The Technicization of Justice, Law, and Legal Practice

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In *The Technological Society*, Ellul refers to human law as one of humanity's "highest vocations."[1] Elsewhere, Ellul spoke admiringly of law as an "indispensable element … in the creation of all civilization."[2] He asserted that law occupies "the privileged place" in "the ever-renewed search by man for values which give meaning to his life."[3] He declared law "unique" among all human phenomena in that there is no dissociation in the law between its ends and means.[4] As a result, Ellul initially appeared to credit law with the ability to resist technique to some degree. He wrote "[j]udicial technique is in every way much less self-confident than other techniques."[5] In the context of law, "technique assumes the role of a handmaiden modestly resigned to the fact that she does not automatically get what she desires."[6]

On the other hand, in a 1975 lecture, Ellul referred to law as "not far from the demonic."[7] He went on to say that "*le droit* becomes demonic when it claims to occupy the whole place and unfortunately *le droit* always finally claims to occupy the whole place."[8]

What are we to make of Jacques Ellul's various interpretations of the law in the context of the technological phenomenon?[9] In order to address the technicization of justice, law, and legal practice, it is necessary first to summarize briefly Ellul's theological and sociological interpretations of the law.

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[1] Ellul, Jacques, *The Technological Society* (Knopf, 1964), p. 300. E'ÉÉé

[2] Goddard, Andrew, *Living the Word, Resisting the World, The Life and Thought of Jacques Ellul* (Paternoster Press, 2002)*,* p. 225 (quoting Ellul, "Initiales pour l'étude de la relation entre émeutes de mai-juin 1968 et le droit" (Archives de philosophie de droit (14), p. 19).

[3] Ellul, Jacques, "Law as Representation of Value," *Natural Law Forum*, 1965, Paper 104, p. 62.

[4] Ellul, *Philosophy of Law*, (Editions of La Table Ronde, 2022), p. 316 (reprint of Ellul, Jacques, "Reflections on the Specificity of the Law" (*Quaderni Fiorentini*, 1973)).

[5] Ellul, *The Technological Society*, p. 291.

[6] *Ibid*.

[7] Goddard, *Living the Word, Resisting the World,* p. 255 (quoting unpublished transcript of three addresses and Q&A sessions given by Ellul in 1975, "L'Autorité: Etudees présentées au colloque des compagnons 1975 à Pomeyrol," p. 20).

[8] *Ibid*.

[9] Goddard notes that in addition to Ellul's early personalist articles about law and his untranslated, five-volume *History of Institutions*, Ellul wrote over thirty journal articles discussing the sociology and theology of law. Goddard, *Living the Word, Resisting the World,* p. 199.

I. Theological Interpretations

At a 1985 workshop in Pessac, France, Ellul admitted that his study of the law was the one area that he was not satisfied with:

> Law, for me, is the area where I have never managed to do something that satisfies me. It's really the only area, it's the only point .... I have varied five times on my interpretation. This is the only point of my reflection where I have varied.[10]

On that occasion, Ellul briefly outlined how his theological interpretation of law had developed.[11] He admitted that in his first stage (prior to 1946) he had a very literalist approach. He viewed the model for law as that which was given in Hebrew Scriptures and that it was up to human beings to create law based on that model.[12] This is not to say that at this stage Ellul considered the content of the Mosaic law to be the model for human law. Rather, Ellul initially viewed the purpose and structure of the Mosaic law, which he saw as affording the minimum justice necessary to preserve society from the effects of sin, as the *model* for human law.[13] Ellul understood law as "the expression and recognition of a common social conscience, of a sense of justice," the goal and structure of which was to minimize the social and economic impacts of sin.[14] At this point, he saw human efforts to intervene in law by seeking to express social conscience in a technical fashion as introducing sin.[15]

Ellul described his second stage as developing when he wrote *The Theological Foundation of the Law* in 1946, at which point he no longer viewed human law as based on the structure of Mosaic law applied literally. Rather, he focused on his premise that society is preserved by God's grace despite the rupture of creation's communion with God.[16] At this point, Ellul saw human law as "commissioned to express [God's] covenant on earth, and to organize the world with a view to

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[10] Ellul, *Philosophy of Law*, p. 287 (reprint of portions of transcript of 1985 interview with Ellul published as "Rencontres de Pessac" (*L'Inter-dit: Journal of Institutional Psychoanalysis*, No. 13, Fall 1986)).

[11] Andrew Goddard notes that on another occasion, in 1987, when Ellul confessed in an interview that the law was the one area where he was constantly changing his interpretation ("I had four successive theories") but Ellul did not elaborate further. *See* Goddard, *Living the Word, Resisting the World*, p. 199 (quoting "An Interview with Jacques Ellul," *Media Development* 35 (2), p. 27).

[12] Ellul, *Philosophy of Law*, p. 288.

[13] Ellul, Jacques, "Droit" (*Foe et Vie* (April 2000), pp.14-15 (reprint of *Foi et Vie* (March-June 1939)).

[14] *Ibid*.

[15] *Ibid.*, p. 17.

[16] Ellul, *Philosophy of Law*, p. 288; Ellul, Jacques, *The Theological Foundation of the Law* (Doubleday, 1960), p. 91.

its preservation until the last judgment."[17]

In his third theological stage,[18] Ellul concluded that human law and divine law are completely separate. As a result, Ellul no longer viewed law as part of a plan by God to preserve the world for judgment. Instead he focused on the social reality of law and how Christians can act as a critical conscience for law and human institutions, engaging them in dialogue to strengthen human values in law and to counter its modern technicization, which seeks to eliminate those values.[19] Ellul states during this period: "Christianity must above all give the jurist a complete clarity concerning the world in which law must get organized, in which the values with which law must be composed are to be expressed and to become normative."[20]

In his fourth theological stage, Ellul focused on law as a human response to the universal, existential questions of time, space, and the other.[21] He saw human beings making law in response to these questions in order to establish a stable situation in the midst of conflict and disorder.[22] In the 1960s, Ellul developed his sociological interpretation that law is normative and applicable in society because it is based on the dominant human values accepted by the social group as well as juridical procedures that reflect those values.[23] At this point, Ellul understood law as "only a useful work of the fallen world without theological foundation."[24] Nevertheless, Ellul noted that the biblical revelation addresses the same existential questions as law and he had not yet worked through the implications of this to his satisfaction. He called this "truly one of the most difficult problems," the resolution of which he implied would be his fifth stage of interpretation.[25]

II. Sociological Interpretations

Ellul's sociological interpretation of the phenomenon of law was not nearly as variable as

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[17] Ellul, *The Theological Foundation of the Law*, p. 104.
[18] Ellul's comments in 1985 do not indicate the time periods to which his third and fourth stages correspond. However, Andrew Goddard's careful analysis of Ellul's developing theology of law places the third stage from 1947-1967 and the fourth stage from 1971-1994, which accurately tracks Ellul's brief descriptions. *See* Goddard, *Living the Word, Resisting the World,* pp. 241, 248.
[19] Ellul, Jacques, "Christianisme et droit. researches américanes," Archives de philosophe du droit (5), pp. 34-35; Goddard, *Living the Word, Resisting the World,* pp. 241-248.
[20] Goddard, *Living the Word, Resisting the World,* p. 243 (quoting Ellul, "Realité sociale et théologie du droit," in *Existenz und Ordung: Festschrift für Erik Wolf*, edited by Thomas Wurtenberger (V. Klostermann, 1962), pp. 51-52).
[21] Ellul, Jacques, *Philosophy of Law*, p. 288.
[22] *Ibid*., pp. 202-209.
[23] *Ibid.*, pp. 269-277.
[24] Goddard, *Living the Word, Resisting the World,* p. 255.
[25] Ellul, *Philosophy of Law*, p. 288.

his theology of law. His earliest reflections describe law as arising spontaneously from the human experience of living with others.[26] He viewed human law as originally based in religious and social customs that are spontaneously followed because they are integrated into human social life.[27] As societies develop, they inevitably become aware of these customs, and as a result these customs become the object of speculation and organization into legal and administrative rules, legal doctrine, jurisprudence, policing, legislation, and case law, which Ellul refers to as juridical technique. Ellul described this process in an early personalist article on law:

> As soon as any human phenomenon becomes conscious (i.e. we become aware of it), it enters into a network in which it loses its character of spontaneity. Once people have become aware of it, it becomes obvious and then understood. Once understood, it becomes reasoned. Once reasoned, it becomes willed, it ceases to be real and becomes instead a process."[28]

Readers of *The Technological Society* will recognize this as the same process by which Ellul described how the technological phenomenon arises generally.[29] From the beginning of his study of law, Ellul recognized that the more society evolves, the more the spontaneous character of law disappears and the more the law becomes embodied in juridical technique.[30]

Initially, Ellul viewed juridical technique as a phenomenon that corrupts the "living law," which arises spontaneously from communal customs and human conscience.[31] In the early stages of juridical technique's development, Ellul viewed it as having a limited impact on law. In comparison with other techniques, he saw juridical technique as "much less self-confident" than other techniques because it is in tension with law's sense of justice, which Ellul believed was impossible to translate into technical elements.[32] Therefore, Ellul appeared to view law as somewhat resistant—though not immune—to the effects of technique, as long as the pursuit of justice remains in equilibrium with juridical procedure.[33] By the time he wrote *The Technological*

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[26] Goddard, *Living the Word, Resisting the World,* p. 136 (citing Ellul's unpublished "Pour un droit vivant" (1934/35), p. 1).

[27] Ellul, "Droit," p. 10.

[28] Goddard, *Living the Word, Resisting the World,* p. 136 (quoting Ellul's "Pour un droit vivant," p. 1).

[29] *See* Ellul, *The Technological Society*, pp. 19-22.

[30] Ellul, "Droit," pp. 12-13.

[31] *Ibid*., pp. 10-11.

[32] Ellul, *The Technological Society*, p. 291.

[33] Ellul, "Droit," p. 14; *see also* Ellul, *The Technological Society*, pp. 29-32 (describing the equilibrium between juridical techniques and the human element of justice achieved in Roman law in 2nd century BC).

Society, however, Ellul believed that any equilibrium between the human and the technical elements of law had been lost and juridical technique had taken over—at least "among nations that have a less firmly rooted legal sense than the French."[34]

Ellul's sociology of law changed in two important aspects after he wrote *The Technological Society*. First, he moved away from his earlier view that a communal sense of justice was the sole basis for human law and he developed a broader basis for law as assuming the dominant common values of a society in which it is found. Second, he recognized that human law itself is a technique and he concluded juridical technique is one of the defining elements of law rather than primarily a phenomenon that corrupts law. Both of these changes derived from Ellul's efforts to understand how law is created in society.

1. The Shift from a "Feeling of Justice" to Common Values as the Foundation for Law

In the 1960s, Ellul's socio-historical study of the relationship between human beings and law in their lived social reality led him to confirm that law is a universal phenomenon that is found in every period and civilization.[35] Ellul reasoned that, because law is a universal human phenomenon, it must be based on universal human experiences and that the only such experiences are those of time and temporality, space, and human relationships.[36] He concluded that "[t]hese are the three challenges that man encounters in all societies and in all eras, and ultimately the law is an adequate response to these three challenges."[37]

But this theoretical account of law's origin was insufficient for Ellul to explain law's normativity in society. Ellul's study led him to conclude that "[i]n all eras, in all societies, law is only made to be normative."[38] For Ellul, what makes law normative is that it assumes the common values found within a society. He writes: "[Law] is never normative in itself, but exclusively by its reference to the values accepted by the social group…. Thus, as long as the group believes in its values, the law which explains them is normative."[39] "The individual only feels validly judged if the law is based on values which he himself accepts, otherwise he can only feel injustice. This is simply due to the fact that the individual recognizes as legitimate the measurement of his act based on an objective rule which becomes subjective for him when the values it carries are also

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[34] Ellul, *The Technological Society*, p. 296.
[35] Ellul, *Philosophy of Law*, p. 165-169.
[36] *Ibid.*, p. 202.
[37] *Ibid.*
[38] Ellul, *Philosophy of Law*, p. 139.
[39] *Ibid.*, p. 310 (reprint of "Reflections of the Specificity of the Law" (*Quaderni Fiorentini*, 1973)).

those he gives himself."[40]

It was at this point that Ellul shifted his earlier emphasis on law as based in a "sense of justice" to law as based more broadly on society's common values, whatever those values happen to be at a given time and place. Thus, if a society's dominant values are other than justice – for example, freedom, equality, order, security, or some other value – then law must assume that value in order to be accepted as law. As a result, Ellul rejected "any categorization of any functioning legal system as 'non-law' when its content fails to conform to our own moral standards."[41] If law in a society assumes the dominant common values and has a positive representation in the society, then that law is no less normative and applicable than law in other societies based on other values.[42] Here, Ellul gives the examples of Nazi Germany and Soviet Russia.

2. The Shift from Juridical Technique as Corrupting Influence to Essential Element

From the beginning of his study of law, Ellul recognized that law cannot limit itself to simply recommending values; it also must create juridical procedures to put those values into practice and to make them concrete.[43] As societies evolve, at some point there will be "a sort of superstructure developed by legal technique" that will supplant the spontaneous character of law.[44] Ellul initially viewed this development as a corruption of law caused by technique, rather than by any internal necessity of the law.[45]

Once Ellul determined that law requires the assumption of a society's common values in order to be normative, he concluded that law requires "the choice and development of ways and means" in order to bring its assumed values "to a certain degree of effectiveness."[46] As society progresses, it is no longer feasible for its customs and values to be spontaneously followed. At that point, they need to be embodied in juridical procedures and rules, *i.e.*, juridical technique, which provide for specific solutions that can be commonly applied in particular cases.[47]

Here is where Ellul made his second significant shift. He came to view juridical procedures, which he conceded were "close to the techniques"[48] and which he previously viewed

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[40] *Ibid*., p. 274.
[41] Goddard, *Living the Word, Resisting the World,* pp. 209-210.
[42] Ellul, "Law as Representation of Value," *Natural Law Forum* (1965), p. 58.
[43] Ellul, *Philosophy of Law*, p. 142.
[44] Ellul, "Droit," p. 13.
[45] *Ibid*.
[46] Ellul, *Philosophy of Law*, pp. 187 & 318 (reprint of "Reflections of the Specificity of the Law").
[47] Ellul, "Droit" (*Foi et Vie* (April 2000), p. 11.
[48] Ellul, *Philosophy of Law*, p. 318.

as corrupting law, as "the essential fact" [49] and "the most important part"[50] of the law.

> The law is effectively what establishes a relationship between values and, at the same time, the conduct of men, and the environment in which these values are to be realized. The law is like the bridge, the intermediary between the two, but not by letting the man or the group carry out the values in a new, independent, 'innocent' way each time. It poses patterns of possibility, it excludes others, it makes the value effective and possibly obligatory, but it is neither the obligations nor the sanction which truly makes the law, it is rather the progression that the man is required to follow to realize the values.[51]

Thus, Ellul concluded that law does not actually exist as law until the point at which juridical techniques to realize the law's assumed values are introduced.[52] This led Ellul to describe law as "not a system of norms but a system of implementing common values."[53] Ellul made it clear that his emphasis at this point was on the implementation. "The law assimilates values and it is they which define [law's] normativity, but [law] assimilates them by giving them a [procedural] form which allows their application to be conceived and planned."[54]

3. *The Importance of Juridical Technique for the Applicability of Law*

Ellul came to see the central question regarding law as not whether law is created by human beings to be normative, but rather whether it *functions* as normative – that is, whether it is applicable because it modifies individuals' conduct and their social reality.[55] Ellul moved away from his earlier position that legal sanctions are what make law applicable. He ultimately concluded law is accepted and applicable in society not as a result of sanctions, but as a result of the individuals who make up society having a positive representation of the law and, therefore, accepting and living it.[56] This positive representation only exists where ordinary citizens perceive the law as not only conforming to the values that they recognize as their own, but also presenting

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[49] *Ibid.*

[50] *Ibid.,* p. 188.

[51] *Ibid.*, p. 318.

[52] Ellul, *Philosophy of Law*, p. 318; *see also* Goddard, *Living the Word, Resisting the World*, p. 202 (quoting "Pour un droit vivant," p. 5).

[53] Ellul, *Philosophy of Law*, p. 318.

[54] *Ibid.*, p. 318.

[55] Goddard, *Living the Word, Resisting the World,* pp. 216-217.

[56] *Compare* Ellul, "Droit" (1939), p. 9 ("All jurists agree that it is the sanction that makes the law.") *with* Ellul, "Law as Representation of Value," *Natural Law Forum* (1965), p. 64. ("It is not the threat of punishment which makes us respect the law. Punishment intervenes only in an accidental way, as a minor influence when one is hesitating, 'Shall I apply the law or not?'").

procedures (*i.e.*, juridical techniques) consistent with those values.[57]

For Ellul, "the law can never be taken as in itself a realization of value. It is, rather, a possibility offered to man to achieve the realization of value."[58] Thus, each citizen's personal representation of the law is chiefly influenced by their personal contacts with the law's juridical techniques in their widest sense, which are all created to realize the law's assumed values.[59] If citizens personally experience these juridical techniques as being consistent with society's dominant values, then citizens will hold a positive representation of the law and the law will be applicable in society. Ellul summarizes a citizen's positive representation as follows: "'If I obey this legal rule, which expresses a value which I recognize as mine, then I create a situation of justice or of order or of peace.' But he cannot obey this rule if he does not recognize the value it expresses."[60]

Because Ellul came to view law's juridical techniques as critical for law's applicability, he concluded that the most important element of law is the juridical techniques that it adopts. If law's juridical techniques are not consistent with law's assumed values, then citizens will form a negative representation of the law, which results in the law no longer being normative or applicable, and the viability of the whole of society is put at risk.[61]

4. *The Importance of Law for the Technological Phenomenon*

Ellul's socio-historical study led him to conclude that law is unique among human phenomena, because in law there is no dissociation between ends and means.[62] In order for law to be applicable, its juridical techniques must always be consistent with the values that the law assumes. For Ellul, this relationship between law's assumed values and juridical techniques is critical for society's continued existence and development.

Ellul viewed this relationship as dialectical, because it enables the law to mediate contradicting positions and generate syntheses at all levels of society.[63] On the one hand, the law

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[57] Ellul, "Law as Representation of Value," *Natural Law Forum* (1965), p. 64.
[58] *Ibid.*
[59] Ellul, *Philosophy of Law*, p. 188.
[60] Ellul, "Law as Representation of Value," *Natural Law Forum* (1965), p. 64.
[61] *Ibid.*, p. 65.
[62] Ellul, *Philosophy of Law*, p. 188; see also *Philosophy of Law*, p. 316 (reprint of "Reflections of the Specificity of the Law" (*Quaderni Fiorentini*, 1973)).
[63] Ellul, *Philosophy of Law*, pp. 339-341; *see also* Goddard, *Living the Word, Resisting the World*, p. 224 (quoting Ellul, "Institution, historie, psychanalyse: discussion" (*L'Inter-dit: Revue de psychanalyse institutionnelle* (1981) (7), p. 79) ("all law is always dialectical").

involves choices among all possible values which are never static in society and on the other hand the law involves choices of procedures that make its assumed values operational in society.[64] At the *individual* level, law mediates contradictions by imposing delays, procedures, and intermediaries. Ellul writes: "[T]he victim does not take revenge immediately, themselves, by pure violence, but after a certain delay, through somebody acting as intermediary (an arbiter, a third party, a tribunal etc.) and according to certain established forms."[65] At the *social* level, law mediates contradictions that arise between diverse social groups, political powers, and evolving social values by bringing them to livable compromises.[66] This tension is both the strength and, ultimately, the weakness of law in relation to the technological phenomenon.

Law's strength is that in order to be both normative and applicable it must always keep juridical technique consistent with its assumed values. Juridical technique can never be separated from the law's assumed values without creating a negative representation for individuals in society and thereby causing law to be inapplicable. Thus, depending on what common values the law assumes, law's values are able to resist the technological phenomenon to a lesser or greater extent. For example, Ellul wrote about the "perpetual problem of justice" in *The Technological Society*.[67] Ellul refers to technique as a "modest handmaiden" in the context of the tension between juridical technique and justice.[68] "[Juridical] technique is in every way much less self-confident than the other techniques, because it is impossible to transform the notion of justice into technical elements."[69] As a result, Ellul saw the potential for an equilibrium between juridical technique and traditional social values, which allows juridical technique to be held in check.[70]

On the negative side, Ellul saw the law's need to assume evolving social values and commensurate procedures as making it "an inherently precarious creation."[71] Ellul warned that law was becoming increasingly detached from traditional values as a result of the technological

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[64] Ellul, *Philosophy of Law*, p. 322.

[65] Goddard, *Living the Word, Resisting the World,* p. 218 (quoting Ellul, "Droit et moral," *Neue Hefter Für Philosophie* (1) (1979), pp. 74)).

[66] Ellul, *Philosophy of Law*, p. 333.

[67] Ellul, *The Technological Society*, p. 294.

[68] *Ibid.*, p. 292.

[69] *Ibid.*, p. 291.

[70] Ellul, *The Theological Foundation of the Law*, pp. 31-32; *see also The Technological Society*, pp. 30-32 (discussing the equilibrium between juridical technique and justice in Roman law the existed between the second century B.C. to the second century A.D.).

[71] Goddard, *Living the Word, Resisting the World,* p. 219.

phenomenon.[72] Ellul saw this as causing law to become "non-law" because it results in law losing both its normativity and its applicability in society.[73]

In fact, however, if society's values are progressively becoming the technicist's values (as Ellul convincingly argues), then the process Ellul describes is not law becoming "non-law." Rather, it is law evolving by assimilating society's changing dominant values and providing commensurate procedural forms to implement them in order to remain normative and applicable. As Ellul himself recognized, simply because a functioning legal system's content fails to conform to certain moral standards does not mean that it is "non-law."[74] Thus, while law has a unique ability to somewhat resist technique when it assumes traditional human values, it also has the potential to accelerate technique in modern society by reinforcing technicist values and adopting commensurate juridical techniques.

III.   Technique's Impact on Justice, Law, and The Practice of Law

1.   *The Technicization of Justice?*

From early on, Ellul acknowledged that the role of justice in human law "presents the greatest difficulties, mainly because of its ambiguity…"[75] As a result, Ellul deemed that it is "almost impossible to determine the nature of justice from a human point of view."[76] In *The Technological Society*, Ellul contends that "[d]espite what philosophers may say, justice is not a thing which can be grasped or fixed."[77] He therefore concluded that it is impossible to transform the notion of justice into technical elements.[78] Likewise, in *The Political Illusion*, Ellul writes that "concepts of justice and its content vary greatly among civilizations and even individual points of view…. Let us therefore leave aside the problem of juridical justice and even that of social justice, the ambiguities of which are well known."[79] Nevertheless, Ellul initially characterized law as arising out of "a sense of justice" that was progressively being lost to pressure from technique.[80]

Once Ellul came to understand human law as assuming society's dominant values and techniques based on those values, he no longer viewed law as necessarily based in justice. Or

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[72] *Ibid.,* pp. 224-225.
[73] Ellul, *Philosophy of Law*, p. 316 (reprint of "Reflections of the Specificity of the Law").
[74] Goddard, *Living the Word, Resisting the World,* pp. 209-210.
[75] Ellul, *The Theological Foundation of the Law*, p. 85.
[76] *Ibid*.
[77] Ellul*, The Technological Society*, p. 291.
[78] *Ibid*.
[79] Ellul, *The Political Illusion* (Vintage Books, 1972), p. 191.
[80] Ellul, "Droit," pp. 13-14.

rather, while Ellul recognized that "the idea of justice is continually held up as a criterion of law,"[81] he acknowledged that a society's dominant values may reflect differing views of what justice consists of (equality, order, freedom, etc.), which evolve over time.[82] In 1973 he wrote: "There is no point in saying that the law must express, for example, justice. What is important is to ask ourselves if the group recognizes justice as its dominant value, and if this is recognized, to know what the group puts under this word justice."[83]

In view of how Ellul came to understand law, the question whether justice has become technicized misses the point. While Ellul asserted that "[t]here is no relation between the proclamation of values (justice, freedom, etc.) and the orientation of technical development,"[84] his sociology of law necessarily qualifies that assertion. Ellul came to see law as a unique human artifice that requires both human values (not necessarily justice) and technical means reflecting those values in order to be normative and applicable. The law is, therefore, the one area in society that human values *are* in direct relation with technical development. Thus, the more important question is: what are society's dominant values assumed by law and are those values becoming more and more the technicist's values?

2. *The Technicization of Law and the Practice of Law*

Ellul viewed technique itself as increasingly becoming a value in society, with a whole system of subordinate values corresponding to the operational needs of the technological system. These values include efficiency, order, rationality, control, predictability, uniformity, organization, normality, and success.[85] As society's values evolve more in this direction, the law, in order to

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[81] Ellul, *The Theological Foundation of the Law*, p. 86.

[82] In 1972, Ellul wrote: "[I]t is normal for a group or a society to change its central value in the course of history. Once it was order. At another time freedom become the value to which priority is given. Then happiness is the center around which all action revolves. It is likewise normal, in the case of a given value, for its content to undergo a change. When one speaks of justice in China under the Han dynasty, one is not thinking of exactly the same think as the justice of the prophets of Israel …. Justice in Aristotle is not the same as justice in Augustine." Ellul, Jacques, *Hope in Time of Abandonment* (Seabury Press 1973) (translated by C. Edward Hopkin), p. 27.

[83] Ellul, *Philosophy of Law*, p. 314 (reprint of "Reflections of the Specificity of the Law").

[84] Ellul, Jacques, "The Search for Ethics in a Technicist Society" (translated by Dominique Gillot and Carl Mitcham from "Rechesche pour une Ethique dans une société technicienne," *Morla et Enseignement* (1983)), p. 3.

[85] *Ibid*., pp. 6-7; *see also* Ellul, Jacques, *The Technological System* (Wipf & Stock, 2018), p. 149 ("[T]echnology is becoming the creative force of new values, of a new ethics. Man cannot do without morality!"); p. 152 ("In other words, technology has become a moral value: whatever it supports it is good, whatever hobbles it is bad.").

remain normative and applicable, must assume these technicist values and adopt juridical techniques commensurate with them. The more society adopts these technicist values, the more law assumes these values, and the more law reinforces and accelerates the technological system.

Ellul saw the technicization of law as manifesting in a number of ways. First, as law assumes more technicist values, it increasingly assumes juridical procedures based on technicist values rather than traditional values.[86] Second, technicized law follows technique's characteristic of self-proliferation.[87] In order to carry out the proliferation efficiently, the modern state takes over the creation of law.[88] The state creates a proliferation of detailed laws and regulations that can be applied automatically by the courts, in an effort to eliminate any unpredictability and subjectivity in judgment.[89] This results in the common law tradition of case precedents having less and less independent value.[90] Third, the role of judges and lawyers in the creation of law progressively decreases, and they instead act as mere technicians who apply it.[91] As a result, law is less and less able to bear the dialectical tension between traditional human values and juridical techniques necessary to mediate contradicting positions in society.[92] Fourth, the state's enormous proliferation of laws seeks to regulate all areas of society, which results in the law becoming incomprehensible to all but the legal expert.[93] Fifth, the fact that the law is under state control means that it undergoes constant change as new sets of politicians repeal laws adopted by their predecessors and adopt new laws.[94] The result is that society no longer views law as a stable and permanent representative of society's values, and this threatens law's normativity and applicability.[95] All of these symptoms of technicization are evident to a lesser or greater degree in law and the practice of law in modern society.

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[86] Ellul, *The Technological Society*, pp. 294-298.

[87] Ellul, *Philosophy of Law*, p. 262; Ellul, *The Technological Society*, p. 297.

[88] Ellul, *The Technological Society*, p. 298.

[89] *Ibid*, p. 294.

[90] Goddard, *Living the Word, Resisting the World,* p. 220 (quoting Ellul, "Realité sociale et théologie du droit," in *Existenz und Ordung: Festschrift für Erik Wolf*, edited by Thomas Wurtenberger (V. Klostermann, 1962), p. 57).

[91] Goddard, *Living the Word, Resisting the World,* pp. 226-227 (quoting "Recherches sur le droit et l'Évangile, pp. 137-138, in *Christianesimo secolarizzazione e diritto moderno: Per la storia del pensiero giuridico moderno*, edited by Luligi Lombardi Vallauri and Gerhard Dilcher (1981)).

[92] Ellul, *The Technological Society*, pp. 295-296.

[93] Goddard, *Living the Word, Resisting the World,* pp. 226-227.

[94] *Ibid.,* p. 221 (citing "Réflexions sur le droit comme représentation," p. 259, in Philosop*hy and Christianity: Philosophical Essays dedicated to Herman Dooyeweerd* (Kampen: J.H. Kok, 1965)).

[95] *Ibid*.

Ellul's express purpose in writing *The Technological Society* was to diagnose the multiple problems that the technological phenomenon presents in order to "arouse the reader to an awareness of technological necessity and what it means."[96] Ellul warns in his Author's Forward:

> The reader may be inclined to say that, if everything happens as stated in this book, man is entirely helpless—helpless either to preserve his personal freedom or to change the course of events. Once again, I think the question is badly put. I would reverse the terms and say: if man—if each one of us—abdicates his responsibilities with regard to values; if each of us limits himself to leading a trivial existence in a technological civilization, with greater adaptation and increasing success as his sole objectives; if we do not even consider the possibility of making a stand against these determinants, then everything *will* happen as I have described it, and the determinants *will* be transformed into inevitabilities.[97]

Ellul's warning against abdicating our responsibilities with regard to values applies directly to law and the practice of law, because he identified law as the only area in society where values are in direct relationship with technique. Ellul saw lawyers as occupying a unique position that allows them to function not just as technicians who apply law, but as creators of law who recognize society's human values and work to embody them in commensurate juridical procedures and practices.[98] He writes:

> As a technician [the lawyer] has the skill to give shape to the demands and protests that he can hear. It is easier for a lawyer than for a magistrate or an administrator. We must not forget that at his level a lawyer is always a creator of law. He is therefore necessarily responsible for the image that we will have of the law…. The lawyer concerned with the place of law in society must be able to place himself at the level of the user who accuses the law, the lawyer, the administrator…The question to ask is: why does this individual or this group have such a representation of law? The lawyer who possesses the technique can then work on the legal provisions so that a new representation of law is born.[99]

But even more important than the lawyer's unique position to positively affect citizens' representations of law, the lawyer must work to increase human elements in law in order to counter its increasing technicization.[100] Because Ellul viewed law as "a testing ground for values," he emphasized the importance of the lawyer's role in choosing the values for law to assume and the procedures to implement those values.[101] These choices are critical for society's ability to

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[96] Ellul*, The Technological Society*, p. xxxiii.
[97] *Ibid*., p. xxix.
[98] Ellul, *Philosophy of Law*, pp. 191, 266.
[99] Ellul, *Philosophy of Law*, p. 191.
[100] *Ibid*.; Ellul*, The Technological Society*, p. 295.
[101] Ellul, *Philosophy of Law*, p. 191.

progress. To the extent that the law's assumed values and procedures defer to the technicist's values of efficiency, order, and adjustment, Ellul saw society heading toward a dead end. This is the situation that arises where lawyers act merely as technicians of law. On the other hand, if lawyers rediscover their role as the only true creators of law and work to bring human values into their practice, then Ellul believed that law could again become a living law that would be able to fulfill its necessary mediating role in society.