Saxon civilization is its judiciary. As long as this keystone remains sound and in place, the arch will be strong and afford a safe and sure passway over the abyss of anarchy and chaos.

The English speaking people have always revered their judges and acquiesced in their judgments as affording the surest and most complete system of justice which it is practical to obtain; not that they believed the system was flawless or the judges perfect; on the contrary, they know that being men, the judges are necessarily fallible, and the system of justice they administer is as imperfect as are those who administer it. But they recognize that the same or perhaps greater infirmities inhere in all other men and will develop in all other systems of adjudication, and believing that their system is the very best system obtainable, they have held on to it with more than filial affection from that far distant time when knowledge seems to

fade on the horizon of history and to vanish in the twilight of fable, to the present glorious period of the 20th century.

Without the system of English law, as administered by English judges, there could have been no English civilization as we know it. Side by side they have grown through the centuries, each aiding and each aided by the other. They are in truth but the evolution of the English character—they embody both the Englishman's love of liberty and the Englishman's love of justice. Side by side, they have grown and developed, with equal steps they have walked from the smallest beginnings to their present grandeur.

Civilization is but the development of a nation towards its highest possible attainment. Law is the sum total of the rules prescribed by the governing force of a nation for the regulation of the intercourse of man with man and of man with the government.

English law and English civilization began in the days of the Heptarchy, when kings as the fountain head of justice administered a rude equity under the shade of English oaks; when there was a mere barter of one barbarian handing over to another a piece of venison in exchange for a string of fish; when commerce was the taking by force the property of the weak by the strong, and when the word stranger was a synonym for the word enemy. Together they have grown until the fleets of the English speaking people carry the commerce of the world over every ocean into every port; when law has become a science and justice a heritage of the race

From the earliest ages justice has been the moral attribute most essential to man in his upward struggle toward civilization. Without it, his uplift would have been impossible and his condition remained that of the brutes who act alone by physical force. There can be no true civilization where man is governed by that old robber's rule, "That they shall take who hath the power, and that they shall hold who can." The Greeks worshipped justice under the form of the Goddess Themis, who, the painters represent as a beautiful woman with bandaged eyes holding in her hands a pair of golden scales.

The picture needs no explanation: justice must indeed be blind; her pure judgments are not to be influenced by a knowledge of the parties whose conflicting claims are to be settled by her decrees. The

balances typify that her judgment, in order to be just, must be as impartial as the scales, so exquisitely poised, that they record even the weight of a hair added to either side. And that the hand that holds them must do it so steadily that not even the eye of envy may suspect that it trembles in the weighing.

Justice has been variously defined, but without seeking for accuracy of definition, it will serve our purpose to say that the justice we are discussing consists of the enforcement of equal laws impartially.

Law (again disclaiming technical accuracy) consists of those rules of human action which man deems necessary for the proper regulation of the conduct of men as members of organized society and which he decrees shall be enforced.

It is obvious that these rules will not always remain the same—the rule that will amply subserve the needs of man in one age of civilization will not avail his necessities in another. And, therefore, the law must grow with the growth of man and become more refined and intricate with the advance of his civilization.

It is also obvious that in the clashing of human interest no man could be entrusted to decide his own quarrel, and therefore, impartial judges become necessary to the proper administration of the law. Into their hands the peace, safety and security of society is committed. These judges occupy, in the actual administration of justice, the place of the blind goddess in the ancient mythology. Upon their judgments depend the justice to be meted out to man. How awful the responsibility; how delicate the duty.

Now, the modern judge, if he would be just, must be like the ancient Goddess, blind and hold aloft the golden scales with impartial hand. He must know neither friend nor foe, and his judgments should not be influenced by the howl of the mob, nor the frown of power, the blandishments of flattery, nor the whisperings of corruption. Before him all men must stand alike; he should be indifferent whether the litigants are white or black, Jew or Gentile, Pagan or Christian; they are all entitled to equal justice without reference to their color, their politics, their religion, or their want of religion. In the administration of the law, there should be none so

high as to be above its restraint, and none so low as to be beneath its protection.

One of the most serious menaces to the practical administration of justice and especially where the judiciary is elective, is the expectation of the judge's political friends that he will look with favoring eye on any litigation in which they are concerned; and this is particularly true when the question is of a political or semi-political complexion. When such questions arise, and this strain comes, then if the minister of justice would be true to his high trust, it behooves him to remember the words of Him who, when two of His friends desired of Him the favor that when He came into His kingdom that one of them should sit on His right hand and the other on His left, replied to them: "Ye shall drink indeed of my cup, and be baptized with the baptism that I am baptized with; but to sit on my right hand and on my left is not mine, but it shall be given to them for whom it is prepared of my Father." And so remembering he should render to his friends everything that he owns: gratitude, love, time, service, money; but he should never forget that the judgments of the court are not his to give, but they are reserved to them for whom they are appointed by justice.

There was never a time in the history of our country when it was more important than now that we should studiously seek to administer justice. The whole texture of our government—judicial and political—is changing. Old ideas of political expediency, old ideas of the rights of property, are changing rapidly. It is, of course, beyond the scope of this article to more than touch on these matters, but it may not be inappropriate to say that the civilization and material progress of the nineteenth and twentieth centuries have been such that gigantic corporations, impossible in an earlier age, have grown up, and by the extension of the power of combination (an evil which grows by what it feeds on), their greedy, cold and cruel rapacity is crushing out all individual effort among the children of men. On the other hand, and as a protest against the unlawful combination of capital, we have the night-rider and the barn-burner making night hideous and threatening the very dissolution of civil society. These two sets of law-breakers are equally criminal and against them both the law should be enforced with equal rigor and impartiality.

The farmer who cannot sell his tobacco because an illegal combination has strangled competition, is a slave who works for a heartless master; and the man who cannot raise and sell his crop when and where and to whom he pleases because of plant-bed-scraping, barn-burning and personal violence is worse than a slave. The Anglo-Saxon freeman will not long tolerate slavery at the hands of either a bloodless combination or a bloody mob; and this fact both parties will do well to ponder. What the anarchist is to the Russian Autocracy which strangles his liberty; what the Puritans, disguised as Indians, throwing English tea into Boston harbor were to taxation without representation; so is the night-rider to the combine which steals the produce of toil by stifling competition for its purchase. But between the illegal acts of these two criminal classes our Commonwealth is being destroyed. It is fast acquiring a newer and a surer claim to that mournful title, "The Dark and Bloody Ground." We are rapidly drifting into anarchy from which law and order and justice must be forever banished.

Would you catch a glimpse of anarchy? Behold the picture painted by the Blind Bard in his *Paradise Lost*. When the great Arch Fiend seduced the snaky portress to unlock the adamantine gates of bottomless perdition, he stood upon its threshold and by the aid of those flames which but served to make the darkness visible, gazed upon

"The secrets of the hoary Deep—a dark
 Illimitable ocean, without bound,
 Without dimension; where length, breadth and height,
 And time, and place, are lost; where eldest Night
 And Chaos, ancestors of Nature, hold
 Eternal Anarchy, amidst the noise
 Of endless wars, and by confusion stand.
 * * * * *
 * * * * Chaos, umpire, sits,
 And by decision more imbroils the fray
 By which he reigns; next him, high arbiter,
 Chance governs all." * * * "this Abyss,
 The womb of Nature, and perhaps her grave,"

is but an arch-type of man's condition, without law, without order, and without justice.

There can be but one remedy for these evils—the rigorous enforcement of the law against all law-breakers, without fear and without favor. Justice must prevail. As said by Wr. Webster, in his tribute to the memory of Justice Story:

“Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race.

“And whoever labors on this edifice with usefulness and distinction, whoever clears its foundation, strengthens its pillars, adorns its entablatures or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society.”

We cannot afford to forget that every act of injustice injures the whole fabric of society. The mob may lynch a defenseless negro charged with a nameless crime, or worse still, the courts may murder him under the forms of law; they may pack the jury box under the influence of partisan passion and prejudice; or turn the temple of justice into a rendezvous for assassins and redden its portals with the blood of its votaries; but these things, under the inexorable law of retribution, must be paid for in the pain and travail of the whole race. So intricate are our interests, as members of society, interwoven, that an injury to the humblest member is an injury to all.

Socrates lays down four rules for the conduct of a judge: To hear courteously; to answer wisely; to consider soberly, and to decide impartially.

Shakespeare makes the great Cardinal say of his successor:

“* * * * may he continue,
* * * and do justice
For truth’s sake, and his conscience; that his bones,
When he has run his course and sleeps in blessings
May have a tomb of orphans’ tears wept on ’em.”

Except in rare cases, the judge, however meritorious, must find his real compensation in the satisfaction of duty well done. The salary he receives precludes aught beyond honorable poverty, and his work at best is recorded in musty records or mustier reports, secure

from all eyes save of the lawyer searching for precedents. Fame may come to the statesman, the orator or the soldier, but the judge's work receives neither the plaudits of the multitude, a place on the storied page, nor mention in the song of minstrel. He may, however, console himself with the philosophy that true worth and real service are not always found in the recipient of popular applause, nor in the possession of those who make the most noise in the world. He can recall that when the ancient prophet went up on the mountain to seek his master, he found him not in the roar of the storm which swept its rugged sides; nor in the rumbling of the earthquake which shook its granite base; nor yet in the glaring flames which lit up the surrounding sky; but when these had all passed away, there came "a still small voice" and Elijah covered his face with his mantle, for behold! he stood in the presence of God.

The just judge, whatever else betide, will stand in honor before the Great Fountain Head of Justice—before him "whose judgments are true and righteous altogether."