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Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 39
Issue 4 *Dickinson Law Review - Volume 39,*
1934-1935

6-1-1935

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Recommended Citation

Walter H. Hitchler, *The Thought of Dr. William Trickett*, 39 DICK. L. REV. 201 (1935).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol39/iss4/1>

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Dickinson Law Review

Volume XXXIX

JUNE, 1935

Number 4

THE THOUGHT OF DR. WILLIAM TRICKETT*

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In considering the career of a great man, it is instructive perhaps, interesting beyond question, to learn something of his heredity and environment, of his physical characteristics,—the color of his hair, the shape of his nose, the character of his complexion. But heredity and environment are merely conditions which shape, and the physical characteristics are merely the outward and visible signs which enclose, the inward and spiritual grace of the man.

This inward and spiritual grace is manifest in a man's thought and in his action. Dr. Trickett was a thinker rather than a doer, and the inward and spiritual grace of his life was made abundantly manifest in the great number of writings in which his thoughts found expression. Let us consider briefly the thought of Dr. Trickett.

EDUCATION

Dr. Trickett was an exceptionally well educated man. He had a congenitally strong mind, which he had trained to a remarkable degree of efficiency, and an apparently inexhaustible supply of information on many and varied subjects. The calibre of his mind was demonstrated in his writings and in his teaching, and became particularly manifest when he addressed himself to problems to which other persons were confident they had discovered the correct solution. He began to think, in many cases, after other people thought that all occasion for thinking had passed. It is recalled that at the same time that an opinion of Chief Justice Marshall was being presented to a college class as a masterpiece of irrefragable argumentation, Dr. Trickett was

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demonstrating to his law school classes, with unanswerable logic, that it was one of the silliest opinions which had ever been written.

His great reputation for learning in the law has caused people to overlook the fact that his knowledge of many other subjects was extensive and profound. He was learned in history and the science of government. He was an accomplished linguist, reading French and German with facility, even in his later years; disputing about the construction of Latin, Greek and Hebrew words; and, toward the close of his life, learning the Japanese language for the purpose, as he described it, of mental relaxation. He frequently confounded his physicians by his knowledge of medicine, and sent scurrying to their trenches all who engaged him in debate upon theological subjects.

He believed that the education of youth was a chief concern of the state. He was a great advocate of the public schools, and believed that only for the gravest reasons should a child be excluded from them. He himself was a graduate of the Central High School of Philadelphia, and for it and the teachers who taught him there he had great admiration and affection. His experience had taught him that the competency of teachers may, in a general way, be rated by the salaries which they insist on getting, and that a school district which offers lower salaries should expect to obtain less able teachers than one which is more liberal in its compensation of those who teach.

He was an advocate of compulsory attendance at school, but insisted that the necessary complement of the state's prohibition of non-attendance was its securing of the food needed by the growing boy in order to enable him to assimilate his instruction. He complained that the state had not secured a good breakfast and decent clothing to the boys whom it step-fatherly required to learn.

He was not convinced of the universal beneficialness of a college education. There was often, he thought, much mistraining of youths in colleges. Much time and thought were bestowed by collegians on other things than of the mind. Some colleges were seminaries for propagating pernicious social and economical notions. In many colleges independence, originality, divagation from accepted notions, political, social, and philosophical, were frowned upon as serious intellectual vices. The proposition that a college course was a good thing was, in his opinion, entirely too broad. Some courses in some colleges were good for some men. Any statement stronger than this was erroneous and mischievous. At least as true was the assertion that some courses in many colleges were for many students pernicious.

Dr. Trickett was much interested in keeping the colleges free and independent of outside forces. He regarded the Carnegie Foundation as a purely

personal institution, which had no authority under the law to make inquiries in the fitness of the tests by which admission to any profession or calling was determined. He thought that if the Carnegie Foundation was designed, by means of its control of a pension system; to compel the many colleges of the country to adopt ideals and possess properties, which might seem good to the persons, wholly unofficial, largely unknown to the public, who from time to time administered it, it would become a serious menace to the nation, a hindrance to freedom of thinking and instruction, a tool in the hands of a few powerful interests to tyrannize the teaching body, and through them the intellects of the nascent manhood of the country. He said that he could understand how gentlemen who drew large salaries from the Carnegie Fund, and who found themselves unable to earn them, should solicit and eagerly avail themselves of invitations to intermeddle in the cause of education, and that the same causes would in due time induce similar interferences in all the other domains of mind and life.

RELIGION

Dr. Trickett was what is commonly called a religious man. He was a member of and a liberal contributor to the Methodist Episcopal Church; he had served this church for several years as a pastor; and until prevented by illness he was a regular attendant at its services.

He admired his church for the simplicity of its professions and its lack of ceremonial. Having attended a funeral service conducted according to the ritual of another church, he expressed wonder whether the man conducting the services thought that he was deceiving the Almighty by his "gesticulations."

But his allegiance to a particular faith did not prevent him from believing and asserting that the state should not in any way require assent to religious tenets, submission to religious prescriptions, or contributions to religious establishments of any sort. He believed that the truth of religious assertions should be as debatable as the truth of scientific or historical assertions; and that men should be free, as far as the state was concerned, to believe or not believe, be pious or not, and observant of religious rites or not.

To him the Christian religion was a body of affirmations concerning great cosmic facts, concerning human conduct, and concerning human destiny as affected by these facts and this conduct. It was simply (1) an aggregate of assertions concerning facts, and (2) an aggregate of prescriptions concerning conduct.

It is known that he obeyed the prescriptions of the Christian religion with scrupulousness and proud punctilio, but he never expressed publicly the

extent of his belief in the fact assertions of the Christian religion. He seemed to be uncertain whether the God in whom we are directed to believe was universal or limited by the solar system, all powerful or only very powerful, all knowing or only knowing very much, and whether he was eternal and increate, or had emerged from Chaos, whither after a million of aeons he would return.

He was certain that the churches had nearly eliminated anger and indignation from their conception of the Deity and made love and patience and long suffering almost his exclusive virtues; and, as a lawyer, he was convinced that the statement that Christianity is part of the law of the land was incurably vague, and in its natural sense wholly untrue, and that in order to make it true at all an interpretation wholly artificial must be placed upon it.

MARRIAGE

Dr. Trickett never married, and his closest friends believe that he was never, to use a legal expression, in immediate contemplation of marriage. Save for the implications which arise from the fact that he never married, little is known concerning his views relative to marriage.

He believed that there were cases in which it should be the policy of the state to discourage marriage. It did not follow because, in earlier times, it was the policy of the government to promote marriage with a view to the growth of the population, that the circumstances of the present demanded the same policy. Marriage perhaps aided conservation of morality, but it should be remembered that there were moralities other than the sexual, and that some of these were worth preserving even at a possible cost to the preservation of sexual moralities. A man who was conscious of a limited mental and physical capacity for earning money should not be required by the state to sacrifice himself in order that he may bring into existence and then starve, progeny which if it survived would be as helpless as himself.

THE LAW

It is significant that Dr. Trickett began the study of law only after he had tried and rejected two other professions, preaching and teaching, and that he continued to study law assiduously until his last illness; but it does not signify that he held the law profession in awe-inspiring reverence.

Indeed he resented the efforts on the part of members of the legal profession to form themselves into a caste and to semi-divinize themselves. It was pleasant for the members of the bar to emphasize the distinction between a

profession and a trade, and to recall that they were not in a money-making trade, nor in any trade at all. But he believed that the lawyers who did not become such in order to earn money must be very scarce, and to him none of them was visible above the horizon. There was a savor of hypocrisy in the assertion that lawyers were not in a money-getting profession, and the ordinary lawyer would think it fantastic idealism to believe that the chief end of the practice of law was not to confer on him good money compensations, with the social distinctions annexed to the business. He deprecated the pretensions of bar associations that this was not the case, and thought that one of the duties which bar associations should inculcate was the avoidance of individual and corporate pharisaism.

He was not in sympathy with the efforts to exclude young men from the bar arbitrarily and unreasonably. It was, in his opinion, a very suspicious circumstance that the lawyers of the country were insisting on qualifications for admission to the bar which would mean a serious reduction of its members. The demand was being made in the name of better training, but lawyers were not a bit more disinterested than other businessmen, and their apparent zeal for higher learning might well be suspected. The greater part of the work, nine-tenths, which a lawyer is called upon to perform could, in his opinion, be well performed by men of very moderate ability and learning, and it was a wasteful policy to require every member of an extensive profession to have any very high minimum of aptitude and expertness.

He thought the influence which lawyers exercise in the United States, despite the fact that for many centuries the bar of the Anglo-Saxon world had been the object of distrust by laymen, was one of the most sinister facts of our times.

He was a vigorous critic of the canon that it is the right of a lawyer to undertake the defense of a person accused of crime regardless of his personal opinion as to the guilt of the accused. It was one thing to affirm that a lawyer had a right to defend the possible victim of circumstances, and another to say that, being an experienced, prudent attorney, knowing how to weigh evidence, he might nevertheless defend one whom he, for adequate reasons, believed to be guilty.

A lawyer who did the latter virtually made himself an accessory after the fact, and for a motive less honorable than that which usually instigates such accessoryship. To set free consciously, for money, a criminal by deceiving or misguiding a court or jury was at least as bad as to rescue him from the penalties of the law by concealing him, by conveying him beyond the state, or by offering a false scent to the officers who were on his trail.

He regarded the conduct of lawyers in defending men whom they knew to be guilty as most baneful and as prompted by the most sordid of motives; and that the unsophisticated conscience of the laymen had never accepted and never would accept the apologies made for it.

It was the conduct of lawyers in prosecuting and defending causes known by them to be bad, on the pretext that every man has a right to have the evidence sifted, etc., and the apologies for such conduct offered by the most respectable of the legal profession, that had perpetuated the odium which attached to the bar. The bar should understand that the sophisms by which virtual alliances with promoters of unjust claims, with even the most wicked criminals, are excused, had not impressed, save with disgust and weariness, the unspoiled intelligence of the non-legal world.

The records of great advocates, almost without exception, were tainted. Their fame had been built up by chicanery, falsehood and hypocrisy. They had basely prostituted their powers to the misguidance of judges and jurors, in order, often, to assist clients to accomplish shocking injustices, in order to set adrift upon society the most hardened and ferocious criminals; and the defenses of such conduct, which came only from the legal profession, revealed the extensive demoralization which the profession had undergone during centuries of virtual irresponsibility.

COURTS

Dr. Trickett considered the acts of the courts of the country in exalting themselves above the other branches of government as an illegitimate arrogation of importance. The constitution recognized three alleged co-ordinate divisions of government and did not rank one above the other. Courts were simply one branch of the administration of the country and nothing made them more necessary or important than the other branches.

He was a violent critic, from both a technical and a practical standpoint, of the doctrine that a court may declare an act of Congress or of a legislature unconstitutional. In other, more favored countries, he said, citizens may readily know whether what purports to be a law is law or not. If it passes both houses, receives the approval of the executive, and is published as a law, it is a law. But in this country the courts have succeeded in making themselves a fourth house of legislation, and, unfortunately, they do not act before the official publication of the law. Indeed it must appear to have become a law and people must appear to have become subject to it, before the courts announce their will. Years may pass, during which the law seemed to be a law, before the court declares that it is or is not a law. In the meantime citiz-

ens are compelled to hazard their opinions concerning the operativeness of the law. The legislature that passed it, the governor who signed it, have in so doing certified to him that it is the law. He cannot rely upon this certification. He must distrust them and form an opinion for himself prior to a judicial declaration, and even after such a declaration he runs the risk that the court may in a subsequent decision change its opinion.

He did not believe that the courts should be free from criticism. He thought that it was the duty of lawyers to criticize the action of the courts in certain cases, and that it was a pity that the obsequious temper of many lawyers prevented a candid and effective criticism of the judicial logic. The fact that lawyers did not, even if they had the ability, weigh dispassionately and candidly judicial compositions was a misfortune for the judges and for the country.

He insisted that the somewhat vague opinion which pervades the public mind that the federal courts, and in particular, the Supreme Court, form a firm bulwark of important political and civil rights and a guarantee against aggression from the executive and legislative branches of the government is subject to important qualifications.

In the first place all the federal courts owe their existence and almost all their jurisdiction to Congress, and it is quite beyond dispute that courts which owe their existence to Congress can be abolished by it, with the one possible qualification that they cannot be abolished during the lives of existing incumbents. And it is equally clear that Congress, should it become dissatisfied with the manner in which the lower federal courts have exercised or are about to exercise their jurisdiction, or the Supreme Court its appellate jurisdiction, may disarm the courts of as much of the jurisdiction as it may choose. And finally when Congress and the President were in harmony, they might if they wished, procure from the Supreme Court decisions of the kind which they desired by simply changing the composition of the Court. If, for example, five judges were known to be against them and four in their favor, Congress and the President might increase the membership of the Court from nine to eleven, and then find nominees who were possessed of the proper tendencies and views.

PATRIOTISM

Dr. Trickett was born in England, but he was brought to the United States at an early age; he was educated in the United States; and he was a patriotic citizen. But he did not believe that logic was patriotic and varied with geographical location and the country in which one lives. He loved his

country for the many times which he thought she had been right; but he was not for his country right or wrong.

He did not, for example regard the Declaration of Independence as an inerrant, inspired writing, but as an agitorial political document; not written by angels; a more or less vituperative document tinctured with insincerity and extravagance, in which the real causes of the separation were not set forth.

The philosophy of the Declaration, which is also the philosophy of the present Constitution of Pennsylvania, that all men are created equal and endowed by their Creator with the inalienable rights of life, liberty and the pursuit of happiness, he regarded as particularly absurd. He did not believe that all men were equal at the instant of their origination by the Creator, and was quite sure that, if they were, they lost their equality as soon as they were created.

He did not believe in the existence of the so-called inalienable rights, for he was sure that the government had by some process discovered a way to compel its subjects to alienate life, to alienate liberty, and also to alienate the right to pursue happiness. As long as a state might declare war, marshal men into armies and compel them to die by the thousands, it was idle, he thought, to talk about an inalienable right of life. It was certainly of dubious benefit to a people to assure them, for rhetorical purposes, rights which must assuredly be taken from them in the actual evolution of government.

He believed that the United States had inflicted upon its colonies most of the injuries of which the colonists complained in the Declaration. It had imposed upon them taxation without representation; it had altered fundamentally the forms of their government; it had used, in the Civil War, foreigners to quell rebellion; it had made the tenure of their judges dependent upon its will; and it had deprived them of the right of trial by jury.

SOCIALISM

He recognized that, even in his day, the government was interfering more and more with the volition of its citizens; but he noticed that legislation of a social nature was not popular if it required the expenditure of money to be raised by taxation. The government, and the people, seemed to be in favor of a little socialism, but only so much of it as could be practiced without being obliged to put hands into the pockets of the class who pay the taxes. People desired a benevolent government, but they wanted a government which would be benevolent at the expense of some one else.

CONTRACTS

One of his ideas as to the powers of the government seems to be of particular interest in view of the gold clause decision. He thought that it would be a great inconvenience that when a contract for something permitted by law is made, no change of policy can be adopted by the government until such contract had been performed. It was the business of the government to preserve its citizens from fraud, violence and oppression, and this duty included the prevention of oppression which might result from contracts.

THE NEW DEAL

It is somewhat difficult to state what would have been his opinion of the New Deal legislation. He recognized the power of the government to be kind in its own particular and peculiar way, and that the government could, if it desired, legislate to prevent certain evils the prevention of which would cause greater evils, when in so doing it could plausibly pretend to be moved by loving kindness for its subjects. But he thought that people should be allowed to develop their own faculties, indulge their own tastes, and discover their own aptitudes, and that legislation was tyrannical which took from people the power to do so. It was, he thought, beyond the power of the government to equalize the opportunities of the rich and the poor. But he insisted also that property rights were not absolute rights.

The government, he thought, might find it very easy to say to a person that he or she should not work in certain ways, nor for longer than certain periods, nor at certain times, nor for less than certain wages. It was very easy to say to a human being: "You shall not earn your livelihood so," when the prohibition does not need to be accompanied by the discovery to the prohibited person of another way in which he can earn as much. A government which was truly benevolent would find for its citizens permissible employment as a substitute for that which it forbade.

THE NEW CONSTITUTION

He doubtless would have approved the effort which is now being made to change the state constitution. Nothing, he thought, was absurder than the idea that we should refrain from altering or changing the constitution out of reverence for the generation which adopted it; and there were parts of our constitution which could be made better to accord with the vastly preponderant sentiment of the people of Pennsylvania.

DEATH

Dr. Trickett was told in his youth that he would not live to be twenty-two years old, and although he lived to eighty-eight, to him death never seemed to be far distant.

He was not afraid of death and did not think that to the dying it was ordinarily a solemn occasion. It was, he thought, a solemn occasion to bystanders, the parents, the children, the friends; but probably seldom to the dying person, who through various stages of obtuseness of feeling and dimness of thinking passed into total unconsciousness. The transit was solemn to the observer, the clergyman, the poet, the ordinary man, who, when well, shrinks from death, but it did not follow that the departing man had any deep sentiment of solemnity.

CONCLUSION

I had intended to conclude with a quotation by a great judge about a great lawyer, which seemed to me particularly applicable to Dr. Trickett. But it is not fitting, I think, that a friend of Dr. Trickett should resort to the words of others in speaking of him.

And I was a friend of Dr. Trickett. Indeed, I like to think that during the later years, I was, with the exception of the Sadler family, his closest and most intimate friend. The last thing that he ever wrote or attempted to write was a letter addressed to me. And as he wrote it death stood there looking over his shoulder. It is a fine letter, and I regard it as my most valuable possession. It hangs on the wall of my study, together with his portrait. Around them cluster memories of a respect and affection which will never depart from the life of the owner, for to him they recall the personality of the most learned and brilliant, the kindest and the best man whom it was ever his privilege to know.