

## ONTOLOGICAL BASIS OF LAW

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Law is one of the many terms which are being widely used imprecisely in the modern literature as against its limited use in the ancient Philosophical discussions. Thinkers of the ancient world consider law as something peculiar to human affairs. This seemingly insignificant distinction in meaning is in reality the product of preformal difference in approach of different worlds of thought. Modern world which has based all its thinking on inductive method only applies this word. Law, on a wide spectrum across the board from human affairs to inanimate world without realizing the yawning gaps in its connotative bases. These bases should therefore be clearly delineated so as to demarcate its different uses in different spheres of human thought.

How much discursively the word is used is evident the fact that the word law is applicable as well to the process of Tort as to Thermo-Dynamical phenomena the three laws of motion which were enunciated by Newton as the three pillars of modern Dynamics.

Such wide use creates difficulties in its definition. However something nearer to the mark will be the defining of the laws as the description of the behaviours of the parts of this Universe individually and collectively without any regard to voluntary or involuntary aspect of this behaviour. In other words connotations of the word law divide themselves into human or social affairs and non-human phenomena, both animate and inanimate. However the important thing is the meaning of the word is its descriptive function, that is its function that it describes the behaviour of the parts of the Universe as a whole. Take for instance the Law of Entropy or Gravitation which describe the behaviour of the Universe and apply to the Universe as a whole.

The description qua description is a kind of mental construction men have made for describing the working behaviour of the Universe and it must be borne in mind that this mental construction has been formed by the process of induction. While some mental constructions, on the other hand are formed through deductive method. As

for example the principle of *Petitio Principii* which has its *Raison d'être* in the deductive function of mind.

The fundamental difference between these two methods has to be noted; *Petitio Principii* can not be called a law. It is an inconvertible principle, a principle which can not be changed as a result of some new discovery. Entropy or Gravitation are on the other hand such a type of mental formation as are liable to modification and change wholly or partially whenever a new discovery having a bearing on these phenomena is made. Here I will not go into a detailed discussion of abstract or contingent proposition which I had undertaken in my book, *History and Universe as I See Them*; the only point which I would like to emphasise here is the fact that all the laws which are formed for the purpose of describing the behaviour of the Universe has induction as their basis.

But before proceeding further we must make it clear that laws have two different connotations. One set of laws concerns itself with the description of the behaviour of the Universe. While the other one is formed for prescribing the limits of human behaviour. This prescriptive role is confined to human affairs only and therefore its applicability is limited, compared to the former which has very wide application. Laws prescribing human behaviour are not propositions; they are orders and therefore beyond the ken of propositional framework. While those describing behaviour pattern of the Universe are actually contingent propositions arrived through the process of inquiry called inductive method. The specific quality of these contingent propositions is that they describe what is going on outside of one's mind. Might this description be incomplete yet is based on *Rex Extensa*, on outside world.

Thus we are justified in concluding that these contingent propositions, namely, those laws which describe the behavior of the Universe have *Ontology* as their basis. The descriptive view of law applies to non-human part of the Universe. But perhaps the word non-human is unfortunate. For the fact that biological phenomena themselves are reckoned under many laws, for example Mendelian Law of Heredity, and these laws are also used for descriptive purposes.

Actually this division between human and non-human has been made here simply to demarcate between those behaviours which are being determined, by human wills and actions and those which are there in the Universe and have nothing to do with the human wills and actions. Described are they by human wills but not determined by them. The former is the only sphere where human wills play their part of prescribing behaviour, that is, behaviour of the human beings.

Before proceeding further we must pay some attention to the word, Ontology. What is meant by Ontology here. If Ontology is described as the branch of Metaphysics dealing with being and reality, then every type of law would certainly be considered as based on Ontology. As by this definition Ontology covers the whole sphere of being. Leaving simply non-being out of its ambit but non-being can not be made reasonable subject of discussion. Surely enough the word Ontology has not been used here in this sweeping way as, otherwise, every discussion would *ipso facto* come under Ontology. We must therefore presume that the scope of the word Ontology here is assumed to be limited to what is usually considered as non-mental.

If this assumption is correct then the phrase "Ontological basis of law", can be translated in this way. Law in its function of describing behaviour of the Universe in its totality or in its parts has its basis on Ontology, that is, law describes something objective which has its existence in reality, a reality existing outside one's mind. Of course law as a form of description of behaviour of this Universe is formulated by human mind and therefore in this respect also seems to be subjective but inspite of being subjective is nonetheless based on objective reality. Another function of law is not descriptive but performs prescriptive function for social phenomena. That is those social activities which society accepts or is forced to accept as the limit of its individual or collective social behaviour.

Here the subjective factor is predominant and therefore it seems logical to treat law as purely subjective reality specially in its function of prescribing social phenomena.

Nevertheless the deeper probe into the matter shows that in this case also law's foundations are laid on objective reality. As it is clear, social laws are made by human beings. "Made by human beings" means that social behaviour is prescribed by human wills. They are actually prescriptive formulae made by the wills of some or many or all members of a society. Here important word is the "wills" of society. Now let us examine this word "wills" a little closely. By "will" here is meant the firm intentions of willing units of energy to enact certain decisions. And decision is the choosing of an alternative out of many possible alternatives.

How this decision is arrived at. I should be hold enough to suggest that the decision of every human being is always based on the notion of justice howsoever this notion might be concieved by an individual. In other words the wills of humanity are by their very nature determined by the notion of justice though its application certainly differs

from one individual to another. Even extreme examples of egotism are ultimately based on the notion of justice, justice to oneself; killing of an innocent man is considered right; in other words just simply because self interest or justice to oneself demands it. But here we must pause a little and elucidate the notions of justice. In my view the concept of justice has objective reality. And by objective reality is meant here something which exists outside mental realm. How justice is this kind of reality? Let us pursue this a little deeper.

Like other concepts the concept of justice has relevance to being as against injustice which belongs to non-being. In other words justice is the principle belonging to Cosmos while injustice forces colliding against each other but ultimately resulting in a state of equilibrium. This state of equilibrium is Cosmos. If equilibrium collapses and disequilibrium develops chaos would overtake the Universe bringing every thing to nought, to non-being. How and why this equilibrium or Cosmos will come to nought, to non-being is a question requiring detailed discussion and analysis which we are not supposed to undertake here. Suffice it to say that the ultimate point of annihilation of this Universe would be the exahustive limit of all the possible notions inherent in this Universe and its parts. The possibility of exact repetition of completely same motion is not at all possible.

For every motion has its own time inexorably attached to it. Therefore when every bit of motion completes itself, its time also comes to nought. This bit of time which is overtaken by nothingness cannot be brought into thingness. Of course something identical can be reproduced but not exactly the same thing.

That does it show? It shows that the repetition of a motion and its time is not actually the repetition of an exact thing. It is rather a different thing though the difference is so small as to be thought non-existent. What conclusion can we draw from this? The conclusion is simply this that the collapse of this Universe will occur only when all possible motions along with their times are fully used.

Would this situation be considered as the height of injustice as this appears to be the apex of disequilibrium? Of course not. It is in reality not disequilibrium as such. This stage is in fact the exhaustion of all the possibilities inherent in the Universe. Disequilibrium on the other hand hinders realisations of those possibilities. What I call injustice is in reality the hinderance in the realisation of these possibilities which might be called injustice.

We must be clear on the point that sameness does not exist in this Universe due to the fact that thing A when repeated would become thing B having different time from thing A and therefore cannot be

called completely similar to A. Remember that our hypothesis was that the annihilation of the Universe is the exhaustion of all the possibilities of motion in the Universe. If all the possibilities are exhausted then *ipso facto* the repetition could become impossible.

Thus the annihilation of the Universe or the exhaustion of all the possibilities of the motion may be called justice, not injustice as superficially seems to be the case. If this analysis is correct then the conclusion is clear that the notion of justice and injustice is actually woven in the very fabric of this Universe. In other words justice has Ontological basis. But we must be clear in our minds that the above explanation of the justice belong only to that part of the Universe which is not affected by the wills of human beings.

As far as that part of the Universe is concerned which comes under the domain of human wills the application of justice, but application only, becomes arbitrary. Human activities both individual and social are in essence a kind of collision of units of energy or force against each other. If this collision creates disequilibrium or chaos we might call it injustice. The important point here is the fact that conditions producing justice or injustice are occasioned by the activities of those units of energy which are free agents in arriving at decisions to pursue some particular course of action.

The application of the notion of justice might be arbitrary but its basis is certainly objective, namely something existing outside the human wills. By this analysis of the concept of justice it is evident that it has objective reality. It has Ontology as its basis. But what about law? Law in its prescriptive aspect that is in its societal conditions is based on justice whatsoever the concept of justice might be to a person or group of persons and howsoever it might differ from one person to another, from one set of social conditions to another. But as its basis has been determined and criterion of just and unjust acts has been bound as it is apparent from the above discussion. It could not be thought impossible to distinguish just acts from unjust acts and just laws from unjust laws.

In the light of this analysis, if considered as correct, what would be the position of law in the subject-Ontological basis of law. Would it be correct to say that being prescriptive it has no Ontological foundation?

As we have shown earlier the word law is used in a wider sense as well as in a narrow one. In its wider sense the hypothesis that law has no Ontological basis cannot be held justifiably as is apparent from our previous discussion. However the situation seems somewhat nebulous when we come to the narrower sense of the word. That is

when we come to the meaning of the law in the domain of social affairs. Here law performs the function of prescriptive formulae. These formulae are made by human beings and therefore subjective factor becomes obvious. But if go a little deeper into the matter we shall see a new situation appearing. In its anthropological and sociological aspect prescriptive law-making process starts from egotistic motives of one or more persons. These motives criminal or other are thought legitimate and right by the persons concerned. Criminology should therefore inquire into the wrong conceptions of justice entertained by criminal persons, due to which they become criminals. Of course wrong perceptions here mean those perceptions which are unacceptable to the majority of the society concerned. What criminologists do or do not believe, the point here is that criminal motives are based on misconstrued notions of justice.

But what all this comes to? It surely comes to this that the ambient notion of justice is always there behind every motive of action. At least at the particular time when the doer does something thought to be criminal by the majority of the society; he feels himself justified in acting in the way his notion of justice allows. Although after a period of time he might repent on the consequences of his action. That is, he might realize that his understanding of the notion of justice was wrong. But the notion of justice was there albeit in a warped form. Could we not conclude from this that all actions of human being are based on the notion of justice irrespective of its being rightly conceived or wrongly.

If all actions of human beings are based on the notion of justice, it logically follows that human actions are determined or strongly influenced by what is thought is just and right or at least not thought as unjust or wrong. Thus law-making process being one of the many human activities cannot be considered as our of the pale of the notion of justice rightly perceived or wrongly?

After going through this long process of reasoning we should feel ourselves bound to draw the conclusion that all laws are based on justice wrongly perceived or rightly.

Now if the notion of justice is the only basis in which the whole superstructure of the legal system is constructed a further conclusion has to be drawn as the logical consequence of the previous one. The conclusion is that all laws are based on objective reality existing outside mental sphere.

It further shows that law as law has Ontological bases. justified laws as well as unjustified ones. Unjustified laws are based on injustice. But what is injustice in the social realm? In social sphere also in-

justice means what it means in non social sphere. Injustice implies a kind of hinderance in the fulfilment of the possibilities embodied in a particular unit irrespective of its being in possession of freedom of action or not. The freedom of action is the most unique and still the rarest commodity to be found anywhere in this universe. All units of energy have innumerable possibilities in their very make up. Especially those units which possess freedom of action. Their possibilities are nearly infinite. Any hinderance in the fulfilment of those possibilities is a heinous act of injustice. Any law framed for the purpose of providing complete freedom of action of one unit at the cost of other unit or units is surely based on injustice. Injustice in the sense that it creates hurdles in the fulfilment of many possibilities residing in the constitutions of those units whose freedom has been sacrificed.

Humanity is still faced by a challenge to frame such a type of constitution which could have capabilities of developing a mechanism for the fulfilment of innumerable possibilities hidden in countless human units of different societies. If this feat can be performed a real millenium shall usher in the world and perfect society will come into being.

But this hope will certainly not come through. This Universe is composed at the ultimate point of its essence of opposites and therefore incapable to produce anything ideally complete. We human beings having idealism embeded in our very nature, have willy to adjust ourselves to this bizzare predicament in which we have been thrown by the powers that do not seem to sympathise with our wishes or at least with our individual predilections. In this world a society based on just laws, just from the point of view of every unit composing a societies impossible to be established; ergo, everybody has to make some sacrifice of his wishes to make room for the freedom of others to be exercised. Here we must be clear on the point that freedom to be exercised implies fulfilment of the wishes of those whose freedom has been secured.

Freedom and freedom alone is the corner-stone of a just society. But here again just is in a relative sense, as completely just society being idealistic is completely out of tune with the very make up of this Universe.

We humans cannot change the structure of this Universe; the infinitesimally small powers that we fortunately have should be devoted to widen the field of freedom of every individual in a society so as to make the lives of individuals worth living. This is the only justice that we can have in this unidealistic Universe and all laws that guarantee freedom of individuals in a society without producing anarchy are

**just laws from the point of view of those who believe in the hidden capabilities of homo sapiens which could come into play through freedom only.**