



1946

FOREWORD

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Recommended Citation

WILLIAM O. DOUGLAS, *FOREWORD*, 55 *Yale L.J.* (1946).

Available at: <http://digitalcommons.law.yale.edu/ylj/vol55/iss5/2>

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THE YALE LAW JOURNAL

VOLUME 55

AUGUST, 1946

NUMBER 5

FOREWORD

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THERE are two conventional ways of settling disputes between nations—diplomacy and war. Throughout the ages they have in general been the limited alternatives available for the adjustment of controversies in the international field. And much of the history of the world is the record of the gradual accumulation of grievances, feigned or real, between nations; the breakdown of the machinery of negotiation or conciliation which we call diplomacy; the slow spread of suspicion, wariness, hostility, and hate; and the overflow of those attitudes into war.

We on this continent adopted a different method for settling this class of controversies. The colonies who separated from their mother country were separate sovereign States. Though they were jealous of their sovereign prerogatives, they realized the risks involved if they were not united in a working society governed by law. There was the problem of the common defense. There were also the important problems of commercial intercourse, finance, and the host of other social, economic and political problems which these neighboring people had in common. And so they formed a compact—the Constitution of the United States.

By terms of that compact, controversies between the States are settled by the processes of law. The Supreme Court is given original jurisdiction over these cases and controversies. It is there that complaints are filed, issues joined, questions of fact resolved, and principles of law applied. Many of those controversies would, in other parts of this planet, precipitate war—boundary disputes, conflicting claims over water rights, and the like. But one of our unique contributions in the history of government has been the substitution of law in this area for diplomacy and war.

Law is man's refuge on his escape from the jungle.

Dr. Albert Einstein was recently speaking about the necessity of building a system of law—that is to say, world government—around

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the atomic bomb and other instruments of mass destruction. It was suggested that the hates, fears, and prejudices of people were barriers to that goal and that nothing could be done; that human nature could not be changed, that it stood in the way of the solution of this problem.

To that argument Dr. Einstein replied, "The ability to think is also a part of human nature. It is intelligence, which is the ability to learn from experience, to plan ahead. It includes the capacity to give up immediate, temporary benefits for permanent ones. This part of human nature recognizes that a man's security and happiness depend on working society; that working society depends on laws; and that men must submit to these laws in order to have peace. It is this reasoning faculty which is responsible for all the progress of man in historical time, in art and science, in agriculture, industry and government."

And he significantly added: ". . . We must remember that if the animal part of human nature is our foe, the thinking part is our friend. We do not have to wait a million years to use our ability to reason. It is not dependent on time. We are using it every day of our lives. We can and must use it now—or human society will disappear in a new and terrible dark age of mankind—perhaps forever."

Man's intelligence has unlocked the secrets of the universe. It has conquered vast domains of disease. It has harnessed the energies of nature and has made possible for man a bountiful life. What the intelligence of man has made possible in the material and physical fields, it can likewise achieve in the field of government—that is, in human relations, and in law.

The history of law is largely the history of the growth of the maturity of people.

Law is order. But in its civilized sense, it is more than that. The most ruthless tyrant in the world's history maintained peace and discipline. And we have seen in recent years the monstrosity of fascism thrive under a regime of force.

Law is stability. But in its civilized sense it is also more than that. A system of law built to preserve a status quo would soon become a crushing, suffocating influence.

Life is change and growth. As Jefferson said: "Laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors."

A system of law, if it is to meet the needs of successive generations, must be adaptable to new conditions. On the world level, a system of trusteeship for submerged peoples would be intolerable if it were per-

petual, if it did not hold forth the hope and the opportunity for the people themselves in due course to take command of their own destiny. In the field of private law, we would be held in the bondage of the eighteenth century if we had not room for growth and change. A feudal economy might still enslave us; industrial accidents might still be borne by the worker and not treated as a cost of doing business; the states would lack the opportunity by experimentation to develop techniques for handling new social and economic problems of a fast changing era.

Law creates stability. For it substitutes the adjudicatory process for ordeal by battle, the pitting of strength against strength. But the existence of the machinery of government through which change can be made is as important as the existence of machinery of government whereby order can be maintained and stability achieved. Without change there is stagnation. The ultimate product of law designed merely to protect the status quo is revolution. We have avoided that pitfall in the system of government which we enjoy. In our system of government the people are the source of sovereignty. They have the final word, even when it comes to changing the very Charter of our government. And the instances are not isolated ones where they have exercised their sovereign power to change the Constitution itself.

Law in its civilized sense not only provides for order and stability and leaves room for change and growth. It also substitutes for self help rules of conduct and machinery for their enforcement. But law in its civilized sense is more than a mode of settlement of disputes, more than a sheriff to enforce a decree. The aim of law in its civilized sense is justice. The government which the Founding Fathers established on this continent is the product of a long struggle for justice—for freedom and equality, for recognition of the inalienable rights of the individual. And they wrote into our Constitution guarantees designed to protect the individual, not only against acts of his fellow man but also against acts of the government itself. Thus, freedom of religion and of assembly, the ban on involuntary servitude and on third degree practices of police, jury trials, due process of law, payment of just compensation for property taken for public use—these became standards under which law is administered. They are standards of justice, so cherished as to be embedded in the very Charter of our government.

The system which we have designed in this country provides for justice, order, stability, and change. It gives protection to the individual and affords the widest opportunities for his development. It provides the machinery for change by the evolutionary route and makes archaic change by revolution.

Our progress in law and government through the years has been marked by the success with which we have reduced the areas of oppression and exploitation and have removed disputes from jungle warfare.

The measure of our success in those regards—our ability to solve the problems of our age through the adjudicatory or conciliatory process—is the measure of our political competence. And it is our political competence—our ability to work within the limits of legal order and to find peaceful solutions of problems—that stands as the greatest challenge of the day. As William James said, "The civic genius of our people is its only bulwark."

Political competence is indeed the end purpose of all law. Political competence applied day-to-day, year-to-year, and generation-to-generation, is all that will keep peace in the world. With the accumulation of problems both internally and abroad, it becomes clearer that the price, not only of western civilization but of our own individual survival, lies in the ability of this imaginative, buoyant, tireless nation to invent the techniques which can unify in a satisfactory, stable, peaceful relation together, millions of human beings—millions with diverse cultures, races, and languages.

Beyond our own borders, we see that peoples of all races are close neighbors in this One World. The necessities of our own survival require us to extend to people outside our own borders the techniques of peaceful unification that we devise for ourselves. Our internal and external problems are all one in their demands on our ingenuity.

Other nations before us have tried to solve these twin problems of a satisfactory internal order and of a satisfactory external order. Some of our predecessors were remarkable in their advances in political competence over what existed in the world before them. But they did not have to develop political competence in matters abroad until they had developed an internal homogeneity in which they had few problems of unity at home.

Moreover, they could, when necessary, cut Gordian knots by the use of force without too much risk for themselves. But the atomic bomb and the rocket have redefined that problem for us. The use of force by any nation may now destroy it as well as those against whom it is used. Internally and externally we must untie our Gordian knots; we cannot cut them except at our peril. The instruments with which we must contrive that men live peacefully together are more intricate and difficult ones. They are the instruments for peaceful adjustment of conflicts between groups and nations. Those instruments are law—law administered in accordance with civilized traditions, law conceived and administered by politically competent people.

The United Nations is the greatest step yet taken towards world peace. It is, however, but the first step towards creating a system of law at the world level adequate to handle the grievances and disputes between peoples. Full fledged world government is probably still in the distant future. The diversity of cultures, of governments, of traditions among nations make inapposite a complete analogy between the rela-

tionship among the colonies in this country in 1787 and the relationship today between the nations of the world. But the great experiment in government which we launched on this continent in 1787 is relevant to the problems of the world today.

Absolute sovereignty, complete self-determination are outmoded in this atomic age. No nation-state can today be strong enough to protect its people against war. Absolute sovereignty on the part of any nation bent on world domination might now be the doom of civilization itself.

The traditional methods of settling controversies between nations become more and more outmoded with the passing of the years. The clash of sovereignties fans the flames of nationalism. Fear and suspicion, wariness and hate, are the result. That path has always led to war. And, to repeat, the atomic bomb and the rocket may now destroy the nation that uses them as well as those against whom they are used.

We are apt to think of peace as the absence of war. But peace is more than that. Peace is the presence of law—of justice, order, stability, and a method for orderly change. That is to say, peace is not merely the absence of war; it is the presence of government.

World law is essential for world peace. The risks are far too great for us to entrust the cherished ideals of this great civilization to jungle techniques.

Mather in his recent book, *Enough and To Spare*, stated: "Our heritage of mind and spirit, as well as of body, stems from the successful pioneers of adventure, not from the conservatives who failed. For us the voice of reason should speak in more commanding tones than the voice of instinct. We at last have learned to read like handwriting on a wall the directives inherent in the structure of our bountiful earth and the interdependence of its human inhabitants."

The future of human society depends on whether this generation will be successful pioneers of adventure. The challenge has never been greater. The requirement of political competence has never been more important. The difficulties of instituting a system of law to deal with world problems may seem to be insurmountable. They are indeed great. For as Brandeis said, "We are making laws for the community. We cannot make the community fit the laws." Success depends not only on our own attitudes but on the attitudes of other peoples as well. But there is no such thing as the impossible where the reasoning faculty of man is unfettered and there is courage to act.

The pages which follow canvass the numerous phases of this large problem. The hopes which they raise, the doubts they express, are hopes and doubts of world citizens fervently seeking a rational solution of age-old conflicts which to date have usually ended in war.