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Legal Culture Confronts Science in Search of a New Paradigm of Humane Governance

(The Expanding and Constraining Boundaries of Legal Space, Curvature of Time, and the Challenge of Globalization)

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Prologue

The theme of this Assembly is the Anthropocene Crisis of the 21st century. Intuitively this crisis reflects the development of human capacity to make choices to master the socio-ecological reality. It is also intuitively the case that the mastery of the eco-social system has generated significantly threats to the viability of that system. Among the high visibility issues are issues of climate change and environmental chaos. There are other threats as man has mastered much of natural order, and how to manipulate it for human advantage or disadvantage. Society generates rules through culture and more formally through the state, to control and regulate the capacity of man to manage and change the environment for the common good. Global crises test the viability of law to control and regulate in the common good because politically, space and time are not as malleable as in a physics lab. More is needed to generate wise decision making about common spaces beyond the conventional boundaries of law. Implicit in the idea of law is the notion that laws emerge from natural order and generate their own self-regulation. Thus, there are the laws of physics, which must be discovered, but these laws dictate the boundaries of science and possibly science do not necessarily dictate these boundaries. The boundaries of the material world were discoverable by science in the splitting of the atom. The use of this scientific discovery as an instrument of war was dictated not by mechanistic rules, but by human choice of a political nature. The nature of law in the context of the organization of culture and society has itself been a prisoner of the autonomous law idea: the perception of law as independent of human choice versus the idea that law evolves as society interacts in terms of its human actors and the largely eco-spatial system. The element of choice and decision as the critical factor in law is a recent development. Moreover, this insight has required a deeper understanding of the nature of law and the impact of law on social process. The critical issue of professional responsibility confronts the role of law in the promotion and defense of the most important values of the earth-space community: peace, security, ecological integrity and dignity.

In seeking to secure a deeper insight into law and the challenges of the human imprint on the global eco-social process, we immediately encounter a critical problem of establishing an appropriate standpoint from which to describe and evaluate the inter-stimulation of both juridical and eco-social relationships. We immediately encounter the challenge of modern science. In particular, there would be the question of the relativity of the observer, motion, and time.[1]

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[1] *See generally,* Richard P. Feynman, THE CHARACTER OF PHYSICAL LAW, 99 p. 9. Compare Jeffrey Satinover, A QUANTUM BRAIN, Jonathan Wiley (2001). Feynman makes the point that our imagination is stretched to the utmost, not as in fiction, to imagine things which are not really there, but just to comprehend those things which are there. This would appear to be true of legal cognition and imagination concerning the nature and function of law. There is a powerful resonance of insecurity in human relations. The orthodoxy of law seeks to freeze experience and legal

Additionally, there would be the intriguing insights from quantum physics about uncertainty in the behavior of microscopic particles, and the possible role of observation that may influence the movement of such particles. In the context of the social sciences, Harold Lasswell recognized that a Newtonian version of observation in space and time was no longer adequate. He put it this way:

> Now it is impossible to abolish uncertainty by the refinement of retrospective observations, by the accumulation of historical detail, by the application of precision methods to elapsed events; the crucial test of adequate analysis is nothing less than the future verification of the insight into the nature of the master configuration against which details are constructed. Each specific interpretation is subject to redefinition as the structural potentialities of the future become actualized in the past and present of participant observers. The analyst moves between the contemplation of detail and of configuration, knowing that the soundness of result is an act of creative orientation rather than of automatic projection. The search for precision in the routines of the past must be constantly chastened and given relevance and direction by reference to the task of self-orientation, which is the goal of analysis.[2]

It is possible that the relativity principle and the human agent of observation effectually suggest a multitude of possible standpoints of observation, which will affect what is observed and how it is observed as well as the ostensible effects of mere observation on the object of observation.[3] Thus, to provide an appropriate reference to the term law in the eco-social context may vary in terms of whether the standpoint or perspective comes from a member of the established elite or the ordinary citizen. Moreover, viewing law and describing it, may vary according to culture, confessional outlook, gender complexity, racial pedigree, age, or the experience of crisis. Even within the framework of the professional side of law, the observer may be a legislature, a prosecutor, an attorney, a judge, an appellate judge, a minister of justice, a juror, or the plaintiff or defendant. According to Professor Reisman, "no standpoint is more authentic than another but the scholar must be sensitive to the variations in perception that attend each perspective" and must be sufficiently disengaged to select a perspective that is appropriate.[4]

This paper draws on scientific metaphors that have been used by jurists and social science theorists to more adequately explain inquire into and appraise the policy foundations and social consequences of law-conditioned phenomena. Evolution of some sort is more or less accepted in the aftermath of Darwin, it is therefore not surprising that we may also see the evolution of legal thought and social process in ways that are more comprehensible and better understood in terms of the challenges they pose for the viability of an earth-space community of the future. The nineteenth century generated a powerful social and philosophical movement in the United States rooted in pragmatism. The pragmatism of American intellectual life expressed itself as a revolt against formalism. This movement had a significant legal presence: The presence of a Supreme Court justice, Oliver Wendell Holmes, Jr.

Holmes powerfully expressed the view that law does not autonomously function in a strong box of legal rules and precepts. On the contrary, it was driven by human agents of decision in different roles. This insight with its emphasis on the role of decision and choice required a broader

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knowledge in the formulaic strongbox of legal rules and precepts. The power of past experience is reflected in the compulsions of precedent. As Northrop put it, precedent works on an assumption that nothing should be done for the first time. Justice Murphy of the Australian Supreme Court suggested that this was a doctrine eminently suitable for a nation predominately preoccupied by sheep.

2 HAROLD D. LASWELL, WORLD POLITICS AND PERSONAL INSECURITY 13 (1965).

3 This is a significant issue touching on the issue of the so-called non-local mind. There is much speculation in physics about this idea.

4 W. Michael Reisman, *The View from the New Haven School of International Law*, in PUBLIC ORDER OF THE WORLD COMMUNITY.

framework of understanding in terms not of the logical syllogism, but also of human experience. It is the evolution of this insight in the twentieth and twentieth first centuries that also opened up the epistemology of law as a critical component of scientific inquiry and analysis.

The idea of legal theory as a self-conscious theory for inquiry about law has opened up the framework of observation, participation and heightened social responsibility in ways that have been creative and open to analogies and metaphors from the developments in modern science. This paper explores some of the dominant borrowed metaphors and an importance to wide range of concerns in law technically, as well as laws capacity to manage such issues as weapons of mass destruction, rights of indigenous people, deforestation, climate change and the fundamental rights of the inhabitants of the Rain Forest.