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Anglo-American Legal History

Joseph A. Cox

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*Surrogate Joseph A. Cox**

I. Introduction

IN THIS SWIFTLY MOVING AGE, with its revolutionary advances in so many diverse fields of activity, it is well to pause and reflect upon the Role of the Law in American life. Unfortunately, in our pre-occupation with daily chores, we miss the trees for the forest, for to a large extent the Lawyer's time is taken up with private interests which, while important to the individual, do not touch the great and vital issues affecting the community. Yet no Lawyer can have any real pride in his profession unless he has the capacity for interpreting to himself and to his fellow Americans the full Majesty and Meaning of the Law.

II. Law the Stabilizing Element in Modern Civilization—Primitive Origins

Without becoming unduly involved in Philosophic Concepts of Law and Justice which have been the subject of comment and debate for many Centuries, it is enough here to note that without Law man would be plunged back into the chaos from which we emerged at the Dawn of Civilization. It is the Law that brings an orderly society, where men may follow their pursuits, secure in the knowledge that their rights will be protected and their obligations enforced. It is the Law that protects the individual against the Tyranny of his Sovereign.

For a proper understanding of our Law and our present Legal Institutions, we must look back over the past Centuries to the Origin and Growth of the Common-Law in England, for it was that System of Law which shaped the thinking of our Founding Fathers. The Origin of the Common Law may be traced to the customs of the Germanic tribes who stood before the Roman legions when Britain was still a Roman Province.[1] It was influenced by the teachings of the Christian Church, after

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1 Pollock, The Genius of the Common Law, c. I, Our Lady and, Her Knights, 8 (New York, 1912).

the conversion of the Roman Empire.[2] Among the Germanic traditions which took deep root were those of freedom and individual self-respect, concepts which have characterized the Common-Law ever since, and which largely account for our present-day liberties.[3]

III. Primitive Modes of Proof and Trial

As a result of the Germanic influence, early Justice in England was formal and rigid,[4]—a characteristic of most primitive societies and essential, in critical periods of Society, to prevent a relapse into anarchy and barbarism. Only by making hard and fast Rules, evidenced by concrete expression, could it be demonstrated to the Primitive Mind that the Law was the same for all men.[5] In order, therefore, for a man to bring himself within the protection of the Law, a suitor was required to follow the exact words prescribed by the Legal Ritual, which controlled the Primitive Modes of Proof and Trial which then prevailed. Thus, it is not surprising to find that up until the Twelfth Century, there was no human method for resolving issues of credibility, this being left to the supernatural.[6] Formalism was, therefore, at its peak in these archaic Methods of Proof and Trial, the most prominent of which were, Trial by Ordeal, by Oath or Wager of Law and Trial by Battle.[7]

The Primitive Trial involved two stages: In the *first* stage, the Court rendered a Medial or Preliminary Judgment, which merely involved the selection of the Method of Proof, to which the defendant was to be put and the Time and Place of Trial; at the *second* stage, the Judges acted somewhat as umpires to see that the Method of Proof prescribed by the Preliminary Judg-

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2 Maitland and Montague, A Sketch of English Legal History, c. I, Early English Law, 600-1066 A.D., 21-23 (New York and London, 1929).

3 Pound, The Spirit of the Common Law, c. I, The Feudal Element, 13-18 (Francetown, 1947); Pollock, The Genius of the Common Law, c. I, Our Lady and, Her Knights, 8 (New York, 1912).

4 Pound, The Spirit of the Common Law, c. I, The Feudal Element, 18-20 (Francetown, 1947).

5 Pollock, The Genius of the Common Law, c. II, The Giants and the Gods, 14-17 (New York, 1912).

6 Forsyth, History of Trial by Jury, c. IV, The Judicial System of the Anglo-Saxons, Section VI, Of Compurgators, 61-67 (New York, 1878).

7 Thayer, A Preliminary Treatise on Evidence at the Common Law, c. I, The Older Modes of Trial, 7-46 (Boston, 1898).

ment was strictly adhered to in the Specific Form of Trial selected.[8]

(A) *Trial by Ordeal.*—Perhaps the Earliest Form of the Older Modes of Trial was the Ordeal, dating from before the introduction of Christianity. As its practice was so widespread among primitive people, and as it was based on the belief that God intervened by some sign or miracle to determine an issue pending between two adversaries, the Church felt obligated to soften its harsh features by surrounding it with formal ceremonies, which added to its moral and psychological effectiveness as a test in the ascertainment of truth. According to Forsyth,[9] an accused was subjected to Trial by Ordeal: (1) Where he was unable to secure a sufficient number of compurgators; (2) Where he had been previously found guilty of perjury; and (3) Where he was not a Freeman, unless his Lord swore to his innocence, or purchased his freedom by paying the required weregild or fine.

Once a person was required to submit to Ordeal, he might be subjected to either one of three Forms of Trial—the Ordeal of the Hot Iron, the Ordeal of Hot Water, or the Accursed Morsel. Without going into details, this Primitive Method of Proof was open to corruption and perjury, produced few convictions and hence fell into decay, and in 1215 was condemned by the Lateran Council, after which it was prohibited by a Writ which Henry III (1216-1272) sent to his Itinerant Justices in 1219.

(B) *Trial by Compurgation or Wager of Law.*—Trial by Oath was unknown to Roman Procedure; it was, however, known among the barbaric tribes which overran England. Consequently, this System of Trial was found in operation early in the Anglo-Saxon Period of English history.[10] In Trial by Oath, the plaintiff made a Formal Affirmation or Charge, which was met by an equally Formal Denial, controverting every point of plaintiff's assertion, word for word. The adversary could stop the Oath and challenge the swearer as incredible. But this could only be done at the proper time, for an Oath once begun could not be interrupted. To stop the Oath the hand had to be seized before

[8] Ibid; Maitland and Montague, A Sketch of English Legal History, c. II, English Law Under the Norman Rule and the Legal Reforms of Henry II (1066-1216), 47 (New York and London, 1929).

[9] Forsyth, History of Trial by Jury, c. IV, The Judicial System of the Anglo-Saxons, Section V, 67-69 (New York, 1878).

[10] See article by Pollock, English Law Before the Conquest, 1 Select Essays in Anglo-American Legal History, c. III, 88, 92-95 (Boston, 1907).

it was lifted to swear or before it touched the relic upon which the Oath was to be made. Another method of stopping the Oath was for the aggrieved party to bar the way into the Church by stretching his arm or his sword across the door. In either event, the Oath-Taker, in the same fashion, had to play his part exactly as the ritual required.[11]

> "A hand held up must not be lowered, a hand laid on relics, or on a sword, or on the Oath Helpers, must not be moved until the Oath is fully spoken. If nothing goes wrong in the solemnity, if all the right words are said in the right order, if all the hands and fingers keep their right station, and, if all being duly done, the customary pause has elapsed without anyone being visibly smitten by the divine wrath for perjury, then the Proof is not only complete but conclusive." [12]

Where a Crime was Charged one could not always escape with an Oath. He could be sent to the Ordeal, which, as we have seen, was conceived as the Judgment of God.[13] The truth was revealed by immersion in water or fire. The water in the pit was adjured to receive the innocent and reject the guilty. He who sank was safe. He who floated was lost. The red-hot iron, one pound in weight, had to be lifted and carried three paces. The hand that held it was then sealed in a cloth. Three days afterwards the seal was broken, and if there was a blister "as large as half a walnut," it was fatal.[14]

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[11] Thayer, A Preliminary Treatise on Evidence at the Common Law, c. I, The Older Modes of Trial, 25-31 (Boston, 1898).

[12] Pollock, The Genius of the Common Law, c. II, The Giants and the Gods, 18 (New York, 1912).

[13] Maitland and Montague, A Sketch of English Legal History, c. II, English Law Under Norman Rule and the Legal Reforms of Henry II, 1066-1216, 48-49 (New York and London, 1929).

[14] In 1824, in the case of King v. Williams, 2 B. & C. 538, 107 Eng. Rep. 483, a defendant took the Court by surprise by throwing down the gauntlet and demanding Trial by Wager of Law. The Judges, after full consideration, decided that the defendant was well within his rights, although the procedure in such a Trial had been all but forgotten. A few years later, by the Statute of 3 & 4 Wm. IV, c. 42, § 13, 73 Statutes at Large 276 (1883), Trial by Wager of Law was abolished.

In the United States, although recognized during the Colonial Period, it really never gained a substantial foothold. In the leading case of Childress v. Emory, 8 Wheat. (U. S.) 641, 671, Mr. Justice Story, after discussing the Constitutional Right to Trial by Jury, observed that "Wager of Law, if it ever had a legal existence in the United States, is now abolished."

It did, however, exist in the United States, for we find that it was expressly abolished in New York by a Statute, which reads: "That no Essoin shall be allowed in any Suit, and no person shall be permitted to Wage his Law in any case, except that of Non-Summons in Real Actions." [L. of N. Y. 1801, 24 Sess., c. 90, § 24].

(C) *Trial by Battle.*—And now we come to Trial by Battle, which prevailed among the barbaric tribes of Europe, but was unknown among the Anglo-Saxons until introduced by the Norman Conquest, after which it was extensively applied in the settlement of a wide variety of disputes, including both civil and criminal cases.[15] Thayer observes that this Mode of Trial was viewed with suspicion, that the Ordeal was preferred over it, hence when Trial by Ordeal was prohibited by Henry III (1216-1272) in 1219, a wide gap was opened up to be filled by the now rapidly developing Jury.[16]

In this Form of Trial, the accuser undertook, during the course of the day, to prove, by his body, the truth of the charge; if he failed to do this before twilight fell, he failed in his Proof and in effect became a perjurer. The object was not to kill or maim his adversary, but to make him pronounce the loathsome word "craven."[17] Although the use of Champions to fight the battles of the litigants was authorized by the Statute of Westminster I (1275), this Form of Trial was distrusted. In 1215 Pope Innocent III condemned it at the Lateran Council for the same reasons which proved fatal to Trial by Wager of Law. Although obsolete, it persisted until the early part of the Nineteenth Century. In the year 1819 this Mode of Trial was finally abolished by Statute.[18]

IV. Trial by Jury

(A) *Establishment of a Centralized Court System.*—After the Norman Conquest and during the Twelfth and Thirteenth Centuries, William the Conqueror and his successors took the Decentralized Anglo-Saxon System of Courts, and superimposed thereon the three Royal Courts of King's Bench, Common Pleas and Exchequer,[19] with Appellate Jurisdiction vested in the Court

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15 Maitland and Montague, A Sketch of English Legal History, c. II, English Law Under Norman Rule and the Legal Reforms of Henry II, 1066-1216, 48-49 (New York and London, 1929).

16 Thayer, A Preliminary Treatise on Evidence at the Common Law, c. I, The Older Modes of Trial, 45-46 (Boston, 1898).

For the story of the subsequent development of the Jury, see Thayer, A Preliminary Treatise on Evidence at the Common Law, c. II, III, IV, Trial by Jury and Its Development, 47-182 (Boston, 1898).

17 Maitland and Montague, A Sketch of Legal History, c. II, English Law Under Norman Rule and the Legal Reforms of Henry II, 1066-1216, 50 (New York and London, 1929).

18 59 Geo. III, c. 46 (1819).

19 2 Holdsworth, History of English Law, c. IV, The Reign of Edward I: The Settlement of the Sphere of the Common Law, 352-401 (3rd ed. Boston, 1927).

of Exchequer Chamber and the House of Lords. The development of these Courts gave England a Centralized Court System.

As an incident of this development the archaic Methods of Proof, as represented by the Ordeal, Wager of Law and Battle, gradually fell into decay, while Trial by Jury, initially conceived as a method of eliciting the facts in controversy from twelve neighbors, developed into the Modern Jury of today, the function of which is no longer to act as witnesses, but as triers of facts.

(B) *The Ecclesiastical Courts.*—Shortly after William the Conqueror took over, he issued what was known as the Ordinance of 1077, separating the Common-Law and Ecclesiastical Courts, with the Common-Law Courts retaining Jurisdiction over Land,[20] and hence of Devises of Land, while the Ecclesiastical Courts retained Jurisdiction over Testaments of Personalty —a division which was destined to have a profound effect upon the law of Real and Personal Property, as well as the Administration of Estates and the Probate of Wills.[21]

(C) *The Court of Equity.*—The evolutionary development of the three Superior Common-Law Courts did not exhaust the Judicial Powers of the King's Council. A Residuary Power remained in the Council under which the King could have administered Justice if all the other established Courts had ceased operation. This great Residuary Power was now invoked by the King for the alleged purpose of relieving the rigidity of the Common Law, which, for various reasons—social, economic, political and religious—refused to take Jurisdiction of certain causes. In consequence, suitors were left with no alternative but a direct Petition to the King. In such cases the King by his Chancellor investigated and decided the controversy. Out of this practice there gradually developed a new tribunal known as the Court of Equity, which could afford remedies not available in the Common-Law Courts.[22] In this fashion the Chancellor, as the keeper of the King's Conscience, brought much needed liberalization to the Administration of Justice and provided the flexibility needed to deal with the great changes that were taking place. The Com-

[20] In this connection see Reppy, The Ordinance of William the Conqueror: (1072), (New York, 1954).

[21] 1 Pollock and Maitland, History of English Law, c. VI, The Age of Bracton, 193-197 (Cambridge, 1895).

[22] See article by Holmes, Early English Equity, in 2 Select Essays in Anglo-American Legal History, 705 (Boston, 1908); and see, Oleck, Historical Nature of Equity Jurisprudence, 20 Fordham L. R. 23 (1951).

mon Law Courts and the Courts of Equity, after a Period of Conflict, as we shall see, worked side by side, one influencing and complementing the other.

V. The Tripartite Struggle Between the Courts for Jurisdiction

As a result of the foregoing development of the Common-Law, Ecclesiastical and Equity Systems of Courts, it was inevitable that the Early History of English Law should be marked by a continuing Struggle for Jurisdiction. As early as the Twelfth Century, the Common-Law Judges were challenging the Church over Issues of Jurisdiction and were asserting the Independence of their Courts.[23] And it was during this critical period that the Common-Law Judges and Lawyers stood firm, resisting the trend in favor of adopting the Roman Law, which at that time—the Sixteenth Century—was sweeping over Europe.[24]

VI. The Struggle Between the Common-Law Courts and the Crown

(A) *Lord Coke and the Ecclesiastical Courts.*—In the Seventeenth Century the Common-Law became involved in a battle against the Stuart Kings. When James I (1603-1625) first came over from Scotland he found Coke in the midst of a battle with the Ecclesiastical Courts, which were resisting his use of the Writ of Prohibition to limit their Jurisdiction. The King was aggravated by reason of the fact that in this struggle Coke insisted that neither the Church nor the King was above the Law. At that time, however, James I was not yet sufficiently entrenched politically to challenge Coke. In consequence, the Common-Law Courts took over a large portion of the Ecclesiastical Jurisdiction.

(B) *Lord Coke and the Court of Equity: (1) The Supremacy of the Law Concept.*—In the same Century, battle was again joined, this time between the Common Law and Equity Courts, the latter supported by the Crown, with Coke reviving his earlier view that the Law, as opposed to the King, was Supreme.

The issue arose when the Court of Common Pleas granted a Writ of Prohibition against Temporal Action taken by an Administrative Tribunal established for the Regulation of the

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[23] Pound, The Spirit of the Common Law, c. I, The Feudal Element, 5-7 (Francetown, 1947).

[24] Ibid.

Church.[25] The Archbishop of Canterbury complained to King James I (1603-1625), before whom all of the Judges of England were summoned, with Sir Edward Coke as their spokesman. The Archbishop talked of the Royal Prerogative, that is, the right of the King to do himself what he had delegated to his Judges. Coke replied that under the Laws of England the King could not adjudge any cause, that all cases were to be determined in a Court of Justice according to the Law and Custom of the Realm. The King took offense and regarded as treasonable the suggestion that he should be *under the Law.* Coke's famous answer was that the King ought not to be under any man, but under God and the Law.[26]

(2) Coke's Use of Magna Carta.—In the foregoing contest, Coke was resting his case on Magna Carta, which had been wrung from King John four hundred years earlier at Runnymede and Marston Moor, in order to compel his recognition and respect for certain basic rights, which are cherished by all men.

VII. Coke's Influence Upon American Constitutional Doctrine

The Role of the Magna Carta in the history of American Constitutional Theory is due in large measure to the revival and restatement of its principles by Lord Coke. The significance of the Charter lay in the fact that it was drawn in terms that did not confine its application to the immediate issues at hand or to the interests therein involved. Its language was couched in terms of universal application. For the history of American Constitutional Law and Theory, the most important part of the Magna Carta, was Chapter 29, which has been translated as follows:

> "No free man shall be taken or imprisoned or deprived of his freehold or of his liberties or free customs, or outlawed, or exiled, or in any manner destroyed, nor shall we go upon him, nor shall we send upon him, except by a legal judgment of his peers or by the law of the land."

It is said that our Concept of Due Process of Law, upon which so many of our liberties have turned, stems directly from this provision.

Because of the Generality and Scope of the Language, Magna Carta, from its inception, contained elements of growth. In 1297 Edward I (1272-1307) ordered all "Justices, Sheriffs, Mayors, and other Ministers, which under us and by us have

[25] Id. at 60.
[26] Id. at 61.

the Laws of our Land to guide," to treat the Great Charter as "Common Law" in all Pleas before them.[27] Furthermore, any Judgment contrary to the Great Charter was "to be holden for naught"; and all Archbishops and Bishops were to pronounce "the sentence of Great Excommunication against all those that by deed, aid or counsel," proceeded contrary to the Charter or in any way transgressed it.[28] By the Seventeenth Century Coke could cite thirty-two Royal Confirmations of the Charter.[29] With the passage of time, the principles enunciated by Magna Carta became absorbed in the general stream of the Common Law and Englishmen transferred to the Common Law the worship they had so long reserved especially for the Charter. Of this period it has been written:

> "The Common Law is pictured invested with a halo of dignity peculiar to the embodiment of the deepest principles and to the highest expression of human reason and of the Law of Nature implanted by God in the heart of Man. As yet, men are not clear that an Act of Parliament can do no more than declare the Common Law. It is the Common Law which men set up as an object of worship. They regard it as the symbol of ordered life and disciplined activities, which are to replace the license and violence of the evil times now passed away. . . . Common Law is the perfect ideal of Law; for it is natural reason developed and expounded by a collective wisdom of many generations. . . . Based on long usage and almost supernatural wisdom, its authority is above rather than below the Act of Parliament or Royal Ordinances which owe their fleeting existence to the caprice of the King or to the pleasure of Councillors, which have a merely material sanction and may be repealed at any moment." [30]

This attitude is reflected in the writings of Sir John Fortescue,[31] Henry VI's Chief Justice, who followed his King into exile, and also in the later writings of Coke and Blackstone.

It was, however, in the name of the Supremacy of the Common Law that Parliament challenged the Doctrine of the Divine Right of Kings. Coke's dictum in the Bonham Case, decided by

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[27] Adams and Stephens, Select Documents of English Constitutional History, 86-87 (New York, 1901).

[28] Ibid.

[29] Ibid.

[30] Figgis, Divine Right of Kings, v. IX, Non-Resistance and the Theory of Sovereignty, 228-230 (Cambridge, 1896).

[31] Fortescue, De Laudibus Legum Angliae [The Laws of England] (Tr. by Selden, London, 1737).

the Court of Common Pleas in 1610, has had a tremendous impact upon Anglo-American Constitutional Law. It reads as follows:

> "And it appears in our books, that in many cases, the Common Law will control Acts of Parliament, and sometimes adjudge them to be utterly void; for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the Common Law will control it and adjudge such act to be void." [32]

This *dictum* pointed the way to Judicial Review of Legislative Acts and postulated the test of reasonableness. In consequence it found its way into the legal literature of the time, and was used as a weapon against Parliament's Claim to Sovereignty. Coke was not expounding a Rule of Statutory Construction, but was expressing a Rule of Higher Law, binding on Parliament and the Ordinary Courts alike. In other words, Coke regarded "common right and reason" as something fundamental and permanent—a Higher Law. This concept is also to be found in the Maxims with which his writings abound: "A Statute should have Prospective, not Retrospective operation." "No one should twice be punished for the same offense." "Every man's house is his own castle." These and many other declarations by Lord Coke are now familiar parts of our Jurisprudence.[33]

In restoring the Great Charter to its proper place Coke wrote that it was called "Magna Carta, not for the length or largeness of it . . . but . . . in respect of the great weightiness and the weighty greatness of the matter contained in it; in a few words being the fountain of all of the Fundamental Laws of the Realm." [34] He pointed out that the benefits of Magna Carta extend to all. He meant the benefits of the Historical Procedures of the Common Law, the known Processes of the Ordinary Courts, such as Indictment by Grand Jury, Trial by the "Law of the Land," *Habeas Corpus*, Security Against Monopoly, Taxation only by the Consent of Parliament.

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[32] Bonham's Case, 8 Coke 107a, 77 Eng. Rep. 638 (1610).

[33] Broom, Selection of Legal Maxims (7th ed. by Manisty and Chitty, London, 1900).

[34] 1 Coke, Institutes of the Laws of England, § 81 (1st Am. from the 16th European Edition, Philadelphia, 1812); 2 Parliamentary History of England, 327 (London, 1806).

VIII. Coke's Contribution to Our Legal System Supplemented by Locke

From Coke's version of the Magna Carta, through the English Declaration and Bill of Rights of 1688 and 1689, to the Bill or Rights of our Constitution, the line is direct. Coke's great contribution to our Legal System was later supplemented by John Locke, whose "Second Treatise on Civil Government" first appeared in 1690.[35] Locke emphasized the Natural Rights of the Individual resting upon a Social Compact. The primary sources of his studies were the writings of Fortescue and Coke and his own Conceptions of Natural Law. He shifted the emphasis from the Individual to the People in mass. He noted the limitation on Legislative Power and its Supremacy within the Law and not a Power Above the Law or a license for arbitrary acts. He also noted that the Law must be general in application, the same for rich and poor, and that it must "dispense Justice and decide the Rights of the Subject by promulgated standing Laws, and known authorized Judges." [36] In saying these things, Locke was anticipating some of the fundamental propositions of American Constitutional Law: Law must afford Equal Protection to all; it must not operate Retroactively; it must be enforced through the Courts; Legislative Power does not include Judicial Power.

IX. The Higher-Law Doctrine as Developed by Lord Coke

The influence of the Higher Law Doctrine,[37] associated with the names of Coke and Locke, was at its height in England when the American Colonies were being settled. Their greatest contribution to the American Colonists was that Legislative Power emanates from a Sovereign People. Our Constitution gained acceptance because it was based on the Concept of a Higher Law, superior to the Will of the Sovereign. This outstanding characteristic of the English Higher Law was described by John Adams, while still a young man, as follows:

> "It has been my amusement for many years past, as far as I have had leisure, to examine the Systems of all the Legislators, Ancient and Modern, fantastical and real . . . and the result . . . is a settled opinion that the liberty, the unalienable, indefeasible rights of men, the honor and

[35] Locke, Second Treatise on Civil Government, c. XIX, 224 (Everyman's Ed. New York, 1924).

[36] Ibid.

[37] See article by Corwin, The "Higher Law" Background of American Constitutional Law, 42 Harv. L. Rev. 149 (1928); Id. at 365 (1929), reprinted in 1 Selected Essays on Constitutional Law, 1 (Chicago, 1938).

> dignity of human nature, the grandeur and glory of the public, and the universal happiness of individuals, were never so skillfully and successfully consulted as in that most excellent monument of human art, the Common Law of England." [38]

To John Adams and the other Founding Fathers, the Common Law represented an embodiment of the Supremacy of the Law which was to influence their thinking when they wrote the Constitution. These men must have been impressed by this tough, tenacious and yet flexible System of Law. As men of wide learning, they were aware of the hard-won struggles of the Common Law and of the protective shield it had set up against Sovereign Tyranny. They knew that the Servants of the Common Law had spoken out boldly and truthfully before Kings to enforce the Concept of Equal Public Justice. Their unquenchable zeal for Justice was expressed in the maxim: "Let Justice be done though the Heavens fall." This is the priceless heritage upon which our Institutions were founded.

(A) *The Constitution of the United States.*—I have touched upon the Origin and Development of the Common Law, and its Contribution to our Legal System, because we, as Lawyers, must be familiar with the Past in order to understand the Present and to plan for the Future.

The Adoption of our Constitution was another great landmark in the evolution of Government by Law as opposed to Government by Men. The Authors of that Great document succeeded in binding together those Common Law customs and traditions which had attained the exalted status of Higher Law, together with the Concept of the Separation of Powers. The Constitution was "made for an undefined and uncertain future." Conceived for the Government of a New Nation but recently carved out of the wilderness, it has proved to be an effective instrument for the orderly Administration of a Society, whose complexities could not have been imagined by the Founding Fathers.

(B) *The Bill of Rights.*—The Bill of Rights and the subsequent Amendments to the Constitution have provided a happy blend of authority and freedom. The System of Checks and Balances adopted therein has preserved the Supremacy of the Law with its guarantee of Equal Justice to All. The Constitution, designed for a Government of Free Men, permits us to live in an ordered society without fear of tyrants. It extends pro-

[38] 1 Adams, The Works of John Adams, 440 (Boston, 1850).

tection to the humblest citizen while exerting restraints against Government itself. It remains a living, pulsating document because it serves Free Men in a Free Society. This is the priceless heritage of Liberty, Justice and Equality. Under the Law which our forefathers bequeathed to us, we must guard it with continuous vigilance.

(C) *Law, The Servant and Not the Master.*—We respect the Law because it is Our Servant, not Our Master. As Chief Justice Charles Evans Hughes once aptly said:

> "We of the Common Law respect Authority, but it is the Authority of the Legal Order. We respect those who in station, high or humble, execute the Law—because it is our Law. We esteem them, but only as they esteem and keep within the Law. . . ." [39]

It is this Characteristic of our Law which distinguishes it from the decrees of Totalitarian Governments which Rule by Force and which exist only so long as their citizens are held in subjection.

(D) *Capacity of the Common Law for Adaptability and Growth.*—Another significant Characteristic of Our Law is its capacity for growth and adaptation. I need only mention in passing some of the tools employed to meet changing needs: The Anti-Trust Laws, the Interstate Commerce Commission, the Federal Reserve System, Minimum Hour and Wage Legislation, the Social Security Act, the Norris-LaGuardia Act, the Wagner Act, the Securities and Exchange Commission, the Federal Trade Commission, the Federal Communications Commission and other Regulatory Bodies, many of which have counterparts in our State Governments. In the field of Civil Rights we are slowly but surely also measuring up to our responsibility.

X. Conclusion

I do not suggest that those charged with the Administration of our Law have never faltered. Human fallibility being what it is, trial and error is to be expected. But we have managed in the long run to provide our own corrections because of our system of Free Expression and Independent Courts. We have not permitted our Constitution to be subverted into a restraint upon Governmental Action required for the Common Good. On the contrary, it has been utilized as an instrument for healthy growth.

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[39] Law Day U. S. A., 4 (Pamphlet Published by American Bar Association, Chicago, May 1, 1958).

Today our Law faces its greatest challenge. It must be developed and adjusted to meet the requirements of an Age which has seen the secrets of nature unlocked by phenomenal advances in science and technology. We are living in an age of atomic fission, missiles and man-made satellites. We are witnessing industrial development on an unprecedented scale. We are confronted with economic and sociological problems of vast complexity. Our security is being threatened on the International Scene at a time when the weapons of destruction are capable of laying the World desolate. To permit our Law to lag behind the times would be to court disaster. We must dedicate ourselves to the task of carrying forward the precious Heritage of our Law to the New Horizons shaping up before us. We must teach our fellow Americans that respect for principled authority upon which the Growth and Development of the Law feeds. We must make them understand that only in this way will they survive as Free Men in a Free Society.

Despite the remarkable advances in science which we are witnessing today, the character of man remains substantially unchanged. He still needs Stability and Justice in his social relations. He still needs protection against the Arbitrary Action of his Government. To fulfill these needs will always be among the loftiest concern of mankind. Each of us, therefore, is under a stern obligation to respond to the Law's Command to secure Justice between Man and Man and between the Citizen and his Government. We must pursue this goal with unflagging determination and undeviating purpose.

Oppressed people throughout the World look to us for Moral Leadership. In the competition with Dictatorships for the Minds of Men, more potent than any lethal weapon, would be an effective demonstration that our System of Law assures more Equal Protection Under the Law, more Security in Person and Property and Greater Personal Freedom, than any other System yet devised. We can and should, with the greatest moral pride, point to our System of Law as the surest guarantee of Individual and Collective Liberty and Freedom in a peaceful and orderly life. We should proclaim, that a deep respect by our people, for the Rule of Law, will ultimately lead to a lawful and peaceful existence for the World Community.

And, as Lawyers, we must assume Leadership in advancing the Rule of Law and Reason to the Peoples of the Whole World as mankind's best hope for survival.