Government by Law
as opposed to Government by Men.[23]

Infinite damage has been done to the cause of legitimate Legal Reform, to the cause of Legal Education, at the expense of litigants, students of law, and the public welfare generally, by proclaiming the concept that all that has gone before in our procedural ancestry should be regarded as obsolete and worthless,[17] and is not to be considered in terms of Modern Pleading and Practice, and in terms of Modern Legal Education. Those who take this limited view have clearly confused the real merits of the Common-Law System with those portions of the System which were needlessly technical, thus overlooking the salient fact that it had developed many sound and enduring principles of legal procedure. They have also overlooked the fact that there is greater similarity in the essential principles underlying Pleading at Common Law, in Equity, under Modern Codes and Practice Acts, and even under the New Federal Rules of Civil Procedure now in effect in the Federal Courts, than is generally realized.[18]

Moreover, the essential elements of causes of action which must be Pleaded have not been abolished by the Reformed Procedure, nor have the Fundamental Conceptions common to all Systems of Procedure as to the manner of making Allegations which reveal the contentions of the rival Parties, been changed. As Lord Mansfield so well said: "The Substantial Rules of Pleading are founded in strong sense, and in the soundest and closest logic; and so appear, when well understood and explained; though, by being misunderstood and misapplied, they are made use of as instruments of chicane."[19]

As a result of such misapplication and chicanery by men who resorted to the technicalities of Special Pleading to serve their own selfish ends, as a result of the portrayal by its enemies of the System as a mere game of skill, in which the helpless litigant became a pawn in a wilderness of arbitrary technicality and confusion; in which it was pictured as the master and not the servant of the courts, or as an end in itself, instead of an instrument for the fair and equitable adjustments of substantive human rights, the System of Pleading and Procedure as developed at Common Law was gradually brought into popular disrepute by the efforts of ~~well meaning~~ Reformers, who emphasized its admitted Defects, but failed to point out to the people of England and the United States the matchless precision of the Old System as a vehicle for reducing human controversies into distinct Issues of Fact or of Law, which could be satisfactorily adjusted, thus achieving the principal end of all government, to wit, the preservation of Law and Order.

Entirely too much time and effort have been expended in criticising[20] or eulogizing[21] the Common-Law System of Pleading. It now seems appropriate that its function as a workable and expanding Instrument of Justice for generations, in both England and America, should be pointed up and emphasized as well as its long-term significance as the fountain-source of our Modern Substantive and Remedial Rights, if not our very liberties,[22] and finally, its value as an influence which continues and must inevitably continue to mould future Anglo-Saxon Conceptions of Law and Justice in a free society, if we are to preserve our ideal of Government by Law as opposed to Government by Men.[23]

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23. Apparently the earliest use in America of the phrase, Government by Law as opposed to Government by Men, is found in Part I, Art. 30, of the Massachusetts Constitution of 1780.