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E. JORDAN: CRITIC AND METAPHYSICIAN OF MODERN CIVILIZATION

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I

Elijah Jordan (1875-1953) was one of the most original social and legal philosophers in the history of American thought. Jordan spent his life in the midwest, near the rural setting from which he came, serving as professor of philosophy at Butler College in Indianapolis from his appointment in 1913 until his retirement 31 years later. Jordan wrote a half dozen volumes that comprise for American philosophy a unique contribution the full significance of which has still to be measured: *The Life of Mind*,¹ *Forms of Individuality*,² *Theory of Legislation*,³ *The Aesthetic Object*,⁴ *The Good Life*,⁵ *Essays in Criticism*,⁶ and on the eve of his death he was at work on his *Metaphysics*.⁷ Generally neglected and attracting attention only toward the end of his life, Jordan's work has begun to win increasing consideration from philosophers and social thinkers in recent years. In accord with the rising interest in Jordan's philosophy, it is the purpose of this paper (1) to explore this philosophy so far as it bears upon the topic of law and social order and the metaphysics implicated therein, and (2) since Jordan is not widely known, to conduct this exploration as much as possible by letting the philosopher speak for himself through quotations drawn from his writings.

The neglect of Jordan's philosophy has been imputed in part to the difficulties of his style, but the great modern philosophers have all been difficult in this sense. Yet Kant and Hegel found their audiences. For style is necessarily difficult if thought is unusually original and complex. In Jordan's case the neglect must be ascribed as much to the discordance between his philosophical outlook and the domi-

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1. JORDAN, *THE LIFE OF MIND* (1925).
2. JORDAN, *FORMS OF INDIVIDUALITY; AN INQUIRY INTO THE GROUNDS OF ORDER IN HUMAN RELATIONS* (1927).
3. JORDAN, *THEORY OF LEGISLATION; AN ESSAY ON THE DYNAMICS OF PUBLIC MIND* (1930). A second edition with a new preface was issued in 1952. Except for the prefaces, the contents and pagination of the two editions are the same. This book will hereinafter be cited as *THEORY*. In those cases where different material is present in the two printings, the appropriate date will be given parenthetically.
4. JORDAN, *THE AESTHETIC OBJECT; AN INTRODUCTION TO THE PHILOSOPHY OF VALUE* (1937).
5. JORDAN, *THE GOOD LIFE* (1949).
6. JORDAN, *ESSAYS IN CRITICISM* (1952) (with an *Introduction* and *Synopses* by Robert D. Mack).
7. JORDAN, *METAPHYSICS; AN UNFINISHED ESSAY* (1956). This volume was edited by Max H. Fisch, who is also responsible for the preface and bibliography.

nant modes of philosophy and social thought. Although Professor Fisch has suggested that Jordan's philosophy has been intimately related to and colored by its rural midwestern setting,⁸ still Jordan's intellectual adventure was pursued in almost total isolation, unaffiliated with the prevailing currents of opinion. Perhaps no American thinker can match his dispassionate dissection and bitter condemnation of the contradictions which inhere in democracy. Yet Jordan remained unquestionably hostile to the totalitarianisms of Fascism and Marxist Communism which swept over much of the world during his lifetime. And though he explicitly rejected the socialist creed, his attitude toward a civilization built upon private business is summed up in the title of one of his books, *Business Be Damned*.⁹ Jordan also repudiated the behavioral sciences for the kind of thinking about man and society which they fostered. Their positivist methodology, restricted to gathering and classifying facts, the investigation of origins, causal explanations, analysis into simples, cannot adequately or profoundly illuminate the nature of social relations and the constitution of public order. Only metaphysical speculation, in touch with the concrete complexity of facts but sensitive to objective tendencies within the systems of fact and capable of conceiving the ideals in which these tendencies end, can serve to advance an accurate general theory of nature, man, institutions and culture. Therefore, Jordan both undertook a critique of modern civilization, in its ostensible forms as well as in its implicit metaphysical postulates, and offered positive speculative metaphysical suggestions to provide more stable foundations for culture and to expedite its improvement and development. Jordan's enterprise was spurred by his remarkable sensitivity to the dilemma which must inevitably strike any man who takes thought on the present practical situation:

Either . . . there must be something wrong with the conceptions . . . upon which civilization appears to have rested, or the principles and agencies which dominate the practical life are metaphysically evil. Either those influences that lead to universal war and strife are wrong and false or else war and strife and hatred are right.¹⁰

Modern civilization, Jordan maintained, is based upon the subjectivist metaphysics of individualism, with the doctrine of interest as its practical corollary. Defining mind as individualized consciousness and reducing individuality to the isolated, atomistic individual, this subjectivist philosophy arose when Christianity superceded the Greek conception of personality. The Greeks had appreciated the unity of human mind, nature and culture, and had understood the human

8. *Id.* at xiv.

9. JORDAN, *BUSINESS BE DAMNED* (1952).

10. JORDAN, *THEORY* 170.

person to be "the obligatory tie which bound him to his objective self in the 'nature' which embodied his purposes in final harmony."¹¹ But with the collapse of classical civilization ensued the religious concentration on individual spiritual salvation, and individuality came "to mean a mass of inner, private, exclusive feelings centered about their own intensity."¹² Unlike Christian medieval thought, which, despite its retreat into subjectivity, still bears the mark of Greek objectivism in that for it interest is linked with the prerogative of a special class as materialized in the objective relation between property and class action, however, modern individualism has come to look upon interest as private and exclusive, stripped of all spiritual significance.¹³ The Christian identification of individuality with "a self-inclosed, self-sufficing, qualitatively homogeneous, isolated unity"¹⁴ has consequently degenerated into what Jordan has called "the subjectivism of the organism"—namely, the contemporary secular equation of the individual with "the psycho-biological human being with his matter-of-fact and common-place interests in making a living and raising a family and winning a place of respectability in the local group where his lot happened to be cast."¹⁵ Hence the Greek "world of overt objects" has given way to the modern "world of invert objects, or subjects."¹⁶

In human relations the subjectivity of modern individualism has entailed the doctrine of interest, apparent in the several branches of practical philosophy in different guises. In legal and political philosophy interest means "exclusiveness, privacy and the divisive concept of the power to compel."¹⁷ In economics it denotes "the hypothetical causal unit of production or consumption of goods and . . . the theoretical locus of the subjective phenomena of want, need, desire, etc."¹⁸ In ethics, it operates as "the subjective principle which distinguishes and disperses humanity and the realm of values, as the ground of right and good, into isolated persons and their distinctive appurtenances of specific goods or properties."¹⁹ In brief, interest is "the expression of the subjective attitude in which the realities of life are estimated with respect to inner aspects of personality . . ."²⁰ Even right "is justified, explained, and blessed, in the mere fact that an individual *claims* it, finds it with an accidental status within his

11. JORDAN, FORMS OF INDIVIDUALITY 93 (1927).

12. *Id.* at 95.

13. *Id.* at 16.

14. *Id.* at 101.

15. *Id.* at 106.

16. *Id.* at 3.

17. *Id.* at 6.

18. *Id.* at 6-7.

19. *Id.* at 7.

20. *Id.* at 14.

mental processes."²¹

The extreme subjectivism of modern civilization, expressed in the doctrine of interest, contaminates all moral and practical concepts and relations, undermining the principles upon which a sound and just social order must rest. As Jordan stated:

[I]nterest is incompetent as principle. The doctrine that the state is a harmony of interests, that law is the instrument of effecting and maintaining the harmony, that the purpose of morality is to find and define the characters of interest that make a harmony possible, that religion should look upon conflicting interest and call it good; all this neglects the simple fact that *no organization of subjective phenomena is possible*, that subjective facts do not submit to order, that the order of mind is not the superficial juxtaposition of mental states.²²

The reduction of practical values and relations to private psychological facts has fostered a variety of serious misconceptions and malpractices. It has wrongly equated man with the abstract "economic man" of classical economics, aiding and abetting a business civilization so amoral, massive and monstrous that it pollutes all cultural values, tramples down all personal concerns and victimizes all men, including business men. It has worked as "the peculiar nemesis of ethics," since isolated individuals can be bound by no obligations which would integrate them into a community of men.²³ It has adversely affected legal theory and practice, wrongly construing contractual relations in which individual interests are primary as the substance of legal order, viewing property as the exclusive possession of individuals despite its public function and justifying the law by the sheer, amoral power that enforces it. The upshot is cyclical collapses of the economic world, blatant political corruption, flagrant prostitution of public institutions to private interests, and periodic wars between states. All those evil features of modern civilization testify to the incompetency of interest as the principle of order.²⁴ As Jordan remarked: "Modern civilization, in fact, built its house upon interest; for a time it prospered, as long, that is, as interest met with appropriate opportunity in the exploitation of nature. But the winds blow and the rains fall."²⁵ And in a later book he said: "Noth-

21. *Id.* at 17.

22. *Id.* at 20.

23. *Id.* at 111.

24. The aesthetic category Jordan considered most applicable to modern civilization is "the grotesque": "[T]here is a type of aesthetic object where even comedy fails, where life evades all the efforts which sublimity and tragedy and comedy make to subject it to form; and while the lineaments of form are traceable in its structure, life in this object persists in reversion to its proto-type in the passive formlessness of pure feeling. This is the grotesque." JORDAN, *THE AESTHETIC OBJECT* 266 (1937). "Our civilization has whatever claim to notice or note it can claim in its grotesquery; and war and business are doing what they can to destroy even that." *Id.* at 268.

25. JORDAN, *FORMS OF INDIVIDUALITY* 19-20 (1927).

ing will work in the world but the right and the true, and this bears no relation to interest."²⁶

Since interest has proved to be the principle of chaos rather than order, it becomes necessary to seek a different principle of order. But since the doctrine of interest stems from an extreme subjectivism, what is required is nothing less than the elimination of subjectivism and the establishment of a new objectivity which embraces both "overt objects" and "invert objects, or subjects." "The modern *practical* problem is therefore how, and upon what principles, can the two modes of objectivity get integrated into a higher unity—that is, how can we find an effectual unity of the natural and the mental in a new objectivity?"²⁷ Jordan's philosophy aims to overcome the modern bifurcation of nature and culture into a spatio-temporal, causally determined world of atomistic, simply located objects, on the one hand, and a shattered society of dispersed, monadic, particular subjects whose psychological states comprise the only values in the world, on the other.²⁸ The solution of the modern practical problem, as Jordan expressed it in his book, *The Forms of Individuality*, consists in "the discovery of the corporate character of cultural objects, the theory of corporation being the logical formulation of the new objectivity."²⁹ Moreover, inasmuch as "the essence of individuality is corporeity,"³⁰ the solution to the modern practical problem includes a conception of individuality different from individualism, a conception which Glenn Negley has aptly called "corporatism."³¹ Hence the logical formulation of the new objectivity involves a speculative metaphysics of mind and individuality and a novel practical philosophy of corporate institutions.

II

Jordan's quest for the principle of social order centers on the philosophy of mind because, just as the subjectivist type of mind underlies the contemporary social disorder, so other distinguishable types of mind are associated with different social conditions. An understanding of social order therefore requires an understanding of mind. Further, Jordan's thinking had been profoundly influenced by

26. JORDAN, *THEORY* 384.

27. JORDAN, *FORMS OF INDIVIDUALITY* 3 (1927).

28. In terms of the formal categories of metaphysics Jordan's concern to establish "the unity of value and existence" has taken the form of "deducing" two sets of categories, one for value and another for existence, and of correlating them through what he has called "the principle of analogical identity." See JORDAN, *THE AESTHETIC OBJECT*, chs. iv, v (1937); *METAPHYSICS* (1956). For a brief discussion of Jordan's theories of the categories in these two books by Max H. Fisch, see Fisch, *Preface to METAPHYSICS* xi-xiii.

29. JORDAN, *FORMS OF INDIVIDUALITY* 3 (1927).

30. *Id.* at 187.

31. G. NEGLEY, *THE ORGANIZATION OF KNOWLEDGE* 301-326 (1942).

Kant,³² and Kant's famous contribution to philosophy, it should be recalled, was his Copernican revolution. The universal forms of reality as experienced, the necessary laws of nature, Kant taught, spring not from reality and nature, but rather from the human mind. World order resides in the structure of mind. For Jordan, following Kant, social order is interlocked with types of mind. However, Jordan gave this doctrine one startling twist and in this respect he was closer to classical Greek philosophy and the post-Kantian idealists. Whereas for Kant nature and its laws are the product of mind, all objectivity being the result of subjectivity, for Jordan mind is objective: Mind incorporates fact. "The 'Copernican revolution,'" he wrote, "insists, then, as the condition of a valid practical philosophy, upon turning away from subjective naturalistic-religious individualism and sociological opportunism and pragmatism, into which practical thought has fallen, and in approaching all problems from the viewpoint of corporate mind as the ultimate practical postulate."³³

At the outset, of course, it should be clear that, although Jordan taught psychology in addition to philosophy at Butler College, his theory of mind is emphatically metaphysical, having little to do with empirical experimental psychology. *The Life of Mind*, published hastily as a textbook in psychology and just as hastily withdrawn from distribution, vehemently attacks empirical psychology for interpreting human nature as "a function of physical nature," charging that, since it does not deal with mind, it is "*not psychology at all*."³⁴ Indeed Jordan dismissed empirical psychology as "physiosophy," meaning thereby a science which, though correctly treating "human nature" as "a mediating nexus between nature on the one hand and culture on the other," erroneously tries to reduce all judgments about "human nature" to judgments about "raw nature."³⁵ He reserved the term "psychology" for the philosophy of mind, defining mind "as the medium and substance of human culture."³⁶

Jordan distinguished three major types of mind: individualized mind, socialized mind, and institutionalized mind. While at present modern civilization, in view of the extent to which individualism and interest prevail, is dominated by mind as individualized, factors in social science indicate the socialization of mind and other factors (e.g., in legal procedures and institutional life) signify the presence of mind as institutionalized. Of the three types of mind, Jordan held,

32. Jordan received his Ph.D. from the University of Chicago in 1911 with his dissertation on Kant, of which an abridged version was published. See JORDAN, *THE CONSTITUTIVE AND REGULATIVE PRINCIPLES IN KANT* (1912).

33. JORDAN, *THEORY* xvii (1930).

34. JORDAN, *THE LIFE OF MIND* 7 (1925).

35. *Id.* at 8.

36. *Id.* at iv.

mind as institutionalized is mind in the fullest sense, and its highest form is corporate mind—institutionalized mind moralized.

Mind as individualized is mind dispersed to absolute and multiple particularity. Divided against itself in a pluralism of particular minds, each bent on the satisfaction of its own private, exclusive interest, mind as individualized is self-contradictory and inevitably fails to be an adequate principle of order. Furthermore, purpose possesses no advantage over interest to convert mind as individualized into a principle of order. Purpose, too, “appears to be vitiated by subjectivity just as does interest; the characteristic difference being that while interest is subjective in its origin and intent, purpose is subjective in that it contemplates an end that is composed of mental states.”³⁷ Mind can serve as principle of order only if it can become objective, be embodied or congealed in objects—*i.e.*, be incorporated, but this excludes its being individualized.

For Jordan, socialized mind fared no better than individualized mind. It is the “artificial if useful methodological abstraction . . .” of social science, yet “is a mind in no practically real sense of the term at all.”³⁸ As the type of mind with which social science deals, mind as socialized is impugned by the fallacious methods employed by these sciences. Modelled after the natural sciences, the social sciences, Jordan contended, gather facts without grasping their meaning, *i.e.*, their reference to ends. And aping the atomism of natural science, social science postulates simple individual men, analyzable into further simple individual units of instinct and habit, related only by means of mechanical causation. Consequently, the methodology of social science is insecurely grounded on “the logical fallacy of the simple” and the principle of causation that seeks to explain events in terms of original events. While the causal principle in practical relations diverts inquiry from the ends of cultural development to remote and undiscoverable origins, the “logical fallacy of the simple,” a survival of magic in scientific method, which assumes that behind every fact there is a simple entity which has caused it, orients social science to seek what it can never find—namely, single individual agents of responsibility behind complex social developments. Even seemingly isolable actions, such as crimes, Jordan insisted, are not ultimately isolable, since they always spring from whole complexes of circumstance in which the putative agents are but component factors. Sociological jurisprudence, despite the correctness of its contention that law exists within the systems of fact that make up society, is ultimately vitiated, Jordan argued, by its dependence upon the fallacious methodology and invidious concep-

37. JORDAN, FORMS OF INDIVIDUALITY 25 (1927).

38. *Id.* at 88.

tions of existing social science. Fact-bound, sociological jurisprudence takes conflicting interests as the stuff to be reconciled and neglects the common ends which, because essential to mind in practical action, must be reckoned with in an accurate, comprehensive social theory. Mind as socialized therefore is not real mind; it is mind conditioned by the antecedent causes of custom and precedent rather than directed toward the realization of ends. Or it is mind manipulated and abused by advertising, propaganda, and the mechanical routines of industry. Socialized mind is regimented mind, mind deprived of its creativity, and standardized for the performance of routine movements. It is mind, locked perhaps in the interstices of institutions, but not yet institutionalized, since it is ignorant of or even alienated from, instead of being realized in, the ends incorporated in the institutions.

It follows therefore that neither mind as individualized nor mind as socialized is mind in the fullest sense, since neither satisfies the conditions of the objectivity of mind. Now the term "objectivity," with its cognates "object" and "objective," covers in Jordan's writings three distinct, yet intertwined ideas: (1) an external material *object*, (2) a Kantian categorical activity which universally and necessarily orders facts, and (3) an independent ideal or end which functions in Platonic fashion as the *objective* of willed action. Mind is intimately linked with objectivity in these three senses; indeed, one might well say that for Jordan mind is precisely the objective linkage of the three types of objectivity, of using objects to attain objectives, of transforming objectives into objects, of constituting wholes of objects and objectives through universal laws. Jordan enunciated the three basic principles of his philosophy of mind in *The Life of Mind*:

- (1) Mind always acts through its body, and is known only in and through its action.³⁹
- (2) [M]ind always acts as a whole or as a unity, and is known only as such . . . [so that mind] can be defined as the active unity which manifests itself in and comprehends the organization of objects in our world.⁴⁰
- (3) [M]ind . . . completes itself in the objects of our external or practical world, and is controlled only through the manipulation of the things of the practical world.⁴¹

Jordan's theory of mind includes an elaborate reinterpretation of the traditional faculties of knowing, willing and feeling in terms of their objectivity or objectification, especially since Jordan's insistence

39. JORDAN, *THE LIFE OF MIND* 4 (1925). (Italics removed.)

40. *Id.* at 4. (Italics removed.)

41. *Id.* at 5. (Italics removed.) These same three principles are repeated in italics and with minor verbal changes in *THE GOOD LIFE* 308-309 (1949).

on the unity of mind rules out the compartmentalization of internal faculties. These faculties are equated with distinguishable yet interlaced facets of systems of objective fact. In *The Life of Mind*, knowing, regarded as subjective mind, consists in "forms of attention, the various ways by which our minds take hold of objects which make up our environment and condition our lives."⁴²

In *The Aesthetic Object*, Jordan's most poetic work, feeling is held to be more basic than cognition: "The cognitive state comes out like a star from the illimitable solid substantiality of the firmamental blue of feeling."⁴³ Nonetheless, feeling is not the subjective content of isolated consciousness. Rather feeling is the primordium, the affective continuum, from which all distinctive sensations and isolated emotions are inferred.⁴⁴ Feeling therefore is a metaphysical principle, "the *Urstoff* of all value," i.e., "the substantial stuff from which the world of values is created."⁴⁵ "Feeling is the material basis of values and culture, as existence is the material basis of nature."⁴⁶ Further, in *The Aesthetic Object* and later in his *Metaphysics* Jordan sought to establish for feeling a set of objective categories on the analogy of the Kantian deduction of universal categories for understanding. As Kant proved that Space and Time are *a priori* forms for sensible intuition and scientific understanding, so Jordan attempted to deduce Color and Tone as *a priori* forms for feeling.

Will, too, is objective. Despite the commonplace supposition that human individuals have wills in the ordinary sense, actually their wills are so hemmed in by external circumstance that they prove to be feeble forces, their effectiveness restricted to self-preservation and reproduction. In a deeper sense, however, there exists "a general will which expresses itself through natural persons in the unity of the state considered as the instrument and as the harmony of natural wills,"⁴⁷ so that the freedom of the individual human wills "is the positive and constructive urge which an individual will gives to the propulsiveness of the general will by the assent of the former to the larger purposes defined by the latter."⁴⁸ Will is the objective propulsiveness upon which the realization of ends and execution of purposes depend, and is therefore fundamental to the practical life. As Jordan wrote:

42. JORDAN, *THE LIFE OF MIND* 18 (1925).

43. JORDAN, *THE AESTHETIC OBJECT* 47 (1937).

44. *Id.* at 53.

45. *Id.* at 55.

46. *Id.* at 56. Jordan's theory of the objectivity of feeling deserves ampler discussion than I have given it in this paper. It is a remarkable theory and pertinent to what philosophers sometimes suggest is needed in metaphysics and axiology—namely, a critique of pure feeling.

47. JORDAN, *FORMS OF INDIVIDUALITY* 240 (1927).

48. *Id.* at 242.

Will is . . . merely the propulsive tendency to order in fact, or the fact that fact can exist only as ordered, and it is a character of perhaps all facts whether regarded as "mental" or not.⁴⁹

Will is simply an *order* of fact, fact organized as an element within another order of fact, and the spontaneity of will refers to the growth relations between the two orders.⁵⁰

Will then is the generalized dynamic aspect of the characteristic orders of fact of human life. It is the fact that orders of facts develop or have by nature effective purposes, or propulsive tendencies toward the permanence of their own form of order or toward the expansion into reproduction of new instances of similar orders. Will is . . . the impulse to realize ends through reproduction in the Platonic sense.⁵¹

Will is then the fact of order, when order is considered in its aspect of involving consequence.⁵²

Both individualized mind and socialized mind are condemned by their subjectivity as incomplete types of mind. Both types of mind take the natural individual to be basic, and this, as we shall see, is a serious mistake. What remains therefore as the highest type of mind is mind as institutionalized. Accordingly, mind is *ordered fact* taking "its practical character from the dominant quality of the sum of detail of fact."⁵³ The identification of mind with the objective quality of its circumstance entails a revision of the prevalent conceptions of what one's self really is. "I, as individuality, am the tangled clot of existent valued elements which are, as spatially and temporally ordered, the facts of nature."⁵⁴ Mind is the active synthesis of these external circumstances. "I am," asserted Jordan:

what my pencil, my pipe, my hoe, my pocket-knife, my books, my wife, my god, my associates and friends, the public instruments I want to use or have to use, make me. Not of course in the crude causative sense, but in the sense that the sum of enumerable means which I use indifferently (publicly) constitute me; I concentrate them and thus individuate them as the stuff of my personality; I am *their* personality; but they, concentrated about another reference point, become the stuff of another personality in which I am a detail—an important one, to be sure, since I am individuated by the same principle as he.⁵⁵

Mind is objectified in institutions, or, conversely, an institution

49. *Id.* at 237.

50. *Id.* at 401.

51. *Id.* at 244.

52. JORDAN, THEORY 81. Jordan's conception of will has proved opaque to many, while some, e.g., E. T. Mitchell, have found it significant and challenging but have severely criticized it, and others, e.g., Glenn Negley, have defended it, though Negley has done so by introducing his own metaphysical interpretations. See Mitchell, *Jordan's Theory of Corporate Will*, 55 PHILOSOPHICAL REV. 65-76 (1946); Negley, *Jordan's Theory of Corporate Will: Criticism*, 56 PHILOSOPHICAL REV. 406-15 (1947); and Mitchell, *Jordan's Theory of Corporate Will: Rejoinder*, 56 PHILOSOPHICAL REV. 416-21 (1947).

53. JORDAN, FORMS OF INDIVIDUALITY 173 (1927).

54. *Id.* at 159.

55. *Id.* at 161.

may be defined as objectified mind. This does not mean that institutions are conscious; on the contrary, consciousness is the particular form mind assumes for psycho-biological individuals, although to the extent that institutions include men, they include consciousness. Fusing corporeal objects and human individuals into organizations embodying will—as evident in systematic tendencies to persist and to grow—institutions, when moralized, provide men with the avenue to self-fulfillment, simultaneously subordinating men to their institutional roles and consuming human lives in the institutional life. By maintaining that the foundation of social order and the subject-matter of social theory is mind objectified in institutions, Jordan was calling for what has only recently begun to appear—an institutional sociology, and by insisting that institutions are embodied in corporate objects, he was among the first to call attention to the central importance of the artifact in the analysis of society.⁵⁶ From the vantage point of an institutional social theory, moreover, new light is cast on the seeming conflicts of interests between human individuals, for upon examination they are detected to be conflicts between the institutions in which individuals are absorbed.⁵⁷ The quest for the new objectivity, therefore, finds its end in the institution, since the institution embraces object and subject in the higher synthesis of corporate mind.

III

Jordan's theory of the objectification of mind in institutions accords with his metaphysical thesis that institutions are higher forms of individuality. Types of mind denote degrees of reality, and to be real, for Jordan, is to be individual. Jordan's metaphysics of mind and individuality owes much to British Hegelian idealism—particularly to Green, Bradley and Bosanquet. As he wrote: "The 'idealistic' doctrines that what is real is always individual (but not for that reason 'specific'), and that individuality is real as a system of qualitatively

56. See FEIBLEMAN, *THE INSTITUTIONS OF SOCIETY* (1956). Feibleman's thesis is that institutions are central to social theory and practice. Feibleman defines sociology as "the study of institutions" (p. 19) and the institution as "an established social group working in customary ways with the material tools on a common task" (p. 21). Feibleman, like Jordan, also pleads for the orientation of sociology toward inquiry into the overt objects or artifacts in which institutions find their means and through which they realize their ends, and like Jordan he underscores one of the major dangers of a culture geared primarily to production of means objects: "Instead of the production of artifacts as a mere extension of his working methods, man now has the production of artifacts as the *end-product* of his working methods" (p. 111). Feibleman, who acknowledges his indebtedness to the work of Jordan (pp. 21, 34), nevertheless disavows explicitly Jordan's attempt to define an institution as "a sort of externalized piece of mind," on the grounds that this language, despite the efforts of thinkers such as Peirce, Whitehead and Jordan to make it designate objective facts, inevitably smacks of subjectivism (p. 57).

57. JORDAN, *FORMS OF INDIVIDUALITY* 167 (1927).

determinable degrees, are taken for granted, and the proof for them is indicated in the development of philosophic thought from Plato to Hegel and on to our own day."⁵⁸ The principle of individuality, or individuation, must not be confused with the process of individualization. Individuation connotes order and synthesis, whereas individualization isolates and particularizes.⁵⁹ Jordan's conception of individuality is quite close to the Hegelian doctrine according to which the Individual is the concrete universal, or the Whole. The Whole is Individual because its parts form a unity through their mutuality. This mutuality of parts within the Whole, furthermore, is equivalent to self-reference, the distinctive essence of Subjectivity, so that the Whole is Subjective. But its Subjectivity is tantamount to Objectivity, since the structure of self-reference of objective parts is objective and since the parts are objects. In the Hegelian Individual subject and object are synthesized. This Hegelian principle of individuality is the key to the new objectivity Jordan sought, the principle which threads together the different individuals in nature and culture.⁶⁰ "The outstanding stages in the compendious whole of individuality are," Jordan observed, "man, the incorporate institution, and the state."⁶¹

To read Jordan's metaphysics of social order as an organic theory of society⁶² is, despite obvious similarities, inaccurate. For what Jordan sought was "a consideration of social relations as *logical* in character, and of the social body not as an organism, but as an *organon*."⁶³ The root metaphor of Jordan's theory is not the bio-

58. *Id.* at 195-96.

59. JORDAN, THEORY 197.

60. Jordan viewed his theory of individuality, in which mutuality of positive content is stressed, to be a correction of the Hegelian theory of individuality, which he interpreted to signify primarily a negation of specific content in order to emphasize universality. See Jordan, *The Definition of Individuality*, 30 PHILOSOPHICAL REV. 566-84 (1921). For a discussion of Hegel's conception of the real as the synthesis of substance and subject, which is nearer Jordan's view than is Jordan's interpretation of Hegel, see my paper, *Substance, Subject and Dialectic*, 9 TULANE STUDIES IN PHILOSOPHY 109 (1960). The question of a direct relation of Jordan to Hegel's philosophy is an interesting one. Commenting on the critical opinion that his thinking was a variety of Hegelian idealism, Jordan admitted: "I regret that I have never read the work of Hegel consistently, most of it not at all." JORDAN, THEORY 7 (1952). Max Fisch has pointed out that if Jordan's philosophy "be Hegelianism, it is Hegelianism without the dialectic and without optimism . . ." *Preface to JORDAN, METAPHYSICS* xiv (1956). It is of course sometimes unenlightening to assign philosophical labels to thinking as complex and original as Jordan's. For example, Jordan's book, *The Good Life*, was hailed by one reviewer as naturalism, and considered by another as idealism—Perry, Book Review, 59 PHILOSOPHICAL REV. 514-27 (1950), and Schneider, Book Review, 47 J. OF PHILOSOPHY 387-93 (1950) respectively.

61. JORDAN, FORMS OF INDIVIDUALITY 302 (1927).

62. G. H. Sabine did so in his review of *Theory of Legislation* in 41 PHILOSOPHICAL REV. 537-39 (1932).

63. JORDAN, THEORY 321.

logical organism, but corporeity viewed as a logical whole.⁶⁴ As Jordan contended: "The organism is not a full individual . . ."⁶⁵ Biological organism, governed by causality, merely maintains itself in self-repetition or reproduces itself in another individual of the same form; it never succeeds in growing into a corporeal entity with its end fulfilled in its own body. Nevertheless, the biological organism does foreshadow the principle of individuality: It is "a corporate individuation of biological functions."⁶⁶ And although the particular organism conspicuously falls short of individuality, the species, as the law of organisms, makes an approach to individuality, in that the species is a concrete universal which not only imparts unity to the particular organism but also establishes its unity with its environment and its continuity within the species. In this sense "the organism is an imperfectly realized form of individuality; or better, it is a distinguishable impulse toward the realization of Individuality."⁶⁷

Higher in the scale of individuality than a mere biological organism, the human person is the juncture between nature and culture. The continuity of nature and culture through the natural human person has been distorted or neglected by modern individualism, which has misconceived man either as an isolated consciousness or a particular psycho-biological organism dominated by exclusive interests. Jordan therefore demanded a re-interpretation of human nature: "[E]very period of advance in culture," he remarked, "has had its inception in the thorough-going analysis of human nature, and the reconstruction of the institutions of life which such analysis implies."⁶⁸ Jordan's analysis of human nature stresses the continuity of nature and culture through man, while scoring the breakdown of modern practical relations because of the prevalent individualism. Human desires and purposes, embodied in objects, crystallize in institutions, defined as systems of "such objects organized with reference to the working out of a larger purpose in the mutual activity of persons . . ."⁶⁹ The larger purpose of an institution is "a plurpose" which, transcending the sum of individual purposes, combines the capacity to conceive an ideal end with the capacity to realize it, and accepts life and nature as parts of a corporate whole.⁷⁰ Just as institutions originate in nature with natural individuals and external circumstance as contributing to their ground, so also human persons in turn draw their substance from institutions. Jordan maintained:

64. See Fisch, *Preface*, to JORDAN, *METAPHYSICS* xiv (1956).

65. JORDAN, *FORMS OF INDIVIDUALITY* 199 (1930, 1952).

66. *Id.* at 188.

67. *Id.* at 213.

68. *Id.* at 55.

69. *Id.* at 168.

70. *Id.* at 256-257.

The logical ground of the individual person is the system of institutions with reference to which as universal he is determined as particular.⁷¹

Whether or not a given human individual is a person . . . depends not on his innate [sic] qualities or substance as the seat of his capacities, but upon relations which are outside of him within the social body, and these relations are determined not with reference to the person, but with reference to the social ends adopted as the criterion and standard of the law.⁷²

Human personality is a function, then, not only of natural individuals but of corporate institutions, of the state as the whole of such institutions, and of law.⁷³

Jordan advanced his argument into the field of law, but he did so without claiming superior expertness in legal matters and technicalities. In the opening paragraph of a chapter entitled "The Theory of Corporate Organization As Law," Jordan said: "We are here making no presumptions to a knowledge of jurisprudence, not even to philosophical jurisprudence, but are endeavoring to give to the conceptions ordinarily used in serious considerations of human affairs such interpretation as the closest analysis we can make will justify and allow, and in this endeavor it is often convenient to employ juridical terms."⁷⁴ Considerations of legal matters, moreover, underscore the inadequacy of modern individualism and the need for the principle of corporate individuality since the practice of law, regardless of its preconceptions, must accommodate itself to the facts of practical life, and seeking this accommodation, it resorts to subterfuges which are so transparent that through them a more basic legality, yet to be articulated, may be discerned. Legal substance is the precipitate of legal procedures, but there is a lag during which contradictions abound. Although, for example, law defines the legal person as the subject of rights and duties, then construes this individual along the lines of individualist doctrine as an entity with inalienable rights and as the exclusive seat of responsibility, law must contravene these basic assumptions and acknowledge "the transfer of rights" and "liability without fault." Since for law, moreover, the individual is "the entity which can sue and be sued, be hailed into court, be compelled to act or refrain, and do all things necessary to the constitution of the end,"⁷⁵ legal individuals are not always identifiable as human individuals, but often are corporations, associations

71. *Id.* at 80.

72. *Id.* at 127-128.

73. Some critics of Jordan have pitted one aspect of human personality against another—natural individual vs. institutionalized individual—to criticize Jordan's theory. See Cornett, *Individualism in the Ethics of Elijah Jordan*, 66 *ETHICS*, 61-66 (1955).

74. JORDAN, *FORMS OF INDIVIDUALITY* 275 (1927).

75. *Id.* at 129.

or unions. To adhere to individualist conceptions in spite of their incorrigible shortcomings, law resorts to the doctrine of fictions, of which Jordan has asserted: "The most monstrous fiction of the law is the theory of legal fictions."⁷⁶ The vicious consequences of individualism in practical relations are most conspicuous in property and contract.

As long as contract is construed, in consonance with the assumptions of individualism, to signify the convergence of absolutely self-enclosed wills for the realization of exclusive interests, each will serving another to the extent of its own gain, contract cannot in reality be the principle of social order, although individualism has traditionally grounded social order upon social compact. Each contractor will seek to defraud the other, and all will conspire to defraud the public. "The principle of contract has become the tool," Jordan observed, "by which unsocial forces slacken the pace of civilization and arrest progress until private greed is satisfied."⁷⁷ But Jordan also recognized that the principle of contract may signify more than the artificial arrangement between exclusive wills in pursuit of private interests. When legal theory and practice admit that the public is a party to every contract, contract cannot be merely a reciprocal agreement between human individuals for the satisfaction of exclusive interests. Its validity ceases to hinge solely on a formal document prepared in the past, binding individuals to reciprocal action, and enforceable by external authority. On the contrary, the validity of contract stems from the mutuality of ends that engage and embrace in common action all the men comprising a social whole, and in this sense, contract underlies all social order and public law.

Still more revolutionary than Jordan's treatment of contract is his metaphysics of property. Now Jordan claimed that property is "*the essence of the person.*"⁷⁸ However, by property Jordan meant not the indispensable objects consumed in the processes of living, but those more enduring objects such as land, industrial plant, and art objects, so that the person of whom property is the essence cannot be the natural human individual. Paradoxically, the human individual does not possess but is possessed by property: "The 'mine' really is that which esthetically or morally possesses me, and it is a commentary on the quality of my sensibility if its object is crude."⁷⁹ Not only is individualism wrong concerning property, Jordan concluded, but the same error infects socialism, since the socialist theory by proposing the distribution of property also assumes the human

76. *Id.* at 309.

77. *Id.* at 415.

78. *Id.* at 351. See also Jordan, *Possession and Individuality*, 31 *PHILOSOPHICAL REV.* 369-87 (1922).

79. JORDAN, *FORMS OF INDIVIDUALITY* 268 (1927).

individual to be the owner of property. This is plainly not feasible with capital goods; their distribution would undermine the industrial bases of modern civilization. Nevertheless, the shortcomings of socialism did not, for Jordan, vindicate capitalism. The existence of durable property does not demand private "owners" whose interest in profits leads to capital investments. On the contrary, so far as profit reverts to the private owner to purchase consumable objects, the store of capital is reduced. Further, exclusive ownership of property is, Jordan insisted, practically unintelligible and evil since the property exists in its public function. The system of property objects on its own generates further objects, and the private "owner" is at best superfluous and at worst an obstacle to its function and growth. But then the question remains: If property belongs to persons, and property in the proper sense cannot belong to human individuals, to what sort of person does it belong?

In addition to legal relations pertaining to property and contract, other specifically moral relations, Jordan contended, are unintelligible unless their reference is not confined to human individuals. *The Good Life* is Jordan's contribution to ethical theory, and coming toward the end of his career, it is nonetheless marked by the same theme: Subjectivism must be overcome. By focusing on action as the translation of the mind into objects, Jordan's theory logically comes to center on institutions. Without the suitable ordering of institutions with respect to the men they subsume, with respect to each other, and with respect to a system of ends upon which, when moralized, they converge, the virtues which are attributable peculiarly to the individual human person, the "subjective or partial virtues" of sympathy, generosity, friendship and integrity, are ineffectual, in no way dependably issuing in the good life for man. Jordan defined the good life in his formula of the law of morality:

The good life posits a person or actor endowed by nature and by culture with all the capacities that are possible to him, with these capacities developed to their fullest possible degree; the person living in a world so organized and ordered as to guarantee to the person full and free access to all the means and instruments necessary to the adequate and appropriate expression of his capacities and to the realization of his acts in satisfying objects.⁸⁰

The good life is clearly unattainable by an individualized subjective consciousness or by a robotistic organization man, since neither is intimately, creatively or freely related to nature and culture. Besides exemplifying the subjective virtues, the good man is obliged, if he seeks the good life with expectation of finding it, to develop the objective virtues of wisdom, courage, temperance and justice, but

80. JORDAN, *THE GOOD LIFE* 59 (1949).

since these virtues reside not in human individuals primarily but in institutions, the moral man must enact himself into institutions. As isolated subjects or "socialized" ciphers, human individuals are poor candidates for the important role of moral persons. And nothing could be practically more futile, Jordan repeatedly emphasized, than the commonplace moral sentiment that a change of heart or mind alters the good and evil in the world. No moral advance is possible unless the objective institutional world in which human individuals are contained is acted upon, and, furthermore, such action can be carried on only through and within institutions.

Practical relations in law and morality make sense neither in themselves nor as holding between merely human individuals. So early in his career Jordan had concluded: "[T]here must be *another person* hidden somewhere which we have not seen. . . . [T]here is a super-personal person involved in *every* practical relation, whether that relation be selling a carrot or saluting a saint."⁸¹ Such a super-personal person, incorporating the virtues of wisdom, justice, temperance, and courage in overt form, is precisely what an institution is when moralized. Property is the body of the corporate institution. Institutions are the persons to whom property belongs, and when property, as the instruments with which men attain their ends and as the stable physical basis of culture, is perceived to serve public functions with which exclusive private interests interfere, it logically follows that property belongs to the institution that comprehends all institutions, the Whole, the State. But at present it suffices to recognize that institutions, containing men and objects in a self-referent organization exhibiting will, and directed toward common ends, are persons. "The body of property and the will that is instrumented in it, once it has become institutionalized and incorporated in human affairs, is, then, the active agent or person, the person that is the ground of all interpersonal or 'social' relations. It is the ultimate moral person."⁸²

Moreover, institutions are natural persons, just as human individuals are, but devoid of the characteristic weaknesses of human individuals though susceptible to other blindnesses. As Jordan wrote:

Institutions grow; they are natural; they reproduce themselves continuously by the reappropriation of themselves as orders of objects to human functions. As such, institutions are persons.⁸³

The corporate body . . . is an individuality principled by the same law as the natural person and the state. . . . The corporate body has a will of its own; it acts on its own responsibility; it has ends that are ends for

81. JORDAN, *THE LIFE OF MIND* 275 (1925).

82. JORDAN, *THE GOOD LIFE* 145 (1949).

83. JORDAN, *FORMS OF INDIVIDUALITY* 308 (1927).

nobody or nothing but itself; it has a mind in the order of fact represented by the will in action toward ends; this mind, like other minds, is approachable only through its objects, or the objects which give substance to it. . . . It possesses the biological functions of nutrition, reproduction, etc., like the natural person; it therefore has a social, legal, political, and moral status precisely coordinate with those of the natural person, and is to be considered in every way a reality of the same order, principled by the same law, differing from the natural person only in degree.⁸⁴

Modern individualism has blinded men to the naturalness of institutions and the corporate, public function of property. So blinded, law has adopted the contradictory notion of the private corporation, and by ignoring the internal dynamism of corporations as they propulsively move and grow without consideration of men, it has dubbed the corporation a fiction. Herein resides the root of the self-destructive forces that menace contemporary civilization, Jordan argued. Business, the activity of the so-called "private corporation," has invaded all the higher institutions of the family, art, science, religion, education, the state, and has subverted all the professions from their ideal roles to service in behalf of business. The inherent self-contradictoriness of private business corporations is evident in the fact that they tend to destroy, devour or merge with each other. Practically what is required is the elimination of business through a rational reorganization of institutions.⁸⁵ The initial steps in the direction of the ideal order of practical relations depend upon the recognition that corporate institutions with public functions are objective moral persons, not fictions in the interests of a few men. And this is tantamount to acknowledging the validity of the principle of individuality which has operated in philosophy from Plato to Hegel. The metaphysical foundation of social order, if that order is to be improved by the general acceptance of correct practical concepts, must be shifted from individualism to individuality. In this fundamental way metaphysics functions as the ultimate *Practica*.⁸⁶

84. *Id.* at 309.

85. Of course Jordan sharply distinguished business from industry. "Business and industry . . . are vastly different things." Business is defined "as the system of mechanisms for the control of industry." Industry is the "production, exchange, distribution and appropriation of goods to use . . ." JORDAN, *BUSINESS BE DAMNED* 2 (1952). Industry demands "intelligent work"; the methods of business are "force and fraud."

86. Jordan was firmly convinced that philosophy has a paramount social duty to perform and that its evasion of this duty by devotion to narrow epistemological topics has contributed to the catastrophes of war and economic breakdown suffered in the present century. In his undelivered presidential address to the Western Division of the American Philosophical Association, written in the middle of World War II, he stated in stressed language: "[T]he responsibility for the situation is philosophy's." Jordan, *Concerning Philosophy*, 52 *PHILOSOPHICAL REV.* 97, 114 (1943).

IV

The reorganization of the corporate institutions in modern civilization, in particular the rationalization of industry, is for Jordan the problem of politics and the task of the state. But by politics Jordan did not mean what commonly goes by that name, nor did he equate the state with the government, since government at its best is the organ of the state, and at its worst it is a tool of private interests hostile to the public good. Representative government as practiced in the constitutional democracies attracted his criticism. Representative government, he claimed, is self-contradictory; it assumes that political capacity and responsibility may be delegated; then, as if aware that the assumption is wrong, it resorts to devices, such as checks and balances, by which to restrain its representatives.⁸⁷ Further, representative democracy, an off-shoot of individualism, is hedged by formal constitutions which presume the state to be artificial rather than natural.⁸⁸ Harking back to the Greek political theorists, and sustained by the idealist metaphysics of individuality, Jordan contended that the state is natural. Simultaneously he resuscitated the classical conception of politics as a speculative science supported by metaphysical foundations, yet fundamentally practical in that it secures "the rational ordering of the objective institutions of human life."⁸⁹ Politics he defined as "the system of rational principles necessary to the weaving together of human motives and purposes into such organized objective form as would give the human life objective wholeness and harmony."⁹⁰ Politics is institutionalized in the state. And he wrote:

[T]he concept which the state at present most clearly represents is that of a system of autonomous institutions which operate as the instruments through the use of which public will achieves its specific purposes. It is characteristically that of a *working* system of machines, or more properly organs, co-ordinated into a whole by the ends which intelligence sets up in the system of policy. This system of ends as a whole implements itself in an Idea whose autonomy does not require an instrument in overt form, since its *act* is ideal—the formulation of policy. Consequently, the State has always been and will always remain, an idea. And theory of the State is speculative philosophy.⁹¹

Paradoxically the concept of the state, for Jordan, connotes what is both natural and ideal. As man is the juncture of nature and culture, and as cultural institutions are higher forms of individuality which grow from nature, so the state is a natural individuality which

87. JORDAN, THEORY 24.

88. *Id.* at 36-37.

89. JORDAN, FORMS OF INDIVIDUALITY 37 (1927).

90. *Id.* at 41.

91. JORDAN, THEORY 406-07.

constitutes the whole of cultural institutions and men, but constitutes the whole through its function as an Idea harmonizing the ends which are pursued by institutions and are embodied in corporate property. The state exists through the medium of law, whereby the Idea is articulated.

Jordan elaborated his philosophy of law in *Theory of Legislation*. Like *Forms of Individuality*, *Theory of Legislation* is a metaphysical treatise, and, confessed Jordan, it was "written as a sort of footnote to the *Forms of Individuality* . . ." ⁹² The differences between the approaches of the two works are evident in two words in the subtitles: the term "grounds" in the earlier book, "dynamics" in the later. Jordan's metaphysics in *Forms of Individuality* is motivated by the logical quest for the ground of social relations, and the result of the quest, formulated in the principle of individuality, is the discovery of a series of individuals comprising the social order and the consideration of them primarily as entities for logical analysis. In contrast with and supplementing the somewhat static approach of *Forms of Individuality* is *Theory of Legislation*. In the later book Jordan examined the dynamics of the entities discussed earlier, and the result is a philosophy of law, since the dynamics of public mind is explicit in legislation.

According to Jordan, who painstakingly sought to show what many thinkers had suggested—the roots of law in life, the "legality of life," as he put it ⁹³—law, like corporate institutions and the state, is natural.

[L]aw of whatever sort is made . . . out of the automaticity of life as embodied and embedded in the institutionalized relations of experience. . . . Laws come, for the most part, out of the life-processes which are indigenous to the relations among institutions; and they are laws rather than scientific principles merely classificatory of fact—they are norms precisely in their tendencies to stabilize these processes and relations into orderly forms . . . ⁹⁴

Jordan therefore sided with the natural law theory of Aristotle over against the legal rationalism of Plato. Unlike the legal rationalist, who posits objective ideal norms which law promulgates and externally imposes upon life-processes, Jordan located the source of law in life, consequently repudiated the theory that law is artificially, externally enforced regulation of life, and emphatically argued for the continuity of life, will and law. Life itself is continuous with fact; it is a definite kind of organization of fact which evinces tendency to maintain itself, to assimilate external circumstance, and to reproduce itself. This growth-change of fact which characterizes

92. *Id.* at 7 (1952).

93. *Id.* at 96.

94. *Id.* at 37.

organic individuals involves in rudimentary fashion the distinction between means and ends, though at this level the distinction pertains solely to spatio-temporal natural objects, mutually determining each others' natures. Nevertheless, organic activity, displaying direction toward ends relevant to means, is inherently legislative, despite the restricted application of the term "legislation" to "the determination within public life of means and ends with respect to purposes."⁹⁵ Will is the link between life and law; and the philosophy of law consequently depends upon the metaphysics of the will. While life, at the purely organic level, dynamically moves toward existing objects contributory to its preservation and reproduction, will attains a higher degree of objectivity. A "plurpose" which absorbs and transcends individual human purposes, will is embodied in the corporate person, dynamically moving toward a universal objective, or end. As will is objective to organic purposes, so law is objective to will. As the act of the political state, legislation embraces and transcends all ends in the End, established as the Idea of the state.

Jordan's deduction of law from life through will, a bold and novel reinterpretation of natural law doctrine, yet supports the normative, directive function of law by the acknowledgement of the reference to ends. Law "as a practical concept" exhibits a flexibility "which law as a technical or natural category for science does not have" because there is always the possibility of interpreting the facts in a different way and choosing to formulate a different principle in legal experience. Thus while law as a natural category is recognized because "it expresses a necessity," law as a practical concept, though deduced from life, is "to be observed, because it exemplifies an obligation."⁹⁶

Law, then, as normative, refers to ends which obligate but do not compel. The ends, however, are in consistent fashion intimately linked to the dynamics of life and will embodied in objective fact. An end is neither an abstract logical ideal nor a subjective psychological phenomenon; it is not the former because such Platonism is incompatible with the naturalness of law, and it is not the latter because such subjectivism is repudiated by Jordan's entire philosophy. Although an end "is the substance in which action ends . . .," an end is more than a consequent, it is also a ground directing action.⁹⁷ And end is the identity of ground and consequent. "End is therefore ground, considered as logical form, converted into content or experience-stuff by action."⁹⁸ The attainment of ends, furthermore, does not restrict action to specific means. On the contrary, the agent makes

95. *Id.* at 57.

96. *Id.* at 452-53.

97. *Id.* at 160.

98. *Id.* at 162.

contact with ends through an organ which is not an instrument, not a natural condition or cause, not a specific detail of fact, but rather a universal, a law.⁹⁹ Through law the agent *enacts* himself and the end consists in the incorporation of the agent and his circumstance in a higher form of individuality. Hence "order principled by law is the End."¹⁰⁰

Thus politics introduces no new content but posits through the medium of law the formal harmony of all ends, the order of all institutions. All the basic components of life, will and law, manifest in objective fact, comprise a continuity from life through will to law, within which the phases of legislation, administration, and adjudication are discernible. As Jordan stated:

Life, will and law are therefore aspects of the same fact-body; and law is effective and has power for the same reason that life idealizes ends in image and will realizes them in action. The ultimate legislator is therefore life, and its representative or agent is will, and the ultimate issue of that agent's act upon the material which life supplies is law as the harmony of the whole. The stages in the act of legislation are, therefore, the definition of ends in idea or the act of policy; the exemplification of policy in fact, or the try-out of administration; and the demonstration in order, or judicial legalization, of the disparate forces of life. In experience terms the same thing is said in the statement that legislation begins with the urgency of the will, passes into agency with intelligence, and issues in substantiated order through reflection.¹⁰¹

Despite his emphasis on the continuity of life, will and law with the three-fold dynamics of policy-making, administration and judicial process, Jordan nevertheless conceived the problem of legislation as flowing from a fissure at the center of the practical life. Jordan was unusually sensitive to the tragedy which haunts all private lives. "The object within which tragedy creates itself," he wrote in *The Aesthetic Object*, "is . . . the truth of life."¹⁰² "The essence of tragedy lies in the fact that its object is a demonstration . . . of the utter impossibility of any complete unity of value with existence *in life*."¹⁰³ Jordan's language erupted with unusual passion as he continued:

At its best, at its nearest approach to beauty, life remains sordid, vulgar, brutal, and obscene. For the benefit of those optimists who in the fatuous shallowness of their muddled vacuity renonstrate, I point to the fact—the reality of the world wallowing in the mire of its own filth and prolonging for the moment its futile existence in fevered draughts of its own dripping blood. This is the eternal truth of the Christ: the blood is shed.¹⁰⁴

99. *Id.* at 175.

100. *Id.* at 183.

101. *Id.* at 113.

102. JORDAN, *THE AESTHETIC OBJECT* 246 (1937).

103. *Id.* at 245.

104. *Id.* at 246.

And he added that "the categories of life are all tragic concepts. . . . Culture itself is carrion vested in cloth of gold."¹⁰⁵ Human tragedy in practical relations stems from the radical division between the capacity to know and the capacity to do.

"[M]an, as individual, can see more than he can do . . ."¹⁰⁶ Except in artistic creation, individual men cannot effectively do what they can envision and propose. As Jordan put it:

The individual will . . . sees more than it can reach; knows more than it can do; it can only speculate upon ends; which are effected, if at all, by other agencies than itself; or devise means which, of themselves, have no end. Its function is therefore to speculate and to create in idea the ends that are to be realized by life as a whole, and to devise the abstract means which may, if intelligence suffice and if power present itself, order those ends into the End.¹⁰⁷

The executive impotence of individual men within the public world necessitates that, if the ends men envision are to be realized, other non-human agencies must effectuate them. Thus men turn to corporate institutions as higher forms of individuality with effective will. But Jordan observed:

The corporate will is . . . blind; all its effectiveness, which is the totality of direct effectiveness discoverable in human affairs, since all human ends can be attained only through its agency, is directed toward the merely maintaining the status quo of its own structure. It has no "soul" of purposed objectivity of ends beyond itself. It can do, but it cannot see; whereas the human individual can see but cannot do.¹⁰⁸

Hence the problem of legislation and control arises. As Jordan summarily stated it:

Life as effective will in the human being, either individually or collectively, is essentially speculative by nature and its function is to see—to foresee—to envisage and idealize ends. But it is powerless to attain any of these ends in objective form. Life as effective will in the corporate individuality of institutions attains its ends in immediate form, but it does this blindly, and the ends attained are raw concreteness without meaning. The one can see but cannot attain; the other attains but attains nothing of objective and ultimate form. It is this situation as present in the facts of life which sets for practical philosophy the problem of legislation and control . . .¹⁰⁹

The problem of legislative control falls within the province of political methodology for solution, because politics, alone among all sciences, undertakes to comprehend the practical life as a whole and

105. *Ibid.*

106. JORDAN, THEORY 212.

107. *Id.* at 228.

108. *Id.* at 244.

109. *Id.* at 248-49.

therefore overcome, if not absolutely mend, the rift between the capacity of individual men to think ideals but not be able to enact them and the capacity of corporate institutions to act but not to think ideals. Political methodology as legislative process involves three distinct, but interrelated, phases: (1) legislation as speculation, (2) legislation as experimental administration, and (3) legislation as judicial process.

Legislation as speculation is the first phase of the political methodology of legislation. The speculative act

comprehends in one view not only the total of given factual means as embodied in the natural and social environments, but also . . . it comprehends the world as fact within the same unity with the world regarded as ideal plan. . . . [I]n thus comprehending the compossibility of the world of nature and culture as means with the world of plan and ideal as end, the legislative fiat, as speculation, provides both the structure and organization of the practical world and the plan and functional purpose of that world.¹¹⁰

Legislation as speculation is "experimentation under logical conditions."¹¹¹ Although legislation in its first motive draws upon all the descriptive sciences to know about the structure of the actual world of culture and nature, yet it is essentially metaphysical speculation, since its role "is one of speculatively determining, in advance of the experiencing or living through them, the ends and principles which, when experienced or lived through, will be felt intermediately as the fulfillment of human nature in the substance of the relations which incorporate the human with the natural into a world."¹¹² Critical of the validity of political democracy with its false assumptions that the "people" can think speculatively or delegate this capacity to others, Jordan rejected democracy as the political framework in which legislation as speculation can be performed, and adopted the Platonic proposal of the philosopher-kings, legislation by an intellectual élite: "There must be maintained within the social or political body," he asserted, "a corporate class of free intellects whose speculative imagination is allowed to wander at will in the construction of the schema of ideas; and whose hand is free and absolutely unhindered in the process of experimental verification of those ideas within the laboratory of social life until they can be reduced to law."¹¹³ This "aristocracy of mind," however, does not primarily depend, as Plato thought, upon the selection of a special group of superior individual men; it is drawn rather from the system of cultural institutions. Legislative bodies secure the opportunities

110. *Id.* at 313.

111. *Id.* at 315.

112. *Id.* at 144.

113. *Id.* at 345.

of expression for the aristocracy of mind, whose function is to talk. Through the medium of discussion ideas undergo experimentation under logical conditions as provided by the parliamentary body serving as a kind of laboratory.¹¹⁴ Briefly the work of legislation in its first phase is to propose laws as ideals to direct action not to enforce it. Thus the laws would be general, sketching in large the ends toward which the society ought to move in the light of its actual situation, and creating in idea the organization of objects, the institutions, requisite to the effectuation of the End.

Legislation as administration, the second phase of the political methodology, has as its work the actualization of ends and objects within a system of order. In contrast with the first phase, where speculative thinking is primary, in administration action is primary. Carried on in institutions, administration is wedded to the actual facts and objects, adding specific maxims for action and acting to implement and realize the general policies proposed by legislative speculation. Flexibility is of paramount importance for effective administration; and its method is the try-out of experimentation. Whereas the clear definition of ends in speculation is immune to stumbling and falling upon brute, recalcitrant facts, administration is susceptible to error, though upon it hinges control. Jordan wrote:

Control by intelligence over the legislative process is . . . always and necessarily indirect, and is mediated through the *ideal* capacity of the objects which are formulated as ends in policy and the *actual* capacity of objects, which are realized in administration. Control is effected in the same way that direction is maintained by a man riding a bicycle; he must keep his eye upon the distant objects which draw the line of his direction, and risk the rest to the inherent and spontaneous power of those objects *somehow* to control the movements of his hands and feet. . . . The discovery and rough-hewing of the things and objects which can be made into objectives depend upon the experimental or administrative act of life where mistakes can be made and corrected . . .¹¹⁵

The judicial process is the final phase in the political methodology of legislation, and its method is deliberate reflection. "[T]he judicial process is the process of testing the principles of policy as worked out by the speculative motive in legislation, in their relations to maxims of action as established experimentally in administration."¹¹⁶ An implicate of the practical life, just as legislative speculation and administrative experimentation are, the judicial process is institutionalized in the established judiciary. Here is found the activity of interweaving law and fact, the application of general principles to specific cases, and the investigation and re-investigation of cases to

114. *Id.* at 346.

115. *Id.* at 437-38.

116. *Id.* at 441.

detect the details of fact which suggest the appropriate principles. The judicial process, moreover, is oriented to the end of harmonizing ends and objects, facts and values, speculative legislative hypotheses and practical maxims of action. It is the process which, regardless of what facts are given to it, provided of course that it works effectively and with the proper laws, will render those facts legal, *i.e.*, locate them in the harmony of value and existence imaged in the State. A fact is nonlegal if it does not fit in with the total organization of facts and ends, but such illegality evinces a failure in the organization, *i.e.*, its exclusion of this fact, and necessitates the legislative processes for the development of law with which to constitute the fact and its circumstances in a superior organization, a more inclusive whole.

Jordan's philosophy of law has been criticized on the grounds that it is remote from what the lawyers know and mean by law—that, in other words, it has little to do with legal experience as it occurs in the passing of statutes, the routines of administration, and the litigations in court.¹¹⁷ This is a curious criticism, for Jordan meant, not to demonstrate superior knowledge in the technicalities of law, but to show how law stems from the practical life and also how phases in these practical life processes are or should be institutionalized in the organs of the State. If what is regarded as law does not have some similar or analogous relation to the practical life as Jordan indicated, then it is not law, but the rule of force. Law-enforcement, Jordan held, is self-contradictory. The application of force to human relations testifies to the absence of legality in the facts as they exist. "Law rests upon will, not upon force."¹¹⁸

What Jordan offered, therefore, is a kind of ideal theory of legislation by which to judge actual legislative processes. And what he sought to demonstrate was that this ideal political methodology is natural—since it is rooted in the dynamic practical life. The existing practices, fostered by the fallacious subjectivism and individualism of modern civilization, are far less natural, and the upshot is the contemporary crisis in practical affairs at every level. While the first steps in the solution of this crisis involve, according to Jordan, the recognition of the metaphysics of corporate institutions and the cultural devastation that ensues from their subversion to private interests, the completion of the task of rationalizing the public life demands the legislative act of the State. Jordan was not hopeful that this would occur. For "the state . . . is the generalized instrument of morality, the instrument or tool through which the larger aims of morality are accomplished. It is also the final object or end of morali-

117. See, for example, Max Radin's review of *Theory of Legislation* in 44 HARV. L. REV. 877-78 (1931).

118. JORDAN, THEORY 362.

ty, both in the sense of the ultimate goal to be reached and in the sense of the perfect body or organ through which moral action is most effectively embodied."¹¹⁹ Upon the State, then, falls the task of moralizing the world and of guaranteeing the good life. Jordan was not optimistic that the State would be realized; but since optimism and pessimism are both subjective occurrences, he would not regard them as germane to the problem of practical control. Acknowledgment that existing agencies operate against the realization of the good life in no way minimizes the correctness of recognizing what in practical relations and institutions may conduce to it. And though all the avenues of action seem closed there still remains for the individual man his primary obligation—namely, the obligation to know. As Jordan put it: "As a practical capacity . . . *the individual's obligation is the obligation to think; to prepare in idea and anticipation the intent of the whole of experience which as objective agency may become active in the execution of a plan.*"¹²⁰ As critic and metaphysician of modern civilization, Jordan lived up to this obligation to the fullest.

119. JORDAN, *THE GOOD LIFE* 338-39 (1949).

120. JORDAN, *THEORY* 228.

