

# Law Quadrangle (formerly Law Quad Notes)

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Volume 22 | Number 3

Article 5

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Spring 1978

## You, the Law, and the Changing Future

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### Recommended Citation

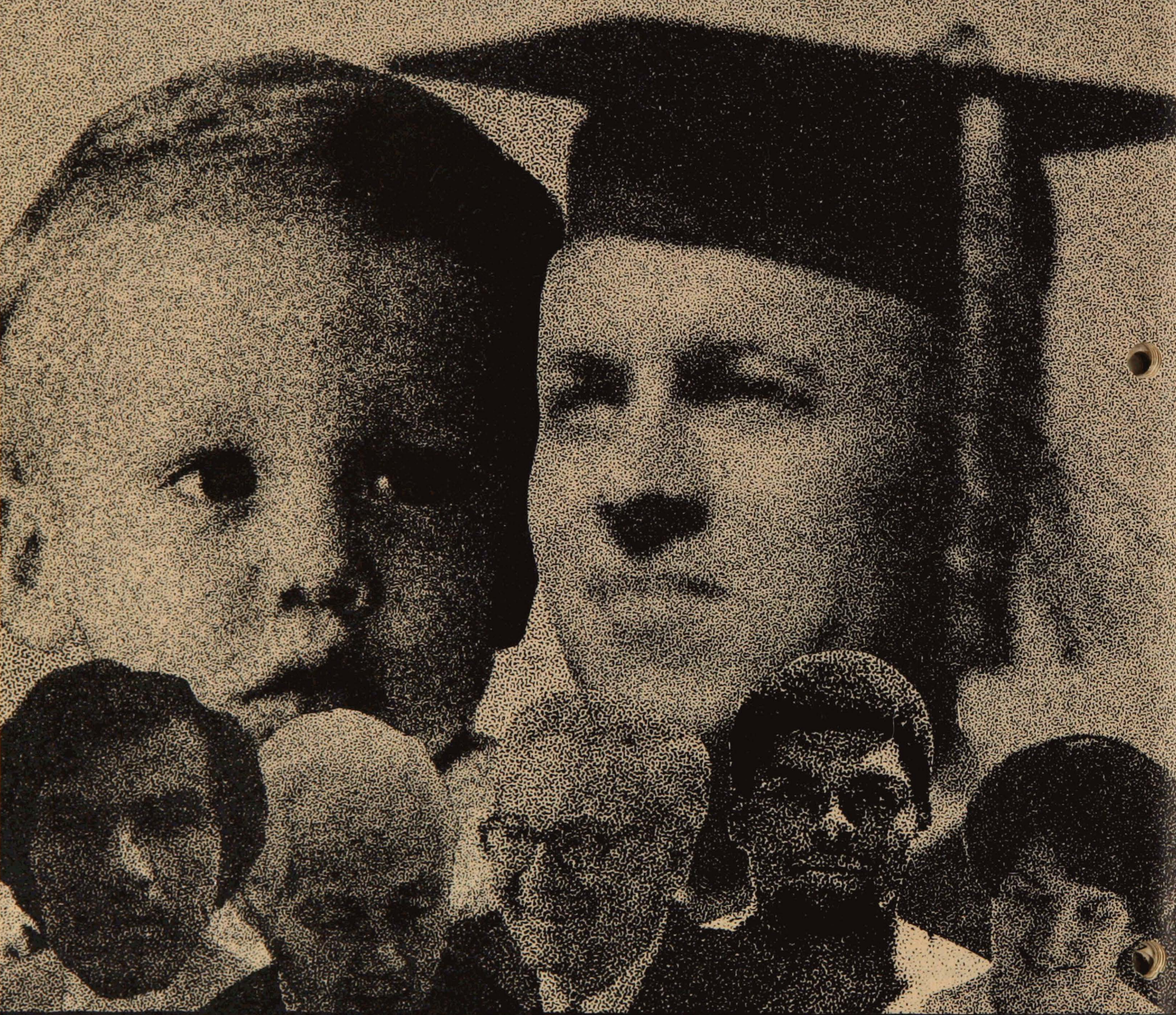
L. H. Wright, *You, the Law, and the Changing Future*, 22 *Law Quadrangle (formerly Law Quad Notes)* - (1978).

Available at: <https://repository.law.umich.edu/lqnotes/vol22/iss3/5>

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you,  
the law,  
& the  
changing future



**1952**

**1977**



by  
L. Hart Wright  
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The University of Michigan

Speech given on Senior Day for December  
Graduating Class, December 11, 1977

On the average, those among you about to graduate have lived through one-fourth of a century. If future historians, appraising those 25 years, looked only at the covers of the monthly magazine *U.S. News & World Report*, they would be reminded that there is a repetitive quality to life and a certain monotony. They might even conclude that, in your time, there was virtually no change in the American landscape.

Illustratively, the April 4, 1952 cover-page headline inquired, "Business Picking Up?"

Twenty-five years later, a 1977 cover rephrased the same question: "Business: Will It Pick Up?"

Similarly, the November 6, 1952 issue headlined "New Threat of Inflation." Though you may be unaware of the 1952 circumstances which justified that statement, you certainly were not startled by the echoing headline on the April 25, 1977 cover page, "Drive to Keep Prices from Soaring." The parallels continued. Indeed, on one occasion, the *U.S. News'* cover page explicitly recognized the recurring nature of major developments. For while the August 15, 1952 cover page had queried, "Food Shortages from Drought?", the April 4, 1977 cover page asked, "Drought: Will History Repeat Itself?"

But do not be misled. The materials between cover pages, over that quarter of a century, would have reflected, if at all accurate, something much more characteristic of that period, namely, the constant change and variety in the U.S. and world scenes.

In your short life, the U.S. has grown from 157 million to 215 million people, an increase of 37%. The rise in the world's population is even more spectacular, from 2.36 billion to just over 4 billion—an increase of 70%.

Though our population grew only 37%, the employed civilian work force jumped over 50%, from 61.3 million to 92.2 million, in part because when you were born only one third of all adult women held full-time jobs whereas now almost one half of a substantially higher population group have full-time gainful employment.

Fortunately for all of us, the United State's gross national product—measured in constant, not inflated dollars—rose at a much faster pace than the population, growing by 99.1% over your life.

It is precisely in the setting of such changing factual terrain that the thrust of our laws—through which we both reflect and channel human behaviour—is often most easily re-examined and modified as to both the rights and duties of people.

Illustratively, Wilbur Cohen, a former Secretary of HEW, would tell you that our country's faster paced economic growth, in the context of the relatively smaller population increase of those years, made it easier in our democratic society to modify significantly, through laws, the income-distribution patterns otherwise generated by our marketplace.

The "haves" had only to "share" that net increase with the "have-nots" (rather than give up something they already had) to make possible Medicare, Medicaid, AFDC, financial aid for students—to say nothing of the dramatic growth in social security benefits and beneficiaries. All of these were possible because doubling of our gross national product facilitated our doubling of federal tax receipts.

But the 25-year change in this one facet of your life bore not alone on quantity. While our present basic federal income tax law—the Internal Revenue Code of 1954—was adopted a scant two years after you were born, the changes in its technical complexion, wrought since then by amendments designed to encourage through incentives one type of human behavior or discourage through disincentives another type, has taken the Senate Finance Committee's professional staff over 4,000 pages to explain in lay language.

Having tired of counting those pages, to your imagination I leave the task of calculating the enormous range of statutory changes inspired over that period by 50 different state legislatures—affecting every field of law and, thus, every avenue of life.

However, constant change in our society, over your life, was generated not alone by alterations and innovations—literally thousands—in our statutory rights and duties. Responsible also were equally dramatic changes in the constitutional rights and duties of our people. The host of my brothers on this faculty who devote themselves to criminal law would probably never forgive me if, in such context, I ignored *Gideon*, *Miranda*, and their progeny. But more significant for most was the change wrought in the early days of your life when *Brown v. Topeka Board of Education* laid to rest *Plessy v. Ferguson*.

This constitutional change shortly after you were born, calling for an end, in education, to state-sponsored segregation by race, was followed quickly by a much wider range of judicially and congressionally mandated changes in our race relations. The aggregate provided the occasion and a framework within which, across this land, could emerge a not atypical by-product—an attitudinal change—a new spirit!

In proof! The President who took office in the year you are to graduate from Law School came from the South—unimaginable at your birth with *Plessy v. Ferguson* still supreme. Even more unimaginable back then: In large part he—a Southerner—owed his victory over a Northerner to massive support he received from Blacks in the South, the North, the East, and the West.

Again, who could have imagined at your birth that the most attention-generating case pending before the Supreme Court in the year of your graduation from Law School—*Bakke*—would involve the question of whether



our attitudinal change had led us to be over zealous in designing a formula for affirmative action programs covering minorities?

Legally inspired changes—a constant over your life—in our rights and duties, and ultimately in our attitudes, came not alone, however, from constitutional decisions or statutes. Justice Frankfurter could have been speaking of the common law when he said:

The search for relevant meaning [that is, the actual dimension of a typically not precisely defined common law idea] is often satisfied not by a futile attempt at abstract definition but by pricking a line through concrete applications.

Whether, in a given circumstance, this "pricking" of "a line [case-by-case] through concrete applications" only clarifies or instead actually re-directs or changes what had seemed to be the thrust of a common-law idea is less important here than the fact that this "pricking" is and will continue to be an evolutionary process which will continue to change our lives in an evolutionary manner.

Not surprisingly, the change in our life, wrought by a single common-law decision is often far less discernible than that associated with a new statute which covered terrain so important that it attracted the attention of an entire legislature. Yet, typically in any one year, the aggregate common-law evolution is sufficiently noteworthy to warrant, as to each field of law, a thoughtful law review article. And the aggregate common-law inspired change over your entire life would obviously then warrant, as to each field, far more than a single volume.

In addition there will be those single common law decisions which break sharply with the past, impacting significantly and immediately on a wide range of people. Only illustrative are the occasions (1) when the Michigan Supreme Court overturned the earlier prevailing doctrine that certain non-profit institutions, such as hospitals, were free of tort liability for negligence, or (2) when yet other courts removed the earlier immunity which prevented one spouse from suing the other spouse in a tort suit, or (3) when courts, on their own, shifted from the notion in a tort suit that contributory negligence was a complete defense, to the practice of spreading damage assessments between parties on the basis of comparative negligence.

What, my young friends, has all this to do with today's ceremony? After all, you were not responsible for any of

the changes to which I have referred. Nor did change *qua change* begin in your time; nor will it terminate with today's proceedings.

Change—a constant of life—began with the beginning and its pace has always been rapid. Remember that the urbanized, relatively sophisticated America into which you were born was, only one full life span earlier, a predominantly rural nation. Of its mere 40 million inhabitants, of whom only 1% had graduated from high school, three-fourths lived on farms or in villages having less than 2,500 population.

Thus, though change is not peculiar to the quarter of a century in which you have lived, it is, nevertheless, peculiarly relevant to today's ceremony. In part, this is because endless variety and change characterized and so affected the common core of study to which your attention has been devoted here. In substantial part, our aim has been to help you sharpen your analytical skills so that hereafter you could help society determine how the variations in our constantly changing terrain should affect the substantive and procedural rights and duties of people. That will tend to be at the core of your task whether you are counselling, negotiating a settlement, litigating, appearing before regulatory or legislative bodies, or sitting as judge, regulator or legislator.

No doubt, in the life of a lawyer, there also is much that becomes routine. But it is the skill and thoughtfulness with which a person trained in the law deals with change that is most important to our society. Mere information that describes today's factual terrain, and gave loosely defined dimension to the law as you now understand it, is, of course, an important part of your mental equipment but only because, on some tomorrow it will be a very useful but only historical point of departure.

In short, it is the tasks of those tomorrows that will require the most sophisticated of your skills and wisdom. And the ensuing changes, to which your skills must be addressed, are certain—if viewed cumulatively in retrospect as of the now seemingly distant year you retire—to have been wide if not wholesale in thrust.

To justify the supposition that, within your professional life, there will be at least tens of thousands of micro-clarifications or changes in the common law, one need only count the number of cases—literally thousands—now docketed with our state supreme courts. Indeed, the product-liability legal changes which alone will unfold in just the remaining years of Ralph Nader's life are fairly awesome to contemplate.

And what a miscellany of legal changes could spring from any one of many demographic shifts due to occur. Half a century ago the number of men and women over 65 were equal; today for every 100 women in that age group there are only 60 men; and, if present differential trends continue, at your retirement there will be 2 women over 65 for each man over that age.

Yet the magnitude of the legal changes created by such population changes may be insignificant in comparison to those created by the energy problem. Cheap energy and cheap oil, available until the immediate past, helped create our national power and affluence. At your birth, petroleum was a "non-problem," subjecting us annually to substantially less than \$1 billion in import costs. Now, in the year of our highest trade deficit, the petroleum import cost for just the first 6 months exceeded \$23 billion. It is not inconceivable that by your retirement oil may be more or less unavailable at any price.

Affecting, but simultaneously cutting across the entire energy problem and generating its own independent legal changes, will be our rapidly growing environmental concerns.

But not all the multitude of domestic legal changes certain to take place in your time will be attributable wholly to changes in our own factual terrain. Christopher Columbus brought this land mass into the world; and never since has it stood outside it.

It was perhaps one thing for tiny Belgium to export, in bits and pieces primarily throughout Europe, half of its gross national product and import a similar amount. But oh how the world, and our nation with it, has been affected, and will continue to be affected in so many yet unknown ways, by our export of whole corporations, called foreign subsidiaries of which our domestic (but in truth multi-national) corporate parents now own well over 30,000.

But this development, shrinking this globe, was not a one-way street. For example, oil aside, it may have been tolerable for the Japanese to take over our television industry. But is it equally tolerable for a major producer in one of our most basic industries, Bethlehem Steel Corporation, to report, this last quarter, the largest quarterly loss ever incurred by an American corporation and, in the process, point at Japan? Certain to affect our laws in diverse ways is the recent congressional testimony of a former cabinet official to the effect that the new steel plant in Kimitsu, Japan, is three times as productive per

worker as the enormous but old United States Steel Company plant in Gary, Indiana. Further, on average, at 327 metric tons per employee, Japan's entire steel industry was said to be 25% more productive per employee than our own.

How too are the laws relating to our agriculture likely to be affected by the escalating food problems of the skyrocketing populations of the less-developed countries?

Be that as it may, at this point in time, your own individual skill, to react analytically and thoughtfully to changing terrain on helping a constituency of our society deal with rights and duties you simultaneously may be trying, creatively, to identify—is something you now are only about to put to the test in a real world context.

Why then celebrate with you now? The answer is simple enough.

Because of your capacity and your industry, you were among the 80% of your generation who finished high school. You then were among the 32% of that 80% who, within the normal time, graduated from college. For three years since then, you have had to compete with peers who had met standards awesome indeed when viewed relatively. For three-quarters of you ranked in the top 10% of those across this land who took the Law School Admission Test.

Was so selective a process required if the most demanding task ahead involved mere preparation of a deed?

The short answer is that we have gathered here to celebrate your obviously successful response to society's institutionalized effort to hone to a fine edge the thought processes of the relatively few who are among those deemed best suited to help society's constituencies, at both macro- and micro-levels, deal with changing rights and duties in a rapidly changing and increasingly complex world.

Some of you have heard that on the occasion of Queen Victoria's Diamond Jubilee procession through the streets of London, a male Cockney, of considerable age, darted from the street-lined crowds in order to whisper a private greeting to his dignified, if dumpy, Queen as her carriage passed by. Were he here today, I believe he might have paraphrased his 1897 remark by saying: "Go it, my young friends, go it, so far, you've done it well!"

And so say I.

