LAW,
ITS
NATURE AND OFFICE
AS THE
BOND AND BASIS OF CIVIL SOCIETY.

INTRODUCTORY LECTURE
TO THE
Law Department of the University of Pennsylvania,
WEDNESDAY, OCTOBER 1ST, 1884,
BY
JOSEPH P. BRADLEY,
Justice of the Supreme Court of the United States.

Quare quum lex sit civilis societatis vinculum, jus autem legis aequale, quo jure societatis civium teneri potest, quum par non sit condicio civium? . . . Quid est enim civitas nisi juris societas?—Cic. de Repub. I.32.
PHILADELPHIA, October 11, 1884.

Hon. JOSEPH P. BRADLEY.

DEAR SIR: - The committee appointed for that purpose by the Students of the Law Department of the University of Pennsylvania, wish to express to you their appreciation of the address delivered before them on the 1st instant, and also to respectfully request that you will lend to them your manuscript in order that it may be printed.

Hoping that you will give this request a favorable consideration, we are,

Very respectfully yours,

JOSEPH S. CLARK, Chairman,
LUKE D. BECHTEL,
GEORGE H. CHESTERMAN,
F. S. PHILLIPS,
HENRY C. TODD,

Committee.

WASHINGTON, October 13, 1884.

GENTLEMEN:

I have duly received your kind letter written as a committee of the Students of the Law Department of the University of Pennsylvania, asking for a copy, for publication, of the lecture delivered by me before them on the 1st instant. Duly acknowledging this mark of their appreciation of the lecture, I would say that I have no desire to withhold it from publication, though it was not prepared under circumstances to render it fit for the test of criticism. In the hope, however, that its suggestions may lead the thoughtful to a fuller and more mature consideration of the subject discussed, I submit it to your disposal. With kind wishes for the success of yourselves and those whom you represent, in the study and pursuit of the noble profession you have chosen, I am,

Respectfully and truly yours,

JOSEPH P. BRADLEY.

LECTURE.

YOUNG GENTLEMEN: An introductory lecture to a course of law is not unnaturally directed to a general view of the subject, its nature, the principles on which it is founded, its relations to other departments of knowledge, the proper methods of its study, and the aims which the student should have in view. To these heads, or some of them, I shall endeavor to direct your attention on this occasion.

First of all, we ought to have a clear conception of the subject itself—law—what it is, and what is its office and use in human affairs. Perhaps the imagination would be more impressed by picturing to ourselves the absence of law, than by attempting to describe its operation and effect. Suppose an omnipotent edict should presently go forth, abolishing all law; what would be the condition of things in this city? A would walk into B's banking house and take from his box or safe any amount of money that his fancy dictated, unless B, by superior strength, could protect his possessions. In like manner, C would enter D's store, and take such articles as he chose, unless D could prevent him by force. Your neighbor, being in want of books for his library, could take from yours whatever he needed, and any clothes from your wardrobe which might strike his fancy. The first bully you might meet on the sidewalk could strike you down with impunity, either for the purpose of indulging in sheer malice and wickedness, or of possessing himself of any valuables about your person. You might, at any moment, be turned out of house and home by a stronger person who fancied your luxurious and
There would be no such thing as property, or debts, or securities. Everything would lie in possession, and that would go to the strongest. Any association of good men, entered into for mutual protection, would be so far the establishment of law, and would be contrary to the supposed edict abolishing it. Society would be dissolved and ended. Society cannot exist without law. Law is the bond of society; that which makes it; that which preserves it and keeps it together. It is, in fact, the essence of civil society.

DEFINITION OF LAW. WHAT IT IS.

And now that we see what law accomplishes, and what would be the effect of its abolition, we may proceed to a definition of it. Blackstone says that municipal or civil law is a rule of civil conduct, prescribed by the supreme power in a State, commanding what is right and prohibiting what is wrong. I would rather say that it is those rules and regulations which the inhabitants of a particular country or territory adopt and enforce for the establishment and maintenance of civil government, the preservation of social order, the distribution of justice, and the advancement of the general good; or, it is that body of rules which a political society enforces by physical power for the protection of its members, in their persons and property, and the promotion of their happiness. Whatever rule of conduct is not enforced by the physical power of society is not law. It may be a rule of morals, or of courtesy, or of honor; but it is not law. That conduct which the State requires of its citizens, or those within its jurisdiction (who are
quasi citizens for the time being), and which it regards as of sufficient consequence to enforce by its physical power, is civil conduct, and the rules by which it is prescribed constitute the law of that State. It matters not how it came to be the law, whether it was prescribed by an autocrat or a legislative body, or arose from mere custom and usage, or the decrees of the courts—if the physical power of society, that is, the State, is put forth for its vindication, it is law; if not, it is not law. Sometimes popular opposition to a law may prevent its execution and paralyze the power of the State. This produces, so far as it extends, a relaxation of the bonds of society and a return to a lawless condition, but as soon as the public power can be restored, the reign of law returns.

With the exception of omitting that distinguishing characteristic of law, its enforcement by the physical power of the State, Blackstone's definition may be logically correct. The law making power is necessarily the supreme power in a State; the rules it enforces are presumed to be known, and may therefore be said to be prescribed; and that they command what is right and prohibit what is wrong is a legal truism, though it is also true in a moral sense, inasmuch as the laws of a State are the final expression of the nation's sense of justice and political wisdom, developed from its history and experience, and formulated by its highest intelligence. So much, at least, may be said of the law, viewed in its most mundane and prosaic aspect, as practically exhibited in human affairs, without attempting to scale those sublime heights from which philosophy may take even a more ennobling view of the subject. Ulpian defines justice (or law in its
essence), as "Constans et per-etua voluntas jus suum cuique tribuendi." And Richard Hooker, a writer of great power and elegance, sums up his conclusion on the subject as follows: "Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels and men, and creatures of what condition soever, though in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace and joy."

GENERAL DIVISION OF LAW.

The law extends not only to the relations and conduct of individuals towards each other, but to the organization of society itself, its form of government, its public institutions and works, and even to the mutual relations between the State and other States. The different subjects to which it is thus extended renders its division natural into public law and private law; and that of public law into international law and Constitutional law.

The laws relating to crimes are generally regarded as public law; but it seems to me that they might properly be considered as belonging respectively to that branch of the laws, public or private, which is violated by the commission of the crimes. A man who takes my property may be a mere trespasser or a thief, according to the manner and intent with which he takes it, but it is equally a private injury to me; punishable in the one case by damages for the injury, and in the other by imprisonment or corporal chastisement,
with a return of the goods, if they can be found. The reason for calling the crime a public offence, committed against society itself, has always seemed to me too metaphysical. It is said that a crime, especially if it reaches the grade of felony, is a violation of the social compact, and tends to dissolve society; or that it is an insult to the majesty of the sovereign; but this is only in degree; every violation of law may be characterized in the same manner, and the statement would be true to a certain extent.

**International Law** consists of those rules dictated by natural justice, by long usage, or by treaties, which form the law of intercourse between the State or nation, and other States or nations. Though international, it is enforced by each individual nation as its own law, there being no common judge to enforce it. And each nation, on its own responsibility, puts its own construction upon the law, at the risk of a conflict with other nations, if they should construe it differently. This law is to be found in the works of those sages of the law who have made international law their special study, and who have become generally recognized as authorities. They are sometimes called publicists, because international law is regarded as public law *par excellence*. Of this class are Grotius, Puffendorff, Bynkershock, Vattel, Wheaton, Phillimore, and others.

There is a branch of international law, which is called private international law, which has respect to the rights and duties of persons who have relations personal, or by means of property or contract with different countries, whose laws conflict with each other in reference to the matter in hand; and it is the office of private international law to determine, accord-
ordinarily every man's rights and duties are determined by the law of the place where he resides. But he may be the subject of some other sovereign claiming his allegiance, or he may own property located in another country, or he may have contracts made or to be performed there; and it is the province of private international law to determine his rights and duties in all these cases. The validity and effect which shall be accorded in one country to acts done in another, such as transferring property, recovering judgments, constituting executors, guardians, etc., is a matter of comity between the two countries and their tribunals; and private international law determines when this comity should be exercised. A number of eminent writers have treated of this subject, sometimes under the title of Conflict of Laws, and sometimes under that of Private International Law; such as Savigny, Story, and your own learned townsman, Mr. Wharton. Chancellor Kent, in his Commentaries, touches briefly, but with masterly precision, the subject of International Law in both of its aspects.

In this age, when the Atlantic Ocean has become a mere ferry, and foreign intercourse is so common, and in this country, where forty independent communities are so closely related by business connections of every kind, this branch of international law is of the greatest importance, and should be carefully studied by every American lawyer.

Constitutional Law prescribes the form of government of a State, its general departments and their functions; the political divisions of its territory, and the duties and powers assigned to each; the various
kinds of delegates and officers to consult for the public good and execute the public will, and the modes of appointing them; in other words, the framework of civil society, and the functions of its several parts. The Constitutional law of a country is sometimes written, sometimes unwritten, and sometimes partly the one and partly the other. In this country it is mostly written, partly in a direct and formal act of the people, under the name of a Constitution, and partly in organic laws passed by the legislature. The general grant of legislative power is deemed sufficient to authorize the legislative department to extend the organization of civil society to details which are not provided for in the outline drawn by the Constitution itself. Whatever law relates to a public function is Constitutional in its character, whether it defines the power of a governor or a constable, or directs the mode of passing laws or of exercising the elective franchise. It touches the organization of the body politic, and that organization is, subjectively, the Constitution of the State.

An appendix to Constitutional law, not generally regarded as belonging to it, though relating to the duties and powers of public functionaries, is Administrative Law, which presides over the establishment and execution of those public institutions and works which are created or carried on for the benefit and protection of society, such as armies, navies, fortresses, sea-walls, light-houses, harbors, piers, bridges, highways, railroads, canals, mails, prisons, hospitals, poor-houses, asylums, universities, schools, and benevolent corporations, all of which, when emanating from public authority (as they mostly do), exhibit the majesty of
the body politic in the energy of beneficent action, aiding, protecting and benefiting all its members and advancing human civilization. This subject is largely discussed by the French lawyers as a separate branch of public law, and some of their works are well worth the students' consideration. Ferriere's Treatise on Public and Administrative Law is a model of clear analysis, and is well worthy of being done into English, and studied in our legal institutions.

Private Law consists of those civil rules and regulations which govern the private actions and mutual relations and dealings of all citizens, and of all other persons subject to the jurisdiction of the State. When we consider the innumerable relations and transactions which take place amongst men in society, it is apparent that the laws must necessarily be extensive and voluminous. In the simple times of old a few rules might have been sufficient, but in the present complex state of society, having so many industries, occupations and interests, and presenting so many phases of human life, all requiring the protection of the laws, it is indeed wonderful that the civil law can be so all-embracing and omnipresent as to reach and provide for every exigency that can arise. But it does this and does it perfectly. It does it by means of a rigid and accurate classification of human relations and acts—a classification based partly on nature, partly on custom, and partly on instituted or voluntary conditions. The most striking natural relations are those of husband and wife and parent and child; custom early established those of master and servant and guardian and ward, and that of magistrate and people grows out of the very construction of society.
But there are innumerable relations which men voluntarily or involuntarily assume towards each other, either by conduct or by contract. If one injures another in person, reputation or property, the relation of injurer and injured is established between them, imposing upon one the duty of satisfaction for the injury, and giving to the other the right to demand it. If two or more enter into a contract (permitted by the law) they mutually assume a contractual relation towards each other, binding each to the others, for the performance of his part of the contract, and a failure to perform involving the duty of satisfaction and the right to demand it. This is a mere general statement of what occurs every moment; but the variations of right and duty growing out of the infinite variety of facts and shades of difference in the many cases that occur, render the complicated mass of rules and principles necessary to meet and provide for all, forbidding to the beginner. He must learn well the great principles of justice, and the system of legal analysis and classification, and then light will begin to break in upon the chaos, and all things will at last become easy and plain.

THE SUBJECT MATTER OF LAW. AND THE PLACE WHICH ITS STUDY OCCUPIES AMONG THE SCIENCES.

Having now described in a general way, what law is, and what are its objects and uses, and its general divisions, let us stop a moment and take a little more accurate survey of it as a whole, as a subject of learned study, and as to the place it holds amongst the other studies to which men devote themselves, particularly those of a professional character.
Every science, or branch of human knowledge, has a subject matter which it scrutinizes, studies, analyzes and expounds, as to its substance, its accidents, its relations, causes and effects, and the natural laws which govern its manifestations. The subject matter of mathematical science is number and figure; the subject matter of astronomy is the heavenly bodies, and it explores their nature, their appearances, their positions, their motions, and the relations which they have to each other; the subject matter of geology is the structure of the earth, which is explored in its various strata of rocks, their relative super-position and age, their composition and contents, the remains of ancient vegetable and animal life embedded in them, and the causes which have led to their production; the subject matter of natural philosophy is the mechanical forces of nature, and the phenomena which they produce; of botany, the vegetable kingdom; of natural history, the animal kingdom. Man himself forms a subject of profound study; his body, with its sustentation and preservation, forms the subject of physiology and medical science; his mind and its operations, form the subject of mental philosophy, including metaphysics; his language forms the subject of philology, grammar and rhetoric; his relations to his Maker, and the unseen world, including his moral relations to his fellow-men, form the subject of religion, or religious philosophy and ethics. All these subjects present vast and important fields of inquiry, worthy of profound study; but none of them exceeds in importance the subject matter of the science of law—civil society—that highest phase and outgrowth of humanity, without which men would be but savages;
without which, unless hedged about by divine influences in some garden of Eden, none of the sweet and beautiful manifestations of human life could possibly exist.

**CIVIL SOCIETY FORMED AND SUSTAINED BY LAW; WHICH IS ITS REAL OFFICE AND PURPOSE.**

No doubt man is naturally a social being. Certain individuals, it is true, for the sake of wild freedom, or from some acquired disgust, may prefer to wander away from their fellows, and lead isolated lives; but take them as a race, men love company, and the mutual support and aid, sympathy, affection, and communication by language, which company gives. They possess, however, selfish passions, which are often fierce and ungovernable; and, under the most favorable circumstances in which they can be placed, society could not, for any length of time, be maintained on the voluntary principle, or under the influence of mere moral restraints. There must be government, there must be force, there must be a civil organization of some kind—that is, the organization of a civitas or State, wielding the concentrated power of the community. To this, if not naturally led by their instincts, men are compelled by necessity, as soon as they increase in numbers and possessions. They cannot separate. They must remain together, not only in obedience to their instincts of affection, communication and sympathy, but for their mutual protection against other bodies of men, who would otherwise drive them from their seats, or make them captives to their will. So that civil society is a necessity of our nature and of the conditions by which we are
surrounded. And this is the subject matter of our science, taken in its broadest sense. It is true that the political philosopher, the political economist, the statesman, and the legislator, as well as the lawyer, finds in civil society the subject of their studies and investigations; but what, after all, is the object of their studies, but to ascertain what are the best and most beneficial laws, and how the existing laws may be improved for better promoting human happiness? and what is this but taking a more lofty and extended view of the law itself? looking at it in reference to its objects and uses; and thereby comprehending more perfectly its spirit, its essence and its application? In other words, it shows us that the profound student of law can never feel satisfied with his acquirements in the science until he is able to take philosophic and statesmanlike views of the subject to which it relates—the order of civil society—and of its bearings on human happiness.

We see, then, that in approaching the study of the law we approach a subject of living interest and importance, independently of its attractions as a professional calling. It is not merely dead books, and their contents, that we set about to learn, but a living thing—civil society—in its organization and its rules, under all phases of human experience, human intercourse, human activity, and human interest.

The student of medicine examines with minutest care the subject matter of his science, namely, the human body; he scrutinizes it in all its parts; the functions of each part and its relations to the other parts; the things that effect it beneficially, and those that affect it hurtfully. It is his study from morning
to night to ascertain its functions, its needs, its dangers, its injuries, and the modes and means of repairing them. So the student of law, in order to obtain a profound conception of his science, must, in like manner, study deeply the subject matter of it—civil society—in its construction, its workings, its rules; in the solution of all questions of civil right or duty that arise in every situation in which a man can be placed, in every transaction in which he may be concerned; in the prescription of the proper remedy for the assertion of every right, and for the prevention or redress of every wrong. For the law is everywhere, and extends to everything of human interest.

At first view when we walk about amongst our fellow-men, we may not observe the omnipotent influence and controlling effect of the law. Its power is so subtle and all-pervading that everything seems to take place as the spontaneous result of existing conditions and circumstances. It is like gravitation in the natural world, which, whilst it governs and controls every movement, and produces all the order of the universe, is itself unseen. It must be studied in its effects in order to understand its power. So with law in civil society. It is over, under, in and around, every action, that takes place. Its silent reign is seen in the order preserved, the persons and property protected, the sense of security manifested; in the freedom of intercourse, in the cheerful performance of labor, in the confidence with which business is transacted, and trust is reposed by one man in another; in the peaceful and contented pursuit of trades and occupations, and the bestowal of services; all goes on cheerfully and smoothly, working out and interworking the constant
evolution. Human happiness—because of the ever-existing (though generally unrecognized) consciousness of the presence, the watchfulness, and the all-sufficient protection of the law. In ordinary conduct, conformity to its rules and requirements is pursued almost as a second nature; but in transactions requiring authentic evidence, greater knowledge, perhaps professional skill, is required; and when questions of ambiguity, complexity and difficulty arise, which the parties themselves cannot amicably solve, then, of course, the skill of the lawyer, and perhaps the wisdom and authority of the judge, must be resorted to. But compared with the millions of transactions which take place, these ripples on the surface, do not often occur. The mighty river of things generally moves on with an undisturbed current; but only because it is kept in its banks and regulated in its course by the power of law.

THE ANALYSIS OF CIVIL SOCIETY AND OF THE TRANSACTIONS THAT TAKE PLACE THEREIN, FURNISHES THE MOST PRACTICAL GROUND OF ANALYSIS OF THE LAWS.

Since law is the bond and basis of civil society, and the platform on which, and according to which, all civil transactions are conducted and regulated, it follows, that the only analytical division of the science which is practically useful is, and must be, largely based upon an analysis of civil society, the transactions that take place in it, and the relations of its various members to the whole and to each other.

Law itself, in its essence, cannot be analyzed; it is simply the dictates of justice in the varied circumstances and relations of life. Those circumstances:
and relations may be analyzed and classified, and the
dictates of justice in each case or class of cases may
be ascertained and enunciated. In other words, not
the law, but the subjects to which it is applied, are
arranged into classes and under heads, and, having
found the law applicable to each class or head, we
speak as if we had analyzed the law itself.

Ulpian, the great Roman lawyer, said (as Cicero
had, substantially, said before him), that the law
itself has only three commands, "honeste vivere,
alterum non læedere, suum cuique tribuere;" "live
rightly, do no wrong to another, give to every one
his own"; leaving it to be inferred that all the rest
consists in the application of these fundamental
principles to particular cases.

True, there are certain general rules and maxims
of extensive application, each of which may furnish
the subject of a chapter of law, showing how and in
what cases and circumstances it is to be applied.
Thus, the rule, "sic utere tuo, ut non alienum lædas,"
is constantly applied to hundreds of cases which it
would be tedious to enumerate, but the nature of
which could be indicated by a few examples, such as
this: If you conduct a stream on to your own land
for the purpose of irrigation, you have no right to
allow it to wet and injure the land of your neighbor
lying below yours. The rule is a rule of justice and
may be treated of under a head or chapter of its own.
But a collection of such general rules or maxims would
not present a scientific arrangement of the law. They
would stand isolated from each other, without com-
pleteness or symmetry, or any proper relation to, or
connection with each other. Several authors, as Noy,
Wyngate, Francis and Broom, have made collections of these maxims, and have commented upon them by showing the manner in which, and the kind of cases to which, they are severally applied; and these books are very useful in their way, and worthy of study; but they exhibit no analysis or arrangement of the law, or the science of law. To make such an analysis or arrangement, we must resort, as before stated, to the subject matter of the law, civil society and the various relations and transactions which it exhibits.

There is one general division, however, which runs through all the departments and branches of the law, which is not based on the subject matter, but rather on the nature of things; it is that which considers the law under the three heads of *Jura, Injuriae, Remedia*—Rights, Injuries and Remedies. They might be considered together, for every injury is the violation of some right, and has its appropriate remedy, or choice of remedies. But there are many injuries, or wrongs, which are deprivations of mere negative rights, and the injuries themselves assume a distinctive and prominent importance, making it desirable to subject them to a separate consideration; such as most torts, including trespasses, assaults, libels, slander, etc. And, again, the remedies of the law have such a general similitude, and are governed by such peculiar regulations, that they need to be distinctly and separately considered.

Another division, independent of the subject matter, is that between law and equity—the latter being a particular modification of the law in many cases where its strict general rules would be inadequate to the purposes of justice. The system of rules and pro-
ceedings which are adopted by courts of equity for effecting the desired modification, is treated of separately from the general system of the law.

With these exceptions, and perhaps one or two others that have escaped me, the study and science of the law is divided and subdivided, according to the subjects to which it is applied, and these embrace all the transactions and relations of society.

In the consideration of rights the principle of analysis to which I have referred is at once rendered manifest. First comes the Constitution and order of the Commonwealth itself; then, proceeding to private law, we first take up the personal rights and duties of individuals, their status as free or servile, as husbands and wives, parents and children, guardian and ward, corporations, etc.; then comes up the consideration of property; and this we divide into, first, real or immovable, as land, and, second, personal, including chattels and contracts; and every contract furnishes a distinct head of law, so that we have the law of sale, of loan, of partnership, of bills of exchange, of promissory notes, of suretyship, of insurance, etc. And when we come to the department of injuries, or wrongs, we find it divided in like manner into many different heads, according to the nature of the wrong committed, each of which furnishes a distinct subject of investigation, and is treated of in separate books, as the law of libel, the law of slander, the law of assault and battery and trespass, the law of collisions, etc. In other words, we find (what, from the nature of law, as we have considered it, we should naturally expect to find) that the analysis of the laws is based upon an analysis of civil society, and the transactions which take place in it.
IS THE KNOWLEDGE OF LAW, OR JURISPRUDENCE, A SCIENCE?

A question often mooted is whether law (meaning, of course, the knowledge of law, or jurisprudence) is a science. If it is a science, it must have some necessary and fixed principles, different from the mere arbitrary regulations of a despotic will, which may be one thing or another, according to the legislator’s whim. The knowledge of such an accidental set of rules could certainly never be elevated to the dignity of science. And if law is of that arbitrary and empirical character, jurisprudence, or the knowledge of law, is clearly not a science. But law is not arbitrary and empirical any more than justice itself is so. Ulpian declares jurisprudence to be “divinarum atque humanarum rerum notitia; justi atque injusti scientia.”

JURISPRUDENCE A SCIENCE, BECAUSE LAW IS A NATURAL OUTGROWTH OF HUMANITY, AND NOT A MERE ARBITRARY SET OF RULES.

In view of what has already been said with regard to the nature of law, it seems to me clear that it is one of the natural and inevitable outgrowths of humanity, like language, like the family relation, like clanship; I do not say like society, because society and law are so intimately connected that the hypothesis of one is the hypothesis of the other. Justice and right, like truth, are the same in all countries and amongst all peoples; and as law is the expression by any particular people of its sense of justice, it must have a natural law of origin and growth, similar in all States. Civil society is substantially the same
thing in all countries, and law being the basis and exponent of civil society, must exhibit substantially the same general principles and the same features in all States. Each people may have some peculiar institutions of its own, arising from its peculiar circumstances or genius; as, among the warlike tribes of Europe, in the middle ages, land was distributed and held upon the tenure of military service, and was made to descend to the eldest son as the person most capable of performing the service required. Of course, it will be expected that the peculiar genius of a people will find expression in their laws; but human nature and the great mass of human actions are essentially the same amongst all peoples; and the dictates of justice under like circumstances are ever the same. Therefore, a system of laws growing out of the experience and exigencies of one people may be adopted with but slight alterations to the experience and exigencies of another. The laws of any State in this confederacy might easily be adapted to the wants of the people of any other State. As a matter of fact, the laws of England were adopted by all the old States and by most of the new ones, subject to such slight alterations as their condition and circumstances rendered necessary. And also, as a matter of fact, the laws of the Roman empire have again and again been drawn upon for supplying the imperfect system of English law with those rules of justice and right which had been educeed and sanctioned by ages of Roman civilization. If we once concede that law is the voice of Justice, regulating the affairs of men in civil society, we cannot deny that it is, and must be, based upon uniform and permanent principles, and that it will be
evolved in substantially the same manner, and in similar formulas, in every community. And such is, indeed, the fact. In hardly any community on the face of the earth is it necessary for a person to be learned in its laws in order to live a peaceable and quiet life; all he has to do is to follow the dictates of his conscience, and endeavor to do right, and he will be pretty sure to commit no offence against the laws. If there is one thing that mankind will have it is just laws. Society can no more subsist with unjust laws than it can without any laws. Even arbitrary and despotic sovereigns, however lawless themselves, generally take good care that the people shall have the benefit of good laws for the regulation of their domestic affairs.

Law, then, being the expression of man's sense of justice in the regulation of civil society, is not an arbitrary and empirical set of rules; but is founded upon immutable and eternal principles—the immutable and eternal principles of justice and right. It may differ in mere form and detail in different countries; but it is essentially the same in all wherever civilization prevails.

It seems to me, therefore, that there cannot be a doubt that jurisprudence is a science, and one of the grandest sciences upon which the human mind can be employed. At the same time, it must be acknowledged that the light of that science is but faintly revealed, and only in obscure glimmerings, to those who do not gaze profoundly into its depths, and acquire that legal insight which only deep study and reflection can give.
THE ELASTICITY AND EXPANSIBILITY OF LAW TO MEET THE GROWING WANTS OF SOCIETY. ANOTHER PROOF THAT JURISPRUDENCE IS A SCIENCE.

Another proof that law is not an arbitrary set of rules, but is an emanation of human nature, and subject to immutable laws of development, is the fact that it keeps pace with the growth and advancement of society, and expands and adapts itself to every phase of social progress, whether in a moral or a material direction. The law of to-day is as adequate to the wants of our advanced social and material condition as the law of five centuries ago was to the restricted life and simpler habits of that period. And this principle of adaptation and expansion is inherent in the nature of law and does not depend upon, and does not generally wait for, specific legislation, though often aided and supported by legislation. It arises from the fact that law is the expression of justice as applied to the transactions of society. As those transactions increase and multiply, they constantly demand the application of the rules of justice, or, as it is sometimes termed, the extension of old principles (which are nothing but the principles of justice) to their peculiar conditions, and hence arises a new expression of justice and a new rule of law. For it is a primary and fundamental rule, that law is founded on reason and justice, and that if no exact precedent can be found for deciding a case, it must be decided according to reason and justice and the analogy of previous cases most nearly resembling it. If a new instrument of trade comes into vogue, for example, a promissory note, it will not be long before general
usage and convenience will originate rules and regulations as to its use and as to the rights and obligations arising upon it, which the courts (if wise and liberal in their views) will sanction as just and equitable, and which will soon acquire the force of law. If a new mode of conveyance and transportation is invented, for example, a railroad, with its steam locomotives and cars, it will not be many years before, by the judicial application of the principles of justice, already to some degree exemplified in other modes of travel and transportation, a code of railroad law will be built up, answerable to all the requirements of the new circumstances. We elder members of the profession have seen this very thing take place in our own time, and could now exhibit to the astonished eyes of our great predecessors, Coke and Hale and Holt, if they were permitted to revisit the earth, almost entire systems of law which they never dreamed of as lying in undeveloped germ in the bosom of that common law which they loved so well; undeveloped then, because the exigencies of society had not yet arisen which required their elimination and announcement. And this is the way that the common law of any country arises and is developed. It is the intellectual form, the specific idea and counterpart of the progress of society. To stop this expansion of the law would be equivalent to stopping the growth and advancement of society, and the very pulse of humanity.

When this judicial adaptation and expansion of the law becomes too slow for the progress of events, or would require too violent a change, the legislature interposes and enacts a new law amendatory of or
additional to the old. Statute law and the natural growth of the common law go hand in hand to meet the new exigencies of life and business that are constantly manifesting themselves.

THE GROWTH OF LAW NOT TO BE SUPPRESSED BY CODES: USE OF CODES.

This law of development is universal. No matter what codes may be devised for the purpose of fixing the law, and making it unalterable, in the nature of things it cannot stay fixed. Frederick the Great, of Prussia, was the originator of codes in modern Europe. He supposed that he could settle the law as easily as he could control his legions. He had a contemptuous regard for lawyers and civilians; and he directed his Chancellor to draw up a code, in which the whole law should be expressed in plain and terse propositions, which might be understood by all, and which would need no lawyer to explain them. Such a code he intended to establish as the perpetual and unchangeable law of Prussia. Accordingly, a code was prepared; but its imperfections prevented its adoption in Frederick's day. It was only adopted in the reign of his successor, after providing for the application of the principles of justice to new cases that might arise. This is the famous Landrecht of Prussia, which has produced innumerable commentaries for its explanation and application, and which, with all its pretensions, could not stop the progress of law, any more than it could stop the progress of human affairs.

The Civil Code of France was adopted in 1804,
and at this day there are probably a thousand volumes of adjudged cases and commentaries on the code, which have all to be consulted in order to know what the law really is.

Codes are undoubtedly useful for the purpose of settling disputed and doubtful points, and giving to the citizens the ordinary rules of law in a compact and intelligible form; but they should not be allowed to usurp the prerogatives of justice itself, seated in man's bosom, by giving to the letter of the code the inexorable fixity of a statute, and thus reducing the exposition of the law to a question of philology and verbal criticism, instead of a question of reason and justice. Used as a statement of principles and rules applicable to cases clearly within their scope, and not as restraints upon the judge in reference to other cases which are not provided for, and which require a new application of principles, i.e., the principles of right and justice governing analogous cases, codes may not only be admissible, but may be of great service in systematizing and perfecting the law. They should never be employed for the purpose of giving to the law a cast-iron fixity of form, and thereby repressing all progress and imposing a deleterious and smothering restraint upon society itself.

THE ROMAN LAW NOT A CODE, AS OFTEN SUPPOSED.

It has been supposed by some that the Roman law, as it has been transmitted to us, being in writing, is in the form of a code; but this is a mistake. The Roman, like the English and our own law, consisted of common and statute law. The former was a growth of time, exactly like that of England, with
small beginnings, and gradually expanding to meet the wants of civilization. It was founded on old constitutions, on the Twelve Tables, on Plebiscita, Senatus Consulta, edicts of the Prætors, responses of the juris-consults, Imperial rescripts, and long usage and custom. The only codes ever adopted in Rome were the Twelve Tables, adopted about 450 years before Christ, and the Perpetual Edict of Hadrian, adopted 131 years after Christ, 400 years before the time of Justinian. The Edict, like the French Code, was the occasion of innumerable books of commentaries; and it was in these commentaries, and other treatises on the law composed by the great juris-consults of Rome, that the common law of Rome was to be found. A great body of statute law grew up at the same time, consisting mostly of Imperial Constitutions. The two made up the whole law of Rome. Justinian appointed a commission of able lawyers, with Tribonian, his Minister of Justice, at its head, to make, not a code, but a digest of the writings of the juris-consults, which had much the same authority as our volumes of adjudged cases. This was done by making extracts from the best writers, and arranging them into a system, under different heads or titles, and dividing the whole into fifty books. This is the Digest, or Pandect, equal in bulk, if translated, to about three volumes of Bacon’s Abridgment, which it resembles more in character than any other book of our law. It contains the common law of Rome in the very words of her great jurists, with all their reasonings and illustrations; and if we except the Holy Scriptures, it is the greatest monument of wisdom which antiquity has bequeathed to us.
The next work of Justinian's Commissioners was what is called the Code (Codex); but it is not a code in our sense of the word; it is a mere compilation of the existing statutes of the empire arranged in systematic order, according to the plan of the Digest, and divided into twelve books.

The Institutes is a small book altered from the Institutes of Gaius (which had been in use for four hundred years) and prepared for the use of students. It is divided into four books, and contains a summary of the law exhibited in the Digest and Code.

The Novels, or novellae constitutiones, are later statutes, mostly adopted during the reign of Justinian, for supplying deficiencies found to exist in the Digest and Code, or making amendments in the law. One of these novels, the 118th, is celebrated as being the law from which our statute of distribution of the personal estates of deceased persons was taken.

These four works, the Digest, Code, Institutes and Novels constitute the Corpus Juris Civilis of Rome. They exhibit precisely the same characteristics presented by our own laws as regards the gradual growth and progress of the law, and its adaptation to the changing circumstances and conditions of society.

It is to be hoped that you will some day make the acquaintance of this splendid system of law, not merely as a matter of curiosity, but as the source and fountain from which much of the common law has been drawn, as well as an inexhaustible storehouse of principles, rules and distinctions, which are susceptible of constant application to the circumstances of modern society, and the knowledge of which will be of signal
advantage in the pursuit of your profession. Hitherto these magnificent monuments, except the Institutes, have remained untranslated into English, although the civilians of Oxford and Cambridge are now beginning the herculean task. But to read them in their original terse and forcible Latin will, of itself, be accompanied with the great advantage of perfecting your familiarity with that tongue, which an accomplished lawyer cannot well be without.

But my object in referring to the Roman law is to show that it is not, as some have supposed, an exception to the general rule, that law is an outgrowth of human nature, and is subject to immutable laws of development according to the progress and necessities of civil society. From this general character of law, as before stated, I deduce an additional argument to those already advanced, that the knowledge of law, or jurisprudence, may justly be called a science.

**AS A SCIENCE THE LAW CAN ONLY BE ACQUIRED BY LONG AND PATIENT STUDY.**

But it is necessary to warn you that as a science it is not to be acquired in a day, nor in a year, but only by the "lucubrationes viginti annorum." As in the creation, we may suppose that the light of the stars did not all burst upon man at a single moment, but came upon him from their distant chambers in successive beams one after another, according to their recondite stations in space; so in the study of law, one great principle after another comes to the yearning mind, and overspreads it with light and gladness; and many long years may elapse before one can feel that he has really mastered the law, and fully obtained
that "gladsome light of jurisprudence," spoken of by Lord Coke. There may be one or two men in a generation, of startling genius, who by some natural inspiration or instinct, become great lawyers at a bound and achieve a glorious career without any great study or seeming effort. But they appear like the summer tornado, without observation or premonition. They are a law unto themselves alone, and furnish no guide or example for others. Ordinary men are not thus inspired; it will not be safe for you to hope for any such inspiration. You must calculate on travelling the old dusty road which we have all travelled before you. You must look forward to hard toil and slow and steady acquirement. Unless you can make up your mind to this, you had better undertake some other pursuit. I do not wish to discourage you, but to set before you the truth. The reward of perseverance is sufficiently splendid to give you courage and hope; but you cannot expect to realize it for many years to come; and those must be years of labor and study and patient expectation.

SOME SUGGESTIONS ON THE MODE OF STUDYING LAW.

It would be out of place for me to attempt to prescribe for you a routine of studies; your learned and able professors are much more competent to do this than I am. But I may, without impropriety, make a suggestion or two as to the mode and manner of study which seem to me to be entitled to your consideration.

Of course the matter and substance of your text books are to be fully mastered and impressed upon the memory. This is taken for granted. The best mode
of doing this undoubtedly is the constant use of the pen in making full abstracts, and often reviewing what is thus written, as well for the purpose of aiding the memory as for that of getting a clear view of the subject in all its relations. But what I would particularly impress upon you is the habit of mastering the language and forms of expression of your author. In mathematics a mental conception of signs and diagrams is chiefly important in the acquisition of geometrical truth; the exact language of the propositions and demonstrations is not of vital importance. A mathematical professor will be satisfied with his student if he finds that he comprehends the mathematical ideas, without scrutinizing his style of expression. But it is not so in the law. Here it is not only necessary to know the rule, but to know how to express it in appropriate language. There is no science in which the words and forms of expression are more important than the law. Precision of definition and statement is a *sine qua non*. Possessing it, you possess the law; not possessing it, you do not possess the law, but only the power of vainly beating the air with uncertain words which impress nobody, instruct nobody, convince nobody. In the law all the knowledge in the world without the power of expressing it in apt formulas and correct diction, is useless to the possessor. This language may seem hyperbolical, but it is true; a lawyer without the power of clear and accurate expression is like a seventy-four gun ship grounded on a sand-bar, unwieldy, unmanageable, and the easy victim of any small craft of the enemy that happens to be abroad. I wish this sentence could be deeply lodged in your minds, to wit: It is of the utmost
importance to a student of the laws to acquire besides a knowledge of the law itself, the power of expressing it in correct and appropriate language, such as is found in books of authority. For correct and appropriate diction is as necessary to the lawyer as a knowledge of the law.

Some men have a natural gift of recalling the exact language of the books they read and master. Their word memory is exceptional, sometimes almost miraculous. But there are few who are thus gifted, and to most persons it is a laborious task to store up in their minds the accurate terms, phrases and definitions of the law. The treasure to be secured, however, is worthy of the greatest pains.

Perhaps one of the best aids to the accomplishment of which I speak is to choose some author of pure and accurate diction, and make his works a vade mecum, until you have become so familiar with its contents that, although not absolutely committed to memory, the words and forms of expression will spontaneously suggest themselves whenever you begin to speak or write on the subject. Of course, there can be no doubt what book should be chosen for this purpose. There is nothing to compare with the Commentaries of Sir William Blackstone in completeness of scope, purity and elegance of diction, and appositeness, if not always absolute accuracy, of definition and statement. One of the greatest, if not the greatest of forensic speakers, as well as lawyers, that I ever knew, was the late Mr. George Wood, of New York—in his early days a leader of the Bar of New Jersey. His discourse to the Court was always grave, dignified and commanding; his diction was
chaste and pure, and his style was rich in correct legal phraseology; so that he seemed, when speaking, to be the personification of the law itself. He made no gestures, and but few references to authorities; he did not need authorities; you knew, as he spoke, that what he spoke was the law. All was reduced to such plain and simple principles, and enforced with such logical clearness of argument, in the chastest as well as the richest and most appropriate legal diction, that he compelled the closest attention and carried conviction along with him to the end. I have often hung upon his lips with chained attention, even when opposed to him in the case, and can truly say that I never enjoyed a greater intellectual treat than in listening to his arguments. Now, I happen to have heard from one of Mr. Wood's contemporaries an account of the method which he pursued for acquiring his wonderful command of choice juridical diction.

It was his custom for many years, in the earlier part of his professional life, when not overburthened with business, to read a chapter of Blackstone of a morning and then to take a long walk, and repeat to himself all that he could remember of what he had read, even to the very words and phrases in those parts that were important, such as definitions and the like. If not satisfied with the first trial, he would repeat the process on the succeeding day, and in this manner, chapter after chapter, he went through the commentaries, until they were so perfectly mastered, both in matter and form, that he became almost a walking commentary himself.

His case illustrates the oft repeated injunction, to
"Beware of the man of one book." This injunction is based on a truth of much importance to the professional student. Perfect familiarity, perfect mastery of any one good book is a mine of intellectual wealth not merely, not so much, for the matter which is thus made one's own, as for the vocabulary, the diction, the style and manner of expression which is mastered and indelibly fixed in the mind. How many pulpit orators, and even secular speakers, have become noted for their eloquence by their familiarity with, and ready use of, the language of sacred scripture! And when the one book mastered in this way is such a book as Blackstone's Commentaries, it is easy to comprehend what power and beauty may be acquired and laid by for future use in the display of forensic eloquence.

This method of constant and repeated study of a few good books, gives one also a firm grasp of the principles of the law, as well as of the forms of expression. The particular books are not essential, if they are good books, and by authors of original authority. When a student at law I took up, out of the regular course, Gilbert on Evidence, the original edition, a small book, but full of principles and grounds of the law, after the manner of the great Chief Baron. I studied it carefully over and again, and I believe that I derived as much benefit from that little old book as from any I ever read, except, perhaps, Stephens on Pleading, which I studied in much the same manner. I conclude that it was not so much the particular books, as the manner of study, which produced a beneficial result.

Another branch of reading, not comprised in the
regular course, and which is productive of the greatest benefit, is that of great leading cases in the reports—here and there one—like that of Twyne's Case and Shelley's Case, in Coke, Coggs v. Bernard, in Lord Raymond, Miller v. Race, in Burrow, etc., not forgetting the great Constitutional cases decided in this country, in which Chief Justice Marshall delivered those profound opinions which have immortalized his name. The careful reading of a case—the whole of it—including the arguments of counsel, will enlarge one's knowledge of the law, strengthen the understanding and furnish a key to the methods of juridical discussion in the courts.

THE STUDENT OF LAW MUST BECOME ACQUAINTED WITH
THE STRUCTURE OF CIVIL SOCIETY, AND WITH HUMAN
AFFAIRS AND BUSINESS.

But if I have succeeded in my object, I have impressed upon you the conviction that the law is not to be studied and learned like a dead language, in books only; but that it is a living subject, embodied in and sustaining that civil society of which you are members, and manifested in its organic form, and in the rules and regulations by which it is ordered and made harmonious and conducive to the greatest human happiness.

All this may seem to be very common knowledge—almost home-spun truth. But home-spun truths often need to be impressed upon the attention. Their importance is frequently overlooked. One deduction to be drawn from the truth which I have endeavored to present is, the importance, to a student of law, of
having a knowledge of affairs, a knowledge of civil society, its constitution and doings; a knowledge of what is taking place around him. He should know, as far as possible, the reason of everything. In other words, he should be wide awake, and, with open eyes, should watch this great drama of human life which is being acted in his presence; and not go dreaming around, with his head down, dwelling only and always upon the metaphysical quiddities of the law. These quiddities may be very good in their place; but they should not be allowed to absorb the whole attention of the student, and entirely divert it from the fresh, green views presented by that living law which he is to apply to actual life around him, and which he can only understand in its true spirit by a wide and varied knowledge of that life as the material and ground work of civil society. Of what use will it be to him to know all about the British Constitution, for example, if he does not understand our own Constitution, Federal and State? Of what use to know the organization of the government and the courts of England, if he does not know that of our own government and courts? Probably you all know the number, the names and boundaries of the counties in your own State; but do you know what are the officers of each county, and what are their powers? Can you tell by what authority roads are laid out and bridges are built? Can you tell by what authority a telegraph pole is erected in front of your door? Are you acquainted with the powers of the Common Council of the city in which you live? A man of ordinary good intelligence finds out many of these things without suspecting that he is learning something of the law. He picks
them up from the newspapers, from conversation, from everything that affords him information. He is wide awake to what is going on around him. His eyes are open. He takes in knowledge at every pore. So the law student should be. To put it in a homely manner, he should have "an inquiring mind." Ulpian, as before stated, says that jurisprudence is the knowledge of things human and divine, as well as the science of what is just and what is unjust. This is a broad definition, but it is suggestive. The lawyer ought, indeed, to know almost everything, for there is nothing in human affairs that he may not, some time or other, have to do with. At least, he ought to be acquainted with all those things which go to make up the form and body, the life and order of the society in which he lives. He ought to know its civil institutions and their several functions. He ought to know all those things about his country and his State which would enable him to speak intelligently of their institutions, their policy, and their public proceedings. He ought to know how ordinary matters of business are transacted; the forms and meaning of bonds, promissory notes, bills of exchange, bank checks, drafts, leases, releases, ordinary deeds, policies of insurance, agreements. He ought to interest himself to learn the actual methods of doing business, not only in private counting houses, in the market and in the exchange, but also in the halls of city, State and Federal legislation. A great mass of this sort of general knowledge and information can be acquired by one anxious to learn, without interfering with the general course of his studies; and it will throw great light on his studies. It will often enable him to understand and apply them when other-
wise their use and application would not be recognized. The sort of knowledge to which I refer is largely to be found in the statute-book, and that, however much despised, is a book which ought always to be within the student's reach. It should be his *vade mecum*, not to the exclusion of scientific text books, but as an adjunct and interpreter of them. The statute-book exhibits the actual institutions and regulations prevailing in the State at the present time.

One of the advantages of studying law in the office of a practitioner is the acquisition, to some extent, of the kind of knowledge to which I have referred. The student is there brought in contact with the business world, and the practical application of the law to actual cases. He copies deeds, agreements, documents of every kind, as well as legal papers, and is often charged with business transactions that increase his general knowledge.

I do not underrate the study of law by scientific methods, as it is pursued in this and other schools. This method of study is of the greatest value. It makes scientific lawyers. It gives general and harmonious views of the law. It awakens an interest for its profound depths. But whilst the science is studied here, its application to the status, the exigen-cies and the wants of society may be learned, and best learned, by a study of the living subject itself—civil society—and the transactions that prevail in it; everything that exists and every thing that passes about one in the social state.

I have urged this view upon your attention because I have often seen young men settle down into mere book worms of the law, losing their interest in passing
events and what is going on around them, and thereby becoming unadapted to the active professional duties of the lawyer, which exhibit him in his most useful character, and bring him the richest rewards.

THE LAWYER'S STUDIES FIT HIM TO TAKE A LEADING PART IN THE STATE.

These considerations lead us to another interesting view of our profession. The subject of the lawyer's studies necessarily makes him intimately acquainted with all the duties of the magistrate, as well as all the duties of the citizen; with the rules of conduct that actually prevail, and with the wants and necessities of the body politic requiring any change or modification of these rules. Of course with this species of study and training, no class of the community is so well qualified as the lawyer to take a leading part in the affairs of the community, in the making and in the administration of its laws, and in the execution of the powers of government. It is the legitimate and proper result of his studies and training. This is only true, however, when the lawyer takes a broad and liberal view of his profession, and regards it, as it should be regarded, as ancillary to the promotion of justice and right amongst men, and the general good of the State. The merely technical pettifogger, the leguleius cautus, is more unfitted than other men to counsel and govern the State, because the narrow and incorrect views which he takes of his profession rather lead him astray, to the promotion of mischievous devices and expedients, than to wise and prudent measures. He knows both too much and too little;
too much to be modest, prudent and conservative, too little to take wise and enlightened views. Hence it often happens, as the result of such unfortunate examples, that a popular jealousy and distrust of lawyers prevails in keeping them out of places of public trust.

How important, therefore, it is to themselves as a class, as well as to society at large, that the students of justice and right, should be imbued with the principles of justice and right, so that the profession may take that high and noble position in the community which, when it is faithful to itself, is its just prerogative.

CONCLUSION.

The few suggestions that I have made with regard to the range of inquiry desirable in the study of law must not be taken as complete. In a single lecture I can only set forth a few things to be acquired or done that strike me as important, and that may not be obvious to the student. There are, of course, many others which I cannot dwell upon, such as general history, the history of the law, legal biography, political philosophy, political economy, and many more, which the student must in time acquire, in order to become an accomplished lawyer. To sum up all in one word, in order to be an accomplished lawyer, it is necessary, besides having a knowledge of the law, to be an accomplished man, graced with at least a general knowledge of history, of science, of philosophy, of the useful arts, of the modes of business, and of everything that concerns the well-being and intercourse of men in society. He ought to be a man
of large understanding; he must be a man of large acquirements and rich in general information; for, he is a priest of the law, which is the bond and support of civil society, and which extends to and regulates every relation of one man to another in that society, and every transaction that takes place in it.

Trained in such a profession, and having these acquirements, and two things more (which can never be omitted from the category of qualifications), incorruptible integrity and a high sense of honor, the true lawyer cannot but be the highest style of a man, fit for any position of trust, public or private; one to whom the community can look up as to a leader and guide; fit to judge and to rule in the highest places of magistracy and government; an honor to himself, an honor to his kind.