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April 21, 1999 LB 76

PRESIDENT MAURSTAD: Thank you, Senator Brashear. Senator Landis, on the Bruning amendment to LB 76.

SENATOR LANDIS: Thank you, Mr. Legislature, members...Mr. Speaker, members of the Legislature. I listen with increasing interest to this debate. This is a debate that has not lost the interest of the Legislature, and it has been of a high level. I was struck by a couple of things in Senator Tyson's speech which prompted me to raise my light. I was struck by a quote that he used, and that was, the truth is that some crimes are so outrageous that society insists some adequate punishment because the wrongdoer deserves it, irrespective of whether it is a deterrent or not. And the only thing that strikes me as odd about that is why you would say some crimes are so outrageous. Read the sentence again, the truth is that some crimes are so outrageous that society insists on adequate punishment. Shouldn't society insist on adequate punishment for all crimes, not some, all crimes, because the wrongdoer deserves it, irrespective of whether it's a deterrent or not? The question is, what is adequate punishment? John Locke tells us that we leave the state of nature, the place where we have absolute freedom, where might equals right, where the biggest person is able to enforce by their power the theft of property or the taking of life, and enter into government. In an exchange, we give up the freedom of living the law of the jungle and replace it with the law of human society. We give up total freedom for productive, valuable social freedom. We give up the ability to do anything so that we can live without the fear of the person next to us doing anything to us, and we create an entity called government to enforce this communal freedom. He says the reason we do that is because it replaces an arbitrary source of power with a legitimate source of power; instead of might, we replace it with right. Things that we communally agree to, as a people, and, therefore, are bound by them. It strikes me that what society gives the individual in this transaction is meaningful freedom. Freedom not at the risk of the arbitrariness of the biggest person on the block taking things and killing without consequence, but the creation of law. What it is that society creates is a set of rules and the power to enforce those rules, unfortunately post hoc, after the injury but, nonetheless, with consequences, social consequences. It replaces arbitrary rule with legitimate rule, and this allows us