

of Mansfield; Canon Fremantle and Archdeacon Palmer; Mr. Peel, the Speaker of the House of Commons; D. Humphry Ward; Canon Barnett, of Toynbee Hall; Mr. Montefiore (the latest Hibbert Lecturer); Professors Caird and Lewis Campbell, from Scotland; Professor Burdon Sanderson (the President of the British Association), Lord Tennyson, and many others equally well known. The funeral was impressively simple, and in every way worthy of the Master.

The life thus ended has been filled with single-hearted devotion to Balliol and to Oxford.

Born in London in 1817, Benjamin Jowett came up to Balliol at the age of eighteen from St. Paul's School, and never left the College afterwards. In 1838 he became Fellow, and tutor in 1842. As tutor he made himself a power almost immediately. The College hitherto had not been undistinguished, but speedily he brought it into the first rank, and the intellectual supremacy of Balliol from then till now has been readily recognized in the academic world. While confining his main energies to Balliol, Jowett became a power outside, both in education and in theology. As an educational reformer his aid was sought in inaugurating a new era with regard to the training of civil servants for the Indian Government, while the great University Commission which reformed our ancient seats of learning, and overthrew aristocratic prestige and ecclesiastical privileges therein, was very greatly influenced and molded by Mr. Jowett. Twenty years before the abolition of religious tests at Oxford, Jowett had boldly advocated a scheme for the admission of Nonconformists at Oxford. As to theology, he was in very early days marked as a dangerous heretic, and so, when, in 1855, Lord Palmerston recommended him for the vacant Regius Professorship of Greek, there was considerable murmuring. But when, later in the same year, his "Commentary on the Epistles" appeared, the storm burst, and a bitter opposition ensued on his application to the University for a moderate salary to be attached to his chair. The original endowment of these Regius Professorships both here and at Cambridge was £40 per annum. The office was generally a sinecure, and the holder generally had other appointments. Jowett was determined to work and to teach, and he naturally thought £40 was not adequate. But then the clerics said he was not orthodox, and so there was a big fight! In the end Jowett won, and before long (in 1860) appeared "Essays and Reviews," which raised a still greater storm. His essay on "The Interpretation of Scripture" would cause no great alarm to-day, but Dr. Pusey forthwith brought a charge of heresy against Jowett in the Vice-Chancellor's Court, which was dismissed on technical grounds.

After long years of ceaseless and successful toil as tutor, Jowett became Master in 1870, and then ensued a period of comparative quiet but of constant activity. The great series of translations—Plato, Thucydides; Aristotle—were then completed, and have long since taken a high place in English literature. As Master, Jowett inaugurated quite a new era. Hitherto college-masterships had been held chiefly by old men, and were usually sinecures. Jowett retained tutorial supervision to some extent of every man in the College. He kept an eye on every department, and made his presence felt at every point. In endless ways he was constantly helping individual students. He was at once the idol and the terror of the College. His great instrument was sarcasm and irony, and yet in the end all his pupils came to see how truly kind-hearted and sympathetic he really was. In the Socratic method of dealing with pupils he had no equal. Endless stories are told of the Master's sayings when men went to read their essays to him. He always made a point of inviting his pupils to his house and table, and even there he did not spare them. A friend of mine, a scholar of the College, breakfasted with him during his first term, and in the exuberance of boyish spirits kept up a rattling conversation, dealing boldly with all manner of subjects both in heaven and earth. "Really, Mr. W.," at last squeaked the Master, "you make a great many unnecessary remarks!" One of our most famous editors of to-day relates how, while reading an essay to the Master,

he made use of the word "evolution," and how he was bewildered when suddenly pulled up in full career with—"Evolution! what's that?"

Mr. Jowett made a constant practice of preaching in Balliol Chapel twice a term, and his sermons were unique. He dealt with many commonplace themes with what Mrs. Humphry Ward terms "subtle simplicity." He was specially fond of biographical sermons, and his last public utterance, only three months ago, in Westminster Abbey, was a skillful handling of the lives of Spinoza and John Bunyan. At the opening of Mansfield College, four years ago, he delighted all our guests by his felicitous speech in proposing prosperity to Mansfield. It was, he said, a "festival of reconciliation." "The points of difference were few, those of agreement many. Are our ideas of truth and right and goodness materially different? The great names of English literature—at least a great part of them—although they may be strictly claimed by Nonconformists, do not really belong to any party or caste. The names of Milton, of Bunyan, of Baxter, of Watts and Wesley, are the property of the whole English nation." He greatly approved of our new college buildings, and for weeks after the opening of Mansfield he regularly brought his Sunday guests to see our College Chapel. Last year he received the whole Mansfield Summer School of Theology one memorable July afternoon, and in his quiet, genial way told his guests something of the history of Balliol and its great men. Undoubtedly the most remarkable personality of these latter days in Oxford, his presence will be greatly missed. He has laid his hand upon the age with obvious effect, but in Oxford, and especially in Balliol, his memory can never be forgotten.

Oxford, England, October 7, 1893.



Lawlessness and the Reason of the Law

By Austin Abbott

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The greatest present danger to our country is now seen in the spirit of lawlessness. All intelligent and fair-minded people seem to be agreed that Law is simply the necessary and wholesome condition of well-regulated life. Law in a free nation is what self-control is in the individual. But alongside of this essential condition of liberty is seen growing up in almost all parts of society open and habitual contempt for the laws, manifesting itself in social laxity, in commercial frauds, in official corruption systematized here and there, and in the infusion of a certain mercenaryness into political functions. In another phase the same diminution of respect for law is shown in the general suspicion of legislatures and their legislation. Still more striking is the recent establishment of Anarchism as a scheme of policy, with its professed teachers, promulgating direct hostility to law as the right and duty of a large class of habitual criminals.

Without doubt these tendencies are partly due to a characteristic and exaggerated but not wholly immoral or irrational disrespect for the authority of mere tradition, or arbitrary command unsupported by reason.

It is time that the reason of the law, that is to say, more specifically, the reasons for the laws, should be raised into recognition and control. As the respect accorded by the masses of people to precedent and enactment declines, the reason of each rule of law should receive systematic examination and discussion, that the people may see that the principles of the law are not arbitrary, nor imposed on us unwillingly by tradition, but are the necessary conditions of a broad public welfare secured to all without distinction.

That this need may be more clear to those of your readers whose attention has not been specifically given to the subject, let me repeat some suggestions which I have recently found to awaken much interest when laid before professional friends.

Many of the legal profession—including perhaps now,

as doubtless heretofore, a great majority of instructors in law and of writers on jurisprudence, and perhaps also of judges—are accustomed to regard law as a fixed system of unchangeable principles, together with the deductions which logic dictates in the effort to apply those principles to new cases or varying circumstances. This conception is evidently founded on the Common Law. Its adherents readily concede that the science of law includes such of the doctrines of equity as by long recognition have become hardened into rules and to some extent imitated and adopted by the courts exercising jurisdiction at law; but they seem to treat any movement of equity beyond those rules as an anomalous interference with law, a disturbing force from without, which must indeed be recognized and allowed for, but is nevertheless foreign to the fundamental conception of law as a harmonious system of predetermined, uniform rules.

We shall doubtless all agree on the soundness, and, indeed, the necessity, of this conception of law as a part of any just theory of modern jurisprudence; and a hundred years ago it was fairly adequate. But there is the necessity at the present day of recognizing and co-ordinating with it another and very different conception. Let us for a moment turn away from our law-books, which are all more or less modeled or at least influenced by the old conception of law, and watch the courts of this country to see what they are actually doing. What is the "law" which we are now administering? What the method of reasoning that even common-law courts are really pursuing? Is it simply a system of logic, having inflexible commands of a superior for its premises, and the inflexible lines of a syllogism as its deductions? An examination of the current reports of the decisions of the courts of last resort will show that, while many cases are decided in that method, a considerable proportion of even common-law cases are decided upon principles of utility. Our law courts not only use something of the same freedom in looking for premises in the doctrines of good faith which courts of equity have always used, but courts of law and courts of equity alike are now using something of the same freedom in looking for premises in the present interests of society. Cases are now frequent in which our courts of last resort are guided to their decision by considering which of several rules urged upon them will work best.

This is not the jurisprudence of a system of commands; it is the jurisprudence of common welfare wrought out by free reasoning upon the actual facts of life. American jurisprudence as actually administered to-day is the jurisprudence of the Commonwealth.

In some few matters the law still finds its premises in reverence for the divine, as did ecclesiastical and canon law.

In a large class of matters it finds its premises in the constitutions and statutes, which are in the nature of commands, and upon all things within their scope we reason as strictly from them as did the common law, which proceeded from premises furnished by monarchical legislation, and by the equally inflexible usages of the realm. But the great mass of the business of our courts to-day turns upon questions not wholly foreclosed by the history of the past. The question, What is the traditional law that has come down to us? is still asked; but another question is always open—viz., Does our situation to-day suggest the wisdom of a deviation from that traditional law?

The keynote of this good change was struck when our courts determined that, notwithstanding the unqualified adoption of the English common law by our Constitution, they would apply and enforce only so much as is suited to our condition.

From that time forth it has always been, for a court of last resort, a legitimate inquiry, what rule on the subject under consideration is suitable to the condition of our people; and a legitimate course to disregard common-law rules whenever unsuitable, and to consult the common welfare of the people, as sound premises for the decision of any question not foreclosed by statutory authority.

Those who have not examined the subject may be surprised to see how far this principle is now tacitly embodied

in our law. I would characterize the existing American jurisprudence as Suitable Jurisprudence. Historical jurisprudence shows us how we reached our present level; analytic jurisprudence clears our conceptions of the various possible rules; comparative jurisprudence gives us breadth of views in comparing them. But existing American jurisprudence looks also at the actual situation of affairs. All the phases of jurisprudence treated in the books are tributary to the wisdom and caution necessary in working out the development now steadily going on, whether we recognize it or not: the construction of a jurisprudence of utility, a jurisprudence which, recognizing the unspeakable value of all the traditions of the past, and respecting the limits of statutory command, seeks also for the premises to be found in the welfare of the community, and reasons from them, too, in ascertaining what principles are suitable to be received as governing the administration of law among our people. It would be easy to show that this change in the conception of law is necessitated by our condition, and that its future advance is inevitable.

In view of these facts, I desire to see founded in the University of the City of New York, as a part of our Law Faculty, a professorship of the Ethics of Jurisprudence, or the Economics or Sociology of Jurisprudence, or both: the Jurisprudence of Utility in the broadest sense; Jurisprudence of Public Welfare. For this purpose from \$50,000 to \$100,000 is needed.

While it is familiar to all that the courts are professedly bound by traditional precedent, all the profession see that precedents are now so numerous and conflicting that the authority of precedents is breaking down by the weight of the mass. They have so multiplied that courts and lawyers find it impracticable to examine them exhaustively. The conflict which arises as new cases are decided without a complete survey of preceding cases on the same point adds to the difficulty. The traditions of the law are thus brought into dispute in the profession itself. The time is ripe for a systematic effort to bring disputed questions and conflicts of legal authorities directly to the test afforded by the bearing of the law on public welfare, and to do this as a part of legal education.

In suggesting the need of a Chair of the Economics and Ethics of Jurisprudence I do not mean political economy, professional ethics, nor theological ethics applied to law, nor abstract ethics in any sense. I mean a chair whose incumbent shall first dissect out and hold up to view the extent to which our highest courts to-day, in causes presenting novel questions and questions involving a conflict of authority, or even old questions under new circumstances, are deciding against authority, on reasons which are ethical or sociologic. He should then show to what extent the efforts of our ablest counsel are already characterized by appreciation and discussion of such considerations. He should then develop the principles which should form, guide, and limit such discussions. In other words, he should open the connection between the welfare of the community and the actual judicial usages of to-day which permit a reconsideration of traditional law in view of the needs of the present time. I do not propose departures from any settled doctrine or application of the law, nor an innovation of new doctrines. But, as I have elsewhere said, when a question has to be decided on which there is no adequate authority, or on which a conflict of authority requires the Court to decide which of two rules is to be followed, the bar are invited to a discussion of the question, in view of its public merits. Then is the opportunity for men capable of handling such open questions in the light of the relative fitness of each rule to the conditions, usages, and needs of our communities, and by putting the test of intrinsic justice.

We have left far behind us the common-law idea that for the courts of last resort non-statutory law is in the nature of a command. We have left far behind us the old conception of equity as merely the chancellor's idea of what is fair in the particular case. Our courts are steadily at work in a course which is developing the idea that if, among conflicting rules urged upon them with sanction from the past, they can ascertain which is the most useful

to the people in the judicial sense of utility, that rule should be applied whether precedents exist or not, or even though some precedents forbid.

When this principle has been included within the outline or framework of American legal education, and we have added to the process of reasoning upon the technical premises furnished by the common law, broad views of the sociologic and ethical considerations which ought to control in a balanced conflict of authority, or an absolutely new question, the reasonableness of the law would be shown as it never has been before. Every department of human knowledge should be laid under contribution to furnish this new jurisprudence of the Commonwealth, a jurisprudence which respects the past, but moves forward according to the requirements of the welfare of the present and the immediate future.

Such a professorship, adequately endowed, and filled by some man of fit ability, whom I believe could be found, would be worthy of the University in which Morse and the Drapers, Elias Loomis, Tayler Lewis, and Howard Crosby rendered such public service while quietly engaged in the tasks of instruction.



The Greater Glory¹

By Maarten Maartens

Author of "God's Fool," "Joost Avelingh," "An Old Maid's Love," etc.
(Begun in The Outlook for July 1.)

CHAPTER XXXIII.

A COUNTY MAGNATE

"And now," said Count van Rexelaer to himself, as he slowly drew his chair towards the writing-table and made himself comfortable, "pleasure"—he pulled a face—"being over, I may give my mind to business at last."

It was true that pleasure was, for the moment, a thing of the past. The house had grown quiet again. The calendar between the windows marked an early day in January. It was one of those calendars with a text for every day in the year, and his sister had given it him. Occasionally Count Hilarius's eyes would thoughtfully linger over the text.

The Freule van Rexelaer, the two brothers' only sister, was a timid maiden lady, living in a small provincial town on a small income, and doing a great deal of unnoted good with it. She had come to Deynum to see the old year out, having declined to share the Christmas gayeties, for the simple reason, which she wisely kept to herself, that to her mind the commemoration of the Nativity should be a religious festival. The great house and its splendors flurried her.

"Oh, how thankful I am," she said to Mevrouw Elizabeth, "that I have not these servants to look after!"

"Not *these* servants. No," replied Mevrouw Rexelaer-Borck, with due emphasis. "But people with one servant are always afraid of them. I am not." She rested her crochet on one knee, looking over her nose at her thin little sister-in-law.

"Ah, but then you are such an excellent manager," said the old maid, timidly.

"I certainly see a few things which escape Margherita's attention. No fear of her being worried, poor thing! Thank Heaven, I have eyes." Mevrouw van Rexelaer-Borck was always thanking Heaven, not so much for blessings received by herself, as for blessings withheld from her friends.

"Yes, my dear," replied the Freule, quickly. "And I was telling you about the Coffee-stall Mission to Paris Cabmen;" and so she led the conversation on to safer ground. Mevrouw Elizabeth, who liked the philanthropy of circulars and Lady Patronesses and paragraphs in the press, was anxious to introduce the coffee-stalls into the Hague, the only difficulty being the absence of cab-stands. Perhaps these could be created.

Utterly dissimilar as the two ladies were, they had in common that sympathy of lifelong surroundings which no later intercourse can replace. They understood each other when they differed. Neither ever quite understood the

foreign sister-in-law, even when they most appreciated her intentions. Fortunately, the Countess did not court their friendship; she lay in the old Baroness's simple boudoir, and Laïssa read her frequent bulletins from the Hague, sent by the maid who had charge of the pets. And sometimes they would consult the cards to find out when Mevrouw Rexelaer-Borck was going away. That lady once surprised them at such a moment, and denounced the heathen superstition in no measured terms. "The wicked folly, Margherita!" she said. "Why, I could tell you as much about the future as these senseless bits of card." "I wish you would, then," replied the Countess, meaningly. Mevrouw van Rexelaer turned away in lofty scorn. "Does this creature understand English?" she asked. She especially disliked Laïssa, as being more "exotic" even than the parrot. The mulatto looked up from the floor, with her great white grin. "Laïssa no understand," she said.

Reinout introduced everybody to the Chapel, in which he already took an especial pride. "I hope you will alter this, Hilarius," said the Freule van Rexelaer, earnestly, after a silent survey of the chancel. And then she drew on her galoches again, because the floor felt damp.

Mevrouw Elizabeth had expressed herself with more commendable distinctness. "This popish mummery," she had said, bringing down a heavy hand on the altar, "of course must go. I wonder, girls, at your uncle having left it so long. And, good gracious, the flowers are—fresh!" Not even Mevrouw van Rexelaer's indignant stare could dim the pure sweetness of the chrysanthemums. Vrouw Poster had renewed them, according to custom. With an extra prayer for vanished Piet.

"Hilarius," said Mevrouw Elizabeth in the course of the evening, "our dear Margherita has surely abjured the errors of her youth."

Hilarius colored painfully. "What do you mean, Elizabeth?" he cried. "If your mother has been talking shameful slander—"

"I was alluding to the Scarlet Woman," interposed Mevrouw van Rexelaer, hastily. "To the Beast;" and then, in answer to his astonished stare: "Hilarius, how can you be so ignorant? I mean that your wife is no longer a Papist; but we must not underrate early influences, and there is positive danger in these popish surroundings. Unless you take care you will have her going back to her bead-telling and bone-kissing, or whatever the people do. I should not speak if it were not for the risk to René. You know very well that the Jesuits have an eye exclusively to rich men's sons. Already the old priest here has made friends with the boy. He took Topsy to see the man, but I forbade her going again. He gave them sweets, Hilarius. Mark my words. He gave them sweets." Deep down in her heart she had an honest, though not clearly explicable, fear that the sweets—for the new heir of Deynum—might be poisoned!

Count Hilarius had been startled by her evident good faith. He had lived too long in a clime where all men acknowledged the same form of religion without practicing any to take note of the flowers and frippery in a sacred edifice; he was too indifferent to understand much of the fierce yet tremulous distrust which still lingers, on the field of Alva's achievements, in the hearts of the degenerate children of a nation of martyrs. He had no large experience of pious women; and yet he felt that Mevrouw van Rexelaer was not like his sister the Freule. But it does not require any very active piety to dread the idea of being burned alive.

As he now sat in the Baron's room, his eyes vaguely fixed on that old gentleman's guns, Hilarius reverted to Mevrouw Elizabeth's words. He wanted no complications, religious or otherwise. What he dreaded above all things was unpleasantness. It hampers one so.

His steward appeared before him, smooth and serene.

"I have been looking at the list of the tenants," said the Count, taking up a paper from the table before him. "Most of them I remember seeing at the New Year's Congratulation. A pleasing custom. Is it general in these parts?"

"At your service, Mynheer the Count," replied the

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