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THE CASE FOR LAW†

ROSCOE POUND*

Mankind has always chafed under laws and more or less resented law. As the human world becomes more crowded and complex the volume of laws increases continually and the law is correspondingly increased in volume and complexity. Substitutes for social control through law have been urged from antiquity and are urged today as against social control by law administered by lawyers. What is the case for law?

The beginnings of civilization are in an ordering which serves to make men's living together in a reasonable degree of harmony possible. Out of a customary regime of harmonious individuals grows a legal order—a regime of adjusting relations and ordering conduct which makes division of labor possible, whereby individuals, freed from continual preoccupation with self-defense, may devote their attention to specialized tasks and then in time may increasingly acquire a mastery over physical nature. A legal order is the mark of a civilized society.

Relations of defense and commercial relations extend the area of civilization. A regime of peace among neighbors grows into one of relations of peace among neighboring groups of neighbors. The regime of peace among neighbors admits of commercial relations among neighbors and out of these grow ethical relations among neighbors and among groups of neighbors. Economic relations among neighbors grow into economic relations among groups of neighbors and in time into such relations among peoples. As aerial transportation, radio and television are making one great neighborhood of the world, we are coming to have world economic relations which must lead to world ethical and, we may well believe, eventual legal relations—a world wide civilization.

We may take as the goal an all round development of every human individual in a crowded world maintained by a regime of social control organized by law.

I say law, rather than laws. "Reason," said Coke, the oracle of our common law, "is the life of the law, nay the common lawe itselfe is noth-

† Title of the manuscript which formed the basis of Dean Pound's address delivered in 1959 on the occasion of the 100th anniversary of Valparaiso University.

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ing else but reason." He is certainly a bold man who would challenge Coke as to what is the common law. But is that the same question as what the common law is? I should say that the law, and so the common law as a system of law, is experience developed by reason and reason tested by experience.

A characteristic mode of English and American thinking about law is largely due to the circumstance that two distinct ideas, law and a law, seem to be expressed in English by the one word "law," whereas elsewhere there are two words available—in Latin *ius* and *lex*, in French *droit* and *loi*, in Italian *diritto* and *legge*, in Spanish *derecho* and *ley*, in German *Recht* and *Gesetz*. Right in English is used for what is right, but not for law, and suggests confusion of "a right," as a legal conception, with "what is right," an ethical conception. At one time jurists in Scotland, under the influence of civil-law terminology, often used the word "right" not merely for "a right" but also for "law" (*ius*). But it was easy in English to reason from the word law in the two terms "law" and "a law" that law was a body of laws and that a law was a rule, one of the components of a body of rules.

At the outset we must distinguish between "law" and "a law"—between law and a body of rules of law. "Law" is a word of more than one meaning. Two of these meanings are important for our present purpose: (1) What Continental jurists call the legal order (*Rechtsordnung, ordre juridique*)—the regime of social control through legal institutions of justice in civilized society—and (2) the body of authoritative legal precepts which obtain for the time being in a politically organized society. It is easy to assume that because each is called by the one name of law the one is bound up in the other and that law is an aggregate or body of laws. Indeed, English analytical jurists long carried this even further. They defined a law as a command set by a political superior and so law as a body of imperatives imposed on men by a sovereign ruler or ruling body such as the British Parliament. This treated the law as a body of legal precepts attaching a definite defined legal consequence to definite detailed facts or states of fact. But the vital, the enduring part of the law is in principles—starting points for reasoning, not in rules. Principles remain relatively constant or develop along constant lines. Rules have relatively short lives. They do not develop; they are repealed and are superseded by other rules. In truth, there is no necessary connection between the legal order and any particular body of rules of law established in any particular time and place.

What must be stressed is the stability of law as contrasted with laws. Legislative lawmaking is inadequate to the task of establishing

and maintaining a system of law except as it formulates under juristic leadership what has been found by judicial experience, developed by juristic reason, and tested by judicial and juristic further experience. On the other hand, judicially or juristically found general principles prove inadequate to special local needs. This is brought out strikingly in American experience as to utilizing the water of running streams. Where streams with a steady, regular flow of water in sufficient quantity to admit of use by many are at hand, the problem of admitting the widest possible use of natural media by the most who are in a position to use and desire to use them—of satisfying the most human expectations we can with the least friction and waste—is met by limiting use of the water to owners of land along the banks and limiting use by each to what will allow a like use by all. The universal principle of satisfying the most expectations with the least friction and waste has been developed in western Continental Europe, England, and the eastern United States by adjudication and juristic reasoning into the principle of riparian rights as set forth above. But if applied to arid regions in America it has the effect of preventing effective use by any one of such flowing water as there is. Here special local geographical conditions call for special legislative rules in place of the principle ascertained by experience developed by reason in the course of adjudication.

English and American analytical jurisprudence as I said above has done harm by inculcating an idea of law as only an aggregate of laws and of a law as a rule attaching a definite detailed consequence to a definite detailed fact or state of facts. Laws, without more, are instruments of tyrants and dictators. They may be laid down and applied arbitrarily. But, on the other hand, they may be instrumentalities of a system of orderly application of the force of a politically organized society in accordance with ideals of justice and a technique of furthering principles made starting points for reasoning. Thus they are directed to a reasoned orderly adjustment of relations and guiding of conduct in civilized society.

With the expansion and unification of the economic order, a chief problem of the science of law is to attain and maintain a due balance between the general, or as it more and more comes to be, the universal and the local. In the science of politics it is a problem of adjusting a general ordering of society as a whole and local self government. In jurisprudence it is one of universal principles, i.e., starting points for guiding the general ordering of relations and conduct of life in society, on the one hand, and, on the other hand, prescribing of detailed rules adapted to local ethnic, geographical, historical, and economic conditions

which often vary greatly from place to place. The two fields are quite distinct but merge along a boundary not easy to draw with exactness. There is a tendency to stress general principles or detailed rules according to historically drawn lines of the time and place. Hence detailed legislation shaped to local modes of thought of the past may hamper judicial working out and application of principles, while, on the other hand, judicially or juristically found and formulated principles may confuse the application of salutary rules for local administration. Working out a theory of the relation of local legislation and administration to universal principles of law for a unified world may be the compelling task of the jurists of tomorrow.

It is significant to note the continuous and often rapid changes in laws—legal precepts laying down rules—as compared with law—in American legal history. In 1924, in an address before the American Bar Association, I made a study of the reported decisions of American courts from the Revolution, beginning in 1774, the date of the Declaration of Rights of the Continental Congress, which claimed the common law as the birthright of Americans. Examination of the reports at intervals of fifty years during this period showed that although the legal order had been conspicuously stable during the whole period, yet if we take law to be merely the aggregate of received or authoritatively promulgated rules in the time and place the law had changed its content at least three times in one hundred and fifty years.

It is true the legal order begins with laws—indeed, in a great detail of rules; attaching prescribed penalties to the minutest details of injuries involved in a breach of the peace. In the laws of Ethelbert, King of Kent (about 600 A.D.), the oldest law book of what was to be the law of the English-speaking world, there are twenty-eight sections, fixing the composition or sum to be paid to buy off the vengeance of the injured person in case of injuries to the person such as disturb the peace of a small town. The tariff begins with fifty scaetts (a scaett was a small copper coin) in case of seizing by the hair, and proceeds to cover every item of the body, from head to foot in detailed distinctions between breaking of bones, amputating, cutting, piercing, mutilating or merely bruising—differentiating a bruise covered by the clothes from one not so covered (in which case his neighbors would inquire who hit him and aggravate the insult) and providing for “every nail a shilling.” This minute differentiation is characteristic of the beginnings of a legal order and may be seen, for example, in the Laws of Hammurabi (Babylon, about 2000 B.C.). Indeed, the ancient codes, as they are called, are very much alike in the most diverse parts of the world and the most diverse ages. Next

to tariffs of compositions they are what might be called police regulations in which ideas of penalty and of reparation are not clearly differentiated.

Hippodamus (about the beginning of the fifth century B.C.) laid down that there were three subjects of litigation in the Greek city-state of his time: Insult, injury and homicide. That is, there were three cases in which one had to buy off the desire for vengeance so as to maintain the peace: (1) of one who had been insulted, or (2) one upon whom an injury had been inflicted, or (3) one whose kinsman had been killed. For the rest, we find in the beginnings what might be called municipal police regulations and rules of procedure for enforcing them. In the Roman Twelve Tables (450 B.C.) we may see legal procedure laid out in rules, and the dramatic ceremonial by which an action at law was begun in the Roman strict law takes us back to a time when in the regal period, the king was the chief of police of a small country town who saw two citizens in a quarrel in the street and called out "let go both of you," and then proceeded to appoint a third person to settle the dispute. Thus the beginnings of legislation are in police regulations. But the beginnings of law are in custom.

It was the duty of the wise and experienced head of the kin-groups in a kin-organized society to learn and know and expound the established customs of the group. These might be thought of as having been taught or formulated by divinely inspired sages in the beginning, but they clearly represented the accumulated experience of the kin-group. In Rome originally the head of the household advised his dependents and advocated their causes before the judicial magistrate and before the appointed triers of fact. He gave regular audience to those who claimed his advice as to what was the customary law and in time young men who were ambitious to be of service came to attend the consultations of what were called jurisconsults and took notes and became jurisconsults themselves. Thus there came to be a profession of lawyers who had become teachers and commentators and law writers and produced a body of legal literature which has been a quarry for the modern law. It was put in the form of an authoritative Digest by Justinian in the sixth century. In the Middle Ages, law began to be taught from the Digest of Justinian in the twelfth century, and in the fifteenth and sixteenth centuries was received as law substantially throughout Continental Europe. In an age of absolute governments in Continental Europe of the seventeenth and eighteenth centuries it was thought of as a body of legislation of an emperor. But it was in fact jurist made, not legislator made. It was a product of experience of advice to litigants and of teaching—a body of experience de-

veloped by reason and reason tested by experience. The civil law is jurist made as truly as the common law is judge made.

As the judicial magistrate administering the legislative texts became in theory the characteristic functionary of the civil law, the independent judge, administering justice according to law became the characteristic functionary of the Anglo-American common law. In the polity of the Germanic peoples of northern Europe, and in particular of the English before the Norman Conquest, the task of seeing to it that all things were done decently and in order—the organized social control—was in the body of free men of the locality, administering the common custom at regular or stated meetings. Those who had complaints to make made them in the open assembly. If the assembly found them well taken an issue was framed at what was called the issue term, to be tried at what was called the trial term. The trial was a definite determination of a simple, single proposition made mechanically by some one of the modes of trial which were then recognized: battle between the parties or their champions if one was unable to fight, ordeal by hot iron, hot water, or cold water, witnesses (not to testify from their knowledge of facts, but as required to validate a transaction and could say that it was executed in their presence) or charters, i.e. production of the actual instrument. Trial by jury was brought in by the Normans at the Conquest. The jury was a device which had been used by the Roman governors of provinces who would call in a number of neighbors from a locality to tell under oath what taxable property was to be reached in the neighborhood. This was developed into a means of ascertaining neighborhood knowledge of what had gone on, that is, the facts of neighborhood occurrences. So simple may be the beginnings of what came to be held fundamental institutions.

After the Conquest the administration of justice passed from the local courts to what became the common-law courts at Westminster which applied what was called the common custom of England. It was in theory a body of customary law common to the whole realm. But in a time when men knew only of law as custom it was not hard for the court to find in the general course of administering justice the needed customs. The great achievement of these courts was establishment of the doctrine of the supremacy of the law, a doctrine, as Bracton put it, that the King should not be under any man, but under God and the law. Establishment of this doctrine that every one and everything was subject to scrutiny of the law in order to see to it that, as St. Paul told the Corinthians, all things were done decently and in order, was not complete till 1688, when the independence of the judiciary was secured by the Bill of Rights.

In the reign of Edward III the Court of King's Bench laid down that men could not go about the Kingdom seizing property as collectors of the King's taxes without the required warrant, and rendered judgment against the would-be collector for the property taken. In the same reign a friend of the King and his companions forcibly disseized a man of his freehold. The man who had been disseized sued in the Court of King's Bench, and as the wrongdoers made no appearance the Court outlawed them and issued a writ commanding the sheriff to take them as outlaws. The sheriff returned the writ unexecuted together with a letter from the King, under his private seal, setting forth that he had pardoned the disseisors and that they should not be held for any damage done. The Court held that such a private letter from the King did not justify the sheriff in not executing the writ, fined the sheriff, and issued a new writ. The King could not in this way interfere with the due course of justice in the courts.

Again in the reign of Henry VII the Court of Common Pleas had to decide, at a time when the distinction between the jurisdiction of the church and the temporal jurisdiction was taken to be fundamental and the first chapter of Magna Carta had laid down that the English church should be free, whether Parliament could make the King "a special person" eligible to be parson of a church. Afterward, at the Reformation, Parliament made the King head of the Church of England. But before that revolution the Chief Justice laid down that "a temporal act, without the assent of the supreme head, cannot make the King a parson."

Under the Tudors and Stuarts the doctrine of the supremacy of the law came before the court again in cases of royal attempts to create new offices in the courts, at the cost of litigants, in derogation of the rights of the lawful holders of the old established offices, to enrich favorites. Also these rulers sought to grant profitable monopolies to favorites contrary to Magna Carta. The courts steadfastly refused to give these appointments and grants legal effect. Finally the matter came to a head when James I undertook to sit as judge in the court of King's Bench. The Chief Justice, Sir Edward Coke, had to remind him that the King in person could not adjudge any case; that controversies were to be determined in some court of justice according to the law and custom of England. Whereupon the King said that if such were the law then he would be under the law, "which were treason to affirm." Coke answered in the words of Bracton, that "the King ought not to be under any man, but under God and the law."

Coke's Second Institute, a commentary on Magna Carta and the old cases setting forth the common law, was nothing short of a Bible to the

lawyers of the time of the American Revolution and the century following and fixed this doctrine in our legal polity. The generation of lawyers who were leaders in the events which led up to the Revolution and who framed the legal part of the Constitution had been trained in the common law in the Inns of Court or by lawyers so trained and accepted Coke as ultimate authority.

In England, after 1688, Parliament became the absolute authority the Stuart Kings had sought to make themselves. In the United States, under the polity of our written constitutions, state and federal, legislative, executive, and judiciary are alike held to act in accordance with the law of the land. There is no unlimited, absolute power anywhere short of the sovereign people acting in the manner prescribed for amendment of the Constitution. In the states the power of amendment is subject to limitation because of subjects committed to the federal government. From time to time legislatures have claimed, as special representatives of the people, to stand in our polity where Parliament stands in Great Britain. But our polity is that of England before 1688 rather than that of Great Britain of today.

No doubt such a polity requires a people with an abiding respect for law such as marked the Romans in antiquity and the English in the development of our common law. At the time of the *coup d'état* by which Napoleon Bonaparte, President of the French Republic, made himself Emperor of the French, one of the steps was to arrest the members of the national legislative assembly. This was done by a body of soldiers under orders of the Minister of War. One of the members stood up to the soldiers and read to them the text of the Constitution as to the immunities of legislators. But to the soldiers the order of the officer sent to carry out the order of the Minister of War was a sufficient warrant. No notion of the sanctity of the written law of the land held him back. In a constitutional polity founded upon separation of powers, an abiding faith in the fundamental need of rationally conducted exercise of the powers of the several departments according to the law of the land must be the ultimate reliance.

The federal constitution declares itself the supreme law of the land. Also it guarantees to us due process of law. As I have said, that phrase runs back to Magna Carta and Coke explains that the two, as used in the books of the common law are synonymous.

According to Lord Kilmuir, making a concordant legal order out of the judicial and administrative systems which go on together in the social service state of today requires what he calls "the essence of a truly legal process." This, I submit, is what we in the United States call by the

good common-law term "due process of law." I have argued elsewhere that the universal legal order, which we are seeking to establish today as a law of the world, must be based upon this same due process. As a means of determining controversies its elements are: An independent, unbiased, and courageous tribunal; full notice in advance to all interested parties of the nature of the controversy to be determined and the claim or claims to be urged or charges to be preferred by the parties; a procedure affording full and free opportunity for each party to present evidence in support of his or its case to the tribunal, to cross-examine witnesses, and to argue both the credibility and the weight, and the relevance of the evidence as to each item and as to the whole, and as to the legal propositions applicable thereto; and finally a judgment according to law, not the will of the tribunal, and not dictated directly or indirectly from without.

Due process of law presupposes such a tribunal. But law also grows out of it.

Note, however, that we are speaking here of law, not of laws. We are speaking of what jurists call the legal order (*ordre juridique*, *Rechtsordnung*), a regime of adjusting relations and ordering conduct by systematic application of a body of received authoritative grounds of or guides to judicial decision and administrative action derived from experience developed by reason.

But we have not told the whole story in expounding the principle of order. Another cardinal principle is that of equality, as we think of it in the science of law and in the science of politics. As a universal principle it might be called the principle of balance. In the historical development of the common law we have seen that principle in action in the doctrine of the supremacy of law. Every one, in everything he does, was equally held to do it, as St. Paul said, decently and in order. Every one from the King down was limited to the powers recognized by the law of the land. Moreover, the law has more and more extended its protection as well as its restraint to every one. Our Constitution prescribes for every one due process of law and the equal protection of the law. I will not essay a mathematical discussion of the principle nor attempt exposition of it as a principle of physics. It is enough that our federal government is organized on the principle of balance—the balance between the universal or at least the general and the local which is involved in the distinction between law and laws. No state of a continental domain, such as ours, has been able to exist otherwise than as either an autocracy or as a federal government. When the Roman state became coterminous with the civilized world the republic was succeeded by an empire which presently be-

came an autocracy. Russia under its old regime was an absolute monarchy and under its new regime became an absolute dictatorship. Great Britain has been a parliamentary absolutism since 1688, but as she became an empire we separated and became a federal government, and Canada, Australia, Ireland, and India have detached and each has become an independent state. Indeed Canada and Australia have become federal states. There is the best of reasons for this. If social control through politically organized society is to be compatible with freedom, government must be in touch with free men as it cannot be except through local political organization. If it is to be efficient it must have a strong central organization with large powers. If men believe in freedom, as English-speaking peoples have at least since the seventeenth century, they seek to temper control through the efficient central government by a regime of local governments. But with the enormous development of means of transportation and communication today, the area of the locality with separate local interests becomes more and more difficult to define. The scope of the local as distinguished from the general becomes less and the need of effective social control becomes augmented. If men believe in efficiency as an end in itself, they tend to believe local governments and individual freedom and individual rights are hindrances to efficiency and turn to autocracy. The democracies which are not federally organized have no continental domain over which to rule.

A federal government requires balance. It is organized on the idea of balance—balance of state and nation, balance of locality and state, balance of individual and society, balance of the general security and the individual life. Balance is by no means an obsolete idea of the eighteenth century. It is only by achieving and maintaining these balances that a single political organization can rule a whole continent except as an autocracy. But balance in a politically organized society requires a Constitution—a received body of precepts serving as the supreme law of the land. It is not a mere fashion of politics that the great English-speaking federal governments of today, the United States, Canada, Australia, are likewise constitutional governments. It is a constitution that maintains the equilibrium which is of the essence of federal organization. To keep the balance of state and nation and of locality and state, each must have its sphere marked out by some authoritative statement from which neither may appeal and to which the officials and agencies of each are held to obedience.

If a federal government requires a constitution, it is no less true that a constitution requires law. It is indeed a supreme body of law—or as our federal constitution puts it, the supreme law of the land. Hence

our Constitution is both a legal and a political document. Under it political questions are often legal and legal questions to some extent may be political. In this respect our polity retains a prime characteristic of the English political organization of the seventeenth century from which it was largely derived. In the English polity there was no special public law differentiated from the ordinary law of the land. Questions of the power and authority of those who act as the agents of government were and still are dealt with by the ordinary courts in ordinary legal proceedings on principles of law applicable to every one. Hence the legal side and the political side of the Constitution are not wholly separable. But a happy balance between the specific and the general, between the redress of specific grievances and guarantee of specific rights, after the manner of Magna Carta, on the one hand, and of general declarations of fundamental rights, after the manner of the eighteenth-century publicists and the Declaration of Independence, on the other hand, keeps these two sides in equilibrium.

In thinking about government we must distinguish an ultimate goal or purpose of political organization of society from immediate ends or purposes, which are sought as means of attaining the ultimate purpose.

Social control, control of the conduct of each of us by the pressure of our fellow men, with whom we must live together in society, is involved in greater or less degree in every form of human association. Politically organized society is a highly developed form of association which exercises social control by means of policing under laws and of law—by means of coercion through special or general commands addressed to individuals or by a regime of systematic application of the pressure of organized social control to guide conduct and adjust relations according to principles. Law is in two respects a necessity of life in a society of any complexity. It is needed by the individual in order to maintain an inner adjustment of his inborn tendencies to aggressive self-assertion to a no less inborn tendency which might be called his social instinct. For man's nature is not a harmonious one except as he learns to bring about a working balance through training and experience of the exigencies of life in society. The aggressive self-assertive instinct leads him to think of his own demands or desires as reasonable expectations or rights and seek to satisfy them at the expense of others. On the other hand, all normal men desire and show an aptitude for life in groups and associations and relations, as deep seated as the urge to aggressive self-assertion. But the urge to form and join in groups and associations and relations is not in itself strong enough to maintain a steady course of conduct compatible with them as against the aggressive seeking of individuals to satisfy their

expectations or claims or desires. These are indeed unlimited but must be satisfied out of a limited stock of the goods of existence. As the saying is, we all want the earth. But there is a myriad of us and only one earth. Whenever a number of human beings come in contact there is conflict and overlapping of these expectations or claims or desires. The aggressive self-assertion of individuals to satisfy them will disrupt the group or association or relation which does not succeed in determining which of these expectations or demands or desires are to be recognized and secured and within what limits and in ordering their satisfaction with a minimum of friction and waste.

It is not merely the aggressive, self-assertive individual that is a potential threat to organized society. Groups may become powerful within a society and group claims and expectations may be urged aggressively at the expense of the interests of the whole or of other groups with equal claims to recognition and security. Organized economic power has had to be curbed whenever and wherever it has become strong and aggressive. From the time of Magna Carta the common law has opposed commercial monopoly. Today the economic and political power of organizations of laborers may be used aggressively. At the moment one of the heads of organized labor in the United States is objecting vigorously to any legislative provision for supervising the administration of huge funds which in the hands of any other body of men than a labor union would be held trust funds to be used in good faith for the proper purposes for which they were raised. In the past more than one type of person and more than one type of individual has had to be taught that the individual claim to his or its dignity could not maintain an immunity against the general interest.

But there are those who tell us now that this way of thinking is outmoded. It assumes the idea of a struggle for existence as did the biological science of yesterday. It presupposes a competition among individuals to realize their expectations out of a limited stock of the media of existence. Science, we are told, is enabling us to overcome this struggle for existence. It is enabling us so to multiply the goods of existence that every one will have all he can reasonably expect without any competition with his fellows. Hence there will cease to be any job for law. Superabundant plenty will put the law and the lawyer with the snows of yesteryear.

But may it not be that the expectations and demands and desires of men will increase with the square of the multiplication of the goods of existence? Will there be an increase of reasonableness corresponding to

the increase of abundance? Or will men still want the earth and the fullness thereof, however full science may make it?

Until the millennium makes over human nature, or communism suppresses it, or anarchy wrecks abundance, there is assured need of law and of lawyers.

As the world goes, then, we may say that the ultimate purpose of a politically organized society, without attaining which it cannot exist, is to achieve an adjustment of relations and ordering of conduct so that the most of what men hold to be their reasonable expectations is secured with the least friction and waste. Maintaining the general security, safety, health, peace and order, and maintaining the security of social institutions, domestic, religious, political and economic, have to be achieved without impairment of the fundamental expectations of civilized life in society. But maintaining the demands of the individual life and of general progress, cultural, economic and political, in the face of expectations and demands as to the general security and the security of institutions raises continual problems for lawmaking and adjudication which become increasingly difficult as societies become larger and more complex. Each expectation and demand, carried to logically complete satisfaction, negates many others. Satisfaction of any claim in some degree limits and may negate competing claims. Hence effective means of achieving a well-balanced adjustment of the general security to the individual life, of the security of the social institutions to the claims to promote general progress, become significant immediate goals. Our attention to the ultimate goal without attention to the means of securing it may defeat the final purpose. What we have to depend upon is experience developed by reason and reason tested by further experience, teaching us how to bring about and maintain the required order and balance.

But, I hear some of you saying, what about justice? We have heard nothing about justice, which Daniel Webster told us is the great interest of man on earth. On the other hand, we have been talking about justice in all that I have been saying about the purpose of law. The leader among those who have expounded the philosophy of law in our time defines justice as the ideal relation among men. In the world in which we live, this ideal relation must be a relation among men living in society, if not as yet in a universal world-society, in a crowded, mechanically operated world where the individual is with dangers compassed round far beyond those involved in intentional aggression by his neighbors or the enemies of his kin-group or neighborhood. Adjusting of relations, ordering of conduct and balancing of competing claims in such a society is the justice with which jurist, judge, and legislator must have to do today.

An abstract ethical relation in a Utopia in which there are no competing human expectations, or an autocracy in which no such claims are recognized or allowed, need trouble no one but a metaphysician.

So we come back to what we started with, our question what law is. And this answers the question: why should we maintain and cultivate the law of the land? Is it not because we recognize and value the work of those who have gone before us in giving us a system of adjusting relations and ordering conduct which enables two and three quarters billion of human beings in the world to live, on the whole, active and useful lives, and one hundred and seventy millions in America to develop the powers with which nature has endowed them in peace and freedom? The agencies of social control are religion, morals, and law. As things are today men have been putting the brunt of the work on the law.

In the psalm De Profundis, as it stands in the Vulgate, differing from the text with which we are familiar in King James's version, the psalmist cries out, in a noble passage, *propter legem tuam sustinui te Domino*—because of thy law have I abided thee, O Lord. The regularity of the processes of nature, as compared with the willfulness and inconstancy of human behavior, the steadfastness and predictability of the moral order, as compared with the want of principle and untrustworthiness of the ungodly, gave strength to the faith of the psalmist in an Eternal who makes for righteousness—in an Eternal who stands behind the regularity and certainty of the natural and the moral order. How to promote and maintain such regularity and certainty in human behavior, through religion or morals or education or government, has been the chief concern of humanity. How to promote and maintain them by the ordering of relations and adjustment of conflicting interests and determining of disputes has been the chief concern of organized humanity. Moreover, not the least part of that concern has been to insure regularity and certainty in the process of determining disputes. When one reflects on what has been done in the development of order and system in these processes, and weighs against the abuses incident to the political order the gains which that order and system has brought us, he may well paraphrase the psalmist and say: Because of thy law am I content with thee, O state.