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PRACTICE THEORY OF LAW, PRAGMATIC RATIONALISM AND SOCIAL CHOICE

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ABSTRACT

Pragmatic rationalism understands application as a process of practical reasoning. As a theory, it accentuates the concrete over the abstract and argues that there is no single over-riding approach to legal issues; instead the matter should be considered from different angles before arriving at a solution. Pragmatic thought underlines that statutes are not only meant to be applied abstractly or based on legislative history, but also what it ought to mean in terms of the changing circumstances and the expectations of the society. In fact, the principled understanding of law by the "Practice Theory" emphasizes on substantive rationality and urges for a transition from formalism to substantialism by conforming to the standards set by knowledge. The harmonization of legal theories with practice is the basic tenet of the Practice Theory of Law. According to this, it is imperative that the idea of social justice should be based on social choice and fairness and not utopia.

I. INTRODUCTION

The road to pragmatic rationalism passes through a detailed critique of the philosophical assumptions behind conventionalism and essentialism, contrapositively the philosophy of pragmatic rationalism effects a cognitivist account of legal facts by reconstructing practice as a normative activity that can supply objective grounds for the truth of propositions.

The issue of distance between thoughts and their objects, considered by many, a prerequisite of objectivity and knowledge is less basic than an issue of intelligibility arising with respect to what entities exist and can potentially be known. Intelligibility is antecedent to distance in that it is not possible to even ask which entities exist, unless we already know what *kinds* of entities our thoughts are capable of connecting to. Failure to address the latter question would deny the correlation between mind and world, a correlation that is essential in bringing about knowledge by bridging the distance between our thoughts and their referents. To put it bluntly, anything whose existence is conceived independently of the boundaries of

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thought will remain radically elusive, thus escaping forever our capacity to acquire knowledge of it.

Avoidance of the dualism of mind and world requires that practice be specified as the foundation of intentional content in thought and action. On the other hand, practice needs to be furnished with a normative component with an eye to resisting the skepticism or relativism associated with a regress of interpretations. Both the requirements point to an account of content which we may call *pragmatic rationalism*. This combines the pragmatic conception of practice with a rational understanding of normativity. The pragmatic conception takes all judging to depend on a practice which escapes mind-world dualism by arguing that environment and thought are equi-primordial, for they arise simultaneously within practice.

II. PRAGMATISM: RATIONAL APPLICATION UNDER CHANGED CIRCUMSTANCES

Constitutional Law prescribes generally the plan and method under which the public business of the political organ, known as the State is conducted. And it differs further from the other types of law, in that it is both enacted and changed either in an extraordinary manner by an ordinary legislative body or by an extraordinary body, such as a Constitutional Convention constituted especially for that purpose.

A legislature must speculate more perilously as to how future cases will arise and what contingencies they will involve. Because perfect generalization for the future is impossible, no generalization is complete. Aware of this impossibility, legislatures often do no more than purport to lay down the most general statements of law, intending that the Courts and other law applying agencies shall creatively adapt the general principle to specific cases. Thus, every time a statute uses a rule of reason, or a standard of fairness without specification, there is conscious and deliberate delegation of this responsibility to the Courts.

Judges sometimes reach outside the Constitution to discover fundamental or universal principles to guide their decisions. This natural law approach, however, remains a continuing source of dispute. To shed further light on constitutional meaning, judges turn to historical analysis. If the Constitution is to guide future generations, there must be some flexibility in applying its language. After reviewing the various approaches to constitutional interpretation, Justice Cardozo described the judges' task as an eclectic exercise that blends in varying proportions the methods of philosophy, history, tradition, logic and sociology. Rules are replaced by working hypothesis. Judicial power must be understood in terms of methods used by courts to

preserve their institutional integrity, prestige and power, the organizational evolution and politics of the courts; and the dynamics of decision-making within the judiciary.

A. Pragmatic Rationalism: Acceptance of practical reasoning by Courts

With no prospect of a change in responsive governments in the immediate future, the pressure on Courts to resolve the nation's social and political problems and maladministration is bound to increase. If the Indian judicial system is to be saved from collapse, the need is not only for more judges and Courts but also, to conserve judicial power where it can be utilized most effectively on a principled and predictable way and in areas where it is most needed. The Chief Justice of India in his address on the eve of National Law Day, 2008 expressed almost similar sentiments.

Under no Constitution can the power of Courts go so far to save the people from their own failure. There are too many dangers to the judiciary itself from an omnipresent and rescuing judicial power. In its own interest the Indian Judiciary may sooner or later have to propound a policy of judicial non-intervention in defined areas. Such a policy is not a sign of weakness or abdication by the Judiciary but only recognition of the fact that the Constitution did not make the Judiciary a substitute for the failure of the other branches of government and that judicial power has its limitations.

The Indian Supreme Court in recent years as an activist Court had to make up for the failings of Indian Parliament and Government to bring about appropriate changes in the law. The Jury is still out on whether the activism of the Supreme Court has gone too far. There is a case to be made for the view that by seeking to build great structures on the 1950 Indian Constitution, the Supreme Court has actually shaken the foundations of the Constitution to the extent that the Court's judgments no longer carry the weight and respect that they once did. But others would argue that compared to the relative lack of ambition displayed by the High Court of Australia and the Supreme Court of Ireland, the Indian Supreme Court has much to be lauded for. There is, at present, a rampant conservatism on show in both of those other courts, where civil society may well look with envy at their Indian counterparts.

In response to the civil society's claim, the recent Delhi High Court on 2nd September, 2009 rebuffed the Apex Court, holding that the declarations of assets were not immune from RTI and added, for good measure that declaring personal assets resonated with the best practices and standards of ethical behaviour of Judges. In the matter relating to Gay rights too, the Delhi High Court has shown more pragmatically rationalist orientation.

The United Kingdom's top court, in the past dozen or so years, has neither been as passive as the Australian and Irish courts nor has it scaled the heights of the top courts in Canada, Israel, and South Africa. British Judges are notorious for doing what parliament tells them to do and in recent years they have demonstrated this obedience by faithfully applying the wording of the Human Rights Act 1998, which effectively incorporated the European Convention on Human Rights into the law of all parts of the United Kingdom, in a manner which has raised the profile of the judiciary considerably, to the extent that even governments with large majorities in parliament have not been able to gainsay the judges' wishes. Also, the British judges – and British legal systems – are accustomed to the impact of the European Union on the doctrine of parliamentary sovereignty now.¹ It will be interesting to see how the independent Supreme Court of England and Wales would treat this judicial practice.

B. Numerous Legal Theories: A need for introspection

If judges' practical skills are to be harnessed to a sound conception of the judicial role based on legal theory, it follows that the latter should be readily accessible to judges. Regrettably, that is not always the case. Many legal theorists seem to write to and for each other. As a result, jurisprudential theory has become burdened with a surfeit of theories and sub-theories, some of which misrepresent and distort the subject theory, which in turn provokes further critical comment.

Unpalatable though it may be, it has to be said that there have been too many rather than too few contributions to legal theory, to the point where the subject has generated its own somewhat self-conscious and introspective industry. Within this industry, legal terms are defined and redefined and inspire theories that may be perceived to have both their footing and reach in the given definition; legal concepts are classified and re-classified until the classification or re-classification seems to become the end of the discourse in itself; and hypotheses are advanced and re-advanced until they break down under the weight of their own linguistic genesis. Jurisprudence has come to possess the variety of a giant supermarket. Small wonder that the practitioner is bemused as to what to take from the shelf.

Natural law theory is a sorry mix of superstition and speculation and cannot be vested with some sort of metaphysical dignity. There are no immutable or eternal ideals that constitute an innate property of the law. Human law is the sum total of the law and, while it may be judged by external terms of reference, it is not preceded by or subservient to a higher law, of timeless and priceless validity. Natural law cannot therefore be invoked as the foundation of the human rights jurisprudence that

¹ Brice Dickson, *Judicial Activism in Common Law*, [Oxford: Oxford University Press; 2007].

has developed over recent years or to sustain the notion of a higher order law to which both Parliament and the courts are subservient.

Hand in hand with this jurisprudential rampage is the development of a jargon that may be helpful to the initiated, but which is bewildering to the novice; legal positivism, for example, may be 'analytical positivism', 'imperative positivism', 'classical positivism', 'linguistic positivism', 'positive legal positivism', 'presumptive positivism', 'soft positivism', 'modern positivism', 'normative positivism', 'ethical positivism', 'democratic positivism', 'exclusive positivism', 'inclusive positivism', 'negative positivism' and, no doubt, as many other positivisms as there are colours in Joseph's spectacular multi-coloured coat.

Built into this heady promiscuity of concepts is the phenomenon of naming rights. After explaining the concept, insight or phenomenon advanced the theorist will add, "I will call this...", and will then insert the brand name. Having one's name associated with an accepted concept identified by other theorists is no doubt appealing, but if the theory advanced will not hold up in its own right, coining a phrase for it will be of no avail.

In his study on how to create justice in a globalised world, Prof. Amartya Sen expounds on human aspiration and deprivation and takes a swipe at John Rawls. The values in play are of global, not purely Western, import. The earlier thinkers, he cites, on justice and toleration come less from fourth century Athens or seventeenth century England than from India. Two themes predominate: economic rationality and social injustice. Prof. Sen approaches them alike. He can, when he wants, theorise without oxygen at any height. But he believes that theory, to be of use, must keep its feet on the ground. Modern theorists in his view have drifted too far from the actual world.

C. Substantialism: A Respite from Formalism

Essentially, a formalistic approach masks the manifold choices facing the judge in the course of reaching a decision. Judicial reasoning is then diverted into a more or less artificial process in which the reality of choice is ignored or denied, or an explanation as to why a choice is summarily rejected in favour of a nominated rule is denied to others.

Substantialism as an opposite of formalism seems particularly apt to describe the work of those judges who, in their judicial approach, have a penchant for justice and modernity in the law and prefer substance over form. The deep and extended prevalence of the precept of non-exploitation in all branches of the law is revealed and, it is argued that its implementation becomes an integral part of the judicial function. As a general proposition it must be accepted that practice divorced

from theory is necessarily directionless, and theory divorced from practice is necessarily unrealistic. Yet, there is a remarkable divide between judicial practice and legal theory or jurisprudence. Although not its only aim, this paper seeks to bridge that divide.

With judicial practice and legal theory in closer harmony, judicial reasoning aimed at advancing the ends of justice and contemporaneity in the law will become more prevalent. Formalism or its lingering influence will be replaced by a judicial methodology that is every bit as disciplined in the service of the law as that out-moded creed. Realism, pragmatism, practical reasoning and principles will become the order of the judicial day. As long as judges remain under the influence of out-dated and discredited theories of law, the judiciary will not escape the opprobrium of 'muddling along'. The common law process is congenitally incremental, and without the guidance that a sound conception of the judicial role can bring, the judiciary will inevitably lurch from case to case without any adequate direction or purpose. Incrementalism itself demands something more than the application of practical skills. It requires a unifying legal theory or approach.

Discarding discredited and untenable theories as a basis on which a sound conception of the judicial role necessitates the deliberate rejection of formalism, or the lingering traces of formalism. Only then will the judiciary have the capacity to adopt an approach which is pragmatic whereby the denunciation of formalism is possible. There is no greater solecism in the working of the law than blind unthinking adherence to that creed. As an off-course substitute for a considered conception of the judicial role, formalism is the real and enduring opponent of fairness, and relevant in the law.

D. Practical Reasoning: A Necessity

Supreme Court opinions are highly complicated and technical. Assessing the intricacies of the decisions is difficult, if not impossible, for anyone other than a specialist in that particular area of law. Supreme Court Thses decisions are tremendously important, since They deal with hot-button social issues like abortion, affirmative action, Right to life etc., and also with deep and abstract questions about the structure of our government, like the scope of federal power and the authority of the government, Basic Structure etc., that are These are issues which every citizen should be concerned with. But the Constitution does not belong to judges, as a mystery intelligible only to a priestly caste and it does not belong to political activists, as a set of incendiary talking points. It belongs to the people. It is our responsibility to judge the Court, and it is our judgment that must be decisive in the end.

People call the Court an "activist" because they disagree with its decisions. But the kind of people who use the word "activist" generally disagree on political grounds; the decisions they see as illegitimate are the ones whose results they do not like. The distinction between judicial activism and judicial restraintivism lies only in one syllable. If the Court/Judge *differs*, it becomes judicial activism and if it/he *defers*, it becomes judicial restraintivism. If constitutional law was nothing more than applied politics, these criticisms might make sense, though they would also be unpersuasive to anyone who did not share the critic's political beliefs. But constitutional decision-making involves more than politics, and we can use non-political standards to judge the Court.

The Court has equated its own doctrine with the Constitution. Humility is a virtue in judges, as Chief Justice Roberts noted during his confirmation hearings, and we may hope that the Roberts' Court will show a little more than its predecessor. But humility is a virtue in citizens as well. "The spirit of liberty" said the great judge Learned Hand, "is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women." Blunderbuss charges of activism are contrary to this spirit. They are a display of thoughtless partisanship, a refusal to consider the possibility that the "plain meaning" of the Constitution does not embody one's every political desire. Our job as citizens is to debate these issues, calmly, thoughtfully and with the presumption that those we disagree with are acting in good faith.

There have been true constitutional crisis in the past, and our system has weathered them without resort to the drastic remedies proposed by current critics of the Court. There is no crisis now, and it would be a serious mistake to let partisan alarmists convince us that any such measures are necessary. Constitutional democracy demands more than the conviction of narrow minds.

III. THE PRACTICE THEORY OF LAW: DEVELOPING A WORKING CONCEPTION OF LEGAL PRACTICE

The Practice theory of Law (PTL) offers a fresh look into the possibility of legal knowledge, by enabling the depiction of legal norms in a practice that combines the two levels of thought and action. This possibility opens up when we move beyond the two currently dominant legal theories concerning the possibility of legal knowledge, namely conventionalism and essentialism. This move requires that one leave behind the philosophical assumptions that underpin these two theories and advance a new account of knowledge, one that connects it with the idea of a practice of judging which is normatively constrained by reasons or, to say the same thing in different terms, reflexive. *Pragmatic rationalism*, the new account that has been put

forward here, argues that nothing can be known unless it can function as a reason or a constraint within such a practice. Unless, for instance, a norm imposing penalties for tax evasion can function as a constraint for a judgment purporting to determine fines within a legal system, that norm cannot be known. As a result, reflexivity, or the ability of agents to think on reason, becomes a key concept for knowledge.

Judging is neither just acting nor merely thinking, for otherwise thoughts would anew become either indeterminate or unintelligible. Instead it is an integrated instance of thinking and acting, or a practice, which asks for justifying reason with respect to any cognitive move performed within it.

In contra-distinction to both interpretivism and the conventionalist account of law, the Practice Theory of Law (PTL) argues that law is a constraint-generating concept. PTL seeks to demonstrate this claim by illustrating the reflexive character of legal practice as consequential upon its responsiveness to legal reasons. As a result the most important task of PTL is to develop a working conception of legal practice. In doing so it must defend the normative character of legal reasons against the pitfalls of both the interpretivist and the conventionalist accounts of law with an eye to avoid losing hold of the reflexivity of legal practice.

PTL encourages a shift from the formal to the substantive features of law. Owing to the opening of legal phenomena to the argumentative practice that underpins them, legal form may be explained as depending on the concrete substantive principles that are at work with respect to particular situations. In this context, form loses its 'uniqueness', for it becomes possible to identify more than one formal or institutional arrangement as suitable for serving the same underlying principle or cluster of principles. Flexibility of form resists formalistic analyses of legal phenomena, especially those that attempt to specify exhaustive sets of criteria for the validity of legal rules, usually by offering a complete list of legal sources within a legal system.

A. A need for PTL to conjure legal validity

In the context of PTL, the flexibility of the form and the encouragement for pluralism of sources opens up a large leeway for setting up mechanisms of regulation at various levels. What is important is that the level of regulation should secure the necessary degree of legitimacy. And if it does not, there is no reason to 'respect' formal arrangements in an absolute way: the sooner they are replaced the better. Take, for instance, the case of the prosecution of war crimes in a post-conflict situation. Which one is the best arrangement: to set up criminal courts locally, to use international structures (ICC) or to install a mixed system of regulation (hybrid courts)? PTL may offer a structure of reasoning by placing the emphasis on the

salient factors that need to be balanced and, in any case, by sharpening our critical angle in arguing that the best solution is the one that can best be justified in the light of some overarching values, those that can recommend the solution offered to those involved, as a justified reason to act upon. If, in this context, a local tribunal proves to be too close to the context of the conflict, then some of its jurisdiction will be displaced to a more international context say, by setting up a hybrid court. To remove, however, the full jurisdiction of such courts out of the local context would probably require too strong a reason to justify.

The question of regulation has finally a further dimension, as regards actors that are not states but claim legitimacy (on the basis of something akin to *prima facie* sovereignty). One could name here the Taliban (or even Al Qaeda) in Afghanistan, or the Hezbollah in Lebanon. Such organizations need to be dealt with beyond the traditional understanding of sovereignty. PTL will again point at the issue of substantive rationality: what counts in this case is whether accepting such formations corresponds to the critical/discursive structure of legal regulation and the idea of democratic legitimacy the latter incorporates. In all those cases, what should and what should not be included within the legal realm must be carefully considered in the light of the rights and interests of the individuals and groups living under those regimes. In addition, such decisions should aim to secure the widest possible consensus in the international community, in order to generate sufficient legitimacy. What is certain, however, is that there are better and worse decisions, for in the light of PTL's principled understanding of law, 'not anything goes'.

Knowledge being a philosophical concept, for anything to constitute an adequate ground for legal validity, it must satisfy the standards set by the former. In the perennial debate between positivists and non-positivists, legal validity has always been a subject of controversy. In exploring standards for legal validity we must remember that knowledge is the outcome of an activity of judging which is constrained by reflexive reasoning. Amongst the constraints are found not only general metaphysical limitations but also the fundamental principle that one with the capacity to judge is autonomous or in other words, capable of determining the reason that forms the basis of action. As soon as autonomy has been introduced into the parameters of knowledge, the law is necessarily connected with every other practical domain. The issue of knowledge is orthogonal to questions about the inclusion or exclusion of morality for what really matters is whether the putative grounds of legal validity are appropriate to the generation of knowledge. Under such circumstances neither an absolute deference to either universal moral standards or practice-independent values nor a complete adherence to conventionality or

institutional arrangements will do. The outcome should be towards more integral rather than current positivism versus non-positivism debate.

IV. PTL & EMERGENCE OF SOCIAL CHOICES

'Soft power' is the ability to get what you want through attraction rather than coercion whereas 'hard power' refers to police and military power. Justice emanates from the justness of our cause, the force of our example, the tempering of humility and restraint. The re-balancing or the synergetic integration of hard and soft power actually operating at the ground level will no doubt constitute an intriguing template of our justice system where the judiciary can operate as 'smart power'.

Democracy can take many institutional forms. But none succeeds without open debate about values and principles. In a recently concluded conference on 'National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays', several judges of the Apex Court suggested various means to reduce pendency and delays. But a more pragmatic approach to this chronic problem lies not in the manpower but the application of modern technology towards development of digitalization, video conferencing, and artificial intelligence in resolving the disputes of minor and trivial nature which substantially reduces the pendency.

A. Electronic Legal Information: A Harbinger of Social change

Disruptive legal information technology and emerging Electronic Legal Information (ELI) may arise as the fourth cornerstone in face of the challenges, the other three being lawyer, judiciary and dissemination of law. Electronic Legal Information (ELI) refers to (i) an integrated Electronic Law governing civil procedures and other areas of substantive law, (ii) electronic legal document filings and evidence and (iii) electronic court case status information. ELI is transforming the existing cornerstones to their virtual existences, which take on new capability to face the challenges of high costs, delay and complexity.

To promote access to civil justice, disruptive legal information technology should be adopted and a positive right to access ELI be established. For unrepresented litigants, the use of ELI will put them in a better position to assess if legal assistance should be sought or if it would be better to remain unrepresented. Should they choose to be unrepresented, ELI provides an ease of reference to law and integrates law from their perspective. For represented litigants, they will have a greater access to information concerning activity of court proceedings and they will be in a better position to push progress with the availability of case status information and electronic court document filings.

One of the basic principles of justice is that 'Justice delayed is justice denied'. It is from this that the Supreme Court of India has carved out the fundamental right to speedier trial from Article 21 of the Constitution of India. The present adjudication process requires transformation in view of the high cost of legal services, baffling complications in existing procedures and frustrating delays in securing justice. Formal adjudication should be more of a last resort than it has been in the past. In recent times, efforts have been made to develop alternative adjudication models in the form of *Lok Adalats*, *Nyaya Panchayats*, *Gram Nyayalayas* etc. In this context, it is felt that alternative adjudication machinery can be augmented with modern computers for a greater extent of openness and accessibility thus lending credibility to the dependence of both government and people on them.

B. Analysis of case by Legal Predictive System

Legal reasoning involves case analysis in statutory as well as real world perspectives. The impact of real world perspective on case analysis poses a serious challenge to knowledge engineers for building legal expert systems. A legal expert system intends to provide intelligent support to legal professionals. Legal predictive system is an attempt to predict the most probable outcome of a case according to statutory as well as real world knowledge of the legal domain. The system accepts the current fact situation of a case and analyses it interactively with legal personnel.

Given the case proceedings/current fact situation, a highly structured legal reasoning system to analyse the case and thereby, predict the most probable judgment based on the statute and discretion to the judge can be achieved by evolving a system through modern technology to develop computer-generated alternate adjudication mechanism.

- The system, by its ability to predict in advance the most probable outcome in a given case, will enable individual clients to decide about the advisability or otherwise of entering into a legal dispute in a given situation. This in turn will lead to reduced workload on the considerably over-burdened courts.
- The system, through its ability to estimate the effect of each individual fact on the judicial decision (by simulating the judgment with altered current fact situations) can aid legal practitioners and criminal investigators in discharging their professional duties more effectively and efficiently.
- The system, by providing an integrated view of the case through the highly structured representation of the current fact situation of the case can be helpful to judges in taking faster decisions thereby mitigating the hardship

caused to the litigant by delayed justice, the bane of the present judicial system.

- The system can resolve petty litigations among people who cannot afford the money and time required in the regular court proceedings, thus providing a computerized alternative adjudication system.
- Based on the above proposal, a generalized system can be developed by drawing on the expertise of several meritorious judges, which in turn can be used to check the correctness of a specific judgment, so that the case may be reconsidered if necessary.

C. 'Ideal' Justice: Rhetoric or Reality

Prof. Amartya Sen in his book on 'Idea of Justice'² gives us a political philosophy that is dedicated to the reduction of injustice on earth rather than to the creation of ideally just castles. Prof. Sen showed that there was no such thing as perfect justice, that justice was relative to a given situation and that, rather than searching for "ideal" justice, the stress should be on removing the more manifest forms of injustice.

But what is justice? Is it right to go on harping on the injustices of the past such as colonialism in order to deliver justice? For example, does 'justice' demand that developing countries should be allowed to pollute the atmosphere to the same degree that the industrialized world did before they agreed to move on climate change? Can "retribution" be regarded as a form of justice? Are any means legitimate in pursuit of a perceived "just" goal?

"The idea of justice demands comparisons of actual lives that people can lead rather than a remote search for ideal institutions. That is what makes the idea of justice relevant as well as exciting in practical reasoning".³

Prof. Sen further points out in his social choice theory, the grave problems with the "transcendental approach" of John Rawls and argues that what we urgently need in our troubled world is not a theory of an ideally just State, but a theory that can yield judgments as to comparative justice, judgments that tell us when and why we all are moving closer to or farther away from realizing justice in the present globalised world. There is obviously a radical contrast between an arrangement-focused conception of justice and a realization-focused understanding: the latter must concentrate on the actual behaviour of people rather than presuming compliance by all with ideal behaviour.

² Prof. Amartya Sen, *Idea of Justice*, (Penguin Publications: 2009).

³ *Id.*

V. CONCLUSION

Exploration of the formal procedures of public decisions and their underlying normative presumptions began during the days of Aristotle and Kautilya in their books on Ethics and Politics. Those issues can be found in social choice theory elaborated by Prof. Amartya Sen.

The hiatus between the "relational approach" and the "transcendental approach" to justice seems to be quite comprehensive. The basic connection between public reasoning, on the one hand and the demands of the participatory social decisions on the other, is the central theme not just to the practical challenge of making democracy more effective, but also to the conceptual problem of basing an adequately articulated idea of *social justice* on the demands of *social choice* and fairness.

The reality of the judicial process would recognize principally, the inherent uncertainty and vagueness of the law. This uncertainty vests judges with vast discretion and confronts them with limitless choices in the course of reaching a decision. Judicial autonomy is not only inevitable, but also essential to ensure that substantial justice is done in the individual cases and the law be applied and developed to meet current requirements through *pragmatic rationalism*.