LAW AS A LINK OF EMPIRE.

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BY THE RIGHT HONOURABLE LORD SHAW OF DUNFERMLINE.

The other day I spoke to the American Bar Association, choosing as the topic of my imperfect discourse "The Widening Range of Law," and briefly surveying the different levels upon which, on a scale ever extending, jurisprudence and the fundamental principles of law are seen to operate. On the broad and plain and every-day level of private life, with rights and duties ever demanding their correlation and reconciliation by justice whose minister is law—on that higher level better realized, better organized, than ever before in history, in which arise the disputings and the deadlock of classes, in the midst of which and often in circumstances of no little public danger, legal principles have still to be evolved and applied—here a new correlation is demanded, Liberty is to be reconciled with Order. The rights of society as a whole are to be vindicated against each and every class, and the clash of classes inter se transmuted into harmonious development. The adjuster, the reconciler, are still that same justice and those principles of law of which you and I are the ministers.

As justice and law rise—and we must respect their claim to do so—to a still greater height, nations themselves must climb and wait, and wait and climb, and must gather their breath again. International law must grope about among the ruins which have been left after the explosions of lawless ambition have laid low much that generations of lawyers had endeavoured, working on lofty and commanding places, to edify into a lasting fabric.

And now today, being here in your beloved Canada, while the venue has changed, still there may be, in an

¹ This article is the substance of an Address delivered by Lord Shaw at the 7th Annual Meeting of the Canadian Bar Association held at Vancouver, in August, 1922.
air less rarified and in which the warmth of friendship and of kinship is even closer, some general topic—akin to my last—in which you and I might talk together.

I like to think as a Scotchman of the citizenship of the world. In that broad air Scotland and its sons have played no mean part by travel, by adventure, by fighting, by knowledge, by comradeship, by captainship, in opening the great oyster of the world’s resources. Fairly clear in brain, fairly sure in aim and fairly strong in arm the Scot wielded sometimes the sword (we must do that deference to the literary allusion), sometimes the lancet, sometimes the hammer, at other times he would don the gown and teach philosophy and law to foreigners in their own tongue with a Highland accent. And he played the game everywhere with a leaning to metaphysics, at the same time, so they say, never quite blind to the main chance.

But the world has been wonderfully responsive to the efforts of my country. Time was when the Scot abroad was known on every bloody European field and in every European university. It was not that he went abroad alone to fight; he also went abroad to learn. Among his learning law was one of his great prizes. Just as two generations ago he went with an independent mind to hear and know what German theologians were about, with the result that they found no stouter or more subtle confounders of their criticism than among Scottish divines, so, for many generations before that, students of law went to foreign universities and came back bearing their independence of attitude and of mind and wearing their learning with no sense of oppression but as a workable, useful article. They tried their best to stamp out the scholasticism which was too apt to mingle with the study of Roman jurisprudence. They elevated common sense and plain dealing as better than mere useless refinements; and so the law of Scotland was built up. England was still the old enemy, making her customs the foundations of her common law, and that with an air superior to all and every other jurisprudence, even
that which was older and much more learned than her own. But the common law of Scotland was of a more scholarly type. It was rested upon the civil law, that marvellous evolution of the Roman practical mind which, finally systematized by Justinian, yet continued to evolve and to become the parent of other forms of jurisprudence of which the Dutch Roman law under men like Grotius, and the law of Scotland under men like Lord Stair—famous men both, alike in law and public affairs—still remain the modern examples.

Sometimes no doubt the learned student came home to trying if not squalid conditions. His lament could be heard:

"Oh, is it not hard that a student of Leyden
Should hardly have whole coat and breeches to stride in,
While half-breds and homespuns their carriages ride in;
Oh, is not this hard for a student of Leyden?"

Here is a problem which I suppose even men in Canada face. And a fine and worthy problem it is, namely, trying to stuff learning and knowledge into one's poor head, and yet to make that not inconsistent with helping the twin causes of an honest livelihood and a cultured life.

For myself, I think of the old Scotch motherland very much as I think of the old Scotch mother, who reminds her stirring and stalwart boys, and reminds them not infrequently with physical emphasis, to forget neither their catechism nor their lessons. Gentlemen of the Bar of Canada: If we would serve the land that bore us well, let us be frank with our hearts and minds; these twin causes of an honest livelihood and a cultured life sound commonplace, but how good and sacred they are, although temptations and worldly en- grossments are apt to drive us past them. They have their public side. Your problems are no less than those which confront a great nation. Young that nation may be, lusty it may be, but well principled in heart and mind it must be. That goes without saying.
that the law can help. For the law we practice at its highest must be the law we love at its deepest, resting ourselves upon those ethical foundations to undermine which, to betray which, is to put in peril the very structure of society itself. The standard of professional honour never was higher. You remember the honest and rollicking ode of Burns, in which the impulse of honour is more powerful than the fear of hell. That he says is

"a hangman's whip
To haud the wretch in order."

"But," he says, and says immortally—

"Where you feel your honour grip
Let that aye be your border."

We think not of the punishment for a violation of a professional code; honour is a code more controlling than fear.

One thought I must be allowed to express, and that is that the more one sees of law in those wider and higher levels to which I have alluded, the deeper is the sense of veritable homage that we pay to the purity of its quality and the sweep of its power. As we see it, it stabilizes the very life of civilization.

But it can only do so on two conditions. The first of these, of course, is, that it be true to itself, free from every taint of dishonour.

"In the corrupted currents of this world
Offence's gilded hand may shove by justice
And oft 'tis seen the wicked prize itself
Buys out the law."

Wherever that can be truly said, then a curse has descended upon society. Law can have no majesty without integrity. Unless law be strong within and without; within, to preserve its integrity against corruption; without, to preserve its majesty by resisting and subduing lawlessness on any scale large or small; unless law prove itself fit for that high task, paralysis
has overtaken an age or a race and progress must seek a purer and healthier air.

The second condition is one that only progressive communities demand and only cultured democracies can most steadily realize. It is that law must not be enclosed in a monumental past. It must feel the impact of modern ideas, be receptive of new light, and in short must move with the times. Democratic parliaments and administrations are aware of this and are apt to play the busy-body, with spasms of jerky and haphazard legislation, and clouds of rules and orders. But in the judicial sphere there is felt to be, there must be, room left for movement also in the legal mind. Yet the movement must be, though alert, yet well considered,—in the application of ancient and venerable statutes and doctrines to newly emergent conditions of life and thought, and so as to prevent, even in the interpretation and construction of contracts and settlements, the dead hand from cramping the living spirit.

Bentham, with whom I have the misfortune so largely to disagree, has, as Sir Henry Maine shows, the crowning credit of at least being a liberator in this direction, although alas! he confined the liberation to the legislative sphere.

Wherever mankind is truly progressive these two conditions of progress within the law accordingly also obtain: (a) Justice ever incorruptible; (b) Justice ever evolving upward and onward into new reaches of truth and freedom. So that it may be truly said that the progress of law is a condition and index of the law of progress and the stagnation of law marks for progress its arrest and its defeat.

The conclusion from all this is indeed one of the gravest moment and of the highest responsibility for the legal profession. To keep the law in its administration stainless, even-handed and beyond reproach, that needs no expounding; it is part of the code of personal honour. But to keep the law from sterility, capable of moving alertly to the call of justice,
unafraid of novelty of method or interpretation, fitting into the movement of the times, that is part of the intelligence of a truly progressive community. This great function must be exercised within safe bounds, that is to say, by men ever mindful of those sound fundamental principles of law which are not alone the guardians but ought also to be the companions of society as it moves through life.

I have said "Wherever mankind is truly progressive." Too often we forget the vast masses of humanity—even civilized humanity—to whom these ideas make no appeal, who sit down contentedly through the centuries, noting their ancient laws which tradition has ascribed to the direct inspiration of Deity, and whose whole legal system is comment, comment nothing but comment, on the old,—with criticism a heresy and change a horror. Such is the rarity of progress.

Sir Henry Maine expresses the thought thus:

"It is only with the progressive societies that we are concerned, and nothing is more remarkable than their extreme fewness. In spite of overwhelming evidence, it is most difficult for a citizen of Western Europe to bring thoroughly home to himself the truth that the civilization which surrounds him is a rare exception in the history of the world. The tone of thought common among us, all our hopes, fears, and speculations, would be materially affected, if we had vividly before us the relation of the progressive races to the totality of human life. It is indisputable that much the greatest part of mankind has never shown a particle of desire that its civil institutions should be improved since the moment when external completeness was first given to them by their embodiment in some permanent record. One set of usages has occasionally been violently overthrown and superseded by another; here and there a primitive code, pretending to a supernatural origin, has been greatly extended, and distorted into the most surprising forms, by the
perversity of sacerdotal commentators; but, except in a small section of the world there has been nothing like the gradual amelioration of a legal system. There has been a material civilization, but, instead of the civilization expanding the law, the law has limited the civilization."

To us, revelling in progress, rejoicing ever in the new light, such thoughts are a sedative to pride and a stimulant to responsibility. Much have I canvassed them during the Great War. Perhaps Sir Henry Maine might have subjected his view to some modification had he been able to witness the movements of the times in which we now live. They extend over the vast, stagnant waters of ancient civilizations; movements towards new knowledge, towards self-expression, self-development, self-government. In India and China the structure of a society immemorially old did occasionally undergo an upheaval at the call and suit of a great warrior founding a new dynasty. But the vast upheaval which may even now be at hand is this time at the call and suit not of great warriors but of great thinkers, founding schools of seminal ideas, receptive as never before to fresh religious, political and legal concepts. What part is to be played in this development by that minority which till now has alone embraced the progressive portion of mankind?

Let me speak frankly, as only one can do to broad-minded men. I am no Imperialist in the vulgar sense which thinks of the outer world as an underworld, which chants its superiority as due to its isolation from that outer world and exults in the assertion of its rights to the point of domination. That vulgarity might be imitated tomorrow in the East by a pinchbeck Hyder Ali, just as it was displayed yesterday in Europe by a pinchbeck Napoleon. And I assert fearlessly that those progressive nations of the world are alone fit to live, who are loyal to the principles of law which, emanating from the fountain of justice itself, place alongside of our rights our sacred duties to
mankind, which lift higher than domination the principles of equality and brotherhood, the trusteeship of service. Unless the Great War has taught men to abjure the vulgar and false Imperialism of selfish ambition and to cherish the noble, sane, powerful, and consecrated Imperialism of service, distinguishing fair from foul, and foul from fair, law is a dead force and the war has been fought in vain.

This latter Imperialism, hard and difficult though its idealism be, is nevertheless in my belief the Imperialism which can live and—I trust we may say it humbly and without pharisaism—it is, it must be, the Imperialism of the British Empire, if the life of civilization is to be preserved. If the progress of mankind is to be assured for good, it must be so, my veritable belief is, by the efforts of the Anglo-Saxon race. I do not speak in any spirit of narrowness, but this world has never known a time in which the idea of development and consolidation of a race has been in the first place so consciously entertained as now, and in the second has been so ethically based as now, on the idea of existence not for itself, but for a higher and a better purpose, namely, the service of the world at large.

If I speak of the Anglo-Saxon race, it is because I love every part of it and I like to think of it as a whole. The other day at San Francisco a great gathering of the American Bar Association joined with me in renewing mutual fidelity and in swearing death to the ancient grudge.

But it was the British Empire, the beloved British Empire, that as one man and at one moment sprang to arms in August, 1914. By and by after much deliberation on complex problems, arising out of a separate constitution and a separate life, the United States came along. It was a turning point in history when civilization thus brought up its reserves—its reserves from the Anglo-Saxon race. What man can declare the saving to humanity, the sudden arrest of German ambition, perhaps the sheathing of the sword,
the saving of "red ruin and the breaking up of laws" if the entire Anglo-Saxon race had, to begin with, signified its essential unity by a simultaneous stroke. In the realm of such conjecture we can only bow the knee before the Greater Wisdom and the inscrutable decree.

But the British Empire stood together; vowed its vows—Mother and offspring, one family. What a spectacle it was. The venerable Mother, that Britannia whose pride in her sons gives her an eternal youth, and whose love of right gives her an eternal power, stood as of old, poising in her left hand the scales of justice. In her right hand she had borne the distaff but at the call of a great wrong to be righted she laid down her distaff and took up the sword. And through all the blinding horrors of conflict and its aftermath she did her best to keep her left hand high and to let the scales of justice swing true. And there she stands today austere in majesty but pitiful in heart, the image and embodiment of law.

When we think of the principles of law, pray, if we value breadth of mind, let us do so in a non-lawyer spirit. The principles of law are not national; they are universal. A nation is great according as it pays homage—wider and deeper as history moves on—to those verities of justice which cannot fail and which from age to age evolving law more and more adequately expresses. The time has at last come when we can declare that no war can be justified which is not waged for righteousness, and no victory can be complete which has not helped to abolish lawlessness from the earth.

I wish to make it plain that the British Empire is not to me an Imperial dominion but an Imperial brotherhood. Canada has arrived; her nationhood is accomplished, and it has been accomplished in her finest manner, that is to say in an unselfish cause and in the brotherhood of service.

As to Canada, we can say of her, as of Australia, of Africa, of New Zealand, of every self-governing colony, nothing better than what we say of the British
Empire itself. If the British Empire is to exist for itself and its own ambitions, and its own aggrandizement, it will perish and its latest days will be its worst; but if it is to come to the rescue of humanity, to the succour of the oppressed, to the healing of society, it will do so by a homage to those principles of law which over-reach the boundaries of States, and which being consciously maintained can bind an empire together, by that marvellous reconciler, adjuster, inspirer of empire, justice itself. And it is the ministry of justice in which you and I are here and now enlisted. Law is the Link of Empire.

As to the place of Canada in that Empire it is unnecessary that I should speak. The subject has been quite recently handled with felicity and skill by my Right Honourable friend, Sir Robert Borden, with whose sketch of the rise of Canada from a Crown Colony up to the penultimate stage of nationhood which was represented by the famous resolution of the Imperial War Conference of 1917, I wholly agree.

Said the resolution:—

"They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine."

Sir Robert, watchful man and keen lover of good business, shews, I will not say uneasiness, but, what in my humble opinion, is a very justifiable spirit of firmness on the issue raised. Says he:—
"The resolution of 1917 will be barren of further results unless a way is found to work out its principles in practice. It can hardly be claimed that any development since 1917 has accomplished this. The resolution of 1917 was based upon vital considerations which cannot lightly be disregarded. While it is true that the Dominions were represented at Paris, that they took their place at the Peace Conference, and that they became signatories of the Peace Treaty, I have yet to learn that since the conclusion of peace their right to "an adequate voice in foreign policy and in foreign relations" has been recognized in any effective or practical way."

It was only the other day that Sir Robert's Canadian Constitutional Studies were published. But history moves in our day swiftly, and much is happening, and has happened since that brochure saw the light. At the Genoa Conference did the United Kingdom stand alone for the Empire? Not at all. As at Versailles, so at Genoa, a great British Empire delegation met together to do its best in the mighty issues which involved the economic, social and political shaping of the old world—still distracted, still in convulsion after the upheavals of the war. And I may venture to bring to you today as a message from the Prime Minister of England, Mr. Lloyd George, this statement of the actual occurrence and fact of what I call the final entry of the self-governing Dominions into Imperial nationhood. I quote from his declaration to the British House of Commons:—

"The British Empire Delegation met together to consult upon the whole of these facts. You had the representatives of Canada, Australia, Africa, New Zealand and India. They came into our consultations.

"There was not a single step of any importance that was taken without previous consultations with them, and the action which we took had their unanimous support."
They came to the conclusion as we did, that it was necessary in the interests of the peace of the world—whatever we thought about the Soviet Government—and let me say at once we had no differences of opinion about that—that some arrangement with Russia was necessary in order to save the misery in Russia itself, to enable Russia to make her contribution to the needs of the world, to help in the swelling of that volume of trade upon which so many millions of people depend for their daily bread, to give the sense of stability and security to Europe, and, above all, to avert those evils which lurk in the future, if nothing is done in order to set straight this tangle of misunderstanding.

"For that reason the British Empire delegation, all of us, gave the whole of our strength and our minds day after day, to fight the battle of peace in the world."

I know well enough the ways of diplomatists to affirm that it would in their opinion be more correct to have a written supplement to the Resolution of the Imperial War Conference of 1917. That will no doubt come; but the fact is there; it can never be gone back upon; the nationhood of Canada and her place in the most august Councils of the World are established and sure, established beyond question, established for ever.

I think—pray forgive my lapse into a historical musing—I think that Lord Durham would have loved to see this day. To him it was given to profit by the mistakes of an earlier day on American soil, the cowardly acquiescence of Ministers in the senseless prejudices of a King. And Durham had vision, wisdom, courage. So much so that his famous Report of 1839 makes that year an epoch in the history of the Empire, of self-government, of the reconciliation of races, of constitutional freedom. Durham ranks with Alexander Hamilton, and the constitutional builders of the world. In spite of the usual clamour of opposition to any liberalism which vests in the people concerned the responsibility for their own destiny, his fearless recommenda-
tions were adopted; and they switched this great Dominion on to that line of responsible self-govern-
ment which, forgetting the past, granted amnesty with a full hand, and faced the future with a glorious faith in free institutions.

We know these objectors to the grant of a constitu-
tion well. They always pose as loyalists, and they always do ridiculous and shameful things. They sav-
agely trumpeted the Report as treason, and amnesty as a truckling to crime, and when the sagacious son-
in-law of Durham, your Governor-General, Lord Elgin, of famous memory, went steadily forward with the policy of forgiveness and reconciliation and trust, they burnt the Parliament Buildings in Montreal, threat-
ened more trouble and pelted the good man with stones. But the policy triumphed; and the British Empire was a safer empire, and Canada has waxed steadily in wisdom, in stature and power—the very idea of vassal-
age uprooted and the idea of partnership growing and to grow.

History does repeat itself; the fine Canadian ex-
ample was repeated. In 1900, in the Nineteenth Cen-
tury magazine, a man of my name wrote an article upon the Canadian precedent, and the Durham Report. He humbly offered these as a guide and help in the settlement of the South African racial question. That precedent, said he, demonstrated the value of the gift of responsible self-government. It was of course of no use; so-called loyalism knew a good deal more about firm government than that, did it not? And it was not until Sir Henry Campbell Bannerman put his prin-
ciples to the proof and granted a Constitution to South Africa, that true peace and loyalty saw the light. The good faith which Africa has kept to its Imperial con-
nection, its Imperial obligations and its Imperial des-
tiny, has justified the policy and astonished the world. No acceision of strength to civilization itself has ever been so swiftly won, simply by the great act at once of adoption as a son and enlistment as a partner, by the Motherland.
Still again the Canadian precedent reverberates. The ink is hardly dry upon that concession of self-government to Ireland which it is hoped will bring peace to a land distracted for centuries. And the Irish Constitution breathes the very words, as well as the air, of this great Canadian dominion beyond the sea. Your constitution; the British North America Act; the famous instrument of "peace, order and good government" which we in the Privy Council know so well; the reference to Canada by name; all these crop up in this new constitution to which every lover of peace and enlightenment wishes well. Who will deny now that your rise and greatness are not only an Imperial asset but an Imperial example? United we stand; it needed not the sacrifice and suffering, the glory, the co-operation and the discipline of the great war to declare it. The cause was greater far than Empire or our strong selves; it was the defence of righteousness and peace we stood for. Our trusteeship for that was a joint trusteeship, and in our unity our humble plea is that we did in an hour when freedom was at stake, defend it, enfranchise it of new, and did not

"forget
That we owe mankind a debt."

It is this among the nations that gives true leadership. Yes, the secret of true leadership of empire is and must be service, the secret of true unity of empire is and must be justice.

(To be continued).