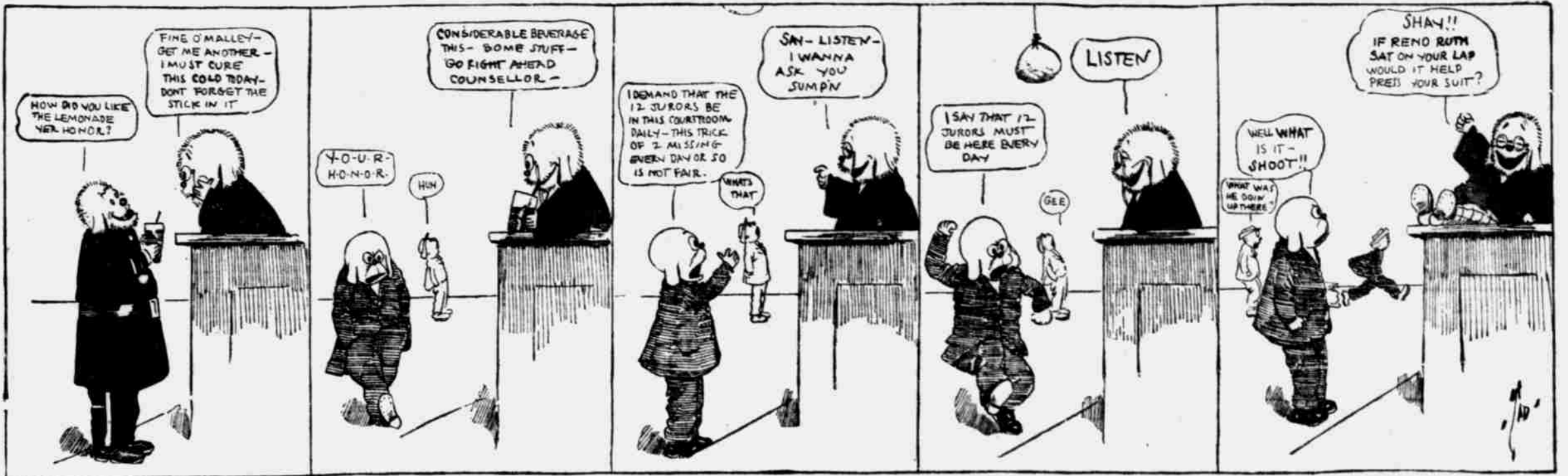


The Bee's Home Magazine Page

SILK HAT HARRY'S DIVORCE SUIT His Honor Felt as Loose as Ashes After the Second One Drawn for The Bee by Tad

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Social Justice and Legal Justice Show Variations Says an Expert.

By PROF. ROSCOE POUND of Harvard Law School.

"What is Justice?" If fair play among social classes belongs to the idea of justice, does our juristic thought hold otherwise? It has, unhappily, up to the present time. This is evidenced in the decisions of our courts on contracts. Legislation designed to give laborers some measure of practical independence, placing them in a sense upon a level with their masters, is said by courts to create a class of statutory laborers and thus to make class distinctions when there should be none.

The highest court in the land told us the other day that a workman's compensatory act "does nothing to conserve the health, safety or morals of the employees." Economists and sociologists are justified in the criticisms which they have used against such a position.

How is it, then, that the legal idea of justice differs from the idea of the economist and sociologist?

The primitive idea of justice was simply to keep the peace. Whatever served to prevent private vengeance or private war was an instrument of justice.

The first law attempted only to furnish the injured party with a substitute for revenge. We repair the wrong with damages, while ancient law bought off vengeance with a composition. Thus the ancient Roman law dealt with injury to the person under the head of insult; the earliest of the Anglo-Saxon laws provided two-fold payment where a horse was not covered by the clothes and so subjected the injured party to chaffing and increased his desire for revenge; the Satic law gave double compensation to the Frank, accustomed to right his own wrongs, as compared with the Roman, trained for generations to adjust his controversies in court.

Greek philosophy and Roman law soon got beyond this primitive idea of law and construed justice as a desire to preserve the social status quo—to keep each man in his appointed groove and thus avoid friction.

It was not until the Reformation that this status quo idea began to be questioned. Then appeal to reason against authority led to a new conception in philosophy, theology, politics and ultimately in legal theory, as a result of which justice came to be regarded as a desire to secure a maximum of individual self-assertion. The beginnings of this are in philosophy. It dominated politics, ethics and finally jurisprudence. The conception is purely individualistic. It endeavors by means of law to prevent all interference with self development and self assertion, so far as this may be done with like development on the part of others.

Spencer formulated this theory when he defined justice as the "liberty of each, limited only"—mark the "only"—"by the liberties of all." This conception has given away to a new conception in politics, ethics and economics, but continues but no part of it has taken place in our law to rule in jurisprudence.

It has been often said that the law having put down force must be put down cunning. The old problem was that some are physically stronger than their fellows and take advantage of them.

The new problem is that some are stronger mentally, in force of character, and use this superiority to exploit and oppress. So to meet this the organized brains of the community must be pitted against are aggressive individual brains.

Our fathers named as inalienable rights life, liberty and pursuit of happiness, but today men are claiming that the mass has a right to realize the greatest possible measure of happiness.

The organized brains, as well as muscles, of the many are to equalize the superior brains as well as the muscles of the few. How far this has gone in social, ethical and economic theory we need not inquire, legal thought.

Zastus wrote in 1820—"All sciences have put off their dirty clothes; only jurisprudence remains in her rags." Today while all sciences have abandoned deductions from predetermined conceptions, such is still the accepted method of jurisprudence. As law it is a government of the living by the dead.

There is this difficulty in legal science as in the administration of justice—a difference in rate of progress, between law and public opinion. Dissatisfaction with law is as old as law itself.

Three kinds of defects give rise to this dissatisfaction: defects due to inherent difficulties in the administration of justice, defects due to the history of our particular legal system, defects due to



ROSCOE POUND.

imperfect solution of new concrete problems.

Of the defects in our American system today the more serious are reducible to two propositions; ultra individualism and four rules and doctrines and over-reliance upon the machinery of justice and too much of the mechanical in the administration and application of rules, etc. They are due to the history of our system and represent acquired rather than inherent defects.

It is a reproach to American legal science that social, philosophical and sociological jurisprudence which are doing so much upon the continent are unknown to us. The courts are not all to blame. The court must look at cases in gross and not measure them by his individual sense of right and wrong. The judge must apply the ethics of the community, not his own. There is also always a difference in the rate of progress between law and public opinion. The law formulates the moral sentiments of the community in rules to which the judgment of tribunals must conform. These rules cannot become settled, and cannot change until a change of public sentiment has become complete.

It behooves those of us who believe in the common law, not as a body of doctrine that protects them, but one that stands between them and what they desire. If the modes of juristic thought which give rise to these feelings are persisted in they may carry with them the real doctrines of the common law—the supremacy of law, the authority of adjudicated cases, regard for the individual will in a common rule.

For a season our jurists must cease from purely historical study; they must learn social, philosophical methods, they must study the acquired defects of our legal system to learn how we may throw them off.

On Herself

At a lenten musical at the Waldorf-Astoria a young matron related a bon-mot of Marie Tempest's.

"Miss Tempest's nose is frightfully pug, isn't it?" she began. "Well, I met her at a tea once, and she joked about her nose as if it had belonged to someone else."

"When the Creator," she said, "was looking for a nose for me, He took, you see, the first one that turned up."

Courtesy—What It Will Accomplish

By VIRGINIA TERHUNE VAN DE WATER

One would think that, since courtesy costs so little and pays so well, it would be universally cultivated, but it is not, as those know who travel on public conveyances, who have dealings with the rank and file of men and women in offices and on the street.

I do not mean to suggest that the principle underlying good manners should be that of policy, for self-interest is the lowest incentive to saying or doing the polite or agreeable thing, but since some people have not sufficient self-respect to make them civil, self-interest might make them so.

There is in a fashionable millinery store a woman who made courtesy her main asset when she began to earn her own living. Her reason for this was not any thought of personal benefit to accrue from it, except as a consciousness of doing right keeps one on good terms with one's self. But she had too much self-respect and unselfishness to be rude.

Her unflinching civility and pleasant manners attracted customers and pleased them so much that women who had heretofore bought at other shops the particular article she sold got into the habit of coming to this store that Miss Smith (we will call her for the sake of convenience) might wait on them.

This led to her engagement in another shop at a larger salary, and several years later she was persuaded by the manager of another emporium to become head of a department in her special line. Every move has meant an increase in salary. And through all the changes she has preserved her unflinching gentleness and good humor. She is not pretty, she is not especially clever, but she is polite. Surely in her case courtesy was a wise investment.

How often it is conspicuous by its absence. "One would think to be eligible

as a street car conductor one must pass a competitive examination in discourtesy," remarked a man as he stepped from one of our surface cars. It would indeed seem so. When one meets, as unfortunately one sometimes does, a respectful conductor, one actually feels like taking his number and reporting him as deserving higher pay. I saw one such last week as he helped a blind man from the car and detained him until the stream of automobiles had passed before allowing him to cross to the sidewalk in front of the public institution for those afflicted as he was.

The same conductor had lifted my satchel on the car for me a few minutes earlier, and when I thanked him he (wonder of wonders) touched his hat and said, "That's all right, ma'am." I was almost tempted to commit the imprudence of tipping him. Which would have been a mistake, as it is well to have some officials whom we do not have to tip in order to get decent service. One sometimes wonders if the fact that there is nothing in the way of cash to be gained immediately by politeness explains its absence on many of our street cars.

As to family life! Words fail to describe the difference in the atmosphere of the house in which the inhabitants are courteous to each other. I once visited the home of a husband and wife where gruff questions and replies made the casual observer think that the pair had a rooted aversion to each other, and yet they were really a rather devoted couple, of course, this disagreeable manner was especially evident at breakfast time, the crucial period in the family life at which the tempers are tried and tested as at other time of the day. But one can be agreeable if one wishes, even at the breakfast table. I really think that in

the family courtesy brings more genuine happiness than do brains or riches.

The best beloved people are those who are most agreeable. I heard a story once of a man who married a woman whom all of his friends thought very plain and commonplace. She certainly was not clever. She was a fair housekeeper and the man's home was neat and comfortable as the average home, but there was nothing remarkable about it.

Still the husband seemed to live in a state of beatific content. He loved his home and wife, returning to them as soon as possible after his day's work was done. The neighbors in the little village in which he lived wondered at his devotion to the simple homely little woman. He had a way of saying, "My wife" as if he were speaking of his queen.

The wife died and the man's heart was almost broken. The neighbors watching him, saw him grow old and gray in a few weeks, although he did not talk of his grief.

They learned that he had given orders for a stone to be erected over his wife's grave, and they hoped to learn from the inscription on it the secret of this woman's hold on her husband, the reason, perhaps, for his deep love for her. And when the stone was in place a group of the curious villagers hurried to the church yard to read the eulogium they thought would be carved on the face of the monument. But they saw only the wife's name and the dates of her birth and death, and underneath these in large letters, the words, "She was so pleasant!"

It was the highest tribute the man could pay to the woman who had blessed his life by her happy companionship. It is not much of a story—but it may be helpful to remember it.

No Matter Where the Dead Lie on This Little Globe of Our's They Are in the Hands of the Almighty

By GARRETT P. SERVISS.

The hearts of many women whose husbands, fathers or brothers helped them aboard the Titanic's lifeboats, and then, with resolute souls, scorned the example of the head of the White Star line, turned back to the sinking decks and waited for a death from which they could not escape with honor, are troubled by the thought that their dear ones now lie, in their last sleep, a thousand miles away from home "in the deep bosom of the ocean buried."

It is a natural feeling which has been shared by millions in all times. The family tombs that mark our cemeteries and the "campo santo" of Italy, as they marked the highways approaching ancient Athens and Imperial Rome, are a token of the strength of the sentiment, which prescribes that all the members of a family shall, as far as possible, repose in the same soil, remaining within touch in death as they were in life. It arises from the religious instinct and is connected with the belief in human immortality. In Christian lands it denoted a feeling that, when the last trump shall sound, those who have lived in one another's presence should rise and step forth together to receive the sentence of the final judge. It was a sentiment acknowledged even by the American Indians, as is shown by the dying words of the famous Iroquois chief Red Jacket: "I do not wish to rise among the pale faces; I wish to be surrounded by red men."

Still, it is a feeling whose demands cannot always be respected by events, and there exists a wide and deep consolation for those who must see it violated by the infinitely varied chances of terrestrial life. This consolation comes from the reflection upon the littleness of the earth. Let her whose husband, son or brother went to his death under the chill iceberg, in a sea 2,000 fathoms deep, look upon this earth not as a geographer



regards it, a vast and mighty globe, whose bulk blots out half the sky, but rather as the astronomer sees it, a little speck floating in space, too insignificant, in a physical sense, to attract the least attention from eyes that range over the limitless universe.

There are ultra-microscopic beings to whom a grain of sand would seem as huge and prodigious as this globe appears to us, but if their fate and that of their grain of sand were under our control we would smile pityingly to see them striving, even in death, to keep together, lest some of them should be overlooked and forgotten in the final accounting. For, no matter on what side of their we world they might lie, they could not be lost, or even separated, since the whole grain would lightly retrace, a mere atom, in the hollow of the protecting hand. Such a speck of sand—infinitely less than such a speck—is the earth in the hand of Him who created it and the boundless universe around it. What are a thousand miles, or a thousand-thousand miles, to the Great Artificer of the heavens who set planets revolving around suns in paths billions of miles in length and made unnumbered millions of suns to blaze in galaxies whose riches no telescope can fathom and who lights up other galaxies and systems in those outer depths which the swift couriers that tread the luminiferous ether are too weary to traverse? And what is the film of the ephemeral sea to the measureless, bottomless, eternal deeps of all-encompassing space?

Wherever we live and wherever we die, on this mile of a planet, we are always together and inseparable in the eye of the Infinite One, as the ultra-microscopic inhabitants of the grain of sand would be indivisible to our our wider vision.

Forcibly had a glimpse of this great truth when he declared in his famous funeral oration that "the whole earth is the tomb of illustrious men." The illustrious men of whom he spoke were those who had given their lives for their country on the battlefields of Attica, just as the illustrious men now before our mental vision are those who sank with the ship, that the women and children might still live.

You Are Your Own Judge

By HAL COFFMAN.



Will you give yourself a life sentence to dissipation and failure, or sentence yourself to industry and success? You can do either.

Laying Out Tomorrow's Work

By BYRON H. STAUFFER.

It was 8 o'clock, and the factory workers were trooping past the time recorder, each employe pushing a button recording to the minute his hours of work that day.

This mechanical exactness, this convict-like numbering of men, this lock-step march past the clock, was just beginning to arouse whatever socialistic tendencies were within me, when my friend, the foreman, after waiting till the last man was beyond hearing, remarked, "I expect a strike tomorrow for shorter hours."

I felt like telling him that I sympathized with the men, that I wouldn't work where I had to push a button, and that I hoped they would strike and win.

But, instead, I listened to his reasons why he thought the hours were short enough and the wages high enough. When we reached the corner where our paths home-ward separated, I was still a silent listener, and a skeptic as well.

"Will you be at the church concert to-night?" I asked in parting.

"No, I shall not be able to come," answered the foreman quietly. "I must go back to the factory after supper and lay out tomorrow's work."

The last five words are not used to indicate any particular emphasis of the speaker, but to give you some faint idea of the force with which the announcement coincided with my previous line of thought.

I suddenly lost my horror for the time recorder. Even the numbering system didn't appear quite so bad. This man, who, I had noticed, did not need to push a button on leaving, had to go back to work, while his men could spend the evening with their families. The executive duties could not be measured by the clock. On the foreman's sacrifice of pleasure that night depended the work of 100 men next day.

I am making no comparisons. I am not speaking for the employe against the employe. I am not making a point against labor's demands. I merely

hold before your view that foreman going back to lay out tomorrow's work. The clock did not record that extra time; very likely the man never gave it a thought.

Indeed, the world over we are apt, too apt to forget the man who is laying out tomorrow's work. He may be a foreman, he may be a promoter, he may be a farmer, he may be a captain of industry. Perhaps it is next year's work that he is laying out.

In cutting out a garment, in writing a book, in designing a building, in planning a railroad line, in organizing a business, in creating a new commodity, in inventing a device, those forms are laying out the work of the future for thousands who could not do it for themselves. The many are well equipped to follow; the few are qualified to lead. We will always need the architect, whether he plans buildings, campaigns, books or industries.

So, while we sympathize with all who toil with their hands, while we want to secure for them all they earn and all the leisure hours they should have, let us not forget that under any social system the Utopian dreamer may devise, the world will always need the foreman who lays out tomorrow's work.

Prayer Ends Kentucky Feud.

In a small town in Kentucky lived Sister Clumber, a Baptist, and Sister Ulpen, a Methodist, whether he plans buildings, campaigns, books or industries.

While attending the church of Sister Clumber, Sister Clumber heard the pastor read a report that they had lost a few members. Sister Clumber shouted:

"Thank the Lord. I've been praying for the downfall of the Methodist church, and she's a-falling."

Soon after this sickness came to the house of Sister Clumber. Her son was about to die.

"Thank the Lord for that," declared Sister Clumber. "I guess my prayer is being answered, too. I've been praying for something to happen to that family and it's a-happening."

When Sister Clumber received this intelligence through a neighbor she sent to Sister Ulpen the following word:

"Till quit praying if you will."—New York Sun.