Law, Logic and Ethics: Issues at the Heart of Society and Polity

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Law or, rather, the legal system concretizes logic and ethics and, in doing so, 'constitutes' both society and polity in a way that provides a radical break from the manner in which they existed and functioned before man's self-consciousness either created or brought it into being. The sense of justice or what Kant has called 'right', that is, the justified distinction between 'mine' and 'thine', to use his terms were, of course, present implicitly before, as was the sense of values in general or 'right' and 'wrong', or the 'correctness' and 'incorrectness' in arguments that people continuously gave regarding the matters they discussed. Thus, the self-consciousness of norms implicit in these judgements regarding thinking and action and their explicit formulation raised the problem of their actualization and of the 'coherence' amongst the 'rules' that this attempt at actualization inevitably entailed.

The differentiation and segregation of the political functions which we have discussed in an earlier paper, and which introduced the radical distinction between those who ruled and those who were ruled, necessitated a division in law between that which constituted the polity and spelled out the criteria, functions, powers, privileges and duties of those who could rule or qualify for ruling and others which centered round what Kant has called the notion of 'possession' which is distinct and different from the fact of 'physical' possession as the former has no limits of space or time intrinsically inbuilt in it. Not only this, the notion of legal or juridical possession, as Kant pointed out, brings a civil society into being where the 'right' of each entails an 'obligatory duty' on all the others to respect, foster and help in its maintenance and active functioning just as it imposes on oneself the duty to do the same in respect of

all the others. This is the category of 'reciprocity' lying at the foundation of a civil society and constituting it ideally in terms of which alone it can define itself.

But this constitutes only a 'society', and not a 'polity', and that too only 'ideally' as, at the purely transcendental level at which Kant's thinking is functioning, 'mankind' would have to be constituted as a 'whole' without the limitations of space and time, that is, 'seen' as a unity without reference to past, present or future. Kant, of course, does not see this implication of what he has said, nor does he realize the strange transition in his thought from the 'transcendental' to the 'transcendent' at this point as the notion of 'mine' or that of 'possession' becomes a 'possessio noumenon' which alone provides the foundation for the 'possessio phenomenon' that we actually find in what he calls a juridical or civil society.

The deeper problem with the concept of 'right' or 'possession' in terms of which he understands it, is that neither its relation to the 'moral good'—as conceived of in his system—is very clear nor is its relation to the 'freedom' of the 'other' which it necessarily presupposes as the 'thine' and 'mine' are equally, reciprocally, balanced in his system as the 'thine' is somebody else's 'mine', just as 'mine' happens to be his or her 'thine'. But 'freedom' in this case cannot be conceived as the 'good will' or the 'will to do good', but only as one's duty *not* to deprive the other of that which he or she 'rightfully' possesses, that is, only negatively.

But what exactly is meant by 'rightful' possession is not made clear, nor is the issue raised as to how the dispute or difference about it is to be settled, and the 'decision' made effective, and that this all has also to be 'accepted' by everybody, and that this 'acceptance' has to be an *a priori* transcendental condition of a civil society, that is, of being a 'human community' in the complete sense of the term.

The problems raised by the necessary postulation of a plurality of centres of freedom to make the moral realm intelligible, comes to the fore when the world of human interactions begins to be expressly grounded in 'rules' that are deemed to be necessary for the stability and predictability of those interactions so that 'action' may take a 'form' and a 'shape' visible and intelligible to the actors

involved. Action based on 'freedom' is neither anarchic nor chaotic nor random, and never disjointed or atomic, as most notions of 'freedom' seem to imply and which, strangely, seem to result from 'morality' itself as each imposes restrictions and limits its exercise in ways that are not 'liked' by it. The demand for 'universality', 'objectivity' and 'equality' seem so self-evident and unquestionable when theoretically formulated that one easily forgets the impossibility of their realization because of the self-contradiction involved in each and all of them. The impossibility and the contradiction get quickly revealed the moment one tries to actualize or realize them, as any study of the functioning of law and its history in different countries, contexts, climates and civilizations would attest. The so-called 'universality' is never really 'universal' and cannot be so in principle as there is no universal society or polity within which it may even aspire to be so. As for 'objectivity' and 'equality', we are acutely aware when they are absent or being violated or ignored, but how they are to be understood in positive terms and what would it actually mean for them to be completely realized, is difficult to say. Perhaps, they are like 'values' whose 'negatives' are known so poignantly and yet about whose 'positive' we can only be fitfully aware and, even then, be in half-doubt whether this was the 'real' thing meant by them. The shoe, as they say, goes on pinching, only sometimes more, sometimes less, and sometimes even making us forget for a little that it is there because one's mind, for the moment, has gone elsewhere.

But the unbelievable 'truth' is that minds can go elsewhere, that consciousness is not bound to senses in such a way that it is their 'bonded slave' for ever. Nor is it so 'self-centered' as not to be able to move 'out' of itself and be concerned with 'others', their good and their welfare. Yet, the moral consciousness in which this is generally achieved is centered too deeply in the modality of its own motivation symbolized in the notion of 'conscience', or 'the good will' or 'duty for duty's sake' that the 'other' vanishes for it or becomes irrelevant as it is only a contingent symbolic necessity, something to hold on to in thought, something so general as to have no specificity about it, or what Hegel would have called 'nothing', a vacuous variable to be filled in by anyone, whoever he or she may be, as 'who it is' does not matter.

Law has to remedy this and make the realization of the 'good' 'situation-specific' without giving up the demand for 'universality' which it interprets in terms of 'rationality', not as it is used in the context of 'knowledge' but that of action. Reason, as it functions in the realm of morals, is not the same as 'instrumental rationality' or what Kant called 'prudential morality' and the latter is not the same as is found in that which is called the 'seeking of truth' or knowledge in the context of man.

Law has a dimension to it which defies the notion of reason or 'rationality' as generally understood in the context of knowledge on the one hand and action, whether seen intrinsically or instrumentally, on the other. It is, and has to be, interested in the specificity and particularity of what it has to deal with, and this not in the interest of some 'universal' whose instance it happens to be or for some theoretical generalization for the grasping of which it functions as a 'contingent accident', but rather for itself in its 'absoluteness', even though it has to 'classify' the specific or the particular, just as one does in art or history. It differs, however, from these two in a radical manner, for against the former its interest is cognitive through and through while against the latter, it is not interested in 'relating' what happened or 'was the case' to the whole host of earlier events in which it is embedded and in terms of which it is supposed to become intelligible.

History is known for its perennial problem of finding what 'actually happened' and how it is related to the 'evidence' from which it is constructed. Law encounters the same problem, but in a different manner as the 'Law of Evidence' on which the legal structure may be said to rest, attests. It also encounters the problem of 'classification' which has been at the center of the cognitive enterprise of man, even though it is at present maligned. But its 'classification' has simultaneously a cognitive and a value-dimension in it which is usually 'hidden' in the disciplines that consider themselves purely cognitive and, hence, 'value neutral'. The valuational aspect of the classification has an in-built imperative for action which all 'values' implicitly possess, and thus create the real dillemma for cognitive classification which generally remains suppressed or hidden in the cognitive disciplines where the successive changes in the classification criteria over a period of time would reveal the

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Law has another aspect which it shares with other domains, but in its own peculiar way. It also seeks 'coherence' on the widest possible front as it has to take into account not only the whole realm of values with its internal conflicts, but also their 'feasibility' and 'practicality' in the changing context of knowledge in all domains and the applications thereof through not only the technologies based on them, but the institutions built around it.

Coherence that is sought in other fields is limited and partial as one can afford to ignore what is happening elsewhere, as is so glaringly evident in what is called 'knowledge' where one discipline hardly knows what is happening in other disciplines. The so-called search for 'unification' is a myth propagated and believed to preserve the idea that all knowledge is of a piece and that there are no radical differences and divisions in it, and that it always remains the same, with neither change nor growth in it.

The realms of action and feeling are even more impervious to this demand for coherence, though there is one realm which cannot escape to meet the demand, even if it wishes to do so, and that is the domain of politics. Politics, like Law, has to keep everything 'together' and, hence, has to take everything into consideration, though their interests may be different. Law has to assume the 'givenness' of the realm of the political as its 'effectivity' and 'actuality' depend on it. But once the idea of constituting a 'polity' though 'written' rules comes into being, the relations between law and polity become more complex and cease to be one-sided.

The introduction of a 'written' constitution involves a radical break in the history of the polity as the differentiation and institutionalization of the political function had done earlier to society, and the invention of 'writing' had done to societies based on and constituted by the preservation of orally transmitted traditions which alone gave them 'identity' through the continuity of 'transmitted memory'. The distinction between the ruler and the ruled, and between the literate and the non-literate now got another added dimension to it as it gave those who were 'literate' a power to judge whether the 'written' rules for the structuring and func-

tioning of the polity were being observed or not, something that gave rise to what we know today as 'Constitutional Law' and the importance we attach to it in the proper functioning of the polity, and thus giving 'law' a function in relation to the polity it never had before.

Law relating to the functioning of the political system now differs radically from those that apply to other domains. They now make 'visible' the over-riding authority of the political system as it not only formulates or legislates what is considered as 'law' having the explicit power to regulate and even change what is considered as 'common law' or the implicitly or half-explicitly formulated rules operating in the behaviour of the social system at its various levels. It generally has 'rules' or even explicitly formulated laws that are supposed to 'govern' its own functioning and, many a time, provides the legitimate procedures for changes in them, if the need so arises. But in either case, it itself has thus to provide a super-adjudicatory role to itself, which is what is meant by the emergence not of a 'civil society', but of what we may call a 'civil polity' where the 'arbitrariness' and the possibility of tyranny is restricted, not by customs usually observed, but by the 'ruling' class itself *after* the political functioning has been differentiated, segregated and institutionalized in a society where it might have been already functioning implicitly as a part of the social system. The explicit acceptance of a separately adjudicating function which must also have been there in an implicit form earlier, assumes a 'visibility' which was not there before. But this very fact not only introduces a 'new' distinction between 'lawful' and 'unlawful' or 'legal' and 'illegal' besides those between 'right' and 'wrong' or 'good' and 'bad' which already had been there, but also the one between the 'constitutional' and the 'unconstitutional'.

The distinction between the 'legal' and the 'moral' and the possible conflict between them now comes into the open and creates a new problem for the moral consciousness, or what is called 'conscience', exemplified so vividly in the historically documented and 'lived' life of Socrates and Gandhi, and in a differed sense by the life of Christ whose crucifixion was the 'result' of a conflict between the 'common law' prevalent in the Jewish community of those times and whose practice seemed to have been allowed by

the acceptance of the practices of various religious communities living in the Roman Empire. Strangely, this simple question has not been faced by those who have written on the subject, nor has it been clarified whether the actual crucifixion was executed by the Roman authorities on the basis of the 'common law' judgement passed by the Jewish community to which Jesus belonged. The story of Barabas, and one other whose name is not known, complicates the issue as these two are supposed to have been 'hanged' along with Christ whose 'hanging' alone has been called 'crucifixtion'.

The idea of 'Natural Law' transcending the varied and conflicting 'common laws' prevalent in various 'social groups' and religions, thus, naturally arose whose explicit formulation and recognition is usually ascribed to Roman thinking on law called 'jurisprudence'. Even earlier, the idea of a *sādhāraṇa dharma,* is said to be there in the Indian tradition, but it is not clear whether the latter related more to the individual's moral behaviour or *dharma* as it is called, or to the legal realm as prescribed in the *Vyavahāra Śāstras* and actually enforced by kings who ruled in those times.

The problem of 'universality' is endemic to all disciplines, including not only 'knowledge' but also morals and aesthetics where, however, it is generally implicit in the judgement that claims 'it is so'. In law, however, it becomes explicit as it not only 'claims' but demands 'enforcement' through all the means at its disposal, including that of force. The claim to universality that is immanent in all 'rational' discourse, thus, becomes explicit here, though it has seldom been recognized as such. Mathematics has been taken as the paradigmatic example of rationality or 'reason' in the Western tradition, and even its classical self-conscious formulations in the form of 'logic' in Aristotle, or in modern times, have been patterned practically on the same model. In law, however, 'reason' is seen in an essentially different form as it not only permits, but *requires* an argument and counter-argument, dispute about classification and interpretation along with the 'weight' that is to be given to 'evidence' which itself has to be established by procedures explicitly stated in this regard, along with the 'need' for an actual, empirical judicial authority that can give a 'final' decision in the matter.

This is 'reason', concretely exemplified in the 'human reality' as it is actually 'lived', and even those who thought and proclaimed

they had 'left' it as the so-called 'renouncers' do and did in the past, have to 'accept' it, particularly if they build institutions to propagate, maintain and proselytize their 'truth' as they all have to 'own' property, establish some 'rules' and 'procedures' for 'succession' which are almost always in dispute.

This aspect of 'reason' was explicitly recognized perhaps only in the Indian tradition where the inclusion of *vāda, jalpa, vitaṇḍā chala, jāti* and *nigrahasthāna* in the very first *sūtra* of the *Nyāya Sūtra,* the basic text on Indian *pramāṇa śāstra* or logic, can make 'sense' only in this sense. Not only this, the idea of a *pūrvapakṣa* is treated as integral to the 'thinking enterprise' as 'doubt' or *saṁśaya* is the essential precondition for engaging in the activity of justification through the offering of a *pramāṇa* or ground for the resolution of the doubt in one's mind by one's own thinking or the objections raised by someone else to what one has said. The former is generally considered to be more important as not only thinking, particularly 'philosophical thinking', was supposed to contain it necessarily in itself but also, if one was a really good thinker, one was expected to 'imagine' or think of possible counter-objections to the 'objection' to show its untenability and still 'prove', even more 'strongly', what one had set out to prove to resolve the doubt.

This, however, occurred only in the highly formalized debate between disputants with strict rules explicitly formulated and agreed upon before an expert audience where there had to be a judge or judges who gave the verdict as to who has won or lost and thus won the prize and the reputation, or lost it. In some cases that have been reported for recent times, specially between Baccā Jhā and the foremost Naiyayika of Benaras those days, is said to have resulted in a 'draw', though the students and admirers of Baccā Jhā claim otherwise. The other famous case is that of Dayanand Saraswati, where the founder of the *ārya Samj* is said to have debated with the 'orthodox Pandits' of Benaras regarding his interpretation of the Vedas and a 'memorial' built to commemorate the occasion. Both parties, however, are said to have claimed 'victory' on the occasion.

The Indian tradition seems to 'mirror' better the 'actual' cognitive enterprise of men based both on 'reason' and 'experience', including both the 'inner' and the 'outer', and that which arises

from 'action' that aims at the transformation of both in the light of 'imagination' that makes one aware of 'possibilities' and 'ideals' at the same time. There, however, is an 'unending' characteristic to the enterprise because of this which seems to have been missed by both the 'Indian' and the 'Western' tradition, but for different reasons. The latter got stuck by its reflection on the peculiar nature of mathematical knowledge which seems to have generated the 'illusion' of 'finality', 'universality' and 'necessity' of 'real' knowledge by treating it as the paradigm for all knowledge, epitomized in Euclid's formulation of the 'geometrical' knowledge of his times. The idea of strict formal derivation from the 'truth' of axioms that appeared self-evident and 'self-certifying' and, thus, 'ensuring' the 'truth' of 'everything' that could be formally derived from them has been at the root of the truth. This gave rise to the notion of 'implication' which Aristotle had formulated in his famous theory of 'syllogistic-proof' where the notion of 'formal truth' was explicitly and clearly formulated for the first time. The premises 'implied' the 'conclusion' derived from it, if it was formally correct.

Euclid, however, had formally axiomatized the geometrical knowledge of his times, but not 'arithmetic' which had to wait long for the attempt at its 'axiomatization', starting from the work of Peano and ending with the work of Russell and Whitehead in *Principia Mathematic* which also showed the limits of the enterprise. Descartes had already paved the way for this through the creation of 'Analytical Geometry' where he had shown the possibility of correlating 'geometry' to 'arithmetic' by the ingenious way of finding a relation between 'points' on a line with 'rational numbers' which gave rise to the problem of the mathematical notion of a 'continuum' in which the 'irrational' and 'imaginary' numbers had to be accommodated. The 'finite' line not only became infinitely divisible but also had to have other 'infinities' created by 'numbers' that could not be expressed in terms of a 'ratio' between natural numbers on the one hand and the 'roots' of the 'negative' numbers which had given rise to problems of its own because of the strange fact that they could not be regarded as either 'positive' or 'negative' because of the 'law' that two negative numbers multiplied by themselves could not give a 'negative number' which, if accepted,

would lead to results that could not be mathematically accepted. The notion of 'diverse infinities' where each was 'greater' than the other as they could not have 'one-one correlation' between them in terms of which the notion of 'equality' between two sets had been defined for the reason that 'counting' which involved 'discreteness' could not be achieved even in respect of the 'fractions' or 'ratios' which were naturally generated by the operation of 'division' which could be carried on indefinitely, giving rise to the paradoxical fact that the notion of a number which was 'immediately next' could make no sense as there would always be another 'fraction' or 'ratio' between them, in principle. This gave rise to Cantor's famous 'invention' or 'discovery' of 'Transfinite Numbers' which gave rise to the yet more paradoxical result where the 'Number of "numbers"' in the 'odd' series of natural numbers is the same as the series of 'even numbers', even though it would 'appear' absurd to common sense as 'half' of the numbers have been taken out of the series and yet the 'Number of these numbers' remains the same.

The development of Non-Euclidean geometries earlier had already effectively questioned the so-called 'axioms' of Euclidean geometry, and Gödel's later proof that the 'completeness' and 'consistency' cannot be 'proved' in respect of any 'complex' system from which 'mathematics' could be 'derived', dealt a 'death blow' to the idea of the 'finality' of mathematical knowledge, and yet the 'faith' rooted in the 'ancient' Greek thinking about it seems to be totally unaffected by all this.

Both Non-Eucildean geometries and Gödel's proof, however, had only questioned the 'formal' 'finality' of any 'given' system at any time, but had not given up the idea that it was both 'necessary' and 'universal in respect of it, though they were now seen as only 'formal' and 'relative' within the context of 'postulates' or 'assumptions' that had to be not only 'formal' in character, but 'powerful' enough to generate 'mathematically significant conclusions' which had to be completely 'independent' of any empirical 'experience' and have no 'necessary' relation to it. The necessary assumption of 'the axiom of infinity' for the 'derivation' of any mathematical system shown earlier by Russell and the dispute about its being purely 'logical' or 'formal' in nature, however, had

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already put a 'question mark' about it, though the 'empirical' fact of the 'progress' and 'developments' in mathematics should already have been a 'sufficient' evidence *against* the assumptions and the attitude regarding its 'finality'.

The Indian 'illusion' regarding 'finality' arose not from any reflection on any particular branch of knowledge, but reflection on 'human life' as 'existentially' lived by man in all the three dimensions of 'knowing', 'feeling' and 'willing' or action at the level of self-consciousness. The 'facts' that struck it at all these levels, included the one that had to be there because of 'birth', 'ageing' and 'death' as inevitably a part of it. The fact of 'suffering' and 'meaninglessness' was writ large on it, just as the fact of 'incessant change' in whatever 'is' or may be done by man to 'rectify' the situation in the direction of the 'better'. This two-fold analysis gave rise to the idea of an 'ideal state' of consciousness from which the very possibility of suffering was removed and in which there could be no 'change' as it had to be either ever-lasting or not in time. The Buddhists appear to have explicitly accepted only the first alternative. As for the second, the Buddha seems to have been silent. The non-Buddhist traditions, excluding the *Lokāyata* or the *Cārvāka,* as they are generally known in the Indian tradition, have generally accepted both. It is a surprising fact that the *Cārvākas* have *always* been accepted and accorded an established position as an independent philosophical 'school', even though they denied both the 'reality' of anything except the body and the ideal of *mokṣa* or 'liberation' which is supposed to be so central to Indian philosophy and culture. They, of course, accepted the ideal in terms of 'pleasure' conceived in purely sensual terms whose paradigmatic example was seen in terms of the 'sexual experience' which is 'known' to everybody and hankered after by 'all'. Their profound influence on Indian culture, including art, literature and 'spirituality' has been totally ignored, even though 'left-hand *Tantrism*' has never been 'excluded' from the so-called 'spiritual sādhanās' so vividly described by Haribhadra Suri in his work *Śaḍadarśana Samuccaya* and visually represented on walls of Indian temples from the earliest times. The later 'practices' of *Tantra* celebrate it and pursue it as an 'ideal' through all the means at its disposal and called it the 'experience' of that 'ultimate union'

which everybody was supposed to 'strive for', whether in Advaitic or non-Advaitic terms.

The concept of 'pleasure' or 'bliss' epitomized in what is called *rasa* and *ānanda* in the Upaniṣads and elsewhere and the centrality of Śṛngāra in both *Bhakti* and *Nātya* are vivid illustrations of this. 'Unalloyed' and 'unending', 'eternal' pleasure is the proclaimed ideal, except in *Nyāya* which Udayana, in his *Ātmatattva Viveka,* claims to be the last stage of 'spiritual realization' ahead of that of *Advaita Vedānta* which, according to him, is only one step *inferior* to it. Strangely, he puts both *Cārvāka* and *Mīmāṁsā* together in the *lowest* category as they both place 'sensual pleasure' as the highest ideal, differentiated only by the fact that the latter calls it *swarga* conceived of in purely physical terms, while *cārvāka* prescribes it as attainable even in this life if one follows the *mārga* prescribed by it.

There are differences in the conception of the ultimate ideal state of 'being' which one may aspire for and attain through the way of *praxis* prescribed for it called *sādhanā* or *yoga* which differ due to the way the ideal is conceived and may be understood as 'transcendental praxis' which means, the transformation of one's 'being' as it 'is' at the 'human level' into that which is 'really' its 'true' nature but which, for some unknown reason, is hidden from it due to 'ignorance' or 'forgetting' of its own 'true' nature that has been called *avidyā,* or *ajñāna,* or even *Māyā* in different contexts. The 'truth' here is *not* about any specific 'object' or even 'object in general', but rather about the self or the 'subject' which 'appears' as involved in the activities of 'knowing', 'feeling' and 'willing' the 'object' in different ways which alone it considers as 'real'. The fact that it is not so is revealed by the constant frustration and the feeling of 'nonfulfilment' that accompanies all these activities as they are pursued in the 'normal' way by all human beings and considered by them to be 'real'.

The 'truth', however, is considered to be as 'final' and 'unchanging' as in the Western tradition. Only, this time it is alout the 'subject' that tries to 'know', 'feel' and 'will', and not about the 'object' that is 'known' or 'felt' and 'willed' through these activities. What is surprising, however, is that the Western tradition has confined itself to the activity of 'knowing' only and not extended it to that of 'feeling' and 'willing' in which it is more intimately involved.

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The term 'knowledge' in the Western tradition, therefore, is confined only to the 'cognition' of that which is 'seen' as 'object' and is always considered 'true' by definition as that which is 'false', in any sense of the term, cannot be considered as 'knowledge'. Kant did try to come to terms with the element of 'universality' in the judgement '"×" is morally good', or "×" is beautiful'. But even he refused to grant them the status of 'knowledge' as they could not be cognized through the categories of the understanding because of the fact that they were essentially non-cognitive in nature.

What is even stranger is that the entire Western discussion about 'knowledge' does not seem to be aware of the issues regarding the ontological status of that which 'appears' as true but is later found to be 'false', a question that is at the centre of almost all 'thinking' about the true nature of the 'subject' that is present in all activities of consciousness.

Both 'reason' and 'value-apprehension' function at all levels due to the essential 'subject-object' relation inherent in the fact of 'self-consciousness' at the human level. The search for 'objectivity' emanates from 'reason' while the 'value-dimension' emerges from the 'subjectivity' involved in it. The value of 'truth' emerges as the 'highest' from the search for 'objectivity' which means 'inter-subjectivity' based on the desire for communication on one's part and the possibility of 'communicability' of that which is apprehended and felt at the level of consciousness and self-consciousness, as the latter presupposes the former. There is an element in 'experience' which eludes 'objectification' in terms of concepts which have a 'universality' inbuilt in them. It can, however, be indirectly communicated through similes and metaphors as in literature, or through variations in speech based on modulation, accent and intonation which become clear in music where all these occur in their purified form as it is primarily concerned with 'notes' or what is called *svara* in the Indian tradition and their innumerable combinations that are 'known' to all those who carefully 'listen' to it. Even 'pure form' can convey it as in painting and architecture, and sometimes in painting when it is 'freed' from 'representation' just through the magic of colours, with 'their subtle variation in texture, modulation and complex combination' where each is merged, submerged and fused with the other and one another. The 'body-

language' does the rest, as in a dance where the accompanying effect of music and 'emotionally expressive' poetry, or even story or narrative add yet another dimension to it.

But effective as all these are in expressing the 'inexpressible', they pale into insignificance before the apprehension of 'moral values' that demand their realization in the actual 'inter-living' in the life of man in family, society and 'polity', as nothing else can be pursued or even apprehended without the effective functioning of these in the actual day-to-day living of man in mutual inter-relationship that vary infinitely from culture to culture, and individual to individual. Yet, however, diverse the apprehension of these values may be, their effective realization in society and polity require some objective formulation for its actualization and realization at the public level, and this is what the 'legal system' actually does. It makes 'value', publicly visible and concretizes 'reason' by making it available for adjudicating disputes regarding conflicting claims. Both 'reason' and 'values' are far, far wider than those exhibited therein, but that which is embodied in the legal system is the 'minimum' required for the effective functioning of society on the one hand and the fulfilment of those basic necessities which are publicly recognized at that time in that society. Reason has to ensure 'objectivity' and 'fairness' in settling disputes between rival and competing claims in the service of 'values' that are minimally accepted by the social consensus regarding them at that time. Law, thus, mediates and connects reason and values in such a way that the settlement of disputes may be seen as fair and reasonable not only by disputants themselves but also by the public at large who is interested in them.

The apprehension of reason, rationality and reasonableness, however, is always changing as also that of values and the minimum social needs recognized at that time. Law is, thus, dynamic and changing, though it may not appear to be so to those who are actively involved in it. To them, it appears as 'given' and 'static' as they have to treat it as such at a given time. But as it always is a 'compromise', it seldom seems to satisfy anyone. At another level, each of these dimensions is seen as inadequate by those who are interested in the larger realms for their own sake and not as 'limited' and 'constrained' by the practical considerations as they appear

in them. To reason, it does not seem 'rational' enough even by the standards accepted at that time. To the moral consciousness of the ethical thinker it appears neither 'moral' or 'valuational' in its aims, purposes and functions. As for the minimum social necessities, nobody is ever satisfied by what the social system is trying to achieve. The whole field of what may be called 'Legal Reality' created by the Legal System is almost totally ignored by thinkers primarily interested in them, and generally treated as if the realm itself did not exist.

The practice of law, thus, deserves the attention of thinkers in all social science disciplines and the humanities, both in its theoretical and practical aspects and the changes in it over a period of time, as it 'mirrors' the subject-matter of almost all disciplines in its own 'reality' which constitutes at a concrete level a human reality, both in its social and individual aspects. Philosophers, in particular, have to pay special attention to it as it involves reason, both in its formal and informal aspects, and deals with both first-order and second-order values which are sought to be realized by man at all levels of his existence. It also involves the problem of 'interpretation' of both 'declarative' and 'imperative' sentences in their syntastic, semantic, pragmatic and contextual aspects. It also contains the basic distinction between 'constitutional law' and all other laws which generally deal with the 'civil' and 'criminal' aspects of 'social reality'. The division reveals something fundamental and basic in the way human reality has generally been seen, though, seldom paid attention by thinkers concerned with the subject. It also raises the problem as to when the explicit distinction between 'constitutional' and 'non-constitutional' on the one hand and the 'civil' and 'criminal' on the other was recognized and what 'effect' the making of this had on the 'reality' and 'polity' of a particular country and civilization.

The implicit distinction between the former was already there when the political function was differentiated and institutionalized, as 'polity' created the distinction between 'ruler' and 'ruled', and thus raising the question of 'legitimacy' of the former and the distinction that resulted from it.

The question of 'legitimacy' has been raised in the earliest discussion of the subject in *Arthaśāstra* texts of the Indian tradition

and the distinction between the political, social and legal aspects of human reality was reflected in the texts dealing with them known as the *Dharma Śāstras, Arthaśāstra* and *Vyavahāra Śāstra* in the tradition.

The explicit formulation of the distinction between the 'constitutional law' and the rest, however, seems to have first appeared in Greece which is described in *The Athenian Constitution* ascribed to Aristotle and dealing with more than two hundred years of the history of the changes in it during that period which comes to an end by the conquests of the 'city-state' by the father of Alexander, King Philip of Macedonia. The work explicitly formulates the basic problem raised by the distinction between the 'constitutional' and other laws, and that it relates to defining the notion of 'citizenship' and the 'participation' of those in the 'political' function of the polity, along with the problem of 'representation' raised by it.

Aristotle also seems to be aware of and concerned with the problem raised by a multiplicity of such states and there is a comparative study of these in the work ascribed to him, but whose authenticity is not established, or the text edited and published.

The explicit formulation of laws relating to the constitution of the polity, thus, introduces a radically new distinction between those foundational laws that constitute the polity itself and all other laws as the changes in the former, permitted by the constitution itself through a process prescribed therein, and those that occur in the latter, reflect the problems relating to polity and society in different ways. A study of these changes over a period of time will reveal the concrete difficulties faced in the actual functioning of 'polity' and 'society', even though they both concern the realization of values through them. The problems relate to the 'realization' of values and, thus, reveal indirectly the limitations of the abstract formulation of them by 'thinkers' who are supposed to think and write about them. The field of law may, therefore, be seen as the 'testing ground' of the theoretical and conceptual formulations, with which the thinkers are primarily concerned. But, as it is not seen in this way, the 'testing' in the field of 'practice' has generally no effect on the theoretical thinkers who continue to discuss as before with practically no regard for the fact that its inadequacies have already been revealed by the attempt to 'realize' and 'actu-

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alize' them. This is facilitated by two assumptions that seem to be intrinsic to thinking about values by most thinkers concerned with thinking about them. The first relates to the axiomatic assumption that 'values' are concerned with 'ideals' which remain unaffected by the fact that they cannot be realized or actualized as they provide only the direction in which man's activities have to move as they can only be realized asymptotically and, hence, never fully by man. The identification of the 'valuational' with the 'really real', from Plato onwards, has helped in this as that which 'appears' can never be 'real', almost by the very definition of these terms. The analogical relation with the one obtaining between mathematics and empirical reality, which is one of the foundations of almost all Western thinking, has further provided support unconsciously to this, forgetting that 'values' are essentially qualitative and not quantitative in nature and that the terms 'greater' and 'lesser' or 'higher' and 'lower' cannot be interpreted or understood in a quantitative way. Plato's mistake and confusion seems to have been 'blindly' repeated by thinker after thinker in the Western tradition and the analogy with the relation between the 'theoretical' and 'observational' in science completely ignored by it.

The other factor that has contributed to this seems to lie in the assumption that values are always in harmony with one another, and that there is no conflict or competition between them. The mapping of the field of values and the possible interrelations between them has generally not been attempted except in the work of Nicolai Hartmann and perhaps of Edward Spranger who have had hardly any influence on it.

Besides these two presuppositions, what stands in the way of understanding the realm of law is the way reason is understood by thinkers who have thought about it, as they see it paradigmatically in mathematics and logic on the one hand, and the cognitive enterprise of science, on the other. Reason, as embodied in these realms, has a formal deductive character, and an inductive nature exemplified in the hypothetico-deductive-verificational method ascribed to science. Reason as it functions in the realm of law does not seem to be either of these and, hence, as exemplified in it has not been a subject of attention by thinkers. In fact, even the moral and aesthetic realms have been treated as if they had no

'immanent reason in them in spite of the fact that Kant had shown that there was an element of *a priori* universality in both the moral and aesthetic judgement. The problem an immanent Reason in other realms has hardly been even raised. But reason in law is present in an unambiguous and clear manner and hence it is surprising that it has not been paid any attention, as it should have been. The very fact that reason here is concerned with the settlement of a dispute regarding which there are two sides based on diverse interpretations of the law concerned and the evidence related to it demanding a 'final' decision in the matter. Should have drawn attention to it. The fact that 'reasoning' should be involved in this whole exercise is obvious, but it is reasoning of a different kind. It is not what we are accustomed to call 'reason' which we think is exemplied in mathematics and the natural sciences. It is reasoning about a 'disputed' matter where both sides claim to have the 'right' on their side and demand justice as each party is convinced that the other side is 'wrong' and, what is more important, accepts that the disagreement and the dispute ought not to be settled by 'force' or the sheer superiority in terms of the physical, 'coercive power' at one's command.

The 'reasoning' here is thus neither deductive, nor inductive, as it is not concerned with establishing a universal generalization on the basis of the empirical evidence it has, or in purely formal deduction from something assumed or taken for granted. Nor is it concerned exclusively with the establishment of 'truth' alone as it sees it primarily in the context of other values and in ensuring 'justice' which is always a complex 'relationship' between 'values' themselves and the relative 'weight' that is given to that which may vary from occasion to occasion. It is concerned with the individual case in its concreteness, but not in the context of finding what 'actually' happened, as in history or even in 'situating' it in the causal nexus *in* which it happened, but rather 'seeing' it as a 'complex conjunction' or meeting point of diverse and complicating values where the resultant judgement is, and has to be, 'valuational' in character, fraught with 'irrevocable' responsibility at the highest level, as it has 'decisive' consequences for the parties concerned, determining their 'future' as perhaps nothing else does.

But, in spite of this, there are important differences resulting from the fact that a 'decision' has to be reached and implemented

and executed within a limited time, a 'limitation' that is not there in other fields as there is no need for 'finality' in them. The cognitive enterprises of mankind have been pursued without this limitation as there, whatever is reached through some sort of 'consensus' on the part of those who are supposed to be actively engaged in it, is always 'open' to challenge on grounds that themselves have to be acceptable to the community of those who are engaged in a 'serious' pursuit of 'knowledge' and 'truth' in those fields. The fact that this is so implies and even ensures that the 'critics' and the 'disputants' are always potentially there as without them there can be no further movement in the enterprise itself. The 'right to appeal' is also present there, but only in an analogous form. The decisions reached are always tentative in character as there is no need for 'finality' there. But, as everyone knows, the 'right to appeal' in the legal domain results in inordinate delay which frustrates the attainment of that which the parties sought. 'Justice delayed is justice denied' embodies this, even though the 'right' itself was required to give a 'fair' chance to those who think the 'decision' has been 'unjust' to them. The 'right', therefore, to appeal is inherent in the idea of 'fairness' and 'justice' to all the parties concerned and yet the 'right' itself leads to the strange paradoxical situation of the feeling that justice is being denied by this very 'right', even when it is not indefinitely extended or granted.

But, in a sense, even the idea of 'fairness' itself has resulted in the same situation as the evidence is always conflicting, seldom conclusive, and capable of diverse interpretations which the competing lawers 'fully' exploit to their own advantage and *not* to the cause which the whole system was created to subserve.

At a deeper level, however, the problem arises because of the apprehension of 'new' values, or the old values understood in a new way, and the shifting emphasis on the priorities to be accorded to the values themselves. The changes in these emanating from the socio-politio-cultural reality outside and those that arise because of the changes in 'knowledge' and technology whose pace has increased in modern times to such an extent that nothing seems to stand still even for a moment now.

At yet another level, the extension of the notion of the 'individual' and the crisis associated with the non-acceptance of the

idea of 'sovereignty' in relation to the 'Nation-States' has resulted in a situation where 'states' themselves can be held 'guilty', even if there be no effective means to punish them for this. The idea of international sanctions has arisen in this context, but then it is the powerful nations which have 'wielded' this against others, and not let it be used against them, even if the whole international community is convinced to the contrary. The recent case of Iraq exemplifies this, just as the case of Israel does on the other hand.

At another level, the abandonment of the notion of 'reciprocity' of mutual 'obligatoriness' implicit in the idea of morality and extending it to cover 'one-sided' obligation, as in the case of 'animal rights' has led to one of the most anomalous situation in the recent discussion about it, where the 'understanding' of the notion of 'right' has resulted not in the demand for refraining from cruelty to them, but also ensuring on one's part that they are left 'free' to lead a 'life of their own', uninterfered by human beings in any sense of the term.

The conflicting and contradictory demands on the socio-political system are reflected in the field of law as they could be nowhere else, and yet the thinkers concerned with 'morals' in particular and values in general have hardly paid any attention to them. Besides this, the legal system affects and is affected by the changing notions of 'reason', 'rationality' and 'responsibility' accepted in a society, just as the 'findings' in the sciences dealing with man do so, though at a different level.

Law is, thus, always a compromise between ethics and Reason, and should be seen as such. 'Logic' here represents not just logic in the narrow sense, but rather the whole epistemological field of which logic forms an important sub-class only. This leads to the puzzling and perplexing question regarding the ontological status of this realm created by man for purposes of human living and, thus, shows distinctive differences from the world of art which also man has 'created' but which is explicitly known and recognized as such. The concepts of 'time', 'causality', 'identity', 'truth' and 'responsibility' undergo a radical transformation as they concern human actions which demand concepts and categories different form those that have to be applied in the 'understanding' of art and nature which alone have been the subject of attention by those

who have struggled with the problem of 'knowledge' and 'truth' about these realms and the ontological status of this 'reality' that is their subject-matter. This 'lived' dimension of human action, a purely philosophical analysis generally misses. It also raises the question whether human action can be conceived of in purely naturalistic terms, and if not, then is it the technological element that should prevail and get primacy, or the deontological one which is reflected in the logic of imperatives? Is the imperative to be conceived of only in conditional terms as in the *Mīmāṁsā*, or unconditionally as in Kant. But whatever the alternative chosen, it is obvious that 'reason' cannot function in it as it does in the formal deductive sciences, or be 'inductive' in character as in the non-formal disciplines. Yet, there are well-laid principles and procedures which have to be taken into account and followed if the settlement of difference and dispute has to be seen and judged as 'fair' to all the parties concerned and also by those who are not directly involved in it.

The principles and procedures explicitly formulated and followed are not entirely different from those that are there in all other fields in order to attain an inter-subjective 'objectivity' through the application of 'reason' in that domain. The primacy of the *vidhi-niṣedha-vākyas*, that is, of imperative sentences over descriptive, implies the logical and epistemological primacy of the former over the latter. The relation between knowledge and action thus gets a sea-change as the former gets meaning and significance *only* in the context of the latter. This is not pragmatism as the realm of human action to which that knowledge is to be applied is itself constructed by 'rules' that have hardly any intrinsic relation to the realm of knowledge which has become subservient to it. Prabhākara's radical views in this regard thus go beyond what is known as 'operationalism' now in the sciences and also on the related question about the status and meaning of purely theoretical terms in a cognitive discourse, as many of them, many a time, function only as ancillary to the discourse, and do not 'refer' to anything outside it. Here, there is a total subordination of knowledge to that which is realizable through action, that is the theory of *puruṣārtha*.

Law, thus, is the meeting ground of so many disciplines raising philosophical problems of its own which, if seriously considered,

would affect thinking in those fields as it is carried on these days. It also would bring to the fore the practical difficulties in the realization of values which are generally ignored by those who 'talk' about them. It will also draw attention to the question regarding the actual use of 'reason' in the field of inter-subjective, inter-actional behaviour of men and the attempt to make it 'rational' as far as possible. What men actually do with this awareness is another question, but that is always there with all the realms he creates and 'lives' in, something that perhaps reveals more about him than anything else.

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