

To the Law School of the University of Chicago:

I am asked by the present Dean of the Law School to write a "Comment" on the "conditions concerning the administration of justice, the economic order, the conditions of security and freedom, or the international order." I shall confine what I have to say to "the administration of justice", for that is all as to which my experience entitles me to have even the tentative opinion that I venture to suggest.

An outstanding feature of our existing law is the proliferation of regulation by means of administrative tribunals. It appears pretty plain that this must go further and further. The progress of our increasingly intimate acquaintance, not only with the physical world, but with the determinants of our own conduct, already makes it difficult for judges not specialists to deal with the conflicts that arise. The issues involved are usually factual; and so far as they are, it is reasonable to leave the answers to specialists, who alone can have valid opinions about them. Their decisions should not be reviewable by courts unless it appears that they have been influenced by improper motives.

True, it is extraordinarily difficult to separate the factors in any controversy that do not involve some choice of values, and values are no only incommensurables, but they will continue to be such for much more than fifty years.

Somewhere in government there must intervene an authority that, although it accepts the decisions of such tribunals, so far as these do not depend upon choices between values, will interpose its own choices. The measure to which these choices are acceptable to the majority of those in the society, or at any rate of those groups within it that are dominant, is the measure of their success. How shall we ascertain what are acceptable choices when values conflict? For many years it has been believed that general principles exist by which courts can determine whether such choices should be accepted, and if they should not be, to declare them invalid. The existence of any such principles applicable to economic interests is being increasingly doubted; but their existence is still widely and ardently asserted as to what are called "personal" values. The notion that there are any basic propositions, concrete enough to determine actual controversies, is deeply ingrained in our legal thinking, and it will take a good deal more than fifty years before we recognize, as I believe we should, that there are none such, and that law consists of choices made ad hoc, and successful to the extent to which the lawmakers are able imaginatively to put themselves in the position of those whose interests are involved.

Of course, I recognize that to do this in every instance would deny what we mean by "Law" and substitute the Cadi at the Gate. However, if I were to guess what would be the course of our law in the next fifty years, it would be that we shall entrust the final settlement of social conflicts

more and more to popular assemblies; and that, when unforeseen controversies arise courts will confine themselves to deciding from what the legislatures have said, how they would have dealt with them, had they been faced with them. In short, the courts will cease to use the broad admonitions of the Bill of Rights as a means of substituting their own views of what is the social will, and limit their authority to "interpretation", except so far as statutes patently mean to leave to them an authority to make their own choices. How far such abdication may go, does involve, not an exercise of legislative power, but rather the determination when a legislature may delegate its authority. That would seem to be a question for courts, although there are no available "principles" to determine it. I have tried more at length than would be possible here to set forth my reasons for these conclusions in three lectures delivered at the Harvard Law School in February, 1958. It is possible that a copy of these, which have been published by the Harvard University Press, may still be in the library of the Law School of this University; and, if so, anyone who should be enough interested to read them, will be able to judge how far they are persuasive.

Learned Hand