

THE NATURAL LAW IN THE JEWISH TRADITION

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THE science of Archeology is rather new. Of course, even in ancient times, men ransacked the tombs and dug around in the earth. But all that was mere treasure hunting. It is only in the last century that the inscriptions discovered and the pottery dug up by archeologists have been organized into a coherent time system and become a part of the scientifically recorded history of man. This rather new science has considerable relevance to our theme: The Divine and Natural Law in Jewish Experience.

Since popular interest in Scripture has, through the centuries, been deeper and more widespread than in any other literature of antiquity, one would expect that Biblical archeology, resulting from excavations in the Bible lands, would be the first archeology to be developed. Yet, curiously enough, the reverse is true. There has been for generations a well-developed Egyptian, Greek and Babylonian archeology, but almost no Palestinian archeology. The reason for this was simple enough. Egypt had its mighty pyramids and other tombs, Babylonia its many ruins; all over the Near East there were the vain-glorious inscriptions written into mountain sides by proud kings who thought their names should be perpetuated in granite forever. In Palestine there was none of that material for archeologists. We have not a single royal inscription from any of the Bible kings. The only ancient inscription we have was from some unknown engineer

who dug the water tunnel from the Pool of Siloam. All kings are vainglorious, yet no boastful king in ancient Israel would ever have presumed to leave an inscription dedicated to his own glory. The Prophets would have put such a foolish king quickly in his place and the people would have rebelled against his pretensions. That helps explain one of the curiosities of Biblical law. The Bible is full of laws. There are hundreds of them on almost any subject. Yet one can hardly recall a single law in Scripture which emanated from a king or from the Royal Council. If there were such, as there must have been, they were deemed to be so ephemeral that they were not preserved in the legal portions of Scripture. I doubt whether the legal history of any civilization can parallel this strange fact. In the entire Biblical legal literature not a single law emanating from kings or other secular authorities was recorded or preserved as permanently valid.

Ancient Palestine was not an anarchy. The people lived under organized authority, obedient to a system of laws. If, then, the kings, with all the armies under their control, did not have the authority to impose themselves on the legal system except for arbitrary and ephemeral acts of tyranny, then there must, of course, have been another and more eminent source of authority, more powerful than kings and more enduring than their councils. One need not ask what that authority was. So well known is the spirit of ancient Scripture that such a question becomes virtually a rhetorical one. There was no doubt as to what their authority was and what was the source of their law. "The Lord is our Judge; the Lord is our Legislator; the Lord is our King." (Isaiah

33:22) This was the authority from the very beginning. Every basic legal principle had the Name of God consciously attached to it. As among other peoples, laws would begin with the words: "I, the King," in Scripture it was always, "I, the Lord." "Ye shall not steal, ye shall not falsify, I am the Lord." "Ye shall not pervert justice; I am the Lord." (Leviticus 19) So through scores of enactments, the Giver of the Law proclaimed His Name that it might be known by Whose ordaining the law exerts its authority.

The later rabbinic comments made by men who were close to Bible times, made clear the spirit of these injunctions. The people of Israel were not the servants of their kings, but the servants of God alone. When in Leviticus (25:42) it is said, "For they are My servants whom I brought out from the land of Egypt," an ancient source amplifies and has God say, "My documents of possession have prior claim to any one's else." Or when we read in the same chapter, verse 55, "For to Me are the children of Israel servants," the Talmud (b. Kiddushin 25b) says, "To *Me* are they servants but they are not servants to other servants." Because the law had so august an authority, it feared no kings. The Prophets, speaking in the Name of the Divine Law, could denounce even David for his sins. And, further, because its source was the Omnipresent, Universal Father, it could rise above all ancient prejudice of race or nation and could proclaim in the Name of the Universal Father: "Equal justice shall there be, for the stranger as for the citizen, for I am the Lord." (Leviticus 24:22)

The Jewish legal system, therefore, began with the majesty of Divine mandate. As such it can only be de-

scribed as Divine Law. But towards the close of the Biblical period, it underwent a development which justifies its description as both natural and divine.

The Biblical laws, revered as God-given, were soon seen as insufficient to cover adequately the expanding needs of changing times. The Bible says, "Judges and officers shall ye appoint in all your cities." But that is surely just a general principle. How many judges, in cities of what size, what courts of appeal, what of a supreme court? The Divine word seems to be silent. If the Bible were looked upon as merely a human enactment, it could be superseded or freely amplified. But precisely because it was Divine, it could not be superseded and who could dare add words and laws to it? Therefore, a theory of jurisprudence arose which is more akin to the implied theory under which a basic but simple document like the Constitution of the United States was amplified into the vast present-day body of constitutional law: namely, to search for what was the intention of the Law-Giver as can be derived from the statements already made in Constitution or in Scripture.

With regard to the intention of the Divine Law-Giver, an interesting doctrine arose, that God gave to Moses on Mount Sinai not one law but two, the written law which we have before us, and an unwritten or an oral law, which He taught him. The unwritten law was handed down from Moses to Joshua, Joshua to the elders, through the ages. What its enactments are can be rediscovered through close study of the written law. The emphasis of a word, the use of an adjective, the choice of a phrase, all were in the original intention, so that one may rediscover the oral law, the unwritten law, through

a close study of the written word. The Talmud says, "Whatever a competent scholar will yet derive from the Law, that was already given to Moses on Mount Sinai" (j. Megilla IV, 74d). Thus only through human study and human reasoning was the *full* revelation on Mount Sinai rediscovered by man, and each generation stood at that mountain and received through its intelligence the eternally expanding Word of the Divine Law-Giver.

Thus by natural, human powers of experience and reason, tested by reverent study of Holy Writ, was a great legal system developed. It was natural, human law, the law inherent in the nature of man's mind and conscience, used as an instrument to discover the implicit will of God which is eternally present in unceasing revelation. The law thus amplified recorded itself in Mishnah and Talmud, in the later Codes, and in the books of thousands of scholars. It governed Jewish life all through the ages down to modern times. Never was the Jewish world community, in Palestine or in all the centuries of the Dispersion, governed by mere fiat of legislature or ruler, but always and almost exclusively, except for intrusive enactments from other systems, governed by a system of law which was the human discovery of God's Will. Students of the law may speak of "natural law" as the substratum of royal or parliamentary law, but never before, I believe, or since, in human history was an entire people in its religious and secular and business life governed so completely by a system of Divine and natural law. If one would wish to study natural law in its fullest effectiveness, here then is a classic example. How, then, did this Divine-Natural Law work out in this strange historic experience?

By the beginning of the present era, the Jews were scattered in many small communities all over the Roman Empire and also in the eastern lands. The destruction of the Jewish state in Palestine intensified this process of social fragmentation. Thus in tiny groups all over the map, they lived through the days of the Roman Empire, through the Middle Ages, down to the modern age.

These innumerable communities in every land were, of course, affected by laws not their own. The laws of city or principality or church or the Koran had provisions which dealt with them. But all these laws touched only the outer perimeter of their lives. Their chief governance was by their own law, interpreted by their own scholars and enforced by their own social will. The outer government would impose a tax upon the small community. The tax would be announced to the heads of the community. It would be they who would organize the payment of the tax according to the ability of each member to pay, and following well-established law. Medieval canon or civil law rarely touched the Jewish individual. In actual practice it dealt with the Jewish community. It was the Jewish community that touched the life of the individual Jew. Thus it came about that the ancient law, written and oral, the Divine Law amplified by natural intelligence, continued in force all through the Middle Ages. This law covered all of life, from the liturgy of the synagogue, the permitted and forbidden foods, the organization of the community, courtroom procedure, also loans, partnerships, contracts, all of the civil law. Divine-Natural Law was the governing law in the self-governing Jewish communities all over the world from classic antiquity to the dawn of the Modern Era.

These communities were orderly, coherent and effective social units. Yet they functioned under immense difficulties. Expulsion from the city or from the province, confiscation of property, attacks by angry mobs, ever-recurring poverty, the unpredictability of the whims of the secular sovereign; — all these were the circumstances surrounding these communities. Yet they functioned and continued through the centuries. All this was achieved without armies, without police power, almost without physical force at all.

Furthermore, the thousands of communities, most of them small, scattered all over Europe and Asia and North Africa, were governed almost in exactly the same way, yet without any functioning central authority. This achievement may seem miraculous, but it was really quite natural. The law was of one texture from the prescribed prayer after the family meal to the law of contracts and loans. It was all equally the Will of God. Thus the communities were governed from within by the inherited Law and the individual was governed from within by his own religio-legal conscience.

This was not Rousseau's Social Contract; it was the Sinai Covenant which was a living awareness in daily life. Social responsibility sprang from religious devotion. Hence even the bitterest disputes could finally be settled. The most stubborn member of the community could come to light. And almost no person needed the threat of prison or the lash, to be law-abiding; for the law was not a mere human contract or the product of the wilfulness of a tyrant or the confusion of some town council. Or ways would have been found to evade it; it was the Will of God as understood by revered scholars. Thus it was

generally obeyed in pride and in love.

This unusual type of self-governance seems far indeed from modern life and modern times. Yet it is not so far as to be irrelevant. The sources of true social order are always the same in a sprawling modern metropolis as in a tiny medieval ghetto. Police power is, of course, essential. Yet never quite sufficient. If a large percentage of the citizens decided to be violent, as has happened repeatedly, the police power is helpless. The true source of order still comes from within. It is conscience which makes citizens of us all.

Laws must be tested by this yardstick. Does the law violate the conscience of the community or earn its approval? If it violates it, no police power will ever be sufficient. As long as the citizens believe that law is wilful, foolish, a decree forced upon them, then they will hate the law and resist it. But when they feel that it comports with conscience, then police power becomes almost unnecessary because the law is enforced from within. The scattered Jewish communities maintained law and order because the law was accepted as coming to them from "nature and nature's God."

There have been many popular books in science, on medicine and on art; and every modern novel nowadays is in itself a popular textbook on clinical psychology. But there are very few popular books on the subject of law. This is inevitably so, for the law with its fine distinctions and precise definitions involves a degree of intellectual alertness which takes it beyond the mental reach of the average and hence, to the average man, is dull.

Yet, among the curious characteristics of the old Jewish communities, was precisely this, that the law did indeed

become a popular study. It was the theme of the child's first instruction, the subject of the workmen's conversation at the workbench and of travellers on the road. It was the content of a lifelong adult study which engaged the spare time of almost the entire community. For the duty to study the law was an ancient one. Even in Bible times the Psalmist says: "Oh how I love Thy law, O God; it is my meditation all the day." (Psalm 119:27)

And in the earliest post-Biblical times, the Ethics of the Fathers, which is part of the great law code, the Mishnah, says: "If thou hast studied much of the law, do not boast of the fact, for it is for that purpose, to study the law, that God has created you." (11, 9) Thus it was that a democratic adult education developed in Palestine. It was actually a legal education; and during all the Middle Ages every tiny community studied the law, each man according to his capacity. Everybody was learned in basic law, the Five Books of Moses. He studied it through each year. A slightly smaller number, but still a large percentage, studied the Talmud with all its complex argumentation. The Talmud was surrounded by a host of commentaries, varying in their difficulty, and some were studied by some and some by others.

This widespread study of the law had an effect not only upon their cultural life, but upon the status and the control of the law in their day-by-day existence. The fact that the law became a culture tended to control inevitable tyranny. All power tends to tyranny and there was occasional tyranny in the tiny Jewish communities. These leaders of the community were under constant pressure from the outer world. Heavy taxes and imposts were put in their hands to impose on the community.

Even if they were not in themselves tyrannical, they became the unwilling channels for outer tyranny.

But these leaders were also scholars of a legal system revered as God-given, a system in which mercy was commingled with justice. They knew that from the very beginning, in the Talmudic law itself, steps were taken to control the oppressiveness of the men in power. It was a duty always to consider the ability of the community to bear the burden before the burden was imposed. (b. Baba Metzia 78b) There is a typical statement by a sixteenth century Rabbi, Joel Sirkes, which indicates how the consciousness that the law was of higher status than the mere will of a governing body, helped to keep tyranny in check. This great authority said, "The power of the communal authorities to establish enactments applies only to such enactments as are manifestly for the *benefit* of the community. But such enactments as do harm, they are given no right to make; evil enactments constitute an error and the enactments are ipso facto void." (Responsa "Bach," Old Series, 60 & 61) Likewise this sixteenth century authority, in discussing certain decisions with a contemporary, said "all such matters [the opinions of certain scholars] have no authority over us merely because they said it. We need only follow that which was taught us from heaven. May the God of truth lead us on the path of truth that we may derive the law in its true meaning." (Responsa, Old No. 78)

Thus the conscience of the rulers was constantly called upon; but beyond that a still firmer check was the fact that they were not dealing with brutish people ignorant of the law. The Jewish community was learned in the law; and the law could always be argued. In the Middle Ages

it was even permitted for a member of the community who felt that his rights were impugned, to arise in the synagogue and forbid the continuation of the service until the right of a hearing was promised him. (*Responsa*, Moses Minz No. 102)

This widespread legal education was, of course, exceptional, but it involves a principle that is universally true. To the extent that the people in any community or nation considers the law as something mysterious and hopelessly technical and beyond its reach, it becomes an over-awed community which docilely accepts and submits. But to the extent that the people understand that the law is based upon fundamental principles of justice and fair-play, which every man can understand, to the extent that the average man knows more and more about the working of his government at every level, to that extent does tyranny receive its natural check. Not in vain did one of the great human architects of our freedom, Thomas Jefferson, become so strong an advocate of universal education. The Declaration of Independence can remain a reality only in a nation of independent minds.

I have had the privilege of presenting to you the legal-social experience of a small fragment of the world community. But this fragment was, as all religious people in the western world believe, a unique fragment of humanity. To combine scientific and scriptural terminology, we might say that this people was God's chosen laboratory. Through it, He experimented with certain Self-revelations. How deeply this is true for Christian tradition, Christian theologians know. As for the people of Israel itself, it is aware that it was once sternly commanded to abandon the great plastic arts of painting and sculpture

in order that the temptation to idolatry may vanish from at least one people on earth. This people, too, was to become devoted to the Divine Law which they were bidden ever to rediscover, so that the Divine became humanly natural. This law they carried with them for many centuries and governed their life completely until the beginning of the modern era when the self-governing Jewish communities merged into the various nations of the world and the child of Israel was then governed by the same law as his fellow citizens. Even pious Orthodox Jews today do not follow the great Jewish civil law codes but conduct their business according to the civil law of the people of which they are citizens. This strange succession of twenty centuries now ended had constituted a laboratory experiment in the Divine-Natural Law. In this small confined group, it was practiced and attained a majesty which it could not attain elsewhere. And as such it revealed its basic characteristics.

During these centuries, the Divine-Natural Law meant order and meant culture. To the extent that it meant order, it meant self-control through conscience. To the extent that it meant widespread culture, it achieved a democratic control over the abuses of power. These principles apply to all legal systems in all times. If men believe that the law is essentially natural and God-given, then with even a minimum of police power, order will reign. If men understand the legal foundations of their own government, they are the intelligent citizenry against which no tyranny can prevail. This is the experience and the universal meaning of Divine-Natural Law in Jewish history. It was small in scope, but it applies *ubique et omnibus*, everywhere for everybody.