Ethics of Inclusive Peace and Responsible Governance

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ABSTRACT:

The world faces growing risks from disputes, conflicts, violence, and instability. Building inclusive peace is about much more than ending war. It is about putting in place the institutions and trust that will strengthen the social contract and carry people forward into a peaceful future. It is about resolution of disputes, conflicts, and wars. Inclusion does not mean giving everyone a seat at the negotiating table. It does mean creating opportunities for people with a stake in lasting peace to shape it. Inclusive governance is that the machinery of govern-ment is equipped with effective, responsive and accountable institutions capable and empowered to deliver necessary public services to those furthest behind and rebuild public trust in government at the local levels. Governance is most ethical-ly seen in the legal process and the juristic act through which the inclusive peace is achieved. The legal process is the resolution of disputes and conflicts which are actual or occasionally potential, by means of a decision. Pound stresses that law, morals and policy are distinct which can alter the fact that legal decisions are inevitably based on an ideology. Therefore, it is better to face up to this and make a conscious effort to recognize what are the operative values of one's society and develop the law accordingly, rather than attempt to treat all legal decisions as purely technical exercises in legal logic.

KEYWORDS:

Inclusive Peace, Responsible Governance, Sustainable Development Goals (SDGs), Dispute Resolution Institutions, Wartime Governance, Legal Process, Unregulated Conflict.

INTRODCUTION

Globally, the absolute number of war deaths has been declining since 1946. And yet, disputes, conflicts and violence are currently on the rise. In recent past, the world saw a wave of protest movements sweeping across six continents.[1] Although to varying degrees, all had one trigger in common: public frustration against an unresponsive State or, more specifically, ineffective state institutions that had lost the public's confidence.[2] The number and complexity of violent conflicts rose in 2019, all reflecting a severely weakened social contract and plummeting trust in government. In recent past, more than 70 million persons are forcibly displaced as a result of persecution, conflict and violence, double the level of 20 years ago. These trends are further compounded by the COVID–19 pandemic. By 2030, more than half the world's poor are expected to live in countries impacted by fragility and violent conflict. Violence is a major problem in 47 countries. Only 18% of fragile and conflict–affected states are on track to meet Sustainable Development Goals (SDG) targets related to unmet basic needs, especially at the local levels where institutions struggle due to lack of capacity, resources or priority. Thus, the world faces growing risks from disputes, conflicts, violence, and instability.

1. INCLUSIVE PEACE: MEANING

Building inclusive peace is about much more than ending war. It is about putting in place the institutions and trust that will strengthen the social contract and carry people forward into a peaceful future. It is about resolution of disputes, conflicts, and wars. Inclusion does not mean giving everyone a seat at the nego–tiating table. It does mean creating opportunities for people with a stake in lasting peace to shape it. The UN has defined 'inclusivity' as "the extent and manner in which the views and needs of parties to conflict and other stakeholders are rep–resented, heard and integrated into a peace process." Inclusion means it is import–ant to avoid the views and needs of elites drowning out those of the wider pop–ulation. To strengthen a society's ability to avoid a relapse into armed violence, groups in society beyond those immediately involved in the conflict also need to be included in the peace process. Broad based inclusion leads to more public support and greater legitimacy for any process and resulting agreement. This is particularly true if civil society organisations are included in the process. Be–cause, civil society organisations can bring local expertise and knowledge, rep–resent the interests of different communities, champion the peace deal, and hold the signatories to a peace deal accountable for its implementation.

For peace to be durable and sustainable, it is paramount for governments to be inclusive across ethnic, cultural, linguistic, national and religious divides.

2. RESPONSIBLE GOVERNANCE: MEANING

Governance is the process through which state and nonstate actors interact to design and implement policies within a given set of formal and informal rules that shape and are shaped by power. Inclusive governance is that the machinery of government is equipped with effective, responsive and accountable institutions capable and empowered to deliver necessary public services to those furthest behind and rebuild public trust in government at the local levels. Inclusive, accountable and responsive governance systems underpin the ability of governments to identify, drive, and direct national and local priorities, strategies and activities for sustaining peace in a responsive and inclusive approach to development and peacebuilding.

'Good governance' is the process that has fulfilled or is accordance with certain characteristics deemed appropriate or standard recognized and accepted by the international bodies. UNESCAP itself laid down eight characteristics. Generally agreed characteristics of good governance include accountability, transparent, follows the rule of law, responsive, equitable and inclusive, effective and efficient and participatory. Accountability refers to the government being responsible and answerable to its decisions and actions. Transparent in the government process is known and clear in procedure and undertakings. People are able to see how and why decision is made. Rule of law in good governance means that there is legal framework that establishes and provides power to the government. Rules and regulations are clear in providing powers and jurisdiction to the authorities. Responsiveness means that the government is serving the needs of the community and also trying to balance out the competing interest in the community and always responsive to their demands and needs. Equitable and inclusive in good governance is equal treatment is given to people in all walks of life and the government is giving special consideration to the weak and poor while proving the opportunity to many to participate in decision making process. Effective and efficient is the optimal utilization of resources while ensuring while ensuring wastages are reduced as much as possible. Participatory process is giving opportunity to take part for those who are interested in the process of decision making through consultation and indirect involvement such as debate, town hall meetings, consultative papers and memorandum. It is basically the government getting opinions from the public before drafting and passing law and deciding and implementing policies.[3]

Three constitutive elements of governance for development: (1) the relative distribution of power among individuals and groups with conflicting preferences; (2) the bargaining arena where conflicting interests are mediated, and policy choices are made and implemented; and (3) the barriers to entry to this

arena.

3. RELATION BETWEEN INCLUSIVE PEACE AND RESPONSIBLE GOVERNANCE

Sustainable Development Goals (SDGs) 16 calls for promoting "peace, justice, and strong institutions," and it is explicitly related to governance.

Violent conflict is the result of three types of breakdowns in governance, all rooted in cooperation and commitment problems: (1) the unconstrained power of individuals, groups, and governments; (2) failed agreements between participants in the bargaining arena; or (3) the exclusion of relevant individuals and groups from this arena. Power sharing, resource redistribution, dispute settlement, and sanctions and deterrence have long been identified as potential ways governance can prevent, reduce, or end violent conflict, yet they succeed only when they constrain the power of ruling elites, achieve and sustain agreements, and do not exclude relevant individuals and groups.

Four categories of governance institutions that directly create incentives for individuals, groups, and governments to refrain from using violence to resolve conflicts. Other types of institutions, such as markets or schools, play only indirect roles. Sanction and deterrence institutions: Governance institutions that punish and deter opportunistic behaviour reduce incentives for violent behaviour by increasing the cost of violence. Over time, they also shift preferences away from violence by changing norms and attitudes toward violence, leading to the internalization of new norms. Ultimately, they foster a culture of voluntary compliance based on legitimacy. Examples range from speed limits and penalty fees to prison sentences. Powersharing institutions: Governance institutions that balance, divide, and share power reduce the incentives to engage in violence by increasing the benefits of security. They may increase the contestability of policies as well. Examples include constitutions and proportional representation electoral systems. Redistributive institutions: Governance institutions that allocate and redistribute resources and resource rents are a special case of powersharing institutions. They too reduce the incentives to use violence by increasing the benefits of security. Examples include budgets, social transfers, and victim compensation schemes. Dispute resolution institutions: Governance institutions that resolve and arbitrate disputes reduce incentives for using violence by stabilizing expectations. They can also shift preferences toward nonviolent outcomes. Examples include courts, as well as institutions of property rights such as contracts and titles.

"Wartime governance" is a specific application of these governance arrangements to territories where the state's monopoly over the use of violence has

collapsed or is being contested, and where armed groups, traditional authorities, and other informal local actors have taken over and become the de facto authority, sometimes undertaking functions normally performed by the state. Although these territories are typically portrayed as anarchic, disordered, and ungoverned, observations from the field show that this is not the case. Different actors adopt a myriad of strategies in the areas they control, some resulting in fairly stable forms of political control.

The wartime systems of governance just described may also result in the emergence of security in conflict contexts when a given political actor is accepted (or tolerated) and recognized by local populations. Notably, wartime forms of governance may offer a sense of legitimacy and certainty, which may reflect civilian perceptions about the authorities who govern them and the nature of their authority (Bates 2008). Recent research on violent conflict has found compelling evidence that local (and not just statelevel) institutional structures influence political processes during and after conflicts.

Disputes, conflicts and wars are the result of a governance failure, which is the outcome of the failure of institutions of governance to resolve a conflict, regardless of what factors or combinations of factors cause it. Three types of governance failures can lead to disputes and conflicts: bargaining failures between individuals and groups; the unconstrained power of the state; and the exclusion of powerful individuals and groups from the bargaining arena where policies are made and implemented. Bargaining failures. Violence can arise when agreements between opposing sides break down, such as when the state's monopoly over violence falls apart.

Violent conflict can, and often does, come at the hand of the state itself, particularly through its military and police. Ruling elites often resort to military force and repression against civilians to avoid having to share power.

4. RESPONSIBLE GOVERNANCE FOR INCLUSIVE PEACE

"Governance" refers to the myriad ways that human social groups agree to make and enforce decisions and resolve disputes. Governance is broader than government. Although governments are one of the primary institutions for making and implementing public decisions, there are many other mechanisms that communities use to structure the group and make collective decisions. The diverse predictors of peace link these mechanisms to governance and the systems of decisionmaking, dispute resolution, and social interaction that structure human society.

Research identifies two critical elements that link governance systems to

peace. One is system capacity, which refers to the resources and strengths of institutional structures. Governance must have sufficient security capacity (in terms of the resources devoted to military and police forces) to prevent the formation of armed groups within the area governed and deter incursions by hostile militaries. Capacity is broader than security. Social capacity (programs and resources for the provision of social goods) also appears to be important in predicting peace. Social welfare support, particularly a robust commitment to education and health care, are directly related to reduced risk of armed conflict. The capacity to provide social goods is an important role for governance systems and helps to sustain peace.

The second critical way that governance leads to peace is through institutional quality. Governance systems promote peace when they are inclusive, participatory, and accountable. Inclusive systems incorporate all social groups into decision–making procedures and provide for the equitable receipt of system benefits and resources. Inclusive systems offer mechanisms for all stakeholders to voice their concerns and grievances. Participatory systems go beyond structures of decision–making to encourage social, political, and economic engagement of all groups within society. Accountable systems operate according to formal rules and have systems in place by which the decision–makers can be held liable for violations of these rules.

Governmental systems that allow for full and equitable participation of all social groups in public life are more peaceful. States with higher rates of education and gender equality are also more peaceful.

Peace is most likely in democratic systems with high levels of social service provision; full inclusion of ethnic and religious groups in decision–making; and high levels of economic opportunity and development. Good governance is a pathway toward a more peaceful world.

5. ETHICAL GROUNDS: GOVERNANCE, LEGAL PROCESS AND INCLUSIVE PEACE

Governance is most ethically seen in the legal process and the juristic act through which the inclusive peace is achieved. The legal process is the resolution of disputes and conflicts which are actual or occasionally potential, by means of a decision. I shall list various possible functions of a legal process. Then, show which function is ethically apt for the resolution of disputes and conflicts that leads to inclusive peace:

1.　　To resolve the dispute by doing or in order to do justice
2.　　To resolve the dispute and conflicts by establishing the facts and applying the relevant rules of

law to them

3.   To resolve the dispute and conflicts in the interests of the immediately involved parties.

4.   To resolve the dispute and conflicts in the best economic interests of society at large.

5.   To resolve the dispute and conflicts in the best economic, social or political interests of the ruling class.

6.   To resolve the dispute and conflicts with the specific object of inhibiting further unregulated conflict.[4]

In all these, the legal process achieves its function through a decision. It should be observed that not all of the functions listed are necessarily mutually exclusive and attain inclusive peace, except sixth one.

6. THE ETHICAL FUNCTIONS OF A LEGAL PROCESS: THE SET– TLEMENT OF A DISPUTE AND CONFLICTS WITH THE SPECIFIC OBJECT OF INHIBITING FURTHER UNREGULATED CONFLICT

This function requires further investigation. In the first place, the process self–evidently regulates the instant dispute and conflict and moreover settles it in the sense that the state's decision is authoritative. Bitterness may still exist be– tween the parties, but the instant dispute and conflict are settled.

Secondly, if the instant disputes and conflicts were not regulated and settled, it would naturally continue. It could poison other relationships between the parties, groups and lead to further unresolved disputes and conflicts that might erupt in violence. Other persons could be drawn into ever–widening conflicts.[5]

Thirdly, the decision serves as an example of what the outcome is likely to be in other similar disputes and conflicts. Hence, persons and groups who may expect to win in these disputes and conflicts are readier to press for a process, while those who are likely to lose are less likely to take their unregulated disputes and conflicts to extremes.

Fourthly, the decision may serve as a warning, especially in violent con– flict cases, that certain kinds of behaviour which give rise to disputes and con– flicts will be punished. Hence, creating a sensitive.

Fifthly, again in violent conflict cases, the freedom of a losing defendant may be restricted in such a way that he will not be able to engage in con– flict–making behaviour in society.[6]

The same conclusion can be reached by a different and positive route. Legal processes arise from disputes and conflicts. A dispute and a conflict that is not settled so as to restrain future unregulated conflict will give rise to further disputes and conflicts. If they were not settled so as to hinder future unregulated

conflict, would give rise to further disputes, and so on ad inifinitum.[7] This pro-gression of processes to infinity is avoided only if the specific object of settling a dispute and conflict by a process is to restrain future unregulated dispute and conflict. The essential function is society's prime and necessary stake in the in-stitution.[8]

The recognised practice (legal process) to be acceptable means: a) it must have come into existence by an approved method. b) For a method to be ap-proved, it must rest somehow on authority that is recognised as such and obeyed as such.[9] Yet the authority need not be the command of a sovereign but may be custom.[10] Again, for the recognised practice to be acceptable, c) it must not of-fend too greatly against the ethics.

Here, one of the great difficulties facing theories of natural law is the appeal to a standard external to the political structure to determine what is law and what is not law. And the difficulty is compounded by the absence of any agreement as to what this external standard is and how appeal should be made to it. For us, concerned with the essential function of the legal process, the relevant external standard will be whatever persuades people in a particular system and the particular process is unacceptable and causes a failure of the essential func-tion, a settlement of the dispute for the benefit of society at large with the spe-cific object of inhibiting further uncontrolled conflict is possible. The uncon-trolled conflict need not directly concern the terms of the original dispute.

The recognised practice must not be unacceptable to a section of the community powerful enough to persuade the community to think again, either because it convinces the community as a whole of the rightness of its disagree-ment or because the community as a whole is unwilling to stand up for the process in view of this section's disagreement. This alternative involves the view of law as social control. But at this level, the process operates only negatively as social control. The proceedings and verdict may be disagreeable to society as a whole and to powerful groups and without the process necessarily becoming unacceptable and failing in its prime function.[11] On this approach, it does not matter whether or not the judge is committed to the argument and to his decision. And the process and the legal rule within it amount to nothing more than a po-litical device to keep people quiet. The answer is that a very important function of legal processes is to resolve a dispute by establishing the facts and applying the relevant law. It is important that a result be obtained different from what could be expected if the relevant legal rules were applied to the facts.[12]

If one individual process greatly offended the ideas of morality or the interests of a powerful group, perhaps little deleterious to the system would result.

But each process must be seen as integral part of the whole. Hence it can happen that one offensive process may have an effect on the standing of the whole system. The importance of an unreasonable process may be greater than its effects on the parties in the suit.[13]

7. ETHICAL STRATEGIES TO PREVENT DISPUTES, ARMED CONFLICT, VIOLENT CONFLICT AND LARGE–SCALE VIOLENCE

These strategies have the following goals and subordinate objectives, which will inform subsequent country and regional implementation plans.

Goal 1: Preventing: Anticipate and Prevent disputes, Violent Conflict and Large–Scale Violence

The State need to ensure its assistance is sensitive to conflict dynamics and reinforces inclusive, participatory, and legitimate governance. This may include critical efforts to improve the protection and promotion of human rights; mitigate health, education, economic, and environmental, and food security dimensions of conflict; strengthen oversight, accountability, and administration in the security and justice sectors; and monitor and mitigate the impacts of disinformation, propaganda, and incitement to violence.

Objectives:

a.   Develop and/or reinforce local, national, and regional early warning systems and early action plans, backed by preventative diplomacy.

b.   Address vulnerabilities and structural risk factors that fuel violence and conflict and undermine civilian security by enhancing partner nation prevention, peacebuilding, and related counterterrorism efforts.

c.   Promote meaningful reforms of governance, essential services, natural resources management, and security and justice sector institutions to increase legitimacy and reduce corruption and meaningfully engage women and youth in decision–making.

d.   Protect and promote the rights of members of marginalized groups, including women and girls, religious and ethnic minority groups, and other communities at risk, including by increasing their participation in public life and protection.

e.   Strengthen local civil society and private sector networks, inclusive of women, youth and members of faith–based communities and marginalized groups, in order to meaningfully participate in conflict prevention, governmental reform, and peacebuilding efforts.

f.   Bolster the capacities of public and private organizations and institutions monitoring, countering and mitigating the impact of disinformation and propaganda by actors who threaten peace and stability.

Goal 2: Stabilizing: Achieve Locally Driven Political Solutions to dis–

putes, Violent Conflicts and Large–Scale Violence

Stabilizing conflict–affected areas is an inherently political endeavour. The States need to support inclusive political processes to resolve ongoing violent conflicts, emphasizing meaningful participation of women, youth, and members of faith–based and marginalized groups, respect for democracy and human rights; compliance with international law, including humanitarian law and principles; institutional transparency and accountability; and environmental sustainability. The States need to integrate and sequence diplomatic, development, and military–related efforts, understanding their potential political impact. The States need to support efforts by legitimate local authorities to reduce violence, establish stability, and peaceably manage conflict.

Objectives:

a.   Assist national and local actors, including civil society and women leaders, to broker and implement durable and inclusive peace agreements or ceasefires and related transitional justice and accountability provisions.

b.   Secure support from local, national, and regional partners to bolster peace processes and stabilize conflict–affected areas.

c.   Expand civilian security in conflict– and violence–affected areas by building legitimate, rights–respecting justice and security institutions capable of countering the full range of threats to stability (e.g., terrorist groups).

d.   Promote the meaningful inclusion of women and girls in brokering and implementing peace agreements.

e.   Augment media, communications, and outreach efforts to engender public support for peace and stabilization processes.

f.   Promote inclusive post–conflict economic recovery and reforms, including equitable management of natural resources, to reinforce stabilization and peace.

g.   Reduce the destabilizing impact of non–state armed actors.

Goal 3: Partnership: Promote Burden–Sharing, Coordination, and Mutual Accountability

National and regional leadership are essential to achieve sustainable solutions to fragility and conflict. The States need to encourage and assist partners to create conditions for long–term regional stability and foster private sector–led growth. The States can achieve better outcomes by marshalling contributions from other public and private donors.

Objectives:

a.   Establish compact–style partnerships with national and local partner governments that promote mutual accountability and advance agreed–upon reforms to reduce fragility.

b.   Secure commitments from regional, bilateral, and multilateral partners to advance necessary governance, essential services, security, justice, humanitarian, and economic reforms and build resilience to shocks.

c.   Mobilize private sector activity in high-risk areas to help improve the investment climate, advance transparency, build capacity to manage natural resources effectively, and combat corruption.

d.   Enlist the international private sector to promote conflict-sensitive and environmentally sustainable investments in fragile states and increase the number of beneficial public-private partnerships.

e.   Address cross-border security threats, disinformation and propaganda efforts by malign actors, and regional challenges by developing and/or enhancing regional mechanisms for economic, security, information transparency, humanitarian, and/or justice cooperation.

Goal 4: Management: Enable an Effective, Integrated Government Response

Creating alignment within and across States departments and agencies to tackle global fragility is a difficult task, but one that will be crucial to the success of this Strategy. Working with legislature, the executive branch will achieve better results in fragile states and regions by improving how the States government conducts operations. The States need to improve prioritization, integration, and efficiency in all planning, diplomatic, foreign assistance, defence engagement, and other operations in fragile states and regions, both across the interagency and with partners. The States need to pursue integrated civil-military resourcing and planning to advance shared objectives, collaboration, and information-sharing. The States can create and pursue a learning agenda, capitalize on lessons learned in implementing adaptive management techniques, and assure that analysis and reporting are linked to desired policy outcomes.

Objectives:

a.   Institutionalize joint States interagency research, analysis, planning, messaging, prioritization of funding, and execution of activities toward prevention and stabilization.

b.   Streamline and expedite funding processes to enable more adaptive, integrated, and agile implementation and informed risk management in fragile environments.

c.   Recruit, train, and retain diverse staff, including States military veterans, with relevant skills for fragile environments, and deploy diplomats and development professionals alongside States military operational and tactical elements where needed and where security conditions permit.

d.   Improve field-level rigorous monitoring and evaluation, risk assessments, and feedback loops to assess progress, adapt strategic approaches, or shift diplomatic, security, and assistance efforts where appropriate and consistent with authorities and responsibilities.

e.   Strengthen coherence among humanitarian, development, and peacebuilding activities to meet

emergency needs while breaking cycles of crisis.

f.   Mainstream conflict–sensitivity standards for all States diplomatic engagement and foreign assistance to fragile areas to reinforce political and social cohesion, while upholding humani– tarian principles.

g.   Align and continuously adapt development, security, and justice sector assistance to stabiliza– tion and peace process implementation by using data driven analysis and adaptive strategic approaches.

CONCLUSION:

The extraordinary rise of technology in modern times and its impact on man's social and economic life led Rosco Pound to explain the legal process as a form of 'social engineering'.[14] The problems of our society were largely based on ignorance rather than on inherent human defects. With a true understanding of the factors involved, appropriate solutions would inevitably present themselves.[15] Pound accepted the view that every coherent society has a pattern of culture which determines its various ideologies. Ideology develops certain fundamental postulates of its own which tend to set the framework within which the law and ethics develop. [16]

Conflicts of Interests: Pound interpreted the legal process as a form of social control whereby all the conflicting and competing interests in society are scrutinised, compared, and accepted or rejected. He concentrated particularly on the function of the courts as the supreme agent of the law in effecting social control.[17]

Two particular problems exercised Pound's attention: first, how the vari– ous interest competing for legal recognition could be classified and correlated; and second, how conflicts between them were resolved by the courts and wheth– er procedures for this purpose could be improved. As to the first of these, Pound made the point that interests were not static, since new situations and new devel– opments were constantly creating new needs and claims. For instance, the interest in a man's own privacy: should a newspaper be allowed to reveal sordid details of a private individual's past life, long since forgotten, merely to satisfy a pruri– ent public curiosity? It is a now need of our society which the courts of Amer– ica[18]have gradually recognized. On the second problem, Pound realised that the basic need is to have some system of values by which competing interests can be compared and evaluated and a decision reached as to which is to prevail. Wheth– er a person's interest in publishing information is overridden by the fact that this information reflects on the reputation of another; whether a person's interest in the use of his own property is to be limited by the fact that the exercise of this property right is intended to injure a neighbour, or for some other 'unjust' pur–

pose; whether the interest in public security overrides, and in what circumstances, the interest of the citizen in propagating whatever political creed he may adhere to; all such conflicts call for evaluation if appropriate solutions are to be reached.

Pound stresses that law, morals and policy are distinct which can alter the fact that legal decisions are inevitably based on an ideology. Therefore, it is better to face up to this and make a conscious effort to recognize what are the operative values of one's society and develop the law accordingly, rather than attempt to treat all legal decisions as purely technical exercises in legal logic.[19]

Reference:

1. From Harare to Port–au–Prince, Beirut to Bogota, Catalonia to Cairo, and in Santiago, Jakarta, Tehran, Baghdad, and New Delhi.

2. Thematic Paper for the UN Secretary General's 2020 Report on Sustaining Peace and Peace–building Governance for Peace: Strengthening Inclusive, Just and Peaceful Societies Resilient to Future Crises

3. Good Governance and the Rule of Law, Nik Ahmad Kamal Nik Mahmod , Faculty of Law, International Islamic University Malaysia, Malaysia

4. Alan Watson. 1977. The Nature of Law, Edinburgh: The Scolar Press Ltd, p. 9.

5. In resolving a dispute, a process fails to inhibit further unregulated conflict. The crucial case I would suggest is persecution of a group by law, where one method adopted is to institute pro–cesses against the group or its members in order either to incite the state's supporters to vio–lence or to provoke the persecuted group to rebel and be defeated.

6. Alan Watson. 1977. The Nature of Law, Edinburgh: The Scolar Press Ltd, p. 13.

7. Ad infinitum is a Latin phrase meaning "to infinity" or "forevermore".

8. Alan Watson. 1977. The Nature of Law, Edinburgh: The Scolar Press Ltd, p. 115.

9. Whether one likes it or not, this authority has much in common with Austin's idea of a sover–eign.

10. The authority that is relevant here can also easily be found both in international law and prim–itive law and can exist even where a sanction is lacking.

11. Alan Watson. 1977. The Nature of Law, Edinburgh: The Scolar Press Ltd, p. 115.

12. Readers of Anthony Trollope will remember the trial of Mr. Browborough in chapter 44 of Planeus Redux. Browborough was unseated from the Commons after a commission proved there was bribery at his election. But there was no desire that he should be imprisoned. The fact that he bribed voters is made clear to the reader. Yet at his trial the judge's 'summing up was very short, and seemed to have been given almost with indolence', the jury 'returned a verdict of acquittal without one moment's delay' and the Attorney–General who had led the prosecution was by no means disappointed, and everybody, on his own side in Parliament and on the other, thought that he had done his duty very well. The clean–sweeping Commissioners, who had been animated with wonderful zeal by the nature and novelty of their work, probably felt that they had been betrayed, but it may be doubted whether anyone else was disconnected by the result of the trial. Unless it might be some poor innocents here and there about the country who had been induced to believe that bribery and corruption were in truth to be banished from the pur–lieus of Westminster. The trial of Mr. Browborougfi is a true example of process working well. Not only is this discretion observable for a process but it is a characteristic of law that not all its rules will be equally enforced at any time.

13. Alan Watson. 1977. The Nature of Law, Edinburgh: The Scolar Press Ltd, p. 118.

14. At the same time, the generally optimistic and forward–looking character of American society coupled with the extensive attempt to place the study of men in society on a genuinely scien–tific basis, created a climate of thought where it seemed reasonable to believe that the problems

of our society were largely based on ignorance rather than on inherent human defects.

15.   Dennis Llyod, 1964, The Idea of Law, Penguin Book, London, p. 210.

16.   The nineteenth century may have seen freedom of contract as one of its basic assumptions, but as Pound himself noted our own age is now seeing the gradual recognition of new postulates, such as the right to work, and the right to be legally protected against the wear and tear of one's job. A slow ferment is therefore constantly taking place from which the positive legal norms derive their vital force and their future orientation. Dennis Llyod, 1964, The Idea of Law, Penguin Book, London, p. 211

17.   Dennis Llyod, 1964, The Idea of Law, Penguin Book, London, p. 211.

18.   unlike those of the United Kingdom.

19.   Dennis Llyod, 1964. The Idea of Law, Penguin Book, London, p. 213. Once the law has established a technical rule, such for example as 'caveat emptor' ('let the buyer beware', i.e. he takes the risk of all defects and so forth) it is so easy to overlook that this simple maxim conceals a whole philosophy of law, the basic postulate of which is economic 'laissez faire'. As Professor Northrop has remarked: 'To be sure, there are lawyers, judges, and even law professors who tell us that they have no legal philosophy. In law, as in other things, we shall find that the only difference between a person 'without a philosophy' and someone with a philosophy is that the latter knows what his philosophy is, and is therefore, more able to make clear and justify the premises that are implicit in his statement of the facts of his experience and his judgment about those facts. Evaluation of the conflicts inherent in human society in accordance with some accepted or established ideology still leaves open the question how far that ideology itself is susceptible of obtaining some kind of ultimate ethical warrant. It is at this stage that the various types of natural lawyers seek to take over.