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THE LAW AND THE FACTS

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The life of society is a struggle for law. Where life is fixed in unalterable grooves, where it moves from day to day without change or thought of change, law is also, of course, stationary, permanent, graven upon the face of affairs as if upon tables of stone. But where life changes law changes, changes under the impulse and fingering of life itself. For it records life; it does not contain it; it does not originate it. It is subsequent to fact; it takes its origin and energy from the actual circumstances of social experience. Law is an effort to fix in definite practice what has been found to be convenient, expedient, adapted to the circumstances of the actual world. Law in a moving, vital society grows old, obsolete, impossible, item by item. It is not necessary to repeal it or to set it formally aside. It will die of itself,—for lack of breath,—because it is no longer sustained by the facts or by the moral or practical judgments of the community whose life it has attempted to embody.

There is, indeed, a sort of law which pushes ahead of fact, or seems to. I mean the law, so common in our day, which attempts

to correct the habits or to guide the tendencies of society. Take our sanitary laws, for example. They do not record habit; they try to alter it. They are not a reduction to rule, merely, of practices into which society has naturally or instinctively settled. They seek to impose upon us, rather, habits and practices which we would not without their duress have adopted. They are based oftentimes upon scientific facts and principles which are not of common observation. We are very obedient to our men of science. We accept the conclusions of their laboratories without question or criticism and embody them in our rules of life, in our laws, with great benefit to our health, but in obedience to authority, not to experience,—at any rate not to experience which is of our own development or discovery.

But even this is only an apparent exception. Law is still subsequent to the facts. Though they be not of our own discovery and we receive them on faith, they are none the less facts. Law follows them; it does not precede or predict or invent them. It is obedient to experience. It accepts the ascertained, the accomplished, the proved and established circumstance, and frames it into an imperative rule of conduct under the compulsion of what men have found to be true.

I take the science of politics to be the accurate and detailed observation of these processes by which the lessons of experience are brought into the field of consciousness, transmuted into active purposes, put under the scrutiny of discussion, sifted, and at last given determinate form in law. Nothing that forms or affects human life seems to me to be properly foreign to the student of politics.

I do not know how some students of politics get along without literature, as some of them make shift to do,—without the interpretations of poetry or of any of the other imaginative illuminations of life,—or without art, or any of the means by which men have sought to picture to themselves what their days mean or to represent to themselves the voices that are forever in their ears as they go their doubtful journey. They read history, indeed, in search of the “facts;” but if they miss the deepest facts of all, the spiritual experiences, the visions of the mind, the aspirations

of the spirit that are the pulse of life, I do not see how they can understand the facts or know what really moves the world. Very often they do not.

Politics is of the very stuff of life. Its motives are interlaced with the whole fibre of experience, private and public. Its relations are intensely human, and generally intimately personal. It is very dangerous to reason with regard to it on principles that are fancied to be universal; for it is local. Its items are of the time and place. What happens in its field is shot through with a thousand accidental elements which you will not find again upon another occasion, because occasions are not similar. And yet there is a large movement in it all which is independent in some strange way of time and place and accidental elements. There are big facts and tendencies to be picked out. There are circumstances which link whole communities together, make them feel their common interest, reveal to them their common relations, and push them forward into the field of law. They must seek a common order, whether they will or not: they must shape institutions to suit their lives and give vent to their common purposes; they must drive a strong, steadfast peg of law in at each step of their struggle forward to hold them where they are.

This study becomes more and more complex because society changes under our very eyes. I suppose there never was a time when things were actually simple. They look so to us in very ancient times of which we have scant record, no doubt, because we know very little about them. They were complex enough, even then, it may be; but we see them only in bulk, and the mass looks simple and easy of description. But manifestly affairs have grown more and more complex as civilization has deployed upon the modern stage.

There was a time, for example, when societies, when nations, seemed to move forward in mass, all together, their internal interests, at any rate, linked and interrelated in some reasonably manifest fashion. Their law was all of one weaving. The classes of which they were made up were formed in one common mould,—were at least continuously conscious of one another and united in a single nexus of forces. In our day, on the contrary, there is

an extraordinary, an unprecedented differentiation. There is a perceptible movement in distinct economic and therefore distinct social sections. Society is too various to see itself as a whole, and the vision of those who study it is confused. Interests have their own separate and complicated development, and must, it has seemed, be made separately and individually the subject of legal regulation and adjustment. The relations which have come to rule in our day in the field of law seen to be the relations of interests, of vast and powerful economic sections of society, rather than of individuals. Laws intended to affect one set of interests directly and vitally are not only not meant to affect other interests directly but other interests are often ignorant of them, wholly indifferent to them. They do not touch their comprehension, do not enter into their calculations, are not permitted to affect their development.

For these sections and interests are powerfully organized, for the management, defence, and expansion of their own enterprises, personnel, and properties. Their power and their resources are concentrated, their management centered in definite and active agencies. They are equipped to take care of themselves, and are alert for every advantage.

Take the case of the United States. The development of its law in the generations with which we are most familiar has not been a development which yielded to or expressed a movement all along the line, an impulse of mass, a correlation of forces of which the whole social body was conscious. It has, on the contrary, been a rapid development of individual forces in a crowded field upon which interests did not move together but asserted themselves separately and in confused rivalry. Our national growth has been rapid not only but prodigious, alike in respect of population and of material wealth, of physical and of financial power. We were dealing with resources which we deemed inexhaustible. Hope and energy in a free field wrought marvels, as they must always do when untrammelled and with tools and materials at their hand. It has been a great spectacle of splendid force released and challenged by every circumstance to work its will. It has, too, been a regime of utter individual-

ism. The forces as well as the men have acted independently, of their own initiative, at their own choice, in their own way. And law has not drawn them together,—it does not appear that it was its object to draw them together. Our national policy has been a policy of stimulation, but of miscellaneous stimulation. Any one who clamoured for legislative aid and brought the proper persuasive influences to bear could get assistance and encouragement. It was everybody for everything upon a disordered field. There was no attempt to coördinate. Our legislation has been atomistic, miscellaneous, piecemeal, makeshift.

And so individual interests without number have been built up. They have not been harnessed to a common cause; the common cause was supposed to be individual development and the right of those who could to use the country and its resources for the release of their private energy and the piling up of their own wealth. Separate opportunities were studied, not common obligations, variety, not community, of interest. A free field and all the favour the law could show was our rule of life, our standard of policy. Interests of this, that, or the other sort grew so big that they necessarily touched and interlaced. Their contacts made them conscious of one another. Each sought the whole field and met the others in it, made rivals of them, or allies. But there was no common guiding spirit or purpose; there was no mandate of law to mould them into one another, to unite, reconcile, harmonize, direct them. The courts mediated between them, but had no means or standard by which they could accommodate their activities to the interest of communities and of men of every kind outside directors' rooms and offices and banks.

And so the field, almost the subject-matter, of our study has changed. It is still the object of political science to see how the forces move, to note how experience develops into law. But experience does not move with an even front, and law responds to it after its own variety, in sections, in special channels, in segments fitted to special interests. Our search is for the common interest, but where shall we find it? It is displayed in no common phenomena,—at any rate in none that can be easily discerned. If we would discover it, we must compound it for our-

selves out of scattered and disparate elements. We must look away from the piecemeal law books, the miscellaneous and disconnected statutes and legal maxims, the court decisions, to the life of men, in which there is always, of necessity, an essential unity, which, whether it will or no, whether it is conscious of it or not, *must* be of a piece, *must* have a pattern which can be traced. Here are the fragments; the laws, the separate forces, the eager competing interests, the disordered *disjecta membra* of a system which is no system, which does not even suggest system, but which must somehow be built together into a whole which shall be something more than a mere sum of the parts.

This is the task, the difficult, elusive, complex, and yet imperative task of political science. It is also the task of the new statesmanship, which must be, not a mere task of compromise and makeshift accommodation, but a task of genuine and lasting adjustment, synthesis, coordination, harmony, and union of parts.

It is first of all, I take it, a task of elucidation, not to say of discovery,—of discovery through thorough elucidation. We have heard a great deal of hopeful talk in recent months about the need of a non-partisan, expert commission to get at the facts about the incidence and actual operation and effect of the protective tariff which Congress has built up into so wonderful and fearful a structure, about the cost of production and the proper basis for duties, about the condition of industry in its various branches and the precise result of this, that, or the other legislative stimulation by means of taxation. It is expected that such a commission would, by investigation of a dispassionate and disinterested sort, afford us what is optimistically spoken of as a “scientific” basis for a revision of the system,—by which, I suppose, it is meant that it would afford us light without heat, elucidation that would not be *ex parte* argument, an exposition of things that would not have the requisite tilt and surface for log-rolling. I trust that such hopes are not ill-founded; but I refer to them here only for the sake of illustration, not to give myself the opportunity to express an opinion. Such a commission would be in fact a commission to discover, amidst our present economic chaos, a common interest, so that we might legislate for the whole country

instead of for this, that, or the other interest, one by one. Students of political science are a self-constituted commission in the broader political field for a similar purpose.

They must discover, amidst the confusion of modern elements the common term, the common interest,—or, rather, they must discover the *missing* term. For, as I have said, the whole is not the mere sum of the parts. These scattered pieces, these separately developed elements of modern economic society, do not disclose, when put together, a whole and consistent pattern. The letters they contain do not make a complete word. The words they contain do not make a complete sentence. Express them all at their best and you still have not found a voice for the common interest, for the forces that must harmonize and round out the life of modern society.

Perhaps we can find a starting point for the new synthesis which this latest enterprize of our thinking must seek to accomplish in two definitions which I have recently ventured to suggest in another place. We are dealing, in our present discussion, with business and we are dealing with life as an organic whole, and modern politics is an accommodation of these two. Suppose we define business as the economic service of society for private profit, and suppose we define politics as the accommodation of all social forces, the forces of business of course included, to the common interest. We may thus perceive our task in all its magnitude and extraordinary significance. Business must be looked upon, not as the exploitation of society, not as its use for private ends, but as its sober service; and private profit must be regarded as legitimate only when it is in fact a reward for what is veritably serviceable,—serviceable to interests which are not single but common, as far as they go; and politics must be the discovery of this common interest, in order that the service may be tested and exacted.

In this conception society is the senior partner in all business. It must be first considered,—society as a whole, in its permanent and essential, not merely in its temporary and superficial, interests. If private profits are to be legitimized, private fortunes made honourable, these great forces which play upon the modern

field must, both individually and collectively, be accommodated to a common purpose. Politics has to deal with and harmonize many other forces besides those of business merely. Business serves our material needs, but not often our spiritual. But the business forces are nowadays the most powerful (perhaps they have always been the most powerful) with which politics has to deal. They are the hardest to correlate, tame, and harness; and for the time being our anxious interest centres upon them. Let us extract from them, if we can, the new term of peace and prosperity which will be found in their genuine and successful synthesis.

The economists cannot help us, I fear. They must segregate these great phenomena of which I have spoken, I suppose, and study them in their pure and separate force, as they are; whereas segregation is just what we, as students of political science, are seeking to offset and correct. We wish to study them, not separately, nor even in combination only with one another, but in combination with the influences, the interests, the aspects of life which are not economic, but stuff of fortune, of peace of mind, of fair and generous dealing, of good will and enlightenment and public service.

There is the statesmanship of thought and there is the statesmanship of action. The student of political science must furnish the first, out of his full store of truth, discovered by patient inquiry, dispassionate exposition, fearless analysis, and frank inference. He must spread a dragnet for all the facts, and must then look upon them steadily and look upon them whole. It is only thus that he can enrich the thinking and clarify the vision of the statesman of action, who has no time for patient inquiry, who must be found in his facts before he can apply them in law and policy, who must have stuff of truth for his conscience and his resolution to rely on.

I know that the statesman and the student of political science have not hitherto often been partners. The statesman has looked askance upon the student,—at any rate in America, and has too often been justified because the student did not perceive the real scope and importance of what he was set to do and over-

looked much of the great field from which he should have drawn his facts,—was not a student of thought and of affairs but merely a reader of books and documents. But the partnership is feasible, with a change in the point of view; and the common interest must somehow be elucidated and made clear, if the field of action is not to be as confused as the field of thought.

I do not mean that the statesman must have a body of experts at his elbow. He cannot have. There is no body of experts. There is no such thing as an expert in human relationships. I mean merely that the man who has the time, the discrimination, and the sagacity to collect and comprehend the principal facts and the man who must act upon them must draw near to one another and feel that they are engaged in a common enterprise. The student must look upon his studies more like a human being and man of action, and the man of action must approach his conclusions more like a student.

Business is no longer in any proper sense a private matter. It is not in our day usually conducted by independent individuals, each acting upon his own initiative in the natural pursuit of his own economic wants. It is pursued by great companies, great corporations, which exist only by express license of law and for the convenience of society, and which are themselves, as it were, little segments of society. Law is not accommodating itself, therefore, to the impulses and enterprises of individuals, as experience pushes it forward from change to change; but is accommodating itself, rather, to the impulses of bodies of men, to the aggregate use of money drawn from a myriad of sources as if from the common savings of society at large. The processes of change will be organic only in proportion as they are guided and framed along self-consistent lines of general policy. As experience becomes more and more aggregate law must be more and more organic, institutional, constructive. It is a study in the correlation of forces.

After all, it is not a purely intellectual process, this interpretation of experience, this translation of experience into law. I said just now that I did not see how the student of political science could make shift to know what he was about without the lamps

of literature to light his way,—those flames, those lambent spirits of men, that burn in the pages of books that some of you are apt to put away from you as having no significance as of science and of fact in them. Nothing interprets but vision, and ours is a function of interpretation. Nothing perceives but the spirit when you are dealing with the intricate life of men, shot through with passion and tragedy and ardour and great hope. That is the reason that I said that there were no experts in human relationships. Sympathy is your real key to the riddle of life. If you can put yourself in men's places, if you can see the same facts from the points of view of many scores of men of as many different temperaments, fortunes, environments, if you have Shakespearian range and vision, then things fall into their places as you look upon them and are no longer confused, disordered scattered abroad without plan or relation. You must not classify men too symmetrically; you must not gaze dispassionately upon them with scientific eye. You must yield to their passion and feel the pulse of their life when you are studying them no less than when you are acting for them. Organic processes of thought will bring you organic processes of law. Nothing else will.

Let us break with our formulas, therefore. It will not do to look at men congregated in bodies politic through the medium of the constitutions and traditions of the states they live in, as if that were the glass of interpretation. Constitutions are vehicles of life, but not sources of it. Look at all men everywhere first of all as at human beings struggling for existence, for a little comfort and ease of heart, for happiness amidst the things that bind and limit them. Such and such are the conditions of law and effort and rivalry amidst which they live, such and such are their impediments, their sympathies, their understandings with one another. See them in their habits as they live and perhaps you will discern their errors of method, their errors of motive, their confusions of purpose, and the assistance the wise legislator might afford them.

I do not like the term political science. Human relationships, whether in the family or in the state, in the counting house or in the factory, are not in any proper sense the subject-matter of

science. They are stuff of insight and sympathy and spiritual comprehension. I prefer the term Politics, therefore, to include both the statesmanship of thinking and the statesmanship of action. Your real statesman is first of all, and chief of all, a great human being, with an eye for all the great field upon which men like himself struggle, with unflagging pathetic hope, towards better things. He is a man big enough to think in the terms of what others than himself are striving for and living for and seeking steadfastly to keep in heart till they get. He is a guide, a comrade, a mentor, a servant, a friend of mankind. May not the student of politics be the same? May not his eye, too, follow the dusty roads, scan the scattered mass, observe the crowded homes, heed the cry of the children as well as the silent play of the busy fingers that toil that they may be fed, follow the lines of strain, of power, of suffering, get a vision of all the things that tell; and then, with no precise talk of phenomena or of laws of action, interpret what he feels no less than what he sees to the man of action, too much engrossed, it may be, to see so much or over so wide a field, too much immersed to hear any but the nearby cries and clamours, too eagerly bent upon his immediate task to scan the distant view?

Know your people and you can lead them; study your people and you may know them. But study them, not as congeries of interests, but as a body of human souls, the least as significant as the greatest,—not as you would calculate forces, but as you would comprehend life. In such an atmosphere of thought and association even corporations may seem instrumentalities, not objects in themselves, and the means may presently appear whereby they may be made the servants, not the masters, of the people. The facts are precedent to all remedies; and the facts in this field are spiritually perceived. Law is subsequent to the facts, but the law and the facts stand related, not as cause and effect, but, rather, as life and its interpretation.