Law the world over reads pretty much the same. There is for example hardly a country that does not put freedom of speech, press, and religion in its constitution. But in communist lands those guarantees have a different meaning. Instead of full religious freedom, only a token of it is allowed. Freedom of expression exists within the framework of the communist philosophy. But that freedom does not extend to arguing for the substitution of a different system of government for that which Marx and Lenin extolled.

There are also trial courts and appellate courts in communist lands; and they have procedures for assuring fair trials (except for those tribunals professedly political in nature as was the one that tried Beria). But the idea of an independent judiciary is largely foreign to communist regimes. In those lands courts sit to promote communist ideology. They are not permitted to rise above it by declaring an Act of the Supreme Soviet or a decree of the Presidium unconstitutional. Recently the Supreme Court of Yugoslavia has been given such powers. How it will work in practice is not yet known. Communist lands may in time evolve to honor law as a protector of individual liberty. Today, however, communist law is largely a protector of communism as a regime or way of life.

Liberty in the western sense is possible only when man can raise his voice against government and find a tribunal with standing to entertain his complaint. Our constitution was, indeed, designed not only to separate out the various functions of government and define the powers of each of the three branches. It was also designed to specify the things that government could not do to the individual and to indicate the procedures that had to be followed in case it moved against him. We were interested in keeping government off our backs when it came to matters like speech, press, and religion, and when the police laid hands on the citizen. That

being true, it was essential that tribunals exist which could decide whether government itself had overstepped the bounds.

The creation of an independent judiciary inevitably means that it and the other branches of government will at times be in conflict. It also means that the judiciary may be deciding cases against majority wishes.

Our history shows that such has happened: judges have stood firm against the mob and have been alert to prevent the executive or legislative branches from impairing the civil rights of the citizen.

This collision has created some crises that have put the Rule of Law in jeopardy. One of the least worthy was the Dred Scott case. 19 Nov. 393

That case held that a Negro could not become a citizen, that Congress could not recognize and protect as a free man a Negro escaping a slave state, that it could not bar slavery in the federal territories. This decision that helped nationalize slavery was to many so politically inspired, so foreign to the American philosophy as to be unworthy of our judicial heritage. But Lincoln did not summon the mobs nor create disorders near the courthouse nor distant from it. He solemnly said on June 26, 1857:

"We think the Dred Scott decision is erroneous. We know the court that made it has often overruled its own decisions, and we shall do what we can to have it overrule this. We offer no resistance to it."

An individual or a marauding group who defies a law to strike a blow for the particular kind of freedom they espouse is indeed destructive of the Rule of Law.

What is the Rule of Law?

Laws are made by the people when constitutions are written. Laws are made by the legislative group at the municipal, the state, and the federal level. Laws are enforced by the executive. Many modern executive actions are in the form of Regulations. These Regulations in the federal domain are so massive and so detailed as to fill many volumes. They have proponents and critics, as do the laws enacted by legislatures and as do the rulings of a urts on the meaning of laws or of constitutions. If civil disobedience were the answer of dissenters, the processes of government would often come to a halt.

Our tradition is not docile submission, as in a communist regime, but orderly challenge. Courts are open to police free-wheeling agencies who stretch the law to satisfy their personal predilections. If relief is not obtained there, the political procedures are open for a change in the law or in the regulation. Those processes are numerous and have high constitutional sanction. The right to vote and "to throw the rascals out" is one. The right to petition for redress of grievances is another. This right -- like that of free speech, free press, and free assembly -- is guaranteed so "that government may be responsive to the will of the people and changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government," as Chief Justice Hughes wrote in DeJonse v. Oregon, 229 U.S. 353, 363.

Lincoln noted that courts often change their own constitutional decisions. That which has seemed constitutional to one generation of judges become unconstitutional in the eyes of a later generation. Times change the dimensions of problems as well as the perspective in which they appear. It's not as though a specific code provision is turned topsy-turvy because of the predilections of an oncoming group of judges. Our constitution is written in large generalities. It speaks of Due Process; Equal Protection, Obligation of Contract, Freedom of

Speech; and the like. Those terms do not have mathematical precision. They involve large social and political considerations. Is it constitutional under the standard of Equal Protection for a state to segregate people who are White from those who are Black? Those raised and educated against the background of slavery might give the idea of emancipation a different connotation than would those of a later generation. To the former the idea of emancipation might not reach beyond the abolition of slavery. Yet those who face the modern problems of a multi-racial world are inclined to think of any type of state-enforced racial segregation as at war with the requirements of a pluralistic society.

The overruling by courts of prior constitutional decisions is not an everyday occurrence. But it happens decade after decade and is, indeed, a happy evidence of growth and change. It has helped make our written constitution enduring.

The people need not wait to get new judges to obtain a set constitutional guarantee. A constitutional decision can always be changed by the amending process. That has been done on numerous occasions.

The Court held a graduated income tax unconstitutional. In due time the Sixteenth Amendment was adopted.

The Court sustained state laws that disenfranchised women. Accordingly the Nineteenth Amendment was adopted.

The Court refused to strike down state laws imposing a poll tax. The Twenty-Fourth Amendment was adopted barring the use of such a tax in Federal elections.

By constitutional amendment the people could of course write <u>apartheid</u> into our law. By constitutional amendment racial groups or religious groups could be given second-class citizenship. By constitutional amendment we could abandon the ideals of a pluralistic society.

By constitutional amendment we could wipe out the large areas of privacy that exist in our constitutional framework and make the police all-powerful. In other words, the procedures for effecting changes in laws that the people find objectionable are available. It is our consensus to live in a pluralistic society and to make it flourish that has prevented extremists from either the Left or Right from having their way.

Defiance of an unconstitutional law is of course in the finest American tradition. If, for example, a city required preachers to clear their sermons with a board of censors, none worth his salt would submit. For freedom of the pulpit is a precious part of our heritage; and here, unlike communist regimes, there are tribunals which have the power to free the citizen from the censor. Whatever the area, a person who feels he is being saddled with an unconstitutional burden can submit himself for a test case. He suffers no additional penalties for that kind of defiance. But he assumes the awful risk that his reading of the law is not the correct one.

Even he who submits his own liberty to a test case is not taking the law into his own hands. He is following a procedure which society has furnished for protection of rights. That form of defiance is submission to ordered procedures. The action of mobs is quite different.

Those who surround a courthouse chanting their complaint in unison act inconsistently with the American ideal of liberty. That conduct constitutes an organized massive effort to influence a judge one way or the other. The mob seeks to bury reason and make emotions exultant. Our concepts of liberty are the opposite. We know from sad experience that the search for truth is at best treacherous and that many safeguards are necessary if trials are to be fair. No human institution is perfect, for man is an emotional as well as a rational being. But

those on trial are entitled to a dignified, quiet place where emotions are parked outside and a detached, objective viewpoint is brought to bear on the issues.

We also know that, though the police are indispensable, liberty suffers when they are all-powerful.

Complete surveillance is the way of life in a communist country. It is anathema to us, for we cherish privacy. Privacy to be sure allows the criminal greater leeway than does complete surveillance. But once the barriers are lowered, the miracle of police power tends to widen until it touches everyone. So we have cast the weight on the side of liberty even though we know it may result in some criminals not being apprehended.

For example, a man's home, no matter how humble, in his castle in a vivid sense. The knock on the door has no authority unless the police bring a warrant issued by a judge that authorizes the house to be searched or the occupant arrested.

Moreover, wiretapping is closely regulated.

In addition, a person arrested may not be detained at the pleasure of the police. Experience shows that long detentions incommunicado are used for the purpose of obtaining confessions. Some police have used torture, such as drilling live teeth or burning the flesh with cigarettes or cigars. Sleepless periods of interrogation designed to breach a man have been used. Crude methods and player methods have been employed. Why not? Some ask. The reason is not only that torture and other coercive devices to obtain confessions are uncivilized; we also know that every individual has a breaking point that makes all confessions of that character very suspect. A communist regime capitalizes on that knowledge by letting the police hold a suspect for weeks on end. Once the breaking point is reached, the innocent as well as the guilty confess.

So rules are designed to limit the time suspects can be held without an opportunity to talk with family and friends.

These days police are being better educated in all of the protective standards of the Bill of Rights; their practices have indeed greatly improved in recent decades. We know that communist tactics need not be used to solve crimes; that brains are more important than brawn; that a police equipped with modern devices can be extremely efficient. We need public support for raising police standards, for increasing their salaries, for attracting abler men to their ranks.

Raising police standards on one hand or lowering them on the other has no relation to the incidence of crime. As the U. S. Attorney for the District of Columbia, David C. Acheson, recently said, "Changes in court decision and prosecution procedure would have about the same effect on the crime rate as an aspirin would have on a tumor of the brain." D. C. Bar Journal, December 1964, pp. 511, 513. The roots of crime are in the failures of family and church, in the blight of alleyways and urban sprawl, in all the conditions of modern society that produce mentally sick or deranged people.

Man's deep instinct, when an awful crime has been committed, is to take quick revenge. But we know that leaving law enforcement to the professionals is the only way of having a Rule of Law that administers even-handed justice and that gives even the most depraved among us a fair hearing and a fair trial. In the long run we would never be satisfied with less. For our conscience has always bothered us when we have so relaxed the rules that innocent men have been adjudged guilty.

The said test of dedication to the Rule of Law is whether self-help will be substituted for ordered procedures, whether the police will become lawless, whether mobs will

dominate the police, whether laws though disliked will be honored while the test of their validity winds it way through courts.

The basic question arises when, as in the Dred Scott case, a law is upheld by the highest court and yet is looked down on by the people. What then?

Lincoln stated the only thesis that is tenable with the Rule of Law: obedience to an unpopular decision until it is changed.

Those who continue to rail against a court's racial decisions and Acts of Congress passed to protect civil rights place themselves above the Constitution. Nullification has appeared throughout our history . But it is destructive of the union which the Civil War made inseparable. It is also at war with the Rule of Law that cements us into a powerful pluralistic society with freedom and equality for all.

Minorities find life tolerable only by reason of the Rule of Law. The welfare of the majority is also dependent on it, as minorities become fractured into minorities, the dominant group today _____ subordinate tomorrow. The Rule of Law honors the _____ by putting the weight of the police and the_____ _____ it. The Rule of Law provides _____ for _____ me that an implorable status quo can be altered. The Rule of Law substitutes argument, debate, and the _____ for fist fights, violence, and pillaging. The Rules of Law protects minorities and non-conformists as well as the majority. It is indeed our alternative to conditions of the jungle which they possess crowded cities as easily as they can the app___ of the Courts of Vietnam.

January 26, 1965 William O. Douglas