

## USING LAW TO UNDERSTAND SOCIETY

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If we understand the central characteristics of law, we can possibly gain greater knowledge of social interactions —of what people in society are like and what they do. My thesis is that we can see society more clearly— we can begin to know its regularities and its science —if we see it through the perspective of law. If I am right in this thesis, all the social sciences— presently in a shamble— should be helped to refocus the direction of their investigations.

What are the central characteristics of law? How do they function to reveal social knowledge?

Law is general and equal: It comprehends all cases of a like kind, and it treats them alike because the *are* alike. It is rule-structured and prescriptive. It is precise. It is enforceable. And root law-fundamental, constitutional law-is enduring. These features suitably fit law to stand as a kind of constant, or fixed component, unchanging while the social life that is regulated by law necessarily changes in infinite and patterned ways.

If these formal characteristics of law are completed by a legal content that forbids and requires people to do certain things, then the social life that *would occur* if people were free to act on their human propensities is obstructed and made idiosyncratic. The social life that results is irregular and unknowable. But if, on the other hand, these formal features of law are completed by rights and liberties (entailing, of course, prohibitions against their interruption), then social life will occur in accordance with human nature because people will be free to act on their unconstricted values and preferences and to pursue goals of their own choosing. What people are, will show up in what they do. To understand animals we observe animals behaving in their natural habitats. If we closed them into pens, put them through all sorts of taxing requirements, or prevented them from

exercising free movement, we should expect their behavior to be deviant and erratic.

In a similar way, my thesis predicts that “liberty law” facilitates the gaining of social knowledge.

I assume—but I do not here argue for—“methodological individualism” as a correct approach to social explanation. Methodological individualism maintains that when people are free to choose how they act, then society and social relations and processes, social institutions and their collective and corporate representations all are reducible to how persons act and interact. Hence what society is and what are its spontaneous forms *causally depend* upon legal freedom.

We already know that a free legal system causally generates adaptive and orderly types of social development. These developments are what want to learn about. Do they show universal commonalities: But we also know something about the conditions under which endogenous, cataclysmic social crises are probable. They are probable when a closed or prohibitive legal system thwarts choice and personal valuation, causally frustrating social development as it would otherwise be—blockages of various sorts mount and explode. We see this on a small scale in the pricing system of the descriptive laws of economics. Economics furnishes a good analogy because it is our most advanced social science and the only systematic, coherent social science we presently possess that reveals patterned regularities and developments. Left to free exchange, commodity pricing finds a level that we know matches and coordinates supply with desire. But when fixed by political decision, usually too low, desire exceeds supply and related “market” anomalies and disvalues—e.g., shortages—show up. When the political fix is removed, prices soar in a delayed attempt to attain an equilibrium that was stopped from happening.

Similarly the same maladaptations and disvalues occur with respect to society at large and to the interpersonal connections that constitute it. When people are prevented from doing certain things they otherwise would do (enjoy religious expression, travel about), or are required to do certain things they otherwise would not do (attend a compulsory public school, see a doctor appointed by the state), covert evasions limited only by man’s creative ingenuity turn up.

What social knowledge might we discover through the application of liberty regulated by the formal features of law mentioned above? Anthropology, social biology, archeology, political studies, and other social sciences already furnish us with knowledge of different societies and the manifold ways people relate to each other, the institutions

they develop, the cultures they build. History also yields social knowledge.

I do not have in mind comparative studies of unique communities or *sui generis* anecdotes of social history. I have in mind *regularities*, such as are found in economics. What is suggestive is that economics builds on human freedom and individual choice (methodological individualism) for discovering the common properties and the universal social relations and exchanges that constitute economic society- and is impossible without it! It is common knowledge that economic law cannot be experienced, participated in or known until *legal* liberty commits itself to the social conditions which make economic functioning both regular and observable.

The question then is this: Do the regularities of economic functioning and economic law give us a model? May there be laws and regularities in other social domains? Can methodological individualism supply the foundation for knowledge of other social phenomena? Because of human freedom, although we cannot predict with exactness the moment or the decisions or the particulars that comprise a social event, can we nevertheless discover reliable patterns and repetitions? If so, what types of social orderings can we expect? I suggest the following crucial problems for consideration:

First, are there common components of our human social nature? Are there valid “social universals” that describe man-what the Austrian Wurzel called “the concepts... which embody the phenomena of social life as they would appear if there were no laws”, and what Edgar Bodenheimer, the United States legalist, referred to as “certain values common to all mankind and conducive to self-fulfillment and civilized living”.

Second, if there are common values, what tendencies of the human species do they unleash? Do any relations, practices, or institutions *necessarily* develop out of these common values? What patterns or regularities, for example, may describe *everywhere*, or wherever a certain level of civilization is reached, family life, trade, inheriting, judicial quarrel? Can we call these regularities “natural law”?

Third, what makes for an adaptive, affiliative social order, as against an aggressive, conflictful, and criminal one? Fourth, what transmission processes (education) occur if there is to be culture growth-what are the expectable processes by which a community or a society becomes a civilization? Are there steps in this development that seem to be necessary, defined by the unfolding of novel and more complex interactions?

Finally, with regard to the family of man, what originates and sus-

tains those basic principles of respect for the persons and toleration for the community that is different from one's own? Are *these* "natural laws"?

Using a legal case study, I demonstrate the pivotal dynamic by which enforced *prescriptive law* that is general and rational, equal and reliable, can be used to help explain the *descriptive laws* of social interaction.