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Metaphysics and Jurisprudence

CORNELIUS F. MURPHY*

INTRODUCTION

A constant problem for creative human expression is the correlating of the inner creative personal act with the environment in which the act takes place. It is said of Prokofiev that in the years he spent away from his native land he neglected music born of living human intonation and concentrated, to his ultimate disgust, upon a purely introspective style. His music lost vividness and realism. Returning to Russia, the renewal of contact with the land and its people gave him new meaningful inspiration. Similarly with modern architecture. Renunciation of the medieval world, with its harmony between form and environment, brought great creative possibilities in terms of spatial and structural work. But it also brought a sense of purposelessness. The works of Piranesi, for example, expressed a complicated spatial wandering with the objectives of the journey unknown and unknowable. The creations of LeCorbusier indicate an attempt to arrest the endless wandering of thought processes and correlate the artistic act with the world; to ground it in reality. His works evolved from an exclusive emphasis on spatial or massive structural constructions to an attempt to articulate a unified sculptural body. This new orientation to his work involved a reassertion of the image of man. The High Court at Chandigarh thrusts upward with expressive power in monumental forms rather than inert abstractions. It becomes more than a massive block of

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* Associate Professor of Law, University of Maine. B.S. (Holy Cross); LL.B. (Boston College); M.A. (Virginia).

1 Nestyev, Prokofiev, 119, 122 (1946).

concrete; the artist has expressed the human act of authority which the court signifies.\(^3\)

Artistic work takes on deeper meaning when it reflects a creative response to lived awareness of the universe. But the coordination between the individual creativity and the environment of the artist does more than improve the quality of the work. It also has a unifying power. The artistic creation can then bring the artist and the onlooker closer together. Emerson held that there was a common mind between himself and the architects of gothic cathedrals. The shape of their churches reflected a natural environment. He could see in a woodland the arches for the great churches; in the sun filtering through the boughs of a winter forest the stained glass windows of a great cathedral.\(^4\)

The problem of coordinating thought and environment and creating unifying power is part of the question of modern man. It is particularly true of the difficulty of making the relationships between man and man meaningful. Much of the work of the philosopher Martin Buber is devoted to an analysis of this difficulty. In his classic essay “what is man”\(^5\) he traces the difficulty of making human relationships meaningful to the philosophical development subsequent to Descartes. Buber notes that in the work of Hegel and Marx the concrete human person and concrete human community were dispossessed in favor of universal reason with objective thought structures and dialectic processes. Buber finds no hope for improving the significance of human relationships in the works of the existentialists. The thought of Kierkegaard developed from a renunciation of an essential relationship with a specific human person. In modern times, Heidegger takes as his object of inquiry not man in his manifold complexity but only his existence in himself. He moves in a strange room of the spirit rather than life as it is actually lived. He fails to find the meaningful response to lived human relationships which can bring man out of his isolation. If we are to reestablish the relations between man and man Buber insists that we must reach beyond individualism and collectivism. If we are to bring about the genuine person and establish a real community of men we must look to the reality of the confrontation of man with man. We must enter the realm of the between, and we must grasp this dialogical situation in an ontological way;

it is not to be grasped on the basis of the ontic of personal existence or of that of two personal existences, but of that which has its being between them and transcends both...\(^6\)

Buber's insights have implications for legal theory. They go to the heart of

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\(^3\) Id. at 44-48.
\(^4\) Emerson, History, 20, in Essays (1903).
\(^6\) Id. at 204. (sec. IV.)
Metaphysics And Jurisprudence

purpose of the legal process. For the law orders and adjusts relations between man and man. What is the foundation for this work? What ultimate frame of reference does the law have? To what, in the last analysis, does it refer to justify its actions? Is there any beforehand knowledge which evaluates and regulates its development? What guides for jurisprudence will be found in the reality which has its being between man and man and transcends them?

We shall develop these questions by tracing the growth of the science of jurisprudence: through its inductive stages, where it asks the raw materials of the legal order to manifest their reasons for being; to its quest for wider and higher forms of intelligibility: in interdisciplinary studies and beyond to the planes of logic and mathematics. We will suggest that when it reaches the latter summits its desire for full intelligibility will not be satisfied, and that there is a realm beyond the quantitative to which jurisprudence can aspire, the realm of metaphysics: being and its laws and the essences they imply; a realm in which the jurisprudential act and the environment in which it works can be correlated so as to bring about the development of the human person and the human society. It is here that jurisprudence will find what has its being between man and man and transcends both, presenting the potential power for the joining of man with man. Let us begin and trace the development of jurisprudence.

**Jurisprudence**

Jurisprudence is the science of law. It studies the relations between persons in society and the rules that govern and adjust these relations. If the 'given' datum of the law—legislation, courts, penalties, remedies, etc., were uncritically accepted—if they were no more than given, there would be no legal science, no jurisprudence. For jurisprudence to be a science it must seek for supermomentary reasons for the existence of the given materials. Thus jurisprudence seeks to point out in the 'datum' of the legal order its reasons for being there. It seeks to make them intelligible. To do this it takes the given datum of legal existence and makes them objects of thought. We will call this given datum *things*. Things become objects of thought in order that they may be known.

By turning things into objects of thought jurisprudence makes them intelligible. It points out their reasons for being in the legal order. Consider precedent. Written judicial decisions are an element of the legal order. They have an influence on subsequent legal development. As such, the decisions are a 'given', or things. Jurisprudence carefully examines and considers the effects of decisions: guidance, assistance to stability, etc. Then jurisprudence, by a thought process, gives a demonstrative explanation of its purposes. It sees in the opinions more than their pure existential character. To do this it must
disengage from the raw material, the accumulated opinions, the intelligibility of which they are the bearer.

The transition of accumulated opinions from a given thing of the legal order to an object of thought involves the observation of their effects upon other aspects of legal development. Intensification of observation yields new reasons or purposes. For example, Llewellyn, by studying a considerable number of early American decisions, and the various ways which they used prior opinions, was able to make a significant contribution to the study of precedent. He discovered nuances of thought or purpose in the range of precedent use that was available to the appellate judge.\(^7\) By a well-grounded experimental constancy, a deeper intelligibility was revealed. Hart and Honore's studies of causation are a further example of this method. Their studies indicate that in substantially similar situations, courts use and apply fairly stable causal formulas. The experimental constancy which their study revealed permits the development of reasonably stable principles of causation. By increasing understanding, it improves the power of criticizing the framework in which legal thought develops.\(^8\)

When jurisprudence seeks to make the given elements of the legal order intelligible in these ways it is functioning as a science of observation. Studying the things of the legal order by inductive methods, it seeks to free the intelligibility contained in them. When it deals with the things of the legal order in this way it deals with the essences or causes of things as hidden. Experimental constancy unfolds an essence; by its effects it makes its reasons for being known to us. Jurisprudence as a science of observation is controlled by experience. It does not rise above time. It achieves a scientific knowledge of things by studying their effects and interaction.\(^9\) But, like all sciences, jurisprudence seeks to become more perfectly explanatory. It tends towards broader and higher levels of intelligibility. As it deals with the ordering and adjusting of human relations it wants to know more about man than can be gained from an observation of the judicial or legislative process.

Jurisprudence calls upon other social studies to help it in its quest for deeper understanding. A sociology of law, for example, records the incarnation of spiritual values in social facts. Psychiatry and psychology inform jurisprudence about the complexities of the human personality. History records the functions that we have called upon the law to accomplish. Anthropology gives jurisprudence a view of the cultural values embedded in the diversity of the human race. Political science reflects broad national and international purposes. These related sciences, while indispensable, are not fully sufficient. They do not satisfy the jurisprudential urge for full intelligibility. They labor

under the same difficulty as jurisprudence considered as the science of positive law—they begin and end in experience. Jurisprudence needs the help of sciences whose object is the non-material. It is thus attracted to logic and mathematics.

The attraction to logic has brought many fruitful consequences to jurisprudence. The attraction is perhaps best illustrated by the work of Hans Kelsen. Kelsen wished to consider law as a specific normative entity, detached from other sciences, such as sociology, which would explain the legal order as the consequence of other social phenomena. He reacted against the view that the law was nothing more than the clash of interests or a merely factual series of uniform human behavior. Kelsen rejected this view because such an approach would make the law devoid of meaning. It would not satisfy the intellectual needs of those who were to develop legal theory. Legal phenomena should be viewed in a systematic relation. By studying the interdependence of legal norms one would find the transcendental—logical conditions of order. A pure theory of law was developed. Legal theory became a structural analysis of the positive law—an analysis which, by rejecting all ethical or other value judgments, would show the inner consistency of the legal order and also how the law preserved itself and realized itself in its progress from higher to lower stages in its hierarchical structure. Jurisprudence was thus given the repose of logical consistency.10

The tendency of jurisprudence to become more fully explanatory also attracts it to mathematics. Mathematics is a truly regulative science. It involves the realm of the non-material because its formal object and method are mathematical while physical reality provides the material for its work. This attraction is expressed in the works of F. S. C. Northrup.

Northrup, like Kelsen, sees the necessity of a normative framework for the legal order. But Northrup finds the intellectual satisfaction derived from a logically consistent legal order insufficient. The grundnorm that states ought to behave as they customarily behave does not satisfy the desire to evaluate the goodness or badness of a particular type of behavior. Kelsen’s system is not sufficiently explanatory. It does not answer the question why punitive sanctions and other legal procedures are permissible or necessary.

This desire for a higher explanation is not satisfied by the ethical postulates of neo-Kantian thought. Justice and the good life are variables. They are ethical assumptions without a clue to their inner content.

Northrup’s quest for higher understanding begins with sociological jurisprudence. Its purpose is to point out that the source of the content and obligation of positive law is in the underlying structure or living law of the society to which it refers. To give more than a naked explanation of this under-

lying reality something must be done to show that this behavior is either good or bad. Otherwise the value variables can be as vacuous as the ethical postulates. A method to determine the inner order of the variables is needed. Here Northrup, like Kelsen, has an attraction to logic. But Northrup's attraction is for a different purpose. It is the logic of the inner order of the key variables in any society which serve as the foundation for the positive law. He is attracted to Sorokin's logico-meaningful causality. Beyond mechanical causality Sorokin found, in cultural sciences, another type of causality which determined the overall ordering of relations in any given society. It sees at work in a people more than the laws of physical causality. People, in their relations in any given culture, work under the influence of a key variable—the meanings which the people hold in common and use to conceptualize their order and experience. It is the ethos of that people, which contains ethical content and can be used to settle disputes in that country. When there is a sufficient agreement on these there is a single culture. It also gives a communal or personal ethics or living law. This common interpretation of life will appear in the cultural expressions of the people, songs, philosophical writings, etc. This will give a persistent community philosophy that must provide the scientific basis for normative judicial decisions.

Northrup's quest for a higher explanation does not stop with a logico-meaningful determination of the ethos of a given people. Law is developmental. An integral part is the urge for reform. A judgment must be passed upon the living law. To do this a higher evaluative norm must be developed. The philosophical beliefs that were the inner order rested upon a philosophical view of man and his universe. As these views grow out of natural experience Northrup believes they can be empirically tested as to their truth or falsity. Here he is attracted most strongly to mathematics. Contemporary mathematical physics must be completed to determine a philosophy of nature. We will then have a new philosophical conception of man and can create a new humanism. Philosophical sociological jurisprudence will then pass to a natural law jurisprudence with sufficient content to be the higher norm for evaluating the living law of any given society.11

There are good reasons for this attraction to mathematics. Mathematics is a deductive science. It is also explanatory. It offers jurisprudence a higher level of intelligibility than was possible with the inductive sciences. It presents the mind with the opportunity of obtaining an abstract object of thought.

In mathematics the mind does not deal with an essence as hidden—it frees an intelligibility from things—quantity, number, extension. The mind grasps as a formal object of thought what existed outside the mind as an accident of

bodies. These primary elements are abstracted from bodies and cannot exist without them. But mathematical concepts can be conceived without matter. So conceived, they are treated by the mind as though they were subsistent beings and as though the mind's notion of them were free from experimental origin. They are beings of reason. For example, projective geometry is developed without any reference to measurement or numerical coordinates but rather depends upon the inner logical consistency of the concepts.

While mathematics begins by abstractively disengaging primary elements from bodies, modern mathematics is important for the knowledge of unobservable elements in bodies which it can reveal. The speculative development of types of order, built without reference to particular entities, creates mathematical laws which can be applied to the interpretation of nature. By conforming phenomena to mathematical laws, the behavior of non-observable ultimate particles can be measured.

Starting with the premise that the scientifically known person is a correlation of what is intuitively known as part of an indeterminate continuum (common to the observer and the observed) and the directly unobservable, theoretically human individual "which is an instance of an imageless formal and constitutively constructed and procedurally defined law," Northrup would apply mathematical laws to the sensible manifestations of the contending theories of natural law in order to resolve whether they were true or false.

The discovery of concepts by formal axiomatic postulation which are concepts by intellection, made first by the Greek mathematical physicists . . . provides a meaning for the scientific definition of a scientific object and its laws without any recourse to the images of the senses or of the imagination. Thereby it provided a means of obtaining determinate, publically valid propositional meanings which are the same for all human beings. The heart of the technique of constructing such cognitive concepts centers in the laying of imageless, merely formal, logical or mathematical properties on the relations between otherwise undefined entities, in such a way that the axiomatically and formally constructed relations define laws governing the related individuals which hold universally for any individual whatever which instances the entity variables of the theory.12

This mathematization of the sensible would bring the stability necessary to determine which of the contending theories of natural law was true. In his quest for an evaluation norm to be the ultimate guide for jurisprudence he would apply the method of mathematical physics not only to the facts of physical reality which he contends the natural law theories grow out of, but also to the work of experimental sciences. Thus the self, or a man, will be "what experimental chemists, biologists or psychologists find him to be."13

13 NORTHRUP, MEETING OF EAST AND WEST, 464.
The patterns of uniformity would provide the established law of nature by which the philosophic concepts which are the basis of a living law can be evaluated. We would then have the superior norms with which to evaluate the living law of any given society.

Jurisprudence as a science seeks to find intelligibility imminent in the existential universe of legal phenomena. In its inductive stage it sought to disengage intelligibility from the raw materials by close observation of a well-grounded experimental constancy. Jurisprudence was then able to point out in the "datum" of the legal order its reasons for being there. As a science of observation it dealt with the essences or causes of things as hidden. Experimental constancy unfolded an essence, by its effects it manifested its reasons for being. However, as a science of observation, jurisprudence is completely controlled by experience. It is tied to time. It seeks to become more perfectly explanatory, to obtain wider and higher levels of intelligibility. It wants to know more about man. It increases its knowledge by interdisciplinary study. Yet they do not satisfy the jurisprudential urge for intelligibility because, like the inductive modalities of jurisprudence, the related sciences are tied to experience. The higher urge suggests immaterial objects and leads to an attraction to logic and mathematics.

Kelsen was attracted to logic since he wanted to consider law as a specific normative entity. Rather than have law considered as a consequence of other social phenomena he desired freedom for autonomous development. The systematic study of the interdependence of legal norms led to the transcendental-logical conditions of order—a pure theory of law. Finally, Northrup finds the theory of logical order insufficient. There is left the desire to have a standard for evaluating the goodness or badness of the behavior or the living law of any society, a desire not satisfied by the grundnorm that states ought to behave as they customarily behave. The quest was for the inner content or reality. It, in part, would have its terminus in the physical reality out of which theories of natural law are believed to have grown. The measurement of the sensible by mathematical laws would provide the precision necessary to determine the truth or falsity of contending natural law theories. Also, the mathematics-physics approach would be applied to the experimental sciences such as biology and chemistry in order to assist them in determining the nature of man. Then jurisprudence would have reached the full intelligibility necessary for evaluating the living law. And, since the formal object and method would be logico-mathematical, jurisprudence, as a science, will have reached the level of full explanation. Having moved from the inductive, purely experimental plane, it has risen to the deductive, immaterial level. It has grasped an immaterial object of thought.

The sciences to which Northrup refers seek a material analysis of life. Their
objective is the gathering of the sensible appearances of living organisms.\textsuperscript{14} Such knowledge is important for a full understanding of the human person and his environment. It yields information which is important to the development and enforcement of laws. But they cannot provide the superior norm for evaluating the living law of society. The understanding they reveal is material, not spiritual. They will not satisfy the quest of jurisprudence for higher understanding, for fullness of intelligibility. Nor are their limitations overcome by the application of the immaterial concepts of mathematics to these sciences. To find for jurisprudence full satisfaction in the accurate measurement of sensible appearances of life is to reduce the intellect to a mathematical and empirometric use. Such is the logical outcome of a theory which refuses to grant to the intellect any power to perceive intelligible natures or essences. Northrup accepts that rejection because he believes that Aristotelian metaphysics fell when his theories of physical reality were proven to be wrong by modern mathematical physics. That contention deserves particular examination.

Aristotelian physics was based upon the sensible observation of physical reality. It involved a rejection of the Democritean idea of non-observable atomic structure in the world of bodies. Modern mathematical physics has vindicated the Democritean atomic theory. Northrup concludes that Aristotle's metaphysics was so intertwined with his physics that the errors of the former vitiated the value of the latter. It is true that Aristotle attempted to give some metaphysical explanations for physical phenomena. But Northrup's objection mistakes the object of Aristotle's metaphysical study. Metaphysics was the study of being as being, the science of what is prior to the study of quantity, and physics; the study of the principles of all reality;\textsuperscript{15} the extent to which the ontological given reveals supra-entative principles;\textsuperscript{16} the notions of being in its fullness.\textsuperscript{17} It was the study of being as the central concept of existence to which all other things that are are referred.\textsuperscript{18} This involved a distinction between the science of metaphysics (which studied being \textit{qua} being) and physics which studied being, not as being but as movement.\textsuperscript{19} Particular studies, including physics, would be dealt with by the primary sciences; \"... only insofar as the subjects are existent and not in virtue of any other character. Therefore, both physics and mathematics must be regarded as parts of wisdom.\"\textsuperscript{20} Moreover, the Democritean theory sought the ultimate explanation of reality in some material principle. As Aristotle points out in his

\textsuperscript{14} See \textsc{Maritain, op. cit. supra} note 9, at 194.
\textsuperscript{15} Meta. Bk. IV ch. I-11.
\textsuperscript{16} Meta. Bk. IV ch. VIII.
\textsuperscript{17} Meta. Bk. XI; IV.
\textsuperscript{18} Meta. Bk. XI.
\textsuperscript{19} Meta. Bk. IX, ch. III.
\textsuperscript{20} Meta. Bk. VI, ch. IV.
metaphysics, such views oversimplified the problem of philosophical knowledge. A material principle could not serve as a full explanation of why things manifest non-material qualities—beauty, goodness, unity, etc.\textsuperscript{21}

Discrepancies in sensitive and quantitative knowledge are also noted by Northrup and, in part, explain his interest in applying mathematical physics to contemporary scientific effort as a solution to natural law problems. But this also misunderstands the objective towards which metaphysics aspires. Uncertainty of sense knowledge does not deter because what is sought is not in sense knowledge but through and beyond it. And the search is qualitative not quantitative—to the what of things. While the sense world provides a material foundation, one must look beyond to the sensible, beyond extension and number, to the what of things. The goal is the dominative, governing structure of entities as they enfold themselves. It is substance as the fundamental manifestation of being rather than atoms and electrons. Rather than ultimate physical elements, metaphysics seeks a universal view of things in general and man in particular.

To reach ultimate reasons on a philosophical level it is necessary to go beyond what is observable either directly by sense perception or indirectly through the methods of mathematical physics and seek what is intellectually primary. It is then that we know things most fully. It means proceeding from what is visible to what is invisible—to attain, to the extent possible, the intelligible structures of the entitative world. The knowledge sought is not to be found in sensation—it is the form that is to be sought.\textsuperscript{22}

In the use of logico-mathematical methods suggested with Northrup, jurisprudence would be working with inmaterial objects of thought. But the terminus would be in the sensible, the measurable. Similarly with the experimental sciences, to which he would apply the method in order to satisfy fully our knowledge of man. These sciences are concerned with the material analysis of vegative, affective, or cognitive life. They seek to preserve sensible manifestations of what exists for itself. They say nothing of man as man. In its attempt to acquire norms of good, jurisprudence needs to resolve its concepts in being, to seek the hidden ontological structures that reveal substance and quality of man that is relevant to adjustment of his social relations. It needs a speculative science where the mind can obtain objects abstracted from and purified of all matter—a speculative science which does not need to verify its own conclusions. It needs a speculative science which recognizes the existence of things outside the mind and the possibility of the mind's attaining a knowledge of those things. It needs a speculative science which considers the essences within existing reality; grasping the being with which they are saturated. A science which is concerned with being and its laws and the essences they

\textsuperscript{21} Meta. Bk. I, ch. III. 984 (6)

\textsuperscript{22} Meta. Bk. VII.
imply is metaphysics. But before turning to metaphysics jurisprudence first should be aware that the deepest problem for thought and the future is what kind of personality it is necessary to develop. Jurisprudence cannot divorce thought from the one who thinks. We must momentarily digress and consider the jurisprudent.

THE JURISPRUDENT

Jurisprudence has a need for beforehand understanding. Thus it seeks wider and higher circles of understanding. But it is only accurate to speak of the needs of jurisprudence in a qualified sense. The growth of legal science is the fruit of human effort. It is the work product not only of legal philosophers but of students and practitioners, teachers and judges. To speak of the needs of jurisprudence is to speak of their needs. When jurisprudence seeks wider and higher levels of understanding it is those who work in the law who wish to illuminate their labors with deeper meaning.

The jurisprudent is man seeking to give meaning to the governing and adjustments of human relations. Contemporary jurisprudence does not fulfill the desire to make this governing and adjustment meaningful. The theory of interests which predominates gives excessive attention to the role of judgment, of reconciling conflicts. It assumes no speculative foundation to which it can refer for guidance. A pragmatism without sure purpose, it exaggerates the role of utility. Immersed in conflict, it fails to promote being together. Functional adjustment is not a joining of man and man.

The pragmatic character of contemporary jurisprudence has a stifling effect upon reason in its upward urge to higher forms of intellectual life. In developing the law men wish to plunge their full spirit into the work. Yet they have no set purposes towards which they can strive. Jurisprudence is not adequately comprehensible for them because it is not sufficiently under norms of final causation. Reconciliation of conflict alone does not suffice. The jurisprudent wants to join his individuality to something more meaningful. Contemporary community standards of purpose, while important, cannot be a substitute for individual commitment. Promotion of human freedom as a goal, without more, is insufficient. Neither are appeals to Asiatic aesthetics, such as Northrup makes, an adequate solution. To be aware of an immediate continuum of feeling common to oneself and all creatures does not fully satisfy the needs of the human spirit. It lacks substance. Its frame of reference is too narrow. A contemplative attitude will not suffice; men actively seek to bring goodness into existence. For this there must be larger schemes of abstract thought to quicken the spirit of man. If the jurisprudent is to achieve manhood and jurisprudence become fully meaningful those who work in the law must come

\[\text{NORTHRUP, op. cit. supra note 13, at 461.}\]
in closer contact with the roots of being. If legal science does not grow autonomously but is rather the result of human effort then those who shape it must again come in touch with essential reality. They must regain a real understanding of the world of being, especially the being that joins man and man.

If the jurisprudent is to rescue his spirit from emasculation he must plunge below the shallowness of the surface of life and strive for the depths; standing up to the entitative world in the fullness of its being, reaching out and grasping it as it is gathered together in itself. The jurisprudent needs to stir his active power of abstraction in order to receive the emerging, enduring, constant power of being into his soul. He needs a knowledge of the essence of being.

If the ultimate questions for jurisprudence and those who shape it are of a metaphysical order, the beforehand knowledge that it is sought must possess the highest credentials. The process of acquiring metaphysical truths must be methodical rather than haphazard. The inquiry must be correctly framed. A well grounded understanding of man cannot be attained by submission to common understanding. The venerable maxims of social life, the *jurispraecepta*, will not suffice as guiding principles. Tacit acknowledgement of being cannot raise metaphysics to the position of supremacy to which it aspires.

**Ontological Method**

If the inquiry into being is to be methodical we must be sure that at the outset we adequately formulate our questions. Being is a question for man. It is an integral part of his makeup to seek an understanding of being. The jurisprudent wants to know the being of man in the context of legal relations. How does one pose the question of being? One seeks after an entity both with respect to the fact that it exists and with regard to its being what it is. We must first then properly acknowledge the existential framework within which our inquiry is to proceed. The task then becomes an ontological one—to make the being of the entities manifest themselves to us in many ways: in their naked existential condition, in their manifold sensitive and quantitative appearance, in their process of becoming, changing, etc. Entities gradually uncover themselves to us; conversely, we pierce through their appearances to reach their inner hiddenness. This means that some mutual relation exists between the self and entities. They affect us, we react. They impinge upon our senses, their being calls out to us. We are aware of their becoming, we wish to find out what they will be when they are complete. We grasp them in diversity, we ask them for their unity. We seek what in them emerges and endures and has permanence.

There is a relation between the self and the entitative world. But our reaction to the entitative world will depend upon our attitude towards the
entitative world. The jurisprudent must deal with relations between man and man. How does he conceive this interrelation? Ontological method must include some definition of the relationship of the self to the entitative world that surrounds him. For example, Heidegger conceives the relationship of the self to the entitative world to be one of juxtaposition. He concentrates upon the uniqueness of the self rather than knowledge arising for the first time from some way in which the world acts upon it. To preserve this cognitive autonomy he has defined the a priori relationship of the self to the entitative world to be such that the unique self dwells autonomously alongside the entities in the world. Heidegger's attitude towards the world and the cognitive method that he has built upon that attitude has led to important phenomenological discoveries. But it is devoted to a description of essence phenomena isolated from extra-mental reality. Emphasis is upon the way in which things affect the self. The world of real beings is forgotten. The relationship between the self and man is no stronger than solicitude. But there must be a vital awareness of other persons at the base of the ontology of jurisprudence. If legal rules and processes are to have meaning, the law must be developed in conjunction with an attitude of awareness of an essential connection between man and man. This then requires some thought about the self and the entitative world in which it finds itself.

The question is not whether the self or the extra-mental world should be the center of ontology. Rather the inquiry should be how one finds a balance between the two. By concentration upon the self a certainty is arrived at. Awareness can be reduced to the self that endures. The self can be grasped in terms of a possibility of itself. But reflection upon awareness leads to the conclusion that the self is contingent; dependent. In the depths of its being the self can realize that, with all other existence, it is subject to transcendental causation. Even when the self grasps its own being in terms of a possibility of itself, it does so within a naked existential structure. It does not grasp its being in relation to a substantial essence. My own existence, in all its uniqueness, labors under that existential handicap. In speculative knowledge an absolute necessity, in the order of essence or possible existence, is needed for the prime datum. This is not to be found in inner thought but rather in a general awareness and judgment that things are what they are. Such awareness and judgment implicitly includes the full possibilities of the self but is primarily directed to things outside the self. It confirms what will be more fully known—that the entitative world has a structure of permanence and enduring essences that will manifest themselves to the active intellect struggling to uncover them. We judge immediately that things are what they are in their

inner selfhood. The self can begin by saying that "I am aware of knowing—
I am aware of knowing at least one thing, that what is, is; not I think."\footnote{25}

**THE METAPHYSICAL INTELLIGIBLE**

The primary intuition is the sense perception of the external world. An in-
tuition of the active self follows from this. When the self affirms that whatever
is is, it affirms that each thing is perceived as something. It is seen to be what
it is and not what others are. The self pierces the sense veil to make an in-
tellectual judgment of existence. Before entities are grasped intellectually in
their essence or nature, they are seen in their existential character, as partici-
pating in being. Being out-reaches one entity and is found in another which
differs from it in mode of existence. Being envelops the multiplicity of the
entitative world. What divides entities from one another is the same being that
is found in each, but varied. Being is found throughout the entitative world.
Entities manifest the being with which they are soaked. They manifest that
they participate in super-entitative principles—substance, potency and act,
quality, goodness, and beauty. Being is placed before the self as an object of
thought. It becomes an intellectual perception. Transcendental objects spring
up in us: all being is what it is; that which is cannot at the same time and in
the same regard not be; everything that begins to be or whose existence is
contingent has a cause, and the common notes of being—substance, quality,
act, potency, beauty, and goodness. Existence as object is seen in itself, not as
a mirror of something already known. It is grasped in its transcendence. The
principle of identity, for example, is not known as a necessity of thought, it
is rather an ontological necessity seen in itself.\footnote{26}

The transcendental object being, like mathematical objects of thought,
arises above time. But when the self grasps the metaphysical intelligible it
possesses an object of thought superior to that of mathematics. In mathematics
entities are presented to the mind as abstract objects, accidental properties
found in bodies—extension, number, quantity. In the metaphysical intellec-
tion existence, actual and possible, has become an object of thought. It is seen
in itself before it is a rule of thought. And it forms the ontological root for

\footnote{25} Maritain, *op. cit. supra* note 9, at 19.
\footnote{26} Maritain *op. cit. supra* note 9, at 210 et. seq.; Aristotle, *Meta.* Bk. IV.

These metaphysical principles are implicitly and actually multiple. Consider cause. Onto-
logically defined as an activity productive of being, yet it is found in diverse aspects through-
out the universe of existence—e.g., causative notions gathered from fields of observation such
as the ideas of cause of contemporary importance in the law of torts, or the empiriological
notion of cause as the spatio-temporal conditions of a phenomena. See Maritain, *id.* at 150,
215. The unfortunate use of metaphysical causative notions by Aristotle in explaining physi-
cal phenomena is a moot reason for the rejection of his metaphysics. See Whitehead, *Science
and the Modern World,* ch. XI.
logic and modern mathematics as, for example, in projective geometry where beings of reason are tied by logical consistency.

**ESSENCES**

The world which has yielded its existential character must manifest to the active self its essential structure. The entitative world manifests itself as having a hierarchical structure of being—microscopic—mineral—vegetative—animal—man. It is the original togetherness of the universe. It is a peripheral structure that is permanently dominate. Whatever comes to be does so subject to this structure.

Beyond the basic structure of the world the intellect only attains intelligible definitions of man and what pertains to him. Knowledge of the infra-human world is perinoetic. Rather than intelligibility we have a knowledge of sensible effects. Sensible properties, observable and measurable, are the empiriological substitutes for the intelligible.27 The self must complete the great periphery of knowledge of the world and nourish itself on the being of man. It must find the ontological bridge which has its being between man and man and transcends both. It must come in contact with essential reality. Only then will jurisprudence have the higher norm for evaluating the living law of any society. Then will the jurisprudent be able to correlate thought with environment. Jurisprudential work will possess deep meaning for it will reflect a creative response to a lived awareness of the universe of man and man. It will have unifying power, for the ontological search will yield the conditions for civic friendship. To achieve this knowledge the spirit involved in the senses must turn to the spirit which is the form of the concrete human body.

Rather than being juxtaposed to other humans the self can be aware of a lived relationship with other persons. In any social relation where man confronts man, the active self can, with its dominating power, pierce through the sensible appearances and plunge into the ontological depths. When the self makes such an effort, that which has its being between man and man will arise and manifest itself. The soul has a capacity to receive the form of the concrete body.28 But the form that arises, by which we grasp in the individual person more than his individuality, is a medium. It is that by which the intellect knows, that by which the intellect communicates with reality. It is through the form that the mind grasps “intuitively, immediately, natures, objects of thought which are in things and which it brings forth from things by abstraction.”29

The perception of the essence of man must be made in the context of the

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27 Maritain, *op. cit. supra* note 9, at 205.
29 Maritain, *op. cit. supra* note 9, at 150.
concrete confrontation between man and man. The self must consider the question of the being of man in the context of the relationships between itself and other men with which it finds itself. Otherwise man, an object of thought, becomes pure object, cut off from any concrete person in whom it has existence—an inerior world of subjectless predicates. In Aristotelian-Thomistic noetic the concrete entity has two levels of existence—its own proper existence which maintains it outside of nothingness and the being that envelops it in order that it can be known.  

It—here the concrete human person—has actual existence prior to my thought about him. When the intellect grasps being it posits this extra-mental existence because it affirms that being is or can exist in things. The entity, or person, becomes an object of thought in order that he can be known. The mind abstracts from the concrete actual existence, from existence in act, and considers primarily the possible existence or being possessed by the entity. In the question of the being between man and man, the intellect considers, as object of thought, the whatness of man, in the sense of what is essential to individual and social life, that can be perceived from a consideration of concrete human persons or concrete human communities. Some of the concepts are perceived intuitively, others discursively, by a process of thought. The diversity of objects so abstracted are unified in the mind and then restored to the concrete persons or community in judgment. Intelligible determinations are not only discovered; judgment speaks of that which has, or possesses, that intelligible determination. By conceptual correlation and affirmation the mind projects into existence—as affected or able to be affected outside the mind, the objects of concepts perceived by the mind. By so doing the intellect, the active self, communicates, is in touch with, essential reality. There is an identity between the self and other persons—not of the mode of existence in the entity and the mind—but a relation of reason. The identity exists with reference to the existence of the person or community of persons taken in pure value as intelligible object—an existence that is or may be realized outside the mind. The concrete human person or community is not dispossessed. Ontological truths both arise out of and are predicated of them.

Metaphysical Content

Metaphysics gives norms with inner content to jurisprudence. The perception that concrete men are something was part of the primary intellectual intuition of the entitative world. Concrete men, as well as the rest of the existential world, were seen intellectually to participate in metaphysical transuniversal principles: causation, substance—potency and act, etc. Men participate in these super-entitative concepts. These primary intuitions gave rise to first

30 Id. at 90.
principles of thought—a thing can not be and not be at the same time and under the same circumstances, whatever comes to be as a cause, etc. These principles were seen in themselves. They were not constructs of the imagination nor general conclusions from experience. These primary perceptions constituted the metaphysical intelligible—an intuition into the real—a perception without discourse. It was a knowledge prior to any knowledge of essences.

By applying the active intellect to general existence, the self gained some knowledge of the fundamental permanence of being. It grasped the permanently dominate hierarchical structure of the entitative world. To complete its knowledge of being the self turned from a consideration of the universe in general to consider its relationship to other persons in particular. In the context of concrete human persons and concrete human communities—the environment in which the self found itself—the being of man began to emerge and manifest itself; the being of man began to be gathered together in objects of thought. Truths about the essence of man in his social dimensions were gathered and collected as they arose out of concrete human situations. They were truths manifested by concrete human persons and predicated of them. From the confrontation of man with man the self has gathered elementary concepts about man in his social context, e.g., rule, justice, equality, agreements, subordination of private to public good, etc. These are norms of content to guide jurisprudence because they manifest something of essential reality: an intuition with the aid of concepts, exhibiting something of the ideal formula of development or normality of function proper to man.

These elementary concepts can receive further content by a process of reasoning which conforms to first principles and seeks de jure necessities—necessary judgments based upon an awareness of the fundamental tendencies of human nature. For example, from the idea of rule an inference arises that it must be effective, from the concept of fair agreements, that they must be performed, etc., from physical integrity the avoidance of injury, etc. These are known by a relatively immediate inference. This is a third type of intuition, an intuition after a discourse.

Similarly with human rights. The human person with whom the self is confronted is more than juxtaposed, he has to do with me and I with him, as Buber puts it. He is surely grasped immediately in a radically empirical way in the “undifferentiated continuum of immediacy.” But there is more content available, he can tell us more about himself and reveal an intelligibility. Certain de jure necessities of the human person are seen in themselves, dianoetically, through the intuition of elementary concepts such as the right to life, and reputation, to worship, to just wages, to the ownership of material goods; or by discursive inferences, (especially as the ideal content is increased by the evolution of human awareness,) e.g., the right to emotional tranquillity,
to have one's essentially private matters undisturbed, education, freedom of
communication, right to be free from arbitrary government action and the
like. And this content of reality, these rights, are inviolate because they are
required by what things are in themselves—with an intrinsic value of objective
truth since they manifest the privileges of our spiritual natures. These con-
cepts are communicable to all members of the family of man, arising out of a
plurality of objects they are grasped as unitary by the mind and restored to
all in judgment. They are communicable to all the human race, since they are
essential to social life and the dignity of the human person. To predicate them
of each, regardless of color or race is an act of the human intellect operating
in its proper dignity.

Metaphysical truths manifest a dominate structure of the intelligible
universe between man and man. They define in advance the goals towards
which jurisprudence must strive if it is to realize social happiness. Expressing
the natural law, metaphysical truths measure the practical reason which in
turn measures the human act. They influence the basic juridical develop-
ments of man such as *jus gentium* and the Declarations of Human Rights. Not that
every positive law is an expression of natural truth. Rather, in the final
analysis, it is a prudential judgment. But existential situations ask questions
about metaphysical order; e.g., malapportionment must answer whether it is
compatible with the natural law rule that government must be effective and
with the natural right of man to participate in government; contemporary
procedures for adjusting international disputes must be evaluated in the light
of the ideal order of the common good of a society of nations. The meta-
physical truths give to jurisprudence a superior norm, the reality of man, with
which to evaluate the living law of a society. Jurisprudence will then have a
non-material object of thought with which to measure the living law of any
society. The ultimate norms will be seen in themselves. Intuitions into the
reality of man, they will be norms with an inner content. Qualitative criteria
will be supreme over quantitative measurement. In addition to the material
analysis of life jurisprudence will have man's social life as it is seen in itself.

Metaphysics provides a structure of intelligibility for jurisprudence. It also
provides a meaningful frame of reference for the jurisprudent. The juris-
prudent, like artists mentioned above, wants to correlate his personal arts
with the environment in which he works. As with the artist, so with the
decision-maker, the creative work is an endless wandering if it is not sub-
stantially grounded in reality. For the musician to make his work meaningful
the reality may be, as with Prokofiev, the intonations of a land and its people.
For the architect the reality may take the form of cultural contact. But for the
jurisprudent, who must adjust the relations between man and man, the

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2 See *Aquinas, S. T., I, Q. 95, A. 4, Q. 57, A. 3; Maritain, Man And The State, p. 98.*
3 See *Maritain, Man and The State, ch. IV.*
meaningful reality is the being which envelops them in order that they may be known. By communicating with the essential reality of man the self, as jurisprudent, gathers gradually an understanding to guide his work. His proper act will be doing rather than knowing. The concrete act of adjusting the relations is a prudential judgment. But his concrete decision implies a knowing. It implies some grasp of purpose to which to evaluate the living law, with which to harmonize conflicting claims. Thought will become purposeful because it expresses the conditions of friendship between man and man.

Knowledge of the being of man gives to the jurisprudent a universal law in the order of human nature. The concepts of man were grasped in the order of possible existence. They expressed an ontological order, a causality determining the overall ordering of relations. But this necessary order does not frustrate creative human freedom. The being of man is permanently enduring, but its realization in actual existence is a contingent event. The jurisprudent desires the good in human action. Being calls. The jurisprudent listens to its emergence and responds. He wants to bring to birth the just order of the relations between man and man. He will thus attempt to realize in concrete time the intuitions he has grasped of the being of man. The jurisprudent will be constantly questioning to see if the being of man is realized in time. For the being of man is not a question, but its realization is. Thus justice is the constant and perpetual giving to each his due.

Conclusion

Part of the question of modern man is that of making the relations between man and man meaningful. Jurisprudence as a science seeks to obtain meaning by inductive and deductive processes. By induction it deals with causes or reasons in the legal order as hidden. To increase its understanding jurisprudence widens and broadens its range of inquiry but as a method it was completely controlled by experience. An experimental constancy revealed an essence. By interdisciplinary studies it seeks to know more about man than can be gained from the inductive analysis of the given legal order. In its search for a non-material object of thought it raised its heights to the plane of logical consistency and interrelation, as exemplified in the works of Kelsen. In quest for a norm with an inner content it adopts, in the work of Northrup, the logico-mathematical methodology, in the manner of modern mathematical physics. But here it must reduce its concepts to the measurable. For its fullest understanding it must move deeper, into the qualitative order. To do so jurisprudence can turn to metaphysics, the science of being. Jurisprudence can obtain from metaphysics intuitions of the being of man. It can gain norms with inner content, for by seeking the metaphysical depths it comes in contact
with the reality of man. It is attuned to the natural law, the creative expression of a Divine Author, presenting to jurisprudence the being which should guide the ordering of relations between man and man. Jurisprudence thus can acquire vividness and realism. It will have a non-material object of thought, a beforehand understanding to guide its development.

For the jurisprudent to grasp being means he has a personal intuition into the reality of man. Grasping what flows from the dynamic social tendencies of man, having nourished itself on the being of man, the self is no longer alone. It knows it is simultaneously bound up with that being and unique. It has a hint of supreme actuality. The jurisprudent can become more real in virtue of his sharing in the reality of man. He is now oriented toward the scope of the person, of becoming himself in the moral order, capable of knowing and loving, capable of communicating on that level of discourse, and able, by grace, to participate in the very life of God. He will bring that being to his jurisprudential work and seek its realization in the adjustment of relations between man and man. By renewing his contact with essential reality, the jurisprudent will have new springs of inspiration—large frames of thought with which to evaluate the positive law of society.

The renewal of metaphysical considerations does not mean that every development of the positive law is an expression of natural law. The Aristotelian-Thomistic tradition envisions the great variety of human situations not measured by essential judgments and the fact that the positive law is prudence, a judgment of the human mind. Moreover, metaphysics does not exhaust the reality of man but only reveals an ontological core of truth. Thus the incorporation of metaphysical truths into the substance of jurisprudence does not eliminate the need that jurisprudence has for knowledge of man that can be gained from the cultural and experimental sciences. Also, within jurisprudence itself, the relatively autonomous development of jurisprudence as a science of law is not affected. The growth of inductive and logical methods,

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3 All the implications of a metaphysical orientation are beyond the scope of this paper, as are all the difficult questions of the practical interrelation of the inductive and deductive methods. Suffice to say that metaphysical insights are limited and their acquisition subject to error, moreover, that the Aristotelian-Thomistic view of metaphysics and law is not the same as the rationalist view that all the positive law prescribes is equated with nature, as though metaphysics would yield an answer to every existential situation. Vast domains of jurisprudence are untouched, or only remotely influenced by the elementary norms; moreover, there is no attempt to interfere with the autonomous development of jurisprudential branches such as Legal Method, Legal Process, etc. Rather, it is our intention to deal with them by suggesting how they can place themselves in the general order of things. Finally, the field of judgment is left untouched as it is also a vast subject whose proper analysis requires a careful study of both traditional and contemporary developments (the latter exemplified by the works of McDougall who has developed many valuable insights into the process of judgment.) The purpose of the paper is to give some hint as to the capacity of metaphysical intuitions to serve as the supreme norm for evaluating the living law of any society.
both scientifically and practically (e.g. case method), linguistical analysis, etc. remain component parts of the jurisprudential quest.

But at the summit of jurisprudential effort, the science of metaphysics, as it reveals some of the essential reality of man, provides the opportunity for the development of the genuine person and the establishment of a real society between man and man, man and the state and between states in the international realm. Under metaphysical influence jurisprudence will then reassert the being of man.
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