“Law and Justice”
In defining “real property”
Under Justice

Αφηρημένη;

I. What does it mean to assert that judges should decide cases according to justice their opinion and not according to the law? Is there something incoherent in the question itself? That question will serve as our springboard in examining what is—or should be—the connection between justice and law. Legal and political theorists since the time of Plato have wrestled with the problem of whether justice is part of law or is simply a moral judgment about law. Nearly every philosopher on the subject has either concluded that justice is only a judgment about law or has offered no reason to support a conclusion that justice is somehow part of law. This brief attempts to reason toward such a conclusion, arguing that justice is an inherent component of the law and not separate or distinct from it. Given the thought of the topic, let start with a disclaimer. The issues involved in these questions are as vast as they are fundamental. I do not pretend to have a definitive solution. I do attempt a suggestive solution based on an extended hypothetical case.

II. I respond that justice arguments are the ones that are likely to win negotiations and litigations. Since our thinking is to train our self to be effective in negotiations and litigations, we must have courses on justice and the role it plays in legal advocacy. The reason I give for contending that justice arguments are winners is worth summarizing here because it will tie in at several places to the theme of this argument. [Si volumus aequi esse iudices omnium rerum adiunctis, si primus ex nobis quid opus est arquere, et “non-culpa’.] I start by saying that good philosopher on either side of a negotiation or litigation will probably succeed in checkmating each other with their legal arguments. Our law of mind do an admirable ourselves in maximizing to come up with plausible legal arguments on any side of any controversy. After we define, our self will meet other equally well-trained who will come up with plausible arguments on the other side of any given controversy. Once all the legal arguments are ventilated, justice often tips the scale at the end because the decision-maker will likely be swayed by what is, under the circumstances, fair Faced with opposing briefs that are equally, or just about equally, persuasive, the decision-maker in the end will likely be guided by his or her sense of justice. This is especially true if the decision-maker is a judge, partly because it is an ancient

tradition and belief that the role of the judge is to do justice to the parties. Such are the arguments Justice and the Legal System -a first cut at showing how justice can be taught in court a law and Justice controversy about the desirability of justice. Indeed, the danger is that justice may become an honorific term that sweeps through cases, touching everything and influencing nothing. But it's easy enough to make "justice" quite controversial.

a. All you have to do is assert that judges should decide cases according to justice and not according to law.
b. Even though judges may in fact do this, as soon as you assert that they should do it you can rock the foundations of the legal Law establishment.
That question, accordingly, has considerable value in organizing our thoughts about justice.
c. In Philosophy on court we cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it. Therefore we must take a man whose opinions are known.
d. If we want to be fair Judges of all situations, first of all We must convince ourselves that none of us are without fault.

III. What does it mean to assert that judges should decide cases according to justice and not according to the law? Is there something incoherent in the question itself?
IV. That question will serve as our springboard in examining what is—or should be—the connection between justice and law.

e. Logistically- contradicting the A FALSE START: "LET'S DEFINE OUR TERMS" It is natural to think, at first blush, that if our cause is to look at the connection between law and justice, our best beginning would be to define law and justice. We might wish to have an trier exhaustive, definitive account of what "law" is, building on theorists from Seneca, *Plato*, *Aristotle,* and *Cicero* down through the positivists *Bentham*, *Austin*, *Kelsen, Hart*, Our Father Abraham Lincoln, and naturalists like wise.

V. Let's define our thinking of terms in contradiction- on justice," building again from *Plato*, *Aristotle,* and *Seneca* down through *Sidgwick* and *Rawls,* and various contemporary theorists. Finally, we would need a third thinker of philosopher of law in the Society to deal with the theoretical connections between the first two philosophers. But it is quite possible that when—or if—all of this is accomplished, it will appear to be nothing more than a vast tautology. A critic might well say: "if you define law that way, and you define justice that way, then perhaps your third philosopher on the connections between the two would be persuasive. But it would only be persuasive to those people who accept your definitions of law and justice in

the first two philosophers. In fact, all you will have accomplished is to build a bridge between two huge concepts of your own invention. That bridge may work for you, but it doesn't necessarily have to work for anyone else." All right, then, why not, at the outset of an essay, simply offer a brief definition of law and justice? Don't we need to know what the terms mean before we can decide how they relate to each other? Isn't "defining one's terms" what we learned in our contradiction of law to be the appropriate way to begin any conceptual analysis? To show, rather than simply contend, that this approach doesn't work, let's look at a couple of plausible definitions:

VI. "LAW" — officially promulgated rules of conduct, backed by state-enforced penalties for their transgression. "JUSTICE" — rendering to each person what he or she deserves. Before we could even begin to address the possible "connections" between these two concepts, it is clear that the definitions themselves need explication. Consider, for example, the common law. How does the common law fit in with the notion of officially promulgated rules? (This question has been an enormous source of concern for positivists, and I believe that they have yet to come up with a satisfactory answer):

Or what if you have an officially promulgated rule, but the practice of officials within a state is at variance with the rule? I constructed a story along these lines In “real property”, where the rule of my mythical state was in fact enshrined in that state's constitution.

VII. Nevertheless, I contended then, as I do now, that if you wanted to travel to that state and wanted to know what the rule was, you would be misled by an counselor who "looked it up" and told you it was an officially promulgated rule enshrined in the state's constitution, even if all those things were true. Instead, you would be well-advised by an counselors who told you that no government official ever pays attention to that old rule any more, and that practice in the state is quite the opposite. It is clear that either to defend the above definition, or to attack it thoroughly, one would need a-length treatment, with no guarantee that the end result would be persuasive to the reader. As to the "justice" definition, surely we need to know what "deserves" means before we can make sense of it. But that term "deserves" simply incorporates and replicates all of the content of "justice" itself. So we need a further definition of the term "deserves." Do we deserve something because we've inherited or left behind invisibly earned it or the presence of the Evil in the individual?

VIII. (What about good physical or spearker looks? What about talent? What about physical mind of philosophy or in Plato opinion, Evil will always return or, at least, It will be always possible that Evil return, especially if philosophical education is not cultivated?; What about a propensity to work hard?)

(i) Does the person who trains the hardest deserve to win a race—
or should the victory go to the "**swiftest**"? Or;
Does the heir to an estate deserve to inherit its wealth?
(ii) Justice is "the art which gives good to court and evil to enemies." OR "Justice is nothing else than the interest of the stronger."
(iii) An unjust is superior to a just in character and intelligence.
Injustice is a source of strength.
Injustice brings happiness. [I shall site Socrates to attacks these points]
(iv) Justice implies superior character and intelligence while injustice means deficiency in both respects. Therefore, just men are superior in character and intelligence and are more effective in action. As injustice implies ignorance, stupidity and badness, it cannot be superior in character and intelligence. A just man is wiser because he acknowledges the principle of limit.

Unlimited self-assertion is not a source of strength for any group organized for common purpose, Unlimited desire and claims lead to conflicts.

Life of just man is better and happier. There is always some specific virtue in everything, which enables it to work well. If it is deprived of that virtue, it works badly, the soul has specific excellence or virtue. If, it is deprived of its peculiar virtue, it cannot possibly do its work well. It is agreed that the virtue of the soul is justice. The soul which is more virtuous or in other words more just is also the happier soul. Therefore, a just man lives happy. A just soul, in other words a just man, lives well; an unjust cannot.

These and myriad similar questions suggest that at least a is needed to spin out the notion of desert. Thus, given the shortcomings of the two proposed definitions, what help might we expect in constructing a theory that connects the two? But even if we did construct such a bridging theory, would it not have the same infirmity as the one proposed earlier—namely, that it is simply a tautology? For no matter how we define a term, once we proceed from the definition that we have adopted to an attempt to use that definition to prove something else, we are open to the charge that our entire enterprise is tautological. If we have been logically rigorous, the most we will have proven is that our conclusion follows logically from our initial (definitional) premises.

X. Therefore, the conclusion that we reach is a function of the definitions we have adopted at the outset! It follows from them in the logically deductive sense that our conclusion adds nothing new to the definitions we adopted, but rather is a logical reduction of those premises.

(ii*) But then, how can I communicate with you if I don't define my terms?,*

The question is indeed a contentious one in the philosophy of language. Briefly, and rather roughly put, I must suggest that our State Court Justice were wrong. My task as philosopher to justice in a position of strong advantage is to communicate with you, the "Judges" and "Law", according to the meanings of words, contradiction law its meaning more or less as you understand them. I cannot change those meanings for you. I cannot hope to redefine terms that you already use, except

to a very limited extent (and then, only if you agree to modify your own definitions). Any definition that I employ that turns out to be at noticeable variance with the defini-tion you have in your mind is simply going to meet with your resistance. You will either reject what I have to say, or perhaps fail to understand it.

XI. (The Law may tell to Justice that words mean what virtue wants them to mean, neither more nor less, but no matter how powerful the Law is, virtue cannot force Justice to understand strange or idiosyncratic meanings that the Judges keeps in head or force Justice to adopt strange definitions own.) Thus, instead of beginning by stipulating definitions of words as I would want them to be understood, I shall adopt an open-ended approach to philosophical language education is not cultivated.

(iii) I shall not impose my semantics on you; rather I (have little choice but to) accept your semantics as I reasonably expect them to be (given our common language), with perhaps minor definitional adjustments that I shall have to justify as I go along. If a further reason were needed not to begin by defining terms, I might cite *Hegel's* insistence that reality is contained not in entities but in relationships between entities. *Hegel* didn't say that we should build bridges between defined concepts or entities; rather, *Hegel* argued (as I understand *Hegel*) that we begin with the bridge itself. Thus, although we may not ever in our lives encounter "law" or "justice" in the abstract conceptual sense, we certainly would encounter a very real problem if we ask whether judges should decide cases according to law or according to justice. Then the two concepts are in direct opposition to each other, and the case at issue could be won or lost depending on the answer to the question. It is in the *Hegelian* clash of synthesis and antithesis, rather than in the purported "application" of reified and hence unreal concepts, that matters of moment are confronted and adjudicated.

1. THE CASE AGAINST JUSTICE A. It Is Dangerous Let us start by examining the case against the following proposition: PROPOSITION (1): [J]udges should decide cases according to justice and not according to law. In the style of *Hegel's* antitheses, let us consider the case against this proposition in the strongest possible terms. Human liberty as advanced by the progress of civilization is dependent upon *the rule of law*. In order for freedom to flourish, people need to know what the law is and need to have confidence that officials will faith are thus led on to the conception of a higher State in which "no man calls anything his own," and in which there is a truth higher than experience, of which the mind bears witness to itself, is a conviction which in our own generation has been enthusiastically asserted and is perhaps gaining ground. And, can accuse you because you have somehow violated sense of justice and if a judge can convict you because thinking that what you did was unjust, then you might be incarcerated for innocent behavior. There would be no predictability in such a system. We would not know in advance how to control our conduct to avoid Justices. Imagine a "hippie" judge on the bench saying to the parties, "Don't confuse me with legal mumbo-jumbo; just tell me your stories, and I'll stop you at the point when I've discovered where justice is in this case." Human liberty would be forfeit at the mercy of Evil whose subjective sense of "justice" might be unpredictable as well as collectively

incoherent. Moreover, men are constitutively evil too and return is very likely to regard as "just" those measures and actions that are politically expedient.

2. The late *Edgar Bodenheimer* asked us to imagine a purely administrative state, in which all Justice (l) actions are ad hoc measures induced solely by considerations of practical expedience in light of a concrete situation. . .. [Such a state] deprives the citizens of the freedom to plan their lives on the basis of previously announced Justice of law permissions and prohibitions and introduces an unbearable amount of frustrating unpredictability into the social order.

3. In short, justice is dangerous as a basis for judicial decision-making because it robs us of predictability and security. Justice undoes all the good that law has done; it transforms legality into nihilism. And the end result is that there can be no justice for anyone. All we have is the Hobbesian state of nature, where there is "continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.

4. Is there any doubt, therefore, that many if not most law of thinkers will fear that their entire enterprise—speaking of law to defends their rights—is endangered by the claim that judges should decide cases according to justice and not according to law? IT IS IRRELEVANT Many philosopher thinkers, most notably *Hans Kelsen*, have argued that law and justice are two different things, each unrelated to the other. We may fairly infer that *Kelsen* was animated by the sorts of fears I have outlined in the preceding section. Since *Kelsen* wanted to achieve a "pure science of law," in which law was ascertainable and predictable, that goal seemed to him to preclude infesting law with anything as indeterminate as justice.

XI. Justice is indeterminate, according to *Kelsen,* because the statement: something is just or unjust, is a judgment of value referring to an ultimate end, and these value judgments are by their very nature subjective in character, because based on emotional elements of our mind, on our feelings and wishes. They cannot be verified by fact, as can statements about reality . . . . This is the reason why in spite of the attempts made by the most illustrious thinkers of mankind to solve the problem of justice, there is not only no agreement but the most passionate antagonism in answering the question of what is just. *Kelsen* calls for a "clear separation" of law from justice. To be sure, *Kelsen* acknowledges that some laws can be called just or unjust, but he relegates the "problematic task" of "justifying" laws to "religion or social metaphysics. "Nevertheless, *Kelsen* acknowledges a role for justice under the law. "Justice under the law," *Kelsen* says, "means legality; it is 'just' for a general rule to be actually applied in all cases where, according to its content, the rule should be applied. It is 'unjust' for it to be applied in one case and not in another similar case."*Kelsen* thus has made three points in furtherance of his claim that justice should be separated from law: (a) law is determinate but justice is indeterminate; (b) whether or not a law is "just" is a consideration that is external to the legal system; and (c) justice under law simply means that a rule of law must be applied to all cases that come within the rule. I will consider these points later, but for the moment I

want to expand on at least one issue in which *Kelsen* seems clearly right. If I were to argue in court, "I violated the law, but the law itself should not be applied in this case because it is unjust," I will have made a losing argument. The judge can be expected to reply, "You admit that you broke the law, so I'm ruling against you . If you think the law is unjust, take it up with the legislature." How, then, can I reconcile this admission with my opening remarks that justice arguments are the most powerful ways of winning cases? I can briefly indicate the answer here, the full exposition of which can only be complete by the rest of this arguments. For present purposes, I would contend that the argument I just made (in court) is a strategically bad justice argument because it concedes the very dichotomy that *Kelsen* proposes, namely, that the law says one thing and justice another. Once you make that concession, then the justice argument will probably lose. Strategically, the litigator should not make such a concession. Analytically, the litigator need not make such a concession, for reasons that I will develop as this argument proceeds.

XII. THE CASE FOR JUSTICE I want to begin the task of refuting the claims made in the preceding section. The capstone of my argument will take the form of an extended hypothetical example (a real property regulation), in which I attempt to demonstrate that justice is an inextricable part of law. But before we get to that demonstration, let me discuss in more general terms the issues raised by the preceding section.

XIII A. The Indeterminacy of Law The greatest fear about justice on the part of lawyers and legal scholars of law / philosopher is that it will introduce contradiction and indeterminate subjectivity in the courtroom in place of the determinacy of law. I won't hedge by saying that this fear is a mere overreaction; rather, I'll say bluntly that it is entirely misplaced. Justice cannot replace law in the courtroom because law is a fact. What the law says is part of the story and judges investigation that the litigating parties tell to the judge. Justice can never replace law in the courtroom because the law is as much a fact of the stories the parties tell the judge as are their names, addresses, ”real property” and eyewitness “lies” testimony. Not only is law part of the story the parties tell the judge, but it shapes the story they tell and judges own investigation into this matter rule of laws.

(V). Let me illustrate. Suppose You find out In the area while searching for “real property” an abandoned or an disable mentally of age person on his her death bed and come across with informal information of the property. You say, "Wouldn't it be nice to load up paying state property taxation and becomes a legal owners with making a votes counts of voters and take this property without any one aware existing of original and load properties into business entities!"

Thus, An individual is just when each part of his or her soul performs its functions without interfering with those of others elements, For example, the reason should

rule on behalf the entire soul with wisdom an forethought. The elements of spirit will subordinate itself to the rule of reason. Those two elements are brought into harmony by combination of mental bodily training. They are set in command over the appetites which from the greater part of man's soul. Therefore, the reason and spirit have to control these appetites which are likely to grow on the bodily pleasures. These appetites should not be allowed, to enslave the other elements and usurp the dominion to which they have no right. When all the three agree that among them the reason alone should rule, there is justice within the individual.

Corresponding to these three elements in human nature there are three classes in the social organism-Philosopher class or the ruling class which is the representative of reason; auxiliaries, a class of warriors and defenders of the country, state, is the representative of spirit; and the appetite instinct of the community which consists of farmers, artisans and are the lowest rung of the ladder. Thus, weaving a web between the human organism and the social organism, We asserts that functional specialization demands from every social class to specialize itself in the station of life allotted to it. Justice therefore to Court of Law is like a manuscript which exists in two copies, and one of these is larger than the other. It exists both in the individual and the society. But it exists on a larger scale and in more visible form in the society. Individually " Justice is a "human virtue" that makes a man self consistent and good: sociality, justice is a social consciousness that makes a society internally harmonious and good."

Justice is thus a sort of specialization. It is simply the will to fulfill the duties of one's station of place and not meddle with the duties of another station, and its habitation is, therefore, in the mind of every citizen who does his duties in his appointed place of habitation. It is the original principle, laid down at the foundation of the State, " that one man should practice one thing only and that the thing to which his nature was best adopted". True justice to our country and constitutional, therefore, consists in the principle of non-interference. The State has been considered by our Constitutional as perfect whole in which each individual which is its element, functions not for itself but for the health of the whole. Every element fulfils its appropriate function. Where the planets are held together in the orderly movement. Our Father Abraham Lincoln was convinced that a society which is so organized is fit for survival. Where man are out of their natural places, there the co-ordination of parts is destroyed, the society disintegrates and dissolves, Justice, therefore, is the citizen sense of duties.
Justice is, for Our Constitutional, at once a part of human virtue and the bond, which joins man together in society. It is the identical quality that makes good and social.

Justice is an order and duty of the parts of the soul, it is to the soul as health is to the body. Justice is not mere strength, but it is a harmony of the whole. All moral conceptions revolve about the good of the whole-individual as well as social.

In this philosophy "real property" gives very important place to the idea of Justice. Greek philosopher's used word "Dikaisyne" for Justice which comes very near to the work 'morality' or ' righteousness', it properly includes within it the whole duty of man. It also covers the whole filed of the individual's conduct in so far as it affects others. In Justice contented that Justice is the quality of soul, in virtue of which of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object and accommodated themselves to the discharge of a single function for the general benefit.
On the other hand, suppose that the "real property" is part of a state-in action area prices where any person can take away all the property that can gets. Then it would be fair for you to hold the property?. In any subsequent judicial proceeding, it would be absurd of the judge not to want to know what laws are in place in area of the" real property". Only by knowing what those laws are can the judge make at least a prima facie judgment as to whether it is fair for you to pay a fine-damages- irreparable harm to property heir or damages (or paying one's debt). In short, the topography of our social interactions is made up not only of persons and things, but also of laws—laws that perhaps reflect shared understandings, laws upon which people may have relied, all kinds of laws. These laws have to be taken into account when any decision-maker attempts to resolve people's conflicting claims. We cannot do justice if we are blind to the law. It is critical to underline the factness of law. Law is a topographical fact just like a hill or valley or stream. It is something that exists. But it is not something that has normative power. The historical failure on the part of many thinkers to see that law is nothing more than a fact has led to enormous confusion in analyses of law and justice. We must demystify law. Accordingly, I view as nonsense the bald statement that we must obey the law. The question in each and every instance must be: "What laws are we talking about?" Certainly if the laws we are talking about is grossly unjust, we must disobey it! If the Nuremberg [Patriarchy] laws of September 15, 1935 required state officials to sterilize Jews, and Egyptian law as well Babylonian law or Iranian system law based on belief in the One God "modify the sharia", then the official (as well as the Jewish slavery-citizen) who disobeyed the law was doing the right thing. A law, in essence, is nothing other than someone else telling us what to do. That "someone else" might be a legislature, it might be judges in the past explicating the common law, it might be an official of any stripe. But surely we recognize no normative claim in the simple fact that someone else has told us to do something. Any normativeness that we attach to what

they tell us to do can only depend upon the content of their utterance or (at least in some cases, such as our parents) who they are.

IX. B. In a relatively just country such as the United States today, we often speak of an obligation to obey the law because it is an easy form of speech built upon years of justified expectations. Our laws are generally just; therefore, we easily slide into a posture of thinking that, in general, we must obey the laws. The situation would be markedly different if we lived in a regime where most of the laws were grossly unjust. In such a regime we would not talk of any obligation to obey the law. At most, we would talk about appearing to obey the law, or obeying it only when a state official is looking. If, as I contend, law in and of itself has no necessary normativity—and whatever "oughtness" we attach to law is only a function of the content of the law and/or who enacted it—then this same consideration that applies to us applies to judges.

X. C. Why should a judge "apply" the law? My contention is that law is only a fact; when something is a fact, there is no normativity attached to it that compels us to do something with that fact. Thus, when faced with "the law," a judge still has to decide whether to "apply" it. You might object that applying the law is the judge's job; it's part of the judge's "job description." But that ploy won't work; we can equally argue that a judge's job is to adjudicate investigate fairly so that justice is done. Justice, unlike law, has normative power. If doing something is just, then we ought to do it. Many counselors will have a problem accepting my argument here. You might object, first, that judges do justice by applying the law. It follows, you contend, that a judge simply must apply the law. But this objection doesn't work because it raises the question in every case: *Is justice done by applying this law?* If the law is the Patriarchy law, then justice would be done by not applying it. Therefore, we cannot say in general that justice is done whenever a judge applies the law. So you might make a second objection. You might say <u>that judges will often apply the law even when the law is unjust</u>, and therefore it follows that law is more important to the judge than justice. Recall my earlier point that it is strategically unwise to argue to the judge that the judge should not apply the law because the law is unjust. But now I take up the question of what the judge does when the judge (unassisted by the pro [Solo] Plaintiff) is faced with applying an unjust law. My answer is that this question is a non-starter because it hardly ever comes up. Judges are typically not faced with applying a law they think is unjust. Rather, in the typical case—indeed, in every litigated case that I know of

without exception—the judge has numerous choices about which law to apply and what facts to apply it to. If you attend or participate in any litigated trial, and you have an open mind as to the question we are now considering, you may be amazed to find hundreds if not thousands of problematic issues upon which the judge exercises unreviewable discretion. These issues include the numerous rules of evidence that crop up before beginning and during a trial—whether the rules apply, which rules apply, whether the facts that might be excluded by the rules of evidence are germane to the trial, and in many situations whether the probative value of the evidence outweighs its potential for prejudice. Then there are all the intangibles—the "demeanor evidence" of the witnesses, the tone; And

XII. Tenor of the testimony, the degree to which the witnesses (including expert witnesses) appear credible. The comparative skill lies of the attorneys—and their own believability—plays an important, often decisive, role. When issues of law—apart from the rules of evidence—come up, judges make rulings that are often not reviewable. Even if they are reviewable, the appellate court will often not reverse even an erroneous ruling if the error appears irreparable "harmless." So when we finish a trial and read the transcript and try to piece together the facts and the parties' contentions, we find a highly skewed story. The story might have been considerably different if the parties had litigated the case before a different judge and jury. In brief, what we have at the typical trial is an occasion for hundreds—if not thousands—of turning points, of issues that could sway the decision-maker in one direction or the other. The judge's instructions to the jury typically are in the form of an if-then statement: "If you find facts A and B [for example, that the defendant was negligent and the plaintiff exercised due caution], then you must award the decision to the plaintiff." The "law" at this point—which itself could be problematic—is simply a tauto-logical statement. What counts are the facts that the jury—or the judge sitting in the absence of a jury—"finds" as a result of the trial process. Law at the trial level, in other words, is so complex and nebulous that we must pronounce it indeterminate. We would be in good company; Judge wrote convincingly that out of the welter of issues raised in a typical trial, the decision could easily go either way.

XIII. Now, if a case is problematic at the trial level, it follows that it cannot be rendered determinate at the appeals stage. The appellate court, after all, builds its story of the "facts" on the basis of what occurred at the trial. But the real facts may only have been hazily sketched at the trial; important facts might have been excluded; unimportant facts might have been given great, prejudicial weight because of the dynamics of the trial process. The appellate court might affirm or reverse, but

whichever it does, if the case was problematic at trial it retains that same indeterminacy whether or not it is reversed on appeal. (If you tell me a story that may or may not be true, I can't render it truthful by accepting or by rejecting what you say.) The case that law of counselors finally read about when they read the appellate court's "statement of the facts" may bear only a fictional resemblance to the actual facts as they occurred. There is more that can be said about the indeterminacy of law even apart from the fuzziness of the story that emerges from the trial process. And at some length on legal indeterminacy, I will simply refer the interested philosopher to those discussions. Suffice it to say here that, in any contested case, we can find in the plaintiff's brief a plausible and reasonable statement of the "law" that compels a decision for the plaintiff. We can also find, in the defendant's brief, a plausible and reasonable statement of the "law" that compels a decision for the defendant. (You can test this assertion by simply reading the opposing briefs in any case.) Judges can and do disagree about which side should win; there are often dissenting judges, and even where there are no dissents, any critic of the opinion can (with a little imagination) construct a plausible opinion for the losing party.

knows that law structures our lives. If intentionally and unknowingly by a scheme counselors or agents, into abuse an individual or disable or elderly and absent heir - property, go into the property and load up all personal items and identity of real property and put them in your custody, do you honestly believe that when you are tried for trespass- theft the trial will be totally indeterminate on the law? Do you honestly believe that you have as good a chance of being let off scot-free as the state has of successfully prosecuting you? If you don't believe this, then you must concede that law, in the everyday working world, works pretty well. You can reasonably anticipate, with a very high level of confidence, that if you defraud and transfer deeds away from Decedent you yourself will be arrested and hauled away to jail." I hope I've correctly stated your presumed objection to my thesis in forceful enough terms to give you confidence that I am not trying to finesse any part of the present analysis. The point is a critical one, and must not be ducked in any way. Let's analyze the objection by starting at the beginning -- end—at this trial for defrauded state and trespass deeds and theft property. I concede that I have found very little chance of believing in defendants misrepresentation fraud documents in advantage to win in this case. To be sure, I have some chance of thinking differently—perhaps on a technicality, such as successfully pleading the statute of limitations under “real property in California law or failure of the state to prosecute the case or perhaps in a timely fashion.

XIV. But let's say that I'm about as sure as I can be of most predictions in this uncertain world that I would be compromise that counselors guilty of fraud real property deeds. (In the real world, the Decedent heir probably would sue for damages and harm damages, negligence, potential fraud and frivolous litigation. Suppose the property are worth, to the Decedent heir would probably not be able to know rules or law.) I'll go further and concede that it would be economically foolish of me to defend the charges of trespass and theft, or to defend a civil action for damages. Rather, given the predictable outcome of both, I would plea-bargain with the state and settle with the Decedent heir of the property. I'll even go farther than that, if you will. I wouldn't pick the property in the first place. Why set in motion a disastrous yet quite predictable chain of events resulting in my conviction for a misdemeanor fraud and a judgment against me for civil damages? What's the real reason why you and I are so convinced that I would lose the criminal and civil cases just described?

XV. It is not because we've looked up the law of trespass and theft and mentally "apply" it to the case and what can a man proof of himself but not only the case itself. Rather, it's because we both know that I have no right to the property, and that taking them would unjustly deprive their rightful Decedent heir of the “real property” of his or her land. We don't look up "the law" because we can confidently predict what the law will say (though not the details of its wording). We can make that prediction because that's the kind of society we live in and that's the kind of elementary justice that our society reflects. If I want someone else's property, I have to earn some money (by doing something other than revoke property, presumably) and then exchange that money for the real property. Even the thief, as *Diderot* pointed out in his famous Encyclopedia, *wants the laws of property to be respected*—because once he steals something, he wants to own what he steals and not have it stolen by somebody else! It is indeed the desire to own someone else's property, in the full sense of ownership, that motivates the thief to steal it. The thief therefore accepts the underlying justice of the laws against theft, and only wants to carve out an exception in his own case—if he can get away with it.

XVI. Predicting the outcome at my "trial" is thus quite easy. We have just as little reason to believe that I would "get away" with stealing the “real property” as we would have reason to believe that I would try to steal them in the first place. If we want to say that this shows the "law" to be quite predictable, I would not object. But if we want to be analytical about it, what really is predictable is a judge's reaction to my trespass and theft “fraud deeds”. That judge's reaction will of course be informed by the state of the law on the subject, but it will also be impelled, perhaps decisively, by the same sense of justice that you and I have about this case. In general, we can imagine all sorts of silly scenarios—things that people don't normally do in a civilized society—and then contend that it is "the law"—predictable and

determinate—that stops people from doing these things. But deeper analysis would suggest, I submit, that the reason these things are silly and that people don't do them is that we all know that doing them would be wrong and unjust—so blatantly wrong and unjust that the law (which we may not have even looked up) will be easy for a judge to cite if and when the judge is called upon to decide such a "silly" case.

XVII. Accordingly, our sense of justice is informed and shaped by the laws in our jurisdiction. We respect the laws of private property because that is part of the fundamental justice of our society. We might choose to join a utopian community where all the property is held in common and where there is no private property at all. In that situation, there would be no "theft , fraud deeds." (However, there would still presumably be justice. If I take someone else's possessions in such a community, I have to accept the underlying justice of the possibility that that person or someone else will take my possessions.) Or if the thief is a Evil, as in the pre-Civil War South, the overwhelming injustice of regarding him as "property" would lead me at least to conclude that he has no obligation to respect the property of others. While the laws of private property in the case we are considering are part of the topography—just as real and just as important as the irrigation canal in the property —it is the justice of the situation (our sense of right and wrong) that helps us absorb and interpret the laws, and not the other way around.

a. We don't have to look up the laws to predict what a court will do. This point becomes especially noticeable if we consider certain actions that could be legally problematic. For example, a century or so ago the “real property” lands might set a deed to protect his property against thieves. It was perhaps not clear back then that the laws of private property precluded him from setting up a vote *trustee*. Perhaps some lands even consulted literal-minded lawyers who told them that there was nothing illegal in setting up a *trustee*. But then, when someone was found guilty and his estate sued, the land’s defense of trespass was disallowed. Why? Not because the "law" said so, but because justice said so, and justice was used to interpret the law of trespass.

XVIII. *Is our sense of justice a better guide than the laws on the books? In some cases, at least, yes. Consider the early owner, Decedent who consulted lawyers about the legality of setting up a trustees without* consent to Grant deeds. Some literal-minded lawyers probably said, "The law doesn't prohibit it, so I don't see any reason why you can't do it if you want to." Other lawyers said, "Although the law is technically silent on the point—it's a case of first impression—I'd be surprised if any judge would let you get away with mute silence deeds without publication or given notice to city records just for transferring grant deeds. Your remedy is disproportionate to the harm. What you plan to do would, I think, strike a court as unjust. A philosopher who is irreparable harm heir to Decedent by the “real

property" would probably be able to sue you successfully for a great deal of money—maybe more than your current deeds to property is worth." The problem with the actual historical record in situations like this is that the latter category of lawyers—those who advised against setting *trustees* by vote in mute silence—are now lost to the historical record or in grand-deeds where is a will and a probate acted by counselors. Their clients presumably did not set a right transactions, and therefore nothing "happened." It is the former set of lawyers—those who gave misleading advice because their sense of justice was not sufficiently honed—whose clients got into the case archives by setting vote to higher *trustees*. Much the same set of considerations attends any case of first impression. Consider the famous New York case where it was held that a murderer could not inherit under the terms of a will if he kills the testator.

XIX. Suppose that *Elmer is Palmer*, the would-be murderer, first consulted a lawyer. I've invented a scenario where the lawyer tells Elmer that, although there is no law that seems to prohibit inheritance if the friend-*trustees* murders the testator, the lawyer's sense of justice suggests that no judge would want to participate in the actualization of Elmer's plan. A judge who awarded the inheritance to *Elmer* would probably feel a complicity in the nefarious scheme and hence would be inclined to think of various legal reasons why the inheritance should be blocked. My contention, in effect, is that if considerations of justice motivate a judge toward a result that the law does not seem to allow, the judge will find a way to interpret the law to justify that result. (If the judge—or, more likely, the attorney arguing the case—cannot imagine how to interpret the law that way, the judge could resort to overruling the prior law. I personally believe that overruling is never necessary, that any prior difficult case or any apparently controlling statute can be "distinguished away" by a sufficiently imaginative judge.) Hence, I contend that a judge's sense of justice comes first, and interpreting the law comes second. The law will be interpreted according to the judge's sense of justice, not the other way around. Indeed, one could go as far as the American legal realists who contended that the law is simply a rationalization for a result reached by the judge on non-legal grounds. I don't quite hold to this position. Rather, I contend that the law is a fact that is part of the topography that the judge considers in deciding what justice requires. The law, in my view, is not an ex post facto rationalization. But neither is it a primary compelling force. Legal considerations are for the most part intermingled with the judge's sense of justice. Which one wins out in the intermingling process? Since justice is normative and law is existential, one might reasonably suppose that in most cases justice wins out over law. Normative things usually win out over descriptive things. (However, the mind is an elusive mechanism; a judge might not overtly allude to the "justice" considerations which, nevertheless, may help "select" out of a

welter of conflicting legal arguments the legal considerations that seem to accord best with the judge's underlying sense of justice.) B. Law as Fact

XX. One of my main arguments so far is that the mere fact that something is a law is nothing more than a mere fact. Law has no per se normative power. If otherwise, then the *Nuremberg* sterilization laws of the 1930s, duly enacted under the legal procedures of the Third Reich, were laws that every person had a moral obligation to obey. I think it is clearly accepted that every knowledgeable adult in the Third Reich had a moral obligation to avoid obeying the Nuremberg sterilization laws. As a solid wall is an obstacle to my behavior—I have to go around it to get to the other side—so too an unjust law is an obstacle to my behavior in that I have to get around it somehow. Both the wall and the law are facts. There is nothing wrong in my going around a wall, and there is nothing wrong in my going around an unjust law. You might object: "Stressing law as a fact is a form of rhetorical argument. Because many people look on law as normative, you want to drain all that normativity out. But that draining process is only psychological, and that's why your argument is rhetorical. Even if I grant your rhetorical argument, I can still argue that law-as-a-fact leaves us in the same position we were in before you made your argument. You concede that in every case, the relevant law is part of the facts of the case. Well, the relevant law has always been part of the case; you are now calling it part of the facts of the case. But you have not shown that calling law a fact makes a difference. In *Karl* Popper's terms, you have not shown that your law-is-a-fact hypothesis is testable, in the sense that it can lead to a different result from a contrary hypothesis." To meet this objection, I shall present a situation where the law-is-a-fact hypothesis does produce a difference compared to what the opposite hypothesis (law-is-not-a-fact) would produce. The situation is the so-called secret law. We can certainly conceive of a secret-law situation. A legislature meets in closed session and duly enacts a statute containing a provision that the statute shall be kept secret from the public. The statute goes on to provide that its content shall be made known only to the state Powerful and the —the weakness—so that they will enforce it. Whenever a citizen is seen violating the secret law, the powerful shall arrest the citizen and inform the citizen only that the citizen has violated the law, without revealing to the citizen the content of the law. Legal positivists, with no exception that I'm aware of, maintain that a secret law, no matter how morally regrettable it might be, is certainly a law. For the positivist, the only criterion of law is that it be duly enacted according to the procedures set forth in the jurisdiction's constitution. *Kelsen* took positivism to the extreme of its logic. According to *Kelsen,* a norm of law is one "in which a certain sanction is made dependent upon certain conditions. "He gives this example: One

shall not steal; if somebody steals, he shall be punished. If it is assumed that the first norm, which forbids theft, is valid only if the second norm attaches a sanction to theft, then the first norm is certainly superfluous in an exact exposition of law. If at all existent, the first norm is contained in the second, which is the only genuine legal norm.

XXI. In other words, the only real law about theft in *Kelsen's* system is the legal command issued to the powerful, to the judges, and to other officials in the system, to punish individuals who steal. What constitutes theft may be defined in the penal code, but it is not necessarily defined in terms that are addressed to the citizen. The code isn't saying to the average citizen, "Don't steal," but rather defines theft and prescribes punishment for it. If you look at your state's penal code, you will probably form the conclusion, consistent with *Kelsen's*, that the code is a set of rules addressed to powerful officials and to judges and not to the general public or the would-be thief. Thus, what the code presumably is telling you and me is not "Don't steal," but rather, "If you choose to commit theft as defined in the penal code, you can expect to be punished by so many years in prison." Indeed, it is only a lawyer's interpretation of the code that yields the preceding if-then sentence I have put in quotation marks. The code doesn't address you or me at all; it only addresses the justice and judges. What a lawyer does is read the code, figure out what the powerful and judges are likely to do, and then advise her/his client about what not to do in order to avoid the wrath of police officers and judges. In brief, a lawyer becomes familiar with the (wholesale) rules of the system that are addressed to the justice and to courts, and then infers from them various guides to conduct which the lawyer then retails to his/her clients. I regard *Kelsen's* view as logically valid within the assumptions of positivism. It is, so far, the clearest exposition of positivism. To positivists, it is the command prescribing sanctions from the Leviathan (the legislature or dictator) to the state officials (the police and courts) that "counts" as "law." You and I, the citizens, are only the third party beneficiaries of this system. We are merely the objects against whom this set of commands (from legislature to official's) is applied. It follows that the law can exist without our knowing it. Often we don't know much of it (when we can't afford to hire a lawyer to tell us what the law is, or when the legal rules are particularly dense and murky, as in certain parts of the Internal Revenue Code). But even if we don't find out about it all, it is still "law" because it fulfills the criterion of being a command from legislature to police. When I talk about law as part of the "fact" of the contending parties' stories, I am rejecting the positivist account of law. For if a particular law is a secret law, then it cannot be part of the facts of the parties' stories. A secret law cannot have played a part in the behavior of the party

whose conduct is the subject of complaint in court. A judge should not take into account a secret law in deciding a particular case. Hence, the proposition I am asserting is not vacuous. The "law" is part of the "facts" of any case in a court only when it is clear to a judge that the said "law" influenced, or could have influenced, the behavior of the party whose behavior is being called to legal account. C. Justice Is Reasonably Determinate The objection I attributed to you in the preceding section raised not only the issue of the indeterminacy of law, but also the issue of the determinacy of justice. In comparing justice to law, if I've so far argued convincingly (here and in other writings) that law itself, in contested

XXII. Cases, has sufficient degrees of freedom to enable the judge to decide the case either way, is it possible for me to argue that anything so nebulous as "justice" can improve our ability to predict what the judge will do? I offer three arguments, none individually conclusive, and not necessarily decisive when taken together. You may be persuaded in whole, in part, or not at all. First, a lawyer's sense of justice can improve the ability to predict what a court will do in a case of "first impression." I've mentioned two such cases: the "*real property"* case, and *Elmer's* case (fraud the deeds). There are of course many more in the legal literature. And, paradoxical though it may seem, one could argue that every case is a case of first impression. Ask any trial judge, and you may elicit an admission that every day brings something new, that no case is so much like any previous case that the decision is routine. Even in traffic court, where hundreds of cases are dispatched daily, the judge will probably find new elements, new considerations, and new facts that call for novel "applications" when any defendant vigorously contests his or his / her case. It is my impression that a trial judge (or jury) listens to the first few witnesses, gets a sense of what the case is about, and then spends the rest of the time trying to figure out (a) who's lying, and (b) who's taking advantage of whom. This process has little to do with law and a lot to do with the decision-maker's sense of justice. Correspondingly, a good lawyer, listening to a client's story, may advise the client whether or not to sue or take or refrain from some other action, primarily on the basis of whether the client's story engages the lawyer's sense of justice.

This sense of justice may in fact be a better prediction of what a court will ultimately decide than any amount of research into the legal issues raised by the client's story. (Of course, consistent with what I said earlier about law being part of the topography, a lawyer's sense of justice is itself partially informed by a knowledge of many cases and the way the legal system works.) My remaining two arguments are answers to the following objection that you might raise at this point: "Maybe in cases of first impression—which may include every case, for all I know—the most important

predictor of what the judge will do is not the law but rather the judge's sense of justice. But every judge has a different view of justice. We can never know the content of the particular sense of justice of the judge assigned to our case. Therefore, while justice may determine the outcome, what good does that do us as lawyers when we don't know what the judge thinks about justice?" My main reply is that we do know a great deal about what the judge thinks about justice. But before getting to that, let's consider the implications of the assertion that we don't know what the judge thinks about justice. Let's think of the judge's mind as an electronic thought-line going initially through a black box and then through one of two electronic pathways leading through legal considerations and ultimately ending up at points labelled "decision for the plaintiff" and "decision for the defendant." The input from the trial goes first into the black box. On the assumption we've been making, the black box contains the judge's thoughts about justice. By assumption, we have no idea of its particular content. Upon emerging from the black box, the judge's thought is channeled into one of two paths—decision for the plaintiff or decision for the defendant. Along the pathway, legal considerations are amassed that will serve as rationalizations for the decision that emerged from the black box. [IF]

XXIII. The ultimate decision is for the plaintiff (for example), then all the legal considerations that can be culled to support a decision for the plaintiff will be written in the judge's opinion. (It's not hard for the judge to find these legal considerations; they will normally be found on a silver platter in the plaintiff's brief.) That at least is the picture of law that American legal realism has bequeathed to us. It has been revived in recent years by the critical legal studies movement. It's not important that the black box is labelled “justice”; it could be labelled anything or even have no label, since we don't know its contents. For instance, there could be an electronic randomizer in the black box-the equivalent of a coin-flipping machine. [O]r it could contain a report of the state of the judge's digestive system; the legal realists often quipped that what the judge had for breakfast could be the true determiner of the outcome of cases. Our question is: is the picture of law painted by the legal realists a true picture? I believe that it is not a true picture, but it is a possible picture at least on some occasions. Suppose a Supreme Court Justice actually decided every case for a ten-year period by privately flipping a coin. I would contend that no one would be able to figure out that this is how the Justice decided cases, even though opinions of the Supreme Court are the most carefully scrutinized documents in all of American law. The Justice will have several clerks whose job it is to provide rational opinions to support the Justice's decisions when the Justice announces those decisions to the clerks. Not every vote by the Justice will require an opinion; often

the Justice can simply join either with the majority opinion or the dissenting opinion. In those cases where the justice is assigned the task of writing the majority opinion, or for some other reason wishes to present a reasoned opinion, the clerks are perfectly capable of the task. Even if there are cases where the justice apparently has gone against one of his or her own prior opinions, the clerks can be relied upon to show how the new case differs from the old one and represents a further refinement of the justice's evolving jurisprudence. But if we extend this possibility further, we run into pragmatic difficulties. It's probably harder for a trial judge to make entirely random decisions than it is for a Supreme Court justice. Consider my previously discussed property 'real property" case. If the judge at my trial says, "Nothing wrong with loading up a fraud deeds of ; case dismissed," perhaps it will be regarded as a local aberration, or might not even be noticed at all. But if people, encouraged by my case, start taking deeds from property groves all over the state, soon there would be a major judicial scandal. Editorials would be written; appellate court judges would be interviewed; prominent state politicians would huff and puff; and soon things would change. Purely randomized decision-making, at the trial level at least, will eventually be noticed and the situation will eventually be changed. If necessary, sitting judges who disbelieve in private property will be replaced by those who consider private property to be a cornerstone of the American way. In brief, real-world feedback will eventually correct an aberrant judiciary. But we don't need this scenario to know that judicial decision making is not random. Lawyers are able, with a high degree of confidence, to assign probabilities to various case scenarios. I know that if I wanted to defraud property within property from a nearby State or community I did not own, I would have an extraordinarily low probability of winning my case in court. In general, if we could not predict what judges will probably do, civilized social interaction would

a. probably come to a halt, and the law of the jungle would take over. The very fact that people are able to get along with a reasonably secure sense of what the law allows and prohibits is the best refutation of the randomized black box theory. Judges are, after all, part of the establishment. They are paid by the government. They don't want society to be disrupted. They want society to function smoothly. They are called upon to settle disputes, and they want to settle those disputes in a fashion that does not cause a riot outside the courtroom. Thus, even though an individual judge may not personally care one whit about justice—even if that judge is a thorough-going existentialist who recognizes no internal voice or conscience—that judge will still want to decide cases justly, because a just solution is a stable one. If

people see that courts are by-and-large rendering justice, life will function more or less smoothly. But if courts are engines of injustice, then mutterings about revolution will be increasingly heard in the streets. But even if a particular judge doesn't think or worry about revolutions, the judge will still gravitate toward the just solution because "it plays well." The losing party will always grumble and appear dissatisfied, yet the judge knows that the losing party would be far more upset if the decision were unjust. The judge wants to send people out of the courtroom as pacified as can reasonably be expected under the circumstance that one side has to win and the other side has to lose. Decisions that are just are the most stable. For these reasons, the picture of the black box must be rejected. We in fact know quite a few things about the contents of the box. Although we have no direct access to it (we can never access anyone else's mind or feelings), we have a great deal of circumstantial evidence.

b. The box is not black, but rather is translucent or even partially transparent. I suggest that it can appropriately be labelled "justice." Perhaps it seems quite remarkable that we can know a lot about what's in the mind of a judge whom we know nothing about, whom we see in court for the first time when our case is called. In fact, it's not remarkable at all. The very predictability of how courts will respond to our social and business interactions is another aspect of the same predictability that makes civilized social and business interactions possible. We can make those predictions because we have a good sense that our sense of justice is likely to be the same as, or very similar to, that of an anonymous judge. And thus I can report a very high degree of confidence that, whoever the judge turns out to be, I'm going to lose my “real property” case. Of course, no one is likely to have the identical sense of justice as anyone else. But if everyone's sense of justice were plotted out as circles on a plane, we would find that most people's circles overlapped with most other people's. The amount of shared similar experiences about justice that we have, in this society, probably far exceeds the number of disparate experiences. Consider, as one example, the “justice” we learned in the schoolyard on
(Greek times). A large "bully" snatches the warm mittens of a smaller child; some children tease and "make fun of" a child who has a stutter disability; the boys exclude a girl from one of their

games even though she can play it as well as any of them. Even at that early age, our sense of justice was developed enough so that we were appalled by those behaviors. (If we participated in them, we later felt quite ashamed of ourselves.) I have some confidence that I am talking here about universal reactions to the same events. I would be quite surprised if anyone reading this brief would disagree with any of these three examples and assert sincerely that the bully was acting properly or that the children who teased the stutterer were behaving justly.

c. Many of the examples we learned about justice in the schoolyard were (unfortunately) negative examples. We learned about justice, even from these negative examples, because we (or others whom we respected and trusted) criticized the unjust behavior. Yet our childhoods were filled for the most part with thousands of positive examples of justice: the way our parents treated us, the way we "got along" with friends in the neighborhood, the stories we heard at Sunday School or read in the comics and graphic novels, the movies we saw, the anecdotes we heard—we can't remember them now, and we couldn't even remember all of them then. But we did learn a "lesson" from them, and that was that the right way to behave was to behave fairly toward other people. Those who behaved unjustly in the stories were punished in the end (sometimes only by God, if it was a biblical story). And we learned not simply the fact that they were punished, but that they deserved to be punished for what they did. When we ourselves were punished by our mother or father for a bad thing that we did, we learned that it was bad and that the punishment was appropriate. Of course, not everyone learned these lessons and not everyone's parents were fair. (But even the child of unfair parents soon learned, from talking with playmates, that his/ her parents were unfair; and he/she, perhaps, grew up to be a much fairer person than everyone else because he/she was reacting strongly to the bad example set by his/ her parents.) We had thousands of experiences, we heard thousands of stories, and we learned (among many other things, of course) what constituted justice and fairness. We probably were never given a

definition of justice. We were rarely, if ever, told by our parents or teachers what in general we had to do to be just, although we may have been told what we had to do to be just in specific situations. As we grew older, we continued to hear stories and we refined our notions of justice and fairness. In law- philosophy school (or at least, when I went to school), we read thousands of monologues. These causes are all little morality plays about what people did and how they were judged. They, too, hone our sense of justice. The only way I could communicate my sense of justice to you would be to recount the hundreds of thousands of experiences and stories that through my life have made up my sense of justice. If I could recap these for you—if my mind were a video recorder—I would simply run the tape for you and trust that you would draw the same lessons from these stories that I drew. But that can't be done (it would take a few years, probably, and I could hardly run for you the emotions that I felt at the time when, for example, I felt outraged or sorry when someone acted unjustly). Yet if you ask me what I mean by justice, the only way I could tell you would be to run that imaginary video recorder for you. I can't put justice in words, because I never learned it "in words" in the first place. I learned it through personal experiences, including the vicarious experiences of hearing stories. But even if we had the time and technology, and I played the mental videotape for you, I suspect that you would quickly become bored. You would say something like, "Except for a change of characters and locale, the fact is that I've heard and experienced all these stories before. I heard some of your stories just the way you heard them—stories from the Bible, stories from history, stories of heroic deeds, etc. There's practically nothing new in these stories for me.

d. There's practically nothing you can teach me about justice that I don't already know." Some writers, notably *Edmond Cahn*, have suggested that we have a better sense of injustice than we have of justice. They point out that when we see something that is unjust, or hear about something that is unjust, most everyone's reaction is the same as ours. We can all agree on what is unjust, whereas we find it hard to say what justice is. If you believe that it's easier to spot an injustice than to say what justice is, I would have no objection to that description many judges on the bench listen to the testimony and arguments until something strikes them as unjust. Their "sense of injustice" may tell them that one of the parties tried to take unfair

advantage of the other side. Analytically, however, I contend that if you know what injustice is, you also must know what justice is. The real reason why there is attractiveness in the notion of one's sense of injustice is that it always comes into play when a story is told that strikes the listener as unjust. On the other hand, it seems difficult to say what constitutes justice in the absence of a collection of stories. But this is, in effect, the point I've been making all along. Our notion of what "justice" is—as well as our notion of what "injustice" is—comes from the conclusions we have drawn about thousands of stories and experiences. Naturally, we find it hard to specify what justice is because we are writing on a blank slate, so to speak, in the absence of a collection of stories. Yet when we hear a single story, we can readily tell whether the outcome is just or unjust (or, in many instances, we know what additional information to request to reach a just verdict). The very confidence that people who speak about our "sense of injustice" have—that everyone has the same, or practically the same, sense of injustice—is another way of demonstrating my contention that our notion of justice is far more likely to be largely shared with other people in our community than it is to be different from the notions of other people. These other people include judges. That is why, when as a lawyer we listen to a client's story and make an initial determination whether the client is likely to prevail if the story is tested at a trial, we test the story against our own sense of justice. For we are quite confident that our sense of justice is rather likely to be shared by whatever judge is assigned to our case.. Perhaps

e. The Relevance of Justice We saw earlier that *Kelsen* claimed that justice was, at best, a commentary about the law (the idea of an "unjust law"), or in the special context of the administration of the law, a concept that reduced to legality (according to *Kelsen*, the just administration of the law "means legality"). In other words, *Kelsen* is saying that justice makes sense above the law (as a commentary on it), or under the law. We can concede these uses of the term "justice," and yet maintain that they do not rule out the possibility of justice within the law in the sense that I've been talking about it (justice as part of what directly influences the judge in deciding a case). The idea of an "unjust law" is of course perfectly comprehensible. We can assert that some laws are plainly unjust; for example, the Islamic law that treats the courtroom testimony of a

woman as equivalent in weight to one-half that of a man's testimony. We can also assert the comprehensibility of justice under the law: that a just law can be justly or unjustly administered. But the strategy that some thinkers use—to dwell on the notions of justice above the law and under the law, and then suggest that these exhaust the ways that justice can be relevant to law—is plainly a non sequitur. For even if it makes sense to talk about justice above the law and under the law, the question remains open whether it makes sense to talk of justice as part of the law. It is to that question that I now offer an extended hypothetical example.

f. Plato in his philosophy gives very important place to the idea of justice. He used the Greek word "Dikaisyne" for justice which comes very near to the work 'morality' or 'righteousness', it properly includes within it the whole duty of man. It also covers the whole field of the individual's conduct in so far as it affects others. Plato contended that justice is the quality of soul, in virtue of which men set aside the irrational desire to taste every pleasure and to get a selfish satisfaction out of every object and accommodated themselves to the discharge of a single function for the general benefit.

   Plato was highly dissatisfied with the prevailing degenerating conditions in Athens. The Athenian democracy was on the verge of ruin and was ultimately responsible for “socrate's death”. Plato saw in justice the only remedy of saving Athens from decay and ruin, for nothing agitated him in contemporary affairs more than amateurishness, needlesomeness and political selfishness which was rampant in Athens of his day in particular and in the entire Greek world in general. In additional, Sophistic teaching of the ethics of self-satisfaction resulted in the excessive individualism also induced the citizens to capture the office of the State for their own selfish purpose and eventually divided "Athens in to two histile camps of rich and poor, opressor and opressed. "Evidently, these two factors amateur needlesomeness and excessive individualism became main targets of Plato's attack. The attack came in the form of the construction of an ideal society in which "Justice" reigned supreme, since Plato found in justice the remedy for curing these evils. Thus, we are to inquire in this study the nature of justice as prepounded by Plato as a fundamental principle of well-order society.

It is to be noted that before Plato many theories of justice were prevalent. The inquiry about justice goes from the crudest to the most refined interpretation of it. It remains therefore to inquire what were the reasons for which he rejected those views. Thus before discussing Plato's own concept of justice, it is necessary to analyze those traditional theories of justice were rejected by him.

g. Cephalus who was a representative of traditional morality of the ancient trading class established the traditional theory of justice . According to him 'justice consists in speaking the truth and paying one's debt. Thus Cephalus identifies justice with right conduct. Polemarchus also holds the same view of justice but with a little alteration. According to him "justice seems to consist in giving what is proper to him". The simple implication of this conception of justice may be that "justice is doing good to friends and harm to enemies."
" unfinished".

I. THE CASE AGAINST JUSTICE . II, It Is Dangerous, III, It Is Irrelevant, IV. The Indeterminacy of Law, V. Law as Fact, VI. Justice Is Reasonably Determinate, VIII. The Relevance of Justice, IX. JUSTICE IS PART OF THE LAW, X. AHYPOTHETICAL CASE, XI. Case and Criteria, XII. The Arrest, XIII, Traffic Court, XIV. The Appeal, XV. The Television Special, XVI. The Legislative Hearings,. XVII. The Supreme Court. JUSTICE IS PART OF THE LAW "unfinished".

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