

## LAW, SOCIETY, AND THE INDIVIDUAL

It is commonplace today to define law as an instrument of social control. Unless, however one construes this definition as stipulative, so that it becomes wholly arbitrary, as a definition it fails. For, while part of the intention which leads to this definition is clear, that there can be no trace of the personal or of the authoritative individual in the law, and that it must fit into the dead center of the communal and the social, just the same as any kind of factual description of law, the definition fails. For it errs in equating law as a whole with one special kind of law, i.e., statute law, no matter whether the latter be considered either as normative or as the positive specification of action; more important, perhaps, it errs with respect to cause. Here it seems to assume that society as an entity somehow exists prior to and apart from law, which in effect becomes its creation. But society and law do not and can not exist apart from each other as separate things, nor is it possible whether empirically or analytically to see how either could have come into existence without the other, any more than we can separate the existence of language from men or if men from language. While it is obvious that particular laws are among the effects of the actions of particular societies, it is equally obvious that every society exists as a mode of pattern and structure (whatever its tendencies and processes) which all recognize as binding and determining it. So much so, as to have all the character of controlling and governing it, in the sense that all actions occurring within it take their start from there. It is just this binding and determinacy, controlling and determining, however, which we recognize as legal, or rather as law, at the heart. It is law which one identifies with constitutions, whether written or unwritten.

Society is just such a patterned thing, for without a lived pattern society at once dissolves into that horror, of milling and mutually destructive individuals identified by Hobbes with the original state of nature.

In short, while governments make laws, law makes government. Wha-

tever happens, whatever actions place in a society, these always define themselves against this constitutional background which we take to be society itself. Thus society as law determines the means, role and the effects and efforts of governments. As for governments, they are means or instruments through which society in the form of a community defines, proposes and executes whatever purposes are felt to be for the public good, or are at any rate, put forward in the name of the public good. Such proposals when adopted we recognize immediately either as particular laws or as the body of particular laws.

One can take laws in this sense, at least for short hand purposes, as fashioned by society or by government as the instrument of society, so that laws would appear as social and public entities entirely, quite separate from persons and individuals. This would be a mistake. Not to define society in this context would certainly incur the danger of thinking of society as some sort of really existing and autonomous individual whose properties are wholly different in kind from those of individual people.

Society is not an individual, nor is it autonomous. Or rather it is an individual but only so in the narrowly logical sense by which one distinguishes any member of a class from any other members of the same class, whatever the distinguishing characteristics of that class may be.

Society does not exist as an autonomous individual, nor can it ever be such an individual, for it is neither intelligence, nor will, nor is it substance in the sense of persisting identical with itself through change.

So to have intelligence, to be able to act through the exercise of reason and will, to be identical with ourselves at the beginning and end of action, these belong to our common humanity and natural character. These are the primary social realities, nothing else. Whatever is social is to be found either in the action of some person or other, or comes from any such action, or else is a matter of interaction among persons; that is, the meeting or modifying of individual actions or performances either with or by one another.

Society, then, as a meaningful term, if only in the sense that it is not some figment of the political imagination, must either designate a moving reality other than our own persons, which of course it cannot do, or else it must and can only refer to some relation of action or interaction between people. Since the first alternative is unacceptable, we take the second. This choice is easier than one might think, if only because it is in such strong accord with general usage.

Society, then, and we now couple such words as community, tribe, nation, state, town, village as just so many variants of it is simply a form of



relation between the workings and actions of persons, at the same time encompassing every kind and every degree of this relation.

The deliberate actions, including the making and enforcing of laws which people so related take are designed to strengthen or to preserve that relationship, or to give it shape or direction. The field of these actions is society.

What then is this relationship, or more strictly, what is common to its many forms, such as producing things, making livings, raising children, teaching, painting, performing and the rest, including the making and to work at all we must find ourselves in constant and perpetual contact, communication, dependence and interdependence upon and with others we call and recognize as society.

Each of these is a relation the defining terms of which always exists as one human person, But the total form of this communication, interdependence and so on is what we call and recognize as society.

Because this relationship always involves action, it must imply purpose.

Since this purpose is not alone to preserve but to advance ourselves, it is easy to see that one identifies it with the good. It is the job of society to achieve the good, it is the job of laws to bring about this good by specific and concrete definitions and steps.

Society, then, and along with it, community, family, tribe, and the rest always appears and continues with the recognition by and among one or several individuals that to secure life and to achieve whatever the wish is to make of it always carries along with it an indispensable and determinate relation with others. Nor does this come about through a particular point in time, as Athens was there for Socrates, discovered most of all when, rejecting his innocence, it forced him to drink the hemlock. It is in society that one comes to the substance of life.

It is through society then, that one steps to the achievement of the good; law enables us to take those steps jointly with others, certainly where others are co-workers in acquiring just this achievement. For, among other things, public choice always involves the rejection, and then, even the forbidding of other, and now formerly possible alternatives.

With the acceptance of a given choice, now distinguishable as law, choices once held viable are now rejected and impermissible, and during the terms of the law are to be prevented. At this point it may be appropriate to speak concerning the changing of laws.

It is a matter of the hypothetical —if we find a certain state of affairs to be such that we cannot alter it without affecting us for the worse, then

clearly the law designed to secure the continuance of that state of affairs could not well be altered. But with another state, of affairs this is not so, then just as clearly while violation of the law is indefensible, possible change of the law is not. But while the law exists it exists to be obeyed. That is to say, it should not be obeyed as in the case of a tyrant's command, where one acts through fear, but it is obeyed in just the way that we obey our wishes or decision when take the steps which we believe will bring them about; in other words, when we follow through.

So to return now to an earlier point. Society is nothing if not a man or men acting and interacting singly or together with others. Further, the color and constitution of any society will be the color and constitution of that performance or for any given condition and set of performances. It is this which overarches and defines at any time and place the particular day to day activities and choice of individuals already so involved.

In a word, no man makes a decision to join or separate himself from society in this broad sense, for society is neither different from him nor alien, it is in effect what he is insofar as his actions reach to others, or as those of others reach to him.

The statements and meanings sometimes taking the shape of commands and prohibitions, which here define and declare the range of activities of the man and of what is called his society are law in the primary sense, recognized for the most part in written or unwritten constitutions, and always discernible in the complexion, character, direction, tendency, and processes of any society. Law here in the shape of a constitution is the spirit or sense of a society. It is a man's recognition of himself as constituting in his relations with others the way to the achievable total of human possibility.

It is law in this first sense which stands, even only implicitly, behind every legislative and executive act, and which gives them authenticity.

It is the authority behind every law enacted or administered by government operating in the only valid way that it can, as the agency through which the general sense and purpose of a society wins expression and is fixed in particular times and places.

In this way the concern of law is with the potentialities of everyone of us, though presumably as an affirmation, with our potentialities for good. It is therefore a mistake to place, in trying to understand what law is, too much emphasis upon finding the law in principle as normative. It is not important to know that law sets expectations, even the devil does this, but rather to determine just what these expectations are, and are best.

Since society then as a reality only exists as that aspect of any person

which designates his condition as modified or dependent upon his relations with others, it follows that it is false to ever postulate a conflict between individual and society, or even to measure or weigh their alternate values, as if one had to choose between them. It is especially false if the conflict is held to imply a difference between two independent and external entities. There may not, in any given situation, be conflict between individual and society, it does not and cannot exist. And where it does seem to exist, it exists in a way similar to that of an individual caught between his own hesitations.

So we can now say what the function of law is: Law operates as the means expressed as statements which formulate the rules and criteria of social and political action through which the latent possibilities of men can be brought in the form of society into secure, communicable, and public existence. And if this is true, then it follows that human existence without law is either impossible or meaningless.

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