CONCEPT OF LAW & JUSTICE

Law has various type of meaning according to various point of views. It may be used in practical as well as in general or abstract form. From time immemorial law may be divided in two major concepts: (1) Eastern World Concept (2) and western world concept. .

This position of eastern world may be peaked from the study of Ancient Hindu, Chinese and Muslim concept of law.

Law according to Hindu concept of life: - Law is the sense has been defamed by Dr. S.N: Sen-1 as follows:- As these rules of conduct Authoritatively imposed by divine power for men, as a being capable of eternal existence governing all his activities public or private and effecting inseparably in spiritual and temporal interests."

The Hindu concept of law and social custom and political ideas in an Indl closely cupled with two inseparable and dynamic ideas of an omnipotent cosmIC or dlvme law, RIta and in all prevailing custom, Dharma which run through the oldest works of our sacred treasurer viz Rig Veda and Atharvaveda, Samhitas and which we developed more fully m the sacred works of the immediately following period viz of the sun, the waxing and waning of the mean, the regularity of the seasons etc. In the
mantras its meaning is extended to include not only the rhythm, regularity and uniformities of nature and natural order but also moral order based on natural justice
Gods are called- Guardian of Rita and practiced of Rita- who -reward the good and
punished the wicked, those who follow the opposite path are the wicked one. In Brahmans, which exits the efficacy of sacrifices rites, Rita becomes identical with object with Y agna or sacrifice. Sacrificial rites are performed with the object of prosperity and happiness here and thereafter. Rita and Yagna imply that each action carries its own reward and Dharma means Right activity or duty, activities whichpromotes virtues and induces man to live in harmony and peace with the world. These two concepts of Rita and dharma have anticipated to a vary great extant the law of nature as developed on the stoic philosopher of ancient Greece and perfected by early ROITI lawyers.

Dharma: - Dharma is the core and center of Hindu legal theory. It is not creed or but a mode of life on a code of conduct which regulated a man's activities as a member society and was intended to enable him to reach the full height of his

stature the goal chuman existence. It thus corresponds to Aquinas' - Eternal Law: - the name given t this first law which is the source of all other law. It is no wonder, therefore that as-------

- U.S.A. has that in Hindu speculations, duty occupies the central position that in Europe an thought belong to concept of natural Rights and freedom. We in saying that Civil obligation rather' than .tights formed the basic of relation of State and subject.

givers acclaimer the' truth that and tolerance in life should be the highest objective of man kind and that same can be achieved by a balance of duties and not by We are reminded of Alexis de-to- statement - "respect and delight in difference are still the charm of India. Ancient Hindu communities were, however, ho strangers to the concept of rights. But they are specific rights to old idea of social order, which is concerned with the application of the principles of the supremacy of law to the individuals and the social units. In the t of Satapatha Brahmans - It is said are the law (Dharma). Hence, whenever the waters Come down to this world every thing here comes to have accrued with Dharma. But whenever there is drought then the stranger sides upon the weaker for the \ 'from the that native's without law is synonymous with anarchy and that law is the foundation of the individual and collective security. "Dharma is the word which has been defined variously. It's most ordinary meaning is but its more appropriate meaning in the sense in virtue or what is true knowledge Dutta used the word in the sense of "that of human duties and occupation, pursuits and daily action. It was this fundamental philosophy of life that permeated the life of individuals as well as nations in ancient India and influenced them in molding their religious moral, legal and social inter course. All creature grown on the growth of righteousness and decay with its decay. Righteousness is called Jharma. Dharma was not only justification for state but its ultimate cause and support. There various sources of Hindu

la was not a source of law. Law is divinely ordained so also danda (the spirit of punishment) is divinely planned. The law was the king of kings and there was nothing higher than law says one Uprishad Manu Smitri{2} says. Danda is above the king 1'.Iho under and not above the card. The whole world is kept in order by punishment is one just inflector of punishment ho is truthful and According to Charless Drekmeier the Hindu king never enjoyed the immunity that accompanied the European concept of the divine right of kings. !"ather than divine Bight. We must speak of divine obligation the duty of the king to protect the social . ,many passages that to get glorify the king in fact reminder of duties implied in his office, the function of the king and not the king himself, are A great work Dn positive law, - in its 18th title dealing with law, strikes a modern note D1 positive law by saying that it is of kings Dmmr:mdanal'lts that give rise tD actiDns in cou!"ts. Law personified as a king roams on €~arth .visibly I-thousand eyes. MQ,rtal cannot livE at all if th.ey his

commandants.WheT to God and the decrees of the Almighty were revealed ~o the people in the vedas by saints and sages who had knowledge of them~ Sanct~on is; and mOT~al one. The basic for- obedience of law in ancient India was their divine origin. In ancient Hindu Society where religious and secular Rules were interwoven and intermixed, 'fear of consequences in the other world, dread of divine displeasure always acted as a deterrent for every infringement of duty, the individual is subject to a two punishment, one immediate and other remote. There was no distinction made between crime and sin. by Hindu jurists, the punishment inflicted upon these (offenders) was based on expiatory theory, c:cmmon~in Europe in the middle ages.

nature nairajya-bears a close resembles to that developed in the west, namely, the power or principle imminent in the universe which A!"istotle-called Nautre-In Maha Bharat we have one sloka attributed to Bhisffia which means that originally, prior to the evolution of organized states in the world there was no kingdom i.e. Government or States. There was no things, no laws, no person to administer and that in such a state men used to protect each other according to dharma or dictates of their c::ons:.c::ienc:e.

Dharma that protected men in such a society was a law that was neither laid down nor enforced by any external authority. But IA);;!5 I.)hc~t the $to).c:s c::onsideT'f:~d as T'eason and ,.)hich accc:)rdinq to them was a universal force prevailing the whole universe as the basic:: '1'01" law and justicE~. Matur.al, law is the 1 a I') dictated by conscience which reflects nature inherent for man. It is the

universal application binding all men everywhere. This law ~ttributed to divine authority is, eternal and unchangeable, binding at all times upoh all people.This is what Dharma means conscience or Right reason which ma~ focused in ptotecting each other. ~

science of the Rights and obligations of man having regBr-d to the contents and the conception of Fiqh. The scope of law of land is r-eally wider, the former r-egulates the internal affairs of the state in dealing. with the subjects in its executive,
legislative, Judicature, Scientific development and social li.depat.'tm~~nt of activities."

So, accor-ding to Muslim b~lief, law or-iginated from the direct command ~f God, the r-eal sover-eign and law giver, interpr-eted and expahded by messenger- of God who were certain chosen human guide.

chinese JUrist r-egar-ding law is not ivai lab Ie. But certain views regar-ding the definition of law is available. The Ancient china although recognized both law of natur-e and positive la~ in bal i:1nced sense. FQremq§t ch ines(~ thQught li.las i;t.s concept iQn of
natur-e and man's relatioriship to nature. The positive law, at the very beginning was developed because the China was governed by pure empires in very str-ict sense. The chinese people at that
cannot qo Qut side and they were in habit Qf thinking that our country i~ the entire world so they became familiar- with positive law (Command of thing empir-e which has to be obeyed in verbatim).

Now, we shall try to analysis, the western wor-Id various famous and eminent jurists en justice.

At the initial stage of his book-3 'Holland refer-so a very pough me an i law, says Benthem, taken indefinitely is an abstract orcQllective term which when it meBns anything can mean neithermore or less than the sum total numbers of Individual laws taken together~" .

This simple statement is in str-iking contrast with a multitude of absor-ptiQns I..Ipon the subject which however are less frequently made upon the subject which however- ar-e less _made t.lith reff)rence to the English fOT'm of 1 a I" than to its equivalents in other languages. The form Lus, Richte; Droit, ~tc. cannot b& said to express nothing more than sum total of a number I:)f ill.;'dividaLtls laws taken together. It happens that all these forms denotes not only sum total of laws but also sum total of Rights (IORA, Richhe, deoits), when we say that jurisprudence is science of LUS, Richte, or droits we may mean in ea~h case that it is the science any of one of three things viz.

1. of law. 2. of Rights. 3. of Justice.and unless this ambiguity be born in mind many expressiohshaving apparent reference to law wi~l be quite unintelligible but a coherent science cannot be constructed upon an idea which has
complex or shifting meanings, one or other meaning must be chosen and when chosen must be made the sole foundation of the edifice. It is therefore a piece of good fortunate that when we say in English that Jurisprudence is the science of law. We are spared the ambiguities which be set the expression of that proposition
in latin, German and French and have greatly obscured its f)xpo~:;iticm in tho~5e languages. It the form "lat.)" is free fT'om any suggestion of the aggreQate of Rights or of the aggregates of Just things. It is of cOurse suggestiv~ of all the' meanings in t.,hich the concrete 1 a I') "a lal..I" is employed in our langLlage and

more have, unfortunately been so numerous as to involve the
abstract idea in considerable obscurity. Hence it is ~hat so many of the definition which have been given of that Mysterious hon.
entity strike us a being vague or merel~ Eulogistic many of them havf.~ T'ef()rence to that divine order t.)hich peT'vades the un;;mimity universe even more than the actions of Ration being and those of them which have reference to human action deal quite as often with the voluntarily observed maims of society as with Rules which are supported by the Authority of state so as the sense of term "A 1 Clt.) " may at first "ight appear the connection bett.,een them
is not hard to trace nor is the earliest use widely different from the latest and most accurate.

The shf:.'pherd I.)ho guides his flock, or on a larger scale the head of the family who regulates its encamoment and employment seems to have been the earliest law given and his directions as orders given by one who has power to enforce their observance are the earlier laws. The original and still the popular conception of a law is a command, disobedience to which will be punished, prescribing a course of action, this conception necessarily implies that of a law giver, who has power to enforce his command from this vQ.gue original use of tl'-,e term, has arisen that large developments of uses some proper some merely Meta phorical out of which the Jurist has to select that
he admits into his science, the strong intellectual tendency of man kind is the AnthT~opomoT~ph~. If a man i~5 mystery t(::I himself, external nature is a still great mystery to him and he explains the more by the less obscure." .s he governs his flock and his
family, so he supposes that unseen being govern the waters and winds. The greater the regularity which he observes in nature the fewer much being does he suppose to be at work, in her till at

len.<;;rtj1 he rises to the conception o'f one great beinq t'lhose lat'ls aT'p' ob(\?yed by thf~ wh!".:)le univp.r's~? CH' it miity be th<.{t, having thW5 arrived at the notion of a universe movinq according to law he
hole\!:; fast to it even t'Jhile he lacKs his hold on the idei~ (Jf
existence of a supreme law giver. Men have also almost always believed themselves to be acquainted with cert~inrules intruded for the guidance of their action and either directly ~evealed to them by B superhuman pow~r or gathered by themselves from such indications of will of that power as are accessible. They are supposed that they have discovered by self analysis a master part of th£~ms~"dves, to the dictate of \'Ih:i.cr', they c)\<le allegiance., They have observed that in order that thei~ senses may receive certain impl-'(-~ssions 'from ewt(-!r-n;;\l objects, thos£~ object=; must be arT'anged
in certain ways and no or~er. It is easy enough upon consideration of these facts to account for the existence of such phrases as laws of nature, laws

of God, laws of morality and others which will at once suggest themselves.

The employment of the same name to denote things so different may appear to us imply on extra or-dinar-y confusion to the topics appropriate to theology, to physics, and to jurisprudence. But the'wonder will be less if we remember that separation of sciencE's to which we are accustomed and which we take for granted, was unknown to remote Anti-quity. The word with which we take for granted, was unknown to remote Antiguity. The world with all its liar-ied phenomena was originally studied as a whole. The fact o~ nature and the doings of man were either conceived of or ordained by the Gods. The constitutions of states and @.utom!:; ;:md laws o'f all the pec)pl(\?s clf ttH? earth t...ere a4 much of divine contrivance as the paths of the planets. The great problems, thus, presented for the study of man kind was gradually broken up into number of minor- problem there occur-red a division of sciences. A distinction is drawn between those which dealt with external nature and those which deal with the actions of men. There, later, the practical were thus severed from the theoretical sciences and the term law which had been ~mbiguously
in the discussion on of both sets of topics before their severance has two distinct histor-ies. In the theor-etical science,it is used as the abstract idea of the observed rejections of phenomen be those relations instances causation or of were succession and 50-existence. In the practical science the modern science is used to expr-ess the abstract idea of the Rules which regulate human actions.

Science or i~ Modern sense Dr in physical science law is used to denote the method of phenomena of the universe, a use which would imply in accordance with the primitive meaning of the ter-m th~t method is imposed upon the phenomenon either by the will of God or by the obstruction called nature or thr-ough minor- ab5tr-actions called gravitation, electricity and the like. The ohenomen, themselves Br-e unable to inform us, 50 to remove this misconception of mind. We must use the term law merely to convey t:C)
importing into this idea, any of the association called up by term Ji)hen it is f?mployed in the practical sciences.ns use in these sciences is speaking very generally, to express a Rule of human action and sciences of human action being those in ~hich the term is most used and indeed is most needed. it is reasonable to say that this is its proper meaning and that its use in the theoretical science is impr~per.

ambiguity for the purposes of jurisprudence is to discard the meaning'in which it is employed. In the physical science where it is used by a mere methaphor, to express the method or ord&r of phenomena and to adopt as its proper ~eaning

that which it bears in the practical sciences where it is employed BS the abstract of Rules of human action.

(1) than and t:he

Holland himself eites these definitio~of law in his Book Lali,1 is king of kings, far more pOliH~rful i:u1d rigid there can be nothing ~ might:ier tr'IE~n 1 a Ii) on IL)hoSE~ aid that by the highest monarch even the weak.may prevail over strcm<;;J."
.

Bnd things divine and IL)hat ILle call the sea!:.sons,appeaT'E:;. if li)S may tr'ust li)hat lile see t<:) be regul ated by 1 al~1 and (:\T'deT'. II

(4) G.t!L.:t..2.li!fl\:!Ji.. -- The commcm 1 aliI ILlhich is the h,ght reason moving through all things identical with zeus the supreme adminis tration crf the UniVf?rse."

!. Atque prin-eps, apta ad vintendum Ratiaert T'ecta summi Lovis.

lubendum

(6) !:-IqP.!:U~L - O'f 1 a Ii) there can be no les~acknmL.d.f?dged than that ~ her seat in the bosoom o-F God her voice"the her money of the world all things in Heaven and earth die her homage, very least as feeling heT' care and the gT'eatest 85 not exempted fT'om her power both angels and men and creatures of what condition suaver though each in different SOT't and manner yet all with uniform consent admitting her as the mother of their peace and joy.

ishes of one man can be combined with the personal wishes an6t~~ man in accordance with the General law of freedom.

Holland further says that the term law is employed in jurisprudence not in sense of abstract idea of order but in that of the Abstract idea of rules of conduct. But of these rules only a particular clas~.; are "Lal"s" in the strict !5enS(;'> ()'f the term. =,0
that although the Jurists is in no danger of getting entangled in question of physical sciences. He is obliged to busy himself in
marking the boundary which separates his own department of study from the wider field of morality. His task is so to narrow and deepen the popular

caMception of law in the sense of rule of action as to fit it for his own purposes before entering upon which it may perhaps be as well to point how various character are those precepts for the guidance of the life and conduct of man to which the term law is with more or less propriety applied. While some of these precepts are received wherever human beings
are gathered together others are limited to the followers of particular religion while some of them deal with the fundamental Institution of Society. Some are enforced by the whole power of
grf?at empil~es t.,hile. (1ther!5 maylfvi,olatetby any one:? t.)ho is not
afraid to encounter the banter of his acquittance. They possess
certain common characteristics. They are either are, or they be, ~~:-:pT"f:)ssf:)d a!::> Di~_,tinct PT"opositions. They are fUT"thfH' propositions
addressed to the will of Rational beings of the two kinds of proposition which may be so addressed. They are commands that is to say, precepts in which the cause of obedience depends on the will on him who commands, not counsels, which are precepts in which reason of obedience is taken from the thing itself which is revised being commands they are accompanied by a sanction that is to say they imply, if that do not express, an intimation that
author will see to their being obeyed, not necessarily by B threat of punishment as such, but also by a suggestion of
interfere to prevent disobedience or to ruin state things in the position in which they were before the act of disobedience. Lastly there are general commands they relate to courses conduct as opposed to special commands which enjoin only a particular
action. Black stone on the other hand makes the generality of law depend on its being addressed to a class of persons. Law, therefore, in the vague sense of rules of human action are proposition commanding the doing or abstaining from certain classes of action, disobedience to which is followed, or is likely to be followed by some sort of penalty or inconvenience.

\<Jith)awE.- pr'op~~T', ar'~~ those \Alhich art~ called la\<ls of God, 1a\'ls of natur~ i~nd li~\'lj5 of morality. So closely indeed aT~(:? these topics connected with those proper to jurisprudence, that many of the, older' '<I(Jd::s em the subject aT~e occupied as much ,<,dth the 1i:1'~ls o.f God or of nature as with law proper. Sir walter Releigh for instance, beings a dissertation upon law, by stating that laws are of thT'e~~ kinds Eternal (l) UncT'eated. C?) Ne~tur'i:1"l (InteT'ned) (3) and those which aT'e imposed or in addition, which are explicatory and perfecting to law of nature or either human or divine both of which kinds are again variously subdivided.

It will therefore be necessa~y to touch briefly on those classes of so called laws which are occasionally compared with laws properly so called.

The use of term law in any of ~he sciences called practical or moral that is to say which have t9 do with the human will is irrelevant for our purposes but the difficulty is that to draw a sharp line of distinction between the mea~tng in which this term is used in Jurisp~ud~nce in which it is used in the other particle sciences.

TtH~ commm1 char'a$:~)T"tics~ o'f moral ~.>c:i,enc~'s covering tj'f human action and including all volitions whether accompanied or nc)t by the ~~~.:ternal movement may be sUfTHTH~d up as follo'<ls : - They postulate a will, free at any Rate so far as to be influenced by motives presented to it, they postulate the deteT'mination of that will by other causes than the mere sensations of the moment and more s~H:~c:ifically by 1"espE'ct for r-ules of lift' and conduct they have many fundamental ideas in common, such as freedom act, obligation, ideas which they are not bound to analysis strictl~, but employ in accordance with the usage of ordinary language and incenses.'t might be accepted by widely opposed schools of specuiation, each science must define&classify such ideas so far as is necessary for its own purposes, leaving their full and final investigation to psychology and metaphysic.

The resemblances and differences in the employment of the "Term la\t.l" i,.1 the sever-al practical scif~nces mu=:.t; b~? eNplain(:?d on

the resemblancesand the differences between the sciences

themselves. The grand division of sciences in between that which deals:-
~:;tate",> of the 'td.ll, irT"'e~:;e~tively of their out-'<laT~6'l tni:mi'f(:?statiC)n in act and thQ!5e ,<,1/iichdealj5 ,<lith states of th(i:'
wills only so far as they manifested in action. The former regard which later disregard those without acts of the will which do not result in outward acts of the body. The former kind of Science is ethic the later kinds possess no received collective name, but
may perhaps be provisionally desi<;'F')ated "nomolo!;JY". Sr..', Ethic is
the science of the conformity of human character to a type, nomology of the conformity of actions of Rules. So, ethic is the science mainly of duties, while nomology looks rather to the definition and preservation of Rights. The terms Rights & duties are co-relatives and are common to both ethic and nomology. But

9the jormer science, in accordance with its more inwards nature 10Qk~~ither to the duties, which are binding on the conscience. The later looks to the Rights, which are the elements of Social life.

which external legislation is impossible. It is the. science of those rules, which

when known are themselves adopted on the will as its. object or aims. This Rightness of will can never be enforced by external legislation, but must be free choice of Individual.~ll the external legislation can do is to effect the external expression of the will enact and this, not by a
rectification of the aim itself of the will, but by causing the ll.,ill to follc.\IA' ~ ~ ancd;I'1er aim./I Kant define Nomology further ~~s /lthe sci!:mc::e of thf:: totality of the Rules fOT~ IA,hieh an external legislation is possible. So, the moral science, having thus grouped under the head of Ethic in which object of Investigation is the conformity of the will to Rule and of ~omology in which the object of investigation is the conformity of acts to a rule we pass by the former as foreign to our

Nomology is divided in two groups :

(1) (2)

A science of Rules enforced by indeterminate Authority. A science of Rules enforced by determinate Authority.

(1)

So far as sanction of law of fashion & honour is concerned, it seems nothing because the Infraction of these are called vice
only, and not condemnation by public or Bad public opinion. So far as law of morality is concerned, the business of Jurist is to 2tCCf!pt at 'fir'i:::.t pl;::,cf! CiS an unt!oubted fact, thf.:' e~d.stf!nce of
moral principles in the world differing in many particulars in different nations at different epochs, but having certain Broad resemblance and in second place to observe the sort of sanction by which these principles are made effec::tive. He will then be in a position to draw unanswiring by the line which divide such moral laws from the laws which are the subject of Legal Science or proper science which have the Broad resemblance of the moral
principles. A man kind is universally admitted the occasional divergences between them are frequently lost sight off. The truth upon the point is iH:lmirably e~.:pr'ess;f.:'d By Paley, "Mor'al
approbation", he writes - follows the fashion and institution of the country we live in which fashion and also Institution themselves, have grown out of the exigencies, the climate, situation or circumstances of country or have been set up by the Authority of an Arbitrary Chieftain or unaccountable caprice of the Multitude. As regards sanction of Moral Rules, Locke says that no man escapes the punishment of their censure and dislike IA,ho - c.tf fends a 1,;1 a j, ns t 'f ash i on and op i n j, on of th e Coun t ry h f? k (~ept'5 ii~ne! tA,ould recommend him!;;elf to it." Buch R.ules ar'e thus by no mean with out their approprj,ate sanctj,on. We cannot therefore see characteristic between morality & Law, that

portion of Morality
IA,hic::h ~.:;uppliE's thf.~ more important and univer'sal R.ulegi> T~.H' the governance. of the out-ward acts of mankj,nd is called the law of
~ature. This is a plain and true actount of a subject upon which a va5tamoun~ of mystical writing has been expended. Such of the received pr~cepts or moral relating to overt-acts and therefore capable of being enforced by a political Authority as in year are enforced by such Authority or/are supposed to be fit so to be enforced are called laws of nature. They are prece~ts obedience
to which, whether it be or not commanded by the state, is insj,sted upon by deep-rooted public sentiment, resting totally upon public: sentiments, they are rules of Moralj,ty. But having reference only to sL~h outward actions as are thought fit for political endorsement, they form only one class of such R.ules
After what has been said as to the origin and Authority of moral Rules in General, it will be unnecessary to discuss at length the orj,gin & Authority of sL~h moral rules as are called natural laws. Whatever may be the character the objective of those laws whether they should be iden~ified with the will of God or should be supposed to be in some sort of Guides e~en of that will, it is enough for the jurists that they certainly rest like other Rules upon the support of public sentiment, while there has been much difference of opinion as to the contents of the laws of nature. The existence of such a law has been generally admitted. At the time when the social sciences were first separated from the Physical sciences speculation recognized j,n the former nothing, but what is variably and artrary thus, Democrats thought, that j,nstj,tutions were of human devising while atoms &
VaC\.IUln .. e~dst by nature. It 1"<~S the !:,tock sophistical doctT~ine t~at moral distinction, specifically Justice are the creatures of law, which is itself a mere compromise, securing each man against j,njury on condition that he surrenders the luxury of ill-treatj,ng his neighbors. The purely conventional character of Morality is absolute c:onclusj,on drawn by Hero dotus from the contradictory views and customs which he found to prevail among different j"',ations.

But a contrary view found early expression in Ij,terature !:'Jc)phc)Cl(~s m<~kes anti(;len appeal 'from thE' oT'df?rE' of I<ing I<reon to unwritten and readfast customs of God.

justice. He mentions as an ordinary device of
rhetoric the distinction which may be drawn between written law ane! common law, which is in accordance with nature and immutable. Stories were in the habit of identifyj,ng nature with law in the
higher sense and of opposing both of these terms to law which is such by m(:.' T~e human appo i n tmf?n t. "JU!5 tic (,~", "h e says" , i !:; by nature and not by imposj,tion. It proceeds from Zeus and common natuT'e.

which ought to be done and prohibi~s the reverse. The highest law was born in all ages before any law was written or state was formed. We are by nature Inclined to love mankind which is the foundation of law. Law did not then be~i.n to ~e when
it was put into ~riting. But when it arose that is to say at the f::;i;~me mc)/'I'i!::nt I£.lith the mind of God." It may be I£.lorth [£.lhile to add a few ins~ance~ from later writers of the times in which the law of nature has been spoken of :

which men may be drawn to agreement these articles are they which otherwise are called laws of Nature.

he law of mankind concerning common necessities to which we are inclined by nature invited by consent, prompted by reason, but is bound upon us only the command of God.

Rat i on a 1
Crf?atLlral(~N naturali~~e dicitur.1I

ThE' term "L.EU1.1 of nature" besides the s;ense in 11!hich 11.11:'> j-'!c:lve
just explained, it has been employed in wider and also in a more
T"p.stT"ic::tpd sen~;&.>. The l£.lider' is that of 11.1&.>11 knOI£Jf1 -,- "I us Naturals" of Ulpian, which he says, prevails among animals as 11.1ell as men r'eC;;Julating the nLlT'.iiJ1"e of the young and the urdon of
the sexei. It is obvious that the courses of action oriented by Ulpian, are followed, in pursuance not of a prpcept add1"essed of t~ 1'ation.d 11Jill 11!hich alone is prQper~ly callf~d a 10111.1 but rather of a Blind Instinct resembling the forces which sway the inanimate world. Such as employment of the term is, infact, fully as Meta Pho1"ic::al as its use to pxpress the orde1" of the Universe. ,~ 'le1\£.I for t:h~? nature M o'ffspring is no mor(~ intelligible them a
leW.I of 9Y"'avitaticm. It is, in pursuance of this; low.I \£Ihich is supposed to covers the relations of men before they have origina~ed. Any of these institutions which Mark super~ority to
the merely animal creation, that all men are asserted to be equal "befo1'e any laI1.1!:;; 11J€H'&' in £n:istence no dif'fer'ence~; betI1.1€-:.>en man ~< man were recognized by law Ulpian sius naturals is therefore is merely Meta phorical phrase leading to consequences, which,
however, magniloquently, they may be eNprsssed turn out upon analysis to be dangerous truism. All legal right & wrong had its Q1"igin after human society was put in motion and began to reflect & act. To talk of law and Right i~ applied

so mankind at a supposed period anterior tQ society beginning to think a~d act is an contradiction in te1"ms.

In Narrower sense is the identification of natural law with ins Gentium. Its origin, a system of positive law enforced among the Romans and the races with whom they were brought into commercial contact, was conceived of Doubtless as early as second century B.C., as the body of principlps which was found in the laws of all nations and which therefore point to a similarity in the De~ds and ideas of all peoples by the introduction of these prec::~i::)ts. The n.U-'f'OI.AJ ~~ str'ic:t lalA.I of Home IAJaf.';; gradually enriched and explanded. It was an after thought to give them a higher authority and philosophical significance by identifying them IAlith the Naturals" .- as is, don(~ I:?ven by Ciceroby Gaius.

Ulpian's; IAJidth me;:,;,ninq 01: term "L..HAJ" neVfH' ~:;eem~e. t"O have gained currency~ It was on the other hand long & generally used in restricted sense of an equivalent for what the Romans meant by the "Ius Gentium".

Its suitable & convenient use in the same in which it was employed by Aristotle was also resorted by such writers as Grotius, Gentile, Oldendrop etc.

A brief of various practical conclusions which have been drawn from the Doctrine ius naturals is as follows 1) Acts prohibited by positive law, But not by the natural are !;;;aid to be mala pf'chibited lJ_..
2) Natural law, or natural equity has been often called justify a departure from the strict rules of positive law..
3) In cases for which ~he law makes no provision the courts are some-times expressly authorized to decide in accordance with the pf"inciplE:-!::..; c)1 Natural L."HAJ. This is so, fOf' in~5tance, in the
Austrian-German-Civil Codes and the commissioners for preparing the body of substantive Law for India recommended that the Judges should decide the cases in the manner they deem most consistent with the .principles of equity. Justice & good conscience, the new swiss Civil Code which came into operation in 1912 provides that in default of express enactment, B Judge is to decide in accorda.nce with "L(-? Droit Coutumier" failing both of thes
sources he has to apply such rule~ as he would lay down were in a legi!5Iator'. 4) The e:-:ceptional r-ule's of lalAJ " explained as derived from natural law.
5) When English Cour-ts refuses recognition to a foreign judgment, as being opposed to natural justice, the objection is limited to the procedure by which the Judgment was obtained. But
this gr-ound of objection u/s 14 of CPC (India) is of wider Hpplic:ation.
6) The International L.aw is based upon the rather scaffoding, law of nature.
7) Positive laws have been said to be invalid when they contradict the law of nature. Hooker Para Phasing Thomas- says, "Hum,,~n l.wJS are rTH~aSUre~; in

must direct, How be it such measures they are as have also theirhigher rules to be measured by, which rules are two, the law of God and law of natur-e so the laws must be made according to the General law of natur-e and without contr-adiction to any positive latAJ tJf ~5criptur(.?, otherIA.lis~? they are ill--made." mankind and dictated by God himself, is of c:our-se superior obligation to any other. It is binding allover the globe in all countries and at all times, no human laws are of any validity if contr~ry to this and such of them as are valid, derive all their 'fOT~Cf~ and i:ill their' authority 'fT~om their orj,{;dnal". Bon ha~'s case says, when an act of Parliament is against common right, reason or repugnant, or is impossible to be performed the common 1 a \11 11dll control it and void. Lor'c:J Hobert says:" "Even were approved. But in Hondon Vis Wood L.ord Holt says though these dictas are correct but appears never to have been followed in practic~?

Rules imposed or thought to be imposed upon mankind by God or God's direct relevations of the will of a supernatural power or indiT"'ec.~t intimation o'f thc.~t I'lillas €,~ach man 'may find in t-ds CH'ln conscience have described as ,laws of God. It has been believed that infractions of higher class of God's law, generally known as I~'

religion to religion the law of God, resemble in almost every kind other than point crf !;:;OI.IT~ce!; and sanction.
definite human authority and here we draw the final distinction between th~ case when such authority is and the case when it is not a sovereign political authority, rules set by such an
authority' are alone properly called 'laws' by a successive narrowing of the rules for human action. We have at length arrived at such of those rules as are laws. A law, is in proper sense of the term, is therefore a General Rule of human action taking cognizance only of external acts, enforced by a determinate Authority, which Authority is human and among human Authorities, is that which is paramount in a political Society more briefly a general Rule of external human action enforced by sovereign political Authority". All Rules of human action for i which that term is employed in Jurisprudence is enforced by a SoY~reign Political Authority. It is thus distinguished not only from all rules which like the principles of morality and the' 50 called nour and of fashion aT'e Indeterminate Authority. But also from all rules enforced by a determinate Authority which is higher super human or politically !:~LIbord in In order to emphasis the fact that laws in the strict sense, are thus authoritatively imposed they are described as positive laws. Some definition will be found to have reference .

many('I is a discDvery and gift of God and at the same time a decision of wise man and a righting of transgression, both voluntarily or involuntarily c:ommcm

"Whatf?ver' the Ruling part .State as to what ought to be done shall enact is called a common Agreement of a State intimating how everything should don(;?" commnn Rules of life for his subjects and obliging them to obedience.

.to an extensively applying and permanently endurinq act nr State of the will of a person or persnns in relation to whom he is, or they are, in a state of sL~eriority".

Have it remains, However, what is meant by a sovereign AuthrJri ty. political

First question arise-what the people is. In the opinion of Holland~ A people is a large number of human being united together by a common language and by similar' customs and opinions resultinq usually from common Ancestry, religion and historical cir(::umstance~:;"... Holland furttH:.'r think l'lhat the State is.., a numero
assemblaqe of human beings qeneral1y occupyinq a certain territory amongst whom the will of majority or of ancertainable class of persons is by strength of such a majority or class made to pr'e~ail against any of their numbers, who oppose it". Holland says a state may be co-extensive with one people as is now in case of French or may embrace several as in the case. with A~stria. But Aristotle denies that a State can be composed only of 10 persons Dr that one lac persons can be compr'ised in a single state. One people may enter into the composition of several states as do the poles and jews. So, a people is truly said as a natural unit but a state is in artificial unit. There must doubtler.;s; I"', av E": beE~n pE>ople~:> bafor'e ther'e ('Iere State£,. i.e.

"to sa¥ that there must have been group of human beings united by !simil':'ilY"'ity of language custom ~(opinion befor"(~ there. ar'os(.:?
amongst them an organisation for enforcing the opinion of the majority or those of a Government acquired in by majority upon an unwilling minority. It is impossible to affirm with Savingy . that a people tl!hich h~' calls "an invisibl(~ natural t,!hol(~ never~ e).dst!;;;
as such, never that is to say without its bodily form the ~State.
Aristotle speaks of the Arcadiam as remaining in till (founding of Megalopolis) they became a itonis nor we can follow Savignyin regarding the production of the State as the highest state. In the pro-creation of law, morality may precede But law must follow, the organisation of a political society.

Of such a Society, the following definitions have been given at various period :

0.J.::.t~~.:\;:.f.?..tlg- :- "The perff.'ct co.mmunity 11!hich aris,es f1"'om !::;evE.'r"d

villages is already a city, which achieves so to ~ay, the fullness of complete self sufficingness, Brought into in the bare needs of life, But finding its true object in time promotion of a nob 1 f:?]. i 'f (~ " .

UqQ.!~...~:.§- :- "The common \,!e"dth is one j:H.'rson of (l!hOS;E.' 2;Cts; a C;.lf'f:.'at multitude by covenant one with another have made themselves every one the Author to the end he may use the strength and means of .them a11.! aj;:". he s;h2;l1 think €D:ppdient for their peace "md CCH11mCH1 de'fenc(.:?" .

together for the common benefit to enjoy peacefully what is their Oll!n and to do.

speculation. To the ST"eeks the oT"ganized city government in which they delighted seemed the T"esult of superhuman wisdom. It was a common place with theiT" ea.rliest poets a.nd Philosophers to ascribe a divine origin to Sta.tes and tQ legisla.tion, every law, $ays D~monsthenes is the gift of God and decision of Sa.ges, La.teT" spec:ulatoT"s not content to vail their ignora.nce under pious allegory, have explained the T"ise of politica.l Society in the Nyposthesis of an origin contra.c:t, the convenants of which they have set out with vast, if mis.placed ingenuity. The Hypothesis is cleaT"ly though by no mean~ for the first time stated by Grotius. Every Sta.te is divisible in two parts one of which is sovereign otheT" is subject. The term !Sovereign seems only to have come into use in this sense in the time of Louis XIV a.nd fiT"stly

it i~ used by Hobbes & Leviathan, the sovereign part, called by Bodin "f1aiestas" is defined by him as "summa in cive!:; as s~lbditos Legibusque soluta poetaster" Grotius C::cd l~; it summa protE:'sters which he defines as being illa cuius actus allures iuri non subsunt it a U.V. allerius voluntaries humane arbitiro irrific pos!E;ient reddi" Hobl::)(:,>!:; define it l<.that he i!5 plei~!sed to call a city as one person whose will by the compact of many men i, to be received for the will of the all. So as he may use all the power and faculties of each particular person to the maintenance of peace and common defence.

The Sovereignty of the ruling part has two aspects 1st it is external as independent of all control from without II Internal ~.;;!E; parcunouht over all action I<Jithin. f\u~_tJll._g..!1QI:.g_2.2.g2L that its Double character by saying that a sovereign p~wer is not in habit of obedience to any determinate hymen superior while it is itself the determinate and common superior to which thB bulk of a subject society is in habit of obedience.

thou t PO!5 s e!s SiD n
of which no State is qualified for membership of family of nation
is enjoyed t)iYJost obvious.ly by I<.that is called and knol'ln as a simple State i.e. by one which is not bound in a permanent manner to any foreign political body". States which are not simple are
members of a Systems of States" these may be pr'otectorate,
federation, incorporate union etc. These are not absolute sovereign in this sense.

The question which arises with reference to Internal Sovereignty relates to the proportion borne by the Sovereign part of the State to the subject part in other words to forms of Government i.e. democracy Aristocreacte, Communistic, Kingship etc. whether the ruling power be as widely diffused as possible or be concentrated in the hands of depot, makes But little difference for the purposes of our present inquiry, it is by the
~ov:r~ign. Be that sover~ign one Individual or 9~gr'egate. o'f
IndIvIdual, that all law 15 enforced, So Hobbes says are not properly laws. But qualities that dispose men to peace and to obedience. When the common wealth is once settled, then are they actually laws and not before, as being thus the commands of the common wealth.

Considerable Doubt has been thrown upon the doctrine that a part from the existence of State and of a sovereign power within it there can be no law because all laws are rules enforced by such power. Real difficulty in applying this doctrine is pointed by Henry Haine with the fertility of illustration and cogency of (Agl~€:'f~rnent 'f01~ t'lhich IL,witing!5 al~e !50 cCH1spicuow5, he a!E:.hE. in l<.that
sense it is true that village customs of Punjab were enforced by Runjeet Singh. He denies the oriental empires whose main function i5 the levying of armies and collection of taxes, busy themselves with making or enforcing legal rules nor will he concede that it i!::> a ~5er'ioL\s anSI<.I€~r to his objE~ctions.",!o(i say that "l"hat a Govt.
does not forbid it allows, he would almost restrict to the Roman empire and the states which arose out of its ruins the full

~ applicability of Austiancian conception of law as applied to other political societies. He

works upon it as an idea or Abstraction related to actual phenomenon, as are the axioms

" . of Mathematics to the actual conclusions of matters or the postulates of political economy

~, the dealing of ordinary life.

Sir, Henry Maine did good device by showing that the obligation of law rest everywhere and at all times as immediately and obviously upon a sovereign political Authority as it does in England at the present day. In guarding against a cube application of doctrine of sovereignty. This great jurist has however perhaps hardly done justice to its essential truth, the reply which we would venture to make to his remarks upon this point would be to the following effect. With reference to the western nations we would submit that dependence oflaw upon sovereignty was as obvious in Attics and Lacedala as it ever was under Roman Empire. A law as carried by percales or as imagined by Plato would confirm to Austin's defmitions as completely as would constitution of Marcus Aurilius.

With reference to the relation of great oriental tax gathering empire of the village customs of its subjects or to the more distinctly formulated laws of'conquered provinces, it is necessary to draw a distinction, Disobedience to the village customs or provincial law may either be forcibly repressed or it may be acquiesced by local authority. If it is habitually repressed by such local force it follows that local force must if only for the preservation of peace be supported by whose strength of empire. In this sense, the humblest custom is being enforced by the sovereign. If on the other hand, disobedience is acquiesced in the rules, which may be broken with impolite are no laws. It is convenient to recognize as only such rules as can reckon on the support of sovereign political authority. Although there are states in which it is difficult to as certain what rules answer to this description.

KEETON CONCEPT OF LAW. JUSTICE AND JUDICIAL SYSTEM

We know that jurispru~ence is concerned almost exclusively with the law, which is elaborated and enforced within that type of community, which is called the state. This

term is difficult to defme with ~curacy and is associated with certain others, separation

from, which is much difficult for example, race, nation etc. A race is an association of

human beings linked by some real or supposed ethnological k~gship. A nation is a community links by some real or supposed racial tie and super imposing on that assumption some common governmental organization. Finally by state is meant, an association of human beings whose numbers are at least considerable united with the appearance of permanence for political ends for the achievement of which certain governmental institutions have been evolved. In modem times, too all states of the most advanced civilization occupy defined territory from which the authority and governmental institutions of other states

It should be noticed that numbers of more thari one race or group of persons speaking different languages may be associated in a single State. Further association for political ~nds distigushes that State from other greek communities of persons is a church or a grade union, in virtue of the political function 1,.lhich the !:d::at(~~5 di!scharges. It is endowed with a plf?nit'ude o'f power over the lives and conduct of its members. Thus, a society other than a State can punish for failure to fulfill alooted function. The State, However, punishes by the infliction of physical harm, upon wrong doer amounting in certain. cases to the d<?pr:i.vation of mE!mbE!r's:. lif(? altogE!th€'!r. V

Historically, political association seems to have originatad in the grouping of members of the family around one of the original progenitors In some early communiti?s, this grouping centred round the mother and sons being the only certain fact in
societies whose sexual unions had not yet acquired the characteristic of permanency. Later, the obvious suitability of the father leadership, resulted in his gradual acquisition of supremacy within family groups. The mother being relegated to the position of comparative subordination. This is the famous Patriarchal state of Society. An illustration may be found in the chapter of Genesis which deal with Abraham and his house hold. The next stage is raached when the sub families established by
the sons and on the death of father do not separate finally on his death. But remain united for common ends i.e. Agriculture, defence etc. Such large associations were clans. Their strength is deput~d on the lose of daughters on marriage. But Augmented by the process of Adoption and marriages of sons. As a result to
this theory, there is a rule of law in many early societies that adoption must follow i.e. with re~ard to the interval of years between adopter and adopted, with regard to capacity of adopter to found a family. When a number of clan permanently associate for common political ends and above all, in early times for defence against external aggression the State at last originated.

Modern States, however, have no such origin, real or assumed they are the product of the renaissance, replacing an earlier and also artificial conception. The birth of Modern State is closely connected with the evaluation of International law. The local nulf:'!T"'s, I!Jho estE.~blish€~d Absolute Q!..lthof'ity in c::ert"dn territoT"y found themselves possessed widest political power at home. But also free from the restraints which feudalism had imposed on
their dealings with their fellow rulers during the middle ages in proposition as these rulers appreciated this fact so did their hosti1e activities for~ard other States become more brutal &
devoid of principle. This in term reacted upon theories of domestic Government

so that we eventually find holding that it is unnecessary for a ruler always to keep faith with his subjects
and that Ruler is subject to no restraint Beyond those of and his Govt. to check the evil consequences of this in the relation between State and State Hence International law was developed. To check its consequences in the domestic policy of the State democracy was established.

~ Notwithstanding these considerations the two cardinal
conditions of State existence at the present day are that the external activities of a State are not subject to the control of any exterior Authority, beyond that to which the state itself assents and that in external affairs the State is equally free from external interference. It is true that some states whtch are subject to the political dominations to others. But they according to Austin can only be regarded as a portio~ of a larger whole, freedom from external interference, however, implies the ability to resist external interference, if threatened.

The circumstances which have led to ev01ution of the modern state have been considered by various writers who in some cases have sought to employ the theories they advanced to justify some particular course of political conduct within ~ definite State. An asserted divine origin does not require special consideration. One which have provoked a great deal more discussion is the contrary theory. It must be emphasized at the out-set that all forms of this theory are necessarily fictitious. Political societies are not formed by the assembly of human beings to decide the terms on which they will be governed in future.

They are the products of historical necessity~According to one theory, as propounded by L 0 eKE And Roussea Society is based on a contract in which the individual surrenders his right
of Unfettered action to the community in return for mutual protection and support and the community thereupon proceeds to appoint I~struments of Govt, which are the creature of community.
If these communities fails to fulfill their allotted work, they may be replaced by the others. Another version of this theory, as propounded by Hobbes and reconsidered by Hume-declares that before the evolution of political society, men recognize no law.
But that of the strongest and consequently live in a State of perpetual fear. To remedy this some common Authorities established, the only way to erect such common power, for
defending invasions and defending from injuries of one another and thereby to secure to them in such and by the fruits on the
earths, is to confer all their power and strength upon one man or upon one

assembly of men bear their person and to submit their wills everyone to his will and their judgment. To his judgment,
this is more than consent of concord. It is a real unity of them all, in one and the same person made by covenant of every man of a common wealth, Hobbes declares it to be instituted of when a multitude of men do agrees and convenient everyone with every one that to what so ever man and assembly of men in the same manner as if they were his own. From the Institution of the common wealth Hobbes deduces the right of him to Whim is committed by the Govt. and he concludes that they are subjects to a monarch, cannot without leave cast off Monarchy - (2) that because the right of bearing the person of them all is given to him they make sovereign by convenient only of one to another and not of him to any of them. There can happen no breach of conveni~nt on the part of the sovereign and consequently now of his subjects by any pretense of future, can be freed from his

'"

subjection. Austin has however, demolish~d this theory objecting that as an explanation of the duty of subjects towards' their sovereign Govt. it is needless and inappropriate nor wDuld it be
binding, legally, l~eligiously nor morally. Further more" t\n en"i 9 i na 1 c:r,m VE'n i ent proper 1 y so call ed orhQ.L!~)h t resf:~mb 1 i n<;;J th!:~ idea of proper original convent could hardly precedt the formation of an independent political society nor has it any 'foundaticm in histDy~ical 'facts". Ins,pite (J'f this. and cd:;heY~
refutation of doctrine, the fact remainsl Dr. Bro!<m ..-indiates I in
his ncd;(~ to Austin that social Contract theory triumphantly ~,i..
by many Generation ot writers will not die and contains a certain underlying element of truth. In his account of the establishing of the Levice than Hobbes incidentally mentions what have been generally regarded as the two primary fUnctions D1 State (i)
Adequate methods of defence of the community against external aggression (ii) and the establishmenb of organs to ensure the just enjoyment of each member's ot each member's legitimat~ interests within community or preservation of order, through the
Administration of justice. The regular of efficient discharge of these two functions through the exercise. In the last resDrt, of cou'rse, defterentiate states trom other communities tor the discharge of these functions, experience has led to the division of Governmental powers in to three aspects legislation executive Judiciary. The Analysis of composition and powers of these govE'r-nmental oT"'gans is the province of constitutional law. ~tH?re
remains for consideration the question of State membership Member
are of two kinds permanent temporary the former are citizens or subject of State

the other being alien temporary resident within territorial limits of State. For-merly-adopting the method followed by Aristotle it was customary to divide States into three classes :- (i) Monar-ch (ii) Ar-istocracy (iii) Democr-acy corresponding to the exercise of GOvernmental power by a single person by some definite order few in number, or by the major-ity of the people themselves either directly or through their repr-f.'sentative chosen by them. At the present time, state being termed unitary or complex (composite). A unitary State is a f:::;ingle undivid(,~d !<,Ihole foT"' thE~ Govt'~rnmental purpOSE~'E"> Anstancf:." great Britain.complex Dr co~posite State on the other hand the task of Govt. is divided between two Dr more sets or organs any or all of ,<!hich may have Q!,.!thority over some p<~rticular' por't:ion of the State's ter-ritory only, for instance United States.

Now, the question arises about the Soverignity, what it is. Pro Keeton has described it as follows. In dealing with formation of the modern State. It was noted that HDbbes declared that a modern State came into existence when a number of individuals agreed together to surrender their rights of self Gover-nment to some persons or group of persons to whom was entrusted the task of governing the whole community that individual or group of individual is termed by Hobbes the leviatham or Mortal God, who must use the power entrusted to him for the common security. It is obvious that this power must be extensive and unquestioned within that community. What is the extent of the power 50 conferred has provoked endless discussion. In the middle ages, Secular as District from religious power was

nf?Var regarded as f.lbsollJtely his e>:(~rci~5f? of pC)l<.ler 1<las stereotyped by the fixed condition of Lords and specifically Lords of manors may have considered himself entitled to resume full Riqht!"; of pos!:::,~,'s~::.ion OVE'r the land in vill_a~je on the death of possessor but their powers were restricted and were regulated by feudal laws. This feudal law prescribed what aids arf? tQ be e).:acted fr~om LInder tenanbs. If tl'H:- kin9 or ct,\~C~ \1H~ntf:'.' more they must consent to the lecy. If they refuse it ~hey are not 1:)(Jund SD !<lith legislation. TI'1U'S, in medif~val EI..\r'c)pe, jlar~ious local government existed. with over lapping authorities each limiting the Authority of Magnate immediately below and each in term being limited by the Authority of Maqnate immediately below and each in turn being limited by the Authority of magnate immediately above and all being limited by the law and every christian was subject tQ the law of Church. Here was a further over lapping of secular and ecclesia~tical jurisdiction.

The Renaissance finally destroyed this theory of society and number of

nation States emerged each acknowledging no checks

\1Ih,3.tf?vey' upcm itj,; inteY~nal rjluthority, ttlithin tho~;:Je !St,3.tej::; f?)dsted

""lonaY"'ch CH' !.;;mall <;;'Iroup of peT'sons havin<;j absolutl:' ~.\thority ,3.nd

constant by altering the lives of their subjects to fit their national policies. Thus in Germany the princes by the policy of Cujus region Ejus religion laid down in treatise with each other aqreed that each price had sole and unlimited authority within his denomination to establish his own from of religion so in Engl and ttH-~ establ i~~hed church came in to being at the 1<li 11 of the monarch satisfied in the supreme deliberative body on the State. These new activities required a new theoretical basis of sovereignty to keep fit the changed facts of political life arose the modern doctrine of sovereignty between 1530 to 1597. Bodin madia complete and scientific survey of politics for present purpose his theory is most needed, he takes the pride in the fact that he is the first tourist to attempt to define this term, as .foll0l1ls :-. "1'1aje~~t,H:S.t Si.umlT'!2; in c::ivis:. a!:.". s;ubditos; l..eqibus qnE.'

So lit a p rot e'5 t as ". 1~!5 far a!,; ~:.DV e Y~0.' i (,:;.f!' body ([1.1h i ch Bod i n used ancr envisaged as an absolute Monarch, since this was the contribution of the Renaissance to politics is concerned, it is the source of all law and its law making power is unfettered nevertheless the law of nature (which has considerably modified operation in bodin treastise should impel a sovereign to keep faith another sovereign and to respect prDprietary rights, thus the distinction between the proper exercise of sovereign power and tyranny is one

(-,''s position differs fundamentally from that Machia Vellj for \1.1hich tl"H? l,atter can ccmceive D'f no mCiral or natural y'es¥aint upon the action of his sovereiqn again (visualized as absolute monarch. Bodin on the other hand insists upon them and so delineates the scope of law of nations.

Bodin is thus the originator of all modern theories of the State, succeeding generations have modified his original conceptions to substitute a body ultimately responsible to people asa whole for his absolute Monarchy. But his attributes remain practically unaltered. Hobbes indebtedness to Bodin is clear and

following Hobbes we have Bentham and ultimately John Austin whose theory of Sovereignty is still the starting point of .juristic speculation.

Austin's definition of sovereignty is as fellows :

"Ifo., oILtel~minatf? hum.:m :.UI::'\(~I~ior, not in habit (yf obedi(.?nce to i:~ l:i.k~) super.j.or, T'eceived hab:i.tual obE)dienc£:> from t,he BIoi 1'1-:: of a given

Society that determinate superior is sovereign. in that Society and the Society including the superior is a society political and independent"~ According to Austin Soverignity has two aspects. Firstly external aspect implies that Supreme Political Authority is not in habit of obedience to any political Superior and Secondly internal aspect implies that Supreme Political r~uthc\1~ity habitl...li.=dly r(~ceivf?d obedience fT~om the Bulk of its subjects. It must be noticed that Soverignity as conceived by Hobbes and his successors have th~ee main characteristics :

(i) That soverignity within States is essential (ii) That Sovf?rignity is indivisHdf?

I(j,ii)Thi:d; soveric;:)nity if.s not unlimited cmd.:J..lirrd.table Autin not escaped criticisms :- which are as follows :

has

Until recently this characteristic has escaped unchallenged#
~t seems clear that within every community politically organized there must exist some persons or group of persons whose Authority is unquestioned and whose will habitually prevail within that commu.nity. In his In QI.I.guT'al addT'~>S:.!::; i:~!F.:, DE)",n faculty o'f 1 a 111 of London' University 1924 OT'. Jenks attacked the idea that soYeT'eignt~ is essential. The burden of his argument was that Sovereignty is at bottom, meT'ely organized force and that the monster which we have raised in our midst & closest with a plantitute of power. What Hobbes teT'med Leviatham is not necessary and peT'manent conditions of OUT' political and legal existence. But a transitory. It is recorded in Chinese ph i lo:..,;ophy-- " ThE) €.)mj:HH'o1" sa i d-"/SACKI ti.~~o th a t of the:.e ministers and people hardly one is found to offend against the regulation of Govt. is owing to your being the MinisteT' of crime and intelligent in the use of five punishment to assist in the incalculation of the five duties with the view of the perfection of my Govt. and that through punishment there may come to be no puni~:::.hmf..)nt. But th~) peoplf.~ 2,ccor"d with the path 01" mear-0 continue to b(~ strenciC:H..I~s"..gc:d::h thi:. Jenk id(~a 8~ Chine!::;f? ph:ilc:$ophy oive a plain hint of a law of nature or system of pT'ecepts of pure reason and not because which all men obey simply because they are precepts of pure reason and not because which all men obey simply because they are precepts of pure reason and not because force Compels obedience. But we aT'e a long way yet from the time when the lion & lamb will lie down togetheT' and

mean while sovereignty remains essential.

OT'OUp of persons which is politically supreme and one only, this seems obvious two equal & opposite conflicting will nullify each

other. Critics View the matter from another Angle. They consider the Engli!5h constitution and come tC) the cCH1clusion that legislative Authority must be in the crown and parliament~ whilst executive sovereignty resides in crown. Parliament in part sovereign in this field. From this it follows that Parliament is Supreme in its own sphere to some extent & crown is supreme and uncor',trollec:I\'lithin its sphE~r'e. Thi'$.. vie\,) bT> held by tl'IO em,;inent Author~iti('?f::. such a!":; I;~'son 81. Salmr.:w1d. But it ,;;I?ems tQbe based on misconception O"r Aw::,.tin AnalY!";:Ls. As far' as;, english constitution, at least is considered is the Right one. In the first place the division of the province 6f Govt. into self contained non overlapping sphereis largely illusory. The executive frequently exercises legislative' functions just as legislature frequently exercises executive function. According to ~nson & Salmond, therefore~ we should be compelled to say that sovereign executive, in legislating was subordinate to the sovereign legislature~ just as the sovereign legislature in performing executive acts, is subordinate to executive sovereign i.e.- a body can be sovereign or can set of purposes and subordinate for another set again assuming a conflict between the executive and legislature with respect to boundaries of their spheres, according to what principles will it be settled, in other words, whose will eventually prevail and assuming any decisive at all what becomes of the pretensions of sovereignty of the losing branch of Govt. To regard both executive and legislative Supreme each within its own sphere, in England~ seems to ignore the main lesson of constitutional history. That such views were formerly held in England with respect to sovereignty (i.e. The Staurt exaltation of the prerogatives) and that the issue has now been decided in favour of Parliament, which alone is sovereign in England. To say that a body is sovereign with respect to certain acts and not wtth regard to others implies that the body may not perform the forbidden acts because some exterior Authority will restrain it and 50 eventually that the exterior Authority and not our original body, is sovereign. The poin t be-'c: ame c I (~ar€.' 1~ \'Ihl.:,n Er191 ish con!::>t i tut ion is cons i c:I t~ red.""1t-1 (:,' crown habitually perform certain acts with the necessary permission of Parliament, if it did them without permission Parliament would restrain. It was the one of reasons why the Civil war was fought and the settlement of 1688 was

necessary. On the other hand if Parliament decides to abolish certain acts of itself nothing could restrain it certainly not also executive. Thus~ the distinction between Legislative and executive sovereignty is fallacous with respect to U.K. constitution. A
further attempted elaboration of a possible Judicial sovereign in English is in admissible for similar reasons. It is essential that a rule enunciated on the sovereign should not be subject to exterior contradiction, yet all decisions of house of Lords (asserted Judicial sovereign before 1911) were subject to immediate nullification by act of parliament, the more difficult question arises under federal constitution which gives supreme control to all three wings and least interference is prohibited by each other so the problem is this whether sovereignty is divided here or not and who is proper sovereign here keeton alongl,Jitl'"1 Eastl'.lood" spokE.' about t1tLl'$..tinic)I"} theor"y of 1 a \'1 ancl

::i;ov€:~r'€:~i<;)r"lty fM.,..~ that Indian f.;tat€:~:::", preserit c:: prc.iblem \<Jhich is difficult for solution and which cannot be reconciled with the Aust.::i,ord,an thE-Dry of individual sov€'!re:i,gnty. SiT' Her'y Mcdne-t.;}} has said that here in India Sovereignty was divided between State &
Indian empire. But this view is altogether not free from difficulty. In British dominions have many characteristic of StatE' per's;cmality. Yet they ar'e notindepenc:lent t:.i€:~ir:)g un'it of
British empire. From the stand point of jurisprudence thi~ legal system can be considered as a separate unit and thus it would seem that from the legal point of vi~w, at any rate the chal"';:~c::tf!!!"i::~t:i,c of fJ"e€:~c:lom from c:ontl"'ol.-4n the re<;;'lulation of
external affairs is no more important than that of immunity from external contJ"ol. '

::L ;U_lj_!J.Ltt.?"t~LLLty", :-- By this it is:, impliE'd that the ~~uthoT'ity
of the sovereign is f!"ee and 0ncontrolled and indefinite, in extent. Thus, everything may legislatively be made an object of Sovereign power even though for the moment it is not subject to regulations issued by the sovereign. NE'vertheless, this assertion of illimitability, must be understood to accept cE'rtain limits
inherent in the nature of the sovereign person or groups and which are limitations in fact and not 01 law. Thus, an 18th century sovereign could legislatE' with rE'gard to Television since such an object of legislation was beyond the sphere of his experience. This is limitation dependent upon the limitation to
the intellect 01 the sove!"eign himself, again there arE' some laws which the

sovereign does not frame because they would meet with
General condemnation from the Community subject to them. Thirdly, certain RulE's are not adopted because they would conflict with the International SE'curity of StatE'. Lastly, it is impossible fo!" the sovereign to legislatE' with the object 01 changing thE' natural order of universe. But it has only beE'n done in one time
when Joshnla commended the sun standstill and the circumstances WE're excE'ptional and hardly likely to reoccu!". It was formerly held that those were rules which the sovereign could not make becaL~e they conflictE'c:I with some higher law. Thus, Coke held that an act 01 Parliament is void which conflicted natural law.

Upon occasion, thE' soverE'ignty has ever attemptE'd to limit its authority by removing cE'rtain topics from its sphere of futurE' action. A morE' SE'!"ious criticism of Austin's sovE'rE'ignty is based upon fact that Austin draws no distinction between legal -'

with extreme lucidity. The power of Parliament to regulate the life of the community by means of laws it frames, is complete and untrammeled. Parliament is therefore, the legal, sovereignty in England on the other land that body is politically soverE'ign or supreme in a state the will of which is ultimately
3- Minutes in Kathiy~ar (Report from Ipdian State committed)
that party would be actual polltlcal soverelgnty and it .will be
open for that party to acquire legal sovereignty as well by lacking necessary constitutional changesJt is therefore, clear that existence of political sovereignty is itself a limitation legal sovereignty. Political sovereignty is the fact of unlimited dominating conscious force within a community. Lega~ sov.reignty is a legal conception. The lawyers explanation of the method in which that physical force transmits itself into legal consequences.

Now, we must see the position of U.S.A., where all three wings of Government are free from control of each other. The state as well as federal cannot trespass within the jurisdiction of other. Judiciary is independent also. The existence of all
these limited Authority is derived from written Constitution which can only be modified by rather complicated body comprising 2J3 majority in both houses plus 3/4 majority (or Majority as in
India) of consent of States. This body has proposed a score of amendments where therefore is legal sovereignty in federal constitution as in U.S.A.. It is not State Govt. not federal or
Union Govt. nor executive nor Administration not judicially etc. because Authorities of all are limited. Sovereignty can hardly be said to reside in Constitution for thisAnanimate can, therefore, (~>dst no pCH', er i!!:. it

amendin~l body, sinc('? th(~ o..uthC:H':i.ty o'f it i~5
absolute & uncontrollable. This seems to be only tenable
explanation according to all conceptions of sovereignty so far
expounded. There exists, however, a different theory of sovereigntyenunciated
by Brown (Brown). Brieflyit regards the
State itself as a corporate entity with an organized will. The
members of this entity are the citizens of State and this body is sovereign. It expresses through definite organs to each of which
is delegated some Governmental power. According to this hypothesis the Constitution of U.S.A. would constitute the terms on which members of the
Corporate State Associate and these can
only be altered by the expression of the will of members in
prescribed form. The State, however, differs from other
c:oT"porations. I~~ thf:~1"'e <"\re no limit~_; to its; ~uthor:i.ty So in
conclusion Keeton says Legal Sovereignty implies Absolute power
I...tithin the ~ of li!u,, i.e. an unfetterf:~d PO\..IE.'" of promulgat:in~;.1
i~nd erl'fr.:.t1"cing le(,;:)al I'ule!::.". pol:i.tical !50ver'eignty implie~::. "th(~ practical pO\L.tf:~I~ o-f domirH'.t::i.ng a political SociE.'ty J in
Jurisprudence, we consider only the former. But both operate
c:: Dmp 1 f:~ t. e 1 y \1) i th :i. n th e or'b it (yf s;ov €.~ n:~ i (~~n st ate /J {(er;.1
i!'. J'd i ng th e
evolution <:)f la\,.t" Ke(?ton fur.ther says as follol'.t!;:;. "In ord(;:.y-, to
arrive a true appreciation of the term law an attempt will be made to indicate the principal steps in the development of law in regarding Society. First~ however, it is necessary to remember that when we speak of the growth of law. In general, terms we are discussing largely a hypothetical growth for unfortunately all legal systems do not pass through the same stages. This is due to variety of reasons. Some societies have not developed within
themselves their laws except incomparative by crude forms. Others seem to jump directly from an early stage to a vary advanced one through contracts with culture more developed than their own.

LegaL systems do not grow up entirely cut off each other. There is constant and increasing inter change of Institutions and ideas. But at the same time Pollock has pointed out all df:~vf.,~topmE'nt. In 1 all.! 'follO\l,I~; c.~ cPr'tain Si.equE'nce "ll.1hcd: I1H? do mean is that the or'der (i.e. of progress) is not found reserved chalk is not everywhere in England nor red sand ston~. But where red sandstone is we know that chalk is not below it. ~

Sir' Henry t'1c:,ine Il.!rotf:)-4 "hiE:;toricc~1 .Jurisprudf:~ncE~ lookf!!d no farther' back than early Roman & Greek law since then the field of inquiry has

been greatly wi~ened to include the customs of uncivilized tribes, as well as highly civilized laws of Ancient Kingdom of China and Egypt. It is exceedingly hard to produce General conclusions which will fit all those communities". All of them, however, seems to have passed through patriachal stage which the traces of a prior matriarchy are far from definite. In
this patriarchal stage, the power of the paterfamilias is
extensive,his wife, children are subject to his Authority and his commands are laws on the other hand his children's on his death have an inalienable right to share the family property among themselves, perhaps with the special provision of a special position for the eldest son when families no longer disintegrate on the death of the peter families another stage is legal, as well as political development has been reached. Within the family. The power of the peter families remains, but in the relations of members with members of other families within the clam custom administered by the elders of law, operates within all families comprising the law there is a common clan cull centering round the veneration paid to these semilegendary founder who is considered to be the common Ancestor of all and whose name is bornE' by all members of the clan as patronymie. Social relations outside the cl~n are regularly and usually regulated by force. The stranger who is not taken in adoption is
inslaved, whilst the murder of the member of a clan is punished by the declaration of Blood feud against all members of murder
clan. Greek and Rome also followed this stage, in earlier stage. But there were records of clan feud in the time of earlier Chinese Rules among less advanced people of South Europe the vendetta survived until late historical times among many people although not universally (Chinese never passed in such age) at the period when a rude mentary State organisation is coming into existence through federation of number of tribes into a common wealth, law becomes closely associated with religion. This seems to be direct consequences of the development of an elaborate ritual, associated with the clan-cult which is basE'd on Bottom i~nd moy'(;,> piH'tic:ularly for tl"',e founder' of clan. Such a Clan cllit
is found among all peoples where a partiarchal Society has developed into State form from a federation of clans. The best example is found in Rome & Greek in the period before XII table,
gradually the central Authority becomes stronger and dominated by some single person usually a capable leader in battle. Thus, we have seen monarchies in which kings themselves deliver judgments or dooms in the disputes of their subjects in accordance with the customs pre-existing luith their own interpretation. This is the

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condition of Society in the heroic age of Homer. These ~ustoms were not laws in the modern sense of law Rather they were a mixtu~e of laws Rulers of Good conduct and religious observance. There was no clear line of demarcation between jus, Fas and bonimores although three trends to separate with the advance of

Following this, comes another stage in the evolution of law. The dominated order in the State not unnaturally utilizes its privileged position for its own benefit. This leads eventually to em in~:.dstf?nt demi:.md, from tl'1e people as a ILI.hole, 'for a code (j'f laws, which shall be available for all men to read. Better bad law which is known, they say in effect, then law which is uncertain, for the former may atleast be avoided accordingly the p(:;)pulcn~ demcmd i~s alto<;,!<~tl")("'1~ satisfif!:.'d. Bu'(~ codi'f:i,cation is th~?-turning point in thE:' f:~al"ly If:.'ge:\l hj~::;t01"Y o..r any people. Roman lal,L' was codified at favorable comparative moment. Jus & Fas had at length becomes at most comparatively separated so that XII table i~; i~lmost ~:;~?cular' cod(~and be:\sic e)f all ~.;\.I1:)~:::.equent devc:-:lopi1H",nt.

In Roman law although Sir Fedrick Pollock-points out that codification of Roman law has tended to perpetuate a form of L.egal procedure by way of cont1"ast the condificBtion of Hindu Laws of Manu occured when the dominating order in community had assumed a definitely a priestly character and when all law therefore subject to religious interpretation with the result that Legal development was finally ar1"ested by the process of cod i f i cat :i em .

These impo1"tant gene1"alization, first advanced by Sir Henry Maine - Based upon Roman & Greek and Hindu law, have, on the whole, st1"ikingly stood the test of analysis necessitated as a result of archaeoloQical discoveries since his day at the beginning of the p1";sent century on almost ve~sion of- code of Hummurabi of Babylon (2000 B.C.) was disco~ered at Susa and subsequent researches have p1"oved it to be the basic of the law of m01"e important commercial nations of th~ east between 2000 B.C. and the expansion of Roman dominion into eastern Mediterranean. Indeed, it has been suggested that the XII table themselves a1"e based ultimately on the Babylonian Code. However, Hummuriba's code which was the starting point of 1500 years of Legal development is again over whelmingly secula1". This code was anticipated by earlier codes. But all thesecodes, so far as we know have one common cha1"acteristic. they are secular and on account of their adaptibility to varying stages of social development they a1"e passed on with modification f1"om one people to another. On the other hand the much later code of Jews is throughout subject to religious influences and is

expounded by priests with the result that it represents rather the idealisation of Legal p1"inciples than the legal clothings of ev(,?1'Y day social relatiQns. Chin(~~~~latl,1 ~:;(~ems to have been
codified as early 2000 B.C. 1'ecodified at ~bout (122-255 B.C.)
during Chov Dynasty and recodification once again by Han Dynasty 200 B.C. to 220 A.D. and T'sang Dynasty (AD 600 to AD 900) at no period in the 1Qn9 history of chinese law does 1'eligion appears

to have exercised any appreciable influence upon its development on ~he other hand all great chinese legislators seems. to have attempted to frame their laws in the form of repressions of improper conduct in conformity with some philosophical conception of perfect duty on the part of individual towards his family, towards neighbors towards Emperor. All chinese official until revc)lution, had th<", pO\'.ler to punish ~< ILJhat they conside~ed to b~?
breaches of Moral duties even if performance of them is not enjoined by law, so summing up, therefore, Maine's generalization hardly seems to have any direct application to Chinese law. Among western nations, The period following condification seems to be one in which a legal system first becomes conscious of its true function within a community. In Rome, for example, we find that XII table are followed by the establishment of praetorship and the formation of Jus Gentium In beginning, Ancient custom must in future give place to rules suitable fbr a rapaidly advancing community eventually we get evolution of Community of jurists and
.8 period of intense Juristic activity during which the very foundation of law are subjected to critical examination and the proc~')ss of cha\gJJ.t. is T'ationalized. But there is a similar progression whi~~ is best illustrated in the history of Roman law. But there is a similar progression in English law and in China again we have a similar line of development. As far as the body of law itself is concerned there is one fundamental change which require notice:- In 5th chapter Sir Henry Maine-points out that early law is largely a law of status. In other words a man's Right and obligations both public & private are determined by the position he holds in his family, his clan and society generally. Thus, in Roman law we have the slaves few citizen, m<:~r'r"i ed I'Joman ~ i:1.nd other sev~~r'al type of 1 egal
potentialities. Moreover, it is difficult and in some cases impossible to change from a position of limited capacity to one of fuller capacity, In modern law State to a considerable extent, though not entirely, disappeared. Every person who may be deemed by the law to form a proper judgment of his own interests in general, free to enter into what legal relations involving Rights & duties he chooses. This is due to the action of several LeQal pr'inciples; of thi:.' first impoT'tanc:f)- .,in the first place, 1'f.1e

family in Modern law is no longer a corporate unit for legal purposes as it was in early law. The Adult children now
independent legal existence and full capacity further more number of artificial distinction between man and man has been broken
(such as serurn, bibertus, Liberttnus, peregrines, Letinus etc.). Again in medieval European law feudalism, determined a man's public rights and duties today. A individual has a greater freedom in these matters. He can enter into or abstain from contempli~tE.\d l(.?gal relations at his pleasure. In fact /'1aina)3
c::las;sic phT'ase." The movement of the progT'essive societies has hitherto been a movement from status or contract" It seems too
correct. It should be noticed that Maine informing this generalization was considering primarily material drawn from private law. It is highest decree of doubtful whether it has an application to public lal'J. ,
1AJ.

the ~oncept of law. He says as follows :

It is obvious that we do not mean the same thing whe~ speak o'f "theClJ lall,l" or la!I,1 generally -- a~, IL,hen !I,e speak o'f "a 1 all'" meaning some particular law in most foreign languages. This distinction is still more clearly marked different words are used' to convey the different ideas
A law- Lex, Loi, Gesetz, legge
The laoo- Jus, aroit Recht, diritto.

But in these foreign languages (third term) mean something more than law. They include Justice, Rights & collection of Rights etc. In English we have spared with confusion. The word law has no connection with the Abstract ccinception of Justice &
Collection of Rights.

Sir John Salmond says "Is this difference between English
and continental terminology a reason for the divergence between English and continental juristic thoughts to which writer Good h~art applies-Plausible as this theory may. It is doubtful 11,hetheT' it is actually corT'f:~ct". The 1110pd "Jus" hc~s the same double significance But the Romans were as essentially practically
as the modern English Jurist is not the difference
due rather to the fact that for over 6 hundred years English justice has been centralized and efficient while that on the continent has been in a constant State of flux. Sir John Salmond S:,ug!;) est that it is the differ"E;'nce in no..-
""""rnenclature ILlhich haS'.
caused the difference between English & continental jurisprudence. But the first difference is no more a cause than the second, they are infact, the result of more fundamental difference. The difference in law between English & continent. Mr. Good Heart indicate that the Romans, although as practical as English jurists,

nevertheless preserved double significance. This seems to supply the clue. The Nation whose language is contained a word denoting at once law, justice, rights have all derived their law from Rome and it is a natural consequence that they should have derived that fundamental legal conception from the same source also. The English, however, have built up their systems from their primitive institution and their original
language, therefore, naturally supplies name for the legal conception they evplve, conceptions which from the circumstances
of their development are naturally different from those of the ROmi:H'j
JUT"ispr'udence. It is thus no accident that "Lall'" is Angl,,
saxon not derived from the latin, to obtain a true idea of what we mean by the term law. It is necessary to examine what it implied in early Society. The earliest rules requiring General
obsepvance and enforced penalties to have been those imposed by the Head of the house hold upon those under his control. In this sense it is clear that law proceeds the State in origin. Since the State only emerges when several clans federated for their mutual protection. At the same time, another conception of law is visible this time as the dominating force of the universe, in this sense law becomes definitely an attribute of God and is responsible for regularity in the universe. Thus, Good promises Noah "11,lhi Ie tt"fE' earth T~emainth
seed time ~': harvest and cold or
heat and !:;UIBfTH:?r and !~r B,nd day and niqht !;"hall not CeaSf? his

conceptin of law as the guding force behind all things appears in the
J,::m:i.'los;ophic.3J. concr:;.'ptic,n of many other Ancient peoples. Confronted with this exceedingly general theory, we may well ask what has led mankind to assume that law is natural or a divine, ordinance regulating the universe. The conclusion is as follows:Men endowed with reasoning faculty and confronted everywhere with
ph("!nomen~ ('Iith hf.~ cannotcompletely undel~!::,tand,""'' ~:::;f?ek!S
nevertheless to discover some hypothesis which will these
phenom("!n~. HI.? nc.\tices that c)nf.~ o'f the if-lost ~:;triking characteristic of material univer!Se is its orderliness and
regularity. Certain things are uniform if various elements of
a
situation are present a certain conclusive inevitably follows.
Thus, if a stone held in the hand is released it falls again,
summer always occur between spring and autumn but never
between
autumn and winter. The crops shown in the spring
always ripen
during summer and are rapped in autumn. Turning from natural world to human affairs, he is acquainted with the extremely complex character of human

desires, hopes & fears. He has a vague rtcollection of facts that before the existence of human law
intercourse & society were difficult if not altogether impossible. He knows when the law is weak. confusion returns from these observation we can draw conclusion, just in his tribe, family or nation some individual preserve order and upholds law, so in the universe there is some person of power, omnipotent as far as human beings are c~'cerned, who does the same. Thus, in
early times, Greek, Hindu & Hebrew philosophers were at once in
holding that law is command that behind the law, there is always the law giver, human or divine. But it must be noticed that in ascribing a law given to law as order of universe (whether law given is God or Nature). They were arguing only by analogy. Thus, the ancient analogy, to the whole of the material, universe emphasized the element of order in its composition when the extension had been accompanied. They populated a law giving theory there by stressing the element of command to be found in
law. This ~rogression in ideas is significant and not accidental.
It would be impossible to find it reversed. Investigation of the customs of primitive peoples demonstrate that the taboo of these people, although early possessed some meaning, gradually cease to have one and are ultimately observed for no other reason the force of habits, of course there is punishment for these Breachout the punishment itself is not based upon any conceivable r"l~as;on but hoibit. Thus 2~ man I.)ho ini:ringes a "Taboo" is not
punished because his action is illegal, irreligious, or immoral. But solely because he has infringed taboo and infringer of these taboos are punished in that way. So, it is that at a much late stage of civilization, we have the laws of Medes and persians 1'.lhich a1"f? "unalterable" and Soci('~tie~:; IL.the'ri.? the pI:?nalty, fC)1~
proposing a law which was 1"ejected by the people was death. So,
fixate of habit is preserved sometime at the cost of reason itself. Thus, we perceives in early peoples an unconscious striving after immutability in law. The laws of nature were internal and changeless and they p1"oduced in harmony. Should not
human laws, starved to imitate them, Besides if God gives the law what Right have me1"e human beings to change it. Hence, in early societies the element of harmony and the formity is predominant.

Ie.

Later by the evolution and rise of State, State's arl:Jitrary power as ~nife~::;ted in lef,)is:.lation the idea of un:i.formity in la~1) is
gradually replaced by the idea of a law as the command of sovereif,)n. So, the Blackstone defined law in old ideas (Law in
its most general and comprehensive sense signilies a rule of

action and is applied indiscriminaty to all kinds of objects tl)hethe1' r.1riima.t:f? or inanimr.1.t:f?, l'ational and ir'rational "con.tr'ary to it Austin has defined in other sense taking command of sovereign, sanction by State etc. The task of defining law is not easy one. Blacstone's definition may be rejected as too wide. it :

other hand, Austin's definition is too narrpw as it excludes international law, custom as a law etc. for which Sir Fredric .~ objt'ct~:::.:- "t1H? ~";hould hardly qive the name of la\l) to a series of unrelated and in consistent commands enforced by arbitrary and uncertain method. The capricious orders of the crazy despot may be laws accordinq to Austin's definition until they <H"f..) 1'(,'voked, but if ~:;o it is; the \.)or~:.t fc)r the definition". The first part of this objection seems to be valid one, but as far as second is concerned Austin would probably reply that a crazy despot is not an intelligent human being. Salmond has considered this problem in an other way. Salmond has defined law "A body o'f princ:i.pl(0~::; rec(:Jgni:zed and applied in ttH:' administration of justice. Thus it consists of the rules recognized and action by court of justice. This definition is also open to objection. The second part of it does not necessarily mean the same on the first Mr. Good Heart criticizes :..- "admirabJ.f~ as:, this:. dE)finitit.::m may be a.s ;:1n idec:~l. it c::an hardly he accepted on a practical solution of the question. The obvious answer is that it does not include laws which are unjust. Such rules are nevertheless are laws. A definition of the whole must include all of the parts. A minor criticism of this definition will be that Administrative law is not covered by the definition as Pro Pound has pointed out that administrative law is developing repeatedly and many questions of it are no more justiciable by Court of law, is primary purpose of law, order, rather than justice. Law and order cannot come in conflicts but law and justice are forms which unfortunately, contrasted the only valid objection to the argument of Good heart, seems tobe that if finds to subordinate the idea of justice. To the idea of order, a subordination, which if accepted, would be had for the science of jurisprudence as well as for the law itself. In ancient times the characteristic of law was order and on that account extended the term law to the material world in general.

But, it cannot be said that the primary purpose of law was only order. The all

testaments for every sinqle time that it mentions the orderliness of the universe mentions the justice of God in creating such a system and the laws of the moses are based upon abstract conception of Right or justice and not upon the necessity of orderliness and in places this conception of Right trumpets over the letter of the law - nor were the jews alone in their high conception of law among Romans. The desire of

abstract conception of Rif,)ht & Justice, higher than existing Civil law than that realized by the existing law compelled them

to institute a system of equitable rules based on edicts,
simi ~rly in moder-'n la\.j, equity lal.), and inherent pOI.jer .of Courts (?tc:. Venogradiff has de'fined lal.j :-- "As a ~set of rules imposed and enforced by the Society with regard to the adjudication and e:-:ercise of pOI.jer over persons and things. "His definition is
good one except it does not show the purpose of law at all.

Accordingly, we can say that the purpose of ~law is

"Administration of Justicf:~" and on/'?' of 'the primal"Y characteristics is
g,r<;!J?..r::.. The meaning of person in the sense o'f
venogradiff include legal persons. It is now necessary to separate law, as understood in jurisprudence, other things impl"operly termed law again from other rules, which though laws are not state laws. Connected with the idea of the divine or natural. Ordinary of the whole universe, is the conception of the
law of God or law of Nature, regulating the action of man. The Greeks in the course of their philosophical speculation celebrat!?d the theory that natur~e through the dictates o'f th!?'
human region had partially revealed a code of perfect law. and which all human law tended to approximate. Human laws was therefore of inferior authority to natural law. This doctrine which was most fully developed by stoic school, the Roman jurists adopted and incorporated into theil" works. Thus providing a philosophical basis for the Jus Genitium. From the Roman jurists, the theory was transmitted to the medieval School men. The Christian church, derived from the Jewish faith the idea of law of God to which again it was the aim of all human law to approximate and which also was superior authority to human law.

Medieval lawyers, thel"efore, combined that two ideas using the

pl"oduct as the basis of their investigations into the nature of medieval Christendom. At the Renaissance Natural law was for a brief period in danger of being discredited when faced with a
more Positivist School of philosophers. But conception of natural

1 a 1',1ol.med still .~ 'further~ duty to European thoughts. It

m2;terially insisted the grCH.)th of international lal.j. GT~ottoes,.
Pufendroff, Thomasius, Wolf, and Vattel contributed regarding natural law, much. thus, we see that the law of nature as an idea has naturally influenced the theory of law since the days of
A-~totle and the Jevish Priesty ..k,:viyes. I'Jhat then is the nature of natural law. is it law at all? Austin divides law properly so ccdled - (:I.) L.c~I')~, of GDd. (2) Human L..:W,IS. Hf:~ is tl")(:>refcH'e,

considers natural law to be law But not positive statement. This

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was simply due to the definition by Austin of law as command.
Since he identified law of nature and law of God, they come to
the conclusion that this law was the command of god and therefore
law but not positive statement by which he meant rules framed by human beings and enforced by with in political community. It would appear that since law of nature consists in a series of abstract principle not framed by man not intended to be enforced among any society of man then the l~w of nature is not law but morality hence the precise nature of international law, is entirely a question of definition. Austin & followers have held that it is not law since it is not command by political superior
to political int~?r":ior~, but i~::; onl:/ possitive morality. .€ut)1"'is
submitted that the definition of Austin is defective. It overestimate the command element and it ignore the historical

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development. Thus, international law is law existing between states instead of between persons and in the longer state of development than positive state law. Those rules which are termed laws of honour and laws of fashion may rest be considered since they will
--illustrate the dividing line between law and morality. Austin notices: - that such rules are not imposed by any determinate authority, but by an indeterminate authority. Moreover they are uncertain and even variable in nature and extent. They are not enforced by any determinate organ of society. Courts and tribunals do not administer them. Hence, it is

clear that law of fashion and laws of honour and similar set of rules are not law, but they

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So far as we are considering law in abstract sense. It will now be convenient to discuss -(A Law)- Austin defines a law a command, which obliges a person or persons to a course of conduct. This defmition now admitted to . be generally defective. It undoubtedly performed useful function. But as a final
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statement of what law is, it is impossible in the first place all laws even statute laws cannot be expressed in terms of a command, May of than are permissible. They say that if a certain course of conduct is persuaded the state will protect the action of doer. Thus, if a man makes his will in conformity with the regulations if a statute the state will give effect to his will. But there is no command by the state to individual to make will. Further, there are statutes, which repeal statutes. They permit things to be done, which were previously forbidden. Here, again the element of command is missing.

The second objection is that:- - a considerable portion of law of some civilized states is made by the judges through case law. But some times it is argued that state permits the judge to make the rules, which appear in the form of judicial precedent. Then, this permission is considered as a command of the state, to judges to make law. But this is quite worth less argument.

The third objection to Austin's defmition is one, which has already been lodged against this defmition of law, in general. The definition assumes because a law is product of state activity that it was always so the value of historical method of approach to the science of jurisprudence lies in the fact that it teaches that law is order than state. Finally, the ethical element is completely excluded from the definition of Austin. A law is

completely a command its purpose is completely ignored. This is also the criticism of definition of Holland. Keeton's final defmition of law is: - "we may say, therefore, that a law is rule of conduct administered by those organs of a political society, which it has obtained for that purpose and imposed in the first instance at the will of the conception of authority. In that society, in pursuance of the conception of justice, which is held by the dominating political authority or by those to whom it has committed the task of making such rules' , .

~he name Civil Law those now fallen somewhat out of use
this sense and though posses~ing certain other meaning is most proper and convenient title by which to distinguish the
of land from other forms of law. Such law is termed Civil being that of the Civil as or state the name to derive from civ:i.liz(~ o.f the Roman!:;. \~\

The other meaning of term Civil Law are not such as to create confusion. It often means law of Rome as opposed to Cannon law. These being two systems by which, in middle age ~tate &
church were respectively governed. The term Civil law is also used to signify not the whole law of land but only the residue of
it after deducting some particular portion, having a special title or its own. The Civil law is opposed to Criminal or military law. The term 'Civil law' as

indicating law of land has been partially superseded by improper substitute positive law. Jus Positium was the term invented by Medieval Jurists to denote law made by human authority as opposed to Jus naturable which was uncreated and immutable. It is from this contrast the term positive derives all its points and significance. it is not permissible therefore to confine positive law to be law of the land. All law is positive that is not natural. So, international law is positive law made by human Authority not less than the law itself. Where the stress is on the distinction between law of land and international law. The former is commonly spoken as
municipal rather than civil law, this usage is of course somewhat inconvenient having regard to the modern connotation of the adjective Municipal as relating to Municipality or borough. It is used as a Synonym of Civil law is derived from Municipalim. In
the sense of self Government governing political community within Roman empire. Civilian & Municipium were closely related in meaning & use. Both terms denoted a body politics or State. The name Civil law is derived from one of them and the name Municipal law from the other.

The term law has been used in senses (1) Abstract (2)
concrete sense. In Abstract application - we speak of the law of England, criminal law and so forth in its concrete application we say that Parliament has enacted or repealed a law. We speak of bye laws or railway or navigation laws. So in abstract sense we speak of law or of the law, in the concrete sense we say of a law or of laws. The distinction demand that concrete term is not coextension and co-incident with the abstract and its application. Law or the law does not consist of the total number of laws, in
force. The constituent element is of which law is made up are not laws. But rules of law or legal principles, that a will require two witnesses is not rightly spoken, Law of English, it is a rule of English law. a law means a statute, ordinance decree or other

la(.) :i.n thE' abs;tr'ac:t ~";t;:r.~..{.''i 1 a \..1 produ.c('!!:::. Statute 1 a I..) of rulinq~:; of Courts (case law) which. is enactment and enforced by Court of law, but not made by any law. Although, laws, commonly, produces law. This is not invar'iably the case every act of Parliament is c::alJl!:'d 1,'.\\.), But:.. i:111 acts". of Par'lii.{ment have not tl...,eir. p\Jr'pose

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and effect formulation of rules of law. Statutes are essentially
the ~r.H~mula,tion of the I..lill D'f ~iF.,over(:>j,(Jn le(Ji!slation and thbs may be directed to other purposes than the alteration of the legal system. It must be borne in mine, therefore, that law and laws, the law and a law are not identical in nature and scope. All law

is not produced by laws and all laws do not produce law. All the contin('~nti:il langu<:;;~I€'s:; poS',sess di!o;tinct 1,'Jords, for t\'Jo. dif'n~rent m(:>an inqs - oi!S -

law inconcrete - lex (Roman), Loi (French), Gesltz (German), le<.::H)i.

Law in abstract - Jus (Roman), Droit (French), Recht (German), Diritto. so it can be seen, it is the peculiarity of English Law that one term is used in two senses, but in continental lanquages different words are used to avoid complexity. This advantage obtained by these languages at a considerable cost because the terms Jus, Droit, Recht, Diritto Not only means law is abstract but also include right & justice within its scope. So, it is always necessary to bear the mind the distinction between Jus, Droit, Recht, Diritto in their ethical

and in their significance. The same ~mbiguity is about the meaning of term equity whether it means principles of natural justice or justice and whether the principle of law developed by COUT"t o"f Ch<incer'y. Henci:~ it is clear ttlCit a/;./;.lal'J is not macli:~ by the leqislature. In England most of laws are made by the law Courts. There is more law is to be found in law reports than in Statute book. But all law however is made recognized and administered by the Courts and minutes are T"ecoqnized Bnd administered by the Courts which are not rules of law. It is theT"efoT"e to the Courts and not to the legislature that we must go in order to obtain the true nature of law. The law may be defined as the body of pT"inciples recognized and applied by the State, by the Administration of Justice in other words, the law consists of the rules recognized and acted as by Court of Justice. To this definition following objection may be made. In thus defining law by reference to the AdministT"ation of justice you have served the proper order of ideas for law is fiT"st in logical~ OT"der and the Administration of Justice Second the latter must, therefore, be defined by reference to the former and not vice versa. Courts of justice are essentially Courts of law Justice in this usage of speech being meT"ely another name of law and the Administration of justice means the enforcement of the law. The laws are the commands laid by the State upon its subjects and the law COUT"ts are the organs thT"ough which these commands are enforced. legislation direct or indirect must receive adjudication. So yours definition of law is therefore inadequate for it runs in a circle. It is not permissible to say that the law is the body of rules observed in the AdministT"ation of justice since this function of the State must itself be defined as the application and enforcement of the law.

This objection is based on an erroneous conception of essential natuT"e of the Administration of Justice. The pT"imary purpose of this function of the State

is that which name implies :- to maintain right to uphold justice to pT"otect T"ight to

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redress wrong. The Administration of Justice may be defined as the aBintenance of right of justice within a political community by means of physical force of the State through the

instrumentality of the States Judicial Tribunals. Law is secondary and unessential. It consists of the Authorative rules

which Judges apply in the Administration of justice, to the exclusion of their own free will and distinction. They are ~ot at

liberty to that which seems right & justice in their own eyes. They are bound hand & foot in the body of an authoritative creeds

is the end~law merely the instrument means and the instrument must be defined with reference to its end. it is essential to a clear understanding to this matter to remember that the Administration of justice is perfectly possible without law at all. Administration of justice can be provided by any other method other than law. One Court may 4e court of Law as well as Court of justice. Courts may be Courts of law only but not Courts of justice. The extent of the system of law may vary indefinitely. The decree in which the free discretion of judges for doing right is excluded by predetermined Rules of law is

capable of indefinite increase or diminution. The total exclusion of judicial discretion by legal principals is entirely impossible in any system, however, great may be the encroachment of law.

There must remain some redidumn of justice, which is not according to law. Some activities in respect of which the Administration of justice cannot be regarded as the enforcement of the law. Law is a gradual growth from small beginnings. The development of legal system consists in the progressive substitution of rigid preestablished princ:iples of individual

judgIT'f(;~nt and to a ve1'y l<~rg\? e>:tent thos(~ princ:i,ples q.rO\Llth spontaneously within tribunal themselves. The great aggregate of rules which constitute developed Legal system is not a condition precedent of Administration of Justice. But a produce of it. Gradually from various sources, precedent, custom, Statute, there is collected a body of fixed principles which the Court apply to be exclusion of their private judgment. The question at issue in the Administration of Justic:e more & more c:eases to be "what is the Right and Justice of this case and more & more assumes the i:dt€n-'nativ€:' forms. "Wh","t is the gener'i:~l principl€,~ c:;lready (:,stabli!5hed and ~~ccep'h"d as applicable tC) ~such a ca~::.f? as this."

Justice becomes increasingly justice ac:cording to law and court of justice became increasingly Courts of law. Salmond considered the conc:ept of justice ac:cording to law as follows :

That it is on whole expedient that Courts of justice could have become Court of law. No one can seriously doubt yet the elements of evil involved in the transformation are too obvious and serious ever to have escaped recognition. Law are in theory

as Hooker says the voice of the like reason. They are in theory thc'!! t~ttte)~ance~:5 of jl...lstic('!! s;p~€'akinq to man by f"flDtlth c)'f the ,State, but tee often in reality, they fall far short of his idea, teo oftf.'n, thf~y "

Ter'm .jt.\dqment tC:J 1/., CH'm ~lJood" and mi:1keUH? administration ef Justice are preach. At present day our law has learnt in a measure never before attained to speak the language of sound reason and Good sense but it still retains t~e no ~light degree invices of its youth nor it is to be expected that at any time we shall altoqether escape from the perennial conflict between law & justice. at is needful therefore that the law should plead and prove the grounds and justification of its existence. The chief uses of law are three in number :- the first of these is that it impart uniformity & certainty for the reason we require in great part to exclude judicial discretion by a body of inflexible law for this reason it is that in civilized community of the judges and Magistrates to whom is entrusted the duty of maintaining justice exercise with a free hand the viri bcm i ,:tr'b it l' i um .-11-') e mor~? comp I ('!!).: our c i v i Ii;,: at i cm b ecome'5 th('!! morc:~ needful is its regulation by law and the less practicable the alternative method of judicial procedure but in simple and primitive society rulers & magistrates should execute judgments in such manner as best command itsel~ to them, but in the civilization at present any such attempt to substitute the deliverance of natural reason for principle predetermined of law would lead to chaos, Reason, says Germany Tailor is such a bOH of quick silver that it abides nowhere it dwells in no settled mansion. It is like a dove's neck and if we inquire after tGe law (J1 natuJ'e. That i~;?' to say the principII'!! of jW5tice. "by th(,~ 1"'l...tle~":, of our reason we shall be as uncertain as the discourses of the peoplc'!!o\~ the dJ'eam!::, o'f di~:;turbed 'fcH1cies".

In second place that the necessity of confirming or publicly declared principles preaches the administration of justice from the disturbing influence of improper motive on the part of those entrusted with judicial functions.

The law is necessarily impartial. It is made for no particular person or for individual case so much in this so that the Administration of justice according to law is rightly regarded as one of the first principles of the political liberty. Locke says The Legislative or'

Supr'emf.~ Authority cannot ass:.ume to itsf:.>l'f a pOI.LJE'r to rule by extemporary arbitrary decrees but is bound to dispense jllstice and to decide the rights of the subjects by promulgated standing lal'J'S and knOl/,Jn authorized judgf:..j:5". In th('!! l'.Iords o'f Cicero -- We arfi' the slaves of law that we may free " Hooker says Law doth speak ILJith all indi'ffc:n-'("'!"1tly and ha,~~ no side r~?s;p~?ct to their persons" So it is to its impartiality far more than to its wisdom that are

all times. Finally the law serves to protect the administration from the errors of judicial judgment, the establishment of the law is the substitution of the opinion and the conscious of the commun:ity at lar!}p. for thos;.(,!! o'f the individuals to !'.Ihorn thl'?

Judicial functions are entrusted Aristotle says - "To seek to be wiser than the laws is the very thing which is by good laws f or'b :i. de:1 f."!r"," .

These, then are the chief advantages to be derived from the exclt~ion of Individual judgment by fixed principles of law. But thes(.? bf.:>fH?'fits aT'(~ cr!:::d,:ain(~d at 1'1(~i:,VY co!!-::.ts. "Tlv.:> li:~lL/ if.:. ILlithout a. remedy for greater evils, yet it brinQs with it evils of its own "Sc)(n(~ o'f them are inl'lsr'ei,t in the very natur'e. Other's i:~re th(~ out-come of tendencies which, however, natural are not beyond the reach of effective control. The fact of a legal system~ is its rigidity" The result of this inflexibility is that however, carefully and cunningly a legal rule may be framed. There will in all probabilities by some special instances in which it will \L/orm, h<~r'ds:.hip and injlJ'stice i.~nd pr(:;)vp. a ~sourc(~ o'f f?rrCH' in~;;tead of a guide to truth. So, indefinitely, various are the affairs of man that it is impossible to lay down general princ,iples which will be true and just in every case if we are to have general rules stall we must be content to pay this, price, the time honc)\"lr€~d ma;.dm "Summum Juse~;t Summa In JUf".ia". In an E')'(pr(,~s;S">ion of the fact that very few legal principles are founded in truth that they can be pushed to the extremist logical, conclusions without leading to injustice. Analogus to these rigidity and vice is that of conservatism. The former is the failure of the law to confirm iti:;;,elf to th(~ r'f.~ql.\ir'emf?nt~s (:;)f sp(~ci;~l instanc(~s and

to those changes in circumstances and in man's view of truth and justice which are inevitably brought about by the lapse of time.

In the absence of law, the Administration of Justice would automatically adapt itself to the circumstances and the opinions of time, but fettered by rules of law.

Courts of justice do the bidding not of the present but of the times, caste in which those rules were fashioned.

Another vice of the law is the formalism By this is meant the tendency to attribute undue importance to form as opposed to ~::,ub~:;tancf.'! and to material. It is incumbent on a perfect legal system to exercise a sound judgment as to the relative importance of the matter, which come within its cognizance and system is infected with formalism in so far as it fails to meet this requirement.

The last defect is undue and needless complexity. So, we can say our law is fi'led with needless distinctions which add enormously to its bulk and nothing to its value, while they render a great part of it unintelligible to any But Experts.

From the foregoing considerations as to merits and vices which are inherent in Administration of, Justice according to law, it becomes clear that we must guard against the excessive development of legal systems, if the benefits of law are great the evils of too much law, are not small.

Bacon and Aristitle have also observed to this effect should do something to abolish or minimize the vices of law :i.t :i,!;;; al~:;o good. If (~ct:ion=; are t,aken in thf.'! T"f:'gar'cI""

" \!.If:' i:md

According to the imperative theory of law, the civil law IS essentially and throughoutwhole compass nothing more than a

particular variety of impressive law and consists of general comlT}-..;rrds is'sued by the State to it~::. subject~5 and enforced through the Agencies of Court of law by the sanction of physical force.
We have seen that it contains an important element of truth. It rightly recognizes the essential fact that Civil law is product of State and depends for its existence on the physical force of the state exercised through the agency of judicial tribunah when there is no State which governs community by use of physical force, there can be nothing as civil law. It is only if and so far as any rules are recognized by the State in the exercise of this function that there rules possesses the essential nature of Civil law. But we must see the objections of this theory. First &
mos:,t important object:i,on 1,1Jill be ;;i~,; folloll)~;: ,"Althou!;)h the definition of L:H1J as the command of 1 all) state is plausible and as is first sight sufficient, as applied to be developed political societies of modern times. It is in applicable to more primitive communities. Every law is not the command of

State. In has, its source in custom, religion, or public opinion and not in any authority vested in a political superior. It is not until a comparatively late steige o'f ~;clci,:d evcd.ut:i.on that la.ll,1 a~5SUm€H:; ih,;

modern form and is recognized as a product of supreme power governing a body politics, law is prior to, and independent of, political authority and indppendent of State, they may greatly resemble law. They may be the pl~imeval substitute for lal.,I. They may be the historical source from which law is developed and proceeds. But they are not themselves law. There may have been a time in the past when a man was not distinguishable from the anthropoid ape, but that is no reason for now define man in such a manner as to include an ape.

So to trace two different things of common origin in the beginning of their historical evolution, is not to disprove the existence Dr the importance of an essential difference between them as they now stand. To all this Samond himself has provided answer that the plausibility of the historical argument proceed from the failure adequately to comprehend the distinction, hereafter to be noticed by us between formaland natural sources o'f la\I). Its formal SOllT'ce i~::; that 'frDm I.)hich it obtains the r)OI~ler & will of the State. Its material sources, on the other hand are those from which it derives its material contents. Custom & religion may be the material sources in legal system. No less than that express declaration of new legal principles by the State which we term legislation. In earlier times, indeed, ;legislation may be unknDwn. Yet, although the imperative theory contains this element of truth it is not wholly truth. It ~s one sided and inad!?quate-an pl~odl\ce of incomplete ~nalys..es of juridical conceptions. In the first place it disregard the ethical element which is essential element of complete conception as to special relation between law & justice. This theory is silent and ignorant. This is right or justice, if rules of law are from one point of you, commands issued the State to its subject from another stand point, they appear as the principle of

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right & wrong so far as enforced and recognized by the State. In the ~xercise of the essential function of administering justice.

"Law is not right alone or might alone but a perfect combination of the law", It is justice speaking to men by the voice of the State. The established law may be far from corresponding accuracy with true rule or right nor is its legal validity in any effective by any such imperfections. Nevertheless the ide~ law & justice are coincident,. It is for the expression and realization of justice that law has been created and like. Every other work it must be defined by reference to its work ends & object purpose etc.

So, a purely imperative theory is an one sided as a purely ethical or non imperative theory would be. It mistakes a part of the connotation of the term defined for the whole of it :

We should be sufficiently reminded of this ethical element in the usages of popular speech, the term law & justice are familiar associates Courts of law are also court of justice and the Administration of Justice is also .the enforcement of law. Right, wrong and dllty are leading terms of law as well as of morals. If we term from only own to foreign languages (German, French, etc. as discussed before). We find that law and right are usually called by the same. They all have a double meaning. They all are ethical as well as juridical. They all include the rules of justice as well as those of law are these facts then of no significance are we to look on them as nothing more than accidental and meaning less confidence of speech. It is this that
the Advocate of the theory in question wOllld have us believe. We
may on the contrary, assume with confidence that these relations between names of things are. But the outward manifestation of very real and intimate relation between things named. A theory which regard law as the command of the State and nothing more and which entirely ignore the aspects of law as a public declaration of the principle of Justice would lose all its plausibility if expressed in a language in which the terms for law signifies justice also even if we will incorporate the missing ethical element in definition even if we define the law as the sum of the principles of justice, recognized and enforced by the State even if we say with Blackstone that law is a rule of Civil conduct
prescribed by the Supreme Power in State corresponding what is Right & what is wrong." We shall not reach the whole truth although the idea of command and enforcement is an essential implication of the law in the sense that there can be no law where there is no coercive administration of justice by the State. It is not true that every legal principles assumes the form of a command although the imperative rules of right & wrong as recognized by the State, constitute a part and indeed the most important part of the law, They do not constitute the whole of it. The law includes the whole of the principles accepted and applied in the Administration of Justice. Whether they are imperative principles or not the only legal rules, which confirm
to the imperative definition are those which create legal obligation and no legal system consists exclusively of rules of this description. All well developed bodies of law contain in

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numbe,r~lf~ pl'incipl(?~s tL.thich h;:::;ve !:;ome c)ther~ purpos(?' and content:
than fhi!::> and ~;;D fall outside' the' ~?.cope o'f :j,mpf:~f'ativf!! defiFlition.
These non-legal imperative are of val'ious kinds. They al'e for example?

permissible l'ules of law namely? those which declare certain acts not to be obliQatory 01' not to be wl'onQful. A l'ule .

there are'~ rule1:;
of law as that term is ordinarily used and it is plan that they fall within the definition of law as the principle acted upon by the Court of Justice. But in what sense al'e they enforced by the State. They al'e not commands b~t pel'mission. They create liberties but not obligations. So? also the innumel'able l'ules of judicial procedure are lal'gely known imperative. TIley are in no proper sense rules of conduct enfol'ced by the State. For example the principle that hearsay evidence is no evidence within evidence is superior to vel'bal that witnesses must be examined on oath & affirmation etc.

Th€:'r"f:.' arf,,' var"ious;:, other fc)r'ms of nor~,mperativE' la\L.I notable

those which relates to the existence application and interprf:.'tation of other rules. All legal principles al'e not

commands of State and those which al'e such commands of State and those which are such commands are at the same time and in their essential nature, some thing more of which imperative theory t: cik f:~ ~:; 2;C C oun t .

Justi(:::E~ : We havE:' dE.'"/:inE~d the ter'm 'Civil LaIL.I' \LJ:i.th reference to idle as of right or justice. If this is so right of justice? comes fil'st in order of logical conception and law comes second and is derivative. A complete analysis of term 'Law' '

1. Natural or moral 2. Legal Justice.

The first of them is justice itself indeed and in truth the second is the justice as actually declared and recognized by the Civil Law and enforced in Court of Law. Natural Justice is the ideal and the truth of which Legal Justice in the more or less imperfect realization and expression. Legal justice is the authoritation formulation of natural justice by the Civil Law, for the direction of the COUl'ts by which Justice is administered.
Such portions of natural justice are deemed for maintenance and enforcement by the State are formulated by the Law in rules which must be accepted by the Courts as the Authoritative expression of
such justice. Natural justice as to authoritative formulated? constitute? Legal justice of the State. Natural justice bears to

authol'itative creed which pl'ecludes inquiry.

Because, there are two kinds of justice, hence there are two types of duties & rights. A duty is an act required by the Rule of Justice an act the contrary of which would be an act of justice eH' \<!T'cwl<;;j. So, duties are of t\<JO type~; 'Natur'al and- L.egal.
A duty of the first kind is one which is required by a rule of natural justice an act the contrary of which would be an act of

moral injustice. a legal duty, on the other hand is one would

amount to a violation o'f the 1<.~11J and "i le(.:;fal ~'Ybjury. A mor"al or natural duty becomes also a legal duty when the rule of natural justice to which it owes, its origin is recognized also by the law as a rule of legal justice.

interest recognized & protected by a rule of right or justice.
All the interests of men are not protected so those which are 50 protected are called rights. All right is the right of the person for whose sake it exists and who is interested in the observance
of it. Rights are also of two types Natural and legal first kind is one, which is conferred by rule of Natural or moral justice. A
legal right on the other hand, is one which is conferred by a Rule of legal justice. A natural right becomes legal right when it is recognized also by the law, as a rule of legal justice.

Both legal & natural justice represent intersecting circle. Justice may be legal, but not natural or natural. But not legal or may be both. For the law is necessarily incomplete in the sense that it does not seek to cover the whole sphere of natural or moral justice or duty, as it is also necessarily to some extent imperfect and erroneous ~ecognizing and enforcing as
justice, what is not justice indeed Bnd in truth Bnd therefore, creating rights and enforcing duties which are legal rights and dutie!:::; only and not alf:::.c.1 natt\r'al ri~;lht~s and dutiefsu B(;?'1'or'(,?
discussing true nature of this natural or moral justice which is distinguished from legal justice. We should consider something which is as follows:

Natural justice does not mean an ideal or perfect form of
legal justice. A moral right or duty cannot be defined as one which ought to be recognized as legal right or duty. In the first place there is a large portion of the sphere of natural or moral
right & justice which is not fit for the enforcement by State. Secondly even those which Bre fit for enforcement, there is a large portion which is not fit for
reduction to rigid rules of Civil Law. So, we reason in a circle when we try to

define natu'("'aJ. L.al<,I. Hiqht, JUf:::,tice I::)y u~:.e e-:.f I<Jorel "clu9ht" or by reference to the ideal or perfect form of civil law. The term "ou<;;)ht" involvf.~ in itself thE:' cor'lception of T"'ight cine:! ther(,,~fC:)J"e, cannot be used for the purpose of defining it by the perfect or ideal or perfect form of law, can only be defined as that which most completely maintain right or justice.

In the second place, both terms cannot be formed together positive morality means the rules of conduct approved by the public opinion of any community. The rules which are maintained and enforced in the community not by the civil law, by the sanction of public disappriation and ensure positive morality bears the same relation to natural right or justice that legal right or justice does positive morality is a more and less incomplete and imperfect attempt by the public opinion of a community, to formulate ;:~nd en'f()1~c:e the r'ules of J"'IatllY"'al r':i(;Jht and justice even as legal justice is the attempt by the State, by its legislature and Court of justice, to do the same.

In the third place, natural or moral right or justice is not to be conceived as a system of authoritative and binding rules imposed upon mankind by some form of operative law. Just as legal justice, consists of rules, imposed upon by citizens by imperative law of the State to which they belong the idea of

imperative law in which natural justice has its source just as legal justice has its source in the imperative law of State, which had played a great part in the history of human thoughts in the realm of Ethics, Theology, Politics and Jurisprudence. It was long the tradition accepted of those Sciences, but it has now fall~on evil days and it can no longer be accepted as in harmony with modern thoughts on those matters.

This imperative theory of natural right & justice has in the course of history assumed two forms and passed through two stages (i) Theological (ii) Secular. In the first of these natural or moral law is conceived as imposed upon man the kind of God as Thom(~sic says -- "NatuT"al la,tAI i~.s divil"H? lalA,I, \Alritten in th(i' I"j(.?art of all men obliging them to do those things which are necessarily consonant to thf? rational .nat:llr(~ o'f m;:lnkind." Form the chu1'ch cof f:3cotland, "mof'i:.d lalA,I i~. tt"H~ der:.larat:icm of lAdl1 of God to mankind dirf?ct:inq and bindin9 ('f!',J(':!ryon(':! to c'..1bedi(i'nce thl-)r(o? into". E!lac::kstonE~ in l;:lteT" days:. ~::.aid -- ,< the 1 a tAl of nature being c;,.oeval with mankind and directed by

God himself, is of course superior in obligation to any other. it is binding over all the globe. In all r:.ourtries and at all times, no human laws are of any validity if contrary to this and such of them as are valid, derive all
their force and all their authority. Mediately of immediately from this original. In its alternative and secular form, natural and moral law is still conceived as in some part imperative. But the idea of diving imposition and command has disappeared or receded, into the background of thou(;Jht and this law is vaguely regarded and spoken of as imposed authoritatively on mankind by nature or by region or by conscience. It is no lonqer the command
of God, but the imperative idea is retained and moral law the rule of right & wrong, is conceived as the product of some form of legislative authority, possessed by man over himself, as by

lc;

his ~region, over his passions or by his higher nature over his low~~~ The idea of morality or obligation is still ,vaguely conceived as based on some form of imperative, imposition
although no longer explicitly on diving imposition. But this secular form of natural law is merely the frustrated ghost 01 the n<~tural or~ mori:d. la(,) ()'f thE.' thec:)].og:ici;;H1~ei.:~<-1T~ded as a 'form o'f
imp!:q"'ativc~ 1 aI".) I"hether~ 'from thf?! rel:i!)ious and secu~,ar pchnt of view, natural and moral law, no longer finds a recognized place in the Ethical speculation of present day. We still speak of natural justice, rights & duties. But rarely of that natural law
by IA)hich tl'H:~y af'e T"'ecogrlized. Nevf.~rthcdc~s:;; the tE~r'm "Natt.lral lal,,",if d!?'finitely 'fr'eed fr'om i'h;:, f?i'lrly ;;~nd mi!:;leading <~!;:;
sociations of command and Authorititative imposition is capable of useful
service. So long as we do not suppose that natural l~w
is the source of natural justice in the sense of imperative authority by which it is established and from which it derives authority we may usefully continue to employ the term as meaning nothing more than the aggr'E.'gate o'f l~ule!"; o'f natural ju!::,tice. The
elimination of illegitimate imperative idea reduces natural law, from a system of authoritative imposition to a system of doctrines. A system of natural law declares and formulates or expresses the principle of natural right and justice. But it does

imperative when its principles are recognized as fit for
copulsory enforcement by some from of human authority notably by the State through the instrumentalities of Court of justice and the Civil Law. The essential purpose and business of those Courts

is to give to natural justice coercive authority, which in

incorporate community against all who disregard it. Legal justice
01 State is natural justice, armed. Similarly, natural justice and law become, by another road, a system of imperative imposition and control, so far as recognized by an corporated in
that law of positive morality which has its authority in public opinion and it sanctions in the penalties of public censure.

So long as natural or moral law is conceived as being a form of imperative law analogous to Civil law, the same imperative element is carried into the derivative conception of natural or

moral duties and rights. The elimination of imperative element from Natural law, eliminates it at the same time from the conception of natural or moral rights & duties. The element of coercion is left tobe superadded of extra by some form of positive and imperative law and is no longer conceived as inherent in the natural or moral rights & duties themselves.

command, Authority of Govt. but is merely a system of doc::trines, what is the subject matter of this doctrine and what does it teaches there significance of all human action depends in law and moral on its effect on human welfare act that have no significance either for ethics or for jurisprudence. On this question philosophers have disputed in all cases and with respect to it there are two predominant types of ethical theory.

in human perfection and according to other it consists of human
happ-:':tn-'~,,=;. ThE" 'fir=;-\:: of these philosopher!::; teach us thr.~t. it is. the business of a mean to seek perfection to attain the ideal form and nature of a man and so to fulfill nature purposes in making him the other school teach us that business of man is to be happy and that everything is good so far as it produces happines~:5 and ever-ything €i'vil so 'fa.r- a~:; rn"'ciduces ~:::.\xf'fer-:t'n{.) and sorr-ow and that nothing is neither- goodhor- evil for- any otherr-eason. But those two different theories lead us to the same result. Men have no means of knowing the purpose for which nature cr-eated them. In the satisfaction of their-desire and the successful accomplicement of these endeavor they find life and happiness in the frustration of these desires and failure of these endeavor-, they find pain, sor-row and death. The only p~rfection which man is can able of knowing lies in his capacity. Thus to do natur-e's bidding and to attain the reward of his activities and the satisfaction of his desires, the only taste of perfection and the only indication of conformity to the ideal type and final cause of human are to be bound in the conditions of human happiness. Let us say, therefore, that human will being the summum bonum consists in the abolition, so far may be, of suffering and sorr-ow and the increase, so far- as possible, of all forms of desirable consciousness, so that men may lead happy lives endur-ing to length of days. It is from its effect on human welfar-e, as to conceived that all

human action derives its practical significance and by reference to this effect that it must be judged. This effect is two fold an action may be consider-ed either- as to its effect on the well being of the actor himself or as to its effect on the well being of mankind of large, so the Rule of wisdom. That is to say, self regarding wisdom the pr-udence of self interest instructs man how he must act in or-der thereby to secure and promote his own welfare. The rule of Justice instructs him how he must act in order to secure and promote the general welfar-e of mankind, if the interests of each individual were in all respects coincident with the interests of mankind at lar-ge. If it wer-e possible for every man to pur-sue his own desires and purposes and to seek his own good without thereby interfering with the similar activities of otherman there would be no need or place for r-ule of justice. To allow eVBr-y man to take as much of it as he CBn get is to waste much of what there is the rule of this appointment is rule of Justice. Justice consists in giving to every man his own the rule of justice determines the spheres of individual liberty in the pursuit of individual welfar-e, 50 as to confine that liberty within the units which ar-e consistent with the general welfare of mankind within the sphere of libsr-ty so delimited for ever-y man, by the rule of justice, he is left free to seek his own interest in accordance with rules of wisdom. So far there is no question of compulsion, command or authority. Neither the law of self regarding wisdom nor the law of natur-al justice, belongs to the class of laws imper-ative, they are practical laws in the sense in which that ter-m has been defused, they assume or-pr-esuppose a cer-tain end or purpose and lay down the r-ules of action by which that end or- purpose is to be reached. The formula of every such law is not that of command, but that of advice to r-each that end

this is the way which you must take. The law of justice is in t h i f,s, r- ~ r. f:~ s. p e c t o'f' t h E~ s. am f:.' n a t 1...1 r-- £'! a!:::. t h €'! l.~ 1.'.1 0 f s. E' I fin t !:~ T' !:~ S t 0 f command is tobe added to advice and authority to doctrine, th~ additional element must be found in some r--egulative or-- coercive system of Govt. such as administrations of justice by the State or-- the control exer--cised by the pr--essure of public opinion in support of those rules which are recognized within a~y So~iety as being rule of Right, both within the sphere of justice & within thf? ~:~pl"H?re of tl'H? I.'.lis.dom of s(£'l'f inter(~st. The concept c.1f "eJught" is of the same nature as the statement that a man ought to do a certain act presupposes some appointed ends and indicates that the acts in question is the proper means to that end. But the conc(~pt c.d: "ought" ha.!:;; I"1CJ applic:atiQn to th(~ end it~:;f?lf. TtH? question why a man ought in the wa~of justice to seek the g(;.'nf~ral \'.Iel'far(;.' ha.s no mDT.'I:? me<3nll"1(1 afC;'d tl"'!er(.?'f(:)rt? no mc:)r'(~ admlt~::; of an answer than the question why he ought in the way Df wisdom to seek his own.

We have spoken of that general welfare to which the rule of Right & justice is directed as if it was confused to the welfare of mankind if we accept the view (Utilitarian) that
the good means happiness and that evil means pain. It becomes clear that the welfare of lower animal does not differ save in degr--ee, fr--om the welfare which is under guardianship of rule of right. We owe moral duties to beasts as well as to man and in the Civil law of moder--n community this part of natural justice has become a part of legal justice also. The capacity & needs of beasts ar--e of littlemor--e than negligible importance as compared with the elements of woman welfare. Indeed, the civil law does not so far recognize their interests as to treat them as legal rights. All legal rights are tights of men. It is sufficient, ther--efore, while recognizing the subordinate claims of the lower animals to deal with the theory of right and law as if it related to the general welfare of mankind alone.

In the general sense in which we have used term justice synonymous with Right. The Rule of Justice and the rule of right are the same thing and co-extensive in their scope. All Right is
justice and all wrong is injustice. Justice is conceived as being merely one part of right and not the whole of it. Similarly duties are recognized of two kinds, one of them consists of duties of justice. So, wrong is also of two types, one of them amount to injustice. What then is the nature of the distinction thus indicated. It is based on distinction between Right &
duties. Justice? it is said, means specifically the observance to rjghts & injustice is the violation of rights. All duties, it is said, do not correspond to rights vested in other persons. Every breach of duty, therefore, does not amount to injustice. it may be a breach of the Rule of right in general, but not Breach of the Rule of justice in particular. So, justice consists, it is said by Roamn lawyers, in giving to every man rights, the distinction so drawn between right in general and justice in particular does not seem capable of standing the best of logical analysis. The truth of matter would seem rather to be this that the distinction is one of the aspects and point of view rather

than one nature of subject. All right & wrong conduct has two ;" <:::,

of view, the point of view may be either that of duties or that
of rights. We may view and judge an action with reference either to the duty fulfilled or broken by the actor or alternatively with reference to the right which is thereby preserved or \."ilol;.:.~t(~c:1 from thE' point o'f \del!'! of duties. The acts; tn~longs to
the sphere of right or wrong from the point of view of right, it belongs to the sphere of justice or injustice, but this double aspect exists in truth in all cases. There are no duties without right then there are rights without duties. therefore,

no rule of !":i(;jht IL,lhich io" not at the s;,ame time in t'ruth a rll,le o'f ju~stic(,,' and there is no wrong, which is not also in truth and injustice,
but one aspect or point of view in some times more natural Dr more illuminating than the other. Sometimes, therefore, rights come into the fore ground of thought & speech and some times duties. We may test the matter by considering the nature of those alleged duties of rights which are not also duties of justice :

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Self regarding duties as approved to duties towards others" Duties to the public as opposed to duties of individual. Imperfect duties as opposed to perfect duties:

2.

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First two do not require any specific detail. They are clear
but third require a details :- An imperfect duty is an act which ought to be done in observance of rule of rights. Therefore Justice includes the sphere of perfect duty only imperfect duty pertain not to justice, but to the domain of Voluntary virtue.
The distinction so drawn between perfect & imperfect duty is, doubtless, one which possesses both logical validity and practical importance. This distinction is subject to two
cT'iticism. In the first place it is tC) b(~ obsey"'v0)d that ttH~
specific rule of the law of the Term justice as denoting exclusively the sphere of perfect duty is not in conformity with established usage"Justice does not connote inforceability or
consonance with an ideal system of civil law. It means due observance of rights. Whether such rights are of a nature to be properly enforced by law or not. We speak of father's treatment of his children as being unjust without any thought of enforciability or of the civil law whether actual or ideal. Natural or moral justice 1s natural or moral right from the point of view of interest protected by it rather than from that of the duties imposed by it and this is so whether those rights & duties are regarded as properly enforceable or not. The second criticism relates to the use which is sometimes made of this distinction between justice & other forms of right. An Attempt have been made so to define justice in this sense that by the process of distinctive reasoning conclusions may be reached as to the proper limits of the administration of justice in the State's Court & of the interference of the legislature with private liberty one ':" .t:

divides the sphere of ethic in the first place into two

parts
dealing respectively with the so called self regarding duties and with duties toward others the first part he calls theethic of

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5- In the principle of ethics

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individual life and second the ethics of social life and later he dividers that in two parts
f.}aling respectively with justice and beneficence, justice includes the perfect and rightly enforceable duties. This alone is the proper sphere of law court and legislatures, beneficence, on the other hand, it include all imperfect and on enforceable duties. The distinction between justice and beneficence is not impercial. Scope of justice is to be deductively as certained by reference to the definition of that form of right. His definition is essentially like that of Kant who said, "justice is that scheme of limitatiori- of the liberty of the individual whereby the liberty of each is limited only by the like liberties of all". The all-embracing formula of justice is "every man is free to do that which he wills. Provided he infringes not the equal freedom of any other man. All that goes beyond this is in the operations of the legislature or of the law court, is tress pass and usurpation and unjustificiable transformation into legal justice of rules, which pertain not to the sphere of justice at all. But to the definitely contrasted sphere of voluntarily well doing.

Private & Public Justice: - justice is either private or public. The former is the relation between individual persons between man and man while the later is the relation between individual persons and court of justice, the rule of private justice deals with individual each other. The rule of public justice is concerned with the dealing of the Judicial Tribunal with those who come before it as subject to its jurisdiction. Private justice is that which the courts are appointed to maintain and enforce public justice is that which they are appointed to administer or dispense, the former is maintained by the court in the same sense in which a physician administers drugs, public justice is that which a plaintiff demands and receives from judicial tribunal because he failed to obtain private justice from his antagonist, so private justice is the end for whose sake the courts exists public justice is the instrument by which they fulfill their functions, public justice is of two kinds being either criminal or civil. It is sufficient to say criminal justice is retributive and civil justice is remedial.

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