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The Function of Law in Society

HOW LAWS FIRST EVOLVED

How many times have you heard someone use the expression “That’s illegal”, “I know my rights”, or “The law is . . .”. These and similar expressions are a part of our language, and they express not only the momentary feeling of the speaker, but a strong indication of the order that is sought through the rule of law rather than the rule of men.

The legal system used by our society has not been an area of separate development, although most people feel that they do not really know what the law is. Over the centuries some rules of law have become normal conduct guides. Although our conduct seems to result from common sense, we are actually following the law. On the other hand, society has been forced at times to confront new and unique problems. After a time the solutions to such problems became part of our laws.

In our system laws are passed by a legislative body. Congress and town meetings are examples of such bodies. Other laws are made by courts. There are limits placed on the ability of legislatures and courts to make law.

The most powerful limitation is the will of the people. A law that nearly all citizens are not willing to obey may be no law at all. Try as hard as it might, a government cannot enforce a law that most people don’t want. If the government tries to enforce unpopular laws, it may be voted out of office.

An excellent example of an unenforceable law is the 18th Amendment to the Constitution. It was designed to keep people from drinking alcoholic beverages. It failed, and was repealed some years later. What were the reasons for its failure? Why was the Federal government unable to keep the people from drinking whiskey and beer? The answer is that

the great majority of people refused to obey the law. They were willing to violate the law because they wanted to be able to drink. Even though the Federal and state police made great efforts to cut off the supply of alcohol and to close speakeasies, they could not. There was a demand for alcohol, and people were willing to take the risk of being caught breaking the unpopular law. Another solution to enforcing the law might have been to rigidly impose severe penalties on persons who consumed alcohol, but this was not feasible, since it would have resulted in the jailing of a large percentage of the population. Franklin D. Roosevelt in his first campaign for the presidency proposed repeal of the 18th Amendment. FDR's stand on Prohibition, an unpopular law, was an important factor in winning the election.

BIOLOGICAL AND SOCIAL REASONS

The law is composed of rules of conduct established by people to maintain peace and productivity in society. Did the law prohibiting alcohol accomplish this purpose? Why did mankind become a social animal in the first place? Were laws created naturally? Why didn't people choose to live alone? Why do we have laws anyway?

Many anthropologists attribute mankind's social nature to six factors: (1) The physiological capacity to enjoy sexual satisfaction year round instead of seasonally was conducive to various combinations of male and female pairing. (2) Because sex was a strong instinct which could be enjoyed all the time, males and females were together all the time. (3) Of course, this led to childbirth, and in order to preserve the species helpless young had to be educated and fed. (4) The need to nurture the young led to permanent family structures. (5) As families grew, small societies were formed. (6) People also developed territorial defense instincts. Since an individual was vulnerable, the defense of territory was best carried out by group attack against invaders. Protection from predators was also more efficient when carried out by a group. Through a social structure, mankind could get the greatest return from his superior brain by organizing different people to do different tasks. Most importantly, the strong natural instinct for dominance over others led to the establishment of a rigid hierarchical social structure, which supplied the welding forces of strong leadership and lack of social friction.

DOMINANCE

There is order and law in all the animal world. Without some naturally occurring order, the society of any single species would be in utter chaos. The weak would be killed by the strong, and the species would become extinct. Consistent with the idea that any society must have some order are the experiments by naturalists, anthropologists, and psychologists which have shown that every social species studied, be it a flock of geese, a herd of cattle, or a school of fish, has a system of hierarchical dominance.

This hierarchical order is founded on fear. The status of each individual is determined very early in life and is called by some the "pecking order" because it was first noticed in experiments in chicken coops. Oddly enough, adherence to the order is permanent and becomes satisfactory to all parties in time. Fear of pain, at first, usually keeps each individual in his established place. Each individual obeys this very natural law. Thus, the first law of order within a society is born—a law of dominance.

There are many examples of the law of dominance in human society. If dominance is a vestigial instinct among humans, it would help to explain the relationship between the Pygmy and the African, in which the Pygmy's lack of agricultural skills is exploited by the African in order to take advantage of the Pygmy's superior knowledge of hunting and the forest.

Perhaps mankind, being rational, not only followed dominance laws instinctively but consciously realized that through social order life was easier. Once status was set within a human society, fighting among individuals stopped and working together began. The strong leaders were looked to for decisions and by cooperating with these decisions the small society gained social benefits. Living together life was much easier than trying individually to outwit both the elements and dangerous animals.

Perhaps democracy is a form of the law of dominance. The will of the majority is imposed on the minority. It is not done by force, but compliance with the rule is demanded. There are also means of changing the rule that do not seem to exist in other societies.

CUSTOM AS A METHOD OF SURVIVAL

As problem situations arose in the society the leading individuals were looked to for answers and decisions. Scientists believe that the decisions that the leaders made about everyday situations became what

we call customs. Customs are social practices or habits which recur in certain situations. Of course, customs vary from area to area and within different ethnic groups. Can you think of any customs we have in the United States? How is a custom different from a law?

Customs were a product of the ability to think. However, the decisions which became customs were not always wise or fair. They were often based on superstitious religious beliefs or taboos. Even today many societal customs are religious in nature.

When members of a society did not like a custom they were forced to follow it for fear of being punished. In time the custom became deeply embedded in the everyday life of the society. The custom became very specific and definite and very important to the majority of society. However, the custom was not yet a law unless there was a system of social enforcement to punish the violator and a specific punishment was attached to the violation. A custom only becomes a law when the leaders of a society decide that violation of the custom will be punished. When failure to follow a custom of a society became a punishable act, the custom became a law of that society. We will see shortly that customs also play an important role in the creation of modern law. In contemporary society a custom only becomes a law when the court or legislature (leaders of society in charge of social order) declares that any future violations will lead to a certain type of punishment.

Today the court or legislature will usually declare a custom law when these factors are present: (1) when the custom is universally accepted; (2) when it is not in conflict with any fundamental principles of other laws; (3) when it is certain, not vague; and (4) when it is reasonable. Therefore, in modern times as in the very beginning development of Roman societies, customs have contributed to the creation of laws.

CUSTOM AND RELIGION AS ENFORCEMENT OF RULES

While we are still talking about how our first laws evolved in societies, we must stress the importance of religion. Remember that many customs came about through decisions based on religious beliefs. Mankind's scientific knowledge was limited. Often the things people ate, touched, or looked at were harmful. In time, mankind became fearful of the unknown. They believed that strange spirits lingered everywhere and that they controlled the world. Customs grew out of these religious beliefs and fears. For example, wandering into an unknown land became

a religious taboo because of fear of the gods who lived there. In time this religious taboo became a societal custom, which eventually evolved into a law, and those who wandered into that territory were subject to banishment.

CONCEPT OF PROPERTY

With increasing population, economic relationships began to develop which greatly affected the creation of our early law and court systems. Economics deals with the production, distribution, and consumption of wealth, whether it be food, personal property, land, or money. Any possession a person had was worth something, and gradually laws were made that dealt with possessions. For example, if a prehistoric person made a beautiful club, what would happen to it when the owner died? Would it be inherited by the family or the chief? Early people wanted laws that would deal with these economic problems.

Social scientists believe that early people could tell the difference between a payment which created a debt and one that was the result of generosity, and that the ability to distinguish these two ways of transferring possessions gave rise to all types of economic laws. Transactions between individuals became very complex and society realized the need for some type of social body to apply laws in order to settle disputes, to create laws to handle new situations, and to enforce laws. It was many years, however, before any type of civil court existed. Many anthropologists and economists believe that a more advanced economy requires a more complex legal and court system. Economics has given rise to laws concerning contracts, real property, business transactions, corporations, inheritance, and almost everything else imaginable. Whenever we look at any law it is important to consider its economic effect because economics is one of the most powerful forces in our society.

A VIEW OF A CHANGING LAW

One day after school Janice is driving a friend home. At an unmarked intersection, Janice's vision is partially blocked by a parked truck. She slows down and proceeds into the intersection. At the same time, a delivery truck is approaching from the right. The truck driver's vision is also blocked; he slows down and enters the intersection. The vehicles collide. Janice's friend, Tom, has not fastened his seat belt and shoulder harness, and the impact hurls him against the windshield. After the accident he feels groggy. He is advised to see a doctor. The doctor informs him that he has a concussion.

While the automobile has become more useful to the individual and society, it has also produced serious social and economic consequences in the United States. Someone dies in an automobile accident every ten minutes—each year accidents claim 10,000,000 victims, of whom 100,000 are fatalities. A study by the Liberty Mutual Insurance Company shows that in over 90% of all accidents someone is at fault and such fault can easily be discovered by accident investigation, or by questioning witnesses. In other words, collisions are almost always caused by the careless driving of one or more drivers. Besides the human toll, the total economic cost of accidents exceeds \$15,000,000,000 annually, a terrible economic waste.

THE PRESENT TORT LIABILITY SYSTEM

In our present system of auto accident compensation, the person who was at fault must pay the innocent victim for his medical expenses, any permanent injuries, inconvenience, lost earnings, auto damages, and even his pain and suffering. Can you determine who is at fault in the example?

Uninsured motorists are liable for accidents they have caused. The wise driver, however, purchases automobile liability insurance so that if carelessness causes an accident, an insurance company will pay for the damage caused. Many accidents are very serious and cause loss of sight, limbs, and life. What would it be worth to you if you lost your eyesight through the careless driving of another? How would you feel if you caused this type of injury to someone through your carelessness? How would you feel if you had to pay for the other person's permanent injuries?

If you are injured in an accident as Tom was in the example, and truly believe that the other person was at fault, you may have to take that person to court and prove negligent driving before you can collect a dime. You will need a lawyer in order to sue the other person. If you prove that the other person was at fault, that person's insurance company will pay you for your losses. Your attorney will usually take as payment an average of 36% of the proceeds that you recover. However, if you go to court and the other careless driver proves that you were also careless, even slightly, in some states you will not be compensated for any losses you suffered. To make matters worse, if you unfortunately are at fault in an accident, you cannot get any money for your own injuries unless you have special insurance.

NO FAULT SYSTEMS

No Fault insurance will do away with fault as a basis for determining who must pay for the damages. Under this new plan every driver will be required to have insurance before registering a car. Also, if you are injured in an accident, the losses for which you can recover are limited. If you have an accident you save all of your medical bills and compute the wages you have lost if you have been unable to work. You submit the total amount of money lost to your own insurance company, and they pay you. You do not sue the other party. Fault is not the basis for compensation. Loss is now the basis of compensation, and you do not need a trial to determine loss. However, all no fault plans have a max-

imum money recovery limit so that if your medical bills and lost wages exceed this limit you must pay them yourself. Usually the maximum amount is \$10,000 for injuries, and no more than \$750 for work loss in any one month. You do not get any money for damage to your car and must pay repair costs yourself. However, if you do wish to have special insurance for your own pain and suffering and car damage you can purchase it at extra cost. Does this mean that the law is more concerned about personal injury than injury to property?

No Fault insurance differs from our present fault system. Since there is no trial, you are spared court costs and attorney fees. You are paid immediately by your own insurance companies and do not have to wait until the end of a trial to receive your money. If you are at fault, you still get paid. However, you get no money for your pain and suffering and only a maximum amount, usually \$10,000 at most, for injuries under No Fault. In the present system you do get money for your pain and suffering, car damage, and permanent injuries. You may receive any amount you can convince a jury your misfortune is worth, and people have recovered very large amounts of money.

Everyone must have insurance before they can drive under No Fault. Under the present system, although you are not required to have insurance, you run the risk of having an accident with an uninsured motorist who cannot afford to pay for your damage even if he is clearly at fault.

We have just discussed the major differences between No Fault and the present fault system. What system do you like best? What reasons do you have? As a potential victim of an auto accident, which would you prefer—an uncertain chance to get adequate money for your injuries including pain and suffering, or a more certain chance to get less money up to a maximum limit?

Before we can decide whether No Fault insurance is better than the present system, we must consider the social and personal factors that will be affected by the new plan. Why do you think No Fault is good or bad? How will No Fault affect society? These are questions which need to be answered.

ECONOMIC FACTORS

Have you ever tried to purchase automobile liability insurance? Can you afford it? Basic liability coverage for people under 25 is approximately \$300 annually. If you have any speeding tickets, accidents, or if you

drive a powerful car, the insurance rates are between \$400 and \$500 per year. If your driving record is very bad, you will be considered too much of a risk, and will be denied insurance coverage. You will then be forced to drive without insurance. The cost of insurance is an economic factor which must be considered before we decide which system is better.

Insurance rates are high because an innocent victim can sue for an unlimited amount of money. Court costs, attorney fees, investigation expense, and administrative costs, all of which insurance companies must pay in order to defend claims, also contribute to the high insurance rates. Since the innocent victim can sue for pain and suffering, car damages, and injuries not limited to a maximum amount, insurance companies must often pay out large amounts of money. Money recovered for pain and suffering can be very high in proportion to the actual medical bills. For example, in a case involving torn elbow ligaments, doctor bills were \$700, but the woman recovered \$6,000 for all her pain and suffering. Under No Fault, the woman would not get anything for her suffering. Therefore, insurance companies would be paying claimants less money.

Another economic factor to consider when comparing No Fault to the present system is the amount you must pay an attorney. Even though an innocent victim has a better chance of getting a large amount of money if an attorney is hired to present his case, the attorney takes a substantial fee. If you sue for \$30,000 and win, your attorney often will take one-third or more of that amount. Also, you are gambling when you sue under the present system because there is always the chance that the other party can prove you were also at fault. In No Fault there are no attorney fees because no lawsuit is needed. However, you cannot recover more than \$10,000 for your injuries.

It is said that No Fault will lower the insurance rates by eliminating court costs, attorney fees, and payment for pain and suffering or car damage. Since the insurance companies will not have to pay out as much money, they can pass this economic benefit on to their customers by charging lower rates. Do you think this will be the result?

Another economic factor to consider is that under No Fault, both parties are compensated immediately for their injuries. There is no delay due to waiting for fault to be determined. Indeed, in large cities courts are so congested with auto accident cases that an innocent victim must often wait three years before a case is resolved. Under No Fault, the parties involved in an auto accident are paid immediately. Delays in large city courts are so bad that, rather than suing, the innocent victim is often

forced to settle out of court with the negligent party's insurance company. The victim must trade the possibility of a higher award from a jury for the advantage of receiving money more quickly. Is this fair? Many drivers are uninsured. If the innocent victim sues an uninsured impoverished driver the victim ends up with nothing. Under No Fault the victim is always insured by an insurance company and paid by it.

Many people have noted an economic drawback of No Fault. Under No Fault all people involved in accidents would be paid—those who were at fault as well as those who were not. The increase in the number of claims made to insurance companies could result in large amounts being paid out. Administrative expenses to handle the increasing number of claims might soar and money might not be saved in the end. Does this argument sound reasonable?

MORAL FACTORS

Along with the economic factors you should consider the moral aspects before deciding between No Fault and the present system. The system now in use is based upon the principle that he who is at fault should pay for the consequences of his actions. If you drive carelessly you should pay for the innocent victims' injuries, since you caused them. It has been said that with fault as the basis of our present system, drivers are deterred from careless driving because it is more difficult and more expensive for a driver with a bad record to get insurance. If a driver chooses to drive without insurance the principle of fault may result in more careful driving since an accident might be financially disastrous.

People who believe that fault principles lead to accident deterrence say that under No Fault drivers will not behave as carefully on the road since they know they will not have to go through an embarrassing suit or be held personally liable for any injuries. Also, since No Fault insurance would be required for all drivers, the cost of paying for accidents would be distributed equally among the entire population of drivers instead of increasing the rates of the driver who has had several accidents. Safe drivers would be paying for the careless drivers in the form of higher premiums. Is that fair?

The people who favor No Fault say that the principle of fault doesn't deter people from careless driving. A person who has liability insurance does not pay for his motoring misdeeds; the insurance company does. For example, in a recent lawsuit an injured innocent victim who was riding in the defendant's car was asked about the accident. He said

that he protested the defendant's reckless driving, and the defendant replied, "Don't worry, I carry insurance". A moment later the crash occurred.

SOCIAL FACTORS

Since 5% of the American population can be expected to be involved in an automobile accident at some time in their lives, automobiles have become a social problem. Those who are injured face serious emotional and physical disabilities. The problem becomes one of fair distribution of the cost of accidents. On one hand it is unfair to allow the unfortunate victim alone to carry the burden of his loss. Often it is impossible to collect any money since careless drivers may be poor and without insurance. Who is to pay? Is it socially desirable to have a system where a few will be left destitute because they were slightly at fault themselves or were unfortunately injured by an uninsured driver? Is it not socially better to have a system where everyone will be compensated but with a lesser amount of money? We have already mentioned that in the present system rates are increased for all drivers to cover the cost of accidents. At what point would high rates force poorer people to drive without insurance? Do you think that a family can get along without a car in our society? How would you like to be without a car? Would your answers change if a No Fault system is adopted?

POLITICAL FACTORS

As you know, under the present fault system attorneys play a large role in recovering adequate compensation for innocent victims. There is a direct relationship between recovering high awards from the careless driver's insurance company and hiring an attorney to obtain that money. Of course, the attorney will take a percentage of the amount recovered, usually 36%. In 1971, \$213,000,000 was paid by insurance companies to claimants in cases handled by attorneys. This means that attorneys throughout the United States received about \$77,000,000 from these automobile accident cases. Many state legislators are lawyers. The legislators have the power to enact No Fault insurance, which would almost entirely eliminate attorney fees. If you were an attorney would you want No Fault insurance? If you were poor and could not afford an attorney would you want No Fault?

CREATING LAW FROM NEW IDEAS

Our society is very complex and always changing. Moral values are also constantly changing, as can be seen by our attitudes on sex, abortion, and the death penalty. Several states have recently enacted liberal abortion laws, abandoning the view that abortion was murder under the law. This is just one example of how the law may adapt to meet the changing moral attitudes of our society. What would life be like if laws remained the same but people changed their attitudes? It is the law's duty to maintain social order. If society begins to change the law must change too, or a social revolution would ultimately occur.

Of course, any social disorder or need must reach a certain stage before our courts or legislatures will take heed of it. A need doesn't become a social problem until a large number of people share it.

Social progress, whether it be in science, economics, religion, or politics, demands that the law keep up with and regulate it. For example, when atomic energy was discovered the United States Congress had to enact laws that set up standards for protection against radiation. Following the industrial revolution, the United States Congress had to create laws that prohibited monopolies and child labor. As the public began to accept contraceptives as an effective and safe way to prevent conception, laws that prohibited obtaining information on contraceptives had to be changed. In short, laws are created or changed as social needs arise and change. Lawmakers don't want to change existing laws if the majority of people are still happy with them!

CLASSIFICATION AND IDENTIFICATION OF PROBLEMS

We have seen that laws are created in response to social change. How is this accomplished? Basically, legislatures and in some cases courts will first examine in depth a new social phenomenon and classify it. They will determine the scope of the new event and declare what is and what is not acceptable behavior.

The increasing tendency of the American people to purchase goods on credit has led to a new social problem. Credit bureaus have begun extensive investigations into the private affairs of individuals to determine credit risks. The United States Supreme Court has declared that every person has a right to be free from unreasonable invasions of privacy.

The first thing the Court had to do was to classify what acts were unreasonable invasions of privacy. Certain credit reporting practices were found to be unreasonable. The court then declared that anyone who invaded another's privacy in this manner could be sued in court, and the innocent victim could recover for any damage caused by the invader. In this way it was hoped that people would be deterred from these acts. Invasion of Privacy is a social phenomenon that we will study in our sections on Torts. Do you think privacy is necessary? What factors are involved here? Do you think that in certain situations the government's interest in maintaining national security should outweigh the individual's right to privacy?

Suppose that you build dams for a living. You must travel all around the country looking for places where you can build a dam and solve irrigation problems. One day a farmer stops you and asks you to build a dam across a stream running through his property, and you agree. You then measure the width of the stream, its depth, and the rate at which the current flows. You also analyze the soil and rock structure of the river bed to see whether it is muddy or solid. As you build you make many mistakes along the way, which you correct as you proceed. Above all, you keep an accurate record of all the mistakes and corrections and a detailed copy of the plans for the dam. When you finally finish, the dam is strong and the farmer is happy.

Later you come to another farm where the farmer has almost the same type of stream running through his property as had the previous farmer. The problem is the same, and you remember that you made a plan of the first dam. You use the same plan, thus saving time. You apply the same solution to the present problem, and build another strong dam.

This is how the principle of *Stare Decisis* works with problems encountered in the law. A court with a new problem before it spends a great deal of time classifying the problem—just as the dam builder first classified the type of stream—analyzing all the social and personal factors involved, in order to reach a fair solution. If the same situation arises again, this or any other court will be able to search through cases already resolved and find the earlier court's solution. Instead of having to resolve the problem again they will rely on the previous solution. What will happen if a majority of the citizens decide they no longer approve of the court's reasoning? New factors must be considered. If society has changed the court must update its decisions. Thus an attorney can argue successfully that it is time for the court to change the law. Courts are not bound by old decisions. If a court feels an attorney has made valid arguments, it may change the law. If courts were bound by previous decisions, the law would never change to meet the needs and demands of a changing society. Thus, we are back where we began. The law can change to meet the demands of a changing society.

Laws may be written because of new ideas on how to improve social order. The lawmakers we elect go to the legislature to study current problems and to determine how our present system might be improved by new laws. They ask, "How will a new idea affect religion, the economy, the government, and various other factors?" Our legislators analyze the advantages and disadvantages of legislative proposals. When legislators create laws which result from original ideas they concern themselves with how the new law will affect the major areas of society and the individual in the areas of government, morals, and economics. This is how much of our United States Constitution came into being years ago. The framers of the Constitution had to determine the best form of government, and then write provisions which expressed their intent. When we study Constitutional Law we will see this more clearly.

Often it is impossible to foresee the effects a new law will have. Our experience with patent and copyright laws demonstrates this. A patent right is given to an inventor who has come up with a novel invention. It prohibits others from copying the invention unless they pay the inventor for doing so. The inventor has exclusive property rights in his device, so that he alone can profit from it. The original lawmakers who developed the patent laws reasoned that in this way science and the arts would progress at a faster rate, since scientists and artists would be making money from their ideas. After the patent laws were put into effect technological innovations fostered great economic wealth. The discovery

of nylon, for example, led to a revolution in the American clothing industry. New jobs were created, clothes became cheaper, and the standard of living went up. Without patent laws nylon might never have been discovered. Thanks to the economic incentive those laws provided, life moved a step forward.

Some laws are enacted to protect various social and personal interests in our society. We must ask how these interests are affected each time we analyze a law. The laws punishing crimes to ensure peace in society are a good example of how laws can protect a special interest. If everyone were allowed to choose what law would govern his conduct, society would be a fearsome place. No individual could pursue his own interest without fear of being victimized, because no one would know what rules other members of society were following. With laws that define what conduct will be punished, we can follow our own interests as long as we obey the rules.

GOVERNMENTAL VALUES

Perhaps the major social interest that the law is designed to protect is the Government. Social order can't be achieved without some system of government, which distributes power in such a way as to direct the affairs of our nation and its states. At the same time, this governmental system must win the support of the public. The people must consent to the way the government operates. They should not be ruled by force. There are many different styles of government based on differing beliefs of how to achieve the best form of human existence. In the United States our system of Federal government was determined in 1789 with the acceptance of the Constitution by the American people.

While considering the worth of any law we must determine if one of its purposes is to carry out some governmental interest. We have already discussed one such interest—the invasion of privacy. The government has strong interest in preserving the national security, and under certain circumstances this may require governmental invasion of the privacy of certain individuals. This interest of government must be balanced with the rights and freedoms granted to individuals by the Constitution.

ECONOMIC VALUES

Economic forces and the creation of laws go hand in hand. Indeed, looking over the history of our country, we can see that the economic ideas held by the controlling class were directly reflected in the laws that were enacted. Before the Civil War, when the slave owners held power, we had laws regulating slavery. During the Industrial Revolution, when industrialists were powerful, we had laws favoring corporate interests at the expense of decent working conditions. Thus, children were made to work long hours in factories. As working people gained power anti-trust laws and unions developed. Due to the influence of this new power, monopolies were prohibited and decent working conditions were required.

Today, we see a struggle between those who value the protection of wealth and those who are willing to sacrifice the protection of property in order to insure an even distribution of wealth. Thus government must decide whether to further regulate private business, or to follow our traditional concepts of free enterprise.

An example of how governments represent economically weaker classes is the federal and state regulation of hours, wages, conditions of labor, retirement benefits, insurance policies, and annual vacations for workers who previously were not in a strong bargaining position with big business. We also have laws that provide compensation for workers injured on the job, Workmen's Compensation, which provides an injured worker with money to pay hospital and living expenses while unable to work, if such expenses were incurred as a result of a job-related injury. This law came into effect because of an economic factor: the inability of the workers to provide for their families if they were injured.

RELIGIOUS VALUES

Have you ever heard the saying, "An eye for an eye, a tooth for a tooth"? This saying has its roots in the Bible. Has this attitude been responsible for any of our criminal laws? How do you feel about the death penalty?

Religious freedom is a right guaranteed by the First Amendment to the Constitution. Whenever you consider a law, ask yourself whether it interferes with freedom of religion.

In California, the fight over the enactment of a therapeutic abortion act is an example of how religion becomes involved in our lawmaking procedure. Catholic doctrine does not allow abortions. Catholic leaders

believed that enactment of this law would undermine their religious doctrine. Accordingly, they fought against passage of this law. Certain California legislators believed that the value of any religious or moral doctrine depends on the willing participation of those who practice the religion. They felt that law should not be used as a weapon to force people to comply with religious beliefs. The law was enacted. If a majority of the California legislators were devout Catholics, would the law have passed?

MORAL VALUES

Morality must be considered as a force affecting our legal system. Morality deals with the degree of rightness or wrongness of an act. The morality of an act differs not only from community to community but from person to person. To further complicate the analysis, standards of morality change drastically over time.

The law should try to take into account the consensus of the people concerning a moral issue. But many lawmakers don't like to deal with questions of morality. Moral rules change so quickly and legislators work so slowly that by the time lawmakers react to a moral standard it may already have changed. Consider the death penalty. Capital punishment was the penalty for murder for hundreds of years until, in 1970, the California Supreme Court decided there had been a change in the moral attitude of Californians, and declared it to be "cruel and unusual punishment". The court felt that it is immoral to disrespect the most important human value—life. Two years later public opinion reversed itself. Californians voted to reinstate the death penalty on November 7, 1972.

Lawmakers consider three classifications of moral conduct. First, the law recognizes that the conduct or "moral rule" may be so vital to community peace that to break it would be a criminal act. Acts of this nature not only disturb the average person's sense of decency, but actually cause harm to others.

Second, the law may not make the act criminal, but may try to discourage it. This is how our Tort Law developed. Tort laws allow a person the hope of compensation for personal injuries or property damage he was suffered as a result of the wrongful acts of another. An innocent victim may take the person who was at fault to court and make him pay for the damage he caused.

Third, the act may be something the court or legislature currently chooses not to consider. These acts usually involve things which are

offensive to the feelings or sensibilities of people. For example, if a radio station builds an ugly radio tower overlooking your city the court will not have it torn down just because everyone thinks it's ugly. However, the legislature and courts are becoming increasingly concerned with environmental issues, and laws are being enacted to protect people's feelings about the preservation and enjoyment of land. Pollution laws stem from this concern.

INDIVIDUAL VALUES

We have been stressing the importance of social factors while analyzing the creation and effect of law. You might ask whether each person is merely an instrument of society. Are we, as individuals, to be used, directed, educated, shaped to a certain pattern by society because of governmental, economic, religious, and moral factors? Or does society exist for the individual? Does the law consider us as individuals or as part of the machinery of society?

The law should always take into account these very important personal interests: physical protection; liberty of thought; liberty of association; protection of name and privacy; protection of mind and feelings; reputation; marriage; the right to bear children; ownership of property; the right to rely on the representations or promises of others; the right to work and be paid; political rights; and the right to pursue economic interests. Many laws have been created to insure these rights, and it is always important to determine whether the creation of any new law may interfere directly or indirectly with the existing laws. On the other hand, an individual must be willing to balance his individual interests against those of another and to concede some freedom in exchange for the protection and order of the society.

We may now ask: If the law takes into account both social and individual interests, and is a wonderful tool to achieve social order, why are we continually plagued with war, overpopulation, starvation, poverty, disease, rising crime rates, economic disasters, and human greed? Unfortunately, the law is not a magic wand. Remember that law responds slowly to social demands because its force comes from the willingness of the people to conform to its guidelines.