

PHILOSOPHY OF NATURAL LAW

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By philosophy of law, for the purpose of this article, is meant the pursuit of wisdom, truth and knowledge of law by use of reason. In other words, philosophy of law means the rational investigation and study of the basic ideal and principles of law. The philosophy of natural law is the subject of this article. Longing for a Higher Law — In the human bosom there has always been a longing for a higher law than those made by the community itself. The divine theory of law, the theory of natural law, and the principles of natural justice are some theories or notions found in fulfilment of this longing. Divine laws are those ascribed to God. Divine rights of kings were supposed to have been derived from God. Laws which are claimed to be God-made, may not be amendable by man; and their reasoning and provisions also not to be questioned by man.

Greek thinkers from Homer to the Stoics, and reflections of Plato and Aristotle mainly provide the beginning of systematic legal thinking. In Homer, law is embodied in the themistes which the kings receive from Zeus as the divine source of all earthly justice which is still identical with order and authority. Solon the great Athenian lawgiver appeals to Dike, the daughter of Zeus, as a guarantor of justice against earthly tyranny, violation of rights and social injustice. The Code of Hamurapi was handed over by the Sun god. Manu's Code was taught by Bhrgu to the sages as he learnt from Brahma himself.

Plato's (428-348 B.C) Writings— Plato began with the idea of Sophist Calliclas that proclaimed the "right of the strong". In natural animal as well as in human life the strong exercise superiority over the weak. In a famous passage in the Republic, Plato puts into the mouth of Thrasymachus, who was convinced that laws are created by the men and groups in power to promote their own advantage. Thrasymachus thus defined justice :

"I declare that justice is nothing else than that which is advantageous to the stronger"

Plato was deeply convinced of the natural inequality of men, which he considered a justification for the establishment of a class system in his commonwealth. He exclaimed :

"You in this city are all brothers, but God as he was fashioning you, put gold in those of you who are capable of ruling; hence, they are deserving of most

reverence. He puts silver in the auxiliaries, and iron and copper in the farmers and the other craftsmen. For the most part of your children are of the same nature as yourselves, but because you are all akin, sometimes from a gold will come a silver offspring, or from silver a gold, and so on all around. Therefore, the first and weightiest command of God to the rulers is this—that more than aught else they be good guardians of and watch jealously over the offspring, seeing which of those metals is mixed in their souls; if their own offspring has an admixture of copper or iron, they must show no pity, but giving it the place proper to its nature, set it among the artisans or the farmers; and if on the other hand in these classes children are born with an admixture of gold and silver, they shall do them honour and appoint the first to be guardians, the second to be auxiliaries. For there is an oracle that the city shall perish when it is guarded by iron or copper.”

In Plato's commonwealth men of gold are to become rulers; they must be philosophers (for until philosophy and governmental power coalesce, there will be no end to evil in the State) and they will be endowed with absolute power, to be exercised rationally and unselfishly for the good of the State. Justice without law Theory Revised. — In his Republic, Plato's view was that in deciding dispute judges should not be bound by fixed and rigid rules embodied in a code of laws, but they should have wide discretion. The State in Plato's Republic is an Executive State, governed by the free intelligence of the best men rather than by the rule of law. Justice is to be administered “without law”.

In his 'The Laws', however, Plato changed his earlier view. The governing authorities of the State are no longer free to administer justice without written codes and legal enactments; they are to become the servants of the law, bound to take their directions from general enactments which are to guide the conduct of the citizens without respect to persons.

Aristotle's Sovereignty of Law. — Aristotle (384-322 B.C.) noticed that Plato himself had come to realise that “no human being..... is capable of having irresponsible control of all human affairs without becoming filled with pride and injustice”. Aristotle was a realist and he postulated a State based on law as the only practical means of achieving “good life” which, according to him, was the chief goal of political organisation. “Man”, he exclaimed, “when perfected is the best of animals, but if he be isolated from law and justice he is the worst of all.”

“Rightly constituted laws.” said Aristotle, “should be the final sovereign; these laws should be sovereign on every issue, except that personal (that is, executive) rule should be permitted to prevail in those matters on which the law

was unable to make a general pronouncement.” Aristotle held that “the rule of law is preferable..... to that of a single citizen.” Even though he agreed with Plato that, if there was a man of outstanding eminence in virtue and political capacity in the State, such a man should become the permanent ruler. He insisted that even such a “godlike” man must be a lawgiver, and that there must be a body of laws even in a State governed by such a man.” He who commands that law should rule may be regarded as commanding that God and reason alone should rule; he who commands that a man should rule adds the character of the beast. Appetite has that character and high spirit, too, perverts the holders of office, even when they are the best of man. Law.....may thus be defined as “reason free from all passio”. Aristotle finds man as part and master of nature. Man dominates nature by his spirit which enables him to will freely, to distinguish between good and evil. This led to the natural law philosophy of Kant as of Hegel; of John Stuart Mill, Herbert Spencer as of Del Vecchio and Kohler. Aristotle distinguishes distributive and corrective justice and analyses natural justice as he distinguishes natural law from positive law, the former deriving force from human nature everywhere and at all times. He envisages natural law as body of rules binding upon the magistrate as well as the people. Natural Law. — Natural law or “jus gentium” of the Roman jurists of the Antonine age denoted a system of rules and principles for the guidance of human conduct which, independently of the enacted law of the systems peculiar to any one people, might be discovered by the rational intelligence of man and would be found to grow out of and conform to his nature, meaning by that word the whole mental and physical constitution.

Mankind’s search for justice found the idea of natural law as something higher than positive law. The Romans found applicability of natural law. The Roman jurists followed the Stoics in building that reason governed the universe in all parts as man is a part of universal nature and is governed by reason in fulfilment of his faculties. To live according to nature means to live according to reason. The Romans did not directly create a body of natural law but from the ideas of ‘jus gentium’ as the embodiment of law and usages observed among different people and representing general good reason followed the idea of ‘jus naturale’. While ‘jus civile’ was applicable to the Roman citizens, ‘jus gentium’ was applicable to all nations. ‘Jus naturale’ was higher law and deviation therefrom was not to be. Natural law philosophy came to influence legal development and has created notions as ‘justum’, ‘acquam et bonum’ and ‘ex debito justitiae’.

CICERO (106-43 B.C.), the great Roman lawyer and statesman was strongly influenced by the ideas of stoic philosophers. Like them, he was inclined

to identify nature with reason and to assume that reason was the dominating force in the universe. All men have reason in common and also right reason in common. Law must conform to the right reason, i.e. must be governed by natural law. "True law is right reason in agreement with nature; it is of universal application, unchanging and ever-lasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions. And it does not lay its commands or prohibitions upon good man in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely..." Cicero viewed natural law as universal law for all times. He wrote : "And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times and there will be one master and ruler, that is God, over us all, for he is the author of this law, its promulgation, and its enforcing judge". De Re Publica. BK.III, XXII.

The philosophy of natural law influenced the development of Roman law from a law of Rome into a law of the developing world. From the ancient Twelve Tables Gaius (101 A.D. to 177 A.D.) compiled his Institutes and thereafter Justinian (527 A.D. to 565 A.D.) compiled his Institutes which were given the force of law. It is interesting to find, in one view, in the Sumati's Code, Manusmriti, was also composed approximately between 150 A.D. and 500 A.D. and it also contains the idea of revelation. The philosophy of natural law influenced legal thinking throughout the centuries until renaissance; and even thereafter legal philosophers expressed faith in it. Meanwhile the digests, pendants and glossae were written on Roman Law and its study spread over. St. Thomas Aquinas (1226-1274) defines law as "an ordinance of reason for the common good made by him who has the care of the community and promulgated". According to him, since the world is ruled by divine providence, the whole community of the universe is governed by divine reason. Divine law is supreme. But the whole of divine law is not accessible to man. Such part of it as is intelligible to man reveals itself through eternal law as the incorporation of divine wisdom, which gives direction to all actions and movements. Natural law is a part of divine law, that part which reveals itself in natural reason. Man, as a reasonable being, applies this part of divine law to human affairs, and he can thus distinguish between good and evil. It is from the principles of eternal law, as revealed in natural law, that all human law derives. But St. Thomas establishes a fourth category, which seems to stand in a similar relation to human law as eternal law does to natural law. This is the *lex divina*, the positive law, enacted by God Himself for all mankind, in the Scripture. All law enacted by human authority, that is positive law, must keep within these limits.

William of Occam (1270-1343 A.D.). — A somewhat different system was developed by William of Occam, one of the most original medieval thinkers. His hierarchy consists of :-

- (1) Universal rules of conduct, dictated by natural reason.
- (2) Rules that would be accepted : as reasonable and therefore binding in a society governed by natural equity without any positive law.
- (3) Rules which may be deduced from general principles of the law of nature but, not being of a fundamental character, are liable to modification by authority.

For the philosopher rather than the jurist the significance of Occam's teaching lies in another aspect" he and the slightly older Duns Scotus identified law with the absolute will of God, which is not identical with the essential nature of things. God's will is subject only to His own arbitrary decree. This, according to some non-scholastic philosophers prepares the way for the supremacy of will over intellect, and, politically, for the acceptance of the absolute power of the sovereign.

Medieval jurists developed from natural law the ideas of private rights of the individual. Natural law philosophy has thus performed many functions. It provided an ideal or higher law to which positive law must try to conform. It transformed the Roman Civil law into the law of the world; in its name the validity of international law was ascertained; and Grotius developed the system of international law. It led to two other powerful developments. It led to the idea of inalienable rights of the individual, and the juristic development taking natural law as a higher law which invalidates inconsistent positive law and as an ideal to which positive law ought to conform.

The natural law theory led to the notion of sovereignty of modern State. Both the ideas of universal order governing men and all the inalienable rights of the individual. In the writings of Locke (1632-1704 A.D.) and Pain provided the foundation for the individualistic philosophy, extolling individual's inalienable fundamental rights.

With the development of science and technology and the nations competing in acquisition of knowledge of the common properties of mankind like the sun, the planets, the outer space, the antarctica and the polar regions, the ordering or regulating of human behaviour would be possible only through an ideal law above the positive, the municipal laws of the countries. Reduction and control of trans-boundary pollution also needs such ordering or regulation. Presently we find the United Nations carrying on the declaration and expansion

of human rights including political, economic, cultural rights have advanced a great deal towards acceptance of such a higher natural order. The need for preservation of Global and regional environments, protection of the ozone layer and avoidance of global warming, and protection of nature's bounties like forests, the seas and space make it all the more necessary to pursue such an ideal. Till then the resolutions of the U.N.O. and the international conventions in different fields indicate great deal of Global cooperation without which the fruits of science and knowledge will not be enjoyable to mankind. Throughout human history it has been experienced that human reason, knowledge and sciences are not to be confined to geographical or political territories. Human reason refuses to be confined to political or geographical territories. Recent developments in demolishing the German partition walls, hitherto considered inevitably necessary, and challenges to monopoly of powers in certain groups have amply shown the value of human wisdom, reason, liberty and aspirations. There is, therefore, immense need for Global cooperation to be followed by Global compact and ultimately a Government for the Globe, the home of mankind and the finest creation of God.