

## THE CRISIS OF THE WESTERN LEGAL TRADITION\*

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That the Western legal tradition, like Western civilization as a whole, is undergoing in the twentieth century a crisis greater than it has ever known before, is something that cannot be proved by science. It is something that is known, ultimately, by intuition. I can only testify, so to speak, that I sense that we are in the midst of an unprecedented crisis of legal values and of legal thought, in which our entire legal tradition is challenged—not only the so-called “liberal” concepts of the past few hundred years but the very structure of Western legality which dates from the eleventh and twelfth centuries.

I should like, first, to indicate some of the principal characteristics of the Western legal tradition. Later I shall attempt to indicate some of the historical circumstances that brought it into being.

First, it is characteristic of the Western legal tradition that a relatively sharp distinction is made between legal institutions, on the one hand, including legal processes such as legislation and adjudication as well as legal rules and concepts which are generated in those processes and, on the other hand, religious, political, economic, and other types of social institutions. Second, in this tradition the administration of legal institutions is entrusted to a special class of people who engage in legal activities on a professional basis as a more or less full-time occupation. Third, such people, whether typically called lawyers as in England and America or jurists as in most other Western countries, are specially trained in a discrete body of higher learning, identified as legal learning, with its own professional literature and its own professional schools.

These three characteristics of the Western legal tradition, namely, that law is a distinct set of institutions administered by a distinct set of specialists who are the custodians of a distinct body

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Some portions of this lecture are drawn from the Pope John XXIII Lecture delivered by Professor Berman at the Catholic University of America Law School on October 25, 1974 and published in 24 CATH. U.L. REV. 490 (1975).

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of learning, is related to a fourth characteristic: The body of legal learning in which the legal specialists are trained stands in a complex dialectical relationship to the legal institutions since, on the one hand, the body of learning describes those institutions but, on the other hand, the institutions are defined by the body of learning. That is, legal institutions, standing alone, are disparate and unorganized but become conceptualized and consciously systematized by legal learning. The law comprises not only what lawmakers, judges, and other officials command or decide, but also what legal scholars—including law makers, judges, and other officials writing or talking like legal scholars—say about those commands or decisions. The law comprises certain concepts of what law is, and those concepts are implicit in the way lawyers are educated.

In other words, there are not only legal institutions; there is also a legal science, what I would call a "meta-law." Just as linguists speak of a "meta-language," namely the language of linguistics, legal science is the language which jurists use to speak about law. We have the grammar which we all speak, and then we have the science of grammar taught by grammarians, and the two are very closely interrelated. Similarly, we have legal institutions and practices and concepts which are the legal order of a society, and we also have the legal learning, or legal science, in which lawyers are trained, which are part of the law and yet which stand in a dialectical relationship with other parts of it. Legal science, or meta-law, is always in a certain tension with legal institutions. The law in action is never as systematic or as consistent with its own ideals as it ought to be, and periodically the tension between the law that is and the law that ought to be is so great as to constitute a revolutionary situation.

The conceptualization and systematization of the law in the law schools, which is my fourth distinctive characteristic of the Western legal tradition, is related to two other characteristics: Fifth, that the law is conceived to be a coherent whole, a system, a body, a *corpus juris*. And sixth, that the body or system of law is conceived as developing in time over generations and centuries. The concept of the *development* of law, its ongoing character, its capacity for growth over generations and centuries, carries the implication of a seventh characteristic, namely, that the changes which take place in the structure of the law follow a certain pattern. The growth of the law is thought to have an organic character, an internal logic.

Let me review. First, law is a distinct set of institutions. Second, it is administered by a distinct class of people. Third, the

legal profession is a learned profession. Fourth, legal learning constitutes a meta-law, a set of legal concepts and values to which legal institutions are supposed to conform or thought to conform. Fifth, legal learning treats the law as a system, a coherent structure. Sixth, legal learning treats the system as an ongoing one that develops organically over generations and centuries. Seventh, the development of law is thought to have an internal logic; changes do not occur at random but proceed by reinterpretation of the past to meet present and future needs. The law has a history. It tells a story.

Let me add two other characteristics that are interconnected with these seven. The body of law at any given moment, as well as over generations and centuries, is conceived to be distinct from the state. In some important respects it transcends politics. And ninth—and, for the time being, last—periodically, in every country of the West, the legal system is overthrown by revolution. Nevertheless, the legal tradition, which is something bigger than any of the systems that comprise it, has survived and, indeed, has been renewed by each of these great revolutions.

Perhaps now enough has been said to make the portrait recognizable and at the same time to raise the question whether it is a death mask. Do the legal institutions, the legal processes, rules, and practices which we confront in daily life in the year 1975 correspond to this model, this "paradigm," of the Western legal tradition? And is this what is taught in our law schools?

I think the first three characteristics stand firm. We still distinguish sharply between legal institutions and other social institutions. We still entrust the cultivation of law largely to professional legal specialists, legislators, judges, lawyers, legal scholars. We still maintain legal training centers, law schools, where legal institutions are conceptualized and to a certain extent systematized. Beyond that, however, law in the twentieth century, both in theory and in practice, has been treated less and less as a coherent whole, a body, a *corpus juris*, and more and more as a hodgepodge, a mass of conflicting techniques and conflicting rules. Nineteenth century categorizations by fields of law, such as the law of contract, the law of tort, the law of property, and so forth, are now largely viewed as obsolete. The latest essay on the subject, Grant Gilmore's *The Death of Contract*, purports to show that "the general law of contract" was a product of the nineteenth-century thought of such men as Holmes and Williston; I would say that it was a product of the French Revolution and of European thought of the late eighteenth and early nineteenth centuries. In Europe as well

as in England and America, nineteenth-century jurists attempted to fit all types of contracts into a general body of rules, complete and self-sufficient. They did the same with torts, property, and other "fields." This view is now disappearing. Still older structural elements of the law, such as the forms of action, by which the common law was once integrated, no longer even rule us from the grave. The sixteenth century division of all law into public law and private law has had to yield to what Roscoe Pound forty years ago called "the new feudalism." Yet it is a feudalism lacking the medieval Western concept of a hierarchy of the sources of law by which a plurality of jurisdictions may be accommodated and conflicting legal rules may be harmonized.

The concept of a body of law which lies at the heart not only of the separation of law from other social institutions but also of the separation of law from other scholarly disciplines is severely challenged, in the twentieth century, by the apparent fragmentation of law into a conglomeration of ad hoc decisions. More and more the law is coming to be viewed that way and more and more it presents itself that way. We are also losing our belief in the organic development of law over generations and centuries. The notion is widely held that the apparent development of law—its apparent growth through reinterpretation of the past, whether the past is represented by precedent or by codification—is only ideological. The law is presented as having no history of its own, and the history which it proclaims to present is treated as, at best, chronology, and at worst, mere illusion. The changes which have taken place in law in the past, as well as the changes which are taking place in the present, are viewed not as responses to the internal logic of legal growth, and not as resolutions of the tensions between legal science and legal practice, but rather as responses solely to outside pressures, the pressure of outside forces.

Similarly, the view that law transcends politics—the view that at any given moment, or at least in its historical development, law is distinct from the state—seems to have yielded to the view that law is at all times basically an instrument of the state, a means of effecting the will of those who exercise political authority.

Finally, the belief that the Western legal tradition transcends revolution, that it precedes and survives the great total upheavals that have periodically engulfed the nations of the West—the German Reformation of the sixteenth century, the English Revolution of the seventeenth century, the French and American Revolutions, the Russian and other Socialist Revolutions of the twentieth century—is now challenged by the opposing belief that the law is

wholly subordinate to revolution. That is, the overthrow of one set of political institutions and its replacement by another leads to a wholly new law. However much the old forms may be kept, they are filled, it is said, with new content and serve new purposes and are really not to be identified with the past.

This, I believe, is the crisis of the Western legal tradition in the twentieth century. It is not merely a crisis in legal philosophy, but also a crisis in law itself. Legal philosophers have always debated, and presumably always will, whether law is founded in reason and morality or whether it is only the will of the political ruler. It is not necessary to resolve that debate, or others like it, in order to conclude that as a matter of historical fact the legal systems of all the nations that are heirs to the Western legal tradition have been rooted in certain beliefs or postulates. That is, the legal systems themselves have presupposed the validity of those beliefs. Today those beliefs, or postulates—such as the autonomy of law, its structural integrity, its ongoingness, its religious roots, its transcendent qualities—are rapidly disappearing, not only from the minds of philosophers, and not only from the minds of lawmakers, judges, lawyers, law teachers, law students, and ordinary citizens, but also from the law itself. Thus the historical soil of the Western legal tradition is being washed away in the twentieth century, and the law is threatened with collapse.

We will not understand the dimensions of this crisis unless we are willing to view the Western legal tradition in a very large historical perspective. It is said that a drowning man may see his whole life pass before him. Perhaps that is an unconscious effort to find the resources within himself to escape from his predicament. We must turn our minds back through our entire history, as far as we can, if we are to determine what it is that is at stake and what resources we have to meet the challenge.

If we take as our starting point the year 1000 A.D. we see that the various legal orders, both ecclesiastical and secular, which existed among the peoples of western Europe at that time, lacked the distinctive features which I have previously identified as characterizing the Western legal tradition. Legal rules and procedures were largely undifferentiated from social custom and from political and religious institutions generally. No one had attempted to organize the prevailing laws and legal institutions into a distinct structure. Very little of the law was in writing. There was no professional judiciary, either in the Church or in the secular realm. There was no professional class of lawyers, no professional legal

literature. Law was not consciously systematized. There was no independent integrated body of legal principles and procedures clearly differentiated from other processes of social organization and consciously articulated by a corps of persons specially trained for that task.

The origins of Western legal science are to be found in the creation of the first European law school in Bologna in the late 11th century. Thousands of students went there each year from all over Europe to study law as a distinct and coherent body of knowledge, a science distinct from politics, on the one hand, and from theology on the other. The law that was studied at Bologna and at other universities that sprang up throughout Western Europe was the law contained in the newly rediscovered manuscript of Roman legal materials compiled under the Emperor Justinian in Constantinople some six centuries earlier. The teachers and students of eleventh and twelfth century Europe set about to study and to interpret a mass of legal rules and doctrines which had no current legal force anywhere. It was a body of ideal law, a body of legal ideas taken as a perfect system. Eventually the European jurists came to analyze current legal problems, hitherto unclassified, in terms of the categories and standards of the old Roman law as they reinterpreted it.

And so the original conception of legal science in Western Europe was that of a body of knowledge found in authoritative books. To this was added the scholastic method of analysis which sought to analyze and synthesize authoritative texts by identifying contradictions and reconciling them. This reconciliation of contradictions was accomplished chiefly by applying criteria for judging which doctrines were of universal validity and which were of only relative validity. This was the scholastic method applied in law as it was then being applied for the first time in theology. It was applied in law even before it was applied in theology.

The scholastic technique of harmonizing contradictions was first fully developed by Gratian, in about 1140, in a book with the marvelous title, "Concordance of Discordant Canons." This was the first modern legal treatise in the West, and possibly the first legal treatise of its kind ever written. The technique of concording discordant canons was coupled with the belief in an ideal body of law. These two beliefs together made it possible to synthesize, first, the canon law of the Church, and, ultimately, royal and feudal law as well. And so legal systems were constructed out of the preexisting, diverse, and contradictory customs and laws.

The European universities gave to the study of law a transnational character and a professional character and this, in turn, helped to give the law itself a transnational and distinctive vocabulary and method. The graduates of the university law schools went back to other countries where they served as ecclesiastical or lay judges, practicing lawyers, or legal advisors to ecclesiastical, royal, and city authorities, to feudal lords, or to administrative officials of various kinds in church and state. To the extent that they were involved in canon law, they could use their university training directly since canon law came to be taught in the universities alongside Roman law. To the extent they were concerned with the secular law, they applied to it the vocabulary and method of the Roman and canon law which they had studied.

The fact that the law was taught as a university discipline, that it was considered to be transnational in character and indeed a branch of universal knowledge, made it inevitable that legal doctrines would be criticized and evaluated in the light of general truths and not merely studied as a craft or technique. Even apart from the university the Church had long taught a natural law and a moral law by which all human law was to be tested and judged. The university jurists added the concept of an ideal human law. The Roman law of Justinian's books, together with the Bible, the writings of the Church Fathers, the decrees of Church Councils and Popes, the writings of Aristotle, and other texts considered to be sacred, provided basic legal principles and standards for criticizing and evaluating legal rules and institutions. These inspired writings of the past, and not what any lawgiver might say or do, provided the ultimate criteria of legality.

I have been speaking so far of what might be called the style of the Western legal tradition during its formative era. Let me now turn briefly to the historic events which produced that style at that time, so that we may better understand what might be called the content of the tradition.

The rediscovery of the law books of Justinian at the end of the eleventh century was closely connected with the struggle of the papacy for control of the Church and for the independence of the Church from secular authority. Both the papal party and the supporters of the Emperor believed that Roman law would support their respective claims. Moreover, the systematic study of Roman law, which was undertaken after the books of Justinian were rediscovered, and the consequent construction of a new legal science and of new bodies of ecclesiastical and secular law, were a response to the new situation which came into existence during and after that

struggle between the ecclesiastical and secular powers. Historians have traditionally referred to this period by the rather tame title, "The Investiture Contest." But it is coming more and more to be recognized as a genuine revolution in the modern sense. The Papal Revolution established the Church as a visible corporate legal structure standing outside and opposite the visible corporate legal structures of the secular authorities.

Therefore, each side, the ecclesiastical and the secular, needed its own system of law to maintain its own internal cohesion. And both sides needed a common legal tradition to maintain the balance between them.

In 1075 Pope Gregory VII in his famous "Dictates of the Pope" proclaimed the legal supremacy of the Pope over all Christians and the legal supremacy of the Church under the Pope over all secular rulers. "Popes", he said, "can depose emperors," and he proceeded to depose Emperor Henry IV. Moreover, Gregory VII proclaimed that all bishops and other clergy were to be appointed by the Pope and were to be subordinate ultimately to him and not to secular authorities. And so the independence of the Church also meant the centralization of authority within the Church. How was the papacy to make good its claims? How was it to exercise the universal jurisdiction it asserted? One important part of the answers to these questions lay in the potential role of law as a source of authority and as a means of control. In his Dictates Pope Gregory declared that the Bishop of Rome alone has the power to make new laws and that the most important cases of every church may be appealed to the papal curia. Indeed, the use of the phrase "papal curia" to refer specifically to a court of law rather than the entire papal household is said to date from that time.

Many of the rulers of Europe and many of the bishops and other clergy refused to accept the Papal Revolution. Civil war raged in Europe for forty-five years before the contest was resolved by compromise. Separate but equal jurisdictions were carved out for the secular and spiritual realm. In England the matter was not settled until almost fifty years later when Thomas à Becket suffered martyrdom at the hands of Henry II in order to prevent a return to royal supremacy over the Church.

In the century after the end of the Investiture Contest, the Western Church under the papacy elaborated a new system of law, the modern canon law, which was the first modern legal system. It prevailed in every country of the West from England and Spain to Hungary and Poland. It governed virtually all aspects of the



lives of the Church's own spiritual army of priests and monks, and also a great many aspects of the lives of the laity. The new hierarchy of Church courts had exclusive jurisdiction over laymen in matters of family law, inheritance, and various types of spiritual crimes. It also had jurisdiction over contracts whenever the parties made a pledge of faith, over property whenever ecclesiastical property was involved (and the Church owned one-fourth to one-third of the land in Europe), and over many other matters.

At the same time it was presupposed by the very existence of the modern canon law and by the Papal Revolution which gave birth to it that there were other matters, secular in nature, which were to be governed solely by the secular authorities. Partly in emulation of the canon law and partly in resistance to it, emperors, kings, great lords, and city and borough authorities created diverse types of secular law, diverse professional courts, diverse types of legal literature. And so, tribal, local, and feudal customs which had prevailed throughout Europe until the eleventh and twelfth centuries were transformed into new secular legal systems governing breaches of the king's peace, property relations, mercantile transactions, and other matters not specifically involving faith or sin.

Perhaps one should apologize for emphasizing so strongly a single period of history, and one that seems so remote to most people. Yet I believe that the time has come for us to recognize that the modern age of Western man began in the eleventh and twelfth centuries. This has become increasingly recognized by historians in all fields—historians of politics, of economics, of religion, of philosophy, of art and architecture. Also the time has come to overcome the intense nationalism of English legal historiography, which has concentrated on the distinctive features of English law and has largely neglected its interconnections with Europe as a whole. England in the Middle Ages was the most Catholic country of Europe. More appeals went from the English ecclesiastical courts to the papal curia in Rome than from any other country. Apart from canon law, the law merchant in England, equity in the Chancellor's court, the municipal law of London and other cities, and the feudal law of the manors were entirely Western in their general character and not uniquely English.

It is true that the royal law applied in the English Courts of King's Bench and Common Pleas, which developed precociously in the twelfth, thirteenth and fourteenth centuries, had its own unique qualities. Training for practice in these courts took place not in the universities of Oxford and Cambridge, which taught canon and

Roman law, but in the inns of court. Legal education there was less systematic. It emphasized craftsmanship rather than theory. Nevertheless, it too was rooted ultimately in the same body of beliefs that motivated university legal education.

I have sketched some of the main elements of the Western legal tradition during its formative era in the High Middle Ages. Substantial changes have taken place, of course, during the four and one-half centuries since the Protestant Reformation. The dualism of Church and State has taken many new forms. Ecclesiastical jurisdiction has been greatly restricted. Much of the medieval canon law has been secularized and has passed over often unnoticed into the law of the state. The German Reformation of 1517 put into the hands of the secular authority, the Prince, most of the jurisdiction which previously had been exercised by the Church over legal matters. But it was assumed that the Prince was a Christian prince. What resulted in fact was the transformation not of the essence but of the forms of the medieval canon law into the secular law of the Protestant principalities of Germany and of other Protestant countries.

In England the great seventeenth-century revolution which started in 1641 and ended in 1689, resulted in a nationalization of the law. The common law courts swallowed up the jurisdiction of the prerogative courts which had applied Roman and canon law. It was a secularization and transformation of the older law without an annihilation of it. The older law, at first threatened, was eventually strengthened and channeled in new forms.

The French and American Revolutions also challenged, transformed, and ultimately renewed the Western legal tradition. In the nineteenth century, the new secular religions of democracy and socialism, themselves born of Christianity, threatened to deprive Christianity altogether of its public character, its political and legal dimensions. We now have many of the functions of the Church being performed by the press, political organizations, educational institutions, and the like. But despite these and other changes, I think it can be said that until the twentieth century, at least, the Western legal tradition bore the marks of its origins. It still stood for the autonomy of law, the autonomy of legal science, the autonomy of legal institutions, the autonomy of the legal profession. It still stood for the coexistence, within the tradition, of diverse legal systems, each of which challenges the other and each of which is to be judged by reason and morality. I think of our federal system with the opportunity to run from state courts to federal courts and

back; of the tension between national and international law; of the dualism of law and equity, a division which remains in our minds even though the procedures have been merged; and of the Constitution as a body of law underlying the law. We still have diverse legal systems. We still believe, or did believe until recently, in the pluralism of legal systems.

The law schools of the West have also remained, at least until recently, one of the last bastions of the scholastic method, by which legal principles of general validity are marked off from those that are variable according to time and place and circumstance. They have taught, at least by implication, that the body of law, the *corpus juris*, grows organically over generations and centuries and is being continually replenished and renewed by legislation and reinterpretation. The Western legal tradition, until the twentieth century at least, has stood for the belief that so long as law remains autonomous, so long as it develops and grows to meet new challenges, it will continue to be able to resolve individual and social conflicts and to maintain order and justice.

The crisis of law and legal education—and here I speak primarily about the United States but I think the situation in Western Europe is not essentially different—is that both law and legal education are being cut off from their roots in 900 years of Western legal history. It is sometimes argued that this uprooting of law is a result of modern liberalism starting in the seventeenth century. Thinkers such as Hobbes, Kant, Bentham, Rousseau, and other leading representatives of various schools of thought are charged with various philosophical fallacies which have led ultimately to the alienation of the individual, to anomie, to the kind of distrust of history and of social institutions which characterizes our time. The separation of the individual from society, the separation of morality from faith and of law from morality, the emphasis on reason at the expense of intuition and passion, the rejection of tradition and of authority, the instrumental theory of values—these are the hallmarks of modern social and political and legal theory. But I believe it is fair to say that they did not really penetrate the legal systems of the West until the twentieth century. Nor did they penetrate the legal consciousness of the vast majority of people. They were simply not believed in. Even those who preached them did not really believe in them to the same degree that they are coming to be believed in today. Both the legal and the religious traditions of the West, up until the twentieth century, were stronger than the political and social theories which obsessed the theorists.

Consider, for example, the narrowing of legal scholarship in this country since the latter part of the nineteenth century, symbolized in the development of the method of instruction of law by cases under Langdell at Harvard in 1870, a method which is now almost universal. Ultimately, the Langdellian case method isolated law study from other disciplines in the university. By focusing almost exclusively on the consistency of legal doctrine and on the analogizing and distinguishing of precedents, law teachers were able to exclude questions of morality and justice as well as questions of social science and of history. Yet one may question whether such teaching substantially affected the real convictions about law held by the students who went to the law schools and held by the people as a whole.

There is the famous story of the Harvard law student in the early 1900's who objected to one of his professor's solutions. "But sir", he asked, "is that just?" To which the professor replied, "If it's justice you're interested in, then you should have gone to the divinity school." Now today nobody would say that. On the other hand, I doubt that law students as a whole, in those earlier days, were stopped by such professorial tactics from being concerned with justice. Indeed, prior to World War I most lawyers in America were brought up on Blackstone, who repeats the same historical doctrine about human law and divine law and natural law that was orthodox in the West from Gratian on. Gratian said that divine law was supreme; that natural law, which can be known by reason, is a reflection of divine law; that the laws of ecclesiastical and secular authorities are to be tested by, and should yield to, natural law and divine law; and that customs must yield to statutes. For the first time in legal history, by establishing a hierarchy of sources of law, jurists were able to systematize the law and to weed out the irrational customs from the rational, the just from the unjust. And basically, Langdell, for all of his narrowness, also believed in transcendent qualities of the law, which he found in legal history.

It is interesting, in this connection, to go back over law school catalogs of earlier days. The Harvard Law School catalog of 1900 says that "the design of this school is to afford such a training in the fundamental principles of English and American law as will constitute the best preparation for the practice of the profession in any place where that system of law prevails." This was a reference to the fundamental principles of English and American law as they had developed over many centuries. Legal history provided the transcendent quality by which justice was to be found. The 1930 catalog is even more explicit. It states: "The school seeks

as its primary purpose to prepare for the practice of the legal profession wherever the Common Law prevails. It seeks to train lawyers in the spirit of the common legal heritage of the English-speaking people." In recent years, however, this sentence has been omitted from the catalog and instead we have the following: "The school tries to prepare its graduates to deal with legal problems as they arise wherever the Common Law prevails." What has happened to the fundamental principles? What has happened to the spirit of the common legal heritage?

"No law school," says the Harvard Law School catalog of 1970, "can today teach with certainty the law which will be practiced by its graduates throughout their professional lives. The school does seek to provide its students with a solid base of knowledge, analytical skills, and insight which will enable them to perform effectively as laws and legal institutions continue to change around them." There you have the crisis of the Western legal tradition! We are unable to identify a common purpose other than that of training in analytical skills. "Thinking like a lawyer" is what we believe in; one who has learned to "think like a lawyer" will be able, we suppose, to analyze any legal problem that may arise in a world in flux, a world in which law is always a means to other ends, a world in which the concept of an ongoing legal tradition no longer carries great weight.

It is sometimes said that the crisis of law in our time is due to the radical centralization and bureaucratization of economic life, of which socialism in one form or another is an aspect or a consequence. To support this view one may point to the enormous changes in our legal institutions during the two generations since World War I: the rapid and fundamental transformation of property, contract, tort, and other fields of so-called private law, and the emergence of whole new branches of public law such as income taxation, securities regulation, administrative law of a dozen different kinds—subjects which were not even taught in the law schools until recent decades—not to mention radical changes in constitutional law. The center of gravity of the legal system has shifted, and the background of legal ideas, the very style of legal thinking, which was characteristic of previous centuries is no longer relevant. We have moved from an individualistic to a collectivistic age.

If the World Revolution of the 20th century were, indeed, only an economic and a technological revolution, or even only a political revolution, we should be able to adapt our legal institutions to meet the new demands placed upon them, as we have done in revolutionary situations in the past. We should be able to accommodate so-

cialism—of whatever variety—within our legal tradition. What cannot be accommodated is the disintegration of the very foundations of that tradition. The main challenge to those foundations lies not in social and economic and political change but in a cynicism about law itself.

We are threatened today by a massive contempt for law on the part of all classes of the population. The cities are unsafe. The welfare system breaks down under unenforceable regulations. There is wholesale violation of the tax laws by the rich and the poor and those in between. There is hardly a profession—including the teaching profession—which is not caught up in evasion of one or another form of governmental regulation. And the government itself, from bottom to top, is caught up in illegalities. But that is not the main point. The main point is that the only ones who seem to be conscience stricken over this matter are those few whose crimes have been exposed.

We shall not overcome lawlessness until we overcome cynicism about the law, and we shall not overcome cynicism about the law so long as lawyers themselves—and law teachers—adhere to a so-called “realism” which denies the autonomy, the integrity, and what I have referred to as the “ongoingness” of our legal tradition. In the words of Edmund Burke, those who do not look backward to their ancestry will not look forward to their posterity.

Yet what I have said would be wholly misunderstood if it is taken to mean that the study of the past is sufficient to save us. There is no going back. We must move forward into the future, But we can only do so by marching backwards, so to speak, with our eyes on the past. For the future can only be known by faith. In Oliver Cromwell’s words, “Man never reaches so high an estate as when he knows not whither he is going.” Those were the words of a man who understood the revolutionary significance of respect for tradition in a time of crisis.