

# Law and Order<sup>1</sup>

by Arthur N. Prior

“The universe is constructed on moral principles”. “There is a moral order in the universe”. “Whatsoever a man soweth, that shall he also reap.” “Righteousness exalteth a nation.” Propositions of this kind are maintained by nearly all religious believers, and by many philosophers. One encounters something not very different even in Marxism, which explains how the stars in their courses fight on the side of the proletariat, who are bound by the “dialectic of history” to gain their rights in the end. There seems little reason to believe that any of these systems is more than “wishful thinking.” There is certainly no way of proving that what we wish to happen, or what we think ought to happen, is bound to happen eventually, in the very nature of things. Nor is there any way of proving that such-and-such is our “duty” from descriptions of how things happen. “Imperative” forms of speech expressing desires and demands cannot be logically inferred from any “indicative” propositions whatever, or vice-versa.

There is, however, a certain understandable confusion which helps to keep alive these beliefs in a “moral order in the universe”. The beliefs in question are commonly expressed in propositions which have a similar structure to those propositions which make up the law of the land. “If a nation is tyrannical, it will fall in the end,” has, and is meant to have, a certain similarity to “If a man converts an automobile to his own use, he will be given a month’s imprisonment.” And it is characteristic of “legal” propositions that they seem to be both imperative and indicative at once, and so seem to establish the possibility of passing logically from one form of speech to the other.

“The law of the land” is in the first place a system of imperatives, telling us what to do, or more often what not to do, or telling the administrators of justice what to do if such-and-such regulations are contravened. But legal systems and constitutions also serve an indicative purpose - they inform the citizen about the “laws”, in the sense of regularities of behaviour, of the community in which he lives - they let him know “what to expect.” They inform him, for instance, that if he leaves his car in the street it will probably not be stolen, or if it is stolen, it will probably be recovered, or if it is not recovered the thief will be punished.<sup>2</sup> The function of legal propositions is highly important.<sup>3</sup> Possibly the most distressing feature of life in totalitarian countries is that the laws there have an almost purely imperative force; the citizen cannot gain from them any idea of what to expect from the authorities or from “society”, and may receive the most brutal treatment for no apparent reason, or at least with no means of foreseeing and forestalling it by “good” behaviour. [p. 2]

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<sup>1</sup> Edited by Martin Prior, Simon Graf and David Jakobsen. From Arthur Prior’s letter to Mary Prior 6<sup>th</sup> August, 1943 it is evident that Prior wrote the article in his atheistic period from the end of 1941 until 4<sup>th</sup> July 1943. (See the Ann Prior Collection at the Bodleian Library in Oxford)

<sup>2</sup> Prior’s handwriting from the margin: “(Hooker’s “Laws of Ecclesiastical Polity”, and the “De Causa Dei contra Anti-sabbatarios” of the 17th century Scottish Covenanted divine John Brown of Wamphray, both preface defenses of the regulations of the respective churches about public worship with accounts of the nature of Law in general, and while for Brown law is essentially an expression of a person’s will, for Hooker it is essentially a matter of order and regularity). This indicative” [note ends abruptly].

<sup>3</sup> Editor’s note: The originally text misses an article for “function”, since Prior first wrote “This function of legal propositions may be incidental, but is highly important.”, but then crossed out the words “This” and “may be incidental, but it”.

Even in better-governed countries, however, this indicative function of legal propositions is performed imperfectly. No constitution ever “works” quite infallible; laws may be evaded or administered half-heartedly or dishonestly, and what they say will follow a certain course of action does not always follow it in fact. Yet legal propositions are not thereby made “untrue” - the law remains what these propositions say it is, even if it is not administered or obeyed. This feature of legal propositions sometimes causes in us a certain intellectual dissatisfaction - we feel that it is absurd that the propositions should be true when they are not true, so to speak, and that it ought to be possible to replace them with others of a different kind which have not this unsatisfactoriness. We might attempt first to replace them by expressions of unwritten social conventions, which we might call “higher” laws behind the laws of the land and conditioning them. Social conventions, however, are infinitely more capricious, less “informative”, than the law itself; one might even say that the law exists to protect us against the capriciousness of social conventions, and give us a more definite idea of “what to expect” than unwritten conventions ever can. The obvious way to meet our feeling of dissatisfaction with legal propositions is to replace them with propositions from the “social sciences”, describing quite dispassionately how men in society actually behave. That should tell us “what to expect” perfectly (within the limits, of course, of human knowledge, which limits also exist in most men’s knowledge of the law or of social conventions.) Yet when this is done we still tend to remain unsatisfied - that is not quite what we were asking for. We were asking for a correction of the imperfections of the laws of the land - for an ideal system of laws - for laws that are so formulated that they are never broken or at least never maladministered - and we haven’t been given this new set of laws, but something that isn’t a set of laws at all.<sup>4</sup>

The “imperative” character of laws of the land is essential to them. All legal propositions are expressions of our wishes, or of our submission to the wishes of others, or of our agreement with others. (Including agreement about rewards and punishments.) If these wishes are fulfilled, or these agreements kept to, the laws also describe the actual behaviour of men; if not, they do not; and that is really all there is to it. If laws are frequently and flagrantly violated, and it becomes impossible to administer them, we can attempt to change them, that is, to replace them by other laws, and we may make use of the social sciences in framing our revisions; but even this cannot make our laws ipso facto descriptions of men’s actual behaviour.

Propositions about the behaviour of men in society may be grouped into systems; all of them together form a “family” of systems or of bodies of propositions. One of the systems in this family is a system of pure imperatives; another, a system of conditional imperatives (“If he steals, you must inform the police”); another, a system of conditional indicatives, the “laws” of the social [p. 3] sciences; another, a system of pure indicatives, the “narrative” that makes up social history. The laws of the land are propositions which for different purposes may be placed in different systems in this family. When they are faithfully operated, they do fall among the indicatives as well as the imperatives; and this fact misleads us into thinking that there is some way of making them fall among the indicatives completely and automatically. In some moods at least, we would like them to do this - we would like to be able to “depend” on our laws completely. But all that this tells us is just what it does tell us - that that is how we would like things to be; it doesn’t tell us how they really are.

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<sup>4</sup> Prior’s handwriting from the margin: “Or to put it in another way, we were not asking for propositions which merely describe what happens anyway, but for propositions which themselves cause things to happen in a certain way (which introduce a regularity into social behavior which wasn’t there before they were formulated), which are themselves part of the data of the social sciences.”

The only way to remedy a bad law (either in the sense of an unpleasant one or in the sense of an ineffective one) is to replace it by a better. It cannot be remedied by being replaced by something that isn't a law at all - e.g. by a proposition out of the social sciences. This is what we are misled into trying to do by the fact that some "legal" propositions may also function as scientific ones. Or we are misled into trying to formulate a new kind of social science which will do duty for a body of laws - a science which will express "the moral order of the universe." The accidental usefulness of legal propositions for descriptive purposes raises false hopes in us, which we can only "cure" by being made to see the accidental character of this descriptive usefulness, and how it comes about.

What can be "cured" is, of course, only the false hope, i.e. the unjustified expectation that our desire will be realised; but not the desire itself. We will go on desiring a "constitution" which "works" perfectly and so is a reliable description of men's actual behaviour - that desire is a large part of the desire for law itself, and of the willingness to submit to law. But we must recognise that the desire can only be realised partially, and that the only way it can be realised at all is by framing and operative laws and replacing them by better laws. We cannot fill in the deficiencies of legislation with "philosophy".