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JURISPRUDENCE IN CONTEMPORARY PERSPECTIVE

*Anton-Hermann Chroust**

No effort is made here to define either law or jurisprudence in any special sense. This has been done, with varying success, by a host of jurists, philosophers and moralists. To enumerate their contributions, from the time of early Greek speculation to the latest theories, would fill a middle-sized library. It might be permissible, however, to entitle the philosophic viewpoint expounded here "Neo-Sociological Jurisprudence." This particular approach to law and jurisprudence is based upon the realization of the general human vulnerability and the vast difference in the psychological reactions by different people to their experiences within social life. It is conscious of the almost infinite and vastly different (and often conflicting) claims made by different individuals or groups of individuals. It takes into account the limited human understanding, the instability of human emotions, the exhaustibility of human patience and the limited human altruism, and especially the widespread human tendency towards overbearance, aggressiveness and even cruelty, which as often as not is but a manifestation of misdirected self-assertiveness. It also includes in its considerations the realization that human and natural resources are both limited and vulnerable. Within a pluralistic though reasonably cooperative society all these factors of existential reality call for a policy which restricts and restrains, by a variety of means and as far as this is humanly possible, the use of violence and outright destructiveness. This might be achieved, at least in part, by fostering a general attitude of forbearance and compromise through policies of fair exchange, workable division of labor, equitable distribution of assets and liabilities, and by joint as well as intelligent planning of desirable and acceptable goals and efficient methods of realizing them by channeling human aspirations, expectations and capabilities.

Above all, law is considered here to be something that is vitally and viably related to existential reality and fact, to historical experience and existence, and to the results of empirical science and scientifically ascertainable data. In this fact-conscious frame of reference, law, that is, a realistic conception of law and its proper function, must always be inspired by, and readily conducive to, an appropriate understanding and appreciation of the multiple social structures and processes which in their totality constitute a dynamic, efficient, viable and essentially free society composed of persons aware of their moral, political, economic and personal importance, and psychological identity. While earnestly concerned with the common incidents of grievance, offense and litigation (encountered in any lively society and normally controlled or resolved by small-scale and short-range though necessary remedial "patch-up-practices"), law must look beyond mere remedial or preventive action. As a matter of fact, frequently it must or should act prior to the need for corrective realignment. In brief, law must realistically and in a spirit of "managerial concern" come to grips with the many and frequently complex large-scale and long-range problems and conflicts which

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unavoidably arise from what appear to be the three most telling and most urgent quests of our time (and probably of all times): First, the almost universal demand for greater and more adequate or equitable *sharing* in the social, economic and political powers inherent in any differentiated or articulated society; second, the urgent insistence upon greater *security* in the many domains—not only of social, economic and political activities or pursuits, but also in the areas of man's physical and psychological health—which include the menacing issues of ecology, pollution, the devastating threat of senseless depletion of human and natural resources, and the frightening possibility of turning the whole earth into a revolting slum or technological jungle; and, third, the perennial search for greater and more realistic *recognition* of man's human dignity, human worth and human individuality, a recognition which can be realized realistically and effectively only through adequate sharing and adequate security.

In order to acquire and maintain any truly meaningful function beyond mere "negative policing," law must seek to bring about a sound and workable distribution of power and liability in the constantly shifting social, economic and political domains of human existence, in reasonable human aspirations and in justifiable human expectations. In a thoroughly realistic manner and fortified by the scientific findings of psychology, sociology, economics and historical knowledge, law must always face up to the extremely involved problems inherent in a healthy distribution of the national income, in the complex issues of human prestige and in the perpetual struggle over the social, economic and political powers. For the sake of economic and psychological security, it must assign a foremost place to individual human dignity in all areas of social, economic and political pursuits—to a sound and realistic humanitarianism rather than to empty emotional preachments about "human rights." More concretely, it must effectively and intelligently counteract recurrent social and economic breakdowns which in the past have led to widespread insecurity and misery, frightful human crises and dislocations, and terrifying revolts which, as often as not, have made a mockery of human dignity and a shambles of harmonious coexistence. It might be appropriate to point out here that aside from moral or humane considerations, the intelligent and effective confrontation of these major issues is often purely a matter of social, economic and political survival. To treat these urgent matters humanely and with a sensitive and well-informed awareness of the causal factors underlying these problems is frequently nothing other than a realistic manifestation of that mutual respect and deference in which any truly free democratic society must be rooted. Only thus may we ever hope for a modicum of the social peace which any societal structure requires for its ultimate survival. Social peace, then, must also include the conditions of continuing peace, that is, a sensitive awareness of the factors that will probably guarantee social peace. True social peace, however, demands more than freedom from physical violence. It must include the freedom to attain, maintain and enhance, by peaceful and non-coercive means, the social, economic and political value position to which all healthy and normally motivated men aspire in their perennial quest for greater sharing, greater security and greater recognition.

Only by taking full and realistic account of all these crucial facts and

problems and their psychological as well as human impact—of their constant and often perplexing though always fluid interplay with other issues—can law ever hope to do “justice” and to work effectively in the creation, maintenance and expansion of those individual, collective and political values, interests, aspirations and expectations which are so essential to the life and growth of a truly free, enlightened and peaceful society. Only by understanding and acknowledging the existence as well as the fundamental significance of these problems and issues can law handle the many worthwhile challenges and counterchallenges which the ever-restless democratic man, or the differentiated or undifferentiated group with which he identifies himself, voices in the perennial pursuit of happiness and the more perfect and more dignified humanity both on individual and collective levels. In our particular age every known economic, social and political system is confronted by pressing challenges and counterchallenges. If properly understood, competently analyzed, and realistically appraised as to their origins, factual significance and decisive impact upon men in general—if, in other words, they are intelligently and sensitively met in attention to their likely practical, psychological and emotional consequences—these challenges and counterchallenges may in fact furnish the basis for a new, more realistic, more fruitful and more workable approach to law and jurisprudence in general.

The first integral element of a realistic fact-related approach to law, therefore, is the concept of challenge. Social, economic or political challenge constitutes a conspicuous and readily discernible fact. It is usually articulated in a specific demand or in a series of interrelated demands, expectations and aspirations, frequently referred to as “interests.” A large-scale social and economic demand such as, for instance, the quest for greater economic security may find articulation in the insistence upon a guaranteed minimum annual wage, a more adequate pension plan or in joining an organization, while the quest for greater economic sharing may be expressed in the demand for higher wages or fringe benefits. The insistence upon greater and more realistic recognition of human dignity may be contained in a call for improved working conditions, more sensible working hours, “released time” and a greater voice in production processes. These challenges, which frequently arise within existing or developing social, economic and political systems, are often of a vital and even decisive nature. Because they also manifest important psychological factors or reactions, they are frequently voiced in a threatening or violent manner. If they are left wholly unattended or if, for the purpose of superficial “life-easing expediency,” they are merely partly, superficially or inadequately attended to in a temporizing “patch-up attitude,” they may ultimately lead to uncontrollable violence and perhaps to the destruction of the very system which either fails or refuses to deal with them effectively, intelligently or satisfactorily.

Law, then, rather than asking itself exclusively a host of relatively irrelevant or “secondary” analytical questions about some canons of formal construction, modes of abstract legal reasoning or lines of judicial authorities, would do better to raise the only questions which, in the long run, really matter: Which overall course of action most likely is going to serve best the healthy survival of a truly free and meaningfully humane society? Which general policy most likely will

improve the overall human condition? How can a free and humane society and its multiple differentiated or undifferentiated structures, interests and aspirations best be managed so as to strengthen truly democratic-humanitarian processes? The far-reaching practical (and moral) significance of these extremely complex questions and the necessity of supplying intelligent, well-informed and workable answers rather than purely "dogmatic preachments" become increasingly apparent as we approach the many challenging and often puzzling problems connected with the sensible promotion and management of social, economic and political activities and aspirations of men, and their meaningful interplay and interdependence.

Law, understood solely in its technical or "legalistic" sense, cannot possibly hope to cope exhaustively and effectively with the almost infinite complexities of individual or collective action, aspiration and expectation. In this sense it can never be scientific in the traditional or narrow sense of the term. And most certainly, it cannot be a closed and presumably self-sufficient system of abstract concepts, norms, rules or principles, or a matter of purely technical skills and professional techniques. Law must always realistically, sensitively and constructively rely upon and make use of the findings of the empirical sciences. In certain areas and, as a matter of fact, often in the most crucial areas of human interrelations and interactions, law must frequently confine itself to devising solutions of a flexible design. Such solutions, aside from bespeaking a laudable honesty, needless to say, are frequently of a provisional or pliant nature. Yet, despite their tentativeness, these solutions must realistically, vitally and viably be related not only to a factual and expert understanding but as well to an appraisal of the broader social structures, or the manifold differentiated substructures, which have their own unique actuality, goals and functions. They must also envision the practical though not always exactly predictable effects—social, economic, psychological and political—which any announced legal policy may have or is expected to have. Moreover, they must realistically take into account the far-reaching impact which the constantly changing (though not always predictable) technological developments have or may have upon man and his mental, psychological and moral make-up, and on the available human and natural resources.

In order to be realistically workable and effective, law and legal policy must be molded and determined by calculation of reasonable probabilities as well as by adept and skillful application of the principle of efficiency. In the face of conflicting challenges, it must make proper, that is, realistic and goal-determined choices among several possibilities or alternatives. Hence, the "logic" of a realistic law or realistic legal policy, which always rests on sensible and factually well-informed choices, experiments and compromises, must be a *logic of predicting reasonable probabilities* rather than a hairsplitting logic of formal deduction or abstract inference. It is exactly the rather absurd and, in fact, impossible proposition that all legal decisions should flow with the necessity of formal logic from antecedently known premises that lies at the bottom of all those theories of jurisprudence which desperately though not always convincingly attempt to glorify the old—which, by insisting upon a misplaced reverence for antiquated

notions, outdated ideas and archaic views—actually strengthen ever-present anti-progressive and, hence, antihumanitarian prejudices. Adherence to such outdated and unrealistic notions, which often seek their ultimate refuge and justification in formal logic, actually widens the fatal gulf between law and life and, in consequence, is bound ultimately to breed contempt for, and irritation with, the law.

The ultimate nature of a realistic and fact-related law must be determined by ascertaining how it works or probably will work: whether it promotes, or is likely to promote, or whether it retards or defeats outright the attainment of desired and desirable goals in the almost limitless realm of worthy and real human aspirations and expectations. This, in turn, demands constant reappraisal and renewed clarification of the concrete meaning of the envisioned policy goals at any particular time and in any particular situation in order to determine whether the means selected to achieve these goals are still appropriate, adequate and efficient in light of changing conditions—whether these particular goals are still desirable or acceptable in an ever-changing and ever-challenging social or economic actuality. In this particular sense all social policy through law is always somewhat experimental and tentative and, hence, somewhat in flux—most decidedly a shocking realization for those jurists who always insist upon the “certainty of the law” and of the legal process.

No series of social experiments through law, however skillfully or benevolently planned and executed, can furnish an absolute guarantee that even under the most favorable circumstances the best choice among several possible choices has been made or will be made, or that any choice, based on efficiency, is indeed the *best* choice. In view of the ever-changing fact-situations and human conditions on which concrete decisions must be based, no solution can in fact ever be called final or ideal. But the proper—intelligent, informed and humane—choices in framing solutions may greatly improve, at least on a provisional basis, the fundamental practices of creating, distributing, preserving and equalizing all humanly and socially significant values—of meeting more adequately, satisfyingly and effectively the ever-present demands and expectations for greater sharing, greater security and greater recognition. In this, law not only may expand and deepen the real and meaningful liberty and, concomitantly, the true humanity of the individual on all levels and in all areas, but it will also increase and fortify man's sense of, as well as aspiration to realize, his individual importance, personal dignity and irreplaceable significance through a newly defined and adequately secured fullness of life, especially whenever such an expansion or increase meets with the basic needs and hopes of man.

The proper choice in the solution of a social, economic or political problem through the proper legal policy must also be evaluated in its relation to certain intermediary goals and values—and in the final analysis and in a certain sense all goals and values are intermediary—as well as in its meaningful relation to the many intermediary processes that characterize an open, free and pluralistic society. The almost infinite number of intermediary goals, values and processes, their likely integration as well as their intelligent and informed clarification and proper inclusion in any “social calculus” frequently is of greater importance and pro-

founder significance for true legal, social, economic, political and human progress within our existential world than any single supreme and absolute value or goal. Hence, a properly and effectively functioning law will frequently have to reject the notion of, or insistence upon, a monolithic society under the rule of a single ultimate principle—a fond notion of certain doctrinaire or Utopian philosophers and a lethal instrument for ruthless autocrats. One single dominant goal or value, no matter how exalted it may be, not only vitiates the meaning of all intermediary goals or values but very likely also suppresses and even destroys the individual and his particular or unique interests and aspirations which are so essential for a viable differentiated society. In so doing, it will in the final analysis destroy humanity in its real and essentially pluralistic meaning.

If law is meant to promote or assist in the promotion of human progress rather than impede or retard this progress—if it is meant to reach beyond the mere settlement of relatively small-scale offenses, petty grievances and impassionate litigations—it must constantly, rapidly, sensitively and intelligently respond to man's many problems, often by resorting to compromise or to obviously temporizing partial solutions. In this it must rely and make use of every known and every available method of scientific observation, determination and procedure that might shed some light on these problems, including a thorough analysis and a well-founded understanding of the origins, causes, components and likely trends of every socially significant action, interest, expectation and aspiration. It must concern itself with an exhausting study of existing, socially relevant trends as well as with man's psychological responses or general reactions; that is, with his participation in, opposition to or indifference towards these trends. It must also attempt to project the future of these trends on the basis of past experiences, always keeping in mind alternatives in case the anticipated or calculated future development, due to some novel and revolutionary scientific, economic, technological, social, psychological or political development, should take an unexpected turn. The possibility of an intelligent and workable solution of the many problems faced by the law, however, will be lost at the very outset if free and unhampered access to all relevant facts or data, which must be marshalled without fear or prejudice, is denied or made impossible, or when due to improper training, deficient knowledge, stultifying propaganda, doctrinaire fanaticism, deeply rooted prejudices, allegedly "timeless absolutes" or plain ill will, people are incapable of distinguishing between fact and fiction, truth and fancy.

The fuller meaning no less than the general direction, intensity and justification of the many real social challenges and counterchallenges which constitute an essential element of total life, can be determined and evaluated effectively only on the basis of an unbiased clarification of fact. Such clarification requires scientific methods of thinking and procedure. It calls for a vast amount of integrated and interrelated modes of analytical thought, dispassionate observation, constructive insight and imaginative vision, including the efficient determination of the specific causes and concrete aims of every challenge or counterchallenge and the practical feasibility of these aims; a realistic determination of the general direction and the speed with which specific challenges will develop and expand; a calculation of their intensity and the passions involved in these

challenges; an understanding of the various differentiated and undifferentiated factors which produce and determine these challenges; and a reasonable prediction of the likely future course of these challenges. All this will have to be done on the basis of historical experience, scientific skill, psychological understanding and a kind of practical wisdom that is founded on information which is often too diffused to permit exact definition. In other words, the competent clarification, informed justification and realistic appraisal of the many aspects and facets that make up any social challenge or counterchallenge demand judicious and proficient employment of all relevant modes of observation, analysis and intelligent as well as humane thinking, which imaginatively and constructively put man and human dignity above technical "constructionism," "legal logic," "judicial authority," "due process" or "normative consistency."

As the deliberate result of realistic fact-clarification and fact-realization, of goal-clarification and goal-thinking, of circumstance and opportunity, law must constantly and consistently be re-evaluated and, whenever advisable or necessary, revised in light of novel fact situations and new challenges and counterchallenges. This re-evaluation or revision, in turn, must resort to imaginative thinking and creative action. The almost limitless aspirations and expectations of man, especially of democratic man, which reflect the social dynamics and constructive vitality of any healthy and essentially happy (that is, free or open) society, are of uppermost concern to a truly "living law"; and the proper handling of these aspirations and expectations, together with a realistic though flexible goal-determination, will ultimately determine the progress of a society and, as a matter of fact, of each individual. The comprehending insight into the ever-fluid structures of all social reality and the diversified and often conflicting challenges it engenders, is in itself a never-ending process and a perpetual challenge. This being so, realistic (that is, truly and healthily effective) law, being related to this never-ending process and responsive to existential (that is, ever-changing) reality, must itself be a series of never-ending processes which constantly will have to adjust to the dynamics of historical existence and humanitarian reality. Probably the greatest tragedy that may befall secular man is a situation where law and existential life in all its almost limitless ramifications and possibilities conflict with one another. Such a conflict always has lethal effects for both law and life—for man and for the world in which he lives.

Admittedly, there are many senseless, irrational and inhuman things which men do, always have done, and probably always will do. On the whole, human history is a rather messy affair or, as one cynic has put it, "the onward flow of human stupidity through the contingency of time." It must be conceded that rational man too frequently behaves irrationally, and that much of this irrationality, which is also characteristic of many human institutions, actually results from the haphazardness with which men form opinions and reach decisions, and engage in irreversible actions. Many of the traditional legal policies and many social or legal institutions are simply the result of his haphazardness and, hence, are largely accidental as well as irrational rather than the deliberate result of intelligent, coherent and consistent planning. They are, in other words, often the crystallization, generalization and "canonization" of the innumerable petty and

temporizing *ad hoc* decisions or resolves man makes in daily living, under particular circumstances and in response to his personal prejudices. Accordingly, society and its many subtle though complex institutions are often structured on very tenuous and unstable foundations. Substantial and worthwhile social changes, however, can rarely if ever be initiated by violent revolutions, because the latter almost always awaken and unleash those "demonic forces," destructive impulses and murderous as well as suicidal instincts which are dormant in man.

In order to be practically meaningful, law must at all times rely upon competent insights and evaluations of the many actual situations and factual conditions with which it wishes to deal efficiently and effectively. It must be developed, expanded, and applied in the multifarious processes of enlightened goal-thinking, goal-planning and goal-acting where, with the aid of all pertinent data, every relevant fact or factor determining human life or group-existence is properly accounted for. It will have to be based upon skilled understanding and expert appraisal of causal factors in the composite life of peoples and in the multiple interactions and interrelations to be found in any composite, differentiated and lively society. Moreover, it must be conscious of the far-reaching impact which the transition from a rural-agrarian economy and society to an urban-industrial or urban-commercial society, and often to a frightful "urban slum jungle," has upon people in general, not to mention the crucial effects which modern industrialization has upon man's health, psychological make-up and mental attitude, upon ecology and upon natural resources. And finally, law must be appropriate to fact-related and fact-conscious responses to specific challenges arising from the ever-dynamic expectations or demands of man. It will have to take into account not only technological and scientific advancements as well as man's physical, mental and psychological reactions to them, but also particular social or economic circumstances and the frequently sudden and even explosive awakening of individuals or whole groups to their social, economic or political powers. Furthermore, it must be conscious of the general fact that every challenge most certainly will be met by a response which may become manifest either in cooperation, passive resistance, or active and violent counterchallenge. In order to retain meaningful and viable contact with these developments, law must quickly and understandingly respond to the ever-growing but always varying social, economic and political awareness of people. And it must acknowledge the simple fact that different people are different rather than identical and, hence, are much more than meaningless "symbols" or "formalistic abstractions." It must be fully conscious of the fact that in modern times the demands, expectations and pursuits of people are not only stimulated by popular education and mass media but are also encouraged and elicited by public figures and "charismatic leaders" capable of voicing these aspirations in "organized demands" and frequently threatening language, often accentuated by the accumulation of bitter resentment over long-endured neglect, discrimination, deprivation, frustration and gratuitous humiliation.

The clarification, justification and appraisal of the dominant challenges of our time—the quest for more adequate sharing, greater security and more realistic recognition—call for more detailed explanations and discussions. To cite but one

typical example which, incidentally, has affected our particular views concerning labor law and labor relations: Present-day trends to maximize economic profits and production volume through the introduction of standardized mass-produced goods, that is, modern mass-production methods and techniques, have all but destroyed or squelched the worker's feeling of personal creativeness, personal achievement and the concomitant interest in true workmanship or joy for work, not to mention the frequently deleterious effects they have on his physical and psychological health and well-being. By now the average worker has lost the vital sense of personal importance, personal significance and personal satisfaction which is, or ought to be, the normal result of true creativeness. And without this sense of importance and significance—without recognition—most men will feel insecure, rejected, frustrated and unhappy, and in consequence will be driven to take certain compensatory steps, usually in the form of drastic demands of all sorts, which frequently are voiced in audible and even threatening language.

The usual mass-production processes of contemporary industrialization are at best uninteresting not to say dispiriting. They are an exasperatingly and monotonously dull though strenuous routine in which man gradually loses his identity and any sense of personal accomplishment. This is especially true when, for reasons of alleged efficiency and certainly for reasons of economy and speed, the operations or techniques employed are wholly standardized and when, as a consequence of this standardization, the worker feels that he is wholly meaningless—that he is immediately replaceable and that his contribution is utterly insignificant not to say “depersonalized”; when every urge to experiment and innovate, so typical of man's individual creativity, initiative and healthy curiosity, is outright discouraged, discredited and, as a matter of fact, considered a liability; when differences in personal talents and qualifications are frowned upon and outright suppressed as a distinct disadvantage; when production schedules, production goals and production standards are invariably determined by others, usually by a remote and disinterested fiat (disinterested in the worker as such); when the work product is never explained to the worker as a significant and valuable contribution to the well-being of society; when the emphasis is constantly and monotonously on quantity rather than on quality; and when, on account of his social, economic and educational status, the worker is constantly looked down upon by his alleged “superiors” or “betters” and, hence, is made to feel that he is no longer, and perhaps never was, a significant and wanted member of society.

These unpleasant facts, characteristic of modern mass-production methods, can be ascertained, clarified and appraised as to their far-reaching effects upon the working man and his whole mental, psychological and physical make-up, and particularly upon his quest for security, his desire for recognition and his quest for sharing. They have all but destroyed in him the vital and gratifying sense of importance and accomplishment. This tragic situation, to which a disproportionately large number of people seem to be permanently and hopelessly condemned, can neither evoke in man a sense of belonging, nor provide him with a feeling of recognition or appreciation, nor bring out his particular talents and, hence, his distinct individuality. Because such general conditions cannot possibly stimulate

or call upon man's creative potential, they cannot possibly give him a sense of power or control over his work or his product. On the contrary, the very system makes him feel inferior to the machine, that is, to his tool and his product, not to mention the "market," the salesman, the manager, the advertiser and the customer. Left thus with a feeling of inferiority, frustration, insecurity, rejection, contingency and anonymity, man will frequently react by trying to compensate for the inadequacy of his particular situation or condition and recompense himself for this "injury," of which he is keenly aware, by making certain demands. These demands he seeks to satisfy with an intensity which, due to psychological factors, frequently border on frenzy or outright violence.

Among these compensatory reactions is, for example, an inordinate desire to join. Membership in a union, therefore, is not merely prompted by the desire to assert more effectively his economic, social or political power, influence, recognition and security. To belong to such a collective organization also makes the individual member feel important and wanted. Moreover, by joining a union he satisfies his craving for power, influence and prestige, as well as his deeply rooted longing for sharing, thus compensating for his distressing sense of powerlessness in the mass-production process. The complete thwarting of all creativeness and individual contribution or qualification, the realization that his mechanical "replaceability" and utter lack of recognition or praise—all this creates within the modern working man a sense of human and economic insecurity and frustration for which he attempts to compensate through collective and, hence, more assuring action. Thus he will frequently make truculent demands for greater economic returns, for a larger share in the profits, for more "respect" and recognition and for larger economic or technical powers. And finally, the almost complete personal insignificance to which he feels condemned (and his sense of real or imaginary unwantedness) often results in a strong compensatory insistence on a greater voice in economic, social and political matters, if only by making the "big noise" that might attract some public attention and recognition, be it even unfavorable or hostile.

This example, borrowed from the field of labor law and labor relations, should make it sufficiently clear that all the above-mentioned facts and factors, in the final analysis, are in some way related to the fundamental quest, voiced by contemporary man, for greater sharing, greater security and greater recognition. The reality as well as the causal factors of this quest can intelligently be clarified, appraised, explained and also justified; and its origins, particular nature, component elements, intensity, direction and ultimate effects upon the whole of social reality can be understood and, hence, translated into effective legal policy and sensible and realistic legal action. If properly evaluated and open-mindedly analyzed, all these facts and causal factors will shed much light on the origin and particular nature of certain social challenges and counterchallenges that emerge from man's perennial quest for greater sharing, greater security and greater recognition. Such insights will also supply a realistic, scientific and hence more workable foundation for the effective legal handling and channelling of these challenges and counterchallenges which, after all, are mainly man's reactions to

certain existing conditions, as well as manifestations of his unique human identity which man will never and should never, surrender.

Viewed in this manner and judged within such a factual context, it should become rather obvious that efficient and workable law must be more than a "command of the sovereign," a "set of norms for human conduct within a given community," a "body of authoritative decisions," a "code," or a standard for evaluating certain aspects of human behavior. Existential reality, it will have to be admitted, is infinitely more complex than any legal absolutes or generalizations. Hence, law may never be congealed into a static though perhaps "theoretically sound" pattern which proceeds on the rather naive assumption that all issues, including the crucial task of survival, in the main are but a question of legal symbols or a "juristic syntax." Neither is it a body of "technical doctrines" or a sort of verbal manipulation of "disemboweled rules" wholly detached from those concrete facts and factors which it is supposed to regulate. Rather, it is a series of variable processes of preventive and incentive channelling of human deportment and human expectation both in general and specific situations which are always concrete. Provided it is properly understood in its functional or managerial meaning, law operates not only in the somewhat restricted though by no means insignificant areas of ordinary offense, grievance and dispute, but also in the vast and vital domains of patent and latent social and economic conflicts or tensions of grave intensity and great dimension. It is preoccupied not merely with the regulation, implementation or revision of certain existing conduct patterns, both on an individual and collective level, but also with the adaptation of old and generally accepted conduct patterns to novel and frequently rapidly changing social, economic, political and technological conditions and their far-reaching impacts on the lives and life-styles of people, on natural resources and on the whole world in which we must live.

Law will also have to be concerned with and be interested in devising and recommending, through incentive provisions, new conduct and expectation patterns which correspond more realistically and conform more readily to these novel conditions and situations. If properly defined and understood in its profounder and more meaningful relation to a truly free and open (democratic) society, law must not merely appraise a definite conduct as to its tangible or likely significance for the realization of some definite though often limited individual, social or political goals. It must also, as far as this is possible, deliberately channel and influence human conduct and human expectation so as to bring about more efficiently and more definitely a fuller realization of all human—individual and collective—values and goals both in their differentiated and undifferentiated aspects. In this sense, law may also become a realistic and workable vocalization of these values and goals—of worthy human challenges and counterchallenges—provided it realizes that not all human problems can be fully resolved. Since a workable law can never ignore humanism, it must also be conscious of the fact that true humanism is an all-encompassing understanding and appreciation of the vast and probably irreducible differences among men and their particular values, expectations and aspirations. It is not a doctrinaire-absolutist commitment to what certain "supermen" or "super-philosophies" consider to be the only accept-

able "ideal." On the contrary, it insists on seeing men as they actually are rather than as they "ought to be" according to some Utopian ideal.

All this, in turn, calls for unbiased comprehension of the values and goals to be attained or promoted. It also demands a familiarity with effective as well as economical means—economical as regards human and material resources—for their realization. It calls for both the ability and the craftsmanship to encourage and promote, often in a spirit of managerial wisdom, a conduct conducive to the fullest realization of these aims. The law should, moreover, attempt, by non-coercive means, to create and implant new individual and social values and goals, as well as a distinct and viable value awareness among people in general; and it should also implement some significant traditional values by realigning them with novel values or by relating them to so far ignored or misunderstood values that are consonant with novel fact situations. Under certain circumstances, law may even initiate a drastic and more realistic reorientation of individual and collective human conduct, expectation and aspiration.

In the areas of constantly and often rapidly changing or shifting economic, social, technological, psychological, physical or scientific realities, any existing society and any legal system are constantly faced with the threat of serious and even fatal breakdowns in the vital coordination and integration of life and work, expectation and attainment, value and reality. It is in these perhaps most crucial areas that a "fact-focused" and fact-conscious law becomes of paramount, not to say decisive, importance. For unless man can become adapted and peacefully reconciled to certain necessary or unavoidable changes within the social, economic, technological or political environment in which he lives and intends to live, he might very well use these changes to destroy this environment or system by resorting to either stubborn resistance or violent countermeasures. This is so especially if, through misunderstanding, misinformation, propaganda, prejudice or plain ignorance, he is led to believe that these changes are detrimental to him or to the group with which he identifies himself, or that they are a deliberate, not to say a diabolical, conspiracy against him and his convictions. Only too frequently do people identify "the other" or plain "otherness" with outright error or evil, solely because it is "other" or "different," while they themselves and whatever they stand for are obviously and always right and good simply because they are not "the other." In brief, the "other," whether ethnically, racially or confessionally, in itself is evil or at least inferior.

Law, then, if realistically understood and applied, may also become the sound and durable foundation of a workable peace order and as such the basis of intelligent social survival. It is a peace order not only in that it removes or greatly reduces some patent or latent small-scale grievances, but also in that it is, or can be, conducive to peaceful adjustment and constructive compromise in the larger domains of human existence and coexistence, frequently through the re-channelling and reorientation of the reactions by the aggrieved or the questing, or through the creation of novel values and novel challenges which deprive old conflicts, aggravations and prejudices of much of their former meaning and, hence, of their essentially irrational bitterness. In this manner law might also minimize and perhaps even remove the chance for possible emotional counter-

grievances or violent counteractions which, due to the ever-present human aggressiveness, selfishness and shortsightedness, always generate serious and often fatal social disruptions in the decisive human quest for more adequate sharing, more realistic security and more meaningful recognition. By achieving all this, law, at least in part, might not only create novel, healthy and viable values and implant as well as stimulate a new affirmative and constructive value awareness as well as new healthy social goals based on sensible forbearance and compromise. It may also secure these new values, goals and interests against the frequently recurring manifestations of man's proverbial inhumanity to man.

Law must at all times confront and attempt to resolve the manifold and many-faceted fact-problems which underlie or arise from the perennial social, economic and political struggles that are a characteristic aspect of any existential and lively society. The intelligent, that is, efficient, peaceful and economic solution to all those fact-problems of existential reality frequently must be sought beyond the rather limited and not always satisfactory horizon of mere maintenance or *ad hoc* repair. From mere intervention in case of a particularly revolting abuse, law must expand into clear-cut goal-oriented policy action. It must do so by realistically and humanely concerning itself with all those social, economic and psychological factors which, being constantly at play, decisively affect and mold the life and well-being of individuals, groups and whole social or political structures. But if law is to be purposive policy action—if it is to be effective and humane “managerial policy thinking” rather than merely an abstract “sovereign command,” an allegedly “objective standard,” a “threat,” a “technical (judicial or administrative) process,” a “body of authoritative grounds of or guides for official actions or decisions,” or a “basis for predicting official action”—it must be deliberately pliant in order to become an effective means to achieve desired and desirable results within a rapidly changing world. The maxim that adaptability to reality and circumstance is one of the prerequisites for successful survival also applies to law and legal policy in general.

The proper law or legal policy, whether applied to a particular issue or to an overall social, economic or political situation or condition—if properly planned, skillfully managed, and efficiently carried out—injects real meaning and tangible content into those human rights which are meant to be the expression of a realistic understanding and full realization of human dignity and human worth. True human dignity—the right to a full and relatively unhampered life and the right to share properly and to be secure and respected—is more than abstract “liberties,” “human rights” or an integrated “grammar of legal semantics.” It is certainly more than empty though high-sounding and, hence, irritating preachments sonorously proclaimed on national holidays or during political campaigns. As often as not, such preachments are just emotional phrases or ritualistic slogans and, hence, in time may cause sufficient disappointment and resentment to bring about drastic and perhaps fatal social disruptions as they frequently appeal to aggressiveness and selfishness in the name of “human liberties” and “human rights.” Most people, it must be conceded, act solely for the purpose of realizing purely selfish and even antisocial interests, while some people act primarily for the purpose of arousing a feeling of dissatisfaction in others. Equally futile, not

to say dangerous, are efforts to advertise mere legal technicalities as "democracy," "liberty," and the "fuller life" or "justice." Such an attitude is but the manifestation of an almost pathetic (or pathological?) readiness to accept statements solely because they are preserved in law reports, treatises or codes, or even because they are said to be found there. The desperate clinging to shopworn traditionalist views, as a matter of fact, is actually a subconscious flight from reality; and the gradual hardening of purely tentative answers into absolute dogmas is frequently nothing more than a frantic though futile search for an unchanging and, hence, allegedly comforting rule of life.

If the idea of a free democratic society under the rule of law is to be more than a mere oratorical exercise—more than a meaningless lip service to human freedom and dignity—then it must always be inspired by a spirit of mutual respect and mutual deference in all domains of human beliefs, thoughts and actions. In the realm of law and legal policy, such mutual respect and deference must manifest itself, and assume concrete forms, in the granting to all people a more telling and more realistic recognition of their individuality, dignity and irreplaceable importance through a fuller participation and sharing in all social, economic and political powers, and through a more equitable security for all men. At the same time, and probably on account of such an enlightened policy, the individual will have, and must have, many unhampered outlets for the dictates of his conscience, for his spiritual-religious commitments, for the attainment of knowledge and wisdom, for the manifestations of personal integrity and virtue, and for the exercise of his creativeness and craving after what he considers to be true, good and beautiful. The law, therefore, must recognize and honor the competence of the individual in final matters of conscience, conviction and religious belief, no less than in the ultimate questions of aesthetic taste, intellectual curiosity, moral attainment and imaginative creativeness in all spheres and on all levels of human activity. While the law will, and actually must, protect these essentially personal concerns and aspirations of man, it may not invade them or even dictate to them. It may never endanger the proper relation between private areas of living and experiencing a full life, and the areas suitable to social control through law. Through multiple guarantees and assurances, law must see to it that any unprovoked and unjustified threat to, attack upon and interference with these ultimate human interests will effectively be repelled. At the same time, law must provide the individual with, and effectively secure for him, much free play and ample leeway so as to enable man to unfold his humanity and human dignity. It must also stimulate this free play which is of utmost importance for the preservation and stimulation of the dynamics and viability characteristic of a democratic society and of democratic man living under an intelligent rule of law. And such an intelligent rule of law or legal policy must always be determined by the three most urgent quests: sharing, security and recognition. Only thus may we avoid the deadliness of a monolithic or closed society; and only thus may we hope to achieve the greatest possible social harmony and still honor individual diversity.