

was unscientific, that it was crude and formless, that it was too slow in its responses to new conditions. The facts that in all important English speaking communities the common law, with its system of precedents, furnishes the basis of all law; that it has there survived the test of use and experience; that the essential justice in the English and American laws is surpassed by no other system and approached by few other nations, ought to persuade one that the common law is thoroughly systematic and unscientific; because an unsystematic and unscientific system could not probably produce the very qualities wherein it excels. If it were the sole product of judges legislating under the guise of deciding, and if the labours of the judges were left untouched to serve as the final contribution to the evidences of the unwritten law, chaos, delay, and uncertainty might be expected as the result; but the common law has never been a purely judicial product, however true it may be that the cases have been such. For, to use a common quotation, 'the law is in the cases, but the cases are not the law.' Therefore, to know and state the law requires a post-judicial operation, just as it requires the office of lawyers to evoke the decision which contains the law.

"Three classes of lawyers, then, have made the common law—the advocates, the judges, and the writers, and each one of these classes has played a vital and an indispensable part. The advocate has presented the question, the court has decided, and the writer has recorded and expounded the precedent, each limited to the particular occasion and duty. Because of that limitation their correlative tendency has been to keep each other's operations true, and their combined skill has solved many problems that no a priori system of laws or codes could have coped with.

"Now the reason that the system of precedents has not produced an unscientific and chaotic law, and that the law has not been overwhelmed in mere numbers of precedents of widely varying worth and authority, is because it was the special business of the writers to deal with and prevent those particular tendencies. From the beginning they have done that work by