

Evolution from Violence to Law to Social Justice

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Law is a complex phenomenon. The principles and practice of law are a composite of multiple forces – the force of past precedent, established custom and accepted tradition; the force of present political, economic and social power; and the force of emerging aspirations and ideas striving for acceptance. At any point in time, law consists of a more or less precarious balance between the past and the future. The elite of society who achieved in earlier generations naturally accord greater legitimacy to past precedent. Currently prevailing social achievers, like the hedge fund traders of today, affirm the legal basis for their wanton freedom of action. Together with civil rights advocates, youth in Cairo and Occupy Wall Street protestors, idealists and aspiring masses press for the translation of high constitutional principles into pragmatic social realities. Thus, in formulating its decision on the legality of nuclear weapons, the International Court of Justice struggled to balance the reality of existing power equations (the five permanent members of the UN Security Council with veto power are all nuclear weapon states), current international law (the NPT specifically includes a long-ignored pledge of the nuclear weapons states to eliminate their arsenals), and the undeniable right of the rest of humanity to freedom from the use or threat of use of such heinous weapons of mass destruction. The ICJ's judgment is not a reflection of justice, but of the prevailing balance of strength between these social and political forces at a given point in time.

Law is evolving. The tension between these forces drives social evolution. Their relative strength determines its pace. But the direction of that evolution is not easy to discern. The complexity of its composition and the varying and alternating strength of retrogressive and progressive tendencies tend to veil the movement. Law is one dimension of a wider, integrated social reality. The intimate relationship between the evolution of law and the evolution of other aspects of society – the movement toward democratic governance, rising levels of prosperity, higher and wider educational attainments, technological and organizational advances – further complicates the issue.

The inevitable direction of that evolution is also obscured by the fact that social development is largely a subconscious process. It expresses irresistible human aspirations and social tendencies but works itself out through a long process of trial and error, advance and retreat, conflict and resolution. Often the strongest reactionary forces serve a crucial role in the evolutionary advance. The US Civil War, fought to affirm states' rights and preserve slavery, succeeded only in affirming the inalienable rights of the individual from unjust state law. In exhausting the policy of state control through the art of tyranny, the USSR demonstrated to the world the essential role of individual freedom and human rights for stability, economic welfare and well-being, compelling China to radically change course to avoid a similar fate. For sixty years, an undemocratically governed UN has espoused the cause of democracy, inevitably preparing for the day when international governance will be democratized. Today, free-market capitalism based on efficient market theory eminently serves the cause of socialism, while vehemently denying it.

In spite of the complexity of the movement, when viewed from a historical perspective, the general direction of the evolutionary movement can be discerned. Physical violence, social authority and economic power are gradually and progressively giving place to principles of justice based on universal human values. Yet, because the movement is complex and largely subconscious, its velocity is hampered by doubts and retrograde measures. Therefore, close examination and validation of the direction – making that direction more clearly conscious and evident – may be of immense practical value. It can speed the awakening of emerging social tendencies and dampen the insistence of those that seek to perpetuate the past and retard the future. A full examination of this issue would require

a massive research effort, for it involves a historical examination of advances in many different fields of society and their interactions with the evolution of law. Such a project would justify a major research program undertaken by a dozen or more universities under the auspices of an international group of multidisciplinary composition, such as the World Academy of Art & Science. Once validated, momentous consequences would follow. For its conclusions would have relevance not only to jurisprudence and legislation, but to politics, economics, education and other fields as well. As an illustration of the approach, here we can only sketch in broad strokes some important lines of inquiry.

The original 'law' of humanity was the law of the jungle, survival of the fittest, might is right. The survival and stability of the collective were the sole governing principles of social order. The strong imposed their will on the weak, the leaders with the greatest following imposed their will over the group, reinforced by force of arms or popular support. 'Law' consisted of the rules laid down by the leadership to govern the community and the foremost of those rules were concerned with securing the collective from external threats and enforcing the authority of the leadership over those living within the community. Hereditary rule became prevalent as a means to ease the transition from one leader to the next, avoiding frequent challenges to legitimacy and wars of succession. Aristocratic lineage defined by bloodline institutionalized the succession of power and proved a stabilizing basis for continuity of leadership and social stability.

Law evolved as an instrument of politics to replace violence with agreed upon rules of social order. Physical authority based on force of arms was progressively replaced by social authority based on the written word and backed by the implicit threat of force. The dueling grounds were replaced by the court room, civil war by parliamentary wrangling between opposing political parties, physical enforcement of financial agreements by contracts and negotiations. Money too played a central role in the transition from violence to social order. Blood money replaced murder as a means for resolving differences. A century ago in France, fining men for physically abusing their wives proved a successful means of curbing violence. The economic incentive of lucrative trade replaced the lure of piracy, conquest and destructive physical plunder. Through it all, physical force gradually gave way to social convention, legislation and jurisprudence as the principal means for dispute resolution.

While its origin might be force, the transition from violence to law always involves an implicit acceptance and internalization of authority by the collective. Unless the populace accepts the legitimacy of its rulers and the laws they pronounce, the rulers will be compelled to resort to force to maintain the status quo. Thus, monarchs, self-declared emperors like Napoleon, military rulers like Saddam Hussein and Gaddafi, and even worse tyrants have achieved that acceptance by those they govern. Rule by the word always implies a modicum of acceptance by the collective and reflects the conscience of the collective. If the people of democratic nations elect a Hitler, Mussolini, Reagan, Berlusconi or Ahmadinejad, it's because the collective conscience does endorse the principles they stand for. Of course, the relationship is more complex. Today, we find the judiciary in India playing an active role to awaken the social conscience and a public anti-corruption movement sprouting in response to the leadership of the Supreme Court.

Long after law evolved to regulate actions within the community, relationships between communities were still governed largely by mutual threats or incidents of violence. However widespread its incidence, war had its disadvantages as an instrument for foreign policy. For centuries, Europe sought to mitigate the threat of war by intermarriages between the ruling families of great powers. From very early times, communities found that replacing physical violence with mutually beneficial trade could also minimize threats and generate greater security. Commerce progressively replaced conquest as the principal means for enhancing national wealth. Bilateral and multilateral treaties between states gradually evolved into a nascent body of international law in the 20th century, culminating in the

founding of the UN, the ICJ and numerous other political organizations of nation-states empowered to codify the public conscience of the world community. As a result, two enormously destructive world wars were followed by 45 years of Cold War in which threats and accusations were mutually exchanged across the conference table and political lobbying for support progressively replaced the physical marshaling of armies. The principle of law replacing violence has gone so far that in the words of a Dutch NATO expert, in the European theater, the site of incessant warfare over five centuries, “war has become unthinkable”.

Each advance in society has a corresponding impact on the evolution of law. Greater democratic freedom necessitates establishment of rising levels of education which generates citizens, legislators, judges and lawyers more capable of formulating, administering, comprehending and abiding by complex rules of conduct. Rising levels of prosperity necessitate a more stable political and safer environment for expansion of industry, trade and investment. Technological advances necessitate development of law for protection of the public, preservation of privacy, patent and copyrights, etc. The process by which society releases fresh currents of energy and directs them toward the development of new types of organizations poses fundamental legal questions. Through this process, people also evolve psychologically. A more educated citizenry has higher aspirations and greater self-respect. The emerging individual is less deferential to the past and more insistent on his or her rights; less willing to conform to regimentation, more insistent on freedom and more tolerant of diversity.

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