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# The People and Law Reform

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## THE PEOPLE AND LAW REFORM\*

BY CARVILLE D. BENSON, JR.†

"Probably I am too skeptical as to our ability to do more than shift disagreeable burdens from the shoulders of the stronger to those of the weaker. But I hold to a few articles of a creed that I do not expect to see popular in my day. I believe that the wholesale social regeneration which so many now seem to expect, if it can be helped by conscious, coordinated human effort, cannot be affected appreciably by tinkering with the institution of property, but only by taking in hand life and trying to build a race. That would be my starting point for an ideal for the law." Holmes<sup>1</sup>

## I. INTRODUCTION

WE know now that it is futile to consider matters of law reform without keeping constantly in mind the fact that the administration of justice is a social institution, one of several agencies of social control. It cannot be isolated as an impersonal part of the state and perfected by itself, it is a vital organ of our social structure. Writers have frequently noted that law reform is greatly affected by prevailing social conditions. In the following pages it is submitted that the problem of removing social conditions unfavorable to the administration of justice, can be treated scientifically

## II. SKETCH OF LAW REFORM

There is at the present time considerable agitation for law reform. Although we notice it particularly in regard to the criminal law, it is insistent in regard to the civil law as well. The demands for improvement range from popular magazine articles to learned studies by commissions.

Law reform, clearly, is a continuing process. It cannot be done once and for all, because even if we assume that the law is in accord with the needs of any particular age, as changes later come about in social, economic and industrial conditions it will become necessary to make adjustments in the legal system to bring it in accord with those changes. And it makes no difference

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<sup>1</sup>Ideals and Doubts, Collected Papers, 305, 306. Reprinted from 10 Ill. L. Rev. 1.

whether the reforms are made on a large scale, as Justinian wrought in the Roman Law, or piecemeal, as is customary in the Anglo-American law, changes in society will make further reforms necessary

The task of making such adjustments is difficult beyond expression.<sup>2</sup> However, from the beginnings of the common law, adjustments have been made by legislation and judicial decision in order that the substantive law might give legal recognition to more and more of the ever-increasing and ever-varying demands of the people, and that the adjective law might make possible in a fuller measure the just application of the law to the case at bar. Yet there still remains much to be done. The law is far from adjusted to the tremendous changes that took place in the nineteenth century

### III. THE PLACE OF THE PEOPLE IN LAW REFORM

A. *In General.*—Law reform is a complicated and technical thing which, for the most part, lies in the hands of lawyers, judges and legislators. It is the work of experts. The people individually have but little to do with it. However, while the people individually may have little or no part to play in effecting reforms in the law by means of legislation or judicial decision, it does not follow that their personal conduct in no way affects the administration of justice. Obviously, the criminal courts are here to punish people for the crimes they commit, and the civil courts are here to decide the controversies that people raise. Also, the prevalence of disrespect for law, the aversion to cooperate in the application of law, and the unwillingness to take part in legal reforms by voting, are largely due to the behavior of the

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<sup>2</sup>Many reasons have been given: e. g., the law must be stable and predicable; and yet it must admit of change; when a change admittedly is desirable it often is difficult to decide the kind of change that should be made because there is no accepted standard of adjustment; legal rules become deeply rooted and it is difficult to displace them; the bench and bar are notoriously conservative; it is difficult to obtain legislation even when a remedy has been devised; the press of litigation and the progress of the times are so great that judicial law-making is almost out of the question; the changes in social, economic and industrial conditions are so rapid that the law cannot keep abreast of them; it is difficult to arouse public opinion in favor of reforms; many reforms that are urged are selfish or unsound, or both; popular impatience of restraint; popular underestimation of the difficulties of the administration of justice; the confusion resulting from the multiplication of statutes and reports; the great number of separate jurisdictions in the United States; the widespread disrespect for law and the tendency to wait until England has tried out a reform.

people. Perhaps only a small percentage of the people indulge in anti-social behavior that leads to crime. Perhaps only a small percentage of the people indulge in anti-social behavior that leads to an appreciable amount of litigation. However, a large percentage of the people harbor a disrespect for law, an aversion to cooperate in the application of law, or an unwillingness to cooperate in legal reforms by voting,—or all of them.

It seems that by different behavior in these matters offending individuals could materially benefit the administration of justice, either by way of removing some of the work of the courts or by way of helping the courts to operate. It seems that such an individual, who does no more than demand that something be done about reforming the law, has not done all that he can do. In fact, it appears that he has not tried to better the situation in the way that he alone can better it, i. e., by living a social life, as that term is used by sociologists.<sup>3</sup> He is himself, in part, a cause of the injustice he complains of.<sup>4</sup>

This is no secret. Writers have frequently deplored and denounced the volume of crime and litigation, and the prevalence of social conditions unfavorable to the administration of justice, and it seems that current thinking condemns them.<sup>5</sup> However, deploring, denouncing and condemning them does not seem to affect them appreciably. The power to change them to a greater or less extent lies in the people, but even though the people may

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<sup>3</sup>"Reasoned justice includes every virtue. It allows no man to form his ambition with indifference to the social effect of his conduct. It summons each of us to subordinate his own interest whenever by so doing he can secure the realization of other interests which in their sum are greater. This justice is honesty which is willing to admit the facts of life and to acknowledge the effects of our own conduct. It is fair play which is willing to abide by the laws which we try to enforce upon others. Its rule is: I for one will so play my part that if all played their part in the same spirit the good possibilities of society would be fulfilled. When the declaration of reason evokes response of sentiment it becomes 'the social spirit' which would make of human life one vast cooperative enterprise in which each participant, while receiving from society a million times more than he can repay, is not indifferent to fulfilling his own share of the common work. This is that love which is 'the greatest thing in the world,' and 'the fulfilling of the law.'" Hayes, *Intro. to the Study of Sociology* 493, 494.

See also Dealey, *Sociology* 39; Ross, *Social Control*, chs. XVII, XVIII, Ellwood, *Sociology in its Psychological Aspects* 332; Todd, *Theories of Social Progress* 521, Ross, *Principles of Sociology* 423-432; Ellwood, *Psychology of Human Society* 394; Odum, *Man's Quest for Social Guidance* 47-83. To the same effect is Bogardus, *Essentials of Social Psychology* 101-105.

<sup>4</sup>Shelton, *Spirit of the Courts* 159, 162, 163.

<sup>5</sup>See notes 22-25, post.

be conscious of the state of affairs they do not seem to desire to do anything. Perhaps the present generation has less power to change them than we think, perhaps the people have become conditioned and cannot now change their behavior. Anyway, complaints leveled at their heads have done little to better the situation.

We may admit at once that the legal system is partly to blame for the existence of the above conditions. It has not become adjusted to the needs of the present age. Reform is needed in regard to many matters of substantive law and adjective law, and the failure to make the needed adjustment is causing, in part, the individual behavior complained of. The interrelation is apparent. The administration of justice is a social institution. The problem of law reform and the problem of effecting social behavior on the part of the individual are interdependent, and improvement must be sought in both directions at the same time in order to achieve the best results.<sup>6</sup> Lawyers, judges and legislators are considering matters of law reform with ever-increasing thoroughness and thoughtfulness. There should be some way to bring about at the same time an improvement in the social conditions that are so closely related to the administration of justice.

B. *The Problem of Lawlessness.*—Let us consider the approach that is being made to the problem of lawlessness as a social problem,<sup>7</sup> for it seems that the treatment of this problem indicates a method of treatment of the others.

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<sup>6</sup>"If we accept the evolutionary point of view we are led to see the relation between society and the individual as an organic relation. That is, we see that the individual is not separable from the human whole, but a living member of it, deriving his life from the whole through social and hereditary transmission as truly as if men were literally one body. He cannot cut himself off; the strands of heredity and education are woven into all his being. And, on the other hand, the social whole is in some degree dependent upon each individual, because each contributes something to the common life that no one else can contribute. Thus we have, in a broad sense of the word, an 'organism' or living whole made up of differentiated members, each of which has a special function." Cooley *Human Nature and the Social Order* (1922, revised 1902 ed.) 35, 36.

See also Dunlap, *Social Psychology* 239-245; Young, *Social Psychology*, in Barnes, *The History and Prospects of the Social Sciences* 191-208; Bernard, *Intro. to Social Psychology* 276, 277

<sup>7</sup>Parmelee, *Criminology*, chs. I, XXX, Elwood, *Sociology and Modern Social Problems*, ch. XIV, Levitt, *Some Societal Aspects of the Criminal Law*, 13 *Jour. of Crim. L. and Criminology* 90; Hoag, *Crime, Abnormal Minds and the Law*; Shepherd, *The Psychopathic Laboratory*, 13 *Jour. of Crim. L. and Criminology* 485; Gosline, *From Pathology to Criminology* 15 *Jour. of Crim. L. and Criminology* 68; Park and Burgess, *Intro. to the Science of Sociology* 560-564; Wood,

For centuries the criminal law has sought by punishment to deter and prevent the commission of crime. Reforms directed toward the surer punishment of all who commit crimes have been effected continually. The extra-legal agencies of social control, as religion, morals and the family, have lent aid by counsels, warnings and teachings. However, the punishment of offenders and the denouncement of crime have not caused the individual offender to obey the law, and in modern times it has been felt that something more is necessary. It has been felt that the law has waited too long to expect now any permanent decrease in the amount of crime by way of perfection of the legal system per se,—that we need more than a system for the apprehension and punishment of criminals, as necessary as that always will be.

Sociologists and social workers have felt that there can be permanent improvement only as a result of an organized effort to determine the causes of criminal acts and to prevent the occurrence of criminal acts by preventing, controlling or counteracting the causes. They have felt that it is not enough to deal with offenders after they have committed crimes, which is all that the criminal law can do in most cases, and that there is needed a more systematic and more scientific consideration of the causes of criminal acts than the various extra-legal agencies, heretofore, have been able to effect separately. They have taken the point of view that the offender is an abnormal individual and that the punishment should fit the individual offender and not the crime. And they have disproved and discarded the classical theory of punishment, which still lingers in the law,<sup>8</sup> namely

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Methods of Criminological Inquiry, 16 *Jour. of Crim. L. and Criminology* 437; Brasol, Foundations of Criminology, 17 *Jour. of Crim. L. and Criminology* 13; Gillin, Criminology and Penology, chs. XV-XXXVI, *Modern Crime, Its Prevention and Punishment*, 125 *Ann. Am. Acad. of Political and Social Science* 1; Glueck, *Psychiatric Examination of Persons Accused of Crime*, 36 *Yale L. Jour.* 632; Glueck, *Principles of a Rational Penal Code*, 41 *Harv. L. Rev.* 453; Glueck, *Predicability in the Administration of Criminal Justice*, 42 *Harv. L. Rev.* 297; Sayre, *Crime and Punishment*, 141 *Atlantic Monthly* 735.

See also the *Modern Criminal Science Series*: Gross, *Criminal Psychology*; De Quiros, *Modern Theories of Criminality*; Saleilles, *The Individualization of Punishment*; Lombroso, *Crime, Its Causes and Remedies*; Tarde, *Penal Philosophy*; Aschaffenburg, *Crime and its Repression*; Garofalo, *Criminology*; Bonger, *Criminality and Economic Conditions*; Ferri, *Criminal Sociology*.

For a social psychological treatment of phases of jurisprudence, see Williams, *The Foundations of Social Science*, chs. XI-XVIII.

<sup>8</sup>Garofalo, *Criminology* 55, 271, Stevens, *Intro. to the English Version*, Garofalo, *op. cit.* xxiv, xxvi, xxix; *General Intro. to the Modern Criminal Science Series*, Garofalo, *op. cit.* vii.

that the offender is a free moral agent, that every act of any man is of his own free will and accord, and that, therefore, every man is responsible for his acts, and that crime can be expiated only by punishment.<sup>9</sup>

Sociologists and social workers seek to bring about a different behavior in the individual in order that the criminal may cease his criminal activity and the potential criminal may be prevented from embarking on a life of crime. They seek to create an understanding of a social life and to provide a way to achieve it. Both parts of their program are necessary. To these ends they are studying individual criminals,—considering their heritage, physical characteristics, economic situation, mental condition (mental defect, constitutional inferiority, epilepsy, the insanities, psychoses and mental conflict), and social condition (the home, playground, school, community, customs, beliefs, class hatred, religion, the courts, prisons, and civilization);<sup>10</sup> and they are effecting programs of treatment and of prevention worked out upon the results of their studies.

It is too soon to attempt to measure the value of this approach, but assuredly it is scientific and full of promise.<sup>11</sup>

C. *The Problem of the Volume of Litigation.*—The tremendous volume of litigation that has been coming before the courts has been commented upon frequently. The bench and bar and the legislatures have been considering it as a legal problem, and have been devising procedural reforms and court reorganizations to meet it.<sup>12</sup> Let us consider it as a social problem, and look to see whether, in part, it is not analogous to the problem of lawlessness, and whether the modern treatment of lawlessness by sociologists and social workers is not applicable.

Our concern here is only with the litigation that results from

<sup>9</sup>Gillin, *Criminology and Penology* 327

<sup>10</sup>Gillin, *Criminology and Penology* chs. V-XII.

<sup>11</sup>It should be noted that there is current an opinion that the limited development of sociology, psychology and social psychology makes futile such an undertaking of social reform at the present time. Young, *Social Psychology*, in Barnes, *The History and Prospects of the Social Sciences* 207-208; Hankins, *Sociology* in Barnes, *op. cit.* 330, 331.

<sup>12</sup>Agencies of preventive relief, as declaratory judgments, juvenile courts and courts of domestic relations, are being emphasized more and more. See Sunderland, *A Modern Evolution in Remedial Rights*, 16 *Mich. L. Rev.* 69; Borchard, *The Declaratory Judgment*, 28 *Yale L. Jour.* 1, 105; Dodd, *Progress of Preventive Justice*, 6 *Am. Bar Ass'n Jour.* 151; Pound, *Preventive Justice and Social Work*, *Proc. of the National Conf. of Social Work* 151; Taft, *Law Reform* 39, 40. But cf. note 31, post.

anti-social behavior. We are not concerned with the litigation that quite easily arises from misapprehension or ignorance of the law. For example, there is a certain amount of litigation in regard to contracts, wills, and other instruments which might be prevented by an understanding of some of the elementary rules of law with respect to those subjects. This has been the object of considerable study.<sup>13</sup> Nor are we concerned with the litigation that results from the need of a judicial determination of a controversy. Many questions arise in regard to business organizations, commercial transactions, ownership of property, and other matters as to which judicial determination is necessary. We are concerned only with the litigation that results from anti-social behavior on the part of individuals, as the litigation resulting from intentional aggression upon, or negligent interference with, the person or property of another. It is a matter of common knowledge that there is a large amount of such litigation.

It has been stated that obedience to law is a normal condition,<sup>14</sup> and that the presence of crime indicates a sore spot on the social body as to which adjustment is necessary.<sup>15</sup> It seems to follow that the presence of a great number of controversies arising out of anti-social conduct, likewise, indicates an abnormal condition of the social body as to which adjustment is necessary. The consequences of the prevalence of crime are so striking as to demand attention and to obscure the consequences of civil controversies which, too, are serious.

It is submitted that in regard to this class of controversies we have a social problem analogous to the problem of lawlessness. Such controversies, like crimes, have natural causes, i. e., circumstances which work to produce them in a given case.<sup>16</sup> These causes should be distinguishable by diagnosis and research, and be more or less capable of prevention, control or counteraction, as in the case of the causes of crimes.<sup>17</sup> The term "subject to the law" usually is thought of as being applicable only to the criminal law, yet it is just as applicable to the civil law. We

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<sup>13</sup>Preventing Unnecessary Litigation at the Source. Editorial, 82 Cent. L. Jour. 280; Remsen, Prevention of Unnecessary Litigation, 87 Cent. L. Jour. 278. See also Shelton, Preventing Legislation and Litigation, 83 Cent. L. Jour. 110.

<sup>14</sup>Smithers, Intro. to De Quiros, Modern Theories of Criminality x.

<sup>15</sup>Aschaffenburg, Crime and its Repression 5, 6.

<sup>16</sup>General Intro. to the Modern Criminal Science Series, Garofalo, Criminology vi, vii.

<sup>17</sup>General Intro. to the Modern Criminal Science Series, Garofalo, Criminology vi, vii.



are not subject to the one any more or less than we are subject to the other. The civil law, like the criminal law, is concerned with the acts and not with the thoughts of the individual. An act is the same thing whether considered from the point of view of the criminal law or of the civil law, and the forces operating to bring it about, generally, will be the same. With respect to the nature of the acts and the forces operating to bring them about, what vital difference is there between many instances of criminal assault and civil assault, of criminal libel and civil libel, of manslaughter and liability under Lord Campbell's Act, of embezzlement and conversion? Often the same act will subject the individual to a criminal action and also to a civil action. In regard to the criminal law we have recidivism,—the commission of successive crimes by the same person. We may or may not have an analogous situation in regard to the civil law, research is necessary to determine this.

Therefore, it appears that a consideration of the anti-social behavior of the people that results in litigation is complementary to the consideration of the causes of crimes. They are both parts of a larger study, namely, the consideration of the causes of violations of the law, civil and criminal. Criminology<sup>18</sup> is concerned with only one part of the problem. It should be worth while to consider the rest of it, for just as it is desirable that the individual should order his life to the end that his acts will not conflict with the provisions of the criminal law, so is it desirable that he should order his life so that his acts will not violate the rights of others as provided for in the civil law. There should be an attempt to effect social behavior on the part of the individual subject to the law, both civil and criminal.

It is submitted that the modern approach to lawlessness as a social problem, especially in its preventive aspect, may be adapted to the problem of reducing the amount of litigation arising from anti-social behavior.<sup>19</sup> We shall not here attempt to work out a detailed method of approach.

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<sup>18</sup>In the broad sense, including penology.

<sup>19</sup>The analogy to hygiene, or preventive medicine, may be noted. Public hygiene is concerned with the application of measures to prevent disease in the community as a whole. It usually is carried on by public authorities. Personal hygiene is concerned with the prevention of disease in the individual by means of the personal regulation of the individual life. It derives its force, generally, from the will of the individual. Comparatively recently it has been included in the curricula of the public schools. The worker in criminology uses both methods. He endeavors to prevent crime by promulgating general

The objection may be made that social behavior on the part of an individual may prevent the commission of crimes, for it is possible for the layman to understand the duties that the criminal law imposes upon him, but it will not prevent the occurrence of civil controversies, because it is not possible for a layman to understand the obligations that the civil law imposes upon him in regard to the rights of others, for the courts themselves often differ on such matters. This is true as to much of the litigation before the courts, and as anti-social behavior is not the cause of these controversies, the attainment of social behavior by individuals will not prevent them. However, even as to such controversies, it is not always necessary that they be fought out in court. Where there is no need of a judicial determination of the question, an amicable adjustment is made possible by an honest endeavor of the parties to settle the matter reasonably. Social behavior will tend to prevent litigation in even this class of controversies.<sup>20</sup> We know that business men of today are pursuing this course more and more. Arbitration and conciliation are becoming usual rather than unusual.

Obviously, social behavior would cause a marked decrease in the number of controversies growing out of anti-social behavior. There is no necessity for the layman to study law to know his personal obligations to his fellowmen. He is well aware of most of the obligations that he is under, whereas he is not aware of the legal requirements as to contracts and wills. The difficulty in preventing infringements of the rights of others lies not in understanding the obligations that one is under, but in observing the obligations that one is well aware of. All automobile drivers know that they should drive carefully. We wish to bring about a social life. The individual who lives a social life runs little risk of violating the rights of his fellowmen with respect to this class of controversies.<sup>21</sup>

D. *Other Problems.*—There remain the problems of disrespect for law, aversion to cooperate in the application of law, and

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measures for the welfare of the community and by trying to get the offender, or potential offender, to live a law-abiding life. The same approach should be made to the other problem. That is, there should be undertaken research to determine the causes of anti-social conduct resulting in litigation, and there should be an endeavor to effect a removal or neutralization of the causes as far as possible by general measures and by individual effort and initiative.

<sup>20</sup>Remsen, *Prevention of Unnecessary Litigation*, 87 Cent. L. Jour. 279.

<sup>21</sup>See note 3, *supra*.

indifference to legal reforms, which have been considered in many articles. Clearly, these are social problems.

Disrespect for law is widespread. Many people set up their conception of the purpose of law and consider improper and of no authority the rules of law that violate their sense of law<sup>22</sup> Surely, the administration of justice is hindered, and violations of the law increase. Such disrespect for law is improper. The individual should understand that as a member of a politically organized society he should respect the administration of justice in whole and in part. He should willingly forego some of his individual opinions and convictions for the good of society<sup>23</sup> If

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<sup>22</sup>"Now law is a curious thing, for, although it is exceedingly susceptible to chicanery and complexity in its essence it is exceedingly simple and homespun. You can fool the average man for a while on most questions, but on this question you cannot fool him for long, for the average man, especially the man born under the Anglo-Saxon tradition, has, ingrained in him deeper than any other feeling, save the feelings of sex and self-preservation, the sense of law.

"Furthermore, since the law is such an elemental business, you can no more fabricate it than you can make a baby. There are plenty of synthetic laws, but they bear no relation to the real thing. A real law is at hand when needed, never before and seldom long afterward, and all the pronouncements possible to the folly of the human mind cannot make a so-called law the law unless it is the law to begin with. There is nothing that so exposes the blocked intelligence as the statement that such and such a thing 'is the law and so must be obeyed. To the lay mind, which conceived law and which must live by law, a law is not a law if it offends the sense of law, and millions of misguided experts cannot prove otherwise. The sense of law stands above all law and all laws are subject to it and refer back to it.'" Burt, *The Sense of Law*, 80 *Scribner's Mag.* 158, 159.

See also Windolph, *Sanctity of Law*, 137 *Atlantic Monthly* 603; Cheney, *Most Lawless Nation*, 77 *Collier's* 25, Feb. 20, 1926; *Is it Right to Break Unjust Laws?* Symposium, 77 *Forum* 181, 185, 433, 436; Abbott, *Laws Men Break and Why* 24 *Scientific Monthly* 135. Bunce, *Great American Delusion*, 117 *Century Mag.* 60.

<sup>23</sup>"It is possible to cultivate a habit of mind which holds in honor the authority of parents, teachers and public officers; or on the other hand to cultivate a heedless attitude in which resides contempt for authority and refusal to recognize the duty of deference to law. Is it not time that the American people should proceed deliberately to cultivate a different attitude and spirit among our people—especially our young people—in this matter?

"Let the public schools, the churches, the press and all the leaders of thought and action unite in the effort to promote respect for law and obedience, not only to those statutes which fall in with the popular prejudices and desires, but also to those which call for self-denial and self-control, in the interests of public welfare." Hart, *Law Enforcement through Self-Restraint*, 24 *Scientific Monthly* 132, 135.

See also Bogardus, *Essentials of Social Psychology* 258, Abbott, *Lawmaking and Lawbreaking*, 114 *Independent* 519. Borah, *Civic Righteousness*, 114 *Century Mag.* 641 Swaney *Law Enforcement and Citizenship*, 14 *Va. L. Rev.* 537-543 Adams, *Our Lawless Heritage*, 142 *Atlantic Monthly* 732.

he is dissatisfied with the condition of the law he can help to improve it by criticism and by cooperation as far as it is within his power. He does not help matters by disregarding the objectionable rules. An endeavor to change the law so that it will better meet the demands that are made upon it is not opposed to respect for law

The people, generally, dislike to cooperate in the application of law because of timidity or indifference.<sup>24</sup> They are unwilling to serve as witnesses or jurors. The administration of justice suffers. It is desired that the people should not think of the legal system as an impersonal part of the state entirely divorced from the individuals composing the public, and concerned only with the interests of the parties to the controversy; but should think of it as a living institution, very close to the lives of all the people in its operation and effect, which needs the cooperation of all the people in its work.

And, finally, there is an indifference on the part of many people to their obligations as citizens.<sup>25</sup> The election of judges and legislators, and the passage of constitutional measures depend upon the votes of the people. Many people are not interested in such things. The administration of justice is directly affected. This is the only part that the people individually have in effecting legal reforms. Although it is a small part, it is an important one, and the people should make the most of it.

Clearly, such unfavorable social conditions impede the administration of justice. The existence of these conditions indicates an undesirable state of the social body. It is submitted that they fall in with the problems of lawlessness and litigation from anti-social behavior to constitute one problem, namely, the effecting of social behavior in the individual subject to the law. Just as research is necessary to determine the causes of anti-social behavior resulting in crime and civil controversies, so is it necessary here. Likewise, there should be devised methods of preventing, controlling or counteracting these causes as far as possible. Here, too, we find the method of approach worked out,

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<sup>24</sup>Sunderland, *Cooperation between the Bar and the Public in Improving the Administration of Justice*, 1 Ala. L. Rev. 5. See also note 25, post.

<sup>25</sup>Taft, *Law Reform* 165, 166; Johnson, *Does the Public need a Code of Ethics Too?*, 13 Am. Bar Ass'n Jour. 425; *The Party of the Third Part*. Editorial, 13 Am. Bar Ass'n Jour. 446; *Lay Cooperation in Law Improvement*. Editorial, 12 Am. Bar Ass'n J. 624; Gerould, *Our Passion for Lawmaking*, 157 Harper's Mag. 700, 705.

in part, in the modern treatment of lawlessness as a social problem.

E. *Reasons for Desiring Social Behavior*—There are two outstanding reasons for attempting to effect social behavior in the individual subject to the law, namely, (1) the legal system is in need of some such assistance, and (2) the people may thereby be relieved of a great pecuniary loss and the social structure of a dangerous strain.

The legal system is in need of some such assistance because (a) it is being overtaxed by the amount of work that it has to do, (b) it always will be imperfect, and (c) legal justice from the point of view of the people often is inadequate.

Clearly, the mere volume of litigation that is coming before the courts, not to mention the imposition of new duties on the courts, the increasing complexity of controversies, and the difficulty of considering and harmonizing the output of the legislatures, is sorely taxing the strength of the legal system. Consequently, the courts cannot give to every case the consideration that it deserves, and the efficiency of the legal system is being lowered. Also, it results in legislation that takes classes of cases out of the jurisdiction of the courts and commits them to administrative agencies. And there has been agitation for changes of a more serious nature, as the recall of judges and the removal of the power of judicial review

The legal system always will be imperfect, even in regard to things that it attempts to do (and, quite naturally, it will fail to achieve results that are demanded of it but which it never attempts to achieve) This is so because law, as we have it, is the expression of human beings, and the application of law depends upon human beings.

Legal justice from the point of view of the people often is inadequate. In other words, justice as administered by law, or legal justice, often falls short of the justice desired by the people, or social justice.<sup>26</sup> Three reasons have been given to explain this situation, namely, (1) legal theories of the end of law, or justice, usually lag behind current social, political, moral and economic theories of the end of law,<sup>27</sup> (2) rules of law usually lag behind

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<sup>26</sup>Ward, *Applied Sociology* 24, 25; Pound, *Social Justice and Legal Justice*, 75 *Cent. L. Jour.* 455; Rosenberry, *Law and Social Progress*, 1926 *Proc. of the National Conf. of Social Work* 76.

<sup>27</sup>Pound, *Social Justice and Legal Justice*, 75 *Cent. L. Jour.* 456, 459; Pound, *The End of Law as Developed in Legal Rules and Doctrines*, 27 *Harv. L. Rev.* 195; Pound, *The End of Law as Developed in Juristic Thought*, 27 *Harv. L. Rev.* 605, 30 *Harv. L. Rev.* 201.

current social, political, moral and economic theories.<sup>28</sup> and (3) there are "limitations inherent in administration of justice according to law, which preclude the complete securing through law of all interests which ethical considerations or social ideals indicate as proper to be secured."<sup>29</sup>

Social behavior on the part of individuals subject to the law should benefit the administration of justice. It should cause a marked decrease in the volume of crime and litigation. Cooperation of the people as witnesses and jurors should make possible a fuller measure of justice in the application of law, imperfect as it is. The thoughtful exercise of the right to vote should make for a better adjustment of the law to the needs of our changing society with its conflicting demands. And the understanding of one's place in our politically organized society should do much to wipe out the disrespect for law that is caused, in part, by the conflict between ideas of legal justice and social justice.

The other reason for attempting to effect social behavior in the individual subject to the law is that, thereby, the people may be relieved of a great pecuniary loss and the social structure of a dangerous strain. Various estimates have been made of the cost of crime in the United States, one estimate being \$2,500,000 a day.<sup>30</sup> There is no way to determine the amount, but the loss that is borne by litigants, their dependents, taxpayers and society from controversies arising from anti-social behavior and from the imperfect application of the law, must be tremendous. We may say, simply, that litigation is a very expensive thing for both plaintiffs and defendants as to time, money and mental comfort. Obviously, their dependents are affected. And so is society. It is not merely a question of dollars and cents. The large amount of crime and avoidable civil strife and the prevalence of social conditions unfavorable to the administration of justice, put a strain on the social structure, which is too frail a thing to be plagued in such a way.

#### IV CONCLUSION

To summarize, law reform is a complicated thing which, for the most part, lies in the hands of lawyers, judges and legislators.

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<sup>28</sup>Lewis, *Adaptation of Law to Changing Conditions*, 11 *Am. Bar Ass'n Jour.* 11, Taft, *Law Reform* 36. See also note 27, *supra*.

<sup>29</sup>Pound, *The Limits of Effective Legal Action*, 3 *Am. Bar Ass'n Jour.* 65.

<sup>30</sup>Gillin, *Criminology and Penology* 29.

The people individually have but little to do with it. However, it must be remembered that the administration of justice is a social institution and that the behavior of the people vitally concerns it. The anti-social behavior of the people results in the crimes that are committed and in a large amount of litigation, and it results in social conditions unfavorable to the administration of justice, as the prevalence of disrespect for law, the aversion to cooperate in the application of law, and the unwillingness to cooperate in legal reforms by voting. It seems that the people should be able to do much to better these conditions. Surely, an appreciable amount of crime and much litigation is avoidable, and the social conditions unfavorable to the administration of justice may be replaced to some extent by favorable conditions. Nevertheless, despite widespread agitation, the people do not seem to desire to do anything about them. In the modern treatment of lawlessness as a social problem, a scientific approach to the other problems is indicated. The denouncement of crime and the punishment of offenders have not caused the individual offender to obey the law. Sociologists have sought an explanation. They have gone behind the criminal act and have studied the causes of that act, and have sought to prevent the occurrence of criminal acts by preventing, controlling or counteracting the causes. The civil maladjustments complained of should be studied as social problems in a like manner. It seems that the five problems noted above merge into one problem, namely, the effecting of social behavior in the individual in view of the good of the individual, the good of the administration of justice, and the good of society. We have an analogy in personal hygiene, where it is sought to effect in the individual a desire to live according to the simple rules of health in order that disease may be reduced to a minimum and that the individual and society may be benefited.

There is today such behavior on the part of many people. They are constantly making adjustments in their behavior to prevent controversies and litigation, they are cooperating in the application of law, and they are making the most of their rights as voters. This is true in regard to business matters as well as personal matters. Many other people, however, do not have this attitude. There should be an organized effort to bring it about by scientific methods. It is remembered that we are dealing with institutions and human conduct which are stubborn things, af-

fectured by numerous influences, and not subject to change overnight. However, changes of some sort are inevitable.<sup>31</sup>

Law reform is eminently proper and necessary, but it is in need of help.<sup>32</sup>

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<sup>31</sup>Bogardus, *Essentials of Social Psychology*, ch. IX.

<sup>32</sup>"Let me ask what is the message carried by the conceded necessity for 'domestic' and 'juvenile' courts? Has an end been achieved by establishing these extraordinary forums? Far from it, indeed! They are merely results—danger signals, pointing to a diseased social status—not remedies. Have we searched our minds to justify them, and have we read the answer, that this is one instance where the jural law cannot be substituted for the moral law? If we continue dealing with results and ignore the causes, obviously the results will be multiplied until the very moral status of the nation is weakened. It is taken quite as a matter of fact that Nevada is today capitalizing and legalizing one of the chiefest vices of the nation. This is a preventive age in everything except social relations. We need a little less governmental, 'Thou shalt not.' and a little more personal, 'I will not.'" Shelton, *Spirit of the Courts* 165.