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The essence of justice - What is it?, 1929.

"THE ESSENCE OF JUSTICE--WHAT IS IT?"

RABBI ABBA HILLEL SILVER.

THE TEMPLE, SUNDAY MORNING,

APRIL 14, 1929, CLEVELAND, O.



In discussing ^{what is} ~~the essence~~ of justice, it is well to distinguish at the outset between legal justice and ideal justice. The two are, of course, not synonymous. The difference is the difference which we observe almost daily between law and ideal morality. Someone has said that law represents the minimum of ethics, ~~that is, that~~ ^{the} set of moral requirements which a community at any given stage in its development regards as absolutely indispensable. Law, as a rule, reflects the average morality of a community ^{at a given time} ←

~~As Judge Cordova indicates in one of his~~
books, the crowd cannot be judged by the morality of the saint and the sinner. The line of the law is usually above the lowest level of morality in the community, but below ~~the highest level. It is modeled after the pattern of~~ the average moral standard of a society. Thus, for example, there are laws on the statute books of our federal ~~government, and of our~~ state and municipal governments, which in many ways are inferior to the moral sentiment of the best minds among our people.

Thus, for example, you will find in the Bible and in the Talmud many laws which are decidedly inferior as regards moral excellence, to the ethical pronouncements of the prophets or the rabbis who lived at the very time when these laws were operative.

In other words, law lags behind ~~legal~~
~~justice, jural justice, lags behind~~ ideal justice, and
always tries to catch up with it. So that it is ~~very~~ *quite*
difficult, and ~~at times altogether~~ unprofitable, to seek
to determine what is ~~the essence of~~ justice by a reference
to ~~the~~ *a people's* legal code ~~of a people~~. There is ~~an~~ evolving
~~moral experience~~, a growing moral idealism in a people
which outstrips the legal morality of that same people,
and which tries to ~~make~~ *bring its* law progressively to conform with
that higher moral standard.

~~In other words~~, law may be said to represent
what has already been achieved in morality. Real justice
represents not only ~~the~~ *that* achievement ~~or the tradition~~, but *also*
the moral imagination of the people, the outreaching of the
moral sense of the people for perfection. Even in legal
justice there has taken place in recent generations marked
progress. Men used to think, and on the basis of that
thought they would ~~calculate~~ *determine* their action, that a man's
wrongdoing was ~~absolutely~~ *exclusively* the result ~~of~~ *a deliberate*
~~heart of~~ evil intention, and that the wrongdoer was
therefore entirely to blame for his wrongdoing, and there-
fore society was ~~justified in~~ *therefore* ~~inflicting~~ *inflicting* punishment to the
utmost upon this wilful violator of the morality of the
community. But our study of sociology, and more particu-
larly our ~~recent~~ studies in the field of psychology, have
convinced us that there is such a thing as a social partner-
ship in crime; that ~~a~~ *the* community, in a sense, is *also* responsible

for the actions of the individual; that very often a man's wrongdoing is ^{not} ~~not~~ the result of evil ^{intention} ~~inclination~~ but of an evil environment, of evil preconditioning, of evil upbringing, of ~~evil distrust of some thwarting or~~ ~~frustration of the sub-conscious self;~~ ^{and} that a man is frequently driven to do wrong by forces over which he has no control. So that ^{an entire} ~~the whole~~ philosophy of crime and punishment has undergone ^{radical} ~~a~~ change in the last few decades.

Justice today is conceived of not as punitive but as corrective, and not so much corrective as preventive. Justice today seeks a ^{change in} ~~revision of~~ social conditions ^{to a point where} ~~in such a way that~~ they will prove morally helpful to the individual, ^{and} ~~so as to~~ keep him from doing the anti-social ^{acts.} ~~things.~~ Of course this ^{commendable new view} ~~tendency, too,~~ ^{has its dangers.} There are those who ^{have come to the conclusion} ~~already presume~~ that the individual is altogether without blame or ^{absolute} ~~responsibility;~~ that when a man commits a crime, ~~or, as~~ ^{we put it in religious terminology--which I prefer--when} ~~a man sins,~~ the blame is entirely that of society and not of the individual.

^{of course} That is the other extreme. ^{This extreme} ~~That point of~~ view makes for ~~total moral irresponsibility,~~ for moral anarchy. The proper mean is for justice to ^{take into account} ~~make due~~ allowance for all extenuating circumstances, but not to ^{disregard} ~~forego~~ the ^{basic} ~~dogma~~ upon which all morality is ultimately built, namely, that ^{the} ~~the~~ normal individual is, after all, ~~said and done,~~ ^{conduct} largely responsible for his own ~~actions.~~

~~Now, what is ideal justice in contra-~~
~~distinction to legal justice?~~ ^{Now,} We can go to our law
books and find out what ~~the law~~ ^{legal justice} is in ^{any} given situation,
but where shall we find ^a the definition for ideal justice?
~~Well,~~ ^{Frankly,} it is very difficult to find such a
definition. From the days of Plato to this day philosophers
and ^{students} ~~writers~~ of ethics have sought to evolve a formula which
~~will adequately summarize justice, and no unanimity of~~
~~thought has as yet been arrived at for such a formula.~~ ^{defining ideal but agreement reached on}

~~Take,~~ ^{(for example, the Bible).} There is
no collection of writings anywhere in the world which is
so completely ~~saturated, I might say, with the ideal of~~ ^{devoted to the concept}
~~social justice as the biblical literature.~~ ^{on} Every page
~~is replete with~~ ^{ring with} it, and yet nowhere in the Bible ^{with} do you
find a concise definition of what really constitutes
justice. (There are any number of positive and negative
commands in the Bible urging righteous relations between
men. There are the most exalted championing of social
righteousness in the Bible. You take that chapter 19 of
the Book of Leviticus which I read this morning; you take
this phrase or two from the first chapter of the Book of
Deuteronomy: "And I charged your judges at that time,
saying, Hear the causes between your brethern, and judge
righteously between every man and his brother, and the
stranger that is with him. Ye shall not respect persons
in judgment, but shall hear the small and the great alike.
Ye shall not be afraid of the face of any man; for the

judgment is God's."

That last phrase is very significant. In the system of laws of other peoples, the ultimate repository of the law is the king of the state. The king's bench, the king's law, the judges, are the representatives of royalty. In the Jewish conception of law the judge is the physical representative of divinity. So much so that very frequently in the Bible the name Elohim (God) is used for a judge. "If ye have the judgment between you," says the law in the Book of Exodus, "ye shall bring it near unto God." That is, the judge, who is the spokesman of God. That is how high a conception of justice, even of legal justice, the Jew had.

Or when you read in Amos: "Thus saith the Lord; for three transgressions of Israel, yet for four, I will not reverse it, (that is, I will not reverse my judgment of punishment upon it), because they sell the righteous for silver and the needy for a pair of shoes. That pant after the dust of the earth on the head of the poor, and turn aside the way of the humble." Or if you turn to the great Micah: "Hear, I pray you, ye heads of Jacob, and rulers of the house of Israel; is it not for you to know justice? Who hate the good and love the evil; who rub their skin from off them, and their flesh from off their bones. Who eat the flesh of my people, and flay their skin from off them, and break their bones. Hear this, I pray ye, heads of the house of Jacob and

rulers of the house of Israel, that abhor judgment and pervert all equity; that build up Zion with blood, and Jerusalem with iniquity. The heads thereof judge for reward, and the priests thereof teach for hire, , and the prophets thereof divine for money: yet will they lean upon the Lord, and say, Is not the Lord in the midst of us? No evil shall come upon us. Therefore shall Zion for your sake be plowed as a field, and Jerusalem shall become heaps, and the mountain of the house as the high places of the forest."

And ^{so} throughout the immortal writings of the prophets, the cry for justice ^{never for the} ~~is heard~~. And a very exalted conception of justice was theirs, one alike for rich and poor, ^{for native born and stranger} ~~one alike for subject and ruler~~. When the great King David sinned, the prophet Nathan did not hesitate to go to him, and, pointing the ^{accusatory} ~~finger of~~ denunciation at him, cry out, "Thou art the man!" ~~Thou art the culprit!~~ When Ahab robbed Naboth of his vineyard and had him put to death, the prophet Elijah did not hesitate to go to Ahab, ~~and in the burning wrath of the cause of justice which had been violated by the king, who was the first person to have defended the law,~~ ^{and} denounced ^{him} the king to his face and proclaimed doom upon him.

It is told of the ^{head} ~~president~~ of the Sanhedrin, Simon, ^{the son of} ~~the son of~~ Shetah, ^{a famous Pharisee teacher} who lived in the first century ^{before} ~~before~~ the common era, that he was ^{so} ~~a~~ great ^{and rigorous} defender of the ~~law, the law of justice, rigorously, so~~ that he made

enemies, and ~~that~~ ^{one} day two of his enemies conspired to bear false witness against his son for a crime punishable by death, and that on the basis of the testimony of these two witnesses the son of Simon ben Shetah was condemned to death, ~~and as~~ he was being led to the place of execution, he protested his innocence so loudly that the witnesses who accompanied him repented and confessed that they had borne false testimony, and the judges who had sentenced him were ready to reverse the sentence, and even Simon ben Shetah the father, too, ^{was} convinced of his son's innocence, was ready to reverse his sentence. But there was a law in ancient Israel ^{which refused to accept the recantation of witnesses,} that witnesses who had once given their testimony cannot be trusted, when later on they reverse their own testimony; and the son who was thus being led to execution turned to his father and said, "Father, if thou dost wish to become the salvation of Israel, see to it that ~~this~~ ^{my} sentence is ~~not~~ ^{carried out.} changed. Look upon me as a door step over which ~~you~~ ^{you} must pass without compunction."

"Let the law pierce through the mountain; ~~but~~ ^{2277 מלך 118 217!} ~~for~~ the law of justice must endure." So great was the passion for justice in ancient Israel that in its name they dared to challenge ^{even} divinity, -- God himself, ^{God Himself} was bound by His laws of justice. You will recall how Abraham pleaded for the city of Sodom and Gomorrah, hoping to save it from its destruction, and he argued with the Lord. "Shall the ruler of the entire universe not do justice?" ^{Caln 217 11 420 6 Caln} and Jeremiah and Habakkuk, and more "

especially Job,--why, the whole Book of Job is a demand of the Lord to come and vindicate his conduct of this world on the basis of the law of justice which He had established. "Why does the righteous suffer? Why does the evil man prosper if there is justice in the world?"

And yet I say, in spite of these truly ~~remarkable~~ ^{and among the Rabbis} remarkable conceptions of justice which we find in the Bible, nowhere do we find a definition which could help us in determining just exactly what justice is, what is the essence of justice. Perhaps such a definition is not to be had. But we may ^{approach} ~~approach~~ an understanding of the essence of justice if we ask ourselves, What is the goal of justice? What does justice aim to ^{accomplish} ~~do~~ for ^{us?} ~~mankind?~~ Well, I suppose that it can be safely said that the aim of justice is the same as the aim of social life itself. The aim of justice, I suppose, may be said to be the ^{well} ~~making~~ making possible of ^a ~~the~~ freely developing and ^a ~~freely~~ acting human personality ^{within in Soc-ety.} That is Kant's definition, by the way.

What is the ideal society? ^{An} ~~The~~ ideal society is the one in which every man does what he wishes to do, but wishes to do only that which will contribute to the happiness of others as well as to his own happiness. I think that is a fair statement of what you and I would regard as the ideal condition of social living. ~~The ideal society is one in which every man does what he wishes to do, but wishes to do only that which will contribute to~~ Ideal justice is therefore ^{republican} ~~republican~~ freedom which helps men build the ~~last society~~ ^{last society}

~~the happiness of others as well as to his own happiness.~~

~~In other words, the ideal society is one in which men are free to develop themselves and free to act morally. If I were to sum up this thought I would say that the ideal of society, and therefore the ideal of justice, is responsible freedom. You will recall last week I summarized the essence of education as moral intelligence. I should like to summarize this morning the essence of justice as moral freedom, or responsible freedom.~~

~~Justice has sometimes been assumed to be equality.~~ There are those who believe that ~~the~~ ideal justice requires that all men ^{shall} be equal. That of course is rank injustice. That assumes the right to superimpose an artificial equality where nature never intended such an equality. ^{It} ~~That~~ presumes to equalize reward without being able to equalize ability. Nature created no two men alike and endowed no two men with equal capacities of body or brain ~~or soul~~. If there is ^{something} ~~anything~~ that you could posit with a degree of certainty in this world it is that there are no two people alike, any more than there are two blades of grass alike. ~~That is no equality at all. Certainly, that is not justice.~~

~~The~~ ideal justice is that which grants a man freedom to develop his capacities ~~within his sphere~~ to the utmost. A man who is equipped to become a first rate mechanic,--and in the economy of God's world a first

rate mechanic is just as important as a first rate
~~Beethoven~~ musician; it is only human beings that place
~~certain sets of values upon human labor~~, --if a man is
~~equipped to become a first rate mechanic~~, society ought to
make him free to develop himself in that ~~realm~~ ^{and capacity} to the
utmost, and the way society makes ^{to} a man free ~~to do that~~ is ^{to afford}
~~through~~ ^{by} the opportunities of education, ^{and} of training.

If a man is ~~equipped~~ ^{endowed} to become a great musician
~~or~~ ^{an} genius, society ought to make it possible for him to be
free, to ~~express that gift~~ ^{develop his} ~~which is his~~; and whether he
belongs to the ~~poor class~~ ^{one class}, the ~~rich class~~ ^{or another}, or the privileged
~~class~~, to ~~this race or that race~~ ^{any}, that counts for nothing.
Society must see to it that these ~~things~~ ^{considerations} ~~shall~~ ^{should} count for
nothing in the ~~man's development~~ ^{unfolding} ~~talent or career~~ ^{that man's}.

In other words, ideal justice demands that
every man ~~shall~~ ^{should} get his due, and every man ~~shall~~ ^{should} have a
chance fully to realize all the potentialities of his ~~being~~ ^{life},
regardless of color ^{or race} or ancestry. Every man
~~shall~~ ^{should} be free to develop himself to the utmost limits of
his ability.

~~Now, don't you see what~~ ^{many} revolutionary
implications ~~derive~~ ^{flow} from this definition? If justice ^{is}
~~requires~~ responsible freedom, then everything which keeps
a man from enjoying that freedom is injustice. Now, what
are some of the things which keep a man from ~~freely~~ ^{from enjoying}
~~developing and freely acting out his destiny~~? ~~Why~~, In the
~~that freedom?~~

first place, poverty! You have ^{often} heard it said ~~often~~ that poverty is a spur to ^{ambition} ~~initiative~~; that want incites to greater ^{effort} ~~ambition~~. Well, that is true ^{up to a certain} to a degree, ~~and~~ ^{but} only to a very limited degree. A ^{small} ~~little~~ pinch of poverty may prove a stimulus, but continuous, crushing want will starve and stultify a human personality and ultimately destroy it. There is very little to be said for poverty. Poverty is a form of slavery; poverty is a prison house; want is so many shackles placed upon ^{the} human ~~being~~ ^{spirit}.

~~And~~ therefore a society which is pursuing the ideal of justice will set about deliberately to destroy poverty, ~~first~~, by increasing the social goods, and, ~~secondly~~, by distributing these social goods ~~more~~ equitably. (The great war of the future, ~~my friends~~, as I see it, must be a war not for industrial expansion in fallen markets, not for territorial aggrandizement, but a war upon poverty. There is enough of social goods in this world, in the bowels of the earth, placed there by a good God, to provide all the necessities of life for every child of God who lives upon this earth, ~~and~~ the task of ^a ~~society~~ ^{who are} ~~seeking to~~ establish ~~an~~ ideal justice ~~will be, in the future~~, to eradicate poverty, --not by charity, not by philanthropy, not by doling out gifts to the poor, but by the establishment of an economic order, ^{where} ~~when any~~ and every man who labors will receive a generous ^{fair} recompense for his labor; ~~when any~~ and every man who labors will have enough ^{so as} to protect himself and his family against

the material distribution
want, against unemployment, against sickness, against old
age.

The destruction of poverty is the first requisite for the establishment of responsible freedom among men, ~~which is justice.~~ And the other factor in society which makes for injustice is wealth, unearned. Wealth, unearned, makes for irresponsible freedom, or, rather, for irresponsible license; it gives power without control. The only justification for the present economic system in society is the merit system. Unearned wealth destroys the merit system, and by so doing destroys justice in society. ~~No man who does not work should eat;~~ No man who does not contribute to the assets of society ~~shall~~ ^{should} be privileged to draw upon the treasures of society. There ought to be, if not a rigid ~~and hard~~ correlation, at least some fair correlation between service and reward, or the whole system becomes infamously unjust.

How can you ~~and I~~ determine whether a given act in which ~~we~~ ^{you} are about to engage is ~~just or unjust?~~ ^{really} After all, that is what we are interested in. How can ~~we~~ ^{you} tell by this definition which I have just attempted to give, --not at all a final and absolute definition, but a ~~presumption~~, --how can you ~~and I~~ tell whether a given act which ~~we~~ ^{you} have performed, or about to perform, is just? Why, just ask yourself: does that act represent me in my capacity as a free agent, working socially, ~~formally~~, or

does it not? Does this thing which I am about to do
represent me at the highest point of my ^{responsibly} intellectual
freedom? at the highest point of my ^{human} obligations? ^{as a free man.} ~~Then~~ If it does,
^{than} that is a just act. If it does not, if it represents
me at the lower levels of my enslavement to passions, to
lust, to desires, to cupidities, to envies, if it
represents me at the lower levels of my social irre-
sponsibility, then it is an unjust act, ~~and the way to~~
determine whether I am doing a thing which represents ~~that~~ ^{what}
~~which~~ is responsible or not, is to ask yourself: Suppose
every other living human being would do the same thing,
what would happen?

That is the test which ^{Emmanuel Kant, in my view,} ~~Kant~~ set for moral
acts. Universalize your act! Say to yourself: "Suppose
every living human being would do the same thing, would
it contribute to social well-being, or would it not?"
Then you will know right soon whether that act represents
a sense of responsibility, ^{and} of social alertness and aware-
ness, or whether it represents ^{self-interest} selfishness ^{and} ~~exclusively~~.

Long before Kant the great ~~Rabbi~~ Hillel set the same test
for the just act. "That which is hateful to ^{yourself} ~~thyself~~ do
not do to ^{your} ~~thy~~ neighbor." Ask yourself whether the act
which you are about to do would be congenial to you if
someone else ^{to say} did it; would ^{it} contribute to your well-being.

Both of these tests are valid tests. Per-
haps Hillel's is ^{for} a more practical test. You may not know

how a given act will affect humanity, but you pretty well know how a given act ^{will} ~~might~~ affect you and how you would react to it. If you are about to ~~despoil a man~~, to rob a workingman of his just hire, put yourself in his place and ask yourself: "If I were the workingman and this act were perpetrated upon me, would I like it?"

To sum up: the essence of justice is responsible freedom, and therefore ~~justice is not here now but is an achievement~~. Justice is an eternal battle. Justice is that ultimate for which the whole of mankind must struggle ~~and wage war and agonize~~ during the unnumbered generations still to come, -- ~~like real freedom, like moral intelligence~~, ^{as for} like all the great values of human life. They are ~~not now already in operation~~; they are goals to be achieved, distant shrines toward which mankind ^{now} on its eternal pilgrimage ~~is moving~~.

Therefore the prophet declares: "Justice, justice, shalt thou pursue!" It is ^{a pursuit, a quest} ~~an enterprise~~, an ^{here} ~~adventure~~; ~~to~~ build the heavenly Jerusalem upon this earth is the supreme adventure of human kind; to establish here a home for the free spirit of man, where every man will live, and ^{live} ~~supremely~~, to his advantage and to the advantage of all his fellowmen. ~~That is a marvelous challenge to all that is best and finest in the spirit of man.~~

~~"Justice, justice, shalt thou pursue!"~~

--o--

The Essence of Justice

Sermon 299

1. Diff. bet. legal J and ideal J. - (Juste)
 - 1. Confound
 - 2. diff.
 - 3. Minimum - requirements -
 - 4. Patterns of the average. Cardozo
 - 5. The law will withhold -
 - 6. Thus many laws.
2. Even in legal J marked advance has been made.
 - assumed - stubbornness of heart - Man entirely responsible.
 - Punishment. (Sociology) & Psych. have taught how many factors enter into man's own determining enters in Crime -
 - Social partnership - Conditioning play heavy role in generating personal traits - Extenuating Circumstances. New Theory of J. not to punish but to correct - Not to correct only but to prevent - To modify factors in environment
3. Of course the tendency may go too far - Society entirely to blame - Ind. entirely blameless - Wholly responsible & all morality - where allow but no more!
4. What then is Ideal J.? It is difficult to define. In our Bible e.g. noblest admiss. of J. - but no ^{compact} formula -
 - (1) One has but to read D. 1.17; De Amos 2.1-8 + 6.1-3 + 8.10 Deut. 3.1-3, 9-11
 - (2) One law for rich & poor - for subject thing - like 2.11
 - (3) Simon ben Shetach - 137, 217
 - (4) Challenged God - In Aba - Jer. Hal -

But no definition. Perhaps no concise def. possible - Let's attempt to ask ourselves what is Goal? Kant - "The
5. Plato - harmony - classes - freely developing & freely acting Aristotle - Man not a slave - permanently - what would be the perfect society? One in which every man does what he wishes to do, but wishes to do only that which might bring happiness to other people as well as to himself - (Spencer) put it in a bit more degree lower "a soc. in which every man is free to do what he wills provided he interferes not the equal freedoms of any other man". If that is ideal soc. then the ideal J. must seek that End - It must ~~be~~ aim at bringing abt a condition soc. in which men

will have fullest opp. to be free to express Ess-
and, accord. to power, not interfere with other's economic
rights or, accord. to our def. substituting to happiness
& thus as well as to themselves - The goal of J is

responsible freedom

6. This, you readily see, does not mean arithmetical equality.
Some have understood J. to be a formal & formal equality
superimposed. In a superimposed form in nature no such
equality exists - This is itself an injustice for it
equalizes rewards without being able to equalize
ability - What is argued in J. is opportunity for
each to ^{with his own} realize his ^{talents} ~~capacities~~ ^{mechanics - human}
genius - ^{whether the prod. system is econ.} No restriction of opp. shall be placed
in way of man bec. of caste, or birth, or race or
creed.

7. What factors stand in way of responsible freedom
which is J. - ?

- ① All forms of privilege. ~~A priv. which is not earned~~
Priv. are exploitations of others - deprive others of freedom.
- ② Poverty - starves & thwarts life - Spurs to imitation
continued want deadens imitation -
- ③ Unequal wealth - Irresponsible freedom - ~~tempt~~
~~to the~~ merit system of econ. org. - the
only vindication of our present econ. system -
- ④ Inadequate education - you cannot make a
genius out of ~~stupidity~~ ^{stupidity} by educ. but you can make
thousands of reflectors & i. freedom, as man by
education -

8. Direction of future progress ① Equitable dist. of wealth
& ② Education - Justice is an achievement ~~suball~~

9. How can you know that what you are able to ^{universally}
do is in accord with ideal? Resp. Ireland filled

Justice in Judaism -

1. Leviticus 19:15 / Against thug. No respecta person - Abah. Nahtho veyard
2. 'Thou shalt not respect person rich, nor poor person -
1. 'Hast thou killed & also taken possession?
3. Amos. 2.7-8 And 6.1-3; 8-10)
4. Micah 3.1-3; 9-11.

5. Deut. 1.17. ^{ליק נדה יליך לל פרקל יצא ילדו עולמא עולמא ליה}
^{ליק נדה יליך לל פרקל יצא ילדו עולמא עולמא ליה}

1. Justice, legal and justice - Moral.
2. Justice vs. Love, for your enemy. Psych. inferior. and so thoroughly unjustified - ~~Even~~ Submit to his arbitrariness - "Be just to your enemy!" endangers social order - We the hate our lord! Protect yourself and then "Thou shalt not talk vengeance, nor bear any grudge against him -

① Simon ben Shetach - Head of Sanhedrin - IC BC. - Son -
 2 false witnesses accuse son & crime punishable by death -
 condemned - led to Execution - protect innocence - witnesses
 repent & confess - Judge abt to set him free - Prisoner
 calls their authority to violation of law. "No belief shall
 be given to witnesses who withdraw previous testimony"
 Appeals to father: "If you wish that the salvation of Israel
 should be wrought by thy hands, consider me but the
 threshold over which you must pass with out compromise"
 וְאֵלֶיךָ יָבוֹאוּ מִלִּפְנֵי הַיְיָ וְיִשְׁמְעוּ אֶתְּךָ

4. Justice tempered with love, Gen. R. XII 15. "Thou shalt
 & established world - ^{מִלִּפְנֵי הַיְיָ} on love? This would cause son to
 increase. (on whatness phos. readers & judges - cannot
 eradicate evil) - on p. 3, the cruel world exist - Both.
 עֲלֵיכֶם וְעַל כָּל הָעָם אֲשֶׁר עִמָּךְ

1. Justice should not be confused with legal or formal justice. The diff. is of course the diff. bet. law and ideal morality. The just law is an approximation, the ideal morality ~~is not always~~ ~~this ideal morality itself~~. Law, declared Jellinek, "is a minimum ethics" i.e. that moral requirement which at a given stage of social develop. is absolutely indispensable. "It is as ~~an~~ ^{an} ~~ethical~~ ^{ethical} ~~requirement~~ ^{requirement} ~~as~~ ^{as} ~~the~~ ^{the} ~~practice~~ ^{practice} of a given epoch ~~that~~ ^{that} ~~concerns~~ ^{concerns} ~~it~~ ^{it} ~~to~~ ^{to} ~~be~~ ^{be} ~~legally~~ ^{legally} ~~binding~~ ^{binding} ~~and~~ ^{and} ~~enforceable~~ ^{enforceable} ~~by~~ ^{by} ~~the~~ ^{the} ~~aid~~ ^{aid} ~~of~~ ^{of} ~~legal~~ ^{legal} ~~sanctions~~ ^{sanctions}". Its pattern at any given moment is the morality, the community where conduct ~~is~~ ^{is} intended to regulate. Of course it is the average morality, the com- & not the highest which determines the law. As Cardozo puts it: "The law will not hold the crowd to the morality of saints and seers. Its line will be higher than the lowest level of moral prev. in a community. But lower, the highest -

① Thus many, the laws, the U.S. lag far behind the moral rectitude, the most progressive moral elements in our nation, just as in the Bible ^{you will} ~~find~~ ^{find} many laws which were decidedly inferior in moral excellence to the ^{agreed ethical} ~~prominence~~ ^{prominence} of the prophets & the Rabbis who lived in the very epochs when these laws were operative.

② Justice, then, can not always be determined by reference to the legal code of the day. There is in society an evolving ethical experience, or an up. reaching moral idealism which seeks to bring law increasingly in harmony with it. -

③ It is not only moral achievement but moral imagination.