

## INDIVIDUAL AND GROUP: THE ECOLOGICAL REVOLUTION

Philosophically, the human individual may be taken to be real while the group is assumed to be a thought construct in the way that the sun, and the planets and their moons are real but the solar system is an idea. All who subscribe to this ontological postulate may in the present context be called *individualists*.

On the contrary, only groups of human beings may be thought to be real; the individual then is an abstraction. An individual separated from all group relationships past, present and future is in this view only a thing, but not a human being, in the same way that a hand severed from the body is not a hand. Let us call all those who accept this ontological postulate *collectivists*.

The application of law to these discordant metaphysical views is immediate. Since law must accommodate both of them we may expect the appearance of theories which attempt to constrain the meaning of law (1) to individuals only (2), to groups only and (3) to some combination of the two.

### *The Law of the Individual*

The notion that law should ideally concern itself only with the individual human being runs into deepseated prejudices. Legal theorists instinctively regard law as a group or collective phenomenon. Some may concede that the notion that law exists only *for the sake of* the individual is a tenable hypothesis, though by no means a necessary or even a fruitful one. But even here, it is insisted that law itself exists only in the group. It is by nature collective. Its incidence falls alike on individual or group in a collective manner. Even in the criminal law, where the individual

---

(\*) Part of the substance of this paper was presented to the Third Plenary Conference, Law and the Ecological Challenge, University of Kansas, Lawrence, Kansas, april 12-14, 1973.



stands against the group in the most dramatic way conceivable, it is felt that collective or communal interests are the real ones at stake. The criminal law, it seems, exists not for the sake of the individual, whether as accused or victim, but for the sake of society.

The result is the same in the civil law. The nineteenth century saw the high-water mark of the conflict in theories of individual as against group or social interests. Roscoe Pound examined this page of history in a series of superb studies of the effect of economic and political individualism as opposed to the rise of socialistic theories of the nature of law and the state. What has emerged in the late twentieth century is a strong consensus that economic and political individualism simply paved the way for the massive agglomeration of economic wealth in the hands of the few and the growth of collectivist state powers in response to demands for social security. It seems that the great mass of humanity, in order to protect its individual life interests, has agreed to have them redefined as social security interests and has consigned their protection to the social welfare state through law.

Our consideration of the hypothesis that law is a species of activity designed for the human individual in order to effect justice in the individual case has led us to massive collectivities as the the sole effective source of legal power. What remains of the Individual and the Law?

#### *Law as Collective Norm*

We have seen that the notion that man is a social animal can easily lead to the conclusion that man is only social. Law did not create this monstrous conception but the ease with which one associates law with collective action makes it seem natural that forces tending to collectivism will express themselves in law. Law becomes the chief mode by which collectivities benefit or oppress the individual.

All collectivities cost the individual more than he feels he gets from them. In collective action, there is always a residue of oppression. When the collective action takes the form of law, as it does increasingly in the modern world, the individual responds by violating the law. The more law-ridden the collectivity, the more lawless the individual becomes, and the more willing, paradoxically, to join in collectivities whose aims are lawless. These in turn attempt to foster their collective aims in the form of laws binding on their members and imposed upon their enemies if possible. Law as collective phenomenon can only result in greater emphasis upon collectivism. To revolt collectively against existing law is to invite greater collectivization in the future.

Radical individualism is a natural response to radical collectivism. Whether economic, political, legal or philosophical the two extremes are always in a state of dialectical tension and the predominance of one invites and stimulates the other. Collectivist tendencies throughout the world give rise to anarchical responses; anarchy entails collectivist repression. The law rides uneasily on top of this state of disequilibrium, finding itself used by both elements but disclaiming both since its true mission is to assist in the just ordering of human relations among both individuals and groups.

Radical individualism has had a long history in the Western World from the Sophists' principle of «Man as the Measure of All Things» to existentialism's profound rejection of all collectivist grounds of responsibility. The dramatic rise of collectivist modes of production of material objects and even of human beings; the devastating use of modern science, not to enrich individual human understanding, but to proliferate collectivist modes of exploitation of natural resources and to multiply mass means of transportation and communication; in brief, the apparently uncontrollable growth of all human activities, promises to those whose chief concern is with the human individual not only a total obliteration of the individual but the certain destruction of the entire race. Again, law is supposed to preside over this nightmare and to bring rational thought and action to its insane excesses.

From the hypothesis that law is only collective there results a state of anarchy, usually armed, in which individual revolt generates repressive collectivities and repressive collectives generate individual revolt. Law becomes only one of many prizes to be captured and used in such interne-cine warfare.

#### *A New Synthesis: The Ecological Revolution*

We witness today a new form of revolt against collectivism. Ecology is to save the individual from the excesses of collective action. The issue is private life against public life; the family against the market place; individual conscience against the public forum and the whole industrial system with its poisonous by-products and its self-serving nationalistic laws.

The base of the word ecology is *oikos*, the home. Hence ecology is the science of housekeeping. Its paradigm is frugal management of family resources to the end that each member will receive what help he needs from the rest and no one will exploit another. The basic assumption of happy family life is that the family exists as a self-contained entity. All

decisions are ideally to be made with the overall good of the family in mind. In modern terminology, the family is a «whole system» and properly speaking, it does not consist of «parts.» The idea that a brisk competition between members of the family will lead to the good of the whole is never even suggested for this configuration.

All members of the ideal family are expected to conserve its assets. Dissipation of the family goods hurts everyone. Pollution corrupts all; the family must clean up its own messes. Its virtue is cooperation, not competition; mutual trust, not armed security; love, not cool self-interest. Rather strangely, its working prescription for its members is a motto familiar in other circumstances: «from each according to his ability; to each according to his need.» This model is at present being pressed largely by the so-called advanced or highly capitalistic countries.

The ecological model is regarded with vast suspicion by countries coming into the full use of the modern industrial process. They suspect that the model is merely another ideological device for enabling the «haves» to retain their superior economic positions over the «have-nots.» Not surprisingly, the model is looked upon with interest if not benign approval by communist countries.

Our question here is this: what challenge does the ecological model pose for law. Is the proposal that the whole earth be treated as a home and humanity as all members of one big family something that law is familiar with and can feasibly implement?

### *The Ecological Revolution and Law*

We have noted that the present-day ecological revolution seems inspired by the archetype of the universal family. This notion that the generalized family is the cure for all the world's wickedness has always been with us. And no wonder. The family is the only form of group organization that exists by nature, not only for *genus homo* but for countless of his animal congeners. All other forms of organization are taken to be artificial, born of the occasion, lasting only so long as the purpose which calls them into existence endures. The family has no purpose save its own. Its extinction is as natural as the end of a human being. Of all of man's complicated groupings, only himself and his family dies or dies out; other groups simply cease to exist.

The ideal of Christian communal living is the Holy Family. God is its father, the Church, its mother and the communicants, its children. No matter that the vast hierarchy that gets the work of the Church done, resembles nothing so much as the artificial creatures called businesses,

nations, world organizations. The paradigm of the family persists. That the Christian paradigm of the family neglects the Earth is understandable. We are only transients here. Our home is in heaven.

Outside the religious family all is governed by law; inside by love. Secularly, it is only in the Utopias that all are sisters and brothers, fathers and mothers, husbands and wives. Religion proclaims that its kingdom is not of this world, that is to say, that it is not political. Thus it insists that the peace which the ideal family is supposed to assure depends upon its separation from the affairs of outside life which is marked by conflict of interests. Law, though it may attempt to harmonize these divergences, really has nothing to do with family life in the Judaeo-Christian cultures. To the extent that law intrudes, according to ancient wisdom, the fabric of the family is destroyed.

We have mentioned above the common assumption that all the members of a family are supposed to help one another. They are forbidden to waste the family substance or to aggrandize themselves at its expense. Its resources are to be husbanded frugally. Its profligate sons are encouraged to return to the fold. The harsh sanctions of the law are not to be invoked by its members against one another. In the Roman law, the greatest crime is the offense against the household gods. But throughout all history, it has been thought by *practical* people that of course the family paradigm is applicable, when it works at all, only to the extended biological family and its retinue.

... It would take a specialist in world history to trace the development of the current idea that the entire human race ought to regard itself as one large family. The earth has had to shrink until it could come in its entirety within the ken of the ordinary person as distinguished from the religious prophet or the ethical reformer. Moreover, all the formal systems of external control had to be seen to be in a state of disintegration for this last ditch refuge to be offered as a panacea.

The paradox that remains over from this state of affairs is that the family itself appears also to be in a condition of badly advanced demoralization, and it is obvious that this model presents us with deep perplexities. Not the least of these is the problem of how to bring law into the affairs of a family whose members are the entire human race.

Historically the human family has always tended to be a law unto itself. No only were the members of the family or clan bound into a single unit. Those outside the family unit scarcely can be regarded as having legal personality at all. The legal person is the group of the kindred. Advance was seen when this legal unit was split up and legal capa-

city came to be recognized in the individual human being. That process has not yet been completed. What difficulties then face a proposal to return to the ancient mode of legal organization, this time on a world-wide scale! The pretensions of human ecologists match those who propose one law for the whole world. Fortunately, it is not necessary to test these proposals against the recalcitrance of human nature. They are in fact the perennial hopes, longings and vision that characterize most religions. Secularly, they are utopias, and as such are important philosophically, if not politically.

I believe that the «Ecological Revolution» is primarily a religious movement. And the central question raised by this way of looking at things is the form that law should take in the new eschatology. «Universal» religions and their law usually begin as local if not parochial affairs. They are seen by non-believers as serving only the special interests of their adherents. Indeed the believers usually exact from their gods precisely this mark of special concern. The religion of ecology is no exception. It is universal, yet the mark of special interest it bears is widely apparent. It need not surprise us that the very word Ecology, which so absorbs us, actually stinks in the nostrils of underprivileged peoples who see in the movement a conspiracy on the part of the rich nations to preserve their ill-gotten gains. It is a matter of common prudence not even to use the word Ecology in many parts of the world.

For, merely to preserve intact what one has, one's home, one's country, may be an outrageous form of exploitation. I have no desire to pursue this matter further. I merely state it as an instance of the dilemma which frequently impales those who set out to reform themselves.

The new religion of the Earth as Home raises other difficulties. The whole structure of world economy based on the conflict of individual and group interest must be set aside. It has no proper application within the home. Our traditional system of law is equally irrelevant. It has developed over the millenia as inapplicable within the sphere of the family. Law's embarrassment when confronted with conflicts within the home are summed up in the inept mess of legal entanglements known as Family law. It has generally been taken as a sign of the disintegration of the family when secular law has had to step in to regulate family affairs. How odd then that we are confronted with the homes as a model for the very possibility that the earth become a place fit to live in.

The rhetoric of the Ecology movement is familial. More than that the emotions and sentiments that traditionally have centered around the idea of the home are thought to be applicable to the whole earth. I

believe that before we can make any sense of the role that law can play in this Ecological Revolution we must first discover what we intend by the paradigm of the World as a Home. I have said that this sounds like religion to me. At the very least, it is philosophy. Law is far, far behind.

On the other hand, politics and policy science are decidedly in point, for it goes without saying that the movement to project the image of the world as a home—the very reverse of the image of the world as a «public»—should have immediate drastic consequences for policy science. Politicians pursuing business in their accustomed ways find themselves criminals. Not yet articulated but surely implied in the polemic of World as Home is a rejection, more or less impassioned, of the notion that the world is a political entity and that only correct public policy can cope with ecological disaster. For the cluster of images that the Greek word *oikos* evokes is the privacies of the home as contrasted with the public life of the *polis* (1). The virtue of the home is the well-organized family, each of whose members is to be taken care of in accordance with need. Management is shared between males and females following the hierarchical principles of the patriarchal family. Rule is authoritarian and benevolent.

The extended patriarchal family is a unit. Its peace and order are to be maintained communally. It offers repose and tranquility to the male adults whose proper business outside the home is politics and war. Inside the family, their word is inviolate. On the other hand, law proper, the governance of the *polis*, is not at all concerned with internal familial regulation. It is plain that the *Polis* people are in for a rough time from the *oikos* people.

### *The Rediscovery of the Individual*

Between the human individual and the whole of his society stands the group. The eighteenth and nineteenth centuries saw the development in philosophy and in law of the rights of the individual. The late nineteenth and early twentieth centuries saw the development of the demands urged in the name of society as a whole. The late twentieth century is the time in which that in-between creature, the group, comes to legal prominence.

---

(1) I have leaned heavily in this account of the *oikospolis* relationship on the work of Hannah Arendt. See *The Human Condition*, University of Chicago Press, 1958, especially Ch. 5, «The Public and the Private Realm».

Man has always existed in groups. But like every other animal, he leads two existences. He is an individual being, living much of his time by himself however unrelentingly he may seem to be socialized. He ingests alone; withdraws into himself in sleep; he needs individualized attention at every level of his biological existence. On the psychic level, his greatest triumphs in art, science and religion seem to be the products of individual genius. For the rest, he is a member of a group.

Law has always expressed this dualism, as has indeed every other aspect of human life: its religion, its economy, its culture. The individual human being is not a late discovery of ancient Egypt, nor of the early Hebrews, nor of Greek culture nor finally of Christianity. That the human being is periodically «discovered» as something new in human history is itself a fascinating subject for the student of humanity. I do not feel capable of doing justice to that subject. I note it as a perennial mystery. Why is it so necessary that the individual should constantly need to be «rediscovered», while the social human being is taken for granted as a natural phenomenon? This is the first paradox that a study of Individual and Group confronts.

Philosophical speculation created the *notion* of the human individual. It is felt necessary to tell us that no two human beings are exactly alike; otherwise we constantly overlook this inconvenient fact. Left to our selves, we inexorably start to classify people. «We» are different from the «Other». Nevertheless, «We» are all alike, at least in some vital respect. «They» too are all alike. Foreigners resemble one another. Slaves all look alike; they are animals. Good people shine with a certain radiance; the evil have dark forbidding countenances.

How natural it is for us to put people into groups and how very unnatural to take them out again. The first process seems instinctive; the second must be learned consciously and at great sacrifice.

Not only philosophy teaches us the individuality of each member of the human race. Religion also tries to do so, not too successfully I am afraid. Law reflects the demand for individuation. But how successful would one say law is in recognizing and protecting the individual against the overwhelming instinct to put him into generalized categories?

September 1973.

THOMAS A. COWAN  
*Rutgers Law School*  
Newark, N. J. 07102 U. S. A.