

REFLECTIONS ON THE LAW

As I near fifty years in the practice of law, I chose to offer some reflections of others about law and lawyers. (Let an “old lawyer” philosophize.)

The following are illustrations of my analysis of the reasons and basis for, the strengths and weaknesses of, and the need to support and follow laws.

Sir Edward Coke (1552-1634), Lord Chief Justice of England, stated that:

“The knowledge of the law is like a deep well, out of which each man draweth according to the strength of his understanding.”

Oliver Wendell Holmes (1841-1935), Associate Justice of United States Supreme Court in *Common Law I* (1881), concluded that:

“The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.”

Sir William Blackstone (1723-1780), English Lawyer and Commentator, defined a law as:

“A rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong.”

Ralph Waldo Emerson (1803-1882), essayist and poet, opined that:

“Every law which the state enacts indicates a fact in human nature.”

In analyzing the effect of laws Samuel Smiles (1812-1904), Scottish writer, concluded that:

“No laws, however stringent, can make the idle industrious, the thriftless provident, or the drunken sober.”

And Samuel Johnson (1709-1784), English Conversationalist, commented that:

“The law is the last result of human wisdom acting upon human experience for the benefit of the public.”

Charles Abbott (1762-1832), an English Judge, said that:

“No attorney is bound to know all the law; God forbid that it should be imagined that an attorney, or a counsel, or even a judge is bound to know all the law.”

In speaking about the extent of an attorney’s knowledge Sir Edward Coke also stated in his judicial capacity:

“If it be common law, I should be ashamed if I could not give you a ready answer; but if it be statute law, I should be equally ashamed if I answered you immediately.”

Advancing to the United States Constitution, George Washington (1732-1799), the first President of the United States, commending on disagreement with and potential changes of the United States Constitution, said:

“If in the opinion of the people, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which Constitution designates. But let there be no change by usurpation; for through this, in once instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use itself can at any time yield.”

In commenting on the United States Supreme Court in considering making a decision contrary to existing decisions, even if wrong, Abraham Lincoln (1809-1865), lawyer and President of the United States, said in his First Inaugural Address on March 4, 1851:

“I do not forget the position assumed by some that constitutional questions are to be decided by the Supreme Court, nor do I deny that such decisions must be binding in any case upon the parties to a suit as to the object of that suit, while they are also entitled to a very high respect and consideration in all parallel cases by all other departments of the Government and while it is obviously possible that such decision may be erroneous in any given case, still with evil effect following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases can better be borne than could the evils of a different practice.”

And Abraham Lincoln in an earlier speech at Springfield, Illinois, on January 27, 1857, made the following observations regarding spreading the word of and application of laws:

“Let reference for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, seminaries, and in colleges; let it be written in primers, spelling books, and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation, and let the old and young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions sacrifice unceasingly upon its altars.”

Thanks for giving me a venue to express my feelings on the law through the words of others. I hope that you, as I do, understand that most lawyers identify with and uphold the principles enunciated above. I also hope that I have aided your understanding of the guiding principles for lawyers as you evaluate the advice you receive from counsel.

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