

"We have examined the moral notions that present themselves with a *prima facie* claim to furnish independent self-evident rules of morality: and we have in each case found that from such regulation of conduct as the common sense of mankind really supports, no proposition can be elicited which, when fairly contemplated, even appears to have the characteristic of a scientific axiom"—although no doubt there may be "a rough general agreement, at least among educated persons of the same age and country" (s).

Yes, prior to the decisions there was "a rough general agreement" as to the principles which ought to regulate the relations and transactions of people "of the same age and country," but (with deference to Professor Burdick) I object to that "rough, general agreement" being called "a true body of law." I take the liberty of agreeing with one of the best of the American authors (Mr. Pomeroy) when (speaking of the appointment by William I. of a Chief Justiciar—"a permanent judicial officer . . . having supreme jurisdiction throughout England") he tells us that, prior to that period, law was administered by the Saxon local folk—courts having for officials no professional judges, and for laws a "mass of arbitrary rules and usages" (t). The new professional judges, with supreme jurisdiction throughout England, at once commenced the work of "reducing the tangle of customs to order" (u); commenced the construction of that

"Science which has for its ultimate aim the ascertainment of rules which shall regulate human regulations in accordance with the common sense of right" (v).

Let Mr. Pomeroy himself continue:

This "initial activity in creating the common law of England was done, not by parliamentary legislation nor by royal decrees, but by the justices in their decisions of civil and criminal causes" (w). "In this work of constructing a jurisprudence, the early common law judges, as well as the Chancellor at a later day, drew largely from their own knowledge of the Roman law. The evidence, both internal and historical, is conclusive that the common law of England, in its earliest formative period, was much indebted to that Roman jurisprudence which enters so largely into the judicial systems of all the western nations of the European Continent" (x).

(s) P. 360

(t) *Equity Jurisprudence*, 13.

(u) Bryce: *Studies in History and Jurisprudence*, 703.

(v) Lightwood: *The Nature of Positive Law*, 36.

(w) *Equity Jurisprudence*, § 13.

(x) § 14.