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LAW AND MANNERS

BY THE RIGHT HONORABLE LORD MOULTON

[A word of explanation seems desirable in regard to the form and the authorship of this paper. It is the verbatim record, by an accurate reporter, of an impromptu speech made by Lord Moulton at the Authors' Club in London some years before his death. Because of its pertinent interest for present-day Americans, we count ourselves fortunate to be able to print it in the Atlantic at this time.

John Fletcher Moulton, first Baron, Minister of Munitions for Great Britain at the outbreak of the war, a noted Judge, a great Parliamentarian and administrator, may be fittingly introduced to Atlantic readers in the words of the Lord Chancellor before the House of Lords at the time of Lord Moulton's death in 1921:

'I choose my words carefully when I say that I greatly doubt whether it would have been possible for the war to have been brought to a successful conclusion when it was, but for the part Lord Moulton took in it. I hope the country will not soon forget the extraordinary work of this most remarkable man, whose memory his colleagues will long cherish.']

In order to explain this extraordinary title I must ask you to follow me in examining the three great domains of Human Action. First comes the domain of Positive Law, where our actions are prescribed by laws binding upon us which must be obeyed. Next comes the domain of Free Choice, which includes all those actions as to which we claim and enjoy complete freedom. But between these two there is a third large and important domain in which there rules neither Positive Law nor Absolute Freedom. In that domain there is no law which inexorably determines our course of action, and yet we feel that we are not free to choose as we would. The degree of this sense of a lack of complete freedom in this domain varies in every case. It grades from a consciousness of a Duty nearly as strong as Positive Law, to a feeling that the matter is all but a question of personal choice. Some might wish to parcel out this domain into separate countries, calling one, for instance, the domain of Duty, another the domain of Public Spirit, another the domain of Good Form; but I prefer to look at it as all one domain, for it has one and the same characteristic throughout — it is the domain of *Obedience to the Unenforceable*. The obedience is the obedience of a man to that which he cannot be forced to obey. He is the enforcer of the law upon himself.

One of the reasons why I have chosen this as the subject on which to speak is that I have spent my life as a commissioner for delimiting the frontier line which divides this domain from the realm of Positive Law. I have had to decide so frequently whether Law could say, 'You must,' or regretfully to say, 'I must leave it to you.' This is the land in which all those whom the Law cannot reach take refuge. It might be thought from such a description that I wished to annex that country and bring it under the rule of Positive Law. That is not the case. The infinite variety of circumstances surrounding the individual and rightly influencing his action make it impossible to subject him in all things to rules rigidly prescribed and duly enforced. Thus there was wisely left the intermediate domain which, so far as Positive Law is concerned, is a land of freedom of action, but in which the individual should feel that he was not wholly free. This country which lies

between Law and Free Choice I always think of as the domain of Manners. To me, Manners in this broad sense signifies the doing that which you should do although you are not obliged to do it. I do not wish to call it Duty, for that is too narrow to describe it, nor would I call it Morals for the same reason. It might include both, but it extends beyond them. It covers all cases of right doing where there is no one to make you do it but yourself.

All these three domains are essential to the properly organized life of the individual, and one must be on one's guard against thinking that any of them can safely be encroached upon. That Law must exist needs no argument. But, on the other hand, the domain of Free Choice should be dear to all. This is where spontaneity, originality, and energy are born. The great movements which make the history of a country start there. It covers a precious land where the actions of men are not only such as they choose, but have a right to claim freedom even from criticism. Men must keep safely guarded this right to follow the bent of their nature in proper cases and act as they would without anyone having the right to utter a word of dictation or command. This country forms the other frontier of the domain of Manners and delimits it on the side farthest away from that of Positive Law.

The dangers that threaten the maintenance of this domain of Manners arise from its situation between the region of Absolute Choice and the region of Positive Law. There are countless supporters of the movements to enlarge the sphere of Positive Law. In many countries — especially in the younger nations — there is a tendency to make laws to regulate everything. On the other hand, there is a growing tendency to treat matters that are not regulated by Positive Law as being matters of Absolute Choice. Both these movements are encroachments on the middle land, and to my mind the real greatness of a nation, its true civilization, is measured by the extent of this land of Obedience to the Unenforceable. It measures the extent to which the nation trusts its citizens, and its existence and area testify to the way they behave in response to that trust. Mere obedience to Law does not measure the greatness of a Nation. It can easily be obtained by a strong executive, and most easily of all from a timorous people. Nor is the licence of behavior which so often accompanies the absence of Law, and which is miscalled Liberty, a proof of greatness. The true test is the extent to which the individuals composing the nation can be trusted to obey self-imposed law.

In the changes that are taking place in the world around us, one of those which is fraught with grave peril is the discredit into which this idea of the middle land is falling. I will give two examples. First, I will take freedom of debate in the houses of legislature such as our own House of Commons. For centuries the members had unrestricted freedom of debate, and no inconvenience was felt. But in recent times some members of this House have said to themselves: 'We have unrestricted freedom of debate. We will use it so as to destroy debate. The absence of imposed restriction enables us to do it.' This obstruction was developed, and it has destroyed freedom of debate, and, indeed, all useful debate in practically every legislature. The freedom due to absence of positive restriction has been treated by the individual members as leaving their use of debate a matter of Absolute Choice, fettered with no duty that they were bound to regard. They shut their eyes to the fact that the freedom was given to them in trust to help forward debate, and that it was incumbent on them so to use it. Clumsy and even mischievous regulations have necessarily been introduced which fetter debate but prevent its being absolutely stifled. The old freedom cannot now be entrusted to the members, because when they possessed it they did not respond to it by the exercise of that moral sense which would have led them to treat it as a trust, and not as an absolute possession, unburdened by obligations which they should compel themselves to regard.

It is not only the conduct of individual members of the legislature that furnishes an illustration. The conduct of the legislatures themselves furnishes an equally striking one. It is the fundamental principle of democracies to bow to the decision of the majority. But in accepting this we do not surrender ourselves to the rule of the majority in all things, but only in those things which are of a kind fit to be regulated by Government. We do not admit, for instance, the right of the majority to decide whom we should marry or what should be our religion. These are but types of a vast number of matters of great interest in life which we hold to be outside the decision of a majority, and which are for the individual alone to decide. But in form the power of a Government has no restrictions. It has the power to do everything, and too often it forgets that this limitless power does not leave the scope of its legislation a matter of absolute choice on its part, but a choice fettered by a duty to act according to the trust reposed in it, and to abstain from legislating in matters where legislation is not truly within its province. And what is true as to the scope of legislation is also true to a great extent as to the nature of that legislation. But there is a widespread tendency to regard the fact that they can do a thing as meaning that they may do it. There can be no more fatal error than this. Between 'can do' and 'may do' ought to exist the whole realm which recognizes the sway of duty, fairness, sympathy, taste, and all the other things that make life beautiful and society possible. It is this confusion between 'can do' and 'may do' which makes me fear at times lest in the future the worst tyranny will be found in democracies. Interests which are not strongly represented in parliament may be treated as though they had no rights by Governments who think that the power and the will to legislate amount to a justification of that legislation. Such a principle would be death to liberty. No part of our life would be secure from interference from without. If I were asked to define tyranny, I would say it was yielding to the lust of governing. It is only when Governments feel it an honorable duty not to step beyond that which was in reality, and not only in form, put into their hands that the world will know what true Freedom is.

The tendency of modern legislation is to extend the area ruled by Positive Law, and to diminish the area of action which is determined by the decision of the individual himself. But there is one great example in the opposite direction. In one instance the People have deliberately chosen to carve a domain out of that previously covered by Positive Law and to throw it into the domain where the individual can determine for himself his course of action. Take the legislation relating to Trades-Unions and Trade Disputes. Limitations on the power of combination have been swept away, and to a great extent that which was previously marked out by Law is now in the hands of the individuals themselves.

I am far from suggesting that this was a retrograde step, but to my mind the question whether it is dangerous, and whether it may and will become disastrous, depends on whether the masters of workmen who gained this freedom of action, not allowed them by the Common Law, look upon the change as justifying their treating the matters to which it relates as belonging to the realm of Absolute Choice, or whether as belonging to the realm where, though not restrained by Positive Law, they yet recognize the duty of obedience to the Unenforceable. Do they recognize that the increase of their freedom of action brings with it not unfettered choice but the corresponding responsibility of using that freedom? That many have failed to realize that this is the true effect of the change has already been made too clear. At the time of the general coal-strike many voices were heard which in a tone hitherto unknown to us cried: 'We can by a universal strike bring the nation to its knees.' It is a proof of the extent to which the sense of Duty ran in the nation, even at a time of such excitement, that this cry was not heeded, and that we came out of the crisis with little harm beyond some labor legislation which will probably have to be modified many, many times

before it comes into working order — a very light price to pay for the experience.

I am not afraid to trust people — my fear is that people will not see that trust is being reposed in them. Hence I have no wish that Positive Law should annex this intermediate country. On the contrary, I dread it. Instead of the iron rule of law being thrown over it I would rather see it well policed by the inhabitants. I am too well acquainted with the inadequacy of the formal language of statutes to prefer them to the living action of public and private sense of Duty.

The great principle of Obedience to the Unenforceable is no mere ideal, but in some form or other it is strong in the hearts of all except the most depraved. If you wish to know how strong, remember the account of the Titanic disaster. The men were gentlemen to the edge of death. 'Ladies first.' Why was that? Law did not require it. Force could not have compelled it in the face of almost certain death. It was merely a piece of good Manners in the sense in which I have used the phrase. The feeling of obedience to the Unenforceable was so strong that at that terrible moment all behaved as, if they could look back, they would wish to have behaved. I have no fear of its strength, whatever be the class appealed to. Even if one takes the least educated, — the so-called lower classes, of whom so many are afraid, — one would find the same loyal obedience to unenforceable obligation in the relationships with which these classes are familiar. The danger lies in that by the growth of the democratic spirit they have newly come into much larger powers, and they have not yet learned that power has its duties as well as its rights. When they have become familiar with these powers, and when intercourse with those who have a wider outlook has taught them that the domain of obligation includes them in their use of them, I am satisfied that those who have been loyal to duty in the smaller lives that they have led will be loyal in the wider fields in which they are now able to exercise their power. It is this faith that makes me dread lest we should hurriedly let Positive Law come in and check the growth of self-reliance, check the growth of the sense of personal duty, and lead people to feel that, if they obey the Law, they have done all their duty. It is wiser to exercise patience and let them alone till increase of experience in life teaches them to appreciate better their true position, and to feel that it is still needful for them to see for themselves that they behave as worthy men should do.

Now I can tell you why I chose the title 'Law and Manners.' It must be evident to you that Manners must include all things which a man should impose upon himself, from duty to good taste. I have borne in mind the great motto of William of Wykeham — Manners makyth Man. It is in this sense — loyalty to the rule of Obedience to the Unenforceable, throughout the whole realm of personal action — that we should use the word 'Manners' if we would truly say that 'Manners makyth Man.'

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