

Law and Order

As students of law and society, we ought to be thinking about social order and the place that law plays in it. I am taking this license to present my view as a law and societician.

Some of our colleagues have spoken to parts of this question; let me here record their observations together with mine and attempt to present them in a coherent whole.

Wilbert E. Moore has observed that rapid social change is now widely recognized, if not always welcomed. Many social changes have mixed effects; while, perhaps improving the economic and political position of underprivileged groups, the conventional authority of political officials may be challenged. Political participation, once a safely "middle-class" virtue and privilege, has been haltingly extended to the poor. Law enforcement, once concerned exclusively with property and order, is being haltingly extended to the protection of civil and other rights of the rural and urban poor.

Harry W. Jones has said that law is not a closed system; it lives and progresses and gains its great momentum only when the passion for justice is shared by all members of the society. Persons who come in touch with the functions of legal institutions as jurymen, witnesses, or parties must be persuaded of the law's rightness, must be brought to say, "Yes, that was right; that was fair."

Gresham M. Sykes reflects that the law may be a source of justice, but not its fountainhead, for, in certain cases of its application, an unjust result may be perceived. Over the last several decades there has been a great change in the attitude of many people toward their government and the formal institutions of power. And along with this, there has been a far-reaching erosion of the comfortable relationship between law and society. In an earlier and more innocent era, it was possible to assume that law was likely to be used in the service of a society which, however imperfect it might be, was pushing in the direction of a just and humane social order. Questions of ethics in politics were more or less ignored—or so it was thought—since all human endeavor

existed in a democratic climate that not only sustained it, but provided hope for its wise employment. But now, for many people, that assumption has broken down, and 1984 or some variant of it is no longer a nightmare of what the future might be but a glimpse of a not too distant reality.

Those concerned with “law and order” often link these as if they were the same thing. It is true that law is a principal source of order. But it is also true that order may depend upon changes in the law, and particularly in its more humane and more equitable enforcements. If law is enforced against those who have no opportunity for participation or meaningful consent, the order imposed may be nearer tyranny than the consensual order of a democratic society.

An hermetic concern for stability, sans change, portends social disaster, and besides, it overlooks the facts. Advocates of an unsupportable identity between the ideas expressed in the terms “law” and “order” suggest that social stability, on the one hand, and social change, on the other (if the concepts are indeed antithetical), present a conflict defying logical solution. Donald R. Young has observed: “Stability, however, does not necessarily mean the absence of change. If we bear in mind that ‘steady’ is a synonym for ‘stable’ it is perhaps easier to think of a stable society as one which may be changing, albeit not capriciously.”

Change, requiring unsettling flexibility; honest recognition of some social illnesses, with attendant creative concern for diagnosis and cure; involvement by a wider slice of the community, although sometimes disquieting—these are the themes for us to meet, not defensively, but with great resolve that they may be the hope of our continuing democratic freedom.

I would suggest an amendment in the record—let’s talk about law and justice normatively, thus properly reclassifying the behavioral consequences of the different concepts of law and order.

—ROBERT B. YEGGE
PRESIDENT