

A.W.T. PAPERS

Misc. Papers
Articles 10

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

The following definitions are from an unpublished work entitled, "The Science of Law."

"THE SCIENCE OF LAW."

A.W. Tourgee.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013

fixed and
• Law is the science of defined relations.

• Human law is the science of human relations as regulated by constitution.

Municipal law, is that body of rules by which the relations of persons are defined by political convention.

The law of any particular state or country, is that body of rules, *approved sanctioned* ~~defined~~ by political convention, by which the relations of those subject to its jurisdiction are defined.

These definitions have the advantage of being exact. They include all that is ever implied by the terms defined, and exclude all that is not included by them. The terms used by these definitions do not themselves need to be accepted in a strained or special signification in order ~~to perform~~ to perform the function imposed on them.

Law is

1--A science, that is a body of rules or principles.

2--It is the particular science of relations, --the rela-

tions of men, of things, of qualities, of numbers, of God, --whatever it may be. Law is always the science of some relation.

3--As relations cannot constitute the subject-matter of a science until they are ascertained, law is the science of defined relations.

The ordinary definitions of law and its sub-divisions are inexact, unless we first give a strained significance to the defining terms.

Law is not -

1--Necessarily "a rule of action". A law may be a rule of action, or it may be a principle of existence. But every law must be a principle of relation, of some sort, and "law" in the aggregate is a body of principles pertaining to relations.

2--Law is not necessarily "prescribed by a superior". A and B are, alone in the world- on a barren island say. They form an agreement as to what each shall do, --that is they define their ^{mutual} relations.

Ex instante that agreement becomes the law of that island. It was not prescribed by a superior or sovereign, --since A and B are equal in right and power. It was defined by political convention.

Again, a custom of trade, of life, of society, grows up among a people. It is not "prescribed" by anybody. The Judge, who in this case, is the mouthpiece of political convention, defines it, and thereupon, ~~fore~~ it becomes a part of the municipal law of the particular state for whom the court speaks.

So too, ^{when} a new fact in science or a new application of force is discovered. It affects human relations intimately. No sovereign power "prescribes" a "rule of action" in the premises. On the contrary the Judge considers how it may affect human relations and therefrom deduces ~~the~~ the principle controlling the same, which, being thus "defined", becomes a part of the law. A striking instance of this was the rule or principle announced by the Supreme Court of the United States in defining the relations of a common carrier of passengers by steam, -- "a common carrier of passengers by the dangerous instrumen-

tality of steam must be held to the highest degree of diligence."

There was no such law before. Yet the Court did not make or prescribe the law: it only defined it, -- brought it out of the realm of unascertained relations into the realm of fixed, defined relations, which is law.

Equity, in a technical sense, is that portion of the body of principles regulating human relations defined by political convention in any particular state, which is cognizable only in a court of equity or one having equitable jurisdiction.

The term "equity" as used in English law is a curious piece of absurdity, -- the perpetuation, enlargement and sanctification of an almost inconceivable blunder. It is the fruit of restricted jurisdiction, the consequence of a silly attempt to divide the realm of human justice by giving to the so-called "law-courts" the right to administer justice in all cases which could be brought under certain prescribed forms, and then establishing another jurisdiction as a

catch all for the residue. This residuary legatee of the stupidity of the fathers, came, in time, to claim and hold a larger portion of the devised field of judicature, than the special legatee--the "law-courts." So that the entire tendency of modern legal reform has been to reduce or destroy this residuum of authority and authorize the courts to administer the law--whatever its character or source, ~~for~~ the benefit of those properly entitled to receive its advantages.

Any principle of human relations, to God, to man or to inanimate objects, which is sanctioned or regulated by political convention, is a law, of the realm wherein such sanction obtains.