Erskine May, Vol. III, Chapter XVIII, pp. 385-393

Law Reform

Improved Spirit of Legislation

[385] WE have now surveyed the progress of freedom and popular influence, in all the institutions of England. Everywhere we have seen the rights and liberties of the people assured; and closer relations established between the state and the community. The liberal spirit of legislation has kept pace with this remarkable development of constitutional liberty. While the basis of power was narrow, rulers had little sympathy with the people. The spirit of their rule was hard and selfish: favouring the few at the expense of the many: protecting privileges and abuses by which the governing classes profited: but careless of the welfare of the governed. Responsibility and popular control gradually forced upon them larger views of the public interests; and more consideration for the claims of all classes to participate in the benefits of enlightened government. With freedom there grew a stronger sense of duty in rulers—more [386] enlightenment and humanity among the people: wiser laws, and a milder policy. The asperities of power were tempered; and the state was governed in the spirit which society approved.

Emoluments of Office

This improved spirit has displayed itself throughout the wide range of modern legislation: but, in passing beyond the strict limits of constitutional history, we must content ourselves with a rapid glance at some of its more remarkable illustrations. No example more aptly illustrates the altered relations of rulers to the people, than the revision of official emoluments. Ministers once grew rich upon the gains of office; and provided for their relatives by monstrous sinecures, and appointments egregiously overpaid. To grasp a great estate out of the public service, was too often their first thought. Families were founded, titles endowed, and broken fortunes repaired, at the public expense. It was asked what an office was worth: not what services were to be rendered. This selfish and dishonest system perished under exposure: but it proved a tedious and unthankful labour to bring its abuses to the light of day. Inquiries were commenced early in the present century; but were followed by few practical results. At that time, 'all abuses were freeholds,'(1) which the government did not venture to invade. Mr. Joseph Hume, foremost among the guardians of public interests, afterwards applied his patient industry and fearless public spirit to this work; and, [387] unruffled by discouragements and ridicule, he lived to see its accomplishment. Soon after the Reform Act, ministers of state accepted salaries scarcely equal to the charges of office: sinecures and reversions were abolished: offices discontinued or consolidated; and the scale of official emoluments revised, and apportioned to the duties performed, throughout the public service. The change attested a higher sense of duty in ministers, and increased responsibility to public opinion.

Administration of Justice

The abuses in the administration of justice, which had been suffered to grow and flourish without a check, illustrate the inert and stagnant spirit of the eighteenth century. The noble principles of English law had been expounded by eminent judges, and applied to the varying circumstances of society, until they had expanded into a comprehensive system of jurisprudence, entitled to respect and veneration. But however admirable its principles, its practice had departed from the simplicity of former times, and, by manifold defects, went far

to defeat the ends of justice. Lawyers, ever following precedents, were blind to principles. Legal fictions, technicalities, obsolete forms, intricate rules of procedure, accumulated. Fine intellects were wasted on the narrow subtilties of special pleading; and clients won or lost causes,—like a [388] game of chess,—not by the force of truth and right, hut by the skill and cunning of the players. Heartbreaking delays and ruinous costs were the lot of suitors. Justice was dilatory, expensive, uncertain, and remote. To the rich it was a costly lottery: to the poor a denial of right, or certain ruin. The class who profited most by its dark mysteries, were the lawyers themselves. A suitor might be reduced to beggary or madness: but his advisers revelled in the chicane and artifices of a life-long suit, and grew rich. Out of a multiplicity of forms and processes arose numberless fees and well-paid offices. Many subordinate functionaries, holding sinecure or superfluous appointments, enjoyed greater emoluments than the judges of the court; and upon the luckless suitors, again, fell the charge of these egregious establishments. If complaints were made, they were repelled as the promptings of ignorance: if amendments of the law were proposed, they were resisted as innovations. To question the perfection of English jurisprudence was to doubt the wisdom of our ancestors,—a political heresy, which could expect no toleration.

The delays of the Court of Chancery, in the time of Lord Eldon, were a frequent cause of complaint; and formed the subject of parliamentary inquiry in both Houses. In 1813, a vice-chancellor was appointed, to expedite the business of the court: but its complex and dilatory procedure remained without improvement. Complaints continued to be made, by Mr. Michael [389] Angelo Taylor, Mr. Williams, and others, until, in 1825, a commission was appointed to inquire into the administration of justice in that court. In 1828, Mr. Brougham exposed the complicated abuses of the courts of common law, and the law of real property. His masterly speech, of six hours, displayed the combined powers of the philosophic jurist, the practised lawyer, the statesman, and the orator. Suggesting most of the law reforms which have since been carried into effect, and some not yet accomplished, it stands a monument to his fame as a lawgiver.(2) Commissions of inquiry were immediately appointed: and, when their investigations were completed, a new era of reform and renovation was commenced. Thenceforth, the amendment of the law was pursued in a spirit of earnestness and vigour. Judges and law officers no longer discountenanccd it: but were themselves foremost in the cause of law reform. Lord Brougham, on the woolsack, was able to give effect to some of his own cherished schemes; and never afterwards faltered in the work. Succeeding chancellors followed in his footsteps. and Lord Denman, Lord Campbell, Sir Richard Bethell, and other eminent jurists, laboured successfully in the same honourable field of legislation. The work was slow and toilsome,—beset with many difficulties,—and generally unthankful: but [390] it was accomplished. The procedure of the court of Chancery was simplified: its judicial establishment enlarged and remodelled: its offices regulated. Its delays were in great measure averted; and its costs diminished. The courts of common law underwent a like revision. The effete Welsh judicature was abolished: the bench of English judges enlarged from twelve to fifteen: the equitable jurisdiction of the court of Exchequer superseded: the procedure of the courts freed from fiction and artifice: the false system of pleading swept away: the law of evidence amended; and justice restored to its natural simplicity. The law of bankruptcy and insolvency was reviewed; and a court established for its administration, with wide general and local jurisdiction. Justice was brought home to every man's door, by the constitution of county courts. Divorce, which the law had reserved as the peculiar privilege of the rich, was made the equal right of all. The ecclesiastical courts were reconstituted; and their procedure and jurisdiction reviewed. A new court of appeal,—of eminent learning and authority,—was found in a judicial committee of the Privy Council,—which, as the court of last resort from India and the colonies, from the ecclesiastical courts and the court of Admiralty, is second only to the House of Lords in the amplitude of its jurisdiction. The antiquated law of real property was recast; and provision made for simplifying titles, and facilitating the transfer of land. Much was done, and more attempted, for the consolidation of the statutes. Nor have these

remarkable amendments of the law been confined to England. Scotland and [391] Ireland, and especially the latter, have shared largely in the work of reformation. Of all the law reforms of this period, indeed, none was so signal as the constitution of the Irish encumbered estates court.

Such were the more conspicuous improvements of the law, during the thirty years preceding 1860. Before they had yet been commenced, Lord Brougham eloquently foreshadowed the boast of that sovereign who should have it to say 'that he found law dear, and left it cheap: found it a sealed book,—left it a living letter: found it the patrimony of the rich,—left it the inheritance of the poor. found it the two-edged sword of craft and oppression,—left it the staff of honesty, and the shield of innocence.' The whole scheme of renovation is not yet complete: but already may this proud boast be justly uttered by Queen Victoria.

The Judges

In reviewing the administration of justice, the spirit and temper of the judges themselves, at different periods, must not be overlooked. One of the first acts of George III. was to complete the independence of the judges by providing that their commissions should not expire with the demise of the crown. It was a necessary measure, in consummation of the policy of the Revolution; and,—if unworthy of the courtly adulations with which it was then received,—it was, at least, entitled to approval and respect.(3) [392] The tenure of the judges was now assured; and their salaries were charged permanently on the civil list.

The law had secured their independence of the crown: but the spirit of the times leagued them closely with its authority. No reign was more graced by the learning and accomplishments of its judges. They were superior to every corrupt influence: but all their sympathies and predilections were with power. The enemies of Lord Mansfield asserted 'that he was better calculated to fill the office of praetor under Justinian, than to preside as chief criminal judge of this kingdom, in the reign of George III.' Neither Lord Mansfield himself, nor any other judge, deserved so grave a censure: but, with the illustrious exception of Lord Camden, the most eminent magistrates of that reign were unfriendly to liberty. Who so allied to the court, —so stanch to arbitrary principles of government,—so hostile to popular rights and remedial laws, as Lord Mansfield, Lord Thurlow, Lord Loughborough, Lord Eldon, and Lord Ellenborough? The first and last of these so little regarded their independence, in the exercise of the chief criminal judicature of the realm, that they entered the cabinet, as ministers of the crown; and identified themselves with the executive government of the day. What further illustration is needed of the close relations of the judgment-seat with power? But no sooner had principles of freedom and responsible government gained ascendency, than judges were animated by [393] independence and liberality. Henceforward they administered justice in the spirit of Lord Camden; and promoted the amendment of the laws, with the enlightenment of statesmen.

Footnotes.

1. This happy phrase is assigned to Richard Bentley, son of Dr. Bentley.—Walpole's Mem., ii. 391.
2. Acts and Bills of Lord Brougham, by Sir Eardley Wilmot, Intr. xv., et seq.; lxxx.; Speech of Lord Brougham on Law Reform, May 12th, 1848, Hans. Deb., 3rd Ser., xcviii, 877.
3. King's Message, March 3rd, 1761; 1 Geo. III. c. 23; Walpole Mem., i. 41; Cooke's Hist. of Party, ii.400. In 1767 the same law was extended to Ireland, on the recommendation of Lord Townshend, the lord-lieutenant.—Walpole Mem., iii. l09.

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