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## *Failure of Religious, Moral and Legal Controls to Meet the Needs of Modern Life: Legal Education*

*Frederick K. Beutel\**

**I**T IS CLEAR that present day moral concepts, or what the anthropologists call *mores*, are old and were slow to form. Even assuming that social habits, morals, *mores*, or whatever one cares to call them, are based on the good judgment of wise men, or on the workings of nature which made the most efficient survive (this is, of course, a statement of hope rather than substantiated fact), they would have evolved from a society which has little or no similarity to the one in which modern man lives.

### **Religion, Morals, and Law**

The actual and theoretical relation between religion, morals, and law is important. As a practical matter, religion, morals, and law have become so intermingled that it is difficult to separate one from the other. It is a common practice for governmental officials to invoke divine guidance in their activities, and for prelates to constantly inveigh against illegal activity. The position of natural law philosophers that religion, morals, and ideals stand above and should direct the course of law is well known to all. So strong is this concept that conscientious objectors actually receive legal protection, and the current popular idea that the law must be directed by morals, and values, is one of our most deeply rooted concepts in both the law and the social sciences. Does this position actually correspond with the facts to be found in the functioning of the legal system?

It should be clearly understood that religion and morals are primarily matters of individual and personal relations. Religion comforts. Morals make it possible for a man to live at peace, first with his own nature (conscience) and second, to some extent, but not necessarily, with his neighbors.

Law and government on the other hand are concerned only with the relationships between men and groups of men. Keeping the peace, aiding production to supply needs, and promoting the general welfare, are the primary fields of legal activity. Religion and morals are designed to control the inner man, the subjective spirit. Law and government have to do with the objective outer relationships between men. Control of the environment is primarily the function of law. In the past it has been assumed that religion and morals, especially

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in absence of other major influences can offer guide posts which law and government should follow.

Whatever may have been the practical conditions of the law-making processes in the past, there is at present a powerful new influence affecting environment.

### **The World Dichotomy**

Under the aegis of science during the last one hundred and fifty years there has been more change in the nature of man's life and his environment than in all the previous history of the race. In the more advanced nations, experimental science has revolutionized all aspects of metallurgy, chemistry, medicine, the production of goods, and transportation. In fact, hardly a facet of our present-day living has escaped its improving influence. The result is that a few nations are rich and powerful beyond the dreams of Croesus and Jove while others are poorer than they were before the industrial revolution.

There is a second dichotomy found throughout the world. Certain aspects of life such as production, distribution, cure of disease, and war are scientifically oriented, while others like government, religion, and the humanities are in almost the same state as they were before the advent of modern science. This is particularly pertinent in the areas where governments and social organizations attempt to control the products of the scientific age. Of the major professions, all but law, politics, the clergy, and the fine arts are now science dominated. The latter four still operate with the same methods which they used before the scientific revolution. So far as law and government are concerned these are the most influential in shaping social controls, but they are not alone. All four of the professions just named are the ones from which spring concepts, techniques, or "values," if you care to use that term, of the present social organization and government.

Thus we find ourselves in a world where the people are divided into the rich scientific "haves" and the poverty-stricken "have-nots." The present means for correcting or balancing the situation in the areas of social organization, law, and government, are in the hands of the professions which neither use nor understand the scientific method. The world finds itself called upon to distribute the riches created by science, in governmental systems largely devised before science came upon the scene, and under the guidance of *mores* and "values" little affected by it.

## The Diversity Between Scientific Procedures and Governmental Methods of Determining Policy

To casual observers the dissimilarity between the techniques of scientific engineering and the presently operating methods of government may not seem important. On all sides, one hears the statement that experimental science deals with problems of the physical world, while law and government attempt to regulate interests of people. Physical objects, we are told, are subject to the unchanging laws of nature while personal relationships are based on values which change from time to time and from civilization to civilization. They say that the basic propositions which control the physical world are constant, fairly simple, and easy to come by, but that the fundamentals in people-to-people relationships are more fleeting and difficult of understanding. Is it really true that human relations are not part of the physical world?

In practicing law, politics, religion, or science, there are certain fundamental propositions, truths, laws, or hypotheses, whatever one cares to call them, upon which people claim to act, or in behalf of which, they tend to rationalize their actions. In law, politics, or religion, there is a tendency to call these basic assumptions self-evident truths or divine revelations, while in science they are labeled hypotheses, or if they appear to be experimentally verified, scientific laws. In speaking of these two great classical forms of assumptions (hypotheses) concerning people and the world about us, Professor Oppenheimer has said, "Statements about scientific matters are not entirely sure—but compared to politics, they are so extremely sure as to be of a different order of certainty."<sup>1</sup> In spite of this fact scientists constantly test their hypotheses and change them to accord with new developments. Compare this with the moral and political "truths." There is in the current system of values no machinery for verification, change, or reconfirmation of the nature of man. An example of a few of the different basic statements of scientific and legal, political, and moral attitudes toward truth (basic hypotheses) are shown in the accompanying Table number 1. Many others could be added.

A glance at the third column will immediately reveal that every one of these propositions, within the lifetime of many now living, has been discredited by experimental science, and has been replaced with better statements. If all the better substantiated scientific propositions have been changed by further scientific study, one can but wonder what would happen to the social "truths" under similar scrutiny.

The propositions in the first two columns, although many are millenniums old and have been discredited by recent scientific dis-

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<sup>1</sup> Oppenheimer, *The Tree of Knowledge*, Harper's Magazine 57 Col A-B (Oct. 1958).

coveries, are all still regarded as basic statements of truth and operating hypotheses in major fields of law, government, and religion. What is more, there is little apparatus to check their validity and less effort to question them. In fact, these statements and other propositions of this kind are the basic stuff out of which men formulate or verify their current morals and political values and ideologies. These values and ideologies we use as a basis to solve our problems of social organization.

### TABLE OF CORRESPONDING HYPOTHESES

The first column contains basic hypotheses held in the legal and political professions, the second religious "truths", and the third scientific laws or facts which once were held currently with, or were similar to, those set out in the first two columns.

Law & Politics	Religion	Science
Nationalism	Denominationalism	Racial superiority
Constitutions	Bible, Koran, etc.	The table of indestructible elements
Equality of all men	Equality of souls	Uniform atomic weight of elements
Equality before the law	Equality of souls before God	Uniformity of all atoms in same element
Permanency of law	Eternal God	Indestructibility of matter
Finality of Supreme Court	Infallibility of Pope	Permanence of scientific laws
Private property	Liberty of conscience	Earth center of universe
Profit system	Rewards and Punishment	Earth is flat
Sovereignty	Capricious Gods	Animism
Sanctity of Human Life	Immortality of the soul	Conservation of matter
Dictatorship of Proletariat	Supremacy of priesthood	Authority of scientific societies
Socialism	Brotherhood of men	Harmonious universe
Resort to force	Excommunication	Only the strongest survive
Adversary method of trial	Inquisition	Discussion to establish truth

### The Balance of Science and Morals

The ancient nature of our political and social organization and the newness of science carry other dangers for the legal and social system. Science is so new and developing at such a rapid pace that it has been estimated that over ninety percent of all scientists that ever lived are actually practicing today.<sup>2</sup> On the other hand, if we are to believe the experts on demography,<sup>3</sup> over three-fourths of all the lawyers, politicians and priests are now dead.

<sup>2</sup> *Id.* at 55 Col B; Oppenheimer quoting Prof. Purcell of Harvard.

<sup>3</sup> Revelle, Can Man Domesticate Himself? 22 *Bul. of Atomic Scientists* (No. 2) p. 2 (1966).

Scientists, who by the nature of their professions are adept at solving practical problems, but are amoral in their attitude toward results, are being called upon to serve ancient ideologies to solve problems of society. When these problems are of a political or moral nature, dangerous results are occurring. Two examples will suffice.

Since before the dawn of history, war has been the chief pre-occupation of the rulers of groups of humans. In their desire to make more effective their warlike potential, heads of modern nations have called upon their scientists to build up the war machines. The scientists, motivated by patriotism and by their own nonscientific values, have responded. Thus scientific knowhow has been used to arm a system which is still fundamentally savage and controlled by emotionally directed leaders who have no basic understanding of experimental social science. The result is a horror. No rational policy maker would decide to loose an atomic war, but some have been known to be insane. There is an ever present threat of nuclear war created by mis-directed scientists which could destroy civilization and perhaps the human race itself.

Another example lies in the field of medicine. Motivated by the non-scientific moral codes which place paramount value on human life, medical scientists have solved the problems of infant mortality and of the prolongation of life. The immediate result is that world populations, especially in the backward areas, are increasing so rapidly and scientific health measures are saving peoples' lives at such a rate that the increasing populations are facing malnutrition, starvation, or worse. Eugenics and medical science also have the potential cure for this danger and the power to create a real super race through birth control and selective breeding in their various forms. Here again moral values and law interfere. Many religious sects blindly oppose birth control. Laws against it are legion. There is also a further peril—the ideal of individual freedom which is embedded in constitutions opposes compulsory birth control, selective breeding, or sterilization. The result again is serious. Voluntary birth control is practiced only by the most intelligent. The outcome is that science, guided by outdated moral ideas and laws, has reversed the natural law of survival of the fittest. Weaklings of all types, mental and physical, are being saved to reproduce themselves. The strong and the intelligent are using scientific devices to limit their offspring and the race is being swamped in a sea of the unfit.

Because of the lack of world vital statistics, the extent to which the human species is threatened with good science guided by outmoded morals cannot be accurately stated. However, some idea of the developing situation can be distilled from population figures in the United States. Because of past inequities of opportunity rather

than any inherent racial inferiority, the Negroes and the Indians in the United States represent a portion of the population most dominated by ignorance, incompetence, ill health, and unemployment, yet the figures graphically illustrate this trend to multiply the physiologically unfit and culturally deprived. "In 1960, one in ten Americans was nonwhite. Today one in nine is nonwhite. In 1972, one in eight will be nonwhite. Today one in seven American Children under fourteen is nonwhite; of infants under a year, one in six."<sup>4</sup> The Secretary of Health, Education and Welfare in a recent speech to the American Law Institute pointed out that seventeen per cent of the families in the opulent United States live below the poverty line and also produce over thirty per cent of the children.<sup>5</sup>

Figures from unwed mothers on relief in large cities, and from the backward nations throughout the world show that under the direction of outmoded moral concepts, science is flooding the world with a crop of unemployable incompetents who may not be able to continue the progress of the scientific revolution.<sup>6</sup> The shortage of competent intelligent workers and the over supply of unemployables is causing tension even in our most stable and advanced nations. In others it is already tragic.

These are not isolated examples to be found only after long research. There are many others at hand. Free enterprise in industry and agriculture is turning our rivers into running sewers with the aid of chemistry and support by law. Business, also legally justified but using engineering as an ally, is raping our natural resources, lining our highways with junk yards, polluting our air, and turning our cities into slums, and at a profit. Here again, the science which causes the damage is capable of creating the cure, if we would give up some of our ancient ideals of individual freedom and think a bit more of the public good and of scientific planning. Even in the advanced nations it is touch-and-go whether government can compete with the disorganization within the social structure caused by the impact of science upon values and ideologies.

The summer riots in the cities of the United States are beginning to demonstrate the utter failure of the legal system and even the civil rights movement, to offer plans to relieve the under-privileged of the burdens of despair, disease, ignorance, and unemployment forced upon them by a legal system which is still more interested in preserving ancient property and business "rights" than it is in taking care of the needs of a subculture. If the present trend continues for about three

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<sup>4</sup> T. White, *The Making of the President* (1964).

<sup>5</sup> Gardner, *A Nation Is Never Finished*, address, A.L.I. (1967) p. 3.

<sup>6</sup> See, *World Population Data Sheet, Population Information for 131 Countries*, Population Reference Bureau (Washington, D. C.).

more generations, this incompetent subculture will become the majority of the people in the "democratic" United States. This has already happened in Washington, D. C. and in the public schools of New York City. The near collapse of the latter is current news.

If science with what little technique it now has and guided by present morals is creating such havoc, think how necessary it is to change our morals and laws as the powers of science continue inevitably to increase.

Under the circumstances it is doubtful whether our so-called values and ideologies, as contrasted with our science, have anything constructive to offer to modern nations. The free world which does not, by its own standards, adequately care for the needs of over twenty-five per cent of the lower level of its population, or the totalitarians who have to build walls to keep their capable people at home, can hardly offer *a priori* ideologies successfully to solve the needs of their own people.

### The Realignment of the Legal System

It is evident that the present means of social control, government, law, and morals, evolved in societies which have little resemblance to modern science dominated civilizations.<sup>7</sup> Government and law have reached their present maturity based on historical accidents, religious teachings, and philosophical reasoning all of which had little relation to the facts of life in the polity from which they sprang. They bear even less relevance to the conditions in the modern world. It is a matter of chance whether or not the law is fitted to the situation to be regulated.

The facts show that in many instances the gamble has not succeeded. Our festering slums, deserted villages, dwindling farm population, underprivileged rural areas, polluted streams, smog filled atmosphere, endless delays in court, do-nothing legislative bodies, struggling educational systems, battered civil rights movements, wars to "make the world safe for democracy" or to impose it on the people of Viet Nam who don't understand it, creeping inflation which is pauperizing additional millions, impotent federal and state governments, are all danger signals showing the failure of our current legal and moral systems to offer solutions for the elementary problems of government. Law, religion, and morals are being strangled by the dead hands of another and primitive civilization. This is the natural result of applying the rules *a priori* with no study of the system to be regulated.

Law is social control, and law devised without direct reference to the facts of life of the people controlled is not likely to be successfully administered. This is especially true in the modern world where social

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<sup>7</sup> Lynd and Lynd, *Middletown*, 5-7 (1929), where the authors point out that in the life of a man still living, conditions in Middletown were nearer to the year 1 than to 1929.



conditions are being changed with kaleidoscopic rapidity, while law and government are changing slowly if at all.

If all the professions using science have so changed man's environment, why does it not make sense to give the scientific method a chance to improve law and government? The means of accomplishing this have been discussed at length elsewhere<sup>8</sup> and need not be repeated here; but the impact of these facts upon legal education need to be briefly mentioned.

### What About Legal Education?

If there is any truth in the above discussion, the impact upon legal education is calamitous.

Although law and policy making, which should be one of the chief preoccupations of the legal profession, is directed almost entirely to the future, the training of lawyers looks to the past. Legal education in the United States, as everyone knows, is based upon the case method. The cases discussed are, with rare exceptions, necessarily judicial decisions out of the recent and the distant past.

The case method was invented by Langdell in 1875 at the Harvard Law School. The theory was that the cases were the best evidence of the "law." By collecting and classifying opinions in decided cases as to the subject matter, stating their facts in class, and learning by the use of logic and rhetoric to reason from them, the law student was trained to think like a judge, and was thus prepared to argue in appellate courts.

The required subjects taught in Langdell's curriculum in this case method in the first and second year are set out in the left hand column of Table 2.

The current curriculum in the Harvard Law School in 1969, is set out in the second column. With the exception of the fact that the semester hour load has been increased by moving "Jurisdiction and Procedure" from a required course in the second year to a required course in the first year, the two curricula are, for all practical purposes, the same.<sup>9</sup> To be sure, today's L.L.B. (or, J.D.) curriculum has been increased from two to three years and now contains many elective courses and even graduate work which did not appear in Langdell's day;<sup>10</sup> but as every law teacher knows the fundamental moulding of a lawyer's mind occurs in the rigorous drill of the first year in law school. He learns to think through cases, and to develop the law by analogy and

<sup>8</sup> See Beutel, *Experimental Jurisprudence* (1957).

<sup>9</sup> There is a short course in the legal history field which is elective, and some Legal writing; but this is minor and adds no new techniques; See *Official Register*, Harvard Law School, pp. 49ff (1968).

<sup>10</sup> Cf., II Warren, *History of Harvard Law School*, 404ff (1904); and *Harvard Law School Catalogue*, *supra* note 9, pp. 47ff, 191ff (1968).

by reasoning from the particular case to the general rule. He believes that the judge-made common law is the basic law of the land. Statutes are exceptions to be narrowly construed. He relies on authority of the judges. They become the central core of the legal system about which government revolves. He believes, as do most of his teachers: that judges "legislate" and "make policy"; that statutes "have no meaning" until a court has decided a case concerning them; that the heart of the ordering of the body politic is procedure, criminal law, torts, private property, and contract rights; and that all legal problems, including even those in international law, can be solved if only they can be brought to a court. All of these are, at best, half truths or plain misstatements of modern legal problems.

TABLE 2

Comparative Curricula Harvard Law School 1876,<sup>a</sup> and 1969,<sup>b</sup>

1876 Required Subjects 1st Year	Semester Hours	1969 Required Subjects 1st Year	Semester Hours
Real Property	4	Property	6
Contracts	6	Contracts	6
Torts	6	Torts	5
Criminal Law & Criminal Procedure	2	Criminal Law Procedure	4 6
<b>2nd Year</b>			
Jurisdiction & Procedure	6		
Evidence	4	(Evidence is still a second and third year subject) <sup>c</sup>	

a. II Warren, *History of Harvard Law School* 405 (1908)

b. Official Register of Harvard University, *The Law School*, 47ff 191ff (1968)

c. *Id.* at 59 & 76.

In the advanced courses he may add many details to his knowledge of law and his skills in dealing with the administration of cases. He may even absorb the basic notion of "due process of law" which to him is a sort of glorified judicial-like procedure. In short he is well trained to practice law in the courts of 1876.

As the Harvard Law School goes, so goes the whole of the legal teaching profession. Ninety percent of the law school faculty arguments over curriculum can be settled by the authoritative statement, "Harvard does it this way." There is little or no scientific experimentation. Empirical research in the legal community is just starting. Unlike Medical education where the hospital and the research laboratories are the heart of the process, the law schools still rely on ancient dogma and a process of brain washing which attempts to make the student "think

like a lawyer." The teaching of Jurisprudence is still philosophical and religiously oriented. One can count upon the fingers of his two hands the courses where scientific method is even mentioned and have fingers to spare.

Unfortunately, the year 1876, which began the flowering of the case method, immediately preceded a complete change in the operation of society. The intervening years have seen more change in the nature of society than in the whole previous history of the race, but there has been no important variation in the legal curriculum. The industrial and scientific revolution, then just starting, forced a complete rebuilding of the body politic and the legal system. The growth of industry and transportation, the expansion of the country, the rise of the great cities, and the proliferation of gadgets, completely changed the demands upon the methods of legal control. The "fundamental courses"—Contracts, Torts, Procedure and Criminal Law—bear little relation to the law and its usages in regulating the modern science dominated polity. All are in a state of collapse as a means of social control. The constitutions, the statutes, the Commercial Code, the other Uniform Laws, the United States Code, and the Code of Federal Regulations, together with their counterparts administered by an increasing array of federal, state, and local administrative bodies, have developed into the basic facts and rules regulating society.

The common law courts may have a great past but they are not qualified to govern the wave of the future. The ninety years during which time Langdell's curriculum developed and spread to all the law schools saw the notorious inability of the judiciary to control, among others, interstate transportation, public utilities, labor disputes, public health, monopoly, agriculture, housing, and air and water pollution. The recent dismal failure of judicial administration in the fields of civil rights, integrated education, and automobile accidents are just further steps along this road. Everywhere courts are being replaced by administrative bodies with delegated powers to legislate and direct the public safety and welfare. These are bodies whose administration and procedure bear little relation to courts.

It is time that the law schools wake up and get acquainted with the empirical facts of the modern world and develop courses to initiate their students in directing a system of social control for our modern economic and social giants.

### **The Demise of Court-Trained Lawyers**

The method of determining the law by the use of cases as taught in the American Law Schools is not used in the rest of the world where statutes are the basis of the law. This is now also the condition of the law in the United States. Interpretation of statutes however is not the

only problem. The case method lawyer takes past decisions of courts and generalizes them into a system. From this he reasons to the result in other cases or to rules of law to regulate society. The absence of scientific experimentation in his system is obvious. It does not take into account the real empirical facts of the social system or the needs of the people. Whether or not the law as thus developed is relevant to the problems of social control which law is supposed to solve is obviously fortuitous.

Today the court-trained lawyer is disappearing from the administration of justice, the government, and the halls of the legislature. He is being replaced by the business executive, the economist, the engineer, the scientist, the city planner, the architect, the army officer, the doctor, and the empirically trained social worker. All of these have education based in experimental science, not rhetoric and authority. The typical result is that while that part of our government controlled by teams of engineers and scientists is orbiting the moon, the branch under the guidance of politicians and lawyers is quarrelling over the shape of a conference table.

The case lawyers' last bastion, the courts in our big cities, are failing to keep up with the limited subject matter remaining to their dockets and are in immediate danger of collapse,<sup>11</sup> a failure, if we are to believe empirical research, which is largely abetted by the habits of the law school trained bar! Already there is pressure for more administrative bodies, even automation<sup>12</sup> which will further replace the courts, and in which lawyers, as now trained, will not even be able to program the computer.

With the bar associations fighting a desperate rear guard action, and with built-in legal busy work like title and patent searching, the present type lawyer may continue to hold his place in society for a few generations more, but unless the law schools radically change direction and begin to take into account in their teaching, the methods and results of experimental science, he will find himself outside the current of "government by law."

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<sup>11</sup> See Chief Justice Warren Address to the American Law Institute (1968).

<sup>12</sup> See Hallován, *Judicial Data Centers*, 52 *Judicature* 157 (1968).