

# Some Philosophical Theological Comments on Law in Society

## Introduction

The word law used in many senses:

- (a) In the physical sciences - a hypothesis put forward by human intelligence in order to bring order into our sense-data, so that we can make "sense" of our experience (e.g. law of gravity, second law of thermo-dynamics etc)
- (b) Law in the Social Sciences - less precise than (a), but still helping to predict behaviour in the aggregate. Greater degree of freedom in man than in the <sup>physio.</sup> <sub>chemical</sub> and <sup>physio.</sup> biological sciences - means social sciences become less scientifically precise.
- (c) The laws governing special societies - Statutory laws ~~of~~ of a corporation, the law of the church etc
- (d) The law as a biblical concept Ha-Torah as a technical notion
- (e) Common law or Civil and Criminal law - Roman-Dutch law, Anglo-Saxon law, & law etc

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as both Science and Mystery, but ought to examine it as a science

The rational element and the Transcendent or Trans-logical element are always in mutual tension.

The notion of mystery should not, however, be used to cloud the what is logically clear.

The tendency in both Anglo-Saxon law and Roman-Dutch law to refer the concept of law itself to the divine will or to Cosmic law - (natural law)

Is there Are there certain fundamental principles common to all legal systems? If so on what are they based?

Is there a law

that " when St. Paul writes in affirming do by nature the things of the law, then they having no law are a law to themselves in that they show the work of the law written on their hearts, their conscience bearing witness thereto"?

Are our laws related to some ethical absolute? If so, what are they? How can we recognize these absolute?

Is there any "ideal law" which act as a norm for "real law" - or is it our real law' ~~that~~ the criterion by which we can evaluate the claims of any law principle to be ultimate, transcendent, or ideal? Locke, Rousseau & Medieval theologians held ideal as norm for real. The new philosophers (the law like Grotius and Wolff held to the position that positive law could prohibit what is

- Freedom of Man again.

Among the ancient Roman Jurists, ~~that~~ law was natural which dealt with mishaps common to man and the animals.

## II The Concepts of Natural Law and Human Freedom

Some further Considerations

- 1 General recurrence <sup>in all ancient cultures</sup> of the notions of Jus divinum and a jus naturale derived from it
2. Jewish speculation that the law was created before "the foundation of the world"
3. The Concept of Rta in Indian Thought probably goes back to pre-Vedic times parallel to Greek notions logos and nomos. In Hindu Thought men and gods can violate Rta. Ancient Hindu religious law (Dharma) upheld man in the path of Rta, and helped restore him when straying.
4. In Greek thought. Socrates of Athens regarded law as superior even to Zeus (God). The Gods. The chief God, Zeus was guardian of the law, but himself subject to it. Plato developed the notion further.
5. Roman law Cicero says, all men have received the reason and law (Greek logos and nomos, Latin ratio and lex) from Nature. And one eternal law is universally valid.

(6) Augustine introduces the notion of the will.  
The law comes from the will of God & has to be accepted by the will of man. God's will is known from the scriptures, but confirmed by our own rational intuitions.

(7) Thomas Aquinas Great contrast between Augustine & Thomas.

(a) Augustine - If man had not fallen his will would not have been sinful & he would not have needed law  
Aquinas. Man is a social animal & needs law even in innocent state

(b) Augustine The State is to restrain evil & should be minimal (<sup>law + order</sup><sub>state</sub>)  
Aquinas The State is to promote the common good (Welfare state)

(8) The role of human freedom found little expression till the 20<sup>th</sup> century. The Puritan fathers { America wanted individual freedom. The French revolutionaries wanted 'liberte' - again individual personal freedom.

Marx was one of the first to draw an attention to social freedom