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What of Stare Decisis?

Roscoe Pound

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WHAT OF STARE DECISIS?

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AS THINGS are today, I cannot but think that much of the attack on *stare decisis* is a part of the revival of absolutism which is so prominent in political and juristic thought throughout the world. It goes with the agitation for abrogation of the bills of rights, making the legislature the sole judge of its own powers, and freeing administrative agencies from judicial review, of which we have been hearing so much in recent years. While we are doing away with checks and balances and putting other forms of official action at large, why not turn the judiciary loose also? Why not set up a regime of free decision that is to allow courts to decide cases as unique with no obligation to a uniform, predictable course of decision? All this is a phase of the general reaction from the settled teaching of nineteenth-century America which opposed the deposit of unlimited power anywhere. The thought of today is as intolerant of limited governmental power as that of the last century was of absolute power.

It is instructive to compare the demand of today that courts be free to decide each case without reference either to past decisions or to other like cases with the no less insistent demand in the last quarter of the nineteenth century, and even in the first decade of the present century, that the courts should not be allowed to develop the traditional element of our law, that they should not be permitted to develop experience by reason, but that everything in the way of finding grounds of decision and practical means of adjusting relations or ordering conduct should be done and done only by legislation. The courts were to be confined to mechanical logical application of fixed rules. If they did anything more it was branded usurpation. Perhaps the high water mark was reached a generation ago when, on the one hand, the apostles of progress were denouncing the courts for not amending the constitution by spurious interpretation, and, on the other hand, the same writers and teachers were attacking them for applying the ordinary canons of genuine interpretation to give a statute a reasonable meaning. As is usual when such extreme positions are taken, the truth lies between them.

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At the outset we must clear the ground. Such a discussion as the present must turn largely upon our idea of the legal order. It makes all the difference what we take to be the end of social control through the application of the force of politically organized society. We may think, as men did in the past, of a systematic and uniform and predictable application of that force in accordance with authoritative norms of decision developed by an authoritative technique. On the other hand, we may think, as many do today, in terms of adjustment of relations by the force of politically organized society, with no necessary element of system or order or predictability, defining law in terms of the judicial process or the judicial and administrative processes, looked on as of the same type, and take it that law is not something governing or to govern official action, but that official action itself is law. If those are right who maintain that legal precepts are nothing more than formulations of the self-interest of a dominant social and economic class, and that single decisions are inevitably dictated by class interest or prejudice, or if those are right who assert that it is psychologically impossible for a bench of judges to act objectively and impartially, that in fact every case will be treated as unique and that legal reasoning and reference of decisions to traditional or to statutory precepts is a hollow pretence to cover up an arbitrary resort to prejudice, there is no need of debating about *stare decisis*. It should go into the dust bin with all the rest of what the self-styled realists call the superstition and mythology of the law. But it is significant of how much the skeptical realists actually believe of their extravagant assertions that they attack *stare decisis*, not as a deceptive bit of pretence but as something which constrains and holds back the judicial absolutism, which in another breath they assert actually exists already. Indeed, they seem to hold that a regime of judicial no less than of administrative absolutism ought to exist, although they often repudiate as unscientific any idea of "ought" in the social sciences.

If we say with the skeptical realists that law is whatever is done officially, we need not trouble ourselves about futile theories of how it ought to be done, whether on a theory of hewing to written texts or one of developing experience of past decision by an authoritative technique or one of application of a personal hunch by an *ex officio* expert. If it turns out that after all the economic order and human chafing under subjection of the will of one to the arbitrary will of another do call for system and order and predictability in the adjustment of relations, we may turn to a superman administrative leader to keep what is done officially to some tolerable limits of order and system.

Bentham attacked what we now call judicial lawmaking as usurpation,

taking law to be an aggregate of laws and a statute to be the type of a law. He believed in codification whereby the norms of decision were to be ascertained and promulgated in detail, leaving to the courts no further function than one of genuine interpretation of the relevant section for the case in hand and fitting that case into appropriate code pigeon-holes by a mechanical logical process. It is a curious feature of recent political thought that critics of the common-law courts, on the one hand, repeat the argument of Bentham and charge the courts with unwarranted making of law when they should only apply law, and yet, on the other hand, charge them with reactionary backwardness in not changing established precepts of the traditional element of the legal system right and left to meet the exigencies of single cases. But we must remember that in all legal history the practice of mankind has swung back and forth between tying tribunals down hard and fast by rigid rules of strict law at one extreme, and at the other leaving them free to decide according to an unfettered personal discretion.

In the nineteenth century the world was in reaction from the identification of law with morals, the reference of all things to individual reason, and the consequent personal justice of the era of equity and natural law in the seventeenth and eighteenth centuries. In the United States, in the last half of the century, the reaction was especially strong. The colonists had had abundant experience of personal justice under a regime in which a royal governor and a council appointed by him were the upper house of the legislature, the ultimate administrative agency and the ultimate court of review. They knew well why it was that, when the colonies became independent, they set up constitutions with bills of rights and called for a government of laws and not of men. But ideas of natural law, imported from Continental Europe were in the air, and in our formative era gave shape to a doctrine that the common law of England was received so far as applicable. The margin of judicial choice involved in the term "applicable" and the gropings for a time in determining what to receive and what to reject and replace alarmed Timothy Walker a century ago, and his pronouncement against any such latitude of judicial action was typical of the mode of thought which came to prevail in the next generation.

As Timothy Walker was in reaction from a judicial process too much at large, many law teachers of today are in reaction from the over-strictness of the analytical theory of law as a body of logically interdependent precepts imposed upon American law in the last quarter of the nineteenth century. Bentham and his followers, the English analytical jurists, taught us that the rule of property was the typical law and jurists

strove valiantly for a time to make all legal precepts conform to that type. Fifty years ago it was confidently believed that the law as to negligence could be reduced to a body of rules, so that if one got on or off a moving car, or stood on the platform of a moving car, or put an arm out of the window of the car, it was negligence *per se*. One of the most liberal, if not the most liberal, of our great American judges believed to the end that the law required one who sought to cross a railroad track to stop, look, and listen regardless of time, place, and circumstances.

In the nineteenth century we had a firm belief in history. In law, as in every other branch of learning, we sought to understand things by studying their development. The age of history is in the past. In law particularly the history of institutions and doctrines is no longer accounted a necessary part of teaching. We teach public law as if it had been put in force by a fiat of a sovereign yesterday without the elaborate introductory historical inquiry which was formerly a matter of course. Hence there has come to be a tendency to forget what historically lies behind the separation of powers and to assume it something growing out of eighteenth century philosophical theories which we may well throw over in the less rigid political and legal thinking of today. When our bills of rights were framed the memory of the administrative tribunals of Stuart England was green. Seventeenth-century England had had a hard struggle with them, and for a time it had seemed that the common-law courts in which judges were removed right and left for hewing to the law instead of consulting the will of the King might be reduced to administrative agencies of the crown. Coke's Second Institute, in which the supremacy of the law, and the subjection of all officials of every kind and grade to the law of the land were preached, became a legal bible to the colonists after it was published by order of the Long Parliament. Seventeenth and eighteenth-century America had a long experience of undifferentiated control by administrative officials with lawmaking, executive and judicial powers, and with courts deciding after the manner of administrative bodies and free from bonds of rules of law. Indeed, the colonial courts were often both judicial and administrative in character. It was only on the eve of the Revolution that some of the states began to set off courts from administrative agencies. Often the legislature was the ultimate court of review. When it was not, the Governor and Council were often the highest court within the colony, and the Privy Council in England was the final court of appeal. Moreover, the Board of Trade and Plantations, another administrative body, had large powers of control over colonial affairs. The Privy Council was not a court, as it has come to be. It sometimes asked for the opinion of the Attorney-

General. But for the most part the noblemen and gentlemen who attended felt competent to pass on colonial legislation and recommend a veto, to issue instructions to the royal governor controlling administration, and to review the judgments of colonial courts by the light of nature without having exercise of their discretion hampered by technicalities of law. Moreover, colonial legislatures had been equally free to follow individual inclinations. They had by statute taken the title to land away from one person and conferred it on another, they had adjudged persons guilty of crimes and imposed punishments and confiscations, sometimes without hearing and in the way of what have aptly been called legislative lynchings. They had granted new trials to litigants defeated in the courts, probated wills which the courts would not allow, given special directions as to the administration of particular estates, and exempted particular litigants in particular cases from the operation of the statute of limitations. This sort of legislative justice died hard in some states after the Revolution. But when we read that the legislature was appealed to in cases too flimsy to take into court, we can understand why the first act of the independent colonies in 1776 and thereafter was to frame a bill of rights declaring for a separation of powers, and why Americans in the nineteenth century, when historical study was held to show the orbit of development of institutions, were firm for requiring uniform, stable, predictable action from judges no less than from other public functionaries. Experience shows there is something here to be maintained even at some sacrifice.

I repeat. The demand for courts as in effect part of the administrative hierarchy, proceeding in the administrative rather than in the judicial manner, is part of the general revival of absolutism throughout the world. In the last century those who believed in a universal ideal of law as a body of logically interdependent precepts, urged that decisions be overruled for want of conformity to their analytically ideal plan. The demand for overruling decisions today comes in large part from those whose ideal plan involves free decision of each case to the ideas of the moment according to personal discretion.

Rightly understood, *stare decisis* is a feature of the common-law technique of decision. What is wrong in that technique, or in the exercise of it by our courts, which is taken to call for giving it up? The common-law technique is based on a conception of law as experience developed by reason and reason tested and developed by experience. It is a technique of finding the grounds of decision in recorded judicial experience, making for stability by requiring adherence to decisions of the same question in the past, allowing growth and change by the freedom of choice from among competing analogies of equal authority when new questions arise

or old ones take on new forms. In that technique there is a distinction between binding authority and persuasive authority. The decision of the ultimate court of review in a common-law jurisdiction is held to bind all inferior courts of that jurisdiction and also the court itself in future cases involving the question of law decided or at least necessary to the decision rendered. Beyond that it may furnish an analogy and be the basis of legal reasoning upon new and different questions raised by different states of fact. But there are usually other analogies of like persuasive authority to be considered and the court's choice is a free one with reference to received ideals of what the social and economic order require. In other jurisdictions it is only persuasive, to be taken as a starting point for judicial reasoning so far as it appeals to the court.

Just how binding is "binding authority" in our common-law technique? A single decision has never been regarded as absolutely binding at all events. But, on the other hand, it had become established that nothing less than an overriding conviction that a precept fixed by a prior decision was contrary to the principles of the law so that it had an ill effect upon the process of determining new questions by analogical reasoning and was, as Blackstone puts it, "flatly" unjust in its results, could justify judicial rejection of it. Perhaps it is as well that the exact limits of this term "binding authority" have never been rigidly defined. All definition says Coke, quoting from the Digest of Justinian, is perilous. The doctrine is a check upon judicial action that ought not to be thrown off in the general pressure to throw off limitations on official action.

But what is it that calls for rejection of the doctrine within the comparatively narrow limits within which it obtains? One type of case where it used to be objected to was rules of procedure established by judicial decision. Today there is ceasing to be need of overhauling procedure by judicial overrulings of the course of decision. The need is being obviated by committing details of procedure to rules of court which may be changed by the courts as experience dictates. Another type of case which has caused irritation at the doctrine is to be seen in decisions establishing certain states of fact as constituting negligence. For instance, there is the stop, look, and listen rule as applied to motor trucks crossing railroad tracks on which streamlined trains are operated. Here application of a standard of due care is involved, and this is a very different thing from finding and formulating a rule of law. The legal precept defines a standard, but there is no set of detailed precepts fitting each case into the standard. That is a matter for each case just as the defining of the standard, on the other hand, is a matter of cases generally to be governed by a rule of law. A decision as to what was reasonable when fast trains

went forty miles an hour and people crossed tracks in horse drawn vehicles is not overruled by not applying it as a measure of reasonableness when trains go from seventy to one hundred miles an hour on double tracks or even four lines of tracks and crossing is done in motor vehicles.

It should be noted also that when definite detailed states of fact vary markedly, rules cease to be more than starting points of analogical reasoning. In most cases other analogies are at hand so that a more satisfactory starting point for the different state of facts may be found and the question may be put on a basis in touch with the exigencies of the time and place by the ordinary technique of drawing a distinction. Rules which attach a definite detailed legal consequence to a definite detailed state of facts have usually a relatively short life because of changes which eliminate the state of facts to which they were applicable and leave only an analogy, of persuasive force for what it is worth, where there may have been a binding legal precept.

Then, too, we must distinguish subsequent judicial rejection of the reasoning by which the result was reached in a prior case and substitution of different reasoning leading to the same result, from a changed course of decision requiring a different result. It ought not to be necessary to say this. But one encounters constantly statements that a line of prior decisions has been overruled and a new line of decisions has been inaugurated, when all that has been done is to announce a better or more all embracing line of reasoning which will sustain the old decisions and lead to better results in new ones which have come up for the first time. Much harm has been done to our common-law technique in America by text writers in the decadence of text writing in the last quarter of the nineteenth century, and by hack writers in encyclopaedias dogmatically announcing rules in terms of the exact words of courts without attending to the results of the cases as compared with the language of decisions. It often requires a long process of judicial inclusion and exclusion to work out a principle or a number of principles which will put a series of new cases in some field of the law in the order of reason and to enable us to formulate a body of rules with assurance. The language may have to be altered many times in successive opinions of the courts, and yet when the development is complete and we look back over the long line of decisions we may see that the cases at the beginning of the line would still be decided as they were when they arose. The language of earlier cases has been repudiated and no doubt ought to have been rejected in the light of further experience. But the results reached remain the same, are consistent throughout the course of decision, and in the end have yielded a workable principle. It is not infrequent to hear it

said in connection with cases of this sort that the highest courts have reversed themselves repeatedly, when they have done nothing of the sort. If anything or any one has been overruled it is the hasty text writer or hasty opinion writer who ventured to formulate general propositions on the basis of insufficient data while a subject was still formative. It cannot be insisted upon too often that our common-law technique does not make the language authoritative, much less of binding authority. It is the result that passes into the law.

I do not overlook such cases as the recent overruling by the Supreme Court of Oregon of its prior decisions following the now thoroughly repudiated doctrine announced by the New York Court of Appeals in 1871 as to one rogue cheating a credulous would-be rogue, nor such cases as the giving up of various rules as to imputed negligence which grew up here and there in the train of *Thorogood v. Bryan*. These cases are squarely within Blackstone's proposition and serve to show that the common-law technique is quite equal to situations that clearly call for judicial without waiting for legislative action. Nor do I overlook such cases as *McPherson v. Buick Motor Company* in America and *Donoghue v. Stevenson* in Great Britain. Many have spoken of the former as sweeping judicial departure. Certainly these cases did make obsolete a great deal of language in the books. But the general principle of negligence had for a long time been coming to be better understood and the merit of the two decisions is that they sum up a course of development which had been taking place according to the traditional technique of the common law and go upon the principle underlying our whole experience of deciding as to liability for negligence rather than upon logical development of language used in a particular type of early cases which tried out a principle out of line with the general law and not justified as an exception by its results. Moreover, the cases had largely been reaching what we now regard as the right result by reasoning which may be given up without affecting that result. There is no departure here from the common-law technique.

One may make a like observation as to recent cases which some have urged overrule older decisions and infringe the constitutional separation of powers. Some of them do no more than recognize that application of a standard may be quite as much an administrative as a judicial function and hence may be committed to an administrative agency where involved incidentally in administration as it is left to courts where involved incidentally in adjudication. The others were explained long ago by Chief Justice Marshall. Where there are powers of doubtful classification, such as rate-making, for example, it is a legislative function to assign them to

an appropriate department. The supposed difficulty in these cases arose from an unwarranted assumption that every power could go only in one place and that there could not be any, and we now know there are many, which, whether looked at analytically or historically, could be put equally well under more than one department. Here, again, the language of law books has been overruled, not the course of decision.

It should be added that as to commercial law, where in any event the orthodox technique allowed greater margin for judicial overruling of prior decisions in order to achieve and maintain uniformity among the several states, uniform state laws have taken care of the subject as to all the important questions and if any not so taken care of arise, the recognized latitude for attaining uniformity by judicial decision will suffice without resorting to any drastic general change of method.

There are real difficulties in the judicial process that I do not pretend to deny nor seek to ignore. But those which give rise today to attacks upon *stare decisis* have to do more with interpretation of constitutional and statutory precepts and with application of standards than with the following of established precepts determined by judicial decision. There are three elements in the body of authoritative materials of decision, a precept element, a technique element, and an ideal element. In interpretation and in the application of standards the ideal element is the ultimate determinant. At bottom, that element comes to a received ideal picture of the social order of the time and place made to furnish an ideal of the legal order. Questions of the intrinsic merit of possible interpretations, questions of reasonableness, always involved in the application of standards, are measured with reference to this picture. In the last century it was a clear one. It was a picture of pioneer, rural, agricultural America of our formative era. That is not a picture of the society of today in urban, industrial communities and is less so in all, but in varying degrees in different, parts of the land. But we have not formed any clear ideal of an urban industrial society and much less an ideal of a society which presents a variety of shades from a rural agricultural society at one end to a highly industrial society at the other. It is here that jurists ought to be making the attack. We need a critique of our traditional re-received ideal. We need to learn how to redraw it and then redraw it clearly. It is not wise social engineering to administer justice today by a blue print of American society of one hundred years ago. But we shall not achieve this critique, we shall not further this redrawing or reshaping of our received ideal by setting the administration of justice at large and turning to judicial and administrative absolutism.

I have pointed to a real grievance with our administration of justice

upon which we ought to be at work. But beyond this is not part of the supposed mischief that is taken to call for giving up of an essential feature of the technique of decision in the English-speaking world simply that this age is in a hurry while the courts are and ought to be cautious? The courts in the past have not been ready to overturn established precepts with every swing of political and economic opinion, especially when they swing so much and so fast. These sudden changes, making new rules operating for the future are for the legislature. The courts, it must be remembered, establish precepts for past and future cases alike. Indeed, when they overrule a decision of the past, they subject a transaction or situation of the past to a different rule of law than that which obtained and applied to it when it took place. Hence English-speaking peoples universally have felt that a check upon the judicial power was needed. The bills of rights seek to preclude retroactive legislation of a kind of which Americans had experience in the colonies. Judicial decision is of necessity retroactive. The court works out a legal precept or finds one in order to apply it to a set of facts occurring in the past. A check upon judicial action is found in the settled practice of courts in the common-law world requiring the courts to apply an authoritative technique to authoritative materials of decision. By that technique the balance of stability and change is assured and maintained.

If what I have been saying is well taken, the causes of dissatisfaction which lead to attacks upon *stare decisis* are not in that doctrine but rather in our technique of applying standards and in the ideal element of law which is decisive in applying standards. Let us approach the subject in the classical manner of the common law. Let us consider the old law, the mischief, and the remedy. To my mind the chief cause of complaint grows out of the mode of thinking about law in the nineteenth century which put law as an aggregate of laws, took law to be of necessity a rule, and took a rule of property to be the type and model of a rule. There is much more to law in the sense of the body of authoritative materials of decision, and much more to the precept element of that body of materials than rules attaching definite detailed consequences to definite detailed states of fact. An increasingly important type of precept in the law of today establishes and prescribes standards. The precept prescribing due care in a course of conduct not to subject others to unreasonable risk of injury and prescribing liability to repair resulting injury in case that standard is not adhered to, does not lay down a definite detailed state of facts nor affix to such a state of facts a definite detailed legal consequence. Due process of law is a standard. There is a precept in the Constitution prescribing that legislative and executive action shall not be

arbitrary and unreasonable. It prescribes that standard. But there are no precepts anywhere defining reasonableness or prescribing in detail what is unreasonable. Nor can there be in the nature of things. The most that can be done is to measure action by its conformity or want of conformity to a received authoritative ideal, and that ideal itself must change with changes in the society of which it is a picture. Application of a standard in the light of a received ideal must be a matter of times and places and circumstances. What was a negligent speed in a horse drawn cart is not a negligent speed in an automobile. What was unreasonable in a rural agricultural society is not necessarily unreasonable in an urban industrial society. What was unreasonable under the circumstances of yesterday may or may not be under the circumstances of tomorrow. I repeat. It is the idea of law as no more than an aggregate of laws, and that a law is of necessity a rule of the type of a rule of property, that is at fault. If the difference between application of such a rule and application of a standard is seen and borne in mind, it will be apparent that decisions as to what was arbitrary and unreasonable under conditions of the past are not binding under the doctrine of *stare decisis* unless the conditions of the time and place and the surrounding circumstances are the same.

It is impossible to have at the same time a perfect stability, a complete certainty and predictability in the judicial process, and a perfect flexibility, a complete instant adaptation to the requirements of changes in the social and economic order. The best that can be done is to maintain a balance between them which will give as much effect as we can to each consistently with not impairing the other. This is achieved by finding and establishing principles, authoritative starting points for legal reasoning, which enable new situations to be dealt with in the light of experience and rules to grow out of application of experience. A good example of the creative judicial lawmaking which the common-law technique permits may be seen in the matter of aviators flying over the air space above land. If one thought in terms of rules only this might have been thought to contravene the old maxim as to ownership indefinitely upward. But the type of transportation was new and the maxim expressed no more than what experience had developed in the past. There was at hand in the authoritative materials of decision not only the maxim but also the settled privilege of boating and fishing over the privately owned bed of streams. There was no break in the consistent course of decision, there was no breach of any established rule of law in developing the doctrine of a new subject from the analogy of that privilege.

So much for the old law, that is, the teaching that all law could be made and administered to the pattern of rules of property and that the ideal

element could be ignored or excluded, and the mischief, that is, the effect of that teaching on the application of standards which have come to be an instrument of chief importance in the legal order of today. Now what of the remedy? For rules and settled principles which require change, except in a few extreme cases, the orthodox common-law technique looks to legislation to abrogate the old and formulate and establish the new precept. The English courts have been and are firm in adherence to this doctrine. But a few months ago the House of Lords was confronted with the remnants of the fellow servant rule which had not been done away with by Workmen's Compensation laws. Lord Wright put tersely the unanimous view of the Lords of Appeal, saying: "This house cannot usurp the function of the legislature in a matter of this nature." Lord Westbury and Mr. Justice Brandeis, who will certainly rank among the most liberal of common-law judges, have both insisted upon this in clear and vigorous terms, not only as to rules of property, but as to rules governing conduct. As Mr. Justice Holmes put it, judicial lawmaking is interstitial only.

It is true the legislature is slow in dealing with defects in the law governing the relations of man and man and has been increasingly disinclined to trouble itself with what is called "lawyer's law". The legislative process calls for scrutiny quite as much as the judicial process and reform there is at least as urgent as reform in the courts. Where radical readjustment of achieved legal balances, as for example, the balance between security and liability on a basis of culpability, which runs through the law of torts, is required, the courts cannot be asked to turn the whole course of judicial decision to the right about at one stroke. If they attempted to do this while new ideas of justice were formative and at large, there would be judicial anarchy. In England, the Law Revision Committee recommends abolition of the requirement of consideration in simple contracts. Would any one recommend its abolition by judicial decision? The committee also recommends repeal of parts of the statute of frauds. Is there any substantial difference between judicial abrogation in the one case and judicial assumption of a power of repeal in the other?

Caution is necessary in introducing new ideas by judicial decision rather than by legislation because in the technique of our law judicial decisions are starting points for legal reasoning. They are developed by analogy for other cases. On the other hand, statutes make rules only for the cases within their purview. Hence when a new proposition comes in by legislation it does not disturb the general legal system, no matter how radically it departs from what went before. But when something radically new comes in by judicial decision, no one can foretell what its disturbing effects

may be. It not merely decides the exact state of facts which it served to adjudicate, it is potentially a starting point for analogical reasoning for cases in widely distinct parts of the legal system. That a court has overturned rule *A* at once puts rules *B*, *C*, and *D*, rules *M*, and *N*, and rules *P*, and *Q* in question, because all rules at all analogous to *A* are likely to be challenged on the analogy of rule *X* which has taken the place of *A*.

It is not *stare decisis* that the law reformer should be assailing. American courts have been quite sufficiently inclined to rectify obvious, clearly demonstrated mistakes in the light of reason applied to experience. What needs rectification is a judicial habit of following language extracted from its setting by text writers, of adherence to formulas instead of to the principle of decisions, and the taking of the words for law rather than the judicial action which those words sought to explain. Again, it is not *stare decisis* which is at fault in the large domain of the legal order which is ruled by standards. It is the failure to differentiate between rule and standard and the attempt to reduce application of standards to hard and fast rules. Even more in all cases where the present generation is troubled about *stare decisis*, the real difficulty is with the blue print to which courts interpret legal precepts, choose starting points for legal reasoning, and apply standards. Here we have a difficult problem at a time when ideals of justice are in flux. It makes the balance between stability and change, always hard to keep, doubly difficult. But we must be thinking about this ideal element in our law, and how to criticize and organize it, rather than thrashing over old straw about *stare decisis*.

If legislation is not doing its part, we should be thinking about how to make legislative bodies equal to the task. Bar association committees, the Conference of Commissioners on Uniform State Laws, Law Revision Committees, and in particular Judicial Councils are meeting the demand for better preparation for legislative correction of defects in the law. Legislation prepared by a legislative committee of some special organized interest has been the bane of American legislation on matters of substantive law and procedure. A ministry of justice is the effective remedy. While that is coming, the law teacher and the profession should make the best use of the judicial council, which is the most effective substitute at hand.

In conclusion I would say as St. Paul did to Timothy: "We know that the law is good if a man use it lawfully."