

UNDERSTANDING LAW AS SOCIAL PHENOMENON*

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I. Concept of Law as Phenomenon

The spheres of scientific knowledge are (1) the sphere of the natural sciences, which encompass non-living things and forces as well as living things, including human beings and (2) the sphere of the sciences of Man or the social sciences which encompass human society and culture in their diverse forms and facets.

Law is within the compass of the sciences of Man, or the social sciences, because it is an integral and necessary part and component of human society and culture. There is no known occurrence of a situation in human experience, in which an existent concrete society and culture has been without, or has been free of, law. Wherever and whenever a society and its culture are found, there law is also found, suffusing the entire society as part of its web of culture.

Like other components of human society and culture, law is a phenomenon, susceptible of intellectual apprehension with the aid of the human senses, and subject to empirical investigation and scientific description. As discussed below, law is one of the culture forms for the control and regulation of human conduct, be this individual or collective conduct. It is the major instrument of social control in modern as well as in primitive society. It is thus, a subject properly within the science of Culture, specifically, the branch thereof dealing with normative studies. Indeed, a name has been coined for the science of law -- general jurisprudence.

What should be our concept of law, in order that law will be a phenomenon in the sense above stated, hence, open to, and appropriate for, scientific study? Clearly, such a concept of law must set forth and delineate specific criteria and indicators that will provide empirical

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linkages with discrete and recurring events and processes in social experience.

We shall begin with a core or minimum concept of law, and then proceed to more elaborate forms of law as phenomenon. For this purpose, we turn to the concept of a "law" as an enactment with the following identifying characteristics:

- (1) the enactment is expressed in language, generally in written form.
- (2) the enactment defines and conveys a norm as its meaning. A norm is behavior that *ought to be*, namely, what must be done, what must not be done, and what may be done.
- (3) the enactment is for, and made in behalf of, a particular concrete society. Such persons may be a single official, or a body or bodies of officials acting for the society.
- (4) the enactment takes the form of overt and visible behavior of an official or officials, amenable and subject to observation, recording and verification. Such official behavior may be an act, or a proceeding consisting of two or more acts.

The foregoing concept provides for defining criteria or indicators of an empirical character, which permit an investigator to identify a particular enactment as a "law" by segregating enactments which are not law through the differentiating characteristics. The cultural dimension reflected in (1) and (2) places the enactment in the normative field. The social dimension reflected in (3) and (4) places the enactment as occurring in a social order, and as an act of governance. The political dimension reflected by reference to "sovereign authority" in (3) identifies the enactment as emanating from the government of a politically organized society.

The core or minimum concept of law identifies a "law" as any enactment of a norm by the sovereign in a particular society. We shall take this as the basic or root meaning of "law" used in this work with reference to particular enactments. Notice is taken of the apparent circularity in the concept, which will be discussed later on in this paper.

In the course of this work, general as well as particular meanings of "law" will be employed, which are essentially variants of the core

concept but adhering to the basic or root meaning as above discussed. Among the meanings of the word "law" employed in this work are the following:

(1) "Law" as referring to the legal order, which is the totality of the laws enacted in a specific society, or at a distinct period in such society. Examples of the legal order in its totality: Law of Iceland, Law of Malaysia, Law of Switzerland, Law of Rome, Law of Sparta, etc. Examples of the legal order of a distinct period in society: Law of Tudor England, Law of Nazi Germany, Law of postwar Japan, Law of the Roman Republic, Law of Imperial Russia, etc.

(2) "Law" could refer to the mass of concepts, precepts, doctrines, principles and prevailing standards, presented in a systematic manner, pertaining to a specific legal order, or to a branch of law in such legal order. Examples are: A Treatise of English Law, Fundamentals of West German Law, Essentials of French Law, the Swiss Law of Sales, the Canadian Law of Civil Procedure, Introduction of Japanese Constitutional Law, etc. In this sense, "law" is synonymous with particular jurisprudence.

(3) "Law" may refer to the entire universe, or total mass, of concrete legal orders in human experience, as field for research or investigation. In this sense, "law" refers to the field of data or raw material of general jurisprudence.

(4) "Law" taken in its most abstract sense, may refer to a systematic statement of concepts and principles aimed at an adequate description of features and institutions that are universal, in the sense that they are common to all concrete legal orders. "Law" used in this sense, is synonymous with general jurisprudence.

II. The Phenomenon of Law and Empirical Linkages

Law as phenomenon is identified, differentiated and countoured by empirical linkages of its enactment with differentiating social facts through the criteria or indicators specified in the core or minimum concept of the law above stated. The "enactment" which is the substance of the phenomenon, is made out in the description of characteristics as a multi-layered cluster of behavioral events, cultural forms, and socio-political structures and relations, all of which present empirically determinable matters.

First, each "enactment" is human behavior exhibiting discreteness, consisting of an act or a series of acts comprising stages or steps in a proceeding. What imparts discreteness to such act or proceeding, is that it is defined and prescribed either by norms of pre-existing law, or by the quasi-norms of tradition. This element of an antecedent normative mold or pattern which canalizes behavior directed at an enactment will receive full explanation below.

Second, such act or proceeding comprising the enactment process consists of overt, visible behavior of a person, or of a group of persons, or of a body or bodies of persons, all of whom have the status of office-holders of a society under a sovereign order and vested with authority under such order to make, or take part in the making of, such enactment.

Third, in literate societies, the enactment process results in an enactment with objective and visible form, being expressed in particular words of a particular language, and couched in a writing with authenticating marks or signatures. Each particular product or output we shall call a document of law.

Fourth, the enactment in the form of a document of law undergoes a subsequent process called promulgation, through which such enactment is published and made known by different modes of communication.

Fifth, in literate societies, the enactment in the form of original document of law is kept as a public record which all in the society interested therein may inspect, examine, and copy.

The cumulation of events and processes relating to each enactment and culminating in an authentic document, establishes indubitably such enactment as a social fact in itself, and the law thereby enacted as a phenomenon amenable to the scientific description, investigation, and study.

It should be emphasized that for any particular enactment to merit classification or identification as a "law", it is necessary that such enactment satisfy the three-fold test specified in the core or minimum concept as above described, namely:

(1) the *Cultural Form* -- the enactment must convey a norm;

(2) the *Social Matrix* -- the enactment must be made in the exercise of official authority within a social order; and

(3) the *Political Criterion* -- the enactment must be made in the exercise of official authority within a social order of a special kind, which is a society under a sovereign order.

It is not enough for an enactment to meet or satisfy one or two of the foregoing three tests; there must be full satisfaction of all three, in order that such enactment be a "law" within the concept as described.

III. Law as a Culture Form

The world of experience divides into Nature and Culture. The distinction may be broadly stated. Whatever is without intervention of Man, is Nature, and whatever is by reason of the intervention of Man, is Culture. Culture then is the totality of human inventions, brought about by expenditure of human thought or effort or both. Embraced in Culture are tools, instruments, devices and contrivances having physical form or expression, as well as intangibles reflecting ideas, processes, methods or techniques, by which human action is to be guided and facilitated towards the attainment of human purposes.

The domain of Culture presents the following categories:

1. *Cognitive-Technical Culture*, which aims at the understanding, control and use of Nature to meet the needs of Man, and which embraces philosophy, the sciences, technology, the utilitarian arts, and the practical crafts.

2. *Normative Culture*, which aims at the control of Man and of Society, to enable human beings to live together in peace and harmony, through prevention and management of conflict. The main forms of Normative Culture are Dogma, Tradition, Custom, Morality and Law.

3. *Instrumental Culture*, consisting of symbol systems, which are utilized for development, transmission, storage, and processing of meanings and ideas in the other categories of Culture. Among the well-known symbol systems are the different alphabets, numerical systems, arithmetic, mathematics, musical notations, etc.

4. *Aesthetic culture* embraces different forms for the expression of Beauty, such as Poetry, the visual arts, the performing arts, etc.

Normative Culture embraces the whole range of prescriptions on behavior that *ought to be*. Such prescriptions are meant to guide and direct human behavior towards the desirable. There are two types: (1)

prescriptions contained in enactments or Norms and (2) prescriptions elaborated by anonymous social forces without enactment, or Quasi-Norms. The Chief forms of Norm are the Dogma of established churches, the Regulations of social orders, such as communities and voluntary associations, and the Law of each politically organized society. The chief forms of Quasi-Norms are Tradition, Custom and Morality.

Normative Culture has great significance for our study of Law as phenomenon. First, in the inception of every legal order that is evolved over time, it is the Quasi-Norm of Tradition that underlies the sovereign authority for the enactment of law. This point will be discussed at length below. Second, the Quasi-Norms of Custom and Morality are usual sources for the enactment of Law through legislation or adjudication. Third, the Regulations of the different social orders in society, with their underlying values, are likewise sources for the enactment of Law through legislation and adjudication. Norms and Quasi-Norms form the sub-soil, as it were, which directly nourish the plant of the Law in terms of direction of growth as well as specific content. There will be occasion in a subsequent paper for a full discussion on the impact and influence exerted by Normative Culture, over the growth and development of the legal order.

Likewise, Instrumental Culture in the form of spoken and written language is the very tissue of the Law. Every enactment takes on a linguistic form, and it is this form that conveys the Norm (i.e. the meaning of the enactment). The meaning of the language used, together with the applicable grammar and syntax, may affect the existence of the Norm, or the kind of Norm intended. In this way, the efficacy of Law is influenced in large measure by the culture medium of language.

On the question, then, whether or not a specific enactment constitutes a "law", the point that must first be confronted is adequate conformity to Culture Form. Is there a Norm created and conveyed by appropriate linguistic dress? Unless the answer be in the affirmative, there might even be no enactment at all. Hence, no Norm, much less a "law" could arise.

IV. Law as a Creation of Authority

While Form is crucial to the creation and conveyance of a Norm, hence, appropriate language is indispensable, it is true nevertheless, that Culture is but the medium, and that the true creative force underlying every Norm is an act of will in exercise of Authority. This is the sense of an enactment. To "enact" in the context of our discussion, is to exert will

towards the creation of a Norm. Mere exertion of will is, of course, not enough. There must be sufficient force underlying such exertion of will. The minimum prescribed for sufficiency of such force is exertion of will in the exercise of authority in behalf of a social order. This is the minimum condition for the enactment of a Norm.

In our effort to grasp and understand what "law" is, it is necessary that we first grasp and understand its basic component. In the concept of "law" above discussed, this basic component is a Norm. Once we grasp and understand what a Norm is, how it is created, and the conditions of such creation, we will be in a much better position to know what is "law". According to the concept of "law" posited above, a "law" is a norm enacted by authority in a special type of social order. Once we understand then, the process of Norm creation and the conditions of such process, the understanding of "law" would follow. This compels inquiry into authority and its exercise in a social order.

There is another equally cogent reason for such inquiry. While society is the matrix of law, we shall find out that the tissue of society consists of social orders, and that an organic connection obtains between political power in society and social power within the component social orders. We must therefore come to an understanding of "social order" and the "authority" obtaining therein.

In this work, a social order is a group of individuals bound by and sharing common interests of an enduring character, all of whom are subject to governance by those among them who are authorized to act in behalf of the group. The distinguishing features of a social order are: (1) a group of individuals either sharing group life on a sustained basis, or a periodic coming together in the common interest, (2) sharing within the group of common and substantial interests, (3) subjection of all to governance by those in the group with authority to act in behalf of the group, and (4) a system of regulations binding on all enacted by those in authority.

Social orders are of two kinds: (1) communities and (2) voluntary associations. A community is based on an enduring relationship of its members, who live together experience regular and sustained face-to-face interaction, and who share a broad range of interests. Well-known examples of such communities are the so-called nuclear families in all societies, extended families in traditional societies, tribes, clans and other traditional kin-groups, and religious orders or societies.

In the case of a voluntary association, the membership has come together because of a common interest which is highly specific and limited. Membership of any individual in the association is terminable at the will of either, and there is only sporadic or periodic coming together of the members for highly limited activities concerning the common interest. Nevertheless, it must be borne in mind that reference is confined only to formal, organized and stable associations. There is no significance for our study of highly informal, temporary and amorphous groups; or *ad hoc* associations existing only in the short term.

Authority within a social order springs from community of purpose and sharing of goals and interests. Such purpose can be realized, goals attained and interests maintained and protected, only through social power exercised in behalf of the entire group. Social power arises from the collective responsibility for the collective interest. Such social power has three aspects: government, authority and regulation. Government is simply the person or persons entrusted with the office to carry out such collective responsibility. Authority is simply the power pertaining to offices of responsibility in government. Regulation is the exercise of authority in laying down rules of governance and in securing their implementation and enforcement.

It is in the laying down of rules of governance that there is enactment of norms. Norms are inherent in rules of governance, for norms stipulate the behaviour that *ought to be*, in the three forms previously mentioned: mandates on acts to be done, prohibitions on acts not to be done, and permissions concerning acts that may be done. Clearly, therefore, norms are created through enactment for the regulation of conduct within a social order, by exercise of authority of officials of government therein.

Thus, for the enactment of a "law", not only must such enactment be in the appropriate Culture medium in terms of suitable language, such enactment must be by officials of the government within the social order for the regulation of conduct therein. Such enactment must be by act of collective will through the exercise of authority by proper officials of government within the social order. If so, we are one step closer to a "law".

V. Law as enactment of the sovereign

It must be made clear that from the three-fold test we are elucidating, no "law" will or can arise unless such test is fully met. Thus, while every "law" is a norm, not every norm is a "law". Although an

enactment appears in the proper Culture form, and constitutes a norm, it is not necessarily a "law". For such enactment to be a "law" the third requirement must be hurdled successfully, which is that the enacting authority must be sovereign.

This brings us to the crucial or decisive feature, which separates and distinguishes norms that are Law from norms that are not. The thought has long persisted in general jurisprudence, that such distinctive or distinguishing feature is to be found in the norms themselves, either in terms of the nature or quality of their content or in terms of their relationship. The idea developed in the present work is that such distinctive or distinguishing feature is not to be found in the norms themselves or in their relationship, indeed, it is not to be found within the field of any set of norms, but *outside* the norms entirely and even outside the whole field of Normative Culture. Such distinctive and distinguishing feature that makes norms truly norms of Law, is the nature or character of the Social order that has created or enacted them. In other words, the criterion for separating norms that are Law, from norms that are not Law, is not to be found in the field of Normative Culture, but in the field of Social Systems. It is not the character of the norms themselves in any respect by which they are to be identified as Law, but the character of the Social Order that gave them birth. The definitive test is not the quality of the norm in any respect, but rather its *source*.

From the standpoint of the present work, the identification of any norm as a norm of Law hinges on the question, What is the character of the Social Order which enacted such norm? Where the enactment is by a Sovereign Order in society, then such norm is a norm of Law, regardless of its content. Where the enactment is by a Social Order not constituting a Sovereign Order in society, then such norm is not a norm of Law, however much it may resemble norms of Law in terms of its content.

From this, we may now present a definition of a "law" for purposes of this work, which is harmonious with the concept of law earlier stated. A "law" is any norm enacted by a Sovereign Order in society. More precisely, we should say that a given norm which has been enacted by a particular Sovereign Order in society, is a "law" of that society. Such a norm is not a "law" of any other society, except of that society whose Sovereign Order had enacted it. This point underscores a characteristic of norms of Law not necessarily shared by other types of norms or other types of culture forms. Law as a type of phenomenon is universally experienced, in life within a society any time and any place would yield experience of Law. Nevertheless, the Law that is experienced is generally, only the Law of that society but not the laws of other

societies. Laws in their concrete form are localized and parochial. Thus, the alphabet or system of numerals may be shared by many societies, or even customs, usages, manners, and morals; but Law is individuated, and laws are enacted and applied on the principle of "each to his own". This topic will be further discussed in connection with territoriality of norms.

Let us now proceed to a consideration of Sovereign Order in society. This refers to any aggregate of social orders within a definite territory under governance of a ruling class exerting, or capable of exerting, supreme power through a military organization. The elements of such a Sovereign Order are: (1) a society (2) under governance by a ruling class and; (3) with supreme power backed by armed forces. These elements will receive extensive discussion in a separate paper.

A society is a distinct form of social order, in that it is an aggregate of different social orders within a definite territory. Generally, a social order has as its components individual human beings. In the case of a society, the components are not individuals but communities and associations consisting of individuals. A society is an umbrella organization embracing many other smaller organizations. It is an aggregate of aggregates. Likewise, it is distinguished from other social orders by the element of territory. Except for extensive kin-groups, social orders generally occupy small areas sufficient for living space. A society, however, because of its numerous components must occupy a fairly extensive portion of the earth's surface on a continuing and permanent basis.

Within the society, the relationship of the different communities and associations comprising the social orders, depends on their strength and on the needs of the society. Social power accrues to groupings having great physical power, or enormous economic resources, or mystico-religious power, or intellectual resources. Dominance, or control of social power in the society, may pertain to one grouping of communities, or to a combination of two or more groupings. The dominating communities may give the society its character through their pervasive imprint upon societal life. A warrior society is one dominated by the military caste. A society may be religious in outlook where it is dominated by a monolithic church. A society may be industrial where it is dominated by the industrialists and capitalists.

A society is integrated, where the dominant grouping or groupings allow the other communities ample access to, and sharing in, public power. On the other hand, a society is stratified if the public functions are categorized, and specified functions may be performed only

by members of a designated community. A society is segmented, if all or nearly all public functions are reserved only for members of a specified community, as in the case of a colony, or a society pursuing an apartheid policy.

A ruling class consists of all persons who hold leadership or ranking positions in the dominant grouping or groupings of communities in the society, including those holding positions of importance in government or in quasi-public institutions, such as political parties, media organizations and civic associations. In an integrated society, all or nearly all the communities contribute prestigious or influential members to such ruling class. In stratified societies, it is the holders of leadership and ranking positions in the advantaged or privileged communities who constitute the ruling class. A similar case obtains in segmented societies.

A ruling class is an informal structure, hence, its membership in any particular society is not determinable with precision at any given time. There are different indicators of membership in such class. First is the holding of a leadership or ranking position in any of the communities embraced in the dominant group or groups. Second is participation in the key policy processes dealing with great public questions, through discussions at prestigious forums, advisorships, or consultations. Third is involvement in high-level action groups in any situation presenting a national emergency. Theoretically, it is possible to list all persons in mutual consultation with one another on the occasion of a grave national emergency. Such list would correspond substantially to the membership of the ruling class in such a society.

Governance of society by the ruling class is effectuated through a formal machinery of office-holders, the upper ranks of which are held chiefly by members of the ruling class, or by persons having their trust and confidence. It is through such officers that policies acceptable to the ruling class are translated into laws, by enactment in the exercise of authority of such officers exerted in behalf of the entire society. Particular enactments yield laws, while the totality of the enactments constitute the legal order of the society.

The sovereign character of governance derives from the backing given the Authority of government and its officers by a military organization consisting of armed forces. This is the true foundation of supreme power within the society. The supreme power results from a conjunction of two conditions: (1) a monopoly or near monopoly of large-scale armed forces by the government and (2) an asserted right of

government to a monopoly of the right or prerogative to the use of force within the society.

Within a given society, social orders gestate the policies essential to their interests. The ruling class aggregates, harmonizes and articulates the policies, the government enacts the policies into law and implements them, and the military organization provides the force for ensuring general obedience and conformity.

Seen in this light, Law is a cultural instrument enacted and administered by the government for social control and regulation, in the interest of the dominant communities within the society.