

- 1 -

## *THE BASICS OF LIFE, LIBERTY & PROPERTY*

### DEFINITION OF LIFE, LIBERTY & PROPERTY

The subject of Life, Liberty and Property is a subject which every living person should have the deepest concern for. It is a topic which all persons should understand since our daily human existence continually depends on what this phrase means and represents.

What then is meant by this phrase of "Life, Liberty and Property," and what does it include. The term obviously relates to certain rights, that is, rights which are regarded as inalienable, fundamental or God-given rights. As such, the concept and meaning behind this phrase goes beyond Constitutions and Bills of Rights wherein it is often used.

The underlying principle of Life, Liberty and Property has been the basis of most revolutions, political upheavals and rebellions throughout history—both lawful and unlawful ones. The phrase not only has legal and political connections and significance, but religious ones as well. The manner in which this subject is viewed by the established religion, society and government will have a profound effect on the freedom, prosperity and happiness of the individual.

The actual meaning behind the phrase "Life, Liberty and Property" is quite broad and comprehensive, covering all known rights. Let us examine the legal interpretation of each aspect of this phrase.

**Life** — The term 'life' refers not just to biological existence, but to other aspects of life as well. The following quote by Justice Field in 1877, is one definition of this term to be considered:

"No person shall be deprived of life, liberty, or property without due process of law." By the term "life," as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation not only of life, but of whatever God has given to every one with life, for its growth and enjoyment, is prohibited by the provision in question.<sup>1</sup>

Our right to life includes every aspect of our body, limbs, health and mental well being. It thus includes our right not to be subject to physical injury, disease, pain or mental anguish. It includes the right to health and to maintain it by being free of hazardous substances that may diminish it. In short, all that is necessary to maintain normal physical and mental functions is part of "life."

**Liberty** — By the term 'liberty' more is meant than the right of freedom of movement. The following quote from a law text gives one definition of this term:

Liberty means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any

<sup>1</sup> *Munn v. Illinois*, 94 U.S. 113, 142, dissenting opinion. The dissenting opinion of this case was the correct exposition on the law. The majority opinion was based on several erroneous presuppositions.

livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out of a successful conclusion the purposes above mentioned.<sup>2</sup>

Liberty thus refers to our right to use our limbs and property in any lawful manner, or to go where we may choose as our judgment may dictate for the promotion of our life and happiness. It includes our freedom to worship, our right to privacy, or to follow any lawful business or trade. In short, "liberty" is the freedom to engage in any right.

**Property** — This term includes the obvious physical or tangible things such as tools, cars, houses, furniture, food, merchandise, land, minerals, natural resources and animals. But it can also include intangible things as well. Thus property also includes the following:

- A contract is property to the parties involved.
- A transferable award, license, coupon or ticket is property.
- A name, reputation, or good will is property.
- The labor of an individual is property.
- A person's business, profession, trade, or occupation and all fruits from them constitute property.
- A bequest in a will is property of the beneficiary.
- Money, stocks, patents, copyrights and trademarks are property.

Property is essentially everything which has an exchange of value. The right of property includes the power to own and possess the property, to dispose of it according to the will of the owner, or to sell it or to give it away as a gift. It is said that property is older than governments, and was a right given by God in the command: "*Thou shall not steal.*"

2 Albert H. Putney, *United States Constitutional History and Law*, Chicago: Illinois Book Exchange, 1908, p. 373.

We thus see that this phrase — Life, Liberty and Property — is in essence a summation of all that is important to us in the physical world in which we live. Everything that can be regarded as something necessary or valuable to physical, mortal beings on earth can be categorized under the phrase "Life, Liberty and Property." The right of "Life, Liberty and Property" also includes the right to protect each aspect it represents from harm, injury, devaluation or destruction.

This then lays the foundation to understand the conflicts, wars, and upheavals throughout history, for who ever controls the aspects of Life, Liberty and Property, controls everything that is important and valuable to man. Life, Liberty and Property are so related that the deprivation of any one right, may lessen or extinguish the value of the others.<sup>3</sup> They are coequal in nature. Thus a man has as much right to work as he has to live, to be free, or to own property.

### HISTORICAL ORIGIN OF LAW

Rights and law go hand-in-hand, and the source of our rights to are found in the source of the law, and the source of the law is to be found in history. To better understand the phrase of Life, Liberty and Property we need to know from where the law that it is based upon was derived, and how it is a part of our Anglo-Saxon history and common law.

When jurists and legal scholars make attempts to determine what the law is in a particular case, they invariably look to history for what the law is, as well as its meaning, intent and proper application.

Law is intrinsically connected and related to history and historical events. When Moses delivered the law of God to the Israelites at Mt. Sinai, this historical event had

3 *Smith v. Texas*, 233 U.S. 630, 636 (1913).

significance regarding law to this day. The relationship between law and history is well stated in the following excerpt:

The student of law in our times has come to recognize the fact that law is, in a sense, a branch of history, and is to be studied in a historic spirit and by a historic method; and as the student of law recognizes the relation which exists between law and history, so also the student of history comes to recognize that a certain relation subsists between history and law.<sup>4</sup>

Law is often the product of a long continued existence and application of customs or religious concepts. To have a true understanding of law and its proper meaning and application, one must be willing to go back to earlier times to study the origin and reasons for the legal principles involved.

When James Wilson gave America its first series of law lectures at the University of Pennsylvania in 1790, his theme was the development of the legal code and philosophy which reflected the American experience. Wilson stated: "Law should be studied and taught as a historical science."<sup>5</sup>

Law is thus more than a study of the history of our own country, but other nations as well. The great mass of our legal conceptions and principles have been brought from across the Atlantic from early England, and in many cases, from a still more distant home.

Law, like religion, language or culture, is a matter that is often quite unique to a specific race of people. Thus tracing back the origins of the common law is a matter that involves tracing the history of the Anglo-Saxon people.

4 From a lecture by Henry Wade Rogers, Dean of the Yale University Law School, recorded in: *Popular Law Library*, by Albert H. Putney, vol. I, Cree Pub. Co., 1908, p. 25.

5 James Wilson, "Study of the Law," recorded in *The Works of James Wilson*, edited by Robert G. McCloskey, (Cambridge, 1967), vol. I, p. 70.

The origin of that which we call Anglo-Saxon Law or the Common Law did not originate in England. It originated with the Germanic tribes in the first centuries of the Christian era. It was not until the Germanic Saxons migrated into England in the fifth and sixth centuries that the Common Law was practiced there. It was these Saxons who established the law we know as the Common Law in England. Thus the first germs of England's constitution and laws can be traced to the home of the Saxon people in the German forests.

The English jurist, Sir William Blackstone, wrote in his *Commentaries* that the law's basic principles . . .

"should be traced to their fountains . . . ; to the customs of the Britons and Germans, as recorded by Caesar and Tacitus; to the codes of the Northern nations on the Continent, and more especially to those of our own Saxon princes; to the Rules of the Roman law . . . but above all, to the inexhaustible reservoir of legal antiquities and learning, to the law of nations in our western orb."<sup>6</sup>

It is the "Germania" of Tacitus which contains the first circumstantial account of the legal and political institutions of the founders of the English nation. We thus find that the English law, as well as many of its institutions and language are almost purely of Teutonic origin.

In the life of the ancient Germanic tribes, we find the germs of many of the later English and American institutions. The political unit was the village community, with its system of local self-government. Each community stood apart, free and distinct from the others, except when they banded together against a common enemy. Among the most prominent characteristics of these Germanic tribes was their intense love of liberty, frequently going to war to prevent subjection or control by others. Here then is the foundations of the law and principles behind Life, Liberty and Property.

6 William Blackstone, *Commentaries on the Law of England*, vol. I, § 34.