TREATISE ON THE LAWS

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CONTENTS:

INTRODUCTION to the FIRST BOOK OF CICERO'S TREATISE ON LAWS.

Marcus Tullius Cicero has composed this Treatise in the form of a dialogue, in which himself, his brother Quintus, and Atticus are the interlocutors. Cicero supposes this dialogue to take place near his villa at Arpinum, on the banks of the river Liris, and beneath the shade of a grove, in the midst of which grew an ancient oak. The sight of this tree reminds Atticus of the oak which Cicero had described in a poem which he once composed in honour of Marius. From this circumstance he takes occasion to compliment Cicero on his poetry. The conversation then turns upon history; and Quintus observes, that he knew no one better able than his brother to write the history of his country, and presses him to undertake it. This Cicero declines, and turns the discourse to the subject of universal justice, and the law of nature and nations.

CICERO’S TREATISE ON THE LAWS.

BOOK I.

Atticus.

—This is the very grove, and this the oak of Arpinum, whose description in your poem on Marius, I have often read. If, my Marcus, that oak is still in being, this must certainly be it, but it appears extremely old.

Quintus Cicero.

—Yes, my Atticus, my brother’s oak tree still exists, and will ever flourish, for it is a nurseling of genius. No plant can owe such longevity to the care of the agriculturist as this derives from the verse of the poet.

Atticus.

—How can that happen, my Quintus? How can poets bestow immortality on trees? It seems to me that in eulogizing your brother, you flatter your own vanity.

Quintus.

—You may rally me as much as you please, but as long as the Latin language is spoken, this oak of Marius will not lose its reputation; and as Scævola said of my brother’s poem on Marius, it will

“Extend its hoary age, through countless years.”

Do not your Athenians maintain that the olive near their citadel is immortal, and that tall and slender palm tree which Homer’s Ulysses says he beheld at Delos, do they not make an exhibition of it to this very day? and so with regard to other things, in many places, whose memorial endures beyond the term of their natural life. Therefore this acorn–bearing oak, on which once lighted

“Jove’s golden Eagle, dazzling as the sun,”

still flourishes before us. And when the storms of centuries shall have wasted it, there will still be found a relic on this sacred spot, which shall be called the Oak of Marius (see Note 1.)

Atticus.

—I don’t doubt it, my Quintus; but there is one question I would ask, not of you, but of the poet Marcus himself, whether the tree is indebted for its celebrity to his verses alone, or whether the circumstance they record really happened in the history of Marius?

Marcus Cicero.

—I will answer you frankly, my Atticus. But you must first inform me what you think of the tradition which asserts, that not far from your house at Rome, Proculus Julius beheld our first king Romulus walking after his decease, and that he heard him declare his desire of being invoked as a God, of being entitled Quirinus, and of having a temple there dedicated to his memory? Tell me also what you think of the tradition of the Athenians, who maintain that not far from your Athenian villa, Boreas made a stolen match with Orithya, for so runs the story.

Atticus.

—For what purpose do you ask me such questions as these?

Marcus.

—For no purpose at all, unless it be to convince you that we had better not enquire too critically into those remarkable accounts which are thus handed down by tradition.

Atticus.

—But this ingenious apology will not deter some from enquiring whether many of the statements in your Marius are true or false; and some will expect the greater accuracy from you, since Arpinum was your own birth place as well

as that of Marius, and the events of his life must be fresh in your memory.

Marcus.

—I have certainly no ambition to gain the reputation of a liar. But some of these inquisitors, my Atticus, are really too severe. It is preposterous to expect an exact statement of matters of fact in a poem of this nature, as if I had written it not as a poet, but as an eye witness upon oath. I doubt not the same critics would make the same objections if I were to versify on Numa’s intercourse with Egeria, and the Eagle which dropped a coronet in the head of the first Tarquin.

Quintus.

—I understand you, my brother; you think that the historian must maintain a closer adherence to fact than the poet.

Marcus.

—Certainly. History has its laws, and poetry its privileges. The main object of the former is truth in all its relations: the main object of the latter is delight and pleasure of every description. Yet even in Herodotus, the father of Greek history, and in Theopompus, we find fables scarcely less numerous than those which appear in the works of the poets.

Atticus.

—Stop there; I have found the occasion I wanted, and I shall not hesitate to urge my suit.

Marcus.

—What suit, Atticus?

Atticus.

—We asked you, long ago, or rather implored you, to write a History of the Roman empire, for we conceive if you undertook this literary enterprise, even in the historical department, we should yield no palms or laurels to Greece. And if you will listen to my opinion, it seems to me that you owe this gift, not only to the affection of those who are

delighted with your writings, but you likewise owe it to your country, that since you have saved her constitution, you should endeavour to adorn her annals, A good history of our country is a desideratum in our national literature, as I know by my own experience, and as I have often heard you declare. Now there is no man more likely than yourself to give general satisfaction in a work of this kind, since by your own avowal, it is of all the forms of composition that which most demands the eloquence of the orator. You would therefore be doing us a great favour if you would undertake this work, and devote your time to a complete history of Rome, which is unknown to most of our fellow–citizens, or at least neglected by them. For after the annals of the chief Pontiffs, which are very contracted, if we come to the book of Fabius, or Cato, whom you are always eulogizing, or the treatises of Piso, Fannius, and Venonius, though one of them may excel another, are they not all extremely defective? The cotemporary of Fannius, Cœlius Antipater, adopted a bolder style of expression. His energy was indeed somewhat rude and rough, without polish or point, but he did what he could to recommend a manly and truthful eloquence. But unfortunately he had for his successors a Claudius, an Asellio, who, far from improving on him, relapsed into the former dullness and insipidity.

I scarcely need to mention Attius. His loquacity is not without its fine points, though he has derived them not so much from the great Grecian authors, as from the Latin scribblers. His style is full of littlenesses and atrocious conceits. His friend Sisenna, far surpasses all our historical writers whose compositions have yet been published, for of the rest we cannot judge. He has, however, never gained a name among the orators of your rank; and in his history he betrays a sort of puerility. He seems to have read no Greek author but Clitarchus, and him he imitates without reserve, but even when he succeeds in his imitation, he is still far enough from the best style. Therefore the task of historian

of right belongs to you, and we shall expect you to accomplish it, unless Quintus can bring forward any reasonable objections.

Quintus.

—I have nothing to say against it. Indeed we have often talked over the subject together, and I have made the same request as yourself; but we could never quite agree in our views of the subject.

Atticus.

—How so?

Quintus.

—Why we differed respecting the epoch from whence such a history should commence its narrative. In my opinion, it ought to begin with the origin of our state and nation, for the accounts that have hitherto been published respecting our primitive antiquities are so written as never to be read. My brother, on the other hand, wishes to confine himself to the events that have happened in our own times, so as only to describe those public affairs in which he himself bore a part.

Atticus.

—In this respect I rather agree with him. For the grandest events in Roman history are probably those that have taken place within our own recollection. He would then be able to illustrate the praises of our noble friend Pompey, and describe the memorable year of his own consulship. These memoirs, I imagine, would be far more interesting than any thing he could tell us respecting Romulus and Remus.

Marcus.

—I know, my Atticus, that you and other friends have long urged me to this undertaking, nor should I be at all unwilling to attempt it, if I could find more free and leisure time. But it is vain to enter on so extensive a work while my mind is harassed with cares, and my hands are full of

business. Such literary enterprises demand a perfect freedom from anxieties and political embarassments.

Atticus.

—How then did you find leisure and vacation enough to compose more books than any of our Roman authors?

Marcus.

—Why certain spare times (subcisiva tempora) occur to every man, and these I was unwilling to lose. For instance, if I spent a few days in rusticating at my country seat, I employed them in composing a part of the essays I had determined to write. But for an historical work, it is impossible to do it justice unless one can procure a regular vacation for a considerable period. My mind is thrown into a miserable state of suspense, when after fairly commencing a literary task, I am obliged to defer its conclusion to a future occasion; nor can I so easily recover the train of ideas in works so interrupted, as bring my essays to their appropriate conclusion, without rest or intermission.

Atticus.

—You therefore require a prolonged vacation for the historical treatise we propose, and a full allowance of holidays, with all their freedom and tranquility.

Marcus.

—I conceive myself the better entitled to such vacations as I advance in life, since I am desirous, after the method of our ancestors, to continue the custom of giving magisterial advice to my clients, and thus to discharge the offices of old age gracefully and honourably. In such a situation, I should be able to compose not only the historical work you require, but others, still more extensive and diversified, with all desirable accuracy.

Atticus.

—I fear that few will accept such an apology for your retirement, and that you will be obliged to speak in public as long as you live. I regret this the more, as the lapse of

years will compel you to change your manner of delivery, and your style of eloquence. Thus, your friend Roscius the actor, in his old age, was forced to give up his most brilliant modulations, and to adapt the instrumental accompaniments to a slower measure. Thus you also, my Cicero, will find it necessary daily to relax from those lofty conflicts of oratory to which you have been accustomed, till your eloquence gradually assimilates to the bland garulity of the philosophers. Since, however, the extremest old age is still capable of executing some duties of patriotism, I see that your retirement will not hinder you from advising your clients.

Quintus.

—I think that the citizens of Rome would readily grant you this kind of secession from public affairs, if you still consented to advise in legal matters. It is at your own option to try the experiment whenever you please.

Marcus.

—Your advice, my Quintus, would be excellent if there were no danger in taking such a step. But I fear in thus seeking to diminish my labours I should rather increase them. I have an objection to thus aggravating the toil of public causes and prosecutions (which I never attempt to plead without full and mature study) by the addition of this professional interpretation of the laws, which would not distress me so much by its wearisomeness as by its tendency to deprive me of that preparation for speaking, without which I never dared to enter on any considerable pleadings.

Atticus.

—Whichever course, you resolve on, my Cicero, we have some spare time, as you call it, at present, and I should be very glad if you would employ it in enlightening us respecting the laws of the state. On this subject I am sure you can give us something better than has hitherto been published. For even from your earliest youth, I remember,

you have studied the laws, when I went like yourself to hear the lectures of Scœvola, nor did I ever find you so addicted to oratorical pursuits as to neglect your legal ones.

Marcus.

—You seek to engage me in a long discussion, my Atticus. However, I will not hesitate to undertake it unless Quintus prefers some other subject. If not, I will frankly tell you all I know about it, since at present we seem to be at leisure.

Quintus.

—I shall listen to you with the greatest pleasure, for what better subject can be discussed, or how can the day be spent more profitably?

Marcus.

—Let us go then to our accustomed promenade, where they have placed the benches on which we may recline after we have had sufficient exercise. I flatter myself that our discussion will be agreeable enough, since we shall be able each of us to throw light on the several topics with which we are personally most familiar..

Atticus.

—Let us go then, and enter on our investigations, as we walk along the bank of the river under the shadow of its foliage. And to begin with the beginning, let me ask I pray you, what is your opinion respecting the nature of Law?

Marcus.

—What is my opinion?—I hardly dare to deliver it, lest it should appear presumptuous. For we have had many great men in Rome, who have made it their profession to expound it to the people, and explain its doctrines and practice. But though they professed to be acquainted with its majestic theory, they were rather familiar with its minuter technicalities. What can be grander or nobler than jurisprudence? or what can be more insignificant and quibbling than the practice of lawyers?—necessary as it is for the people. Not that I think that those who adopt this

profession are altogether ignorant of the principles of universal legislation; but they are far more attentive to the civil law, which gives them a hold on the interests of the people. Are then the sublime and recondite principles of jurisprudence less necessary or less useful? Certainly not. It is these you wish me to elucidate and illustrate, and not the formal regulations of our civic economy. You ask me not to write treatises on the rights (stillicidiorum ac parietum) of common sewers and partition walls; and to compose forms of stipulations and judgments. These have been already most diligently prepared by clerks in office, and are decidedly lower than the topics which, I suppose, you expect me to discuss. (see Note 2.)

Atticus.

—For my part, if you ask my opinion, I should reply, that after having given us a treatise on the Commonwealth, you cannot consistently refuse us one on the Laws. In doing so, you will imitate the example of your favorite Plato, the philosopher whom you chiefly admire and love with an especial affection.

Marcus.

—Do you wish then, that we should emulate that conversation which Plato held with Clinias of Crete, and Megillus of Lacedæmon, which he describes as taking place one summer day under the cypress trees of Cnossus, and in its sylvan avenues: where, after discoursing and arguing respecting the best kind of commonwealths and their appropriate laws, he sauntered with his delightful friends? —Do you wish that thus we also, walking beneath these lofty poplars, along these green and umbrageous banks, and sometimes reposing, should investigate the same subjects somewhat more profoundly than is usual among barristers?

Atticus.

—I am delighted with your proposal.

Marcus.

—But what says my brother Quintus?

Quintus.

—I can imagine nothing more agreeable.

Marcus.

—I admire your choice. For in no kind of discussion can we more advantageously investigate the facilities which man owes to nature, and the capacity of the human mind for the noblest enterprises. We will discuss the true objects of thought and action, for which we were born and sent into the world, and the beautiful association and fellowship which bind men together by reciprocal charities: when we have fathomed these grand and universal principles of morals, we shall discover the true fountain of laws and rights.

Atticus.

—In your opinion, then, it is not in the edict of the magistrate, as the majority of our modern lawyers pretend, nor in the rules of the Twelve Tables of our Statutes, as the ancient Romans maintained, but in the sublimest doctrines of philosophy, we must seek the true source and obligation of jurisprudence.

Marcus.

—It is for this reason, my Atticus, that you do not ask me to explain to you the formalities of legal practice, and the technical replications and rejoinders of our professional pleadings. These, indeed, deserve much study and respect, inasmuch as they have occupied the attention of many great men, and are at present expounded by a most eminent lawyer (Servicius Sulpitius Rufus) with admirable ability and skill.

But the subject of our present discussion soars far higher, and comprehends the universal principles of equity and law. In such a discussion therefore on the great moral law of nature, the practice of the civil law can occupy but an insignificant and subordinate station. For according to our

idea, we shall have to explain the true nature of moral justice, which is congenial and correspondent with the true nature of man. We shall have to examine those principles of legislation by which all political states should be governed. And last of all, shall we have to speak of those laws and customs which are framed for the use and convenience of particular peoples, which regulate the civic and municipal affairs of the citizens, and which are known by the title of civil laws.

Quintus.

—You take a noble view of the subject, my brother, and go to the fountain–head of moral truth, in order to throw light on the whole science of jurisprudence: while those who confine their legal studies to the civil law too often grow less familiar with the arts of justice than with those of litigation.

Marcus.

—Your observation, my Quintus, is not quite correct. It is not so much the science of law that produces litigation, as the ignorance of it, (potius ignoratio juris litigiosa est quam scientia). But more of this bye–and–bye.

With respect to the true principle of justice, many learned men have maintained that it springs from Law. I hardly know if their opinion be not correct, at least, according to their own definition; for “Law (say they) is the highest reason, implanted in nature, which prescribes those things which ought to be done, and forbids the contrary.” This, they think, is apparent from the converse of the proposition; because this same reason, when it is confirmed and established in men’s minds, is the law of all their actions.

They therefore conceive that the voice of conscience is a law, that moral prudence is a law, whose operation is to urge us to good actions, and restrain us from evil ones. They think, too, that the Greek name for law (νομος), which is derived from νεμω, to distribute, implies the very nature

of the thing, that is, to give every man his due. For my part, I imagine that the moral essence of law is better expressed by its Latin name, (lex), which conveys the idea of selection or discrimination. According to the Greeks, therefore, the name of law implies an equitable distribution of goods: according to the Romans, an equitable discrimation between good and evil.

The true definition of law should, however, include both these characteristics. And this being granted as an almost self–evident proposition, the origin of justice is to be sought in the divine law of eternal and immutable morality. This indeed is the true energy of nature, the very soul and essence of wisdom, the test of virtue and vice. But since every discussion must relate to some subject, whose terms are of frequent occurrence in the popular language of the citizens, we shall be sometimes obliged to use the same terms as the vulgar, and to conform to that common idiom which signifies by the word law, all the arbitrary regulations which are found in our statute books, either commanding or forbidding certain actions.

Atticus.

—Let us begin, then, to establish the principles of justice on that eternal and universal law, whose origin precedes the immeasurable course of ages, before legislative enactments were in being, or political governments constituted.

Quintus.

—By thus ascending to first principles, the order of our discourse will be more methodical, so as to conduct us by agreeable gradations to the practical bearings of the subject.

Marcus.

—You wish, then, that we should seek for justice in its native source, which being discovered, we shall afterwards

be able to speak with more authority and precision respecting our civil laws, that come home to the affairs of our citizens?

Quintus.

—Such is the course I would advise.

Atticus.

—I also subscribe to your brother’s opinion.

Marcus.

—Well then, I shall endeavour to describe a system of Laws adapted to that Commonwealth, which Scipio declares to be most desirable in those Six Books which I have written under that title. All our laws, therefore, are to be accomodated to that mixed kind of political government there recommended. We shall also treat of the general principles of morals and manners, which appear most appropriate to such a constitution of society, but without descending to particular details.

Quintus.

—You therefore derive the principles of justice from the principles of nature, to investigate which is the main object of all our discussions.

Atticus.

—Certainly, and when she is our guide, we are not very likely to err.

Marcus.

—Grant me, then, my Atticus, (for I know my brother’s opinion already),—grant me that the entire universe is overruled by the power of God, that by his nature, reason, energy, mind, divinity, or some other word of clearer signification, all things are governed and directed; for if you will not grant me this, I must proceed to prove it.

Atticus.

—Respecting the existence of God, and the superintendence of divine providence, I grant you all you can desire. But owing to this singing of birds and babbling of waters, I fear my friends can scarcely hear me.

Marcus.

—You are quite right to be on your guard, my Atticus; for even the best men occasionally fall into a passion, and what would your fellow–students, the Epicureans, say, if they heard you denying the first article of that notable book, entitled the Chief Doctrines of Epicurus, in which he says “that God takes care of nothing, neither of himself nor of any other being?”

Atticus.

—Pray proceed, for I am waiting to know what advantage you mean to take of the concession I have made you.

Marcus.

—I will not detain you long. Since you grant me the existence of God, and the superintendence of Providence, I maintain that he has been especially beneficent to man. This human animal—prescient, sagacious, complex, acute, full of memory, reason and counsel, which we call man,—is generated by the supreme God in a more transcendent condition than most of his fellow–creatures. For he is the only creature among the earthly races of animated beings endued with superior reason and thought, in which the rest are deficient. And what is there, I do not say in man alone, but in all heaven and earth, more divine than reason, which, when it becomes ripe and perfect, is justly termed wisdom?

There exists, therefore, since nothing is better than reason, and since this is the common property of God and man, a certain aboriginal rational intercourse between divine and human natures. This reason, which is common to both, therefore, can be none other than right reason; and since this right reason is what we call Law, God and men are said by Law to be consociated. Between whom, since there is a communion of law, there must be also a communication of Justice.

Law and Justice being thus the common rule of immortals and mortals, it follows that they are both the fellow–citizens of one city and commonwealth. And if they are obedient to the same rule, the same authority and denomination, they may with still closer propriety be termed fellow–citizens, since one celestial regency, one divine mind, one omnipotent Deity then regulates all their thoughts and actions.

This universe, therefore, forms one immeasurable Commonwealth and city, common alike to gods and mortals. And as in earthly states, certain particular laws, which we shall hereafter describe, govern the particular relationships of kindred tribes; so in the nature of things doth an universal law, far more magnificent and resplendent, regulate the affairs of that universal city where gods and men compose one vast association.

When we thus reason on universal nature, we are accustomed to reason after this method. We believe that in the long course of ages and the uninterrupted succession of celestial revolutions, the seed of the human race was sown on our planet, and being scattered over the earth, was animated by the divine gift of souls. Thus men retained from their terrestrial origin, their perishable and mortal bodies, while their immortal spirits were ingenerated by Deity. From which consideration we are bold to say that we possess a certain consanguinity and kindred fellowship with the celestials. And so far as we know, among all the varieties of animals, man alone retains the idea of the Divinity. And among men there is no nation so savage and ferocious as to deny the necessity of worshipping God, however ignorant it may be respecting the nature of his attributes. From whence we conclude that every man must recognize a Deity, who considers the origin of his nature and the progress of his life.

Now the law of virtue is the same in God and man, and cannot possibly be diverse. This virtue is nothing else than