

2 copies
PROCESSES OF SOCIAL REFORM BY LEGISLATION.

It is now established that the basic principle of Evolution applies also to the social sciences: that is to say, Society undergoes a progressive growth from a given condition to one relatively different and advanced, and that this development is the result of the action and reaction of certain social forces working in accordance with certain principles.

It is also recognized by legal thinkers that Law in general is produced by an analogous evolutionary process, and that every substantive legislative enactment is the product of such a process.

It is because they are ignorant of, or neglect to consider this fact that the efforts of the advocates of social reforms so often prove ineffective and abortive. No desired reform can be brought about merely by the enactment of statutes where they are based merely on a priori reasoning and leave out of account the basic nature of law and the processes thru which alone true and effective laws are evolved.

Now, I am not using the term "reform" or "reformers" in any offensive or invidious sense, and I could not intelligently do so - for all legal students must recognize that a great deal of impetus is given to the growth of law by the conscious efforts of sincere men who have vision to recognize the existence of a social evil and deliberately set themselves to remedy that evil by agitating for and ultimately securing the enactment of the appropriate legislation.

I am merely suggesting the absolute necessity that they should have some adequate knowledge, first, of the existing social conditions and motivating social forces, and second, of the nature of law and the method by which effective law is developed.

A "law" (in the ~~sense of a legislative enactment~~) is a rule of human action or conduct, ~~promulgated~~ *prescribed* and enforced by the state and binding on its citizens for the future.

The ultimate sources of such statutory rules are to be found in two sets of factors:

(a) CONSCIOUS factors - or the purposive activities of men in studying and attempting to regulate social

3

conditions thru legislation:

(b) UNCONSCIOUS factors - or the natural forces which govern men as individuals and men in societies.

These latter are more powerful than the former, because deliberate efforts to control human relations by legislative means will only be effective where they harmonize with the unconscious natural forces affecting the community life. Consequently the practical efficacy of remedial legislation has definite and inherent limitations and the lawyer is the first to concede this.

If we examine the history of any existing reformatory statute we shall get a general idea of the processes by which law is developed. The sequence was something like this:

- (a) A social condition manifested itself
- (b) Some men recognized this condition as detrimental to the community.
- (c) Growing recognition of the evil created a demand thru enlightened public opinion for a legislative remedy.

4
(d) The government in the course of time yielded to the demand and enacted a statute to eliminate the evil.

(e) The statute was enforced and because it was too hastily conceived or too radical or in advance of public opinion etc. failed adequately to provide the desired remedy or even failed of enforcement:

(f) It was successively amended and modified, and finally reached a definite and efficient form in which it was sanctioned by the support of the bulk of the public opinion.

PROHIBITION - Fortunately, you may test the correctness of this theory by reference to your knowledge of the history of prohibitory liquor legislation, and I think you will agree that it went thru the same stages of recognition of the drink problem - demand for regulation - pressure on government - tentative enactment and experimentation and amendment.

A closer look at these processes reveals some of the important characteristics of the development of law directly bearing on legislative reforms.

"A" Enacted law is always behind the advance of public opinion - (This is partly because of the nature of law and because of its method) Three things must precede the actual enactment:-

(a) public opinion must first develop to the point where the need for remedial legislation becomes apparent.

(b) deliberate steps must be taken (usually by a small group) to get the desired legislation.

(c) considerable time must elapse before the demand becomes so popular and general as to compel the government to enact the necessary law.

"B" If, as is usual, the condition is a new one there will be no precedents upon which to draw and the first step will be necessarily tentative, and hesitating for two reasons:

1st: public opinion may not be unanimous in recognizing either the need for a remedy or the proper type of remedy to be sought.

2nd. It is impossible to tell whether the proposed scheme will be effective until after it has been actually put into operation when it may be found that current opinion will not support it or that its operation may have reacting results which are not socially beneficial.

"C" The only practical method of overcoming these difficulties and securing the desired remedy thru efficient legislation is by a process of continued experiment, observation and modification - and by the enactment of a law and subjecting it to the test of actual operation and enforcement in much the same way as a working scientific hypothesis is tested.

OBSERVATIONS:

(1) The initial statute should not be too radical or advanced but merely sufficiently strong to formulate the necessary principle so as to afford an opportunity to test the reaction of public opinion and of other social factors.

(2) Actual enforcement and careful observation thereof

will reveal deficiencies and the trend of popular opinion.

(3) Then will follow a succession of amendments to meet the observed deficiencies and bring the law into greater conformity with expressed public sentiment.

(4) After these repeated tests and consequent modifications or extensions, the law will assume a form which furnishes the desired remedy and which is effectively enforceable because it is adapted to the existing conditions and has also the sanction of public opinion.

"D" The development of an effective law is a "complex" process because two groups of factors are involved:-

(a) The physical environment and the conscious and unconscious activities and reactions of men as individuals, and

(b) The social forces which control the relations of men in groups or in society.

Both of these groups are dynamic and are in constant in-

teraction in an infinite variety of unknown ways and together constitute the ultimate causes of social phenomena.

Obviously any purposive attempt to remedy by law an existing social evil will be ineffective if it ignores these factors.

Conversely, that law will most quickly become effective which has been preceded before its initial enactment by a careful study of all known contributing causes and which has been carefully amended to bring it into greater harmony with the underlying relevant social forces and particularly with the current of enlightened popular opinion.

"E" The process of securing an effective remedial law is necessarily slow, and irksome involving as it does; preliminary study - tentative enactment and experimentation and progressive modification; but as the delay arises from the very nature of law and its essential method of growth I do not think that the process which I have been describing can be successfully avoided or hastened.

"F" Finally (and this is the cardinal point which I have been trying inferentially to drive home) all advocates of

reform by legislation must fully appreciate that the attainment of an effective working law as contrasted with a purely nominal enactment depends in the last analysis on the underlying and unconscious social forces and the silent opinions of the individuals of the community as to whether that law is right and desirable. And it is in this aspect that the necessity of preliminary education of the masses to a recognition of the evil aimed at, the urgency of remedying that evil, and the adequacy of the proposed legislation to do so becomes apparent.

I wish to close these remarks by quoting the very pertinent words of a writer in the Political Science Review:

"The mere enactment of a statute is not of itself sufficient to make law in any true sense. Of itself it is merely "nominal" law. It will not be true or essential law until it has proven itself to be founded upon the sense of right generally prevailing in a community.

10
In fact it may well be said that all newly made statutes are at first merely nominal law and it requires a further process of growth, adaptation to the actual conditions of society and confirmation by tacit consent of members of the community before they can attain the rank of essential law. The process of making law is not exclusively the work of legislative bodies. The really determining factor is not the arbitrary will of individual men nor even of groups of individual men acting consciously and with a deliberate purpose. The most important element in the entire process of law formation is that silent working of a million individual minds, each forming and expressing opinions, beliefs and feelings; setting up ideas, analyzing and judging the myriad facts and events of daily life; having all the time no conscious purpose of helping in any task of making laws, yet creating by their combined influence that environment which molds the minds and shapes the purposes of those who at one time or other act as legislators or judges and also creating that condition of popular opinion which itself will decide the destiny and effect of any enacted nominal law."

Conclusion

Intro 1 -

Allotment of subject - not intended to confine to Administration
Speak on another aspect - conditions & methods
of securing enforceable law particular reference
to programs of social reform by Legist.

Pertinent to gathering to inquire why of various
enactments each equally binding some are
capable of effective enforcement & others
remain always purely nominal & inefficient

Conclusion. Gratifying opportunity. hope have expressed some
views of service in carrying on laudable work
to which dedicated