5-1-1941

What is Law

Luis de Garay

James J. Kearney

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation
Luis de Garay & James J. Kearney, What is Law, 16 Notre Dame L. Rev. 261 (1941).
Available at: http://scholarship.law.nd.edu/ndlr/vol16/iss4/1

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
WHAT IS LAW?

1. LAW AS REGULATION.

"If there exists a specific human history or a history of culture, it owes itself to this that man, by nature, is an Utopian; that is: capable of opposing the being he ought to be, and of measuring power with a strickle of law."

—Hermann Heller.

Life in animal societies is regulated in an unfailing form by an instinctive order, which does not consent to transgressions, nor permit deviations, innovations or individual solutions that change the pattern or the instinctive picture of the species.

Thus the social life, in the animal species, unfolds according to an invariable organic regularity: in the settled lines of an innate, inescapable and assimilating system.

Human society is organized in a radically different form, because unlike the rest of animals, man possesses the gift of not conforming to their actions and is endowed with the talent of conceiving an oughtness, and of moving socially and individually in variable and multiple planes of action.

The social life of a man is not organized, in an inexorable and absorbing manner, by an ineludible, inherent and rigid
system; to the contrary: it unfolds within more ample margins in a great variety of forms subject to progress and change, that require an order constructed by man himself with certain liberty.

Order in the animal society is inviolable, but in the human community it has, to the contrary, the radical characteristic of being violable. The legal order is, in the society of men, the substitute and complement of the instinctive order.

By virtue of this, law is parallel to instinct and realizes, in a certain sense, the functions which the latter has absorbed in the animal society. By this I do not wish to signify that the law is opposed to instinct, since it is structurally the same and it ought to follow more or less closely the wise outlines which nature engravés in the instinct as a wholesome and elemental sequel of life in common.

In the social existence of man the free course of events does not lead to harmony between order and justice but that harmony is precisely the necessity, and the mission of man is to possess order and justice with a tenacious spirit which is constantly renewed.

Life in the human community requires a regularity, or better said, a regulation which makes possible a perfectible, just, ordered regularity. This constitutes the beginning and end of law and is of living and permanent signification.

All juridical phenomenon implies regulation, every principle of law bears a character of rule or norm.

This is the first element of the concept of law.

2. LAW AS A REGULATION OF SOCIAL CONDUCT.

It is almost unnecessary to say that law refers exclusively to human relations. Only man, individually or collectively, can be the subject and the end of the legal relation. It is useful to recall, moreover, that this does not direct itself to the regulation of social phenomena, but by a direct method, it
applies itself to human conduct, which is properly susceptible of regulation in the social sphere.

Law is, then, a regulation of social conduct: a regulation of man's conduct with his equals.

But there are other disciplines that meet with the law in the field of social relations, and naturally it is urgent that their boundaries and connections be made precise.

3. **Law and Ethics.**

Ethics aspires to regulate human conduct, not only in the individual realm, but also in the movement with other men. Of course, it is not exact to affirm, abruptly, that law is social and ethics is individual. Law is always social; but ethics is not content with regulating purely individual conduct, since there exists an ample group of ethical social norms.

What distinguishes these norms from the juridical? Or when do these, at the same time, constitute legal norms?

Naturally, of course, the norms of positive law are distinguished from ethical norms (or from other norms of social morality) by virtue of the formally established sanction; but one must make a philosophical analysis, and it is necessary when passing over the surface of the problem that we pay close attention to the question of whether the study of law may be exhausted in positive law.

Social morality covers two classes of norms: (1) unilateral norms; (2) bilateral or reciprocal norms: these are: (a) of intrinsic justice; (b) norms emanating from legitimate authority.

1. The non-reciprocal norms of social morality relate to the obligations with other men; but their fulfillment is exclusively subject to the decision of conscience itself and therefore we call them unilateral.

2-a. There are norms of morality that of themselves are so strict and significant in human relations that their fulfill-
ment is reciprocally demandable besides obliging in conscience like every ethical norm. They constitute elemental obligations that carry a correlative right, and from the philosophical point of view, they have a character of legality notwithstanding they may not be formally sanctioned by a social power.

These norms constitute the part of ethics protected by justice and, by virtue of this, they are intrinsically bilateral because their fulfillment can not rest upon the good will of the obliged subject, and they suppose the possibility of demanding of all other men that they be fulfilled.

2-b. Ethics on sanctioning the edicts of authority makes a dedication or remission to positive law and it lends its validity to the norms which the latter establishes with an appearance of coactivity.

The precepts of positive law constitute ethical norms in as much as they are morally obligatory, partly because of being intrinsically just, partly for being the mandate of legitimate authority, and having as such a moral obligation. Through the principle of authority ethics enriches the union of its norms with those of positive law, and this comes to be, accordingly, a part of the ethical arrangement.

But a problem presents itself: if the positive law is a part of ethics, in as much as it is morally binding, can it be said that there may be encountered in the same case positive precepts that are notoriously unjust?

As these represent only a minimum in all positive law they may be considered as exceptions that do not destroy the general picture of the system.

There are those who believe to the contrary, because as soon as there exists, or may exist, positive norms with an immoral character, there will be an obstacle to considering it as settled, that the positive law (and, therefore, law in general) is a part of ethics.
WHAT IS LAW?

From the affirmation that positive law is a part of ethics it might follow: that either all positive orderly arrangements may be justified openly, from the ethical point of view, or the character of law might be denied unjust positive law, because, since it is unjust, it is not within the moral whole.

The first is untenable. Concerning the second, it is fitting to decide with greater care. From the ethical point of view an unjust positive law is not law. But in the complete sense, and from the formal point of view it indeed merits a juridical classification.

By virtue of this it is not possible to reserve the name "law" for the just law, and this raises an obstacle to flatly asserting that positive law in every case represents a part of ethics.

In reality it is possible to elude or suspend a decision respecting whether law totally considered, is or is not a part of ethics; but on the other hand, the dominant character of ethics cannot be pawned off on law as the source of its validity and be therefore the reason for its invalidity, when it is unjust.

One must make note, nevertheless, that ethics does not withdraw in its obligation to a positive precept if the injustice is not fundamental and flagrant, and finds reason, for adjusting differences on the grounds of peace and order and juridical certainty, which if broken might lead to greater and more numerous injustices.


"... Justice, which holds in one hand the scale in which law is weighed, carries in the other the sword which serves to make it effective. The sword without the scale is brute force; and the scale without the sword is law in its impotence; they reciprocally perfect themselves: and the law does not truly predominate any more
than in the case in which force is displayed by justice in
order to uphold the sword, might equal the talent she
employs in maintaining the balance. . . ."

—R. von Ihering.

On studying the parts of norms protected by ethics we
are able to discover that those that are reciprocally requir-
able have a character of legality, first because of being a part
of positive law, they may have, or ought to have, the sup-
port of a coercive sanction; and secondly, because of there
being in this case elemental rules of intrinsic justice, the parts
may imply of themselves a strict performance demandable
by each from the other, notwithstanding that social author-
ity fails to recognize and positively consecrate the elemental
correlative right.

From the moment in which law relates to obligations of
conduct whose fulfillment does not rest upon the mere de-
cision of the obliged subject, there is no doubt as to whether
coercibility is a proper element of law, linked to its essence.

There is no sense in speaking of reciprocal necessity if it
is not supposed that it is supported by the faculty of using
compulsion in support of the legal exigency.

Well now, one thing is the compulsion in fact — the real
sanction — and the other is the coercibility. That is an ele-
ment of fact that can be conceded or not. Coercibility is the
moral faculty of using compulsion, a faculty demanded by
the reciprocal essence of the legal norm. (Ethics is ad unum,
says St. Thomas, law is ad alterum.) Coercibility we could
say is a faculty, or potency, of every law, the use of com-
pulsion in a necessary case in order to secure its perform-
ance, is the act.

Law, that is not prepared in a practical manner with co-
ercive means in order to secure its performance, is like justice
without her sword. But I could relinquish being right, if it
would not imply or carry with it the moral power of invok-
ing force in its support, and of securing, even by compul-
sion, the respect of this norm, and it would be like justice
with the scale, and also, perhaps, with her sword, but without
the right of using it.

In summary: the norm of law is reciprocally requirable.
This is an essential mark. The norm is coercively requirable.
This is a proper mark derived from its essence.

To express the coercible character that is suitable and
special or distinctive to law, one must, of course, continue to
imply its reciprocal essence and fix precisely the distinction
between the juridical norm and the other norms of social
ethics, as much from the philosophical point of view as in
the field of positive ordinance.

The mark of coercibility has served us to distinguish the
juridical norms, not only from those of pure ethics, but also
from the other types of norms (technical and conventional).

5. LAW AND FORCE.

"Force is a condition of all historical realities. Law is,
on the other hand, solely the property of some realities.
Some properties of power conform to law, others are
contrary to law and others are indifferent. These are
the words of common sense." —Ramiro de Maeztu.

All law, as coercible, is law using force to fulfill an obliga-
tion that might consider its double, moral and juridical, char-
acter. The moral end of force is to serve law.

Here appears the true relation between law and force. In
order to clarify or explain a concept it is convenient to com-
pare it to others that are capable of being related by affinity
or have presented themselves as such, and force, in some
doctrines, has allied itself with law already as a pretended
source of validity, either as an original factor or as an ele-
ment of the existence or possibility of a law.

But it is necessary to affirm in a categorical manner, that
law and force though not antagonistic contradictories, are
radically different entities. Neither is the law effective force nor force the law.

To say the second is as much as to justify all acts of force and to consider force capable of making laws — might making right. To affirm the first is to fall into the ingenious error of thinking that law opens the way by itself only as if by virtue of a "harmonia praestabillita," that it might give on earth moral victory without the human effort, indefectibly putting the forces at the service of good.

Law and the power of action do not always go together. That does not cease to be law for want of force, neither is force capable of creating laws making just the pretensions of the strong.

But as law alone is not sufficient to obtain justice, it is necessary to seek force in its support, and by this, the effective respect of law is recommended to the perpetual spirit of man the conqueror, seeking and directing the forces that might perfect law, in order that the odious dilemma of unjust force and impotent law might not be seen.

6. LAW AND CONVENTIONAL NORMS.

In the foregoing chapters we intended to go into the matter very deeply of the relations that intervene between the juridical and the moral norm. Now we ought to also occupy ourselves in establishing the distinction between these and the norms of convention or of etiquette.

Gustav Radbruch maintains that the relation between law and conventions is more historical than systematic. The social uses, he says, participate indifferently in the double character of morality and law, remaining marked in one or the other, until they reach their completion.

It is strange that Radbruch disregarded an essential point of his doctrine in establishing the difference between law and social convention.
As afterwards we shall say, the professor of Heidelberg parts from the idea of justice as *a priori* in order to reason deductively to the concept of law in its universal and necessary character. Justice, he says, is the specific idea of law.

Good now; precisely as much as it is specific we believe that it constitutes the basis of distinction in the problem that we concern ourselves with. The conventional norm does not pretend to get its origin in justice nor does it present itself as an exigency of it. Therefore, in this is it distinguished from law and by such, contains assistance as a systematic element for delineating the relations that exist between law and the usages of social decorum.

He says, for the other part, that sanction does not distinguish law from social conventions, therefore, these are supported by a psychological impulse, by a social sanction at times powerfully effective. This character is perfectly distinguishable from the coercibility which characterizes the juridical relation.

Society discredits that which does not follow the rules of good behavior; but it does not seek its performance by means of coercion, that which in any way might devitalize the character of the norm of ethics or might modify its classification. The juridical relation, of course, implies of itself potentially, the employment of compulsion notwithstanding it in practice does not have to be used, it may be: for the use of the unsatisfied contractor, for material impossibility or for any other contingency.

It is not the compulsion of action without coercibility that distinguishes law from other norms.

So, therefore, the norm of social decorum is distinguished from law, as we have already indicated, in that it is not presented as an exigency of justice and correlative in that it is not properly coercible.
7. LAW AND TECHNICAL NORMS.

Conforming to the Kantian division, the imperatives are categorical or hypothetical. The first enunciate an unconditional obligation, the second ordain a somewhat common condition: if one wishes to reach the end one ought to assume the means.

The categorical imperative is considered as corresponding to the ethical norm. The hypothetical is the peculiar quality of the technical norms whose non-perfection falls under the sanction of not reaching the desired end. He himself affirms that the juridical norms, as those of ethics, concern a number of categorical imperatives.

In reality there are in the law a considerable portion of technical norms and indeed there are hypothetical imperatives included in the legal domain.

The division we have pointed out with regard to the matter of the imperatives, supposes that the categorical ones are obligatory, but not necessary since they are not able to be realized. The hypothetical ones are not obligatory, but imply a necessary relation (as of cause and effect), that always is realized.

It is good to note that in law the hypothetical imperatives are understood on other bases.

In the non-juridical technical norms, the means ought to be assumed if one wishes to reach the end, it is a cause of the end and that is a necessary effect of the means. In the technical juridical norm the relation of means and end is not necessary as of cause and effect in the natural phenomenon. The juridical phenomenon is cultural and the relation of means and end is established by authority, in the positive ordinance. A logical connection may be included.

If one wishes to execute an obligation swiftly by means of a negotiable instrument ¹ it is necessary to reduce it to

¹ The term "negotiable instrument" is used instead of the original título de crédito, found in the original Spanish, since the requirements of negotiability are better appreciated by the Anglo-American lawyer.
writing. To make the instrument legally effective the formal requisites required by law ought to be fulfilled. The relationship between the negotiable instrument and the action of exchange is not properly one of cause and effect, unless in a technically legal sense.

On occasions, in order for the positive ordinance to be obligatory in such manner the acts must reach the ends to which they are directed, namely: that the administration of justice is an obligation of the state. The formal processes also are strictly obligatory, since they constitute the means of administering it. In other suppositions the means are not themselves similarly obligatory but once it is realized that the final consequences are obligatory and are not productive of obligations without technical means. We can deny filling the requisite consent of a mandate as soon as it is no longer obligatory to consent to it. If we do not compliment these, birth is not given to the mandate; if we consent with this obligation (with requisite oughtness) we fall short of obligations to the following effects.

There are all manners and types of obligation in the technical juridical norm.

The adjective and substantive norm are equally obligatory and participate in as much of the general character of coercibility that is proper of everything juridical. The technical norms of law, different from the other technical norms are coercively obligatory. In this form once more the coercible character is used to distinguish the juridical norm.

8. **Law and the State.**

Properly we do not intend here to study in an exhaustive form the relations between the terms “state” and “law,” nor to investigate their similarity or dissimilarity; we consider them only in so far as to determine if for the concept of law it is necessary to interpose the state relation.
1. Supposing that all law is of a state there are presented thereupon relative problems of international and canon law which properly speaking have a character outside the state and if one denies them the nature of law by virtue of their not corresponding to the state, in agreement with Del Vecchio, there is the risk of incurring in a petition of principle, given of course beforehand, that all law is of the state. In this way existence need not be conceded to positive law exclusively, except so only as to the positive law of the state.

2. The state is not singularly capable of creating laws between men. We believe that the values of Justice and the normative tradition are above it and have an existence independent of the will of its organs.

For the other part it is ventured, still above the purely positive plane, to state without reserve the quality of law as of the state, when historical investigations consider it indemonstrable that the State and Law were born at the same time.

The life of man, by his social nature, implies juridical relations which were incapable of being hoped for at the formation of the state. "Before that, it (the state) was an especial organ of law," man needed an elemental juridical order conforming to his nature. It might be said that the function created an organ, above the parts of the legal relation, but not the inverse.

Before the formation of the state man had to take recourse to direct sanction, in support of an elemental legal order, calling on his proper forces to defend his right of life.

In penal matters one can see that the sanction was exercised by the party wronged or by his friends, as an act primarily of social defense converted afterwards into a legal custom. Very much later the organs of the state took over, in an exclusive manner, the function of sanctioning wrongs.

3. The state absorbs in general the function of sanctioning the law and maintains in a private sphere every act of
the direct administration of justice, in as much as each time it converts itself into an organ freer of the collective ends.

This may be taken for certain if we give credit to the investigations that reach the conclusion that law is historically anterior to the state.

A group of men, before the formation of a state, or placed by disaster in a territory divided from the action of one already formed, have had relations in which each one invoked principles of elemental justice, that could not be disavowed by not being attributable to an authority formally established.

If it is said that this supposes the existence of objective principles of Justice, with a balance of accounts human and permanent, we have answered these situations exactly, as soon as the congenital revolution of these men faces the arbitrary acts of the state, and the resistance of the spirit considering that just it is that established it, nothing more by being such, they call attention constantly to the thinking humans forming objective criterions of value, forming elemental principles whose origin is in the nature of man and of these things, and that they are as rules of value applicable to all humanity.

4. All revolutionary law is born on the margin of the authority of the State, and in decisive moments comes to possess greater effect than the precepts formally emanating from a legislative authority. This process is not sporadic, but is very significant in the life of the law.

The right of rebellion is not of course ever admitted by the state but its legitimacy is incontestable in certain cases.

5. Customary law, on the other hand, appears as if from outside the state, in regard to not emanating from the organs of the state, a fact which constitutes the formal element of the quality of being of the state.
The disuse that abolishes a positive norm is in turn a legal phenomenon that develops contrary to the expressed will of the state.

6. The same Hans Kelsen, zealous destroyer of juridical fictions, had to take recourse to a fiction to impute all jurisdiction to the state.

The Viennese author, by analyzing the scaled structure of the legal order, found that by descending from the constitution to the coercive act, passing by the general law and by the act of administration, direct or indirect, there are true creations of law within its portals that the superior norm proportions to the inferior.

Thus, in the legal negotiations, within the portals of the law, the parts create a law for themselves and it might be considered, in such manner, that the determination of this portal is imputable to the state, but not the law that freely and by proper will within this limit the parts create.

7. In conclusion, as Del Vecchio said, there is an "order of phenomena that seems to attest equally the possibility of a law which is not of the state, or is all a series of minor legal ordinances, established in the ambit of the state, but independent of it, and even in some case antithetical to the same." By way of example it is possible to mention the law of Corporations and that which they create for the internal relations of the members of a private society, as soon as that regulation of a justice and an order *sui generis* that rules in the heart of a family. Do we not encounter in these cases an order interlaced with a system of sanctions that binds the faculty and the obligation and might make a finality of justice and peace?

By all of the considerations mentioned one may see that there exists an obstacle to affirming that the element "State" might be inherent of the concept of Law because, as we have said, if the positive law has not secured the character of being of the state, it is less able to have that normative tradi-
tion of the elemental values of Justice that are above the state and that the state ought to consecrate and to serve in its positive edict.

* * *

The two following chapters address themselves to considering the essential ends of law, the only way to understand it in its complete and living significance. The finality that animates it constitutes the reason of being and the meaning of law.


Essential in law is its relation with Justice. A legal principle always aspires to merit being considered a just norm.

In the positive plane all law is something that addresses itself to establishing a just order between men making use of a proper technique.

Justice is the landmark that serves us to describe the proper field of its legality. To Radbruch this constitutes the point of departure in the investigation of the concept of law. According to the German jurist it is possible to attain such concept by inductive means, but it is not possible by this method to ground its universal and necessary character.

In order to arrive at the concept of law by a deductive procedure, one must depart from a priori. This a priori is the idea of law, “that it is not able to be other than justice.”

The dominion of culture characterizes itself by referring acts to values and the law as a cultural phenomenon has its center of reference in the value of justice that is, this that corresponds to it in the kingdom of culture.

It is said that the law is an “ought to be” and not a “must be,” by virtue of its relation with ethics and this relation stays inserted precisely in the part of ethics that treats of justice.
Only that the law does not have for its object justice as the virtue of the person, except the objective justice, exterior, inherent in the human relations. In such form the juridical objectivity adds nothing to the specific end of ethics, that is the value of the person in his conscience, the virtue of free will.

In other words, the law supports the objective realization of ethics in the sector of justice, but does not rest nor collate anything to subjective justice, practiced, nor by the legal imposition, unless in compliance with the moral oughtness.

The relation between law and justice cannot be rescinded or put aside.

For certain, when it is said that law is a coercive norm of the state (or something similar), omitting its reference to justice, one gives an insufficient and dead formula. It is insufficient notwithstanding it only pretends to address itself to defining positive law or better the positive state law, spoken in all precision. It obtains or not, every law has the pretention of being just. This formula of Kelsian taste suffices to specify the positive order of the state in relation to other norms, but does not capture its living substance inasmuch as it forgets or breaks its connection with the reign of these values depriving it of the essential reason of all law, that is serving justice. This constitutes its reason of being, its profound significance.

This vision, incomplete and obscure, unworthy of the true jurist, could be extended at the most to the image in the maimed glory of a fragment of a piece of art, saved between rubbish that it by chance permits only a glimpse of the magnitude of it lost, and to reconstruct ideally the fullness of the entire and beautiful form.

Without the sense of justice, all historical law would not be more than a manifestation of force or a simple act of power, without moral substance and without beauty, blind and obscure, arbitrary, foreign to the reign of ought to be.
10. The Finality of Order.

Law does not only have as its objective justice in social relations, but to make that possible it leads, it fits and pacifies the act of living together by means of Order.

Already we have said in a preceding chapter that the social life of man does not seek to conform to a spontaneous regularity, fixed and totally given, without requiring a regulation before a certain established point, and repeated by the same man without which a pacific act of living together is not possible, ordered and just.

Logically all regulation directs itself by an immediate mode to normalizing, ordering and stabilizing. Law as regulation that is, with view to the peace and security and social relations, has the immediate finality of realizing an order.

Order, peace and security are terms that correspond in the case we are considering and often they are employed in an indistinct manner to designate that the finality of law is not reducible to justice.

Law, then, tends to order and peace in human relations. It significantly includes a certain order and a limitation on hostility. All activity of a group of men, even in sport, requires the attachment to certain rules, although not by any exigency of justice, but by necessity of coordination.

They explain themselves purely on the function of security and order, as said Radbruch, these so-called norms of direction which only propose to establish one single regulation, whatever it might be, "for example, the police regulation: keep to the right, whose finality could be complied with equally with a contrary: keep to the left."

According to the professor of Heidelberg such norms of direction or coordination "are also necessary in a community of perfect beings, who live together and completely practice
all the obligations of justice.” “Nor are the celestial armies able to evade a regulation of their existence.”

* * *

Order makes possible the realization of the ends of the same society that are grouped together under the title of common good, and has such a significance in law that many concede it a place even more important than justice when both ends are presented in conflict. “I will never be able to understand why justice,” says Sauer, “which is the highest finality has given away before the legal security, which is inferior.” This is explained, according to the author, by virtue of which security truly constitutes the fundamental finality of law, that which is “a general order that demands its proper existence before all.”

In reality, although it is necessary to take this into account, that notwithstanding order is the immediate end of law, this does not satisfy and does not appreciate that justice is also an essential finality.

Both categories of justice and order are irreducible as ends of law, and they reciprocally complement and assist each other. This supposes the existence of an order that is possible of objective realization. Order at this time ought to be just. It on the contrary is not good, inclusive, or possible of being stable, because justice is an intimate element of an organic peace.

Nevertheless on occasions both finalities appear in conflict, and such hypothesis prohibits in some cases the interest of order and peace from appearing; in others the priority corresponds to the exigencies of justice.

For example, in the exercise of the right of rebellion one resorts to enforcing the existing order by violence when a state of fundamental and notorious injustice is involved. In this case the interest of justice controls over the convenience of conserving order and maintaining peace. (Security and
order, it is said, are a static element of law; justice exercises a dynamic function.)

In other suppositions, to the contrary, the priority corresponds to the interest of security and peace. The *de facto* governments that obtain the deforcement of power with unconstitutional and even frankly reprehensible proceedings, attain, nevertheless, a conversion in authority, in as much as they get to establish order. The interest of peace and public security has scorned the injustice of the original usurpation. In an equal manner, an interest in juridical security gives definite stability like a cause of action judged to the sentence that puts an end to the litigation, however, if one made a further investigation it might not result justly. Similarly, according to a new law acts prior to its promulgation might seem unjust, but that does not revert back in order to destroy them, before a social need for legal stability.

It has been said that the prescription, the possessory protection, and the international *status quo* are also examples in which one is able to see a certain priority of the interest of security and order above that of strict justice.

In this respect a problem presents itself which is well to be fixed on one's mind. The interest of juridical security seems to sanction *de facto* situations superior in some cases to pretensions of justice, and to appear in this form as a consideration referring to things that are falsely imputed to be above an ethical finality.

But it is necessary to explain that in reality one does not treat a preponderance of these things as above moral interest, therefore, not only justice but also order has an ethical value in its character as a necessary instrument for the common good.

But of all the means already considered as an ethical end to order, as much as to justice, the problem of deciding to which of both finalities ethical priority ought to attach remains to be gone into.
In our opinion the end of justice is superior in as much as it constitutes the fundamental value of law. Notwithstanding the pretension of security and order might appear to preponderate on occasions, it is on the foundation, ultimately, for the interest of the same justice, since the confusion and insecurity lead to greater and more numerous injustices. Similarly it is convenient to record respectively that justice for its proper realization demands the existence of a respected and stable order.

The realization of Justice and Order in social relations, constitutes the contribution of law to the common good. This supposes a complexity of conditions in social life, that we are not able to give without those values which have other aspects (creation and unfolding of the wealth of material; cultural relations; collective moral climate — a minimum of moral health in life, public, domestic, and private.)

THE INTEGRATING ELEMENTS OF LAW.

I shall proceed to recall the data obtaining in the preceding chapters in order to reunite in one concept the elements that we consider linked to the essence of law.

From the beginning we note that the social life requires for its conservation and development a regulation of the relations that are established between men.

Law addresses itself to this regulation of conduct, as does ethics; and similarly, notwithstanding its distinct manner, it addresses itself also to conventional usages.

We discover that that which distinguishes the juridical relation is the coercible character of its complement. The juridical exigency is more strict. Its completion is demand-

---

2 "Order and peace by justice," says Jean Dabin, "are formal elements of the public good." Material of the public good are "all the human necessities of the temporal order, especially politics, economics, intelleligences, and moralities." The common good is the end of all society, "treating of the State, the expression public good is preferable to common good." Jean Dabin, DOCTRINE GÉNÉRALE DE L'ETAT, Paris, Sirey, 1939.
able by the rest, and for this effect it carries an inherent principle of coactivity.

We will establish on the other hand that the faculty of using coaction in some form as the complement of the legal norm does not make force or power essential elements of law. They are perfectly different entities. We also reject as essential to law its state affiliation.

I remain intent upon studying the relations between law and morals, the predominant character of one above the other as a basis of its legitimacy. If the note of coercibility distinguishes the juridical norm from that of pure ethics (and from other norms also), that which determines the connection of law with morals is the finality of Justice and even that of Order. Without considering these ends it is not possible to understand the essential significance of law.

Law is, then, a coercible regulation of social conduct with the ends of Justice and Order.

This concept corresponds to law objectively considered, positive or not. Were law adequate to these ends, it would be legitimate, that is to say morally valid. Its essential interests, the realization of Justice and Order, is — in its intrinsic value — far above the transgressions of the positive norm and the illegitimate acts of authority.

Non-positive law is law in as much as it contains a principle or a group of regulatory principles, that like elemental Justice aspire, with intrinsic moral validity, to a coercitively requirable complement and a place in the social order.

All law is understood as a regulatory principle of conduct joined spontaneously for its perfection, in the interest of justice and order in human relations, by an implication of coactivity. The subjective law has the same marks, but you consider it below the other formula, that is to say from the point of view of the faculty of a subject by virtue of its objective norm.
Regulation of human conduct, coercibility of its complement, finality of Justice and Order in the social relations; such are the inherent marks of law.

We believe that the elements contained in our concept are common to all that which is understood as law notwithstanding they furnish different forms and receive diverse combinations.

**Note on the Objectivity of the Principal Elements of Justice.**

The essential end of law is the realization of justice in treating humans. This constitutes its ultimate criterion of value.

In this respect, it presents a problem that we ought to touch, notwithstanding it is only a succinct allusion, as I constantly object that it has been a sore spot in the field of Philosophy of Law. Is Justice somewhat absolute in its form or in its content? Do permanent principles of Justice exist as objective rules that determine if law realizes its end or not?

It has been repeated in every manner that the examination of each one of the proffered juridical complexities in history carries, as if by the hand the conviction that with the variation of historical conditions, the lines of law are modified fundamentally to such a degree, that it results that that which is just in one epoch is unjust in another, following the difference of things and the moral preoccupation of each one of them.

Legal positivism, in its multiple manifestations, rejects all belief in objective principles of justice, independent of the concrete reality of social authority, and flees from all criteria that seem metaphysical.

The historical school considers law as a social product that springs spontaneously from the same necessities, sanctioned by custom and by popular legal conscience, and whose ref-
WHAT IS LAW?

erence of value, for such, is the spirit of the people, that is like a well informed and infallible judge of law. This is not immutable, except that each epoch elaborates its legal products, those which reflect the variation of the historical condition and the transformations of the spirit of the people.

But, notwithstanding its empiricism the historical school without wishing it returns to fall into the metaphysical trap. The spirit of the people is a romantic and metaphysical criterion. It has not been demonstrated that the people are infallible and perhaps it is not able to be demonstrated, but for the historical school the normative sanctions for its legal customs are perfectly just. Just is that which is so considered by the spirit of the people. Law by its excellence is custom and is good by being customary. By this manner one falls into the error of assuming, respective to the value of law, a criterion of fact in a lamentable confusion of the happening and of the ought to be.

But apart from this, they have exaggerated the differences between each historical law; perhaps a study of greater profundity might disclose greater resemblance of these that they recognize, those that deny permanent data in the contents of law. Abandoning the investigations to be carried on by an analytical spirit, they perceive preponderantly the variety and the differences of phenomenon from phenomenon, which many times are no more than shadings of a common datum, and they inadvertently easily pass the elements that are the presuppositions of legal complexity in study and that are implied even in the method and in the mind of the investigator as a common rule. Authorities in matters of comparative law among those which are cited by H. A. Post, not suspected of being positivistic, do not hide the conviction of that which is a great part of the constant legal principles in all epics and peoples.

Kelsen represents the other aspect of legal positivism. The Viennese professor with the doctrine that the same thing called “pure,” aspires “to expose the law such as it is, with-
out legitimizing it by its justice nor disqualifying it by its injustice. . . .” He rejects all valuation, every round about judgment by positive law.\(^3\) Neither does he give nor accept arguments to legitimize or disqualify an existing legal order. “Justice is an irrational ideal, inaccessible to knowledge.”\(^4\) “Anyone prudent might be right. . . . Law protects only as long as it is positive or enacted.”\(^5\)

This attitude, philosophically, has the significance of separating law from all ethical oughtness, splitting its relation with justice, and from the practical point of view implying the justification (wishing it or not) of all regulation and of all acts of the state, that might even be tyrannical. The pure theory of law aspires to be “an un-prejudiced juridical science”\(^6\) and, in reality, this is attained. The prejudice on behalf of justice does not have influence in its pure doctrine. An unbiased and objective analysis of the Kelsian construction which is so perfect as to be deliberately empty of all real and ethical content, is sufficient in order to provoke violent opposition, and is to be hoped that very quickly it may result in an already unnecessary breaking of feudal allegiance against this disfiguration of law and against this mutilated vision, that repeatedly affixes to itself a modest objective — the formal aspect of positive order — but surreptitiously first and expressly afterwards, finishes by shining through the smoke screen as a complete universal and organic conception.

In general, the positivistic attitude in the law supposes a confusion between reality and value, it might justify all positive law, or it might deny that some justification is necessary.

The historical reason, not admitted or explained, is, in reality, the greater protection for the side of those that deny

---

4. Id., p. 18.
5. Id., p. 48.
6. Id., p. 20.
universal and permanent principles of justice. They reject these principles or consider them unknowable, because positive law is changing and because man has not been capable of unanimous opposition with respect to these.

But Radbruch, on a proposition of a related theme, considers that "one ought not to believe that the pretension of the natural law of authority derives its juridical precepts from a fixed inclosure, invariable and with universal validity, able to refute by purely empirical means, with the usual reference to the variegated diversity of the legal conception in different epochs and nations. The naturalistic law has been rejected with the reason that to end the oughtness of being of it, amounts to that, "plebian invocation to a supposed contradictory experience," (Kant), and in the diversity of the legal conception one only has to view the diversity of frequent error from the one truth of natural law — error multiplied: truth one —".7

For the other part, moreover, one is not able to have a science of law with the analysis separate from each historical law, without a thread to guide in the investigation and without a form of unity that connects the diverse legal manifestations, in order to establish principles common to all. The alarm is unjustifiable which causes every affirmative relating to the permanent and human principles in law, principally those that deny the possibility of constant and common data and pretend to labor in a science that is not able to exist if there is no possibility of establishing permanent connections that link all law in a unified and common rule. If all the principles of every juridical system are distinct, if there is nothing similar and permanent in every manifestation of law; if all of it is nothing more than an amorphous combination of contradictions in reality and in the appreciation of the same, one might proceed, then, to rescind from the intent of constructing a legal science and a philosophy of law.

7 Filosofía del Derecho, traducción de la tercera edición alemana, p. 24.
The scientific and philosophical necessity of establishing universal and absolute principles in the law carried Stammler from a point of view purely Kantian to an intent of overcoming the deficiencies of positivism and of relativism, with the elaboration of a formal, absolute system.

There are two permanent and absolute things in law: the concept and the idea. The concept determines, without exception, in every case, that which is legal; and within the sphere of these ends, it indefectibly goes into the question of knowing whether they are legitimate or not, that is to say, if they are orientated or not to justice, that is an absolute idea. "All positive law is design of just law." The just and the just is a "logical primary contrast," inescapably attributed to the conscience.⁸

 Solely that, according to Stammler, justice is an absolute idea but of formal character. "The notion of the just involves a unity of ordination in our thoughts. Justice is equivalent to a centralized ordinate." ⁹

 "The notion of it as objectively just bases itself on the possibility of reducing to one fundamental harmony all desires or aspirations notwithstanding the diversity of their contents, subjecting all to a unique rule of judgment." ¹⁰ "This general point of view, in our judgment, cannot be other than the purely voluntary, that is to say, free from all concrete matters; this decisive rule of judgment is only able to survive in a pure method of ordination." ¹¹ Any law whatever would be fundamentally legitimate when it harmonizes with the fundamental unity of arrangement of our thoughts. The end of the idea of law is that of offering a point of view that serves to orientate all conceivable legal aspirations; by this one is not able to base an opinion on any of these concrete aspirations, without having to find itself deprived of all con-

---

⁹ Id., p. 209.
¹¹ Id., p. 211.
WHAT IS LAW?

crete and determined elements.” 12 In this manner is reached the solution of the problem of knowing what is the “logically determinant criterion of the concept of justice.”

Facing the complete negation of valid principles for all law, the doctrine of Stammler represents a great step in the field of philosophy and of legal science, in as much as it affirms the existence of universal and absolute principles, notwithstanding they have only a formal character and a reality within the confines of conscience. But with all the respect that the figure of Stammler deserves for his intellectual honesty and his religious unction by studying and teaching it, and with all the admiration that we owe to his work, we must express the conviction that this does not resolve the problem of the objectivity of justice as an ethical entity. His doctrine does not solve the problem of an objective and permanent moral obligation of being, except by showing that one ought to be logical. All his theory, as he has said himself, is no more than a legal epistemology legality. But faced by all acts of life, man must state the moral problem. His acts have a rectitude in the ethical sense and not only in the logical sense. Opposed to Stammler, in the end there remains the unsatisfied aspirations and the objections that go before a complete denial of principles of justice, objective in their ethical content and not only logical in their form.

When we ask ourselves what is the juridical reality we find in Stammler only an elaboration upon a pure form of conscience, a model with which we capture the juridical reality. When we investigate what characteristics the just law has to support the professor of Berlin we find the analysis of a subjective form of conscience, that is the ordaining principle of logical character, but is not an ethical principle.

This deformation of the doctrine of Stammler is less illuminative and totally unacceptable than that which considers

12 Id., p. 245.
that there are universal and permanent principles of formal character, opposing universal and permanent principles of substance. One cannot have principles without contents because they are devoid of and lacking some sense and are not able to be universal nor permanent nor even simply principles. The concept and the idea of law in Stammler are formal in containing pure forms of knowledge. "It is absurd, then, to conceive of a notion lacking contents." 

If we redirect our attention to Gustav Radbruch, figure of more influence in actual juridical thought, we find in his philosophy of law a speculation of inestimable value, full of accurate observations, revealing a strong and healthy legal criterion used to forge an objective and complete concept about justice.

The professor of Heidelberg distinguishes clearly between reality and value, not in the manner of Kelsen and of the school of Marburg, but following the tendency of the school of Baden, under the major auspices of a philosophy of value. He studies with dexterity the relations between law and morals. He determines the importance which the problem of its finality has in law and studies with care and masterfulness the tension existing between justice and security as ends of law. It occupies a basic place in his philosophy, the essential significance of law as a bridge which unites the world of reality and the kingdom of valued justice; but in spite of the dexterity he cuts the wings of his valuable investigation, that deserves being crowned with a happier end, and stops short in conclusions rigorously relativistic.

With a picturesque stroke he says in the third German edition of his PHILOSOPHY OF LAW after professing this relativism "that indeed the same destroys itself by being anti-scientific (Sauer)." "The supreme precepts of oughtness are

13 Stammler, p. 248.
14 FILOSOFÍA DEL DERECHO, REVISTA DE DERECHO PRIVADO, Madrid, 1933, p. 17.
The last quoted clause could possibly be translated "indeed not even of belief," but the translation used above seems more in keeping with the context.
indemonstrable, axiomatic, not susceptible of knowledge, except by belief."  

"Moreover the philosophy of relativistic law is incapable of determining for the individual the election between legal concepts systematically unfolded from ultimate and contrary suppositions. It limits itself to proportioning in an exhaustive way all the possible positions, but it abandons its proper importance of position to a decision germinated by the profundities of the personality; in every case, not of its free will, but of its conscience. Only an ignoramous could possibly declare that this autolimitation arises from a conviction with respect to the supreme judgments of value. But notwithstanding only this ignoramous presented himself, relativistic philosophy would maintain its belief that it had shown by means of the systematic unfolding of all possible conceptions of the world, a previous and useful labor, to the genius capable of deciding between them with scientific unanimity."  

"The method here exposed (loc. cit.) is called relativism since its task is to decide the justice of each judgment of value, only in relation to another judgment of value determined and superior, that is to say, only within the limits of a determined conception of value and of the world; but the stability of this same conception does not make a problem."

"Without some doubt," — Radbruch continues, — "if the end of the law and the means necessary to obtain it are scientific and clearly determinable, it might result as an inevitable consequence, that it could have annulled the validity or operation of all positive law that disinters natural law which was once scientifically known, as the error hidden before the truth is discovered. But we have already seen that it was not possible for us to answer the problem of the end of law except by an enumeration of the diverse opinions of

15 Id., p. 19.
the party in revolt of it; now well, it is precisely because of this unknowability of natural law that one is able to base the strength of positive law. Relativism, that was until now only a method for our consideration appears in this place as a stone pillar of our system. 16 The method and the end of the philosophy of Radbruch is “to expose by exhaustive method all the systems of legal values in their agreement and disagreements, and to roughly describe within the limits of one topic all possible concepts of the world and of life, a topic of all the possible concepts of law, giving by this means, not a system of philosophy of law, but the complete order of these possible systems.” 17

To our mind this constitutes a very difficult task, not perhaps realized by the author of Heidelberg.

In Radbruch, as we have seen, relativism not only is a method but it is a system. As in Kelsen and Stammler, the speculation about the method reaches to dominate all the conceptual structure.

Hans Kelsen, by dint of seeking the purity of method, finishes by constructing a legal outline without content of justice, “a science of law without law,” (Heller), a juridical theory of nothing, all of it as subtle as might be wished. 18

Stammler, for his part, responds to every problem of the philosophy of law with an analysis of the formal method of legal knowledge. In the work of Gustav Radbruch, one is able to observe also, we repeat, the absorbing preponderance of method above the united system. As he says “it limits itself to proportioning in an exhaustive way all the possible positions, but it abandons its proper importance of position to a decision germinated by the profundities of the personality.”

Radbruch does not give his proper decision.

16 Id., p. 108.
17 Id., p. 18.
WHAT IS LAW?

In it we see an example of that diverted humility of the intelligence of which G. K. Chesterton has told us, as of a contemporaneous indisposition. It has been converted into an instrument of negation and doubt, that which by its nature was an act for the affirmation and knowledge. The use of doubt constitutes within just limits, a good method; but it is a lamentable system. Relativism signifies the perplexity of the intelligence, and as the end of an audacious elaboration, it represents a grievous lost spirit.

For the other part, the resulting practices of the axiological-relativistic doctrine are the same as those we have pointed out respecting the positivistic formalism of Kelsen. If “the validity of positive law only rests on the unknowability of just law” it is not wanting in more than that it takes as just all positive ordinances. Using the same words as Radbruch “supposing that, according to the relativistic conception, the reason and science are incapable of executing this task (that of determining unanimously the order of life in common), it must have been undertaken by will and force.” Such result is more distressing although the other aspects of the investigation of Radbruch are more valuable, and for certain, we owe him a prudent critique of the theory of force as a first principle of the validity of law.

Opposite those that pretend to deny or evade in the law its relation with justice (as Kelsen), who represent in every way a great step are the jurists that, as Stammler and Radbruch, who establish in a certain manner this absolute reference, accordingly as we fix it on the mind.

Law is always orientated to justice; this constitutes its finality and its source of validity. But the problem stays in the end: when might the positive law realize this finality? What is the rule for knowing when the content of a law is just? In our opinion, this problem remains without solution if one is not able to resort to objective principles of justice, of intrinsic moral validity.

19 Radbruch, p. 108.
It is evident that not every positive law is just, simply by its being enacted. It always has facing it an imprescindible law suit. The State, by itself, is not able to convert into just that which is intrinsically unjust. Precisely “the State finds itself justified as the measurer in that it represents the necessary organization for guaranteeing the law in fixed evolutionary rations. We understand by law, in the first place, those juridical principles of moral character which serve as foundation of positive juridical precepts.” 20

All the liberating fights in the field of philosophy have not been able to obscure in the human spirit that conviction always denied and reborn that directs itself, with the force of a necessary moral sling, to the existence of a “reduced aristocracy” of elemental principles of justice, objective and permanent, that animate the spirit of man and which base their permanence and their preeminence on the nature of things and on the same essential equality of men in as much as they are generic.

In nature, in history, in man, there are constant and uniform data that permit science and belong with philosophy.

The world is a cosmos, not a chaos. The order of nature, within a total conception of the cosmic order, is correlative to a moral order, objective and permanent. The nature of man and of these things marks a course of conduct, inviolable notwithstanding it may be violated, objective, superior to human decrees, ruler of worth, moral force with which the law is obliged. In the history of thought there constantly appears that conviction of Antigone about an unwritten law. Blowing eternally, reason is animated by every profound conception and by every anxiety about justice.

There are doctrines that affirm the existence of objective principles of justice, but they doubt the possibility of knowing them. In reality the aptitude for knowledge in general is and ought to be a basic imprescindible supposition. The fundamental error of Kantianism is using the intelligence in

20 Hermann Heller, La Justificación del Estado, Cruz y Raya, No. 9, p. 22.
order to investigate its aptitude as an instrument of knowing. If this instrument does not serve, every reflection with which it realizes is equally ineffective, notwithstanding it refers to the same.

But what are these permanent and objective principles of justice?

1. Precisely an argument used against its existence permits us to prove the universal character and permanency of the principle of equality and symmetry. It is assured that, with the transformation of the historical conditions the precepts of law are modified. The contrary being opposed to the principle of equality, according to which the norm ought to treat equally the equal cases and unequally, the non-equals. It is objected that in the management of races, one treats a military class as such, and those pariahs as pariahs, because they are considered essentially different and applying thus the principle of equality, one attempts (a crime) against justice. But the bad application of the principle does not affect its validity, beside that it leads to affirming a permanent and objective base for its application which is that all men are equal in their essence.

Del Vecchio says that the bilateralability of law, essential to this concept, supposes "the simultaneous consideration of various subjects; the parity and initial equality between the same subjects." And the subject of law is man and that all men are equal. The Roman professor with reason says that "if we consider no intersubjective relation, without a relation between subjects that know one another fully and equally in the absolute value, we have in this notion an ideal principle that constitutes, no already appointed form, but a postulate of justice, absolutely valid as a criterion and measure, even above positive juridical determinations." 21 This criterion obtains "in a transcendental consideration of our nature." It is elemental justice that each man sees in other men.

21 Crisis del Derecho y Crisis del Estado, p. 70.
2. The right to life is conceived as fundamental in every sane mind. It is clearly understood, as such, that one can destroy being only for grave considerations, (legitimate defense of the individual or society) and the rule is not to kill. Every conscience innately perceives the gravity of homicide.

3. Every man has the right to live and to live a life worthy of man. In order to live it is necessary to appropriate from the exterior world those elements that are required for subsistence, and from this is deduced an elemental right; the right to property. The discussion of you and me joining the life of humanity to carry on prepared the existence and balance of accounts of an elemental and basic right. The violent contemporaneous objection that has represented socialism does not effect the essential objectivity of this right. In the first place because neither doctrine is affected by the truth by the mere act of anybody influentially pronouncing its contrary. An historical error, doctrinal or practical is not able to disturb the validity of the principle. In the second place because the socialistic doctrine already considered in itself, is founded, not as it is supposed, as commonly might be believed, on the absolute negation of the right of property. This negation is better addressed to the instrumental goods, than to those used and those consumed. They are not able to be without the personal property of that which profits them inasmuch as they are useful. "The right of the worker to the entire product of his works" is spoken of as a right of property and for certain not as a transitory affirmation, but as a pretension of permanent validity. If by chance, in the foundation of all doctrine about the economic distribution, breathes better the aspiration of making extensive to all holding it, and not the intent of denying in the absolute all property. Besides a right of property, we wish to speak of a right to property.

4. As we have said, in order to live man needs to profit in the battle of his subsistence a portion of material elements. But in order to live a life worthy of man it is of primary jus-
tice that he have a right to satisfy a minimum of those fundamental aspirations of his spirit. He is not able to live without a minimum of liberty. You have here another elemental, objective and permanent principle of justice. It is an absolute idea that man has the right to a relative liberty.

5. The agreement as a first principle of rights and obligations is a constant legal notion. Its importance is such, that the philosophy of the eighteenth century resorted to the idea of contract as a point of departure for the justification of all law. The same exaggeration might be the reason for discrediting it; but it contains a portion of permanent truth and is an imprescindible element in every juridical construction. The contract obliges; by supposing within its limits that it does not reach a break with another basic principle of justice.

6. The *suum cuique tribuendi*, utilized in the same definition of justice enjoys the privilege of not being irresolute in its universal and permanent character; but it affirms that it is formal principle pretending to say with it, improperly, that it lacks content. In reality it is a general principle, but not formal in the sense indicated. Its content is not concrete because if it would be that, it might relinquish being a universal and permanent principle, for that which it needs to be of a general nature. And in the same vein explanations might be required that they explain it and compel it; but being a central notion in law, essentially illuminating, it follows that as with every general principle it is necessary to apply, a specification, a relation with elements more concrete.

7. The principle of authority is by chance the maximum of justice preponderantly in every positivistic doctrine. Positivism recognizes positive law as unique. But, why does enacted law oblige? If it is obligatory, it is as regards a moral consideration. It could not be obligatory by the mere act of emanating from the force of government. In such case no more might be necessary, perhaps inevitable, and by this fact we might respect it. But one is not able to speak of the
obligation to comply with it, and one is not able to understand it except in the function of ethics. Why then, do the positivists accept as valid the law emanating from the state and not that issuing from it? Are they not considering in this form the principle of authority?

On the other part those that deny the knowability of the objective principles of justice nevertheless find it necessary that somebody establish a unique and common order placed above the parts of the eternal legal conflict. Now then; this necessity is permanent and it is establishing the exigency of an authority and an obligation subject to the established rule for it. Of these ideas contrary to the elemental and objective principles of social regulation we have been able to obtain the proof of some without trying to enumerate them, by making an enumeration neither systematic nor exhaustive.

D. Antonio Caso, in a series of related essays that were edited under the title of "El Acto Ideatorio," refers in a singularly suggestive form to the problem that in every speculation on the essences and values representing the everlasting fight between relativism and objectivism. Is there anything that is permanent or does everything change in reality or in the value of things?

In the final reflection on the debate, says the master Caso: "We prefer to conclude aggregating or collecting the antimonies of the Critique of Pure Reason that other modern; because it appears to us that the arguments pro and con of objectivism are worthy of a profound, mature, perhaps interminable reflection."

In reality, this debate on all in the field of ethics and the philosophy of law will be difficult to conclude; but, notwithstanding one or the other position, one ought to see the true being. If the arguments we have directly gathered together in the secular contents are not sufficient in order to decide the judgment, one has it to resort to in seeking a solution to the sentence of Lotze, who recognizes D. Antonio Caso in as
much as it contained "a great occult truth": "In that place where two hypotheses are equally possible one that concurs with our moral necessities, others that contradict them it is mandatory to select the first." And the objectivity of justice is a moral necessity.

If there are no things just or unjust by themselves, unless they are or are not accommodating themselves to every subjective variation; or if nothing may be known for certain of it that is just or unjust in its content, by the light of firm principles objective in its intrinsic legitimacy, then the moral obligation, upon a shifting base, is gently converted into a troubled and doubtful idea, supposing that nothing is knowable and that every act and all criterions of justice, almost happily are able to find justification of some kind, which does not have an objective and common rule, intrinsically valid, and immovable before the calculations and lack of calculations of the jurists and superior to their decrees and to human errors.

*Luis de Garay.*

Escuela Nacional de Jurisprudencia, Mexico, D. F.

Translated by *James J. Kearney.*

College of Law, University of Notre Dame.