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Social Justice and Liberation

Robert E. Rodes
Notre Dame Law School, Robert.E.Rodes.1@nd.edu

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Sir William Blackstone, on beginning the study of law, set down his feelings in a flow of tetrameter couplets. Central both to his rhetoric and to his feeling are these lines:

> Then welcome business, welcome strife,
> Welcome the cares, the thorns of life,
> The visage wan, the pore-blind sight,
> The toil by day, the lamp at night,
> The tedious forms, the solemn prate,
> The pert dispute, the dull debate,
> The drowsy bench, the babbling hall,
> For thee, fair *Justice*, welcome all![1]

Although the legal profession is not lacking in either intellectual stimulation or material reward, the deeper satisfactions come from the pursuit of justice, and the experience of occasionally catching up with it.

Justice has traditionally been defined as that virtue that moves us to render to others what is due them. It has been applied by extension to a state of affairs in which that virtue is commonly practiced and departures from it are suitably redressed, or even to one in which people in one way or another generally get what is due them. To pursue justice through law is presumably to deploy the skills of our profession to bring about or maintain some such state of affairs.

It follows, of course, that a jurisprudence concerned with the pursuit of justice must rest on some understanding of what is due people. There is in us a deep-seated intuition that we do not give people their whole due merely by keeping out of their space and their chattels, living up to our agreements with them, and otherwise letting them alone. "Thou shalt not kill; but need'st not strive/Officiously to keep alive."[2] We fulfil our nature in a social milieu, and we pursue our pilgrimage of life in company. We owe one another what help we can give in doing both. There is, therefore, a certain correspondence between needs and rights, so that the requirements of nature and pilgrimage are in some way requirements of justice.

In making this point, I have separated nature from pilgrimage because they make different, albeit complementary demands on the law. The demands of nature have long been familiar under the name of natural law. They embrace what we need to live as human beings were originally meant to live—to be nurtured and educated through childhood and adolescence,

* Professor of Law, University of Notre Dame.

This will be the second chapter of a book presently in preparation. The first chapter was published as Robert E. Rodes, Jr., *Pilgrim Law*, 11 J.L. & RELIGION 255 (1994).

1 DAVID A. LOCKMILLER, SIR WILLIAM BLACKSTONE 193 (1938).

2 Arthur H. Clough, *The Latest Decalogue* (1862), *quoted in* THE OXFORD DICTIONARY OF QUOTATIONS 207, para. 17 (Angela Partington ed., 4th ed. 1992).

to marry, to establish and support families, to engage our faculties in useful work, to participate in the economic, social, and cultural life of the community, to have such health care as we need and the available resources can supply, to have decent support in old age and disability. The demands of the pilgrimage—I will call them by analogy pilgrim law—extend to what we need for a spiritual journey into the unknown, a continuing openness to a transcendent destiny: freedom, leisure, respect, encouragement, and someone to pick us up when we fall.

The special part played by law in meeting these demands is determined by its two chief distinguishing qualities: it is deliberately chosen, and power is deployed for its enforcement. Because it is chosen, law can be a vehicle for specifying and clarifying what is due from one person to another, and for deliberately rearranging social conditions to give people more of their due. Because it is enforced, it can be a vehicle for motivating A to afford what is due to B.

There is a problem relating justice as a condition of society in which people get what is due them to justice as a moral virtue which people can be persuaded or compelled to practice. The problem is called that of assignability: to whose failure to practice the virtue of justice can the injustice of society be assigned? Suppose I am walking on the sidewalk and encounter a homeless man keeping warm on a grate. If he has no access to decent shelter, it would seem that an injustice is being done him: decent shelter is everyone's due. But who is doing the injustice? Not I surely. Even if I had room for this man in my house or enough money to rent a room for him somewhere else, I would find another homeless person on the next grate and others still on the grates after that. In many cities, it would take only a few blocks to use up everything I own. Even if I ought to provide a home for one or two homeless people, which of the many homeless should be assigned to me, and which ones to someone else?

If, then, I have a duty to shelter the homeless, it is a duty without a correlative right: it does not give any particular homeless person a claim on me. By the same token, the right of any one homeless person to shelter has no correlative duty: the man I am stepping over on the grate cannot point to anyone in particular with an obligation to take him in. So if justice is necessarily something one individual owes another, it would seem impossible to speak of sheltering the homeless as a matter of justice. In fact, many theorists believe the problem of assignability as I have just stated it to be an insuperable obstacle to treating this or any other support of the poor as a matter of justice.

The solution to the problem lies in the concept of *social justice.* Social justice is that branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society—one in which people's needs are more fully met. It solves the problem of assignability because it is something due from everyone whose efforts can make a difference to everyone whose needs are not met as things stand. I do not owe the man on the grate a place to live, but I do owe him whatever I can do to provide a social order in which housing is available to him. I do not owe any poor person a share of my wealth, but I owe every poor person my

best effort to reform the social institutions by which I am enriched and he or she is impoverished.

It is tempting for an advocate of social justice to identify with the sociological school of jurisprudence, for that school has been in the forefront of most of our initiatives for social reform during the past three quarters of a century. But I believe the temptation must be resisted. The sociological school is inexorably identified with an instrumentalist view of law. It is dominated by technological metaphors like Roscoe Pound's "social engineering," and its intellectual energies have been largely devoted to honing techniques. It has to its credit important incremental improvements, but it has not brought a generally just social order any nearer than before.

To try to impose a general order on society—even the open-ended order envisaged by pilgrim law—is to try to control history, something that the best philosophical reflection tells us cannot be done. Herbert Butterfield, the great historiographer, shows that we cannot isolate in history the causes of a single effect or the effects of a single cause.[3] It follows that we can neither predict nor control the results of any given intervention in a historical process. Unintended results will always be inextricably entangled with intended ones. This view is consonant with what Jacques Maritain calls the Law of the Ambivalence of History[4]—the principle that good and evil are mingled in any historical development, so that the role of human prudence is not to control the development as such, but to enhance whatever good and resist whatever evil the process brings about. Accordingly, while we can hope to solve particular problems and eliminate particular injustices with the legal skills at our disposal, a problem-free, fully just social order will continue to elude us. As long as the world lasts, new problems and new injustices will arise to take the place of the old ones.

Recent history illustrates what I mean. The most serious of today's problems are the result of the success, not the failure, of yesterday's solutions. We would not have to worry about the lack of entry level job opportunities if our laws had not provided significant benefits for entry level workers. We would not have to worry about the dependency of welfare recipients if we had no welfare system for them to become dependent on. We would not have to worry about day care for children if we had not outlawed job discrimination against women. We were quite right to protect workers, relieve the poor and emancipate women; the problems we solved by doing so were real and important. So are the new ones we have created in the process: ones we could not have foreseen and must now try to solve. The globally just social order to which we aspire continues to recede as we approach it.

Indeed, such an order is no easier to express than to achieve. We can no more envisage the injustices of the future and teach one another to avoid them than our ancestors could have taught Andrew Carnegie to avoid acid rain, Cyrus McCormick to prevent the disappearance of the family farm, or Henry Ford to cope with smog in Los Angeles.

3 HERBERT BUTTERFIELD, THE WHIG INTERPRETATION OF HISTORY (1931).

4 JACQUES MARITAIN, ON THE PHILOSOPHY OF HISTORY 52-53 (Joseph W. Evans ed., 1957).

It seems, therefore, that the concept of social justice states no value that the law is capable of realizing, or even of expressing in explicit terms. Indeed, it appears that we cannot be sure of even incremental realizations, since every injustice we remedy may give rise to new ones as bad or worse. The question naturally arises: why should the concept of social justice play any part in jurisprudence? Why should lawyers, legislators, judges, and legal theorists not content themselves with pursuing such just results as are possible within the social and historical situation they find in place, rather than setting in motion historical processes they cannot control and social changes whose effect they cannot predict? If the only choice available to us is the one Ambrose Bierce lays down when he defines a conservative as "[a] statesman who is enamored of existing evils, as distinguished from the Liberal, who wishes to replace them with others,"[5] why not opt for conservatism and stick to the devil we know? In fact, there is a good deal of conservative argument that takes just this form.

Those of us who reject this line of conservative argument tend not to take it as seriously as we should. I have often encountered it in disconcertingly plausible form. Let me illustrate with a couple of cases analyzed as I believe a conservative of the law-and-economics school would analyze them. I pick these two cases because I have used both of them in my own teaching with a very different analysis.

Javins v. First National Realty Corp.,[6] was a landmark case in tenants' rights, written by one of our greatest reforming judges, Skelly Wright, in 1971. The decision, departing from a long line of authority it found inconsistent with modern urban housing conditions, held that a tenant could withhold rent if the premises did not live up to the standards set by the housing code. I have always regarded the case (and regard it still) as an example of a good and compassionate judge using the skills of his profession to repair a glaring injustice in the law.

The conservative analysis is quite different. It begins with the fact that the case has increased the cost of being the landlord of low-cost housing. Previously, the housing code was enforced by city inspectors, too few in number to inspect oftener than once in a while, and probably willing to accept excuses if the landlord was not making enough money out of the building to pay for the necessary improvements. Now, tenants themselves can enforce the housing code by living rent free in any non-complying units they happen to occupy. They will presumably accept no excuse from their landlords, who will now have to bring all their units up to code or collect nothing for their investment. But it may take a considerable rent increase to recoup or make a good return on the cost of bringing a unit up to code. The increase may take the unit out of the low cost rental market and turn it into middle class or gentrified housing. The newly gentrified unit can then be rented for less than a landlord would have to charge for a comparable unit newly built. There will be no market, therefore, for new middle class units. At the same time, the cost of keeping units up to code

5 AMBROSE BIERCE, THE CYNIC'S WORD BOOK (1906), *quoted in* THE OXFORD DICTIONARY OF QUOTATIONS 109, para. 8 (Angela Partington ed., 4th ed. 1992).

6 428 F.2d 1071 (D.C. Cir. 1970).

will make new low cost units an unattractive investment: entrepreneurs will put their money into computers instead. As a result, there will not be enough new units built to house an increasing population, and existing units will go to middle class people. So the final upshot of Skelly Wright's judicial intervention in the housing market will be that the poor will have worse housing than before, if they have any housing at all.

American Textile Manufacturers Institute v. Donovan[7] was decided by the Supreme Court of the United States in 1981. It upheld an order by the Occupational Safety and Health Administration (OSHA) establishing the amount of free cotton dust that could be permitted in a textile plant. The order was based on a finding, after extensive investigation, that the technology was available to limit the dust to the amount specified, and that no greater amount was consistent with the health of the workers in a plant. The manufacturers claimed that the law required a further determination that the benefits of reducing the dust level would outweigh the costs of doing so. This was the claim the court rejected. I use the case in my Administrative Law class to illustrate my general mistrust of cost-benefit analysis. My argument is that the costs and benefits are incommensurable: how much more should you have to pay for your shirt or your pillowcase in order to keep textile workers from getting a horrible lung disease? The case, as I see it, implements principles of social justice by answering, "whatever it takes."

A conservative law-and-economics analyst will tell me I am asking the wrong question. The right question is how much extra you would have to pay a fully informed worker to undergo the risk of an unhealthy level of cotton dust, and whether that sum, multiplied by all the workers involved, is greater or less than the cost of reducing the dust level. If we choose the more expensive alternative, we will lose more business to textile makers from Hong Kong, and throw more American textile workers into the ranks of the unemployed, where the psychological damage may be more severe than the damage to their lungs from cotton dust. Furthermore, we are not in a position to decide for all the textile workers in the country whether a short, well-compensated life with a lung disease at the end of it is better or worse than a long, poverty-stricken life ending with a stroke, cancer, or Alzheimer's.

One plausible answer to all this conservative analysis is that the claims of social justice are not stated radically enough. If the best we can offer our poor is a choice between substandard housing and no housing at all, or a choice between poverty and lung disease, our economy evidently requires more, not less, intervention than we have thus far undertaken. Unfortunately, though, experience is not very encouraging to the advocates of more intervention. Many of the interventions already in place have been coming unstuck lately. The problem is that the more extensive our interventions become the more they look like attempts at a global solution, doomed to frustration by the overall intractability and ambivalence of history.

7 452 U.S. 490 (1981).

I do not think that this conservative critique can be answered on its own presuppositions, which are pragmatic and historical. My continuing rejection of it is moral rather than pragmatic, eschatological rather than historical. The moral principle is fairly simple: you must do your duty by other people even if you foresee undesirable long run consequences of doing so. If you owe a person money, the fact that he will probably spend it on drink is not a morally acceptable excuse for not paying him. If you are able to throw a life preserver to a drowning man, the fact that he will go home and beat his wife is not a morally acceptable excuse for letting him drown. There is a maxim *fiat justitia ruat coelum*, let justice be done though the skies fall. It applies to social justice as much as to any other kind of justice. Just as we should not solve the problem of organized crime by putting reputed Mafia dons in prison for crimes they did not commit, or the transportation problem by building highways through people's front yards without paying them, so we should not solve the housing problem by letting people live in substandard rooms or the unemployment problem by letting them destroy their lungs.

If this moral stance is not historically efficacious, in that it does not assure us of a quantitative increase of justice from one decade to the next, it still assures us of a different and better history than we would have without it. Regardless of success or failure, a society in which people do the best they can to rectify the injustices they encounter is a better and more humane society and deserves a more honorable place in the history of the world than one in which fear, cynicism, or indifference leads people to let obvious injustices flourish unchallenged.[8]

The eschatological principle is provided by the theology of liberation, which teaches that the pursuit of social justice has an eschatological significance independent of its historical effect.[9] While true liberation from injustice is always and everywhere the free gift of God, by deploying our skills and resources as effectively as we can, we bear witness to God's will to bestow this gift. The Second Vatican Council teaches that the final consummation of history in the Kingdom of God is "already present in mystery."[10] Our own efforts cannot be related to that consummation as means to an end, but we believe that they are part of the mystical presence. It is this belief that constitutes the theological foundation for what I have called pilgrim law.

Concern with social justice necessarily exposes us to the problem of class. Wherever there are unjust institutions, somebody is benefiting from them, and somebody else is suffering from them. If no one were benefiting, they would not remain in place; if no one were suffering, they would not be unjust. The distinction between beneficiaries and victims inheres in the institutions. Any effort to reform the institutions gives rise to a class

8 See my *Law, Social Change, and the Ambivalence of History*, 49 PROC. OF THE AM. CATHOLIC PHIL. ASS'N 164 (1975).

9 See my *Law, History, and the Option for the Poor*, 6 LOGOS 61 (1985).

10 SECOND VATICAN COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD (*Gaudium et Spes*) para. 39, *reprinted in* RENEWING THE EARTH: CATHOLIC DOCUMENTS ON PEACE, JUSTICE AND LIBERATION 171, 213 (David J. O'Brien & Thomas A. Shannon eds., 1977).

struggle. The victims have a stake in reform, while the beneficiaries have an equal stake in the status quo.

Christianity does not teach us to ignore this struggle between competing interests. What it teaches us to do is side with the victims even if we are ourselves beneficiaries. If our prosperity is the flip side of someone else's misery, we are, like it or not, oppressors. We should be no more content with being oppressors than we would be with being oppressed. But we did not create the institutions that cast us in that role, and we cannot get out of the role by wishing the institutions away. The beneficiaries of unjust institutions, like the victims, need liberation, and the replacement of unjust institutions by just ones, would liberate beneficiaries and victims alike. It is this principle of joint liberation that reconciles participation in an ongoing class struggle with a Christian commitment to universal brotherhood and solidarity.

We should not equate the liberation to which we aspire with a general abolition of class distinctions. Such distinctions and the institutions that produce them are not necessarily unjust. We all come into the world with different time and space coordinates, and even in the same time and place we come differently circumstanced—economically and socially as well as physically, intellectually, and emotionally. No institutional arrangement for the distribution of wealth and power can fail to take at least some of these differences into account, so that some people will end up with more wealth and power than others. I cannot see that such arrangements are unjust as long as those who have the least have as much as is required for a fully human existence.

Class differences, even if they are not unjust, are fortuitous. Those who have more than their neighbors do not have it because they deserve it, but because the fortunes of history, geography, economics, or genetics have so fallen out. A number of rationales have been proposed, but none is very persuasive. The traditional one is that people's places in the class structure are all assigned them by God, and justified for that reason:

> The rich man in his castle,
> The poor man at his gate,
> God made them, high or lowly,
> And order'd their estate.[11]

This is not very good theology. Granted, everything that happens is in accordance with God's will, but that does not prove that He wants it to go on happening any more than our being born naked proves that He does not want us to wear clothes.

Most of the modern rationales are based on utility, merit, or some combination of the two. The ruling classes rule and the prosperous classes prosper because they serve the wider society by doing so, or because they possess some quality that others should be encouraged to emulate, or that is intrinsically deserving of recognition or reward. If, for instance, we enroll industrialists in our ruling class, it is because we want to motivate more

11 Cecil F. Alexander, *All Things Bright and Beautiful* (1848), *quoted in* THE OXFORD DICTIONARY OF QUOTATIONS 8, para. 10 (Angela Partington ed., 4th ed. 1992).

people to become industrialists, because we want to encourage people to practice the supposed virtues of industrialists such as ambition, resourcefulness, and hard work, or because we consider people with those virtues morally superior to other people.

Rationales of this kind presuppose first that positions of wealth and power are in fact occupied by people who meet the ostensible criteria for occupying them, and second that those criteria are themselves just and reasonable. Neither presupposition is very realistic. We have it in Scripture that the race is not always to the swift. Even if it were, the value of swiftness would depend on someone's largely fortuitous decision to hold a race instead of a chess match, a caber toss, a bakeoff, or a spelling bee. The decision to hold a market economy instead of any of these may be a little less fortuitous, but history has offered no lack of alternatives. Which prevails in a given time and place is a matter of historical accident.

I maintain, therefore, that the distribution of wealth and power in any society is in large part fortuitous, and that no such distribution is unjust except insofar as it leaves some people lacking what they need to live as befits human beings. But wealth and power, even if justly distributed, can be unjustly used. They are held in a social context, and should be used in subordination to social needs. *Rerum Novarum*, the classic statement of Catholic social teaching, puts it this way:

> Whoever has received from the divine bounty a large share of temporal blessings, whether they be external and material, or gifts of the mind, has received them for the purpose of using them for the perfecting of his own nature, and, at the same time, that he may employ them, as the steward of God's providence, for the benefit of others.[12]

Whatever the historical origin of the class structure in any given society, those who have the largest share of the benefits are accountable in justice as stewards for the wider society.

Social justice does not, then, call for the abolition of class distinctions. Indeed we should be highly suspicious of any claim that such an abolition has taken place, or is about to. The abolition will probably be illusory, and a camouflaged class system is more dangerous than an open one. The demands of social justice are the same with respect to any class structure, however it arose, and however long it has endured in the past or is expected to endure in the future. These are, first, that the members of every class have enough resources and enough power to live as befits human beings, and, second, that the privileged classes, whoever they are, be accountable to the wider society for the way they use their advantages.

If we are considering law, not revolution, the second of these demands will tend to subsume the first. A society may entrust its ruling class with responsibility for its culture, its security, its agriculture, and its electric supply, and frame its laws to see that the responsibility is carried out, but if it does not at the same time make them responsible for seeing that even the

12 LEO XIII, RIGHTS AND DUTIES OF CAPITAL AND LABOR (*Rerum Novarum*) para. 22, *reprinted in* THE CHURCH SPEAKS TO THE MODERN WORLD: THE SOCIAL TEACHINGS OF LEO XIII 205, 218 (Etienne Gilson ed., 1954).

least advantaged members of society have what they need for a decent life, the system will be less than just. The different kinds of responsibility may exist in some tension, and be unevenly implemented by the laws. When St. Bernard accused the monks of Cluny of clothing their stones with gold while the poor went naked,[13] he was complaining in effect that the responsibility of the ruling class to provide a decent living standard for the poor had been unjustly subordinated to their responsibility for religion and culture.

The demands of social justice are part of what keeps the class structure of a society from being static. Marxists, of course, have made us very familiar with the idea that changes in the class structure go hand in hand with changes in the economy. But they have not really succeeded in explaining how a ruling class with as much power as they attribute to it can fail to prevent the economic changes that will result in its displacement by a new class. Their account of the transition from feudalism to capitalism is less than satisfactory, their predictions regarding rule by the proletariat have been generally wrong, and they have entirely disregarded the displacement of capitalists by managers and professionals in the non-Communist world. None of these changes can be adequately explained by either greed or naïveté on the part of the people in charge; nor can they be shown to have inhered in the previous forms of production and distribution. I believe that they were made at least in part because it seemed right to make them. Either they were seen as providing better for the meeting of basic needs or they enhanced cultural and social amenities for which the ruling class was responsible to the wider society.

This point cannot be developed at length here, but I will give one example: the shift to capital-intensive agriculture and manufacturing in England in the eighteenth century. In agriculture, the landowners themselves made the shift in the interest of applying new methods and thereby producing more food. With the aid of enclosure legislation, the great landowners who could afford to innovate bought out the small landowners and peasants who could not. Meanwhile, the more enterprising among the small artisans became great factory owners by adopting new industrial technologies and employing the agricultural workers displaced by new kinds of agriculture. At the same time, the great landowners and the newly enriched factory owners invested in an infrastructure of roads and canals to transport goods to market and bring new amenities to their country seats. As the process went on, the factory owners adopted the mores of the landowners, and were recruited into their magistracies and other public functions, while the landowners adopted much of the urban polish that the factory owners had imported on the roads and canals. It was not until almost half a century later that these developments led to a showdown between agriculture and manufacturing, which manufacturing won.

In the interim, it is clear that the landed gentry and the newly coopted factory owners took great pride in what they had accomplished for the better feeding of the masses and the broader distribution of cultural amenities

13 Bernard of Clairvaux, *Apologia to Abbot William* ch. XII, § 28 (1125), *in* 1 WORKS OF BERNARD OF CLAIRVAUX 33, 65 (Cistercian Fathers Series 1970).

among the well-to-do. The displacement of other social classes was regarded as regrettable but inevitable: G.M. Trevelyan tells us that enclosure of agricultural lands was regarded as a public duty.[14] The adoption of what Macaulay refers to as "beautiful and costly machinery"[15] must have been considered a public duty also: he is sure that only lack of education could make anyone oppose it.

To sum up the whole evolution, here is Basil Williams's description of the landholding class at the particular point when the economic changes that were to result in its displacement by the capitalist class were already in place, but the displacement itself was yet a few years in the future:

> No doubt this polite society was in many respects selfish and self-indulgent: by its monopoly of social and political power and its sublime conviction that it alone possessed the right and capacity of leadership, it no doubt continued the subordination and even prevented the development of the classes below far longer than was their due. At the same time, with all their selfish pleasures, they not only elevated the standard of good taste in art, literature, and music and above all in urbanity of conduct and conversation, but set an example as a class of public spirit and public duty. It was this consciousness of civic duty which in the long run eased the inevitable change in their relations to the classes then of little account, and made such a change much easier than was possible in the countries where aristocracies had no purpose in society beyond amusement and military glory.[16]

The responsiveness of the ruling class to the concerns of the rest of society was not entirely due to public spiritedness. The bizarre electoral system that had grown up over centuries assured the great landowners of control over the House of Commons, but they had to placate a number of lesser figures in local society, and often to spend large sums doing so, if they were to keep their seats. And even those with full control over Parliament had the London populace to fear. They had also to be concerned about local magistrates, who could tap vast reserves of inefficiency if called on to implement a measure they did not like. There was also a general right to hold meetings and submit petitions. It was widely used, and the government tended to take the resulting petitions seriously lest something worse befall. Halévy, describing the political situation in 1815, does not hesitate to refer to "the supremacy of public opinion."[17]

Law operates in society as a bridge between values and their realization. It is one that ruling classes are often willing to cross, and that they often cross, willing or not, because of the power of the rest of society. I might add, drawing on the history of various revolutions, that if the bridge is lacking the gap will be crossed in some other way. The drive for social

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14 G.M. TREVELYAN, ENGLISH SOCIAL HISTORY 379 (1942).

15 Thomas B. Macaulay, Education, Speech Delivered in the House of Commons (Apr. 18, 1847), *in* SPEECHES ON POLITICS AND LITERATURE 349, 352 (Ernest Rhys ed., Everyman's Library Series, photo. reprint 1936) (1909).

16 BASIL WILLIAMS, THE WHIG SUPREMACY 1714-1760, at 143 (photo. reprint 1945) (1939).

17 ELIE HALÉVY, ENGLAND IN 1815, at 108, 108-200 (E.I. Watkins & D.A. Barker trans., photo. reprint, 2d ed. 1964) (1949).

justice is neither continuous nor overwhelming, but it cannot be permanently ignored. If it is not effectively institutionalized, it will find ways, often harsh ways, to become so.

The role of law in the institutionalization process is complex, because it controls all the institutions of society and at the same time is one of those institutions itself. It is, like any institution, under the power of the ruling class; at the same time, it is the main vehicle for holding the ruling class accountable to the wider society. In its dispositions, it must embody the requirements of natural law and pilgrim law, both as they apply universally and as they are experienced in a particular society. It must also, as far as possible, impose these requirements on other social institutions, and render the ruling class accountable to the wider society for serving the same requirements. Our task as Christian lawyers is to sort out these complex demands on law, and try to organize a Christian response to them.

It is a pleasure to dedicate this piece to the memory of a dear friend and colleague with whom I shared that task for nearly forty years.[18]

18 Not that he would have agreed with everything I say here. I shall miss his gentle but uncompromising dissent at many points.