

FOUNDATIONS OF MASONIC LAW

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The history of law and law making is the history of civilization. As man's sense of justice developed with increasing needs and responsibilities, his ideas of legal enactments altered and changed. What was lawful in one age became crime in the next; what was criminal in one age was sanctioned by legislation in the next, in a thousand periods, climes and countries. Within the memory of men now living in the west it was permissible to hang a horse thief with no more legal basis than common necessity; today we name it lynching and make it illegal. Similarly, it was once illegal for a man to run away from his employer (slaves, prior to the Civil War) whereas now any man may travel where he will.

Masonic law, also, has seen developments during the nearly two and a quarter centuries since the formation of the Mother Grand Lodge;

Some acts right in one age are wrong in this, and certain wrongs of one century become right in the next. For instance, the power to make a Mason at sight is now denied by some Grand Lodges to their Grand Masters; the ancient right of all Lodges to be represented in Grand Lodge by both Master and Wardens is not now universal. In the narrower sense, Masonic law rest upon the Old Constitutions, the Old Charges and the Landmarks; the superstructure is made up of the Constitutions and By-Laws of Grand Lodges; the decisions of Grand Lodges on appeals; the edicts of Grand Masters; the decisions of Grand Masters, sometimes standing without review, more often reviewed and confirmed by Grand Lodges.

But in the wider sense, Masonic law is based upon English law - which goes back to Roman law - so that it is within the facts to say that Masonic law is a development of the ideas of equity, and the administration of justice, of the days of ancient Rome. From the time of the reign of Diocletian (284-305 A.D.) on political theory the Roman State was republic. Ultimate sovereignty was in the Roman people. The Emperor was the First Citizen, to whom the Roman people had delegated their sovereignty for the time being, by act of legislative authority. As time went on, the Emperor became thought of as the ultimate repository of sovereignty, the source of law. His powers began when he welded the authority which the sovereign Roman people delegated to him. But inasmuch as the people, through their legislative assembly, could lawfully enact a law, the Emperor, having been delegated their authority, came to be thought also to have the power to enact a law. Law thus enacted by the Emperor, by virtue of legislative authority vested in him, was called "Constitution," or in our language, Constitution. Actually enacted by the Emperor, such laws were considered rules established by legislative act. A second medium by which the Roman Emperor made law was by decisions in cases taken before him on appeal, or cases adjudicated directly by him. The Emperor filed his opinion or

judgment, which when rendered was called a decree. Under the Roman system, a Roman magistrate had no power to render a decision of judgment; such decisions were rendered only by judges or arbitrators chosen for the case. A magistrate, however, could decide certain matters and render a decree; these powers also were delegated to the Emperor at his accession.

Power to make or declare law by edict originally belonged to the magistrates of the Roman Republic, and was exercised by the Praetors or judicial magistrates. In the beginning edicts were pronouncements by a magistrate of a course which he proposed to take in the administration of his office, to the end that the citizen might know what to expect. In time these pronouncements easily became authority, and had the force and effect of law which governed the administration of the official who made the pronouncement. When the power of the magistrate was delegated to the Emperor, the power of issuing an edict also passed to him. The Emperor was thus given authority to issue general orders governing matters of administration, which had the full force and effect of law. In the Roman Empire an edict was a general administrative law, as distinguished from a judicial order, prescribing the conduct of some matter of administration.

The Roman Emperor also made or declared law by “rescripts”; letters or answers which he made to questions put to him by judges or magistrates. In the judicial system of Rome, a judge, having a cause for adjudication, was advised by the expert opinion of a person learned in the law, known as the Jurisconsult. As the Emperor was the Jurisconsult of highest authority, the practice of submitting questions of law to him for his opinion was but natural; having all the sovereign power of the Roman people vested in him, his determination was final.

“The Constitutions of the Free-Masons” published in 1723 contains the “History, Charges, Regulations, & etc.” of the Craft. This volume is the foundation stone of our Masonic law. But it is not the only “Constitution” of Freemasonry.

At the end of the eighteenth century the people of this country constituted themselves the sovereign, and as much the highest earthly power, fixing as the frame work of the Government then formed what we call the Constitution, the object being to limit the several organs of Government set up. Proceeding from the highest earthly power, this is our superior law, to which the several legislatures and departments of the Government must yield. In the same way, the Constitution of a Grand Lodge, whether called by that name or another, is the superior law of that Grand Lodge; the act of the supreme legislative authority of all Masons in that Jurisdiction, acting through their legally authorized representatives. Whatever the Grand Lodge establishes and promulgates as its fundamental law becomes its Constitution. In the early part of the eighteenth century, a Constitution in this sense was unknown; Anderson’s Constitutions was but a reducing to writing of existing usage and customs. So, in speaking of Masonic Constitutions, we must distinguish between Anderson, whose work was fundamental Masonic law, and the Constitution or governing instrument of an individual Grand Lodge, devised and adopted by it to fit its own particular needs. Anderson’s Constitutions belong to the Craft as a

whole; a Grand Lodge's Constitution is its alone, and has no force or effect beyond its Jurisdictional limits of authority. The similarity between the law of Rome and the modern conception of Masonic law is striking. To the Roman Emperor was delegated the powers of the sovereign Roman people. To the Grand Master is delegated many (not all) of the powers of the sovereign Craftsmen. Thus, in Landmark 3, in the "Constitution, By-Laws, General Regulations and Edicts of the Grand Lodge of New Jersey," we read:

"The Grand Master is elected by the Craft, and holds office until his successor is duly installed. He is the "Ruler" of the Craft and is, of right, the presiding officer of every assemblage of Masons as such. He may, within his Jurisdiction, convene a lodge at any time or place and do Masonic work therein; may create lodges by his warrant, and arrest the warrant of any lodge. He may suspend, during his pleasure, the operation of any rule or regulation of Masonry not a "Landmark." He may suspend the installed officers of any lodge, and reinstate them at his pleasure and is not answerable for his acts as Grand Master. He may depute any brother to do any act in his absence which he himself might do if present." This excerpt has been chosen because it sets forth certain powers of the Grand Master more plainly than is done in some other Jurisdictions, but his fundamental powers are rarely questioned in any Jurisdiction. Particular attention is called to two statements: the Grand Master is the "Ruler" of the Craft, and, he is not answerable for his acts as Grand Master. These two powers over the Roman people were inherent in the Roman Emperors. The Roman Emperor made law by decisions in cases taken to him on appeal, or in those which he adjudicated directly. The Grand Lodge hears appeals from those involved in Masonic trials, and affirms or reverses the decision of the Lodge (or trial commission); Grand Lodges adjudicate directly in trials involving Masons who are members of Grand Lodge. The modern conception of justice is bound up in our belief in the right of appeal from a lower authority to a higher, and finally to the highest, that fallible human justice may be made as infallible as possible. The brother in Lodge cannot appeal from the decision of his Master, but can appeal to the Grand Master or the Grand Lodge. The brother tried, convicted and punished, may not appeal to the Lodge that tries him, but may appeal to the highest authority, the Grand Lodge.

The Roman Emperor made law by "rescript"; by letters of answer to questions put to him by a judge or magistrate. All Grand Masters are called upon to make decisions on questions asked by Masters of Lodges or individual Craftsmen. Like those of the Emperor, these decisions are law for the time being, and usually (not invariably) become part of the written law when Grand Lodge receives the Grand Master's report of the decisions he has made during the year. The Grand Lodge either affirms the decision, or, if its legality has been questioned by the Committee on Jurisprudence, may adopt the Committee's report, thus determining that the law in the future is contrary to what the Grand Master decided.

The Roman Emperor made law by edict. An edict was initiated by the Emperor; the decision came as a response to an appeal. The Grand Master may issue an edict as an initiatory act of law making, it stands as law until repealed or affirmed by Grand Lodge. The development of law making in modern times is divided by Dean Roscoe Pound into four stages:

1. Unconscious legislation, when dealing with common law principles. The facts of the case before the Court may differ from those of a former case, to which the Court has applied a common law principle. Notwithstanding the difference in the facts, the Court may extend the common law principle to cover the case at the bar; the legal effect of this is to extend the common law doctrine to new limits. This was described by the late Justice Harlan, of the Supreme Court, as “Judicial Legislation,” because in law the latest application of a doctrine establishes the law of jurisdiction.
2. Declaratory legislation, or reducing the unwritten law to written law. This does not result in new law, but only gives written authoritative expression to already existing common law.
3. Selection and amendment, when by the political union of peoples with divergent customs, it becomes necessary. A new State resulting from a combination of peoples of different customs, requires selecting and amending laws and customs of the different peoples to fit the needs of the new State.
4. Conscious legislation; law making to meet existing exigencies or new conditions.

Here also we find distinct parallelism with Masonic law. The law of a certain Jurisdiction states that no man may be made a member of the Craft who is “engaged in the manufacture or sale of intoxicating liquor.” By “unconscious legislation” a Grand Master extended this to mean, also, a book-keeper employed by a man who sold liquor. A later Grand Master extended this enactment to mean a stockholder in a hotel company who countenanced the sale of liquor by that hotel. As these decisions were confirmed by Grand Lodge, they became constitutional law in that Jurisdiction.

Masonic declaratory legislation, reducing the unwritten to written law, first took place in London in 1723, when Anderson’s Constitutions were published. But the process has by no means been completed. Many Grand Jurisdictions have local customs which have grown up through the years; it occurs to someone, or the need arises, to have this reduced to writing and made a part of the constitution of the Grand Lodge By-Laws. It is properly put before Grand Lodge, and becomes law.

In a certain Jurisdiction the ancient custom of opening the V.S.L. at definite passages of Scripture during the three degrees was thought by some to be more honored in the breach than in the observance. Grand Lodge decided that what its prophets contended was the common practice, should prevail. It is now law in that Jurisdiction that the Bible may be opened “at Random.”

Selection and amendment takes place Masonically when a new Grand Lodge is formed, or an old one splits in two. When the States of North and South Dakota were formed from the Territory of Dakota, the Grand Lodge of the Territory became two Grand Lodges. The Grand Lodge of North Dakota selected and amended the law of the Mother

Grand Lodge to form its own Constitution. Conscious legislation in Masonic bodies is similar to that in all other legislative bodies. In almost every Grand Lodge meeting some amendment to existing law is offered, to lie over for a year, or having been proposed the previous year, it is acted upon and accepted or rejected.

Grand Masters and Grand Lodges today have far more despotic power than any ruler or national legislative assembly in any modern body politic. That such despotic authority has learned to rule wisely and well; that Grand Masters under-emphasize rather than over-use their powers; that the Craft as a whole is well, sanely and soundly governed, are tributes to the gentle influence of the principles of Masonry, too great for even headstrong men to oppose. Truly, Masonic leaders have well learned the ancient truth:

“O, ‘tis excellent To have a giant’s strength, but it is tyrannous To use it like a giant!”