

The Philosophy of Elijah Jordan

by

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PREFACE

As he prepared the publication of his 1951 book, *Classic American Philosophers*, Max H. Fisch approached Thomas M. Haynes, a former student of his and of Elijah Jordan's, about preparing a chapter on Jordan's philosophy for the book. It was to be an additional, seventh chapter of a book that otherwise included introductory essays and selections on Peirce, James, Royce, Santayana, Dewey and Whitehead. Fisch himself was a student of Jordan's at Butler and wrote of Jordan's *Forms of Individuality* and *Theory of Legislation* that they "will stand as a major contribution to social philosophy, in some respects the greatest so far in America." (*Metaphysics*, p.xi)

Why Fisch ultimately decided to leave Jordan out is difficult to say. There are hints in the correspondence between Fisch and some of the reviewers of Haynes' draft. Some suggested that Jordan's work was too recent to be included. Others suggested that it was more difficult to sum up in an introductory essay and brief selections from his writings. One admitted to not having read *Forms of Individuality*, but was against including Jordan along with what he called the "canonical six." He did, however, write that Jordan had been "unduly neglected" and hoped that Haynes' work would be published separately. Others, notably Robert D. Mack and Forrest O. Wiggins were enthusiastic in their support for Jordan's inclusion, suggesting possible additional passages, including from Jordan's ethical treatise, *The Good Life*, then in galley proofs at the University of Chicago Press. In the end, Jordan was left out.

Alas, Jordan is largely unknown today. Why did Jordan disappear, not just from Fisch's book but from philosophy generally? Many see the neglect of Jordan as mainly a function of the difficulty of his writing. Indeed, Jordan is no easy read.¹ But as Andrew Reck² has pointed out, neither were Kant or Hegel. Haynes writes in his Introduction of Jordan's "relation of uncompromising opposition" to the main currents in theory and practice in the modern era, none more so than individualism and subjectivism in its various forms. Reck suggests that neglect of Jordan is best explained by this "uncompromising opposition" to mainstream philosophy, or, as he puts it, "the

1. After sending a manuscript (probably *The Good Life*) to his good friend Ahrens, Jordan responded to Ahrens' comments. "I was especially glad to have your comments..., and to know that they are not unintelligible to anyone who is accustomed to doing rigorous thinking and will consent to put in a little of the effort it cost me to work them out." (Jordan, 1948)

2. Reck, A. J. (1960-1961). E. Jordan: Critic and Metaphysician of Modern Civilization. *Vanderbilt Law Review*, 14(263), 263-289.

discordance between his philosophical outlook and the dominant modes of philosophy and social thought.”³

It is with the conviction that Jordan’s unique philosophical contribution has much insight to offer our crisis plagued world that we present Haynes’ fine introduction to the work of this great American philosopher. We gratefully acknowledge Thomas Haynes’ sons, Jonathan Haynes and Christopher Haynes, and daughter Carolyn Haynes, for their encouragement and for permitting us to make this work publicly available after nearly three quarters of a century. We trust that it will serve as a useful introduction to Elijah Jordan’s work. We also thank the University of Illinois archives for providing this and related documents from the Max H. Fisch Papers.

It should be noted that Haynes offered this as a draft, fully intending to revise it prior to publication. Only minor editing has been done to the introductory essay. Anyone wishing to see the original may contact the University of Illinois Archives.

About the author

Thomas M. Haynes (1918-2006)

Thomas M. Haynes graduated from Butler University where he was a student of Elijah Jordan. He received his Ph.D. in Philosophy at the University of Illinois where he was a student of Max Fisch. In 1949, he completed his doctoral dissertation, *Institutional Theories of Law: Hauriou and Jordan*. He was a Professor of Philosophy at Lehigh University from 1945 to 1983.

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3. Reck, A. J. (1964). *Recent American philosophy; studies of ten representative thinkers*. New York,: Pantheon Books.

The Philosophy of E. Jordan

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An introduction to the philosophy of Elijah Jordan, especially as it bears upon social issues, may be achieved if we can see his relation – a relation of uncompromising opposition – to the three predominant and apparently conflicting tendencies in theory and practice which have arisen in answer to the strain and confusion which is the outstanding characteristic of our day. One of these is the reassertion of faith in the individual, and a corresponding attempt in many quarters to preserve or reinstate whenever possible in the organization of society those principles consistent with what has been called individualism. This position, perhaps more pronounced in America than in most countries, shows a remarkable capacity to survive as an ideal even where it has admittedly disappeared in practice. Most American philosophy and much of our practical activity, even in its reforming moods, does not contemplate any serious departure from the premises of individualism. Thus the inclination to oppose the expansion of governmental activities.

A second obvious trend, and one which is more a fact than an ideal in America, is the submergence of the individual in all sorts of absolutisms. The more painful forms of this development are found in the totalitarianism of many foreign states; but it has its counterpart in American life in increasing militarism, in the character of certain governmental agencies, and in the persistent tendency toward monopoly in industrial and commercial organization. This absolutistic phase of modern life is usually, even if falsely, taken not as an outcome of but as an opposition to the individualistic principle.

Especially in America, a fervor for applied science is combined with the pragmatic attitude, a proudly borne native development, to create the philosophic basis for a third typical modern response, the disposition to take up society's problems one at a time and solve them through the use of the social sciences.

To Professor Jordan it has seemed that each these trends will prove unfortunate in practice, since each fails to recognize fully the most basic character of modern cultural life. A signal figure in American philosophy, in that in the field of social theory he stands alone among writers in social theory with a metaphysical bent in his acceptance of corporate organization as the significant fact of modern life. Jordan saw it as the fundamental cultural reality which if ignored goes its own way for better or for worse, and which if understood could submit to the control which might make of life what it should become. His corporate interpretation of culture is based upon a complete rejection of the individualistic presuppositions basic to most American social theory; and it involves an entire reformulation of political and legal problems, with a vastly different estimation of many of our institutions. However, it is important to see that in his own thinking his suggestions for practical reform and theoretical reformulation gain their warrant from the fact that the doctrine of corporeity is most accurate as a description of the cultural form resulting from the direction in which life has already moved. It does not seek to lean upon nothing but a capacity to portray a better life of a nature totally different from the one now being lived.

It must be remarked at once that Jordan's understanding of the term "corporate" bears little similarity to the most common recent uses of the word. Certainly the philosophic system which he builds around it differs radically from anything that might prove congenial to the modern "corporative states," to the legal doctrine of fictive corporations, or to the usual sociological doctrines of institution or corporate group. Much more direct relations can be found between Jordan's work and that of several writers within the idealistic school who have found metaphysical significance in the fact of corporation. But the similarities here are more misleading than useful, since Jordan's avowed and undeniable connections are with more recent developments of the idealistic position, whose other writers have not produced a commanding political philosophy, where the corporate concept takes on its greatest importance. Much of Jordan's importance lies in his demonstration that the idealistic philosophy can have implications in politics quite contrary to those which it has usually had since Hegel.

Jordan was born in 1875, in a farm community in southern Indiana where as a young man he began his teaching career by teaching in elementary and secondary schools. Leaving the community, he went to Indiana University, first as a classics student, then as a student of philosophy. He completed his undergraduate work there in 1907, having had the good fortune to study under Professor Warner Fite, whose study of the meaning of individuality was of abiding interest to Jordan. His graduate work commenced at Cornell where he was doubtless influenced by certain phases of Creighton's speculative idealism. He then went to the University of Wisconsin, where he developed the highest regard for Professor McGilvary, and a respect for the obdurate character of finite non-mental fact, which McGilvary's realism stressed. His doctoral thesis on the regulative and constitutive principles in Kant was completed in 1911 at the University of Chicago, more or less in spite of the wave of interest in pragmatism which engulfed that philosophy department at the time. For the sake of classification, Jordan would most accurately be considered as an objective idealist, but it is not difficult to see that the realistic and pragmatic influences have not been lost on him.

During his long career as professor of philosophy at Butler University (1914-46) he enjoyed a very considerable popularity, especially for his powerful ethics course. While there he published four books. The first, *The Life of Mind* (1925), was a rather quickly written work designed to provide an elementary text in what he calls rational psychology. His intention was to suggest that the more popular descriptive psychology, which is often simply a lesson in physiology, is nearly irrelevant to the whole subject of mind-life or cultural growth.

His major works thus far published are *Forms of Individuality* (1927), *Theory of Legislation* (1930), and *The Aesthetic Object* (1937).^{*} The first two of these constitute his study of social philosophy, which is essentially an attempt to find the concepts and principles by which to make the fact of life and growth more fully intelligible, and hence more subject to deliberate control. Jordan's richest metaphysical statement of these matters is to be found in the third work, which he submits as an introduction to the philosophy of value. Though that work only concerns

^{*} *The Aesthetic Object* was issued, and the other two were reissued, in 1937, by The Principia Press, Inc.: Bloomington, Indiana.

itself to relate these broad concepts to the problems of aesthetics, it is clearly evident that the categories employed there are developments out of, and are intended to be relevant to, the theory of growth as a political fact.

We can often feel our way into the spirit of a philosopher's work more easily if we have some glimpse of the man himself; this is especially true in Jordan's case. Those whose philosophic patience carries them through his work will not miss the unusual scope and often striking originality of his thought. An additional characteristic of the man, with which his students were invariably impressed, is his remarkable moral sensitivity. His stature as a philosopher is grounded in his capacity to see demoralizing confusion in life not only when it manifests itself in wholesale war and economic emergency, but even more clearly in what he considers the devastating perversion and superficiality of the relation of man to his work, which is introduced by the profit motive and certain modern industrial techniques. And he views as morally disintegrating the social relations established by the many practical forms which the principle of competition and its corollaries take under highly commercialized and industrial society. Yet the root of the objections does not lie in the hatred for sharp business practice; it lies in his basic revulsion from a system which encourages millions of people to exhaust their lives in the mechanical processes of mass production; or worse yet, in the enormously insignificant venture of competing to sell neckties. He feels strongly that neither a society nor the many lives within it can attain maturity when such is the limit of its vision regarding the mission of life.

The pertinence, for this introduction, of the comments on Jordan's personal revolt at the unsatisfactoriness of modern life is that it points to a primary conviction underlying his endeavor in philosophy; namely, that philosophy can and must become the supreme instrument by which men can achieve a steady control over worthy cultural developments. His second basic conviction might be said to be this: that cultural control is possible only to the extent to which man can find the principles of the objectivity of cultural facts and of our judgments about them. That is to say, we must learn to formulate cultural problems in such a way that our conclusions and evaluations will not depend merely upon our initial preferences as private persons.

Jordan's independence of the main streams of American thought is evidenced in part by his insistence in many connections that psychology, sociology, and the social sciences in general do not in any way help us in this task of gaining objectivity. Quite on the contrary, he insists that they add confusion of several sorts. When, in their efforts to become "exact sciences" and hence gain a sort of objectivity or independence of personal opinion, they accept the analytic and inductive methods, he feels that they are using logical techniques which will prevent them from adequately expressing the nature of life as a cultural fact. The causal method in social sciences not only introduces an unwarranted mechanistic terminology, it further results in the unity which is the heart of life being cut up into separate and distinct capacities, e.g., the economic capacity to produce and the capacity to consume, a myriad of often conflicting legal capacities as property holder, as parent, as agent – and so on to infinity. An endless pluralization of causes explains the endless distinguishable "facts" of life as found by an infinite analytic method. And the sciences have, on their own principles, no way to reconcile the divisions they introduce into life. Even where the details of fact which a science like sociology or psychology reveals can be of use, the principles of that use are never derived from those sciences.

Jordan further insists that in the long run the great wave of scientism as applied to social problems does more harm than good, in that the task of "finding the facts" by analytic and classificatory methods indefinitely postpones the attempt to evaluate the facts already quite well known. The effects of much recent work in psychology, sociology, economics and other social sciences has been to make us feel that the trouble with life is the enormous complexity and number of its problems. Jordan, on the contrary, sees the trouble in our inability to see things whole and pass political judgment upon them. He argues that the salvation of the practical disciplines of ethics, law and politics does not depend upon help from the sciences; and the genuine utility of the social sciences themselves awaits their discovery of logical techniques by which they can comprehend the objects of culture, not analyze them into fragments. Objectivity involves, then, an escape from the linear causal approach of scientific techniques as now used, which Jordan views as having gained their vogue in science by virtue of their being the historical counterpart of the concept of individualism.

Jordan has concerned himself to show that the principle of individualism which is the outstanding example of modern subjectivity has wreaked havoc in every sphere of life. The *Forms of Individuality* is announced as a study of the grounds of order in human relations, prompted by the realization that the principle of individualism, which has been taken as the basis of social order, may also be held responsible for the fact that everywhere there is disorder, with fraud and violence, ugliness and bleak artlessness, for by far the greater number of individuals. He considers it inevitable that the system which was to exalt the individual should end in a purely abstract social equality, and in the domination, regimentation, and standardization so characteristic of our age. He sees the persistent tendency toward universal war as an inevitable outcome of the endless legalized conflict which is made the principle of business, and which demands the police force as a permanent and vital fixture of the social order. He would not agree that the principle of individualism ever provided a true account of the fundamental elements and functions of cultural life, though he does admit it has had a tremendous influence, some of it quite wholesome. Under modern conditions, however, that influence, amounting to an exaggerated emphasis on possible differences of interests, opinions and preferences, results finally in exploitation and domination and in the conversion of political institutions into absolutistic instruments of power, to be used by whatsoever interests can come to control them. Hence he argues the futility of a reassertion of individualism as a method of avoiding the evils of absolutism, the latter being merely the final development of the former. He expects the two to remain or disappear together, and sees no hope at all in any scheme for social order based on preserving the individualistic system but "limiting" the individual, or on looking to government for protection of all really public functions yet "checking and balancing" governmental operations.

The main lines of Jordan's social, political and legal doctrines are based on the recognition of an even more profound sense in which the individual person has lost out in the attempt to orient his life around his own subjective states. Not only do men lose out to one another; men, as individuals, even taken collectively, often find themselves impotent in the presence of vast impersonal corporate bodies or institutions. There has been wide recognition of

the fact that the business system is more powerful than the fine sentiments of the business man, and the institution of war more effective than the yearning for peace in every citizen. Jordan's entire social philosophy is an attempt to formulate issues in terms of objective orders of fact, not in terms of states of mind, private feelings or attitudes. Moral enthusiasm in the individual is not taken as an important principle for social organization, for such enthusiasm only gains political significance when it works itself outward into an established system of objects or patterns of action.

The first task in social analysis then is to find these external objects or systems of objects which are really the autonomous "individuals" with regard to the function in question. It is to these, and not to the powerless private persons, that our ethical categories of responsibility and initiative must be applied.

Jordan's approach here seems, but in truth is not, similar to the host of institutional theories which have become popular in sociology. These other theories do not depart fundamentally from the principle of individualism with its metaphysical dualism, where "value" and "mind" are considered as residing solely in private persons taken individually or collectively. Jordan, on the other hand, sees value as substantiated in something other than the frailties of human beings. The doctrine of corporeity or corporate will states just this fact; that mind must complete itself in objects, must work itself outward. These external objects and organizations of objects bear part of the meaning of mind, which then does not center around the distinction of mental and non-mental. He insists time and again that no cultural principle derives simply from the quality, frequency, intensity or general possession of emotional or psychological states.

By this Jordan does not mean to postulate any sort of entity standing behind these orders of objects, such as a world spirit. It is simply that realized purposes, such as railroad systems that have been built, remain purposive "on their own hook;" they continue to have the "will" or efficacy with regard to other future cultural situations, which is the only meaning will has even as belonging to individuals. The major difference is that the will of the institution, which he designates as plupurposive, has considerably more cultural influence, usually, than the will of the individual, which is simply an order among ideas and private feelings.

There is another difference. The will of institutions in becoming rather independent of psychological states has also become separated from human conscience. Various purposes once objectified (pluripurposes) affect one another and frequently yield a result unforeseen and acceptable to no one. The transfer of will from the private person to the superpersonal corporate orders, which are then admittedly morally blind, gives us Jordan's reformulation of the problem of control. He differs from so many of the philosophical idealists in his recognition that the effective society, while it may be ethically sounder than the judgment of the individual person, frequently is not. It is the function of deliberate legislation to supply that guidance. The *Theory of Legislation* is the broad study of the metaphysical possibility of that control and of those specific political and legal functions which can successfully embody it.

This second phase of Jordan's political study is a mixture of strenuous metaphysics and detailed legal theory such as is not uncommon in continental literature but is still something of a rarity in America. It is a study of how life embodies itself, how it casts itself into continuously changing uses of property, and maintains its cultural form against the processes of nature. The theory of corporeity or embodied mind is considered as receiving a substantial verification if we can locate and describe its operation as a methodology of public mind.

His theory of politics and of legislation, whether it be right or wrong, is a stimulating factor in American thought in that it represents perhaps the first attempt to give a vigorous philosophical explanation for the impressive facts in our political life which in the older theories remain deplorable yet without which we do not seem able to live. One of these is the ever-increasing element of wholesale planning; the second is the fact that most of this planning is done through administrative agencies which are avowedly more experimental than traditional theories of government will condone.

Certainly it will be agreed that much of the objection to political planning comes from the relation which such a function has to private property. But the burden of Jordan's theory of corporeity is that property is predominantly public in nature, it being the factual ground for the continuity between individuals in all their degree-forms from private persons through a wide variety of institutions and on to the state. The same instance of property embodies the purposes

of many individuals. Jordan says clearly that the new equality among men, if there is to be one, will involve a change in the meaning of property from the possessory act of the individual to the use or end-function of the whole. His ethical system, which interprets freedom as the positive opportunity to employ capacities, could require such a public interpretation of property.⁴ It is to be noted in this connection that “property” here means the things which are proper to abiding cultural interests and become the mutual embodiments of primary institutionalized acts. Property in the sense of food and clothing and such things, which are destroyed or consumed in the using, he chooses to refer to as Aristotelean “indispensables,” with regard to which the only problem is to achieve the most efficient production compatible with richness in the lives of the producers; it certainly is not taken as a proper arena of competition.

Here again, in the consideration of property, we can see that Jordan’s version of philosophical idealism gives that position novel implications in political theory; it can scarcely be used by conservative apologists for things as they are, nor can it be used by overly “spiritual” religions.

Briefly, legislation is considered as involving three basic functions: speculation or deliberation, experimentation, and reflection. These correspond at least roughly to our present political system’s legislature, administration, and judiciary. We have seen that Jordan’s analysis finds the person’s individual will as virtually insignificant. But individuals can think, and this becomes his chief political obligation. It is an important one, since it is just on this ideal plane that action can be controlled. The metaphysical explanation of the influence which an idea can have on action, private or institutional, receives meticulous attention in several places in the *Theory of Legislation*. Simply stated, it is the effect which the end-clearly-seen has upon the act, whether in political connections or in throwing a baseball. Jordan is presenting the obvious, but

4. In his ethical treatise, *The Good Life*, published in 1949, the same year as Haynes prepared this, Jordan states his “law of morality” as follows: “The good life posits a person or actor endowed by nature and by culture with all the capacities that are possible to him, with these capacities developed to their fullest possible degree; the person living in a world so organized and ordered as to guarantee to the person full and free access to all the means and instruments necessary to the adequate and appropriate expression of his capacities and to the realization of his acts in satisfying objects.” (*The Good Life*, p. 59)

in America rare, theory that the legislature is to concern itself with the continuous reformulation in idea of those forms into which life might satisfactorily cast itself.

The modern tendencies of legislatures to pass laws by the thousands is seen by Jordan as evidence of a misconception of their function. It stems in part from the old rationalistic politics which assumed that it could get done, once and for all, with the problem of determining the relations of life; partly it comes from the equally unjustified demand, usually in the interest of private property, that the future disposition of property be reduced to felt certainty. Both demands are unallowable. The legislature is to envisage ends and design the administrative instruments by which to reach those ends, most of its laws being of the enabling or permissive sort.

There are two important features in Jordan's conception of the speculative phase of legislation. First, the determination of the ends or goals is not accomplished by legislators coming to an "agreement." As in any other case of thinking, agreement, as a personal attitude, comes as a by-product of an adequate objective formulation of the issues. Both the autonomous institutions which embody life's characteristic functions, and the relations between these institutions, are objective fact which the legislators must learn to recognize. Likewise, legislation is not a matter of compromise. As Jordan sees it, the principle of compromise is a bald admission that there is no intention to treat even public problems from the standpoint of the public welfare.

At this point Jordan is critical of another cherished tradition, that of representative government. The surd of politics is that free men do their own political thinking, yet cannot. He feels that the institution of representative government embodies this contradiction to the full, and far from mitigating it, leads to a great deal of political confusion, indecision, and such corruption as to cause loss of faith in government. The representative either thinks about public affairs from the public standpoint, in which case he does not "represent;" or he attempts to find out what his constituents want, and thus passes the intricate political problem back to the mass of people who were unable to solve it in the first place. Jordan's answer to the surd is that, at least in the field of deliberative legislation, the function is to formulate the problem logically, by showing specific issues in their relation to the more comprehensive background with respect to which their resolution must be made.

It is in the field of administration that the “common sense” of the people manifests itself in its acceptance or rejection of the work of the legislature. Administration, as Jordan sees it, is that field where experimentation on the logical plane is translated into experimentation with the actual body politic, the system of institutions which make up the state. The administrator is not an executive who “enforces” laws made by the legislature. His task is to recognize the autonomy of the fundamental institutions and see if a reworking of the relations between them can be made so as to achieve a goal foreseen by the legislators. The ends of life are to be lived, not forced upon life. Experimentation is pragmatic in the most profound sense, but not in that sense of pragmatism which indicates a piecemeal or remedial approach to life. It is an experimentation carried on with strict regard for the several alternative orders of life which the permissive laws of the legislator have suggested might be allowable. And it also recognizes the substantial forms which life has already given itself.⁵

Adjudication, which is neither speculative nor experimental, is the reflective phase of legislation which continuously attempts to unify the other two. It measures the methods and successes of administration against the goals outlined in speculation, at the same time recognizing the practical lessons which have been learned in the process of administration, as they can be made to indicate the deficiencies, misdirection or over-optimism which speculation may represent. The judicial process, as Jordan describes it, is not a trial of the criminality of persons, but is essentially a trial of the law itself in either its speculative or administrative aspect. It concerns itself neither with defending things as they are, nor with punishing persons; it is concerned with learning something from a restudy of the social situation, with a view toward redirection of some phase of life if necessary. This is a vindication of the creative judiciary. It

5. Jordan thinks that the institutional will, as he has defined it, is an intermediate stage between psychological immediacy sensation, and the mediacy of rational thought. He designated this as feeling-mass, the objective ground of cultural stuff within which alone private experience as specialized feeling could ever develop. Administration is the ineradicable element of fumbling and groping directed by the demands of the feeling-life. But on the political scale the “feeling” involved is not the private subjective stuff of individual persons, but is the cultural matrix itself as it has “precipitated” into institutional forms. It is here that the “common sense” is found.

indicates also that legislation is not to be measured against ethical standards; it is itself the highest moral discipline.

Jordan's most fundamental political postulate is that, in spite of the political tradition to the contrary, men neither work against each other in their private interests, nor, as an alternative, live their lives "in the service of others". There are phases of life which serve only to show that life has not yet found its true form, and life struggles on somehow against the disadvantages of these false directions. The more fundamental truth, that which accounts for all the real headway culture makes, is that men work for common ends, and as a by-product find themselves working together. Sound political organization should make this ever more possible, by emphasis upon those developments in legislation which can produce a clear statement of those common ends.

We have indicated here that Jordan emphasizes the vital experimental aspect of legislation, and thus is opposed to the traditional rationalistic attitude toward law. He is doubly removed from it, and finds himself at variance with both the natural law theory and with the modern reaction to it known as the pure theory of law, which is an attempt to make a science of jurisprudence without regard for social ideals. His position becomes possible through his development of a value-logic which elevates such concepts as appropriateness and design to a position of ultimate logical and metaphysical importance, complementing, and in many ways superseding, the non-cumulative discursive logic of the sciences.

The development of that value-logic is the task before Jordan's strikingly original research which is set forth in *The Aesthetic Object*. In this work, he finds the logical, methodological, and substantive concepts of two types of thinking, the discursive and the contemplative, to be ultimate in their own spheres. The only possible relation of these ultimates is taken to be that of analogical identity, which becomes a major metaphysical principle. The work purports to show the unity of the existential and value worlds, and to bring something like the adequacy achieved in natural science into the functions of evaluation. This pioneering work, if its results can be substantiated and applied not only in the field of aesthetics but also in the other social spheres, might cut the ground from under the nearly universal subjectivism and

relativism which leads men to accept competition and conflict as the law of life. Such indeed has been the aim of much of Jordan's philosophy.

Selections from the Works of Elijah Jordan.....

A. Logic and the Concept of Individuality

I.

From the earliest beginnings of systematic thought one of the ultimate objects of thought has been to find a conception which would be complete in itself without reference to or dependence upon any other conception, one which would be secure in its own integrity. This motive has given rise to all the methodological devices which, taken together, determine what may be called the structural aspects of the knowledge process. Its essence is that what appears objectively in experience shall be self-contained and seen whole with respect to certain relations which, it is assumed, are immediately felt to constitute the inner structure and purposes of objective appearance. It is the demand that what *is* shall at the same time *be its own meaning*; that mere existence automatically shall carry with it a total significance experienced as corresponding to what is immediately given as fact.

This motive of thought has throughout the history of logic turned upon the concept of homogeneity, and one of the characteristic ends of thought has always been to discover and identify *the simple*. The meaning that simplicity seems to possess all along is that of material homogeneity, or the idea that what is should be “all of a piece” in the sense that it is qualitatively alike in nature all the way through. That this demand was a crude materialistic conception for the most part is shown by its tendency to regard spatial and quantitative differences as the only types of real difference. That is, the presupposition behind the conception, as what is uniform for all phenomenal instances which the conception represents and is therefore negligible, escapes notice and the result is conceived as uniform quantitative likeness.

The distinguishing characteristics of the real, then, just because they are universal, are negligible, and the real may be defined in this point of view in terms of its particularity, of that which it possesses in itself without reference to anything beyond itself. The real is, as the scientist would say, isolated, distinguished from its *relata*, and can be given a quantitative differentia which makes no reference to anything beyond itself. It is a definition of the real in

terms of abstract content, which differs in no important respects from a purely formal determination. The real can then be “known in repetition”¹ just because any instance is exactly like any other instance; because any instance is a sample of the real in that it differs in no wise from any other. But it is not a symbol of the real in that it suggests that the real should have as a whole a meaning in its references to single instances. The differentia of the real is, on this view, the possession of unique sensible quality. Contact among reals being thus cut off in advance, since sense qualities are not media of relations, the problem of unity in the sense of how to get together what the presupposition has already put asunder, becomes extraordinarily perplexing. There is left under these conditions only external relations as possible to any things that are real. And as external relations, no amount of description or of appreciation of them can ever make them divulge a connection which is denied them in advance. When reals are considered as human beings, i. e., when the question is as to the ground of social relations, the only suggestion which carries any hint of principle is that of association, and this concept is a presupposition of the political atomism of individualism.

The consequence of this logical impasse is an attempt to return from what are almost invariably psychological considerations to the neglected aspects of quantity and spatiality, the purpose appearing to be to find for social theory a ground in the objectivity of scientific fact. But this merely means going from subjectivism to positivism. Under the prejudice of simplicity the general or essential nature of quantity and space is overlooked. Only the cardinal aspects of quantity are considered, thus limiting the significance of simples to their local and repetitive functions, which is equivalent to restricting them to a *locum tenens* capacity only, their only meaning lies in their holding a position which is not even determined for them by their relations to other simples. Then abstract plurality is the only common quality which the real considered as simples can have. The importance of anything consists in its “essence”; in its being what it in itself is, as different from other things. It has status and importance only in the fact that it stands alone, and while the attempts usually made to give it description take positive terms, the fact that all significant quality is denied it in advance, results in the awkward necessity of saying what the

real is in terms of what it is not. This seems to explain the general preference for the character of “uniqueness” upon which the basic social relations are often “explained.”....²

The series of attempts of thought to arrive at an adequate concept of individuality constitutes the logic of human history; and the partial failure of each has probably been due to the demand to make specific and distinct within each stage the full expression of the principle upon which individuation rests. And while the requirement of distinctness is real, the specific character can only be represented fully by allocating it within the synthesis of relationships which makes up the whole of life. This can perhaps best be done by attempting to describe the principle of individuality in the variety of functional forms in which in the course of experience it has appeared.....

(1.) The Greek Origin Of Individuality³

For the purposes of western thought development begins with the Greeks. It is a commonly accepted fact that the genius of the Greek race reached its highest point of development under the closest harmony with its natural environment, and that it perhaps reached this point before it had become self-consciously aware of the distinction between its “mind” and its environment. The Greek race felt itself a part of the great whole of nature, and since it had not yet developed interests which would require a distinction between what was “Greek” or human, and what was nature, there was no occasion for its setting itself off from nature. Nature seemed to the Greek merely felt as the immediate and undifferentiated entirety of his experiences, immediate in the sense that he was not aware of it as distinct from himself, but further in the sense that nature was himself become immediate in the process of awareness.....

But the delimitation of the state within the whole complex of experience and as the vague synthesis of experiences is at the same time also the process by which the unique nature of the personality is revealed, and it is within this process of distinction also that the first or original qualitative character of the personality is to be found. The early Greek could for a long time blame the gods, as an aspect of the objective status, for his misfortunes, and could, if necessary, exchange his gods for others more sensitive to human needs. And it is to be observed that such

would be the logical and proper attitude while their relations to each other and the laws of their association were merely external and 'social.' But he was soon to see that *he himself* was in some way concerned in his own destiny, just as he had discovered the gods by making distinctions within the primitive whole. He discovered himself, in his peculiar quality of will, then, in the discovery that he could by taking thought modify the gods, or the state, and his response to the new power discovered in himself developed into the sense of responsibility. This is the essence of personality; obligation.

But the problem indicated here is one that was taken very seriously in its reflective form only as late as Aristotle, who labors very long and hard between the conservative idea that the state is 'natural' and thus fatalistically determined when it is 'right,' and the progressive or experimental idea that man could and sometimes should recreate the state through revolution. The 'naturalness' of the state, while to Aristotle the reflectively demonstrated truth that the state is the *status* of the elements and conditions of human nature, is to the ordinary citizen, perhaps because of the part which his feelings play in the formation of the attitude, something more firmly grounded in what does not represent the frailties of human nature. But the moment it was realized that the *status* or constitution of things depended in part upon the action of the citizen (as would be emphasized in the call to duty in war or the law courts before even individuality was clearly felt), then the individual discovered *himself* in the tie which bound, him to the whole of what appeared to him as real.....

The meaning of the personality for the Greek, then, was the obligatory tie which bound him to his objective self in the 'nature' which embodied his purposes in final harmony. This marks the highest point ever reached by human reflection, if the results of reflection can be gauged by the objective perfection of ultimately satisfying ends reached by it. But when by hard necessities of historic fact the objective ends of the Greeks were destroyed, the total effect of this collapse of the objective machinery of the state was responsible for a change in the conception of personality, which was accomplished or gradually attained during the Hellenic-Roman period, or what for our purposes we may designate as the period of the crisis of religions.

(2.) The Religious Development Of Individuality⁴

The extension of the areas of war, the expansion of commercial activity, the general flux of peoples, the advancement of knowledge with reference to the geographic world, the improvement in the means to commerce -- all these served to demonstrate the *administrative* inadequacy of the existing state. The immediate subjective effect is best seen in the morbid hopelessness that is to be observed in the eclecticism, scepticism and pessimistic religiosity which characterized the philosophic activity of the period. The defection of the gods which came with a widening of experience had liberated large areas of hitherto restrained desire, while the collapse of the state left no usable instrument for the determination of the legitimate ends of desire, nor any criterion for judging among desires. This, of course, finally got formulated as an ethical problem, as distinct from its political origin, as it naturally as a standing unanswered question would, in the positive and negative pleasure theories of the Epicureans and the Stoics, which were satisfactory perhaps to the cultured few.

But for the political mass of people the situation left nothing but bewilderment, which, the moment the interest of curiosity failed it, realized the uncertainty and danger in not knowing the precise nature of their moorings. This feeling of uncertainty and detachedness, this 'fall of man,' was perhaps responsible for the loss of his essential self-respect which was a function of his consciousness of unity with nature, and which is the essence of his personality. Nature has lost her dependableness, the state no longer protects with guaranties; the gods have been pushed aside by fact, and destiny which was once joyful now appears to threaten; the tie which held man tethered to his end snaps, and he is left with no recourse; there is no longer harmony between himself and nature. It is then in this situation that he 'falls'—gives vent to the most pathetic and mistaken wail which his history records: What must *I* do to be saved?

This outburst was perhaps not a question; not an attempt rationally to formulate a problem. But it was merely a discovery of the fact of discord between the immediacy of experience and the imaged completion of experience in the form of an end⁵ as the completion of the life of desire. And, since the nature of the end was not clearly grasped or understood, there having been

developed no form of unity between the subjective life and the larger scheme of fact presented by the changes enumerated above, the reaction to the situation was that which ordinarily follows from a state of ignorance—fear smothered in hope. And fear once more throws the weight of emphasis upon feeling, with the customary result that imagination, instead of following the idealizing tendency to a reconstruction of the state of fact, turns attention to the inner and subjective and immediate. Instead of referring to the rational problem of reconstituting ‘nature’ with reference to ends, as had previously been the constructive genius of the Greeks, the mind of the time lost itself in a mystical and futile ‘searching of heart.’ In other words the center of interest was transferred from the objective and general purpose to ‘see life whole’ in the form of unity of detail of fact, to the immediacy of subjective and particularized feeling, and the ‘soul’ of religion was born.

By some such process as this the idea of the self became identified with a mass of vaguely unsatisfactory subjective states, and as feelings do not submit to law, cannot be generalized, the personality gets identified once for all with what is private and exclusive and inner and ‘metaphysical.’ This idea of the self lost in the struggle with the Greek-Christian objective idea of self during the middle ages, but finally triumphed with the Reformation and modern individualism. With this development religion and philosophy became distinct interests, even while the problems of philosophy all have reference to religious values; and theology becomes the method of scientific thought as well as the magic which is to be sufficient unto salvation.

Individuality thus comes to mean a mass of inner, private, exclusive feelings centered about their own intensity..... Under the presuppositions of ‘inwardness’ which dominated the religious attitude, *the problem of personality became the psychological question of which among its ‘inner’ aspects was the soul’s ultimate ‘simple.’*.....⁶

Given abstract homogeneous identity, or ‘unity’ to which all the worth and values of life are assumed to adhere, there is no escape from the adoption of mystical feeling as the organ and criterion of knowledge, except through the doubtful and precarious attempt to perpetuate the feeling by repetition through numerical extension, i. e. by stimulating the feeling’s Intensity. It is for this reason that hedonism in ethics is the inevitable issue of individualism in politics and

economics. This assimilation of the ‘philosophy of identity’¹ with atomistic pluralism will seem strange to some minds. But the empty identity is the black night for all philosophies—for Democritus no less than for Plato, for Hume no less than for Hegel. For abstract identity and abstract distinction or difference come out at the same place, and it makes no difference from which we start, it makes no difference whether the abstract absolute is the microcosm or the macrocosm.....

Let us look at the individual as he appears in the essentials of modern political, ethical, and legal theory.⁷

(3.) Individuality as a Modern Practical Conception⁸

(a.) Modern Science and Philosophy

The refined and exsiccated soul which was the result of the process of the plan of salvation became a thin and colorless abstraction, bearing little resemblance to the complex of hungers and thirsts, of sex desires and the greed of wealth and love of display and sense of physical strength and sensible harmony which the Germanic peoples felt as the essence of their lives. Moreover, when the young Westerner learned to think, having been to school to the ancients in the Aristotelianism and Platonism of church theology, the thin-drawn arguments of the old intellectual system seemed peculiarly dried out and dead when brought into contact with the pulsing life which he saw around him. The new man of the period becomes therefore the natural or ‘economic’ man, in the sense at least of recognizing the real necessity of the Aristotelian ‘indispensable’ and preferring it to the ‘higher’ spiritual and intellectual values of the Church

The point of view, therefore, of the sciences of life, as these sciences became formulated, was determined with reference to the immediately felt detail of content of human nature; if for no other reason, for the simple one that the young modern was more adept at perceiving than at thinking. The tendency to particularize on a basis of concrete experiences then became formulated into the method of scientific procedure, and the modern logic of induction as the basis of the ‘empirical’ philosophy was well on its way. The negativity of the procedure as

formulated in methods of elimination, which is its central characteristic, came by various suggestions from Bacon to J. S. Mill. And along with the concern with the particular experience, and perhaps because of it and under the influence of religious feeling, went the tendency to inwardness and the abstraction of the concrete inner experience into a self-subsistent entity. Each specific inner fact became important on its own account and was worthy of its own place in the descriptive system. Thus was born what developed into empirical psychology, and the epistemologies of the 17th and 18th centuries, which, along with the new inductive logic, all presuppose the ultimateness and absoluteness of the ‘distinguishable’ single mental state, which was modeled after the self-sufficient unity of religious experience. This tendency is characteristic also of the ethical treatises which for two centuries were little more than descriptions of those inner feelings which are concomitant to the kinds of actions that customarily get approval. And in the contemporary attempts at metaphysics, e. g. in Spinoza, the tendency was universalized in the principle that the order and connection of ideas corresponds to the order and connection of things. This principle, from the naturalistic point of view, was developed later by the eclectic and sceptical encyclopedic movement, which seemed to establish once for all the general injunction to get all the facts, with the idea that for each fact there exists a corresponding state of mind. The final issue is, of course, positivism; and sociology. But in these “objective sciences” even, the tendency is toward the emphasis on the subjective.....⁹

(b.) Modern Social Science: The Economic Individual

It is not the purpose here to combat the “economic man” or to attempt to show in what particular details the conception is faulty from the point of view of a consistent economic theory. That, I suppose, is easy enough; in fact it has become the fashion to perform the feat and then announce that economic theory is nonsense. But the conception is of a type that cannot be refuted by any arguments based upon the interpretation of detail of fact, nor can it be successfully met by showing that there are other qualities of the real individual not comprehended by the term, even though the additional suggested qualities are verifiable as

positive and demonstrably essential to the nature of the individual. The conception is not an idea, but an Idea; not a clearly defined outline of form filled with experimental quality which may be designated, but an attitude that is constitutional to thought and therefore organic with human nature. Specific arguments with reference to its content thus fail to strike its vital parts; for to meet such an argument its content could be changed in such a way as to make it consistent with *any* verifiable descriptive statement. For this reason, then, so far as content is concerned, the conception is adequate and there are no objections that can shake it.

The trouble with the economic man is not as to his psychological content. The economic man is *psychologically* therefore a fact. But for these very reasons the conception is false as an idea. For no idea is ever exhaustible in the matter of content. The content of an idea never can be fully known, otherwise the idea would lose its dynamic tendency and become a fixed and abstract form. The growth of the idea implies the continuous realization of varying content under a universal form. Defined in terms of distinguishable content merely, it of necessity takes finally the negative form of isolation and homogeneity, and therefore fails to embrace the *possible* quality which is essential to a regulative conception as the attitude that governs the method of a science. In simpler words, the economic man is a narrowly defined complex of qualities abstracted from the totality to which they belong and from which they derive their meaning—the whole of human nature. The conception is simply too small—too restricted to satisfy the expansive and anticipatory requirements of a human interest. The economic man as an attempt to define man in terms of content, as we have seen, isolates and makes particular and subjective the idea to which it is applied. The economic man, then, as an isolable group of wants and the activities determined by these wants, is not a man, not a human being in the full meaning of the term. It is not distinguishable from the isolated and ‘saved’ soul of religion except in that the detail of content in the one case is conceived as ‘spiritual’ and in the other economic and material, while both are equally ‘inner’ and abstract and subjective. The meaning of an idea is not determined by its content, the sort of matter which happens to fall within the synthesis of its act; but by its ‘intent,’ what it tends toward universally by the rule of its nature; or, by its

portent, what of possible meaning an ¹⁰indicated situation may have through relation to the present actual.

II

The prevailing ‘group sociology’ is also merely an instance of the same general fault in method. The logical difficulty is met with in all fields of research. It is a weakness of the age; the exaggeration of a motive of thought which under necessary limitations is perfectly valid, to a point far beyond any possibility of logical justification. The concept of the social group is a case of the atomism which has dominated thought throughout the development of the modern period, and which has become notorious in its practical form under the name of individualism. That is, the ‘group’ method of explanation of human affairs, however scientific it may appear to be, does not save sociology from atomism, nor does it save social philosophy from the peculiar weaknesses of atomic individualism considered as a practical point of view. It is merely another instance of the logical fallacy of the simple. It assumes that science can start with individuals bound together in groups and neglects the fact that, so long as the method of analysis is held to, these groups must always be resolved back into their component atoms before explanation is possible. It fails to see that what it erroneously calls a group or collection is really a unitary individuality, and that the problem is not as to its origin or structure, but one of its active constitution.

The group method is therefore no advance over the older method of beginning with the ‘natural man’ which characterized the development of juristic and political and ethical theory of an earlier period. It is a doubtful criticism of Hobbes, for example, to reject his conception of the natural man as dominated by such dispersive characteristics as fear and the instinct of self-preservation as the key to political organization, and to substitute for it a group of beings just as irrationally controlled by the dispersive reflexes become “organized” unconsciously in the group as habit or custom.¹¹ In each case we are trying to erect a system fit for the qualities and capacities of man by stripping the man we want to fit into the system of just his distinguishing

qualities and characters, and in both cases we are neglecting constitutional order as principle for origins and presupposed analytical simples.¹²

Experience is not ‘mental’ in the sense of belonging exclusively to individuals, but objective in the sense of being institutionally determined. Unless there is some special aspect of personally individuated life which has its meaning outside the narrow confines of private purposes, it is nonsense to talk about ‘social’ relations or of human order. In fact, the ordinary practical conceptions of contract, agreement, etc., can have no meaning but impact and composition of forces so long as we think of perfectly distinct entities which can only *come* together, and it makes no difference whatever whether the elements that are distinct are mental or of any other kind. The important matter here is not the qualitative elements according to which the distinction is made, but the distinction itself, while distinction is taken in the absolute sense of separation.

There seems to be neglected the important logical consideration that all distinction rests upon a *fundamentum divisionis*, and this, if it means anything, implies a ground of positive likeness, not superimposed upon the real by its apartness from mental entities, but inherent in the essence of things considered as prior to the distinction between mental and non-mental. The basis, then, of what is real in the system of social relations is not the original distinguishability of the parts within the system, but the positive character of unity which gives meaning to distinction within the system. It is the concept of ground rather than that of cause that is the social *fundamentum*, and this ground as positive fact is the institutional form which human life everywhere manifests, the objective and plupersonal order which gives significance to all distinctions into lower forms of individuality that make up its content. It is difficult to conceive what can be meant by insisting that this positive logical ground must be some form of subjective ‘inner’ particularity, or some metaphysically isolated center whose main quality is its self-containedness and Aristotelian ‘independence.’ Mind itself is objective; and it is this aspect which gives the degree of reality to mind which makes descriptive and logical consideration of it possible. And it is the same objective mind that is the ground of all practical interests. It is unfortunate that the same idealistic movement which in its earlier stages attained its significance because of its development of the concept of objectivity, is now in some of its forms the most intransigent

partisan of a narrow and subjective individualism. This concept of the objectivity of the *content* of mind must get its proper development.....¹³

It is this objectivity of reference of content which is the principle of individuality; an individual is a system which with reference to itself is complete as a mere existential whole, but whose content lies outside the confines of its completedness in that which it intends. And an individual is the only thing of which such can be said; that is, individuality, but not the individual, is unique.¹⁴

The real, then, while not the immediate, is immediate in every fact. The individual is an object whose constitution is its history and whose end is the institutionalizing of that history into forms which through their universality the individuality shares its life with other individualities. In its structural aspects it is therefore the manyness of fact in process and time and space which lays the foundation for the continuity of life, and the ground for reproduction, the passing of individuality into individuality.¹⁵

It has not been the purpose of our account to argue that mind either as individual or 'social' is *influenced* by the institutions of life. That statement would, of course, be literally true, but it would be correspondingly unimportant, and would presuppose precisely the proposition which we cannot accept as principle. It presupposes a unique and given mind, a mind uncritically accepted as the point of origin and explanation of all the vexatious questions of either personal or social life. In short, it presupposes a magical entitative agency which, while it does not require to be understood in itself, yet is the principle of explanation for all that is. As an ontological concept it becomes the ground of all reality, and, just as its logical and scientific use involves magic, so does its ontological use wind up in the uncertainties of mysticism. Not that we reject mind as the essential form of reality, but we reject as vigorously as possible the assumption which finds the essence of mind in the distinction between it and the things that influence it or react upon it. Conceptions based upon this distinction come to grief in the murky exclusive uniqueness and complete self-inclusiveness and sufficiency of mind which robs it of any possibility of moral or universal quality.¹⁶

It will be noticed that the main presuppositions of both vitalist and mechanist have been ignored in this discussion. But they have not been avoided because they are not interesting or because their importance has been regarded as not justifying consideration. Our point of view has attempted to go beyond the sphere where mechanism and vitalism are final distinctions. Consequently, their importance can be recognized for the attitude which is limited by the ordinary presuppositions of science, and a secure position given them in a larger sphere than that which any science can give them because of its methodological limitations. From our view, the conception or category of dynamic or functional order is cosmic in its reference, and is therefore inclusive of the lower concepts of mechanism and vitalism in a synthesis of the whole which as order gives to both conceptions whatever meaning they have.

Loeb's insistence, therefore, on the finality of physico-chemical law, and Driesch's¹⁷ equally vehement emphasis on the factual character of entelechy both may be true realities within the fields which their respective presuppositions prescribe to them. But these fields are limited and partial; they are but provinces in the imperial realm that is governed by the higher prerogative of functional order. This means for the scientist, as is already in some quarters fully recognized¹⁸ that sooner or later a wider philosophical interpretation must be sought in order that the conclusions of science may have that mutual compossibility of ordered truth which the idea of a world implies and presupposes. Under such conceptions of a world-order as the idea of a whole of experience demands, the categories of vitalism or teleology and mechanism will find then-proper places as representing entities individuated by the synthesis of their overt relations to a higher individuality; entities whose inner constitution consists of a synthesis of its own wholeness with the wholenesses of its environing individualities, the latter of which largely predetermining (Henderson, p. 7) its nature. It is this stability of status of an individuality within the matrix of environing individualities that is meant by mechanism. But the stability is not fixity; it means the constancy of reference of a lower individuality to a higher in a system whose dynamic character imposes upon the lower individuality the necessity of the concrete and specific processes of growth. And at this point necessity is not in principle distinguishable from

obligation, or connectedness in reason, which is the law of the highest aspects of life where growth processes are concrete and universal.¹⁹

The attempt to isolate movement and to connect it with nothing but other movements is the simplification which results in mere repetition and abstract process, as has been pointed out. Movement has no meaning when related only to other movement, just as a mental state has no meaning when referred to another mental state. The logical consequences of the attempt thus to isolate either mental state or movement is the mechanical conception of causation with its hard and rigid necessity, a cause which *produces* nothing, but which merely *reproduces* the abstraction which represents the original assumption of simplicity. The attempt at isolation of the conscious state results in the absurdity of unconscious states, and the worse absurdity involved in saying that consciousness when it becomes 'pure' destroys itself.... Given the two assumptions of isolation of the mental state and of organic movement, the mind-body problem is irrational; it leaves two supposed entities staring blankly at each other across a chasm eternally, a parallelism which can never be taken seriously. Nothing simple is real; and the real is not homogeneous....²⁰

Then vitalism has come to terms of harmonic unity with mechanism in an ordered whole whose constitutional law represents a synthesis of inertia and life, of necessity and obligation, of law and principle, of cause and ground. And the scientist has by the same living necessity become a philosopher (Henderson, p. 9). But a certain caution must characterize the use of such conceptions and their precise meaning must be kept clearly in mind. When necessity, or subjective inner compulsion, and obligation, or ordered freedom, mean the same thing, it is because they both get their meaning from the inevitableness of constitutional organization within or autochthonous to an individuated whole, and not from the mere unavoidable-ness of contacts among elements which show no functional but only external and determined relations. Yet the withinness or uniqueness of individuality is not an exclusiveness of external fact, but individuality *is* precisely the ordered form of that fact. The individuality is the universal whose concreteness is precisely the content of fact which constitutes its own environmental conditions. Its conditionedness is then neither inner nor outer, neither causal nor final, but just the synthesis of appropriate order.

Thus mechanism and vitalism, cause and life, necessity and purpose must unite in the order of a higher synthesis. And this higher synthesis is just Individuality, of which we have seen Organism to be the distinctive type-fact, and for the understanding of which Organization is both the scientific and the logical category.²¹

B. Politics, The State and Government

I. The Structure of Society²²

The famous dictum of Sir Henry Maine relative to the structure of human society is one of the very few propositions of genuine universality that have been formulated on the subject of human relations since Plato and Aristotle. The observation that ancient society was constituted about the principle of status and that modern society had its constitutional principle in contract is a valid and vivid contribution to the theory of society. But it seems to me that it has been understood only in its less important implications. The emphasis has for the most part been placed on the implication that the history of society is to be looked at as a transition *from* status *to* contract and that somehow progress, regarded as a growth in a positive direction, is a necessary consequence of that transition. Also it seems to be implied that the modern constitution based on contract is superior to the ancient constitution based on status. It does not seem to me that this is a necessary or even a determinable conclusion.....

The first in importance of the meanings of this famous dictum is, as it seems to me, that human society *has a structure*, that the structure is objective fact, and that it can therefore be formulated in terms of objective and universal law. This fact of structure we moderns, under the dominance of democratic and contractual preconceptions, tend to overlook. For us, society is, basically, a collection of individual persons held together by subjective ties, and the material substratum of society is ignored. But society has a structure independent of subjective relations. Further, this universal law of social structure is the basis and ground of law in its political, civil, and “legal” senses and, therefore, the premise upon which rests all theory of the state, of law, and of society in all its aspects. This principle of social structure is also the ground of “positive” law in the sense that upon it is based the system of principles from which alone the fact of society can be made intelligible; and the fact that the fact of society can be made intelligible through the concepts of law and structure is perhaps all the meaning that can be given for “rational” law. It is because of these considerations that the relation of status to contract is of fundamental

importance to us now while the very foundations of the state, the validity of law, and the possibility of meaning for human society are being questioned—and being questioned not by the puny interests and purposes of men but by the logic of the facts of existence. In another connection²³ I have pointed out that the principles of status and contract, as they function in contemporary society, are identifiable in property interpreted in terms of “privacy” and in contract interpreted in terms of “agreement” or “meeting of wills”; and I have been at considerable pains to show that both concepts as thus interpreted are essentially inadequate to the facts and are responsible for the confusion in which our contemporary life now finds itself.

In approaching the problem of status, we shall try to keep in mind the implications it necessarily carries to the ideas of order and property and the synthesis of the two ideas in institution. . . . The fact of status is basic to the very idea of human society and therefore must be recognized as a factor present in society at all times and in every instance. But what is universal in fact is, as formulated, in judgment, a principle; so we have in the concept of status one of the foundation principles in accordance with which society is constituted. It is therefore a constitutional principle for all political states and takes substance in the actual state in the legally ordered property which is the stuff of institutions. It is necessary to assert this here with emphasis because of the tendency of modern thought to conceive institutions in the subjective and personal characters of individual rights, interests, etc., thus making the sole basis of interpretation of society to rest in contract. But contract, as we hope to see, is merely status looked at in its dynamic aspect; the two notions of status and contract are not therefore contradictories or correlative opposites, but imply each other in such fashion that neither is meaningful out of relation to the other, and both have meaning that is positive only through the reference to the synthesis of the two which is their identity. This synthesis we have already noted in the concept of structure. So that status is not to be regarded as the distinguishing characteristic of a historical period to be superseded by a superior principle of contract in a later age but as one of the uniform constituent factors of human society everywhere and at all times. Just as we think of society in terms of its substance and as permanent and fixed, and as thus the ground of order and stability. and of dependableness in general, when we interpret it in terms of

status; so we think of society in terms of contract when we wish to find the principles underlying its active and growth phases. When we think of society as achieving, or as striving toward, ends so as to express purposes, we naturally give expression to these facts in terms of will, where the will is thought of as the ground of determination of the relations which are to hold among its constituent elements.....

We must keep in mind that the ultimate purpose all along is to understand the *structure* of society, which we vaguely conceive as the basis of its intelligibility. And, as this structure becomes, for politics, the idea of the constitution of the state..... In so far as the root idea of contract is the meeting of wills, the concept of the constitution to which it leads is that of a unity of the people through the conformity of their wills, and thus involves agreement and the idea of a general will. But this again overlooks the essential part which institutions play in determining the structure and constitution of the state and thus tends to ignore the important constitutional function of property. It is just this neglected element of property which is now playing havoc with the democratic and contractual constitution.....

Any adequate theory of the state is, after all, a plot of its constitution, and the theory of contract cannot present us with any rounded picture of the structure which forms the substance of the constitution. The contract theory therefore never did and never can provide for the constitution of the state and therefore fails to present the state with the character of permanence which is the very essence of its meaning. This can be illustrated, I think, in the constitutions of the democracies. They give us no completed picture of the state but concern themselves with the arrangement of the particular elements; for example, they exhaust themselves in the discussion of rights, liberties, duties, and interests of the individual persons whose collectivity is supposed to make up the stuff of the state.

That is, democratic constitutions, which all depend upon consent as a form of contract, are obsessed with the importance of the minute and simplest and most immediate relations of social structure and thus fail to achieve any plan of the whole structure. Or, if the effort is made to vision the whole, it is dominated by the idea of the working whole, as the idea of contract implies the dynamics of society, so that the emphasis here is all placed upon the instruments by

which the integration is to be effected. Consequently, the mere organization of government is confused with the constitution of the state, and the constitution exhausts itself in an effort to provide machinery with which to implement the social or rather the governmental process. Thus it can be said that democracy, in its modern form at least, has the basic weakness that it provides no constitution for the state but undertakes only to implement a method of government.

As a consequence of this failure of democracy to provide for the continual creation and maintenance of the constitution, the actual constitution of the state, as embodied in its institutions and the order that comes into being from the functional relations of the institutions to each other, is left to formulate itself out of the blind processes of nature and life without benefit or grace of the law. And we must keep in mind here again that the essence of an institution is the property that gives it substance and continuity and thus the basis of permanence. Accident, therefore, and what the practical man calls “the necessities,” since property has power but no vision, determine the state as a “mass of perdition” and confusion, with the legion of evils which are just now coming to be so persistent as to demand a new and thoroughgoing examination into the bases of the state. And I am here suggesting that this new investigation may best proceed from the foundation principle of structure.

But this confusion and the breakdown of democracy illustrate, if they are not the results of, the basic weaknesses within the contract idea. This weakness lies within the subjectivity of the idea, that is, in the fact that the idea attempts to validate itself within a fact content that is partial and thus not fully representative of any reality. The active phases of reality cannot adequately be conceptualized without indicating at all points their dependence upon the passive and stable phases: This means that contract, since it undertakes to do just that, is partial and inadequate as principle and will have to be complemented by a basic relation to status with its reference to substance and property before it can serve as a constitutional principle.

When we observe that both status and contract show fundamental weaknesses when analyzed and that each seems to involve by necessity a reference to the other in order to make its meaning complete, it is suggested that they are, after all, both “derivative” and not in themselves real but only aspects of a deeper lying reality; and this raises the question as to what this reality is. If

neither status nor contract can be made intelligible by itself, but if they imply each other, the inference is that they get their meaning from some third thing, and the question is then what is this third thing. To assume something different in nature from both as their mutual referent has the unfortunate consequence that the thing assumed will have no qualitative identity with either; but if so it cannot explain either. The only alternative to this is to assume that the third thing is the identity of the two themselves, and this necessitates showing how status and contract can be identified as each having its meaning in the other and, through this mutuality of meaning, constituting the entity which we require. If we can discover the object in which both status and contract can be seen to express their full meaning, then the constitution of this object will indicate the principle of their identity and suggest that this principle is that upon which the nature and structure of society depend.

This object that identifies status with contract has been known for a very long time; and the elements of its structure have been, inadequately, perhaps, long recognized as the basis of the law of its nature. It has also, again inadequately, been recognized that the law of the constitution of this object lies close to the principle upon which human society has achieved such order and organization as has been possible to it. The object referred to here is the corporation. The constitution of the corporation is the objectification of the principle which we found to represent the synthesis and identity of status with contract.²⁴

The corporation and its principle, and their central importance, have long been recognized; but it is unfortunate that, for the most part, the knowledge of them has been limited to law and theology, and the tendency in both these disciplines to relapse into vague abstraction has prevented the type of general interest that would have been necessary to show their full significance for social and political theory. Also, the tendency of both the law and theology toward a superficial practicality has tended to conceal and confuse the deep intellectual problems that are involved in a general theory of corporation. A thorough investigation of the corporation in its general characters, one not restricted to the legal and religious interests, will show that it is a fact of universal scope, and nothing short of the universal can furnish validity for the principles of social order in their political and moral implications. And it was the fact that the legal and the

theological accounts of the corporation ignored its universal moral nature, and emphasized its superficial and practical character, that was responsible for the fact that the corporation has become of late the symbol of large-scale evil.

The principle of corporeity is thus the synthesis of the principle of status with the principle of contract. And I submit that it is upon this principle, and upon it alone, that the investigation of the present structure of human society can offer hope of significant results. And I should insist further that any speculation upon, or planning with reference to, the future of human order will have to set out from the principle of corporeity. And the reason behind this necessity is that now human society has a corporate structure. Human society, of course, always had a corporate structure, and our interpretations in terms of status and contract have been partial and inadequate. And, with respect to the term “corporeity,” I should justify it as most appropriate because of its heavy emphasis upon the physical; and this seems to me justified because of the central importance which impersonal property has come to have in modern society.

I would admit that there is a sense in which it is true and important to emphasize the historical and developmental aspects of the relation of status to contract; so that the dictum *from status to contract* puts their relation with great force. It also satisfies our prejudice for evolutionary explanation. If, however, we wish to retain that statement of the relation, we shall have to amplify it and go on to say: *from status to contract and on to corporeity*. But the historical statement seems to me important only as emphasizing the fact that *now* human society has a structure not completely characterizable in terms of either status or contract or both but is fully described only upon a basis of corporeity as a stage beyond them and representing their synthesis with the new qualitative characters which a corporate entity always displays. But while it is important to recognize that different historical periods are each characterized by its emphasis upon one of the principles, the ancient by status, the modern by contract, and the contemporary by the principle of corporation, or corporeity, yet the historical statement ignores the more important fact that the three principles are, and have always been, present and operative together and simultaneously wherever human relations have shown any tendency to lay the ground for

civilization and culture. They are not each operative in a separate historical period or under its own peculiar conditions.

It is the emergence to dominant status of these new corporate phenomena in modern society that has demonstrated the weakness of the principle of contract and the major types of political and social organization that are supposed to rest upon contract. Democracy, through its concepts of freedom, liberty, rights, with their modern counterparts in initiative, enterprise, etc., is generally regarded as the objective form of contractual society and political organization, and it has come to be questioned in very serious ways. It is obvious that it is the weakness of the contractual principle that is responsible for the social frictions that have thrown democracy so seriously into question. And these weaknesses of contract appear now because society has come to have a structure, through its institutional development, to which contract no longer corresponds as principle; and we have the very serious situation where the bodied structure of life and society is moving in one direction while the principle supposed to guide and direct it is moving in another direction. The consequence is the confusion and strife which are now worldwide; and, because it is blind and without rational purpose, it can only appeal to force, from which no rational issue can be expected to follow.

But the revolt against democracy and the contractual principle does not avoid all difficulties. While it may avoid difficulties that are peculiar to the contractual society, it will meet with difficulties that are peculiar to its own nature. For the revolt is merely reversing the historical formula and moving, or attempting to move, *from* contract *to* status. That is to say, the antidemocratic forms of society (strictly they are mere abstract ideologies, as democracy, with its subjectivist interpretation of contract, has also come to be) are attempting to go back to a regime of status, which, as a principle of order, has, by itself, even less to recommend it than contract. The situation illustrates the fundamental error in the interpretation of the relation between status and contract, which is probably due to the statement of the relation in historical terms. *From* status *to* contract implies a rigid either-or as the basis of their relations, and, as this always turns out negative, their relations are regarded as opposites and contradictory. But, since their relations are not negative and repulsive but positive to the extent of implying fusion, the authoritarian state

will not avoid the evils inherent in democracy but, in addition to them, will afflict itself with a batch of evils' inherent in its own nature. The obvious conclusion from this dilemma is to be reached through the recognition that contemporary human society has a corporate structure, and in that structure the truth of both contract and status can be given realization because its principle of corporeity is a synthesis and identity of the two principles.....

Human society has taken on a corporate structure, and there is demanded of political wisdom only that it see and recognize the fact. The idealizing utopian there is still left in us will find the way from there on out.²⁵

II. Law and Political Life

....Each of these opposite forces, individual liberty and social absolutism, in the history of medieval and modern times, and under diversity of place and circumstance, has had its day; both have been carried to their extremest possible development, and promise to disappear together. Indeed, the many correspondences between them suggest that they may be only different names for the same fact; the absolutism of tyranny is nothing more than a full and consistent recognition and acceptance of the logic of individualism, and thus differing systems of political categories represent merely different facets of the same facts. But in any case the basic problem of social order at the present time arises out of their apparent differences, and is perhaps most suggestively stated as whether the tendency away from administrative efficiency has not gone too far, whether, that is, the individualist resistance to large-scale effort in the interest of the public good is not due to a mistaken ideal of freedom as a negative relation to the good.....

But the democratic fear of administration was due to its connection with authority, and it was not yet realized that democracy might develop its own type of experimental administration through local political institutions, and that "authority" would come from the proper coordination

of these local administrative systems through the means of a legislative system devoted primarily to the determination of policy.²⁶

The central position given to administration is due to the fact that it has seemed to me to be the point at which legislation has bungled worst, and to the fact that, if the corporate theory of will be allowed, administration as experimentation is the legislative method is the most important motive of the legislative act of our day. On this topic I have profited by suggestions derived from the works of Goodnow, Carr and Freund, but I have not followed anybody closely enough to burden him with responsibility for what I say. Administration has also appealed to me because in its contemporary development it illustrates better perhaps than anything else my theory of the corporate nature of mind and will and life. Also, when interpreted in terms of this theory it corrects the activism, naturalism, pragmatism, etc., which as political opportunism and industrial Machiavellianism, have made a well-nigh hopeless mess of the public affairs of the world today.

Administrative control exercised by and expressed in corporate public agencies of any industrial sort is the significant fact of the “social” order of today, and the combined effectiveness of these agencies is rapidly taking the place of the older institution of political government. I raise no question as to the right or wrong of the process; but if we are wise we will recognize the fact. It is administration that is the instrument through which the change is being effected, and since there is little or no public control of the process it effects itself through private agencies, with all the irrationality that privacy involves. But it has been my faith that even the privacy and the “blindness” of the administration process need not preclude its rationalization, indeed the very blindness is consistent with the unity of administration with the speculative and reflective modes of practical experience in a total unity of the active life. The rationalization of a blind industry appears to be the peculiar task of civilized government at the present moment. However, this means, to date, the substitution of “business” for political government, and will continue to mean just that until administration is placed upon a solid theoretical foundation in law. The prospect of any such result in the near future is not hopeful.....²⁷

Under prevailing theory of the state the laws, as the principles of its constitution, can be made; and it is assumed that the constitution can be made in advance of the experience which is to furnish to the constitution its body of fact. The philosophy of the representative has then become pure rationalism. A constitution made in this way is made out of the subjective rationalizations of its makers, just as the constitution of the United States was made out of the doctrinaire theories current at the time, in so far as it was not a result of the business expediency of the time; and whether or not it will apply to conditions which arise in the future will depend upon the accident that history should conform to prophecy made under the extremely dubious influences that determine directions of idealization. This demand for finality is, of course, a consequent not so much of the desire to provide for the future in terms of certainty and safety, as of the tedium and irritation which arise from the necessity to be always looking after the order of conditions which render action possible; which, since it involves thought effort, stimulates us to try to find means of getting it off our hands once for all.

But this attitude neglects the fact that in so far as it is allowable to speak of constitution-making and law-making, law of whatever sort is made not so much out of the spontaneity of the law-maker's intelligence, certainly not out of his reason, as assumed by the theory of representative constitutionalism, as out of the automaticity of life as embodied and embedded in the institutionalized relations of experience. But if law is "natural" in this way then the representative as law-maker is an excrescent disease upon the body politic. Laws come, for the most part, out of the life-processes which are indigenous to the relations among institutions; and they are laws rather than scientific principles merely classificatory of fact--they are norms precisely in their tendencies to stabilize these processes and relations into orderly forms so that, as in institutions, those relations may be taken for granted and thus become hypotheses for further experimentation. But such a conception of the nature of law requires a complete reformulation of our conceptions as to how law is "made," it requires, that is, that a new direction of purpose should revitalize all our legislative institutions.

It is thus not a matter of inventing new institutional instruments like "recall" or "proportional representation"; what is needed is a new vision as to the nature of life and law. All

law is, in this point of view, common law; for it is the objectified spontaneity of the commonwealth. Law then, as the basis of faith or confidence in government, is a conceptualization or an hypothecation of the dependableness and stability of institutions, which gives to that stability as fact a momentum of weight which pre-determines the future; and law as thus contemplated, in preconditioning the future, makes itself. It is then the spontaneous transformation of the life process into a relation of order, the spontaneity of the process implicating the substantiality of will, that constitutes the difference between a law and all other things, and at the same time accounts for its "origin." And in so far as the origin of law is to be objectified, it is necessary to refer it merely to the fact that institutions as bodies of fact become corporate orders through the weight of the natural and cultural conditions that give them existence and determine their directions of growth. The substantiation of these natural and cultural conditions within the order, the synthesis of whose specific relations is derived from ends operating purposively, is the spontaneity known in fact as will. It is corporate will that "makes" law.

The popular emphasis on the making of law is, as begins to be seen, a confusion of the concept of real law with that of the fiat of command. It is subjectivism in that it assumes the abstract creative power on the part of the reason or the will merely to spin the law out of its own inwards. But this is not legislation. It is magic. It is the business of legislation, as a rational or deliberative function, so to order the conditions of life that the relations established will, through their permanency and the creative weight derived from their order, institute or lay down the grounds of significant action and at the same time lay out lines of direction for the types of action whose future or ideal determination furnishes us with our plans. Law then means direction, not regulation; and it was an imperfect perception of this truth, namely, that life and will may be directed and guided by but never commanded by the reason, that was responsible for the fact that the democratic tendency turned to rationalism with its faith in doctrine and theory. The substance of law as "made" then lies in the transitive aspects of life. When this is forgotten the emphasis is thrown off legislation where it belongs, and placed upon the legislator; thus giving the latter, either as the person who legislates or the legislative instruments which he uses, a significance

which by nature they do not have. And this misplacing of emphasis forgets that a right, a good, an end, which are essentially categories or typeforms of corporate will activity, as distinct from an interest, which is a concept of neither law nor will, is indifferent as to the mode of its implementation, and is realizable, when realizable at all, independently of any specific means and of all specificity of means whatever.....²⁸

Representative government is a contradiction in terms; it is the same or a similar contradiction to that which gives a degree of plausibility to the doctrine that government rests on force or authority, the contradiction of the power state. The day of both is past, and the element of fact in public life which these contradictions represent only by abstraction are already indicating to us new and concrete concepts suitable for more significant types of public organization. There already is upon us their successor in the concept of the administrative autonomy of the corporate person, which is the basic category of politics, and at the same time the elementary reality of fact to be dealt with in the practice of government.

Legislation therefore, as the autonomous corporate act of the public life, and as observed in the practice of governments laboring under the antiquated and obsolete conceptions of representation, gropes blindly between two equally futile procedures. In the one direction it tends to adopt a sort of public-be-damned irresponsibility, and in the other tends to fall into the eternal deadlock which awaits an expression of the public will in the mandate of an election.

But still politically organized bodies of men in social life “muddle through,” and peoples maintain their political integrity more or less without regard to the doctrinal systems upon which political organizations in governmental forms appear to depend. And the real current of political life seems to flow on while quite unconscious of, or deliberately ignoring, the sublime seriousness with which governments employ themselves with “making” and “enforcing” laws. This fact suggests the possibility that governments, as we know them at present, may be artificial makeshifts which have no essential or ground relations with the real political life of peoples, are not, that is to say, political institutions. It may be that our legislative and executive and judicial machinery, even our legal and constitutional systems, are only remotely connected with the original flow of real political life, and consequently our very familiarity with them and our blind

confidence in them may obscure real political processes which are the fundamental constitution and order of public integrity. However this may be, public life is lived under some degree of significant order in spite of the fact that governments change and prosper and decay; and it may very well be that the instances of decay, which are the outstanding landmarks of human history, furnish evidence for the judgment which is becoming quite common, viz., that governmental institutions lag so far behind the growth movement of political life that on occasion they become merely diseased excrescences upon that life and finally destroy it.

It is true of recent changes in governmental machinery, particularly those of an administrative nature, that what are supposed to be quite fundamental principles are involved. Principles which claim to have constitutional significance frequently seem to be abandoned, and the "form of government" which our doctrines regard as inevitable and fixed in the nature of things, changes in essentials from decade to decade. This situation at least suggests the question as to whether there may not after all be something natural about the order of human public life which maintains itself independently of the systems of governmental machinery upon which the maintenance of public order is supposed to depend. If this should turn out to be so, then governmental systems would, as they should, lose the sacredness that always attaches to rigidly fixed forms, and would, as they should, become objects of experimental research, just as do other systems which embody human purposes. This experimentation would involve no danger to the continuity and orderliness of life, since it is directed to the reorganization of what is artificial and external to the life process. It is in fact the only principle upon which social continuity can be guaranteed. And this would relieve our minds of the superstitious fear with which we invariably approach questions of public order, since we should reflect that knowledge of public affairs is gained, like other knowledge, through experimentation, and involves no more and no less danger and as much and as little promise as investigation in other fields, and for the same reasons.....²⁹

The conclusion is then that our state theory rests upon a false theory of will. But it wisely recognizes the fact that the state in its active capacity, that is, as legislator, requires to be formulated in terms of will. The theory of legislation is therefore, in the first instance, an inquiry with respect to the metaphysics of will, the determination of the nature of will as objective. And

between the popular traditional theory of a will whose nature is completely expressed in spontaneity, i.e., caprice, and the orthodox psychological and Human dogmatism that no will at all can be “found,” our store of knowledge upon this most profoundly important aspect of experience begins to appear sadly depleted. For the spontaneous will is nothing more than the apotheosis by magic of the inert and inevitable reason, the will which willed perfection from the beginning, and which, conceived as active, wills itself alone from everlasting unto everlasting. And the will which psychology can find, the “facts of action” which the psychologists “describe,” are nothing else or less than an equally dogmatic and naive hypostasis of certain hypotheses about biological structure. We no longer, of course, as did the magicians, deal with moral “powers” or spiritual efficacies; but we will, as scientists, the new name which we prefer for the same old fact, continue to describe and “produce” all manner of causal agencies and “isolate” elementary substances upon which they depend.

Whatever this phenomenon called will may turn out to be, it is the root of the life of action and thus the basis not only of political but of all practical reality. As social process it is legislation, the dynamic of objective mind. Legislation then, for our purposes, is a question of any and every agency of life through which purpose as imaged end finds implementation and embodiment. This broad conception will justify our allocating the legislative will within the social and industrial and religious and economic institutions, in all practical groupings whose relations, both functional and frictional, are observable in the facts of social experience. Legislative right and authority will be found therefore wherever there is found constructive social or corporate action, however humble may be the instance in which a public life is thus recognized.

Legislation is, then, the designation for a mass of extremely complex and intricate processes of corporate or public life, and the problems of legislation are the problems of the nature of will and of the modes of its expression in the cultural processes which represent the spiritual life of man, and of its corporate substantiation in the object-systems within which that life is rendered objectively permanent. It is thus nothing less than the process of the corporate life itself in its myriad manifestations whose rationale is to be portrayed. In the most

comprehensive form of the problem, from the point of view of a metaphysic of will, there appear the two fundamental aspects of the duality of the real; in the one case there is the fact of action in the infinite series of its degrees from mere movement to creation, with the varieties of causal efficacy and spiritual influence in between; and, in the other, the fact of the infinite variety of modes in which action precipitates as the structural forms of the external world considered as the medium and embodiment of the act of life. Or, in familiar terms, there is the question of the nature of mind considered as the ground of growth-change and continuity in the real on the one side, and on the other the question of the nature of the objects which give to the continuum its character of permanence and substantiality. More simply still, we are dealing with the relation of an act to its end, the specific instance of that collocation of phenomena which is supposed to embody the mystery of will.....³⁰

C. The Theory of Legislation and Its Problems

I. Theory of Practical Philosophy

The concept of the corporate or embodied will thus appears to be valid and universally applicable as principle. But how does it work in fact? How does the corporate will, as an observable reality in experience, create and maintain the realities of cultural and public life and order?... How does the corporate will retain in reality the systems of realized or embodied values as the accomplishments of culture, and sustain them as organs within an incorporate life?

These questions formulate, in its broadest philosophical outlines, the problem of legislation. This problem is seen at once to have little to do directly with the “passing of laws” or the formulation of statutes. Particular statutes are at best mere experiments in the logic of will, mere attempts on the part of intelligence to image to itself the form of a contemplated activity. Statute-making is thus the problem of “practical” legislation; not a problem of the theory of legislation. Legislation is, for the theory of practice, the process of constituting the cultural public body as a system of realized values; and it is a continuous and eternal act and an adventure in pure speculative theory because the public body manifests cultural life or grows. As law-making, legislation is not the production of specific laws, but the promulgation of constitutional law, the assertion of the elemental principles by which life embodies itself in the progress of living. Hence, in the study of legislation with respect to principle, there is no need of reference to the detailed experimentation with the forms of particular acts. Such experimentation can be assumed to conform to right policy if consistent norms of policy or constitutional principles can be kept alive in the political body; so that for the legislator the elementary maxim of practice is, that constitutional principle is the first desideratum.

As in the earlier work the object of research was the element of corporate reality, so here the object sought is the element of dynamic law. Or, if we may assume that there emerged in the previous research³¹ the principle of practical reality, we may announce that the object here is the

principle of universal practical method. By this we assume that there is in the life of the public or corporate will an inherent and discoverable methodology, and that this natural methodology can be made intelligible and formulated so as to make it consistent with the actualities of public life as self-conscious in the purposes of men. That is to say, there is a “nature” discoverable in the public will which renders intelligible the demands of life for guidance and control; and this “nature” suggests, at the same time that it guarantees the intelligibility of purpose, certain conditions under which control and guidance may be made actual. It is this ultimate methodology that we recognize as persistent fact in the dynamic relations of public life; and the description of its various processes, together with the logic of their synopsis into a whole of life, constitutes the methodology of public mind. It is this methodology as circumstantial and executive in social or cultural fact that constitutes the legislative process as ontologically real; and it is this description, with its appropriate logical synoptics, that we mean by the theory of legislation. The theory of legislation is therefore a metaphysic of life, the formulation of the principles of the dynamics of mind.

For the metaphysic of mind implied in the problems of legislation I shall presuppose the corporate theory of reality as in its broad outlines it was sketched in the earlier work. Mind then becomes a special case, though one of ultimate importance, of corporate reality or life. It is that instance of corporate reality whose natural dynamic or will represents to itself the appropriateness of a non-given situation to its own inner principle. This is the intelligible ground of action as the topic of a theory of practice. Thus objectivity is the essence of its definition, as ideality is of its substance. In simple, but inadequate psychological terms, this is mind as consciousness..... The one circumstance that guarantees to mind the element of principle which consciousness fails to furnish is the fact that mind is always bodied. This fact, when made a postulate of thought about mind, that is, when recognized as circumstantially constitutive of mind, constitutes the element of principle of dynamic which we require. That is, mind as active presupposes body as the implementation and medium of its action, and this mediating body, as a necessity integrated within the nature of mind, is corporeity. It is this fact of corporeity that validates the concept of embodied mind as active. This is will. The reality of will, that is, the

objectification of will in body, implies the substantiality of action.....

Viewing the problems of the dynamic of public life from the point of view of the corporate embodied will constitutes a more or less complete reversal of generally accepted procedure. The individualistic approach to questions of public policy has heretofore universally been given something of the status of an axiom of practical philosophy. Public order is, in prevailing theory, the order of subjective individuals, and its law is the harmony of such individuals, preferably, since the theory is rationalistic in the extreme, the harmony of states of mind of individuals..... The alternative to this abstract individualism has been, historically, the assumption of a metaphysical status for institutions considered as practical phenomena. This would appear to be sound. Yet the historical theory invariably dehumanizes the institution and detaches it from all the contacts which give it life. Practical reality must in any case be human, personal, and living; and the institutionalist theory usually comes to grief in socialistic mechanism and absolutism. No individualist or abstract institutionalist theory can succeed in endowing its individual with public capacity; and in the absence of this public capacity the concept of the individual has no meaning for practical theory. Our corporate theory assumes, as against other theories, that, from the point of view of practical reality, the individual, considered either as a bio-psychological unit or as overwhelming institution, is not an element of principle. The individual cannot, without resort to the substitution of psychology for logic, be represented as vested with public capacity, it cannot therefore act, and is not a practical phenomenon either of fact or theory. As an element of cultural content the individual is real in both senses; but there are no questions of public life or order that can be made intelligible by regarding the individual as an element of principle. The “Copernican revolution” in practical theory consists in giving up the attempt to interpret practical reality in terms either of the isolated or the aggregated individual, and adopting the view of the corporate or embodied mind or will as the principle with respect to which all questions of practice are to be resolved.

This “revolution” can be instanced in another way. Theories of public life are generally of two types. These may be called the naturalistic and the idealistic. The corporate theory is critical of both, but frankly embodies and exploits the element of truth which each has glimpsed but

failed to comprehend--the truth that the individual is essentially a person. But then the individual is, or may be, more or other than the psychological person.....

The corporate theory, with its attitude of positivism, finds the individual in the concrete experienced personate life, in the concrete corporately embodied mind which is individuate in every genuinely practical experience. This experience is realized in every cultural object as a principled impersonation of life. But it is this corporate person individuate as law that is real, and this implies the embodiment of concrete elements of personal content in a universal form of order which is public mind. In this sense the Individual is a species of which the varieties are the types of real corporate person, the concrete order of which is the Public Body.

This theory of corporate order is a conception of metaphysical synthesis upon which, as I think, many recent types of philosophy tend to converge. Of these, the most important, so far as metaphysical groundwork is concerned, is that of Whitehead and the group of thinkers who are endeavoring to restore the scientific motive to its appropriate foundation upon a system of speculative concepts. There is also a biological group whose interest seems to be to restore to the science of life its necessary system of rational content in the form of a system of concepts of order. It appears to be seen that science has too long pursued the phantom of abstract process and its characteristic particularization in technique. As results there have come, as practical phenomena, the irrationalities of process and the machine; process as the infinite struggle toward law which yet always falls short, and the machine as the endless effort toward "instrumental" embodiment which is ever thwarted, or "succeeds" to the point of monstrosity. It is profoundly hopeful thus to observe science once more in a mood to consent to think as well as to experiment, and to take its thought seriously.

Perhaps it may not be futile to hope that out of this new re-establishment of the grounds of scientific thought there may come suggestions upon which the "social" or practical sciences may be brought to their necessary synthesis in a metaphysic of practice, a Practica, just as the physical or natural sciences are approaching synthesis in their metaphysic of nature. This hope, which has been vaguely in my mind throughout, would, if realized, become a rational ethic, a metaphysic of the dynamics of reality. The metaphysic of ethics, as a synoptic of all practical

disciplines, is then the final practical philosophy. Its practical objectification constitutes the system of the principles of law as incorporate in political society. I hardly can hope to have contributed to its formulation.

It is with great hesitancy that I venture to suggest that the magnificent thought structures which the new metaphysic of science is building up are nevertheless unstable at a vital point. It can be conceded that its logical symbolism is of the type of all thought and thus a firm ground for the synthesis of the metaphysic of nature as a principle of reality. Also the “philosophy of organism” may be conceded to represent the synthesis of all content of the real world, and to be, on its own ground, elemental. But the ultimate synoptic act of corporate thought, the act wherein and whereby the metaphysic of nature, as principled in abstract symbolism, and the metaphysic of concrete reality, as embodied and realized in organism, find their bond of order, seems always to be just beyond; foreshadowed, it is true, in the hypothetic necessities of both systems, but incapable of realization in either in any living real. The new logic does not attain the ultimate corporate judgment upon which a final synthesis of existence with practice depends. Its object remains a thing which moves, but which never acts; the ultimate object must be an objective, an Act, a deed. And to see the brave effort give way to importunities of subjectivism in the appeal to God, to appeal to religion for the ultimate principle of unity, shatters the brave hopes that the scientists have built up. For it is precisely the function of a metaphysic of ethics, of an ultimate Practica, to execute the act of thought through which the order of nature and the order of life are brought to their final synthesis in the order of culture. The realities of religion are elements of cultural content within the order of life; they are not elements of principle for the synthesis of life with nature, and it is futile to appeal to them for the synthetic law. Here Plato is the teacher, and Aristotle the wavering pupil; it is the good that is ultimate law, and God must obey with the least of us.....

The “Copernican revolution” insists, then, as the condition of a valid practical philosophy, upon turning away from subjective naturalistic-religious individualism and sociological opportunism and pragmatism, into which practical thought has fallen, and in approaching all problems from the viewpoint of corporate mind as the ultimate practical

postulate. Under this postulate the practical categories, right, freedom, beauty, God, order, justice, find their synoptic unity in Law as the act of thought in which order is realized in a factual world.³²

An individuality as will-object, and as such self-determining, must be carefully defined; here it may be noted that it does not necessarily imply the human individual; but does imply the corporate constitution of individuality as such. Will as individuated consciousness then becomes the idealizing function of the constructive or planning imagination, and in this form it is the most completely individualized or isolated of the forms which the individuality assumes, the natural individual who knows himself as the ethical and political, that is, the practical, man. It is through his consciousness that man is alone in his universe; The fundamental difference between individualization as the tendency to isolation, and individuation, the tendency to synthesis and order, must throughout be kept in mind. Hence the conscious will, the will naturally individualized in the human person, identifies with the speculative faculty, and becomes the medium whereby the individualized person presents to itself the unity of the series of individualities as an objective, since it cannot comprehend this unity as an object, which is the peculiar act of individuation; so will thus becomes the faculty through which the perfection and wholeness of the series, prefigured as a character of the isolated individual, becomes a purpose or objective or end to one of its own members.

The individual may have “social purposes” as intellectual interests, and these will be conceived in the form of ideas of qualitative states that may come to characterize the whole order of life. But these are not and cannot be ends for him, since he cannot conceive of their being realized; they are not for him objects which are to be embodied by intelligence in the system of universals, but objectives which are to be realized by will in the form of the law which becomes effective in the constitution of an institution. For, as objectives, they are not ends for him. Thus the individual intelligence as employed upon these public purposes invariably takes the form of speculation, and this activity of speculation becomes the legislating function properly so called.³³

What does this result mean in terms of the concrete facts of experience, in the life of the

individual human being? The answer to this question involves all possible meanings in the life of the individual, and it is necessary to make the situation as clear as possible, in so far as any matters of principle may be involved.

It means that for the individual, considered in himself and as expressing his capacities through intelligence, and in terms of his nature considered as a system of values and also his capacities as expressed in apprehending will, that is, for the individual as legislating will, there is no adequate embodiment possible. And when we state this in ordinary ethical, legal, practical terms, it means that for the individual there is no end; that no individual purpose can be achieved; that his world, considered as the sphere of his action, is irrational. Thus every purpose which he may conceive in terms of his own private life is bound to be thwarted, and he will be met with incompleteness and fragmentariness in all his undertakings. This is the ground of that sense of defeat which characterizes the life of every intelligent person, even at the time when he approaches the fulness of his capacities in maturity; and a sense of satisfaction in one who has reached this period is evidence either of lack of intelligence, as in the case of the “practically successful” individual, or of intelligence submerged in religion or some other form of sublimated emotion.....

The difficulty is, once more, that man, as individual, can see more than he can do; can propose more than he can pose or set up. He is thus divided against himself. It is therefore the function of the individual to see, and the obligation to effectuate and realize his visions devolves elsewhere. It is the individual’s obligation to exercise vision and to think; to design and formulate ends without any reference to the possibility of their being executed; to dream. It is not his business to accomplish; except in the single instance of art, and here he loses his individuality, for in art the artist as creator exterminates himself in the act of procreation.³⁴ It is the individual’s province to plan, to lay down the eternal foundations in thought which other types of person than he shall have eternity in which to develop to full being.

What can be attained is an objectified purpose, an end; and ends are all public.

Then there is no individual or private end that can be attained; in fact, there are no private ends, ends are universals; and the envisioned aspirations of individuals toward these ends are

subjective, that is, they are purposes; whereas the longings and wants of the individual for immediate objects are mere interests, and interests cannot be embodied or objectified; they can only be particularized in the impermanent form of tools. The objectification of purposes into ends is the proper work of a higher form of individuality than the natural person; it is the work of an agent whose primary capacity is not intelligence, but which expresses itself, rather, actively, with reference to ends created by intelligence, but in accordance with a plan intermediately apparent in the background of feeling.....³⁵

What is the product, as distinct from the formulation of policy, of the individual intelligence? Or of intelligence as such? Man, either as individual or as social, by intelligence, can make tools, instruments, machines; but he cannot, either as individual or as social intelligence, put these machines together into the organs of purpose.

It is obvious that the intelligence does have some sort of constructive relation to the active capacity, and it would be folly to deny that its ideas ever reach any degree of significant embodiment. However, this does not assert that the objects of intelligence, when they attain perfection, do so as a consequence of any constructive capacity in the intelligence acting upon them; even while they are objects of intelligence their perfection may be attained as a result of forces which have little or nothing to do with intelligence. What is denied is that there is any intelligible relation between the objects of intelligence which are created, or as the activity is properly designated, produced, either when taken singly or in combination or complication, and the purposes of intelligence in terms of which the reality of life would or might be fully and adequately expressed. The systems of instruments, which is what is meant by produced objects, constructed by man do not express his purposes as these purposes are formulated in his ideas and ideals.....

So true is this that a large part of the “thought” and much of the active energy of man is expended in the production of machinery which he knows, or should know, to have a devastating negative effect upon his life, in such instances as industry and war an exterminating effect; and, while he in his lucid intervals is aware of this consequence, yet, so far as the use of intelligence is concerned, he is powerless to avoid it or to make any effective efforts at its prevention. And

this is true even in those connections which are supposed to be most highly rationalized, where the finest energies of men are employed. Nothing is so likely to cool the ardor of man's idealism and self-respect as effectively as to reflect that his knowledge of the much vaunted science of chemistry is uniformly employed in inventing or "perfecting" the instruments of destruction. And much, even it is to be feared, most of man's political wisdom and energy is devoted to the effective prevention and contravention of the welfare it is supposed to create and cultivate.....³⁶

It is the individualistic conception of the unique and exclusive will as competent to achieve objects which has been responsible for existing chaos, and it becomes necessary to find a more adequate principle of order for the practical affairs of men. We must, that is, attain a new conception of will.....

The individual will, then, sees more than it can reach; knows more than it can do; it can only speculate upon ends; which are to be effected, if at all, by other agencies than itself; or devise means which, of themselves, have no end. Its function is therefore to speculate and to create in idea the ends that are to be realized by life as a whole, and to devise the abstract means which may, if intelligence suffice and if power present itself, order those ends into the End. As a practical capacity, then, the individual's obligation is the obligation to think; to prepare in idea and anticipation the intent of the whole of experience which as objective agency may become active in the execution of a plan. The political function of the legislative will as individual finds its first object in the working out of a system of policy.....

The individual's political or public obligation is fulfilled when he devotes his intellectual energies to the task of thinking the order of the cultural life. But as all thought is mediated to mind in and through specific objects, that is, objects which incorporate the species of the real, the individual's political thought must find its characteristic objects in which to embody and render permanent the forms of its organization. These specific objects are the institutional means through which the individual's various activities work themselves out in objective forms. What the individual thinks about as he thinks politically is, then, the various corporate instruments through which his personal "interests" are expressed and objectified and thus made public. He thinks about the institutions of government, education, industry, art, recreation, religion, and the

order of his thought upon these objects, formulated under law, constitutes the state to which his ultimate allegiance is due. The order of these objects is the constitution of his life. But in so far as he merely cogitates these objects he is outlining public policy. In his economic, etc., activity he is testing this policy experimentally or administratively, and in his social and cultural relations with his fellows he is adjudicating this policy and conforming it to the ends of his life. The immediate activities of the individual incorporate as a person are the grounds of law and the matter of the justice which it is the end of the law to maintain.³⁷

D. The Three Phases of Legislation

(1.) Speculative Legislation

We have seen that the most elementary general function of the legislative body is to talk.

By this it is of course meant that discussion is the method by which ideas get cleared up as to their logical consistency with each other, and the formal statement of ideas in judgments under the pressure of critical comparison with other ideas constitutes that experimentation under logical conditions which we have accepted as the definition of legislative thinking. A parliamentary body is a laboratory whose function is to provide these conditions. And by “talk” we mean further that ideas must, at the time of and in the process of their formulation, be kept clear of all complication with the things of practice, since in the practical process ideas are likely to become qualified in objectionable ways by the interest of the persons who use them. And it is interest which is the universal enemy of the public life. Talk as the instrument of communication is then the method by which ideas are made clear, and by being made clear we mean primarily their being reduced to universality. And universality as a practical norm means absence of pressure from interest. Legislation is discussion; but discussion should get some degree of careful definition before too much emphasis is laid upon it. Perhaps this can be done as well as is necessary for our purposes by saying what discussion is not.

Discussion is not debate. In debate, and this is the form that much political discussion assumes, the participants have convictions derived from interest which it is their purpose to establish, and the establishing by either of the truth of his conviction is assumed to depend upon the destruction logically of the point of view of his antagonist. A conviction is an interest which pretends to universality. But it is still an interest. Consequently the purpose and procedure in debate is negative. The debater’s purpose is to establish his position mainly by showing that other positions are untenable, and this method, just because of its negative form and its tendency to questionable devices of argument, puts its faith in a position largely upon the fact that not enough is known to establish the opposite position. It is a form of evasion motivated by interest,

and involves deception. This negative method of elimination is applicable in connection with work in the scientific laboratory, where the persistence of a fact after the eliminative process has done its worst is as near “proof” as any matter of fact is susceptible of. Facts, that is, cannot be proved, but merely must be found as existences; but this gives no proper suggestions as to the methods of dealing with ideas. It is easy to say that a fact either is or is not present, but of two proposed ideas both may be false, and the elimination process thus says nothing whatever about the positive quality of the facts involved, and it is this positive quality of fact that becomes the substance of ideas. So in debate nothing of a positive nature is established with respect to the nature or meaning of ideas, and the only thing it can do is to suggest that there are situations either of fact or of logic which appear to militate against the idea in question.....

Discussion is not argument. When the conflict of ideas in communication takes on a positive purpose, but still with the idea of truth lying within a definite area of specified alternatives, there is what may properly be called argument. And this form of discussion is positive in the sense that each “side” of the issue is concerned to point out positive qualities attaching to the ideas it holds that tend to support their truth. It is thus advocacy, another form of interest. It thus is aware of the necessity for objectification of motives. Consequently its tendency is to meticulous analysis of the structure and relations of ideas, and it gives often very useful catalogues of the qualitative natures of the objects whose relations constitute thought conditions. So just as the negative method of debate develops the procedure of elimination, the positive method of argument develops the analytic procedure in its descriptive phase. And argument has all the faults and all the advantages of analytic methods. It gives exhaustive systems of detail so that no aspect of a question need be overlooked. Further, it emphasizes the different qualitative aspects of the situations it analyzes, and as the positive nature or essence of a thing is found in its quality, or substance, it gives constructive suggestions as to the grounds upon which principle is to be established.

But it is to be noted that argument is positive and constructive only with reference to the specific idea in favor of which it is presented, and gives no hint as to the methods through which the idea it represents may be incorporated within a larger system. It represents no motive of

synopsis or synthesis. Its attempt at objectification is therefore only half realized, since it undertakes to objectify pure content without reference to the order which gives quality limit and meaning. It is thus not an instrument of order. It shows therefore no tendency to system, or to the organization of ideas into positive structures which might lay out suggestions along which courses of action might proceed. It is for this reason that legislative discussion tends to be interminable, since all the ideas involved tend to follow divergent lines indicated by differences of quality disclosed by analysis, and the nearest approach to a constructive idea that can be reached is by the forcible method of compromise.....

A modification of the discussion process has lately been offered as the typical form of the legislative or political procedure. This is the suggestion that the small group such as is provided in a committee furnishes all the conditions for as full a clarification of ideas of policy as is possible. It is claimed that in such a group ideas lose all their peculiar taint of privacy and become fused or amalgamated into a whole that is genuinely representative of the composite of all suggestions presented. Not that ideas are toned down or pruned away until they fit into each other's interstices; but it is claimed that ideas in such discussion actually develop and grow toward a synthesis of the whole which may be a revelation to the persons involved. Thus the conclusion is not a compromise, but a genuine synoptic unity of all the pertinent ideas presented.

This argument is worthy of a good deal of consideration, since besides offering a new and suggestive interpretation of the discussion process, it shows how many of the shortcomings of discussion may be avoided. But it is still doubtful whether it presents anything new. Close contact of persons in a small group imposes upon them tremendous pressures of one or another sort. The day laborer who might find himself in such a group with a powerful banker would feel all the restraints which his social inferiority has enforced through generations, or he would, if trained in modern ideas of social conflict, assume an attitude of defiance toward the banker. In any case the small group is crippled from the start by persistent attitudes and the familiarity of close contact merely serves to draw them out and accentuate them. Again, to assume that a man, say, who has been bred under the conditions that wealth provides, will be able in an hour's discussion, or a week's discussion, for that matter, or discussion at any length, to succeed in

comprehending fully the point of view of the man reared under conditions of poverty, is presuming too much with respect to human educability. As a matter of fact two such persons have points of view so different that neither can understand that of the other; it is a simple impossibility. For, a man can comprehend no further than the significance of his own experience reaches, and there is nothing in the experience of either of them that can make contact with the experience of the other, even though they agree in emotional attitude or in language. What happens in such a case is that each defers or concedes to the other in some point foreign to the issue under discussion: the banker will pity the laborer, or the laborer will condescend to or defy the banker, but the real issue will never be raised between them.

So that the small-group theory places a too heavy burden upon human educability..... In the committee the give and take of discussion finally induces a common mental state in all the members; but how shall they maintain that mental state after the meeting is dissolved? And will they not all, perhaps, disagree as to what the conclusion arrived at was, even though it was spread on the records? The members will disagree about the interpretation of the conclusion within an hour after it is subscribed to by all of them. States of mind can not be given permanent form, and there is no real change conceivable that depends upon the subjective agreement of persons.

Agreement among persons is not therefore an important matter, and is impossible in the nature of the case. Moreover it is not desirable. Agreement has therefore no practical significance; in fact it makes little difference what one's states of mind are. As a consequence even concepts of policy are not fixed, and have no being outside the constitutional structures in which they are embodied. What is contemplated by thought on practical questions is that an object will issue in the external world which can be accepted by anybody as a presupposition or ground of action, such an object, in fact, as will be established as an institution through its being presupposed for practical purposes by persons generally. It is this object that is the end of all public or practical thinking, and its nature and quality as a practical object has nothing to do with the personal characteristics or states of mind of individuals. Its being accepted as such does not depend upon agreement, and agreement therefore is not an important practical concept: it makes

little or no difference whether people agree or not so long as they presuppose common objects as the ends of practical activity. And this acceptance of common objects may have nothing to do with their opinions, but comes simply out of the fact that their lives are similarly conditioned in their natural and cultural environments, and may not be a conscious situation in any sense.

It is extremely doubtful whether any suggestions of practical principle or public law can be got from the deliberations or discussions of the small group. But the small group is an institution of very great practical importance. Its significance is not for the formulation of policy or the determination of practical principle. Its importance lies in the fact that it is an indispensable administrative instrument. Its legislative significance lies in its being the instrument through which legislative enactment is transformed into established law, and this it does through the administrative process. Its discussion then properly belongs under the heading of administration.³⁸

The double function of the legislator, the clarification of issues with the intent that the electorate may the more intelligently perform their duty in, e.g., voting; and the formulation of ideals so that the electorate may know what it is that they politically want; in general, the creation of concepts of policy, fully justifies the existence of the legislative body. But as a corollary function, and by way of completing the policy act, the legislator also speculatively devises instruments through which ideas of policy are realized. In the main these latter are administrative bodies (including the whole executive system) and the system of judicial machinery. The defects of the policy-creating organ are to be found rather in the faulty means of communication between the legislator and the "people" he represents than in the legislative function itself. This raises the difficult question as to the position of the educational and promulgative processes of the public life, which we need not try to dispose of here.

It is this question as to whether the "public" can act intelligently, that is, whether a point of contact can be found between its action and its thought, that gives both Plato and Aristotle many of their difficulties. And they both see the problem clearly. The "people," it appears, can act with political intelligence only when their vaguely felt necessities and wants are clarified as universal public issues, and presented to them as elements of some large ideal end. It is assumed,

by Aristotle particularly, that their “common sense” will enable them to test the item of policy by comparison with elementary moral convictions, and thus prevent them from falling into the more glaring evils of deception. But it was the lack of this capacity on the part of the ordinary citizen to clarify issues for himself that led Plato and Aristotle to limit rather narrowly the franchise to the leisured classes, some classes being barred from political capacity by “nature” and some by the necessities of making a living. It involves, of course, that the “people” are at the mercy more or less of the legislator’s honesty and capacity, but, as they see it, somebody must define issues for those who cannot think for themselves and for those who do not have the necessary freedom to think.

Thus the legislative process appears to be characteristically a function of pure or speculative thought, which, in the last analysis, is the point to which legislation must be referred. Thinking, then, as speculative, is both the process through which legislation is carried on and the standard by which the process is tested as to its conformity to the requirements of life. The legislative process as policy forming must therefore conform to the requirements of logical method; what is law must be self-consistent.....³⁹

(2.) Administrative Legislation

The second of the three phases of legislation, considered logically,⁴⁰ is administration. This is the phase of the legislative act the performance of which involves the action of the institutionalized individual, and is concerned primarily with the adaptation of technical means to public ends. The ends which, as principle, govern action here are furnished to the administrative process by the speculative act of the human individual acting as “king in parliament,” or as the sovereign intelligence objectifying his thought by communication with his fellows. Means to the creation of law may be hinted at in the speculative process as corollaries of the act of policy, but their final shaping and their adaptation to ends is the peculiar function of the experimental process of administration.

Administration does not involve in any elementary way the public capacities of the

human individual. It involves his technical capacities to the full, but these as such have no public or legal significance. It is the sphere of blind, groping, muddling experimentation on the part of institutional forces. This is the place where law, as public will formulated in principles of policy, is tested experimentally or tried out, hence this is peculiarly the place of experiment, exploration, research. But it is not peculiarly conscious research. It is the social process on trial, or in travail. Administration is thus the casuistical function of rule-making, the formulation of corollaries to law considered as policy in order to adapt law at first hand to the circumstances of fact as they arise within the processes of institutional life. Many of the most important as well as the most difficult problems of legislation appear in this experimental process of rule making. The process is carried on primarily outside the sphere of governmental agencies proper, and within the “social” process of economic, religious, etc., life. It does not refer to that aspect of the judicial function which adopts maxims, although it is an analogous function....⁴¹

The administrative system...tends to develop a spontaneity which maintains its organization and effectiveness in justice by virtue of the influence of the rightness and wisdom of the speculative ideals in accordance with which it was originally constituted. The problem of control of administrative agencies of public life is then a matter of understanding the conditions under which those agencies develop spontaneity or self-control. They attain this capacity upon becoming corporate persons.

Ideally, the administrative body would be autonomous in so far as it is appropriated to the function it performs, and thus not require control, or would minimize the amount of external guidance necessary to effective service. The Postal system will get on of itself, even with a politician as “head.” But this condition would be approached in proportion as the function represented were properly related to its object. The control in this case would be exerted from a distance by the speculative legislature, would be, that is, a control exerted through pure intelligence, and would avoid the irksomeness of direct administrative control, which usually takes the invidious shape of management. The indirect control by the speculative body is effected through the determining by that body of the instruments by which the administrative activity is effected, and would thus appear as an elementary part of the activity which represents the

administrative function itself. It is an ideal control by influence, as distinguished from the forcible control of management. Thus the administrative unit would acquire an *esprit de corps*, that is, an intellectual autonomy or the spontaneity of pure intelligibility, and we would find the system of instruments which it represented held into a unity of function by the very relations that constituted the “mind” of the system. An effective administrative system is the perfect specimen of spontaneity as the autonomous activity of a “minded” order. Its mind represents a degree of cultural significance which the mind of the individual frequently does not.

The difficulties of administration that are real come therefore from the fact that a system of administrative instruments is not properly adapted or appropriated to its function, and thus throws the burden of direction upon the speculative as the organizing function to be worked out in advance of any overt experimentation. Given a system rationally conceived and honestly embodied in proper instruments, and there is little likelihood that it will fail practically. The reason so many public agencies will not “work” is that the *intention* that they should work was never pure.....⁴²

There is no desire...to deny or limit the claims of administrative autonomy, rather it is the ground of the criticism directed at industrial autocracy that real administrative autonomy is rendered impossible. Administration when properly implemented is as autonomous in its operation as is any other aspect of the legislative process, and in fact full legislative autonomy is guaranteed to the public will only when its three legislative functions are all free. What their freedom means, and how they can all be free and yet bound together into a unitary process is the problem of the judiciary, about which we must inquire at the appropriate place. But here it is necessary to assert that the administrative system must be animated with its own autonomy, must determine its own methods and directions of activity, and be limited in no way possible. Even the speculative function that creates its embodiment and breathes the breath of life into it does not bind it; it only obligates it to an end, and the violation of this obligation is the denial of its own self-autonomy and a confession of self-contradiction. But this is equivalent to abdication as a public function, and is simply an assertion, on the part of unorganized instruments, of disorder in their own relations, which disorder becomes pronounced in the case of the industrialized

administrative system.

Administrative autonomy therefore is the basis of any and all stability in a public organization, and denial of freedom to the agencies by which the life processes of society are carried on is suicidal and must be avoided. When we raise the question as to how the freedom of instrumentalities that are for the most part mere masses of property can be guaranteed or even conceived, it will be necessary to refer to the principle of distinction of administrative methods mentioned above. That is to say, the freedom of activity that is involved in a rational administration, is always a reference to personality, and the question how the freedom of administration is to be guaranteed is a question as to the nature of the personality through which its freedom is effected. In the case of an administrative system the personality that is involved and that must be understood is precisely the property-mass considered in its capacity of action or in its practical capacity; the property-mass must be treated as a person expressing autonomy in order to make any administration rational or intelligible at all.....⁴³

It is to the administrative process therefore that attention must be given in the reconstitution of public life; and it must be learned as an element of basic principle that the process of administrative law-making, which is the law-making process in its essence, is going on primarily within those relations and situations of life which are ordinarily regarded as private, and that on this account the sphere of the public will have to be extended so as to include these situations if the law is to attain and retain authority and the respect of men. The regulations which a "utility" corporation imposes upon the citizen are law often in a far more important sense than the enactment of a legislature, and they get and deserve more of the citizen's respect and resentment. And our doctrine that the corporation is empowered thus to impose regulations upon us by virtue of a legislatively granted charter and under the regulation of a legislatively organized utility commission--that the law is in fact made by public agencies of government--is exactly reversing the relations of fact and distracting the attention of the public from the real source and arbiter of the law. What as a matter of fact is true is that the law, as a positive system, the legislature itself as a governmental function, and the commission as an attempt at mediation between abstract government and the actual content of life, all these are, as is the utility

corporation itself, the products of the law as made in the necessary relations and processes and activities of the practical life as lived in the simple routine of existence. On no other conception can the law be given authority over the institutions of life, and the doctrine of the rule of law is senseless if law is to be regarded as merely the product of legislative enactment. Law is derived from will, and will is life aware of its end in the activities which attain ends. The ultimate source of law is the administrative process.....⁴⁴

Perhaps the best way to describe the new administrative method that is emerging from social practice is to illustrate it by the use of the nearest instance of it. This would appear to be found in the case of the commission form of government coming into use in many cities. It is not necessary to enter into a discussion of the details of the system; but it is obvious at once that it represents a combination of the democratic principle that the whole people ultimately carries political responsibility and assumes all the burdens of policy as well as decides the major questions of political method, with the aristocratic principle that the performance of a function should be put into the hands of the individual who can perform it best from the technical point of view and in consistency with principles of policy as laid down. It is clearly a recognition that the ultimate administrative responsibility rests upon the person who assumes to be competent to attain a view of the whole situation where action is required and who occupies a position giving the best vantage point for that view. It is also assumed that a man may possess the competency of an expert in the superintendence of vast complexity of detail and at the same time appreciate the significance of general policy and the mutual bearing of policy and factual situations upon each other. It is also an attempt to find a middle course between the narrowness of the specialist and the incompetence of the masses, and to show that democratic equality is not incompatible with aristocratic competence. It may be indicated at once how such a combination of capacities is possible. The traditional assumption is that the expert combines these capacities because of the multitude and perfection of his states of mind, his "ideas." But actually he possesses such capacities of comprehension through his technical knowledge of institutional instruments as organized into a workable whole by a full understanding of the "theory" of the institutions. This competence he may acquire largely through "experience." But the basis in any case of such

capacity is simply the recognition of the nature of institution, and the success of the expert lies in his willingness to allow institutions to effect themselves through their natural spontaneity, and not undertake to make their action conform to anybody's interests or theories.....⁴⁵

(3.) Judicial Legislation

The final stage of the legislative process is the judicial. This is, so far as the activity of the individual is concerned, the reflective process. It approaches legislation in its speculative phase in cases where there is a board of judges acting as a body, as in the Supreme Court of the United States. Its function is, in general, concerned first with the ultimate rational harmony of the law which it undertakes to integrate in a self-consistent system of principles of action-- "the body of the law." As this self-consistent system of law is the plan or ideal of harmonious human relations, it represents the constitutional activity of will, or the activity of will in which it contemplates the total order of life. It differs on this head from the speculative function in that it contemplates the system of ends as embodied, and as thus the element of permanency of order in life, whereas the speculative contemplates the system of ends as ideal, and as in continuing process of growth. In the one case the ultimate legal reality appears as given permanent effect in nature; in the other, as held fluent in idea. But as the constitutional function of order, the judiciary defines, within the sphere of ultimate ends, the generalized forms and conditions of welfare, and among these assesses their relative worths. That is, it gives precedence, as circumstances demand, now to one type of welfare, now to another; and in making these distinctions, passes, as an incidental function, upon the question of the adequacy of given institutions to the fulfillment of the various aspects of welfare. These institutions are established, given, that is to say, through that phase of the speculative process which designates means, as, e.g., commissions, boards, etc., for the control of large social agencies. It is for the reflective or judicial function to decide as to the adequacy of such means. As such, the judiciary is the instrument of organization in a sense in which no other agency can be. It differs from the speculative and the administrative in that it accepts the world of fact as given, and asks for such

elements of order only as the given is capable of; hence it neither speculates nor experiments, but simply reflects and evaluates. Its attitude is critical, skeptical. It creates nothing, but puts the stamp of approval or disapproval upon the possible satisfactoriness of a speculatively proposed end, and upon the adequacy of administrative means which have been tested in the administrative experimental process.....⁴⁶

The judgment of the court is thus compulsive while the act of the legislature is persuasive; the court requires and prescribes action while the legislature advises and suggests, “allures to brighter worlds and leads the way.” The acts of the court are mandatory, those of the legislature enabling or permissive. The legislature decides what is lawful, the court decides what is law. The legislature demands what is obligatory; the court commands what is compulsory.....

It is...not, characteristically, men who obey the judgments of the court. These judgments are addressed as creative facts to organs which, by virtue of the nature of the commanding agent, are such as appropriately realize the end indicated in the purpose of the judgment. Otherwise stated, decisions and decrees of the court are not addressed to men, enjoining or commanding action; but they contemplate the creation of such an implement in general as will automatically tend to the realization of an end as defined. The legislative element in the judicial act therefore is a realization of what exhausts itself as an ideal in the speculative act, and the realization is completed through the means which are provided in the administrative process.....⁴⁷

The thought element in the social process is the thought of individuals in the sense that it is mediated in every case through the physiological and psychological mechanisms of the individual, and it is in the mind of the individual that there occurs the synthesis of the fact elements in their minutiae, which constitutes the ground of order in the world. But this point is not of so great importance as is commonly supposed. It is pretty much on a par with the psychological localization of functions within the areas of the brain. It is of little importance, except as a purely theoretical matter, that the reflective processes are localizable within one or another of the cerebral areas; they might under perfectly trifling evolutionary influences come to be performed in any other areas. And it gives us little insight into the nature of the problem of social life to find that the thought processes involved in those problems take place in the “brains”

of individuals. And as the localization of psychological process in a given area of the brain is of use primarily only for diagnostic and therapeutic purposes, so the locating of the thought element of social life in the individual is of importance for corrective purposes only, in that its major self-contradictions can best be discovered there.....⁴⁸

The one factor to which we desire to revert with some emphasis is that which represents the professionalized life of the lawyer, as the corporate unity out of which his judgments and decisions issue. The atmosphere of the law office, the bar association relations, the influence of the law journals and reviews, all these tend to determine a make-up of mind for the lawyer which is unique and which conditions the corporate opinion of the lawyer and makes his opinion as a lawyer. Such conditions, of course, surround every type of professional mind, and there is no purpose to criticize it; in fact, it is precisely this corporate determination of legal opinion that furnishes such safeguards as there may be in the process of litigation, and that gives to the judicial process the stability so necessary to the maintenance of respect. It is this fact which maintains a sort of balance between the social process as the sum of all the life activities of a people, and the structural fixity of social institutions; and it is this balance that constitutes precisely the meaning of the concept of justice as the condition of perfection of law in social relations.

But it means several things that must be kept in mind in connection with the impatient popular demand that justice be “done” and not merely speculated about. It means, e.g., that the wheels of justice move slowly, and that there will be discrepancies between the frontiers of social demands and the solid responses of judicial determination. It also means there is always the possibility that the processes of justice will be stampeded when the judicial milieu is shaken off balance by an unstable public mind. The occasional judicial murder is a case in point. The more stable the corporate mental condition, the greater the aberrations that may occur. But it must be observed that social demands are not always possible of justification, and that whether they are in a given case justifiable or not is precisely the question at issue in every issue involving law. In fact the harmonizing of the administrative rules and maxims of the swiftly moving social process with the more staid and ponderous movement of reflection is exactly what is meant by law-

making as a judicial function wherever the harmonizing process is found. It is found with an emphasis upon particular adjustments and local order in the social process as formulated in administration; with an emphasis upon law in its universal aspects in speculation; and the final weaving of the elements together under the combined influences of reflection and experiment constitutes the judicial function in its legislative capacity. Too much emphasis cannot therefore be placed upon the importance of the influence of the social agencies and institutional pressures which make up the environment of the judicial process; they make by unconscious cerebration the law which the judicial decision declares; and while the “mind” of lawyer and judge in the judicial institution are the instruments through which the decision of law gets its details of form, this mind itself is nothing other than the incorporate or impersonated order of the influences we have described, as that order becomes dynamic in the reflective process of deliberation.⁴⁹

E. The Metaphysics of Legislation

Law as Will Incorporate in Nature

....It appears desirable at this point to state with more precision the nature of the legislative function considered as social process, since it is social process that is “made” into law, and to integrate our discussion more closely with experience. It must be remembered that the reference to experience does not restrict us to a description of states of mind as these are present as the normal content of the human individual’s life. On our view the reference to experience implies a more effective objectification of the facts of active individual life, and puts those facts upon a substantial basis within the structure of the real world.

In this objective sense legislation is, we must repeat, the general process of life activity, the process through which will through intelligible action embodies itself in institutions. It is to be observed that such action is not necessarily intelligent. In a very narrow sense, but one representing common usage none the less, legislation refers to specific functions of government. But on the view which we wish to work out, the idea of legislation carries no peculiar reference to established government, but becomes rather an elementary category of order from the point of view of which it is hoped that a total and comprehensive survey of all the facts of life regarded as active may be attained. This is of course a somewhat ambitious undertaking; but the continuity and persistence of the active life in any significant form of organization appears to require that it be undertaken. Can we then, come to immediate relations with “all the facts of life regarded as active”?

This is the question as to whether a fundamental ground in nature can be discovered for law considered as an executive or active function. In another connection I have attempted a rough classification of the elements which enter into the determination of the meaning of the “practical.” On that occasion, however, it was a subsidiary purpose. Here it is central. It is obvious that we are not dealing with causes when we undertake to set out the “situations of fact which are productive of legal consequences.” Law and legal values arise out of situations which

can not be regarded as causal in any sense.

(1.) As a practical phenomenon life is conditioned to a certain extent upon chance. By this is meant that, for the purpose here defined, the structure of life as given in experience in biological and psychological organization, automatically determines the direction in which the inertia or weight of fact is to be exerted, and to some extent and as conditioned by circumstance as envioning condition, also determines the extent to which that exertion is to affect the organization of the structure of life itself on the one side and the order of circumstance on the other. This is the situation in fact to which the term spontaneity ordinarily applies, whenever, as is rare, any reference to concrete fact in discussions of spontaneity is implied at all. And this means that the use of the term spontaneity in connection with fact is simply a case of assuming that facts do not exist except under conditions of order, and that it is the very meaning of order that facts as ordered exert influence upon surrounding phenomena. For, order is the presupposition of relation; and the exertion of influence, as manifest to perception or contemplation, in a concrete case of action, is the instance of a concrete relation which makes order intelligible in the objective sense, and corresponding to the instance of objective or perceptive order, the subjective instance of order as idealized in thought.

This is, I think, as near as it is possible to make explicit and concrete in terms of fact what is meant by assuming that fact, order and cause are original presuppositions of experience, and hence do not require to be demonstrated. In any case action starts somewhere, if we may mean by action observed movement with a reference, and if action does not mean that, then what we have in mind is movement, is, that is, a pure objective abstraction and a case of pure hypothecation by thought. But movement in this sense can never be a presupposition of experience or life, and is quite properly the central methodological concept of mechanics. But as such it is not a practical category, and when our categorizing refers to fact there is nothing for us to do except to accept action as an original fact.

But action cannot be, at least it in fact is not, limited in its connection with either mere fact or cause, and we shall accept Hume's demonstration on that point as final. By the method of inference and by hypothecation, then, action is a function of order. But nothing is proved by this

method. There appears no way out of the situation other than that indicated by the necessity to appeal to perception, and on this point our presupposition will survive the reference both to “common” experience and to science as exemplified experience. It is a common observation and a necessary postulate of practical philosophy that as the internal order and organization of an object changes its modes of relation to other facts also change, and the new relations cannot as fact be traced backward beyond the change in internal order. It is true that speculation can deal in a certain way with such concepts as kinetic energy, but this becomes upon examination a category of logic and only remotely an aspect of observed fact at all. So there could be no connection between kinetic energy and action. As simple fact then, effectiveness as a condition of change in experience originates from the reformulation of the order internal to a fact; and by way of distinguishing it from cause, which can be traced back indefinitely and thus becomes a category of thought and not an observed aspect of fact, we may designate by the term chance the factual situation in which an observed phenomenon cannot be referred beyond observed change of order. Where such a reference is possible the connection implicates cause.

(2.) Besides the obvious fact that change originates within the organization of fact when that organization is considered as strictly internal to the situation in question, there is the equally patent fact that the external relations of a situation also initiate changes. If the former may be regarded as an instance where change is referable to substance, the latter may be said to be a situation of change involving or depending upon circumstance. Once more it is obvious that we are not dealing with causes. Thus the mere placing of fact, or the mere position of fact, imposes upon the facts placed not merely abstract space relations, but it gives them the highly significant relations of reference to each other. And this does not depend necessarily upon the idea of cause as the explanation of how the placing occurred, since this question is self-contradictory.

Thus there are relations involving at least reference to, and through this perhaps movement, implied in the idea of mere position, and the simple idea of a fact retaining its position appears to depend upon the conception of harmony among the relations which radiate from it. But it implies the possibility also of a shift of emphasis or weight which disrupts the harmony and thus establishes a direction in which the meaning of the central fact may impinge

upon an environmental fact in a new way. And there is also reason in the assumption that this shift of emphasis may itself be due to the impact of an emphasis or weight of a similar sort arising from the redistribution of relations in the circumstance of the fact under consideration. It is not necessary to limit the interpretation of what is being said here to mere spatial terms. The language will apply as readily to the qualitative aspects of fact.

Thus the circumstances within which a fact exists may give rise to changes attributable to the nature of the fact, and thus account for the effectiveness of a fact situation upon the experience of the individual. The individual might speak of an external fact as exerting a subjective influence. Of course it is true that this is a tissue of abstractions, except in so far as explicit reference to experience can be made, but even as such it represents the system of formal relations which constitute the objective ground upon which the possibility of an experience rests. And it is further an accurate description of the assumptions which every reference of an evolutionary sort makes when it speaks of the environment, for it intends nothing more than to bring into the clear the assumptions behind the concept of environment as used in scientific connections. It is depending upon what would be regarded as an extremely flimsy basis to say that the environment conditions a course of growth or affects the specific characters of a fact if what is said were reduced to its necessary literal formulation, and it would quickly be explained that of course the environment does nothing. Yet scientific explanation goes on to make deductions which assume the contrary, and the tacit assumption is more adequate as a description of the facts in many cases than the overt accounts of the scientist.

It is clear therefore that the "force of circumstances" is not a mere idle phrase, and that it expresses as much of the truth in many important situations as we can know. There is therefore no reason why circumstance should not be given a place in logical discussion which is often allotted to cause and which cause in the nature of the case is not fitted to occupy since its meaning is compromised thereby. If it be argued that the idea of circumstance is too vague and indefinite to justify recognition in rigorous scientific connections, it may be replied that on the ground of indefiniteness taken as a test science would lose many of its fundamental categories, and if the dependence is placed in clearness it need only be reflected that many clear ideas are

not true.

Even on a causal theory, the substance of fact is a function of the way in which the fact in question is circumstanced; to ground the concept of cause in numerical or quantitative considerations quite promptly relieves cause of its effectiveness, that is, reduces cause to a contradiction. If it is not doing too great violence to language we may then speak of circumstance as ordered chance, and our meaning would be similar to that involved in the use of the idea of cause, since in either case we are assuming that in a given situation of fact there is no need to go beyond the assumption of that degree of order which is necessary to make the situation intelligible. And this assumption we make in any case where thought acts at all, so that we have here in the concept of circumstance apparently an essential element of logic. It is thus, e.g., a simple matter to understand custom and tradition, to take situations involving “experience” on the assumption that they are circumstantiated in history and thus given the permanence of order which makes them effective in influencing the course of events; when it would be preposterous to undertake to explain them in terms of their being built up out of atomistic reactive experiences, or due to the establishing of “uniformities” in the reactions of men. Thus a circumstance which must from the aspect either of its substantial nature or its qualitative relations be regarded as passive, may and does through just that inertia itself exert an influence upon fact outside the ambit of its organization. If it is asked, How? the answer is that neither has cause a “how.”

(3.) But the circumstantiation of fact, when it reaches a particular degree, begins to affect the substantial nature of the fact, and this it does through identifying itself with the qualitative relations of other realities. One of these degree points which is of peculiar significance is that which characterizes the fact circumstantiated as living. And the distinction between the living and the non-living thus becomes a matter of the degree to which and the quality in which a fact is circumstanced. That is to say that an order circumstanced to a given degree, and in a form determined by quality, manifests the qualities and functions of life, so that life has at this point a definite bond of continuity with fact which is ordered in pure inertia, while at the same time they are distinct in kind. And the fact that we speak of the spontaneity of living forms means no more

than that the relations in which they become circumstanced begin to manifest those aspects of effective orders to which we attribute the capacity for action. This is a statement of the case, however, from the outside; but it also is a statement of the fact that it is the point where first the distinction between outside and inside occurs. Stating the distinction in terms of substance we say that here a unique quality appears, the quality which, as circumstanced in higher degrees of complication, we call experience, or, with certain other limitations, we call consciousness. But looking back at this point from the ground of consciousness and experience we may name the fact circumstanced and its relations, not in terms of its degree of circumstantiation merely, but in terms of its quality also, since relational characters and perhaps others now begin to complicate their aspects of order with a new aspect of quality or substance, and its essence, as a new aspect, is perhaps just the stability and permanence of the degree of order involved.

But as pure quality or substance recognized in experience it becomes itself the ground of experience with respect to the inner quality of experience, and is known there as feeling-mass. We say feeling-mass in order to distinguish the original stuff of experience from its specialized characters as realized in experience later, since as experience complicates in circumstantiation through its objects the original feeling-mass acquires distinctions of quality within itself. And it is perhaps just this fact of qualified or limited quality, or degree become substance through the order of its circumstance, which makes the analysis of experience so difficult.

But it is also just the fact of qualified quality which makes possible the explanation of the fact previously described, viz., the fact that a shift in substance or circumstance so redistributes circumstantial relations that the situation circumstanced acquires an executive or growth-urgency. And it is this we wanted to explain, if any possibility of explanation could be found, and this seems to have been discovered when it is realized that order is, by virtue of its own nature, capable of generating the facts of urgency and will upon the occasion of change in its circumstance. This is the ground in nature of law considered as effective order which we have been seeking. But this also reminds us that, on other grounds, we see reasons for believing that what is here called circumstance is the content of the fact circumstanced, in which case we have agency and product, creator and creature, in the same fact, and thus the mystery of spontaneity

appears to be solved. But this result would be unnecessary except to satisfy the insistence of curiosity, since the explanation of urgency and agency and spontaneity is giving the how of a fact, which can only be done in terms of metaphor. But the fact of spontaneity is undoubted, and as an active quality appears to issue from what in subjective experience is known as feeling. Consciousness is then feeling in process of self-substantiation, and, objectively, this is the identification through growth of the substance of fact with its circumstance, order operating as law.

The roots of the life functions which through culture are made into law appear therefore to lie in the substratum of will, and there is little difference whether that substratum be regarded as will issuing in life, or as life acting as will, since the language would mean the same in any case. And there seems to be little question but that we have here both that active character of urgency of life which substantiates the effective authority of law, and the order of life which gives to law its uniformity and universality. Life, will and law are therefore aspects of the same fact-body; and law is effective and has power for the same reason that life idealizes ends in image and will realizes them in action. The ultimate legislator is therefore life, and its representative or agent is will, and the ultimate issue of that agent's act upon the material which life supplies is law as the harmony of the whole.

The stages in the act of legislation are, therefore, the definition of ends in idea or the act of policy; the exemplification of policy in fact, or the tryout of administration; and the demonstration in order, or judicial legalization, of the disparate forces of life. In experience terms the same thing is said in the statement that legislation begins with the urgency of will, passes into agency with intelligence, and issues in substantiated order through reflection. And we have just seen how the trinity of life, will and law, positing itself as a background of feeling and as thus the possibility of the assumption of new quality, becomes also the ground of the experience in which the realities of life, will and law are made intelligible as substance.

This conception of feeling-mass is important in the fact that, being different in constitution from mere fact, it makes a difference of types of inertia, a difference roughly indicated already as that between cause or force, and influence. But the fact we have called mass-

feeling must be understood in terms of neither psychological subjectivity nor of organic subjectivity. As subjective, and in terms of the organic life, it would be indistinguishable from blind force, which is objectionable not so much on account of being directionless as being easily confusable with physical force, in that no objectivity could be found for it. But original will as feeling is not, as is true of physical force, isolable from its locus in the experience whole considered as the ground of its substantiation, and thus has no distinguishing quality since it is the basis of all distinction of quality. As consciousness it is the ground of that mode of knowledge which is neither mediate nor immediate, but which is better called intermediate or obviate. Or, in stricter language, it is the knowledge that has become mediated on a plane substantial to the distinction between mediate and immediate. Hence as either subjective or physical it could not in itself be known either immediately or by ordinary processes of mediation, but is known only as mediated, or recognized as obviate, that is, is inferentially known without any recognized dependence upon the inference process. As either subjective or physical, or in our own phrase, as subjectivity either of the mental or the physical sort, it would give only the form of knowledge, as is true of all scientific relations; would be, that is, restricted to mere process and repetitive recurrence, and would thus have no determinable relations to ends, thus no logical or ontological status.

Feeling then must be understood as involving “consciousness” and “spontaneity” neither directly nor indirectly but still actually and really; not indirectly as is true of physical fact and physical principle, nor directly as in sensation. And yet consciousness in feeling is not immediate, as in sensation, nor mediate as in thought; but intermediate or obviate in that, while it makes a reference to both sense and thought, it has substantial character in itself, while not independently of, yet indifferently to, both. This is frankly implying, as a corollary of the nature and quality of feeling, a possible third alternative between mediate knowledge and immediate knowledge. While this is not the place to work out the details of fact which would be involved in the attempt to clarify such a proposition, a good case could be made out if it should seem in the interest of practical principles necessary to go to the bottom of the question of feeling as knowledge or as a knowledge function.

Thus it could be argued that physical reality, e.g., is known mediately, social reality immediately, and cultural reality intermediately or obviately. This latter is obviate rather than mediate or immediate in that its means are not known directly in the present experience through which the knowledge is derived, nor indirectly through the past experiences through which the knowledge is derived; but it recognizes the knowledge process itself, the elementary feeling-state operating now as will-act, as the intermediary between the substance of experience and its circumstantiation, as an instance, perhaps the instance, of the growth relation as constitutive; hence, it is a form of experience without the duality of character which knowledge on other grounds is invariably infected with. Feeling as knowledge is then substantiation of fact, and the ordinary logical devices of premise and consequence are not required in its modes of validating its objects, nor are the mechanisms of ordinary perception directly involved. It is thus that feeling compels recognition of the fact that it is a knowledge function, and not merely the abstract content of knowledge functions as is often supposed. It is not a content, we may repeat, because it has no quality; it is substance and thus the ground of experience content just because it is quality, and thus prior to the logical distinction between substance and accident.

Some such account of experience as an executive factor in life in its historic and racial and national forms has been shown to be necessary by the fumbings of sociology. Experience clearly exerts influence upon the course of life in ways that can not be made intelligible on the ordinary accounts of the knowledge function. This the sociologists see; but their suggestions for a solution of the difficulty involved have not been convincing. The meaning of all this we may state for our present purposes in the proposition that feeling-substance exerts an influence which constitutes a phenomenon different in kind from the forces expended by other types of fact. It is in this fact, namely that feeling-mass has a-logical relations (or prelogical relations) to ends that we find the significance of thought and knowledge for the legislative process. Too often legislation has been regarded as a purely logical or “thinking” experience, and political theory a purely rational system. But the standing criticism of the rationalist view, viz., that it implies a static universe, is justified, as far as it goes, which is only half way, since the reason implies a world already finished antecedently to the act of reason through which the world is known.

But the idealizing capacity of the reason is overlooked in this criticism. Yet the rationalist's reply in the assertion that "thought is dynamic" cannot make the pure rational process which asserts it an act. It is precisely the function of legislation in experience, in its thought aspect or its idealizing capacity, to recreate speculatively the logical system of ends continually and to adapt the forms in which it itself is embodied (in administration) to the growth-stages in nature represented in those constellations of fact which are called institutions. This insight is popularly represented now in the demand that law be made to keep pace, in its development, with life.

It is through the feeling-content of experience therefore that thought devoted to legislation can create a law which possesses an influence over the acts and order-forms of men; but this influence is neither the conviction which results from reasoned symmetry in an end defined by the reason, nor in the "power to compel" ordinarily connected with the spontaneous "will" which operates on the "subject" from without. The substance of political life, as life lived in peace under law, is primarily the feeling-content of experience, in the utilitarian order-form of economic life, or symbolic order-form of religion, and it is this same content that gives substantial effectiveness to the law considered as an ordering agency.

It is to no purpose to argue that as fact most legislated law is irrational just because of the feeling-element; the rationality that comes to the law by or from thought is nevertheless a rationalization of just that feeling-content. And if law is for the most part vitiated by feeling, this fact indicates a problem for thought and suggests a possible solution. There is then no mystery involved in the fact that law exerts propulsive or effective influence over the minds and actions and institutions of men; but the explanation of the fact, as stated through a reference to human nature, lies neither in the traditional philosophies which rest upon reason or sense, and which make law depend upon psychological sanctions of punishment and the power to compel represented in the police or the military power; nor in the command of an omnipotent will. The influence, or "power" of the law, lies in the respect which the law's intrinsic justice manifests in and through adequate institutions as the objective form in which the pulse of life can embody itself.

The complaint therefore that the law is not respected often means that it is not respectable in this very point, viz., it fails to embody the original feeling-life-content of experience which is the stuff and ground of both law and respect. Law in that case is from without, a usurper. The law's power or proper influence then lies within its own nature, the nature which it has in common with life and will in the elementary feeling which makes all of them both active and intelligible. The effectiveness of law is a consequent neither of cause in the scientific sense nor of ground in the strictly logical sense, both of which imply mere formal conditionedness; but of determinants in the practical sense, which as unconditioned derive their effective potency or cogency from their being obviated in the elementary forms of experience itself. It is not a matter of immediate experience and scientific considerations, sensory proofs or demonstrations, nor is it a matter of mediate experience with its abstract formulations of abstract thought processes. It is rather a matter of obviated or intermediate experience conditioned or backgrounded upon feeling-mass as the elementary nebula whose organization creates the phenomena of the practical life and thus preconditions both active will and creative thought.

Objective feeling-mass, as thus made obvious in fact relations, acts as a determinant of events, the possibility of which in fact and the rationality of which in thought constitute the theoretical problem of legislation. The object or substance which stands as ground behind this determination of events is the corporate order of human life as embodied in institutions. This corporate entity is not a cause, although it includes all the meaning of cause. As a consequence the theory which formulates its nature and constitution can be stated in neither the language of natural science nor of psychology. Scientific considerations of incorporate fact, even of the facts of organism and of life, and also psychological considerations of "mind," make little if any contributions to the problem of finding the ground of effective action. They both presuppose it--incorporate fact as the ground of effective action; and this they do in ways and for reasons that contradict the necessary principles of their methodology, particularly that which enjoins rigid criticism. As a consequence the psychologists can "find" no will, simply because they have no respect for, or are unaware of, the logical connections within which the real will has its being. And yet these logical connections are themselves, in an important aspect of their nature,

psychological facts. And the physical scientists for much the same reasons find no cause in nature, only the abstract aspects of process in “sequence”; thus neither has anything of consequence to say on the subject of elementary law, which eliminates both psychology and anthropology, even science as such, from the “sources” of our information about the practical life.

The effectiveness of will, a different type of phenomenon from that of cause, implies that the process and direction of its action, the two characteristics through which it becomes an object of experience and hence a describable quantity, are not necessarily direct and straight-line as in the case of causes, but devious and occasional in the same way that we speak of the “spirit of the time” or “spiritual” forces generally as operating by methods and instruments which we rarely if ever undertake to specify, but which we assume to be as real as any of the conditioning agencies under which life is lived. This capacity of effectiveness is due to the corporeity of will, and it is in this fact that life and will are seen to be not conditioned but conditioners, not consequents of more remote substances, but the original substance upon which all consequents depend, and the quality at the same time that makes all consequence significant.

This determination of events by original and pre-ordinal indirection permits of the interruption of the life process on the occasion of the emergence of the novel. But this is not a particularly important fact; a new event has, primarily, significance merely in the fact that it suggests the reference to logical principle as necessary to an understanding of a given instance of order. It is merely suggestive of corporeity. That is, logical relations are the general grounds in mediacy of the possible; it is the logical relations between the actual and the possible as the general ground condition of the practical which is to be filled in by the experience that gives to the “emergent” fact whatever status it has as a philosophical issue. It is this determination of events by indirection also, indirection being a function of corporeity as a general characteristic, which makes the direction of action determinable, even in a sense determined, but disallows the predictability of the occurrence of events in the sense accepted by science; events, that is, cannot be predetermined in space and time; but it still allows of events being predictable, even the occurrence of events, through the methods of indirection employed in thought operating as the

speculative capacity and determining events as ends in idealization.

Thus has legislation a ground in the original power of corporate life to make objects actionable in idea antecedently to their occurrence in nature. Through indirection events are determined, but not predictable, in the sense that while the future event is contained and known to be contained in the present conditions, yet the present conditions are, in so far as they involve life, never quite definitely known. They are always in the process of knowing, but this process is never completed in the scientific sense, although it may be adequate and final for thought as a logical relation. It is upon a basis of such considerations as these that a science of legislation, as of law also, is not regarded as possible. That is, law, as also all the social or human interests, implies principles not discernible within nor required by the purposes of natural science. And while a reference to psychology does not constitute a scientific explanation, in so far as such reference is necessary as furnishing a ground in human nature, these principles must relate to an area of psychological fact which has been overlooked by psychologists as well as by legal and political scientists. This is the type of fact which we have called intermediate or obviate.

Feeling-mass as incorporated and objectified, or life as lived, is a determiner of events rather than a cause of effects in the further fact that it is not limited, in its relation to its events, to the straight-line relation of antecedence and consequence. It stands in a number of elementary types of relation to its events at the same time. It operates determinatively through any of its relations, perhaps on occasion all of them, or even all of them at once, and not as a mere resultant of any one of them or of a combination of its relations. It thus even overcomes the restrictions upon the occurrence of events which mere time imposes. It is this fact, the fact that not all the detail of relations in a given case are at one time perceivable, which makes the element of mystery for the scientist and gives rise to his methodological principle that the facts are never all in. Hence the scientist regards the causes of many perfectly well known facts as themselves unknown, and even, in simple and common instances, he is ready to assert that the cause is not knowable to finite mind, whereas ultimate knowability is the presupposition of any mind at all. Thus he will accept God as an “uncaused” and “unknowable” fact, and thus split his knowledge into knowledge and faith, which means that he lapses into magic and superstition. Thus is

“knowledge destroyed in order to make way for faith.” But what is required is not a recognition of magic, but an understanding of all that is implied in knowledge.....⁵⁰

But regarded as an analytic insight the reference to God as source is significant. What it means is that law has a certain “source” or justification in the emotional values and ends to which it refers and which it helps to define and organize. Hence the designation of a value by a rule purporting to derive from the entire system of worth as organized in human culture is one of the elementary grounds upon which the respect for law rests, and it is from this respect, considering the matter psychologically, that whatever power or authority the law has is derived.

But the reference to God is significant precisely in that it is a metaphorical way of obtaining objectivity and hence universality for this respect as a political function, and it transfers the essence of law from the subjective aspects of will or command, on the one side, and the equally subjective fear and obedience on the other, to the objective system of values in which the significance of law is sharable by every one and thus made respectable because rendered concrete to the imagination. Thus the attempt to find an origin in God for the law is once more the attempt to get universality and concreteness for it, and is explicable on the basis of the fact that feeling furnishes us with intermediate knowledge of objectivity long before the methods of logic were perfected to the point where demonstrable or provable knowledge was possible.

This point may be worth further development, and would be in order if this were the place to argue the question of intermediate knowledge. But the religious formulation of legal and political values illustrates so perfectly the method and process of intermediate knowledge that a description of that form of knowledge serves very well as an explanation of certain aspects of law and law-making. We have already noted that the element of immediacy, the positivist element that makes law directly referable to fact, must be incorporated in any law that can command respect. And respectability is the criterion of just law.

But we must note here that immediacy, while normally taken to refer to direct and present sense-perception, is also discoverable within the higher processes of mind, and peculiarly in imagination and memory, as yet a fact identical in character with the content of sense-perception. It is this “reproduced” sense-perception as backgrounded in the nebula of feeling that gives

immediacy to facts of memory and imagination. But it is memory and imagination that give continuity to experience, and thus enable us to “discover” the objectivity of fact in nature. Hence the reference of law to God as source objectifies the law intermediately in feeling, and in the absence of this feeling element there would be no respect for the law in terms of which reason could argue for respect as the basis of the subjective aspects of social order. Thus objectivity intermediated in feeling, the conviction of the substantiality of value, is a necessary presupposition of all thought about law, in so far as law is to find any genuine objectivity. But in the absence of objectivity thus grounded there is, subjectively, no justification for appeal in the interest of respect for law, and no basis of understanding of the relation which law may be supposed to have to inert institutional forms through which life is mediated. The religious “origin” of law is thus simply a reference of law to experience as immediate in feeling.....⁵¹

Some such disposition can readily be made of all the “sources” of the law. There remains one, however, which, because of its importance in the judiciary process of legislation under the name of equity, and in the administrative process under the name of fairness or reasonableness, calls for treatment at this point. Ordinarily and in general the theory is contained in the proposition that law has its source in the “sense of right,” “sense of fairness,” “fair play,” etc., which characterize all ordinary human activities. Like other theories it has a large element of truth, which, as in the case of the other theories also, rarely gets clear formulation. In other words, the theory is made to rest on its least convincing character, in this case the assumed universality, as a subjective fact, of a common state of mind, a common desire or aim on the part of men for the best. That men’s purposes or activities are motivated to any large extent by the presence of the sense of right as a state of mind, or by the presence of any other state of mind as a uniform condition, is extremely doubtful.

There is a much stronger possibility that the sense of right, in the form of a conscious idea, or even any form which connects with the continuity of the individual’s experience, occurs only in the individual’s clearer and more deliberative moments, and then only upon the stimulation of some fact appearing outside the matter of the thought of the moment. What is meant, concretely, is that when I am trading horses or buying groceries these activities occupy all

of my thought as well as all my “sense” and if a question of right enters the situation it is likely that it comes to me from some other than the horse or grocery situation. If the grocer pays me back too much change it is more than likely that I experience a “sense of right,” if at all, because I am aware that some third person knows it, or I fear the grocer will tell it, or I may merely vaguely picture my social position as injured, etc. In any case the subjective possibilities upon which such a fact as a sense of right depends are too slight to serve as a basis for the origin of law in any of its aspects. The sense of right can have any possible content, and, it can almost be said, has every possible content, if we take into consideration the whole legal order.

But it is more than likely that a defender of the point of view would argue that he, of course, means nothing like that; that the sense of right is not to be looked for as a specific state of mind which can be assumed to be uniform among men. But it is to be reflected that there are perhaps only two alternatives in the case. Any psychological interpretation would ultimately reduce to the subjective atomism described above.

And the only other way out, at least the only way known to the methods of consistent thinking, proceeds through the objectification of the so called “sense,” that is, some fact or situation of fact would have to be found within the structure of the objective world through which the meaning of the sense is made communicable among, and accessible to, all men. It is not therefore the existence of the “sense” as a psychological fact ubiquitously in the minds of all, but the presence significantly or symbolically of a universal meaning in an objective order of fact which makes the “sense” possible to all who can understand the order of fact within which right is objectified.

Then the “sense of right,” in so far as it is significant as a “source of law,” turns out to be a reference to the order of life within which our states of mind themselves are determined. It is a reference, if we must put it in psychological terms, to the idea of fitness and satisfactoriness implanted in our “consciousness” unconsciously by the established orderly system of modes of activity and the order of the objects through which the activities are mediated. But its universality, that is, its point of contact with law, lies within the objective order of objects and not in the state of mind.

Besides, if we are consistent in our psychological terminology, we shall have to look more carefully to the analysis which furnishes us with a “sense of right.” It appears that the sense of right is discoverable among psychological entities neither as an “idea,” not, that is, as a factor within the system of fact that makes up our knowing or cognitive experience, nor as a “sense” or among the raw stuff of cognitive experiences. The subjective correlate therefore of the fitness or rightness of our environment in its practical aspects, which is the invariable meaning of right, can only be found among the affective phenomena, or what are commonly called feelings. But feelings are notoriously obstreperous in the presence of law; they are supposed not to submit to “legal” organization, being unstable and so indefinite in quality as to be difficult of classification. And, since law implies order and uniformity, contact of law with feeling seems out of the question. This is, however, a confusion of law with scientific principle.

The real difficulty is, not in the mistaken conception of law manifest in such argumentation, but rather in the inadequate analysis of feeling implied. It is neglected that if feeling were strictly true to its usual psychological description it could be neither described nor argued about; not described because feelings would never persist or recur, hence could not be “reproduced” nor argued about because no two phases of the argument could be sure of standing on the same presupposition. It is extremely hazardous to assume a permanence or identity of succeeding phases in a psychological fact; it comes dangerously close to contradiction. In so far as such facts can be made the subject of discussion they have their portion of objectivity. So that in so far as feeling is a “source” of law, and it is merely recognized as an important material factor, we have law created by a non-speculative function.

Then there are elements of quality in feeling that have been neglected. It is not desirable here to go through a long process of analysis, since we are not here engaged with the constructive aspect of our subject. Let it suffice to state the results of the analysis, with only such shreds of argument as are necessary to the statement. All psychological phenomena are cognitive in nature; and further, the cognitive phase of a given phenomenon is, from the point of view of science, i.e., knowledge, the essential aspect of it. But this scientific or knowledge or cognitive character is the point of contact with the order of the objective world, just as the sensory element

is the point of contact with the content of the objective world.

Here, with the question of the source of law on our hands, we require a cognitive element of experience as the point of connection with law. Reason or intellect might meet the requirement; but then that always reduces the system of law to abstract formalism. Imagination and the fancy might meet the requirement; but this ends in utopian lack of contact with the facts of life. Then there is nothing left but to say that, so far as psychology and the facts of subjective experience are concerned, law, when referred to a source in human nature, finds its point of contact in material fact and thus its logical ground, in the feeling experience.

But it is necessary to avoid confusing feeling as a ground of law with feeling as the content of mere unregulated experience. It is true that feeling is the normal “ground” of war, riot, political stampede, religious fanaticism, industrial imbecility, and of irrationality generally. But we have seen also that “feeling,” or the life background upon which experience is cast, including the specialized experiences commonly denominated feelings, is an intermediate form of knowledge, hence cannot be identified either with the disorganization of impulse or the organization of thought. But it is characteristically cognitive in nature. And that is the point of importance. It is the feeling as a cognitive function, as an instrument of interpretation of our world, both in its aspect of historic continuity and in its aspect of presented system of nature at the same time, that is the primary ground of right.....⁵²

The elementary feeling which is the basis of knowledge is not as yet a feeling of anything. To speak of it as a feeling of or for anything thus prejudices the explanation intended. But such expressions are magic until the facts they are supposed to indicate are seen in their objective relations within the structure of experience. “Right” is not a sense fact nor a sensible fact, it makes no peculiar reference to subjective phenomena at all; it is rather an order of fact backgrounded and thus minded in mass-feeling and is objective and thus the ground of communication, that is, of universality, within the sphere of meaning. Right is thus effective as a determinant of ends independently of and indifferently to any subjective considerations. It is this determination to and of ends that makes right a fact which neither science nor formal logic can appropriately place. But such objects as right, when become fact, display the original mass-

feeling in physical and material form, show the life, that is, as rendered permanent and historical by overcoming the temporal restrictions involved in first occurrence by wider complications in devious and occasional relations, relations specified in that occurrence. And when life expresses itself as active will, it combines the principles of force and influence, and thus creates or establishes concrete objects as the data or detail of institutions.

The description thus takes the highly abstract form because, in the case of the concept of law, it is dealing with what is the metaphysical original of both the inner experiences of conscious beings and of the existence and order of the things of nature. It must avoid at the same time the subjective terms of psychological immediacy with which states of mind are described, and the abstract terms of formal logical mediacy which are applied in scientific discussions of things of nature. Law as a form of knowledge is the synthetic whole formed by the combination of the two which, as a synthesis of qualities, becomes the descriptive designation of the actual objects of experience.

But by objects of experience is not meant the centers of reference within experience, areas of quality worked out by the definition within the nebula of life; but objects formed by the concrete objectification of qualitative areas and their embodiment in the things of nature. These objects are therefore neither subjective states nor external or objective facts, but the common ground within which both subjective and objective are found by distinction and definition. In terms of experience, they make up the area of intermediacy of sense and the mediacy of thought, the feeling-mass background by reference to which alone the surd of subjective-objective can be overcome.

But this, in terms of social theory, means that in the concept of law a way of escape is found for the individual-social contradiction that vitiates all modern practical philosophy. Half the theory of life is lost in the psychological and biological subjectivisms of states of mind and organic structure, and the myths of synapse, tropism, reaction, habit, etc., in terms of which they attempt to express themselves. The other half is vitiated by abstract presuppositions of group, association, control elements, etc., in which sociological theory, adopting the false methods of psychology, attempts to isolate the objective facts of life which are directly and simply described

only through their embodying forms--the institutions of practice. The difficulty arises from the necessity of getting away from the abstract distinction between subject and object, mind and nature, thought and thing, individual and social, which, after all, and as a mere distinction, is the least important of distinctions for practical philosophy, one which should be ignored where it cannot be transcended, in the interest of a satisfactory interpretation of the institution or set-up of life.....⁵³

ENDNOTES

1. This selection is taken from Jordan's chapter "The Socialized Mind and the Group Concept in Forms, wherein he studies the logical methods of the social sciences. His point throughout is that no realities in human life are such as can be "known in repetition"; it constitutes part of his objection to any use, in dealing with cultural problems, of the statistical method.

2. *Forms*, pp. 44-46.

3. Jordan's subtitle: *Forms*, p. 89.

4. Jordan's subtitle: *Forms*, p. 94.

5. This term, "end", is one of prime importance throughout Jordan's works. It never refers to life as finished in the usual sense of having "come to an end", but always refers to a substantial embodiment of some phase of life. As thus embodied or culturally instituted it becomes the ground for further action.

6. *Forms*, pp. 88-96.

7. *Forms*, pp. 102-103

8. Jordan's subtitle: *Forms*, p. 103.

9. This term "subjective" is another concept of basic importance in Jordan's work. He deals at length with politics, law and art, in which connections he designates private feelings, attitudes, and "states of mind" in general as subjective, meaning that they do not supply from within themselves a principle for their own evaluation. But the more fundamental meaning for subjective is seen in this and numerous other passages, where the "facts" of science are also criticized as subjective because they are taken in abstraction from the laws of cultural growth which he thinks are of first importance when we try to say what meaning the facts can have. "'Subjective' then refers not to the inner qualities, but to the detachedness of fact from the order which individuates it as fact." *Forms*, p. 199.

10. *Forms*, pp. 105-109.

11. Further along in the selections Jordan will be found using “custom” in another sense, where it becomes a ground for law which involves cultural growth. In context there is —no confusion or contradiction. Here he is using the word in the sense in which many sociologists have used it; and he rejects it because in that sense it refers to a conditioning of human life in such a manner as makes cultural growth inexplicable.

12. *Forms*, p. 48.

13. *Forms*, pp. 60-61.

14. *Forms*, p. 299.

15. *Forms*, p. 185.

16. *Forms*, pp. 224-225.

17. Loeb and Driesch are two of the biologists whose work Jordan studies in his chapter “The Organism as Corporate Individuality” (*Forms*).

18. Jordan’s note: L.J Henderson, *The Order of Nature: An Essay*. Cambridge, Harvard University Press, 1917. p. 9.

19. *Forms*, pp. 225-227.

20. *Forms*, pp. 144-145.

21. *Forms*, p. 227.

22. Jordan’s title to a journal article, which is here given in part.

23. The reference here is to the last two chapters of *Forms*: “Property as the Structure of the Corporate Person”, and “contract as the Principle of the Corporate Organization”. In addition to the critical analysis here referred to, these chapters contain a reanalysis of both concepts from Jordan’s point of view of corporeity as the basis of both property and contract.

24. It is important to realize here and throughout Jordan’s discussions of corporations that he does not necessarily or even usually have in mind the corporations which our present legal system has recognized and designated by that term. “Corporeity” or embodied mind, is Jordan’s basic metaphysical concept; “institution”, a cultural term, can refer to any characteristic or typical kind of embodiment, such as the institution of education; “a corporation” is a still more limited term, referring to specific cultural entities such as particular universities or industrial

centers or churches, which could also be called institutions. But in any event, a corporation, for Jordan, must manifest at least to some extent the characteristic of autonomous growth; it must, that is, embody its own legality, and not receive it from some external source such as a government which “sanctions” it.

25. “The Structure of Society”: *Ethics*, Vol. LV, No. 2. January 1945: pp. 79-87.

26. *Theory*, pp. 30-31.

27. *Theory*, pp. xviii-xix.

28. *Theory*, pp. 36-38.

29. *Theory*, pp. 33-35.

30. *Theory*, pp. 42-44.

31. I.e., the *Forms*.

32. *Theory*, pp. x-xviii.

33. *Theory*, pp. 195-198.

34. This notion is most fully developed in the latter chapters of *The Aesthetic Object*, but it is also touched upon in an earlier passage (p. 193) in the same chapter, “The Problem”, from which this selection is taken. The considerations which he develops which bear upon this matter are: (1) that the nature of the art object is such as eliminates “the characters and processes through which it is experienced from the meaning which it is”; that is, it becomes a cultural object in its own right once it is created, and involves no back-reference to its creator; (2) life can embody in the art object a perfection which it itself does not have, but the art object does not have life, either, except as a cultural force whose “life” is of a nature quite different from that of the artist.

35. *Theory*, pp. 211-213.

36. *Theory*, pp. 217-218.

37. *Theory*, pp. 228-229.

38. *Theory*, pp. 346-351.

39. *Theory*, pp. 133-134.

40. Considered historically administration is the first phase, since it is the blind or nearly blind fumbling the failures of which give rise to the speculative aspect of thought. This speculative

phase is logically first, since only on the assumption that it will emerge, or rather is there all along at least in an incipient stage, can the will as administrative ever be portrayed as practical, that is, as capable of getting somewhere and amounting to endless process. In Jordan's extended chapters dealing with the various aspects of legislation the apparent contradictions which result from his designating now one and now the other of the three phases as primary, or dominant, or ultimate, etc., can all be resolved by giving close attention as to whether the passages in question deal with legislation from the logical, historical or experiential point of view.

41. *Theory*, p. 105.

42. *Theory*, pp. 383-384.

43. *Theory*, pp. 416-417. The problem of the "persons" which law must recognize has been treated in many places in Jordan's works. E.g., in *Forms*, p. 128, in dealing with the problem of the "subjects of rights and duties" he seeks to show that the judge must find the rights, that is, the right relations required in the social scheme, and then declare what "subjects" this situation demands. The appointment of a guardian would be a simple case, but usually the relations need to be grounded in a more significant property mass. At any rate, "the persons of the law are not the original sources *from* which the relational capacities which represent juridical acts issue as by the magic of creation, but wholes *into* which these relational capacities synthetically converge...."

44. *Theory*, pp. 426-426.

45. *Theory*, pp. 429-430.

46. *Theory*, p. 106.

47. *Theory*, pp. 450-451.

48. *Theory*, p. 150.

49. *Theory*, pp. 457-459.

50. *Theory*, pp. 106-119.

51. *Theory*, pp. 135-136.

52. *Theory*, pp. 138-142.

53. *Theory*, pp. 120-121.

