SOME PROBLEMS OF PHILOSOPHY OF LAW

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"It is my firm conviction that he who critically reviews modern jurisprudence from the Qur'anic viewpoint, reconstructs it, and establishes the truth and eternality of the Qur'anic laws, would be the real leader and pioneer of Islamic renaissance and the greatest benefactor of humanity at large. This is the time for action; for in my humble opinion, Islam today is on trial and never in the long range of Islamic history was it faced with such a challenge as the one that besets it today."

(IQBAL — letter to Syed Suleman Nadavi)

The challenge which emerges from modern jurisprudence and legal philosophy, it seems, was regarded by Iqbal as of prime and paramount importance and according to his line of argument, the modern renaissance of Islam would depend upon successful grappling with the problems of legal theory. In this article an attempt is being made to explore the problems that are posed by modern juridical thought.

The Importance of Law

'Where law ends, tyranny begins' — is an old adage. Beyond doubt it is an embodiment of truth. For as J. Holland has said: "Laws are the very bulwarks of liberty; they define every man's rights and defend the individual liberties of all men." They are the standard and the guardian of liberty, the sheet-anchor of a society. The role of law in modern society is not merely negative; its task is not restricted to arresting the hand that creates evil. It plays a positive role as well. It regulates the life of man on every turn and pass, sets before him the ideal and norms of civic life and spurs him to live and act justly.

Law has always comprehended the entire gamut of human life. Its jurisdiction spreads over all the departments of human activity. All sciences and arts are grist to the law's mill. It has always occupied a sovereign place in the life of man and society.

But in the modern state the position of law has been further enhanced. Its hands are more strengthened; its position more consolidated.

The technological revolution that has swept over us in the last two centuries has narrowed the area of individual life and has widened, beyond any semblance of the past, the field of social contact and of collective life. Mutual dependence has increased. People have been endowed with such powers as would, if left uncontrolled, bring havoc. To take a very simple instance, in the bygone there was hardly any need of rules of traffic. The bullock-cart did not pose any danger to the human life. But today the motor vehicles, running at a speed of sixty miles per hour, are a veritable threat to human life. Their very existence brings home the need for rules and regulations. The area of legal control is widening. Personal freedom is shrinking into a tiny shell. Law is assuming mightier proportions.

This increasing importance of law suggests that a careful study of the nature and meaning of law should be conducted. In this essay an attempt is being made to present some salient features of the contemporary thinking on the nature and problems of law. First of all we shall try to cast a glance over the modern concept of law, then we shall proceed to discuss the different aspects of the philosophy of law and finally shall briefly give a resume of those main problems of legal theory which beset the modern thinker.

II

THE MODERN CONCEPT OF LAW

What is law ? is a question with which man has been faced from the very dawn of civilization and whose clear and precise answer has evaded his grip

ever since. Perhaps it would be no exaggeration to say that if there are ten Jurists there are no less than eleven definitions of law! Despite this abundance and variety of thought we can distinguish some main strands of thought.

Law, literally, means any set of rules of conduct. But in legal philosophy the term is used for those rules of behaviour which are enforced through the agencies of the state. *The Pocket LawLexicon* defines law as:

"a rule of action to which men are obliged to make their conduct conform; a command enforced by a sanction to acts or forbearances of a class"[25]

This definition may be defective in certain respects and, many modern schools of legal thought would not subscribe to it fully. This is so because a fundamental conflict of opinion exists as to the nature of law. Some believe that law is nothing but the will and command of the sovereign who is the real creator of law. Others suggest that law is but custom confirmed by the state. State has no law-making power as such. It only puts its stamp over that which already prevails in the community. Some regard *state sanction* as the real determining factor in law. Others would say that *obligation* makes law, and not just sanction. These conflicts arise because of a conflict of ideologies and of fundamental approaches to the phenomenon and it would be instructive to preface the discussion of these approaches by a brief review of the evolution of law.

Modern view on evolution of law

Here again there is a wide difference of opinion and the difficulty is aggravated because the facts of known history reveal that a definite concept of law was present even in the earliest societies. *Code of Hammurabi,* the ruler of Assyria and Babylonia (2084-2081 B.C.) is an instance in view.

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[25] Motion A. W., *The Pocket Law Lexicon,* English Edition, 1951, page 216.

Law presupposes community life. With the dawn of communal life, the need of rules of social behaviour became imminent. In the primitive society only a few rules were rampant and they were forced through the sanction of the society. Most of the wrongs were regarded as private wrongs and the victims were free to take revenge and make good their loss. But from earliest days some offences were regarded as crimes against the community as such and were avenged by the society. This was, it is said, the beginning of law.

Custom played an important part in setting these rules of social behaviour. But perhaps more important was the role of religious beliefs and practices. The famous historian of law Sir Hanry Maine says that:

> "There is no system of recorded law, literally from China to Peru, which, when it first emerges into notice, is not seen to be entangled with religious ritual and observance.[26]

It is said that the primitive law passed through three distinct stages. Earliest was the era before the emergence of the courts of law. Then the courts of law appeared and with their emergence separation of the legal rules from the vast plethora of custom and social regulations was affected. This occurred in the early periods of the Agricultural stage. With the evolution of the courts a definite line of legal development became visible. Now a machinery for the application of law to specific cases was established. Moreover, a definite institution for the creation and evolution of law also emerged and this greatly helped the growth of law. Third stage was that of codification, wherein legal codes were prepared for the guidance of the courts of law. These codes reduced diversity to clarity and eliminated to a great extent the conflicts and divergences which were bound to appear in individual judgments. This stage is represented by the *Code of Hammurabi* and the *Twelve Tables of Rome.*

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[26] Sir Hanry Maine, *Early Law and Custom,* (1883), p. 5

After primitive law came the period of Legal formalism. Sir Maine says that "when primitive law has once been embodied in code there is an end to spontaneous development"[27] This period witnessed the growth of definite techniques for the enforcement of the law. Stability was achieved and law became rigid. Specialists in the field of law appeared and general thought grew. During this period the concepts of equity and legal fiction were developed to meet the exigencies of formalism. Institutions for the creation of new law were also evolved. This brings us to the classical period of law which began with the critical study of law among the Romans.

The classical period is the period of introspection and examination. Now an attempt was made to discover general principles of law, the universal rules of justice. Tools of classification and analysis were employed and endeavours were made to evolve a synthesis of divergent natural approaches. The Roman search for universal principles is most important manifestation of this classical period. The same search for universal foundations of law was carried on by the European Jurists of the 18th and 19th centuries.

During the mediaeval age major developments of a different kind took place in another part of the world *i.e.* the Islamic world. The Muslim genius for law surpassed the achievements of their predecessors. They developed a magnificent system of law, based on the divine injunctions of God and His Messenger. But the nature and quantum of work done by the Muslims is an independent topic of inquiry and lies outside the scope of the present study which is confined to the thought currents of the Western World. A critical study of the evolution of law in the Western World reveals the following important trends:

(a) The development of a machinery for legal decisions and of a definite class of judge and legal specialists.
(b) The separation of law from the mass of custom and its development through codification.

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[27] Sir Hanry Maine, Ancient Law, (ed: Pollork), 1924, p. 26.

(c) The development of definite forms of legislative techniques monarchic, oligarchic, dictatorial and democratic.
(d) Gradual separation of private and public law and the development of each in its own sphere.
(e) Emergence of the concepts of equity and legal fiction, endeavours to develop theories of rights and the classification and categorisation of law.
(f) Overall search for justice and of some general principles of law.

This may be said to be a brief resume of the Western thought of the evolution of law.[28] Now we may proceed to discuss the concept of law as developed in the West.

Austin's Definition of Law

John Austin was one of the foremost legal thinkers of England and his ideas have influenced the modern legal thought immensely. *He distinguishes "law as it is" from "law as it ought to be" and* defines positive law as:

> "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him."

An analysis of this definition shows that:

(i) He divorces law from justice and devotes only to 'what is'. The normative and ideological aspects are ignored.
(ii) He regards law as a *command* which is emanating from a higher authority, the sovereign. Law is nothing but the command of the sovereign. As such sovereign must be above the law for he is the creater of law and is bound by no law. The sovereign might be restricted by extra-legal considerations, but not by law as such.
(iii) Every command of the sovereign creates a duty for the subjects, who by their very position are bound to obey the law.
(iv) Law is characterised by the sanction that follows with it. Sanction

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[28] This discussion is based mainly upon *"A Text Book of Jurisprudence" by* G. W. Paton (1948), J. W. Jones' *Historical Introduction to the Theory of Law* (1940), Maine's *Ancient Law* and Friedman's article in *Chamber's Encyclopaedia* (1950) Volume 8.

is the real power to impose law, for, disobedience of law entails penalty. There can be no law without sanction.

These views of Austin have been criticised on several counts. The divorce between law and justice has been deplored by the moralists and the reformers, for, as Salmond says, justice is an essential part of law. His own definition is as follows:

"Law may be defined as the body of principles recognised and applied by the state in the administration of justice. In other words, law consists of the rules recognised and acted on by the courts of justice."[29]

Others say that it is difficult, rather impossible, to locate sovereign in a society. Sovereign powers are divided between different organs and Austin's insistence on the concept of the sovereign is superfluous.

Modern writers say that it is wrong to regard law as essentially the *command* of a superior. Many legal rules such as private rights, declaratory laws, legal powers etc. are not commands at all. Similarly the concept of sanction is also, it is said, vastly exaggerated. Most of the legal rules are accepted and obeyed willingly and voluntarily. People obey laws because they regard them as proper rules of behaviour, because it is in their interests to follow them. Tradition and religion also play a great part. The realisation of obligation is more important than the threat of the sanction. Sanction is effective only for the recalcitrant minority and not for the willing majority. Paton rightly says that 'academic preoccupation with the sanction led to a false view of law.' The idea of health does not at once suggest to one's mind hospitals and diseases, operations and anaesthetics, however necessary these things may be to maintain the welfare of a community. The best service of medicine is the prevention of disease, just as the real benefit of law is that it secures an ordered balance which goes to prevent disputes.

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[29] Salmond, Jurisprudence, 10th edition, (1946) edited by G.L. William p. 41.

Then there is the question of the constitution. Constitution is obeyed not because of any sanction, but because of the realisation that without it no law can operate and no system can work.[30] Thus, the modern view seems to be that a disproportionate emphasis on the imperative aspect should not be given.

Sociological Concept of Law

The sociological school takes an altogether different view.

The modern sociological view is a representation of the German Historical School led by Savigny. Its theory was that "Law is altogether the outcome of popular consciousness consolidated from time to time by legal service." Its modern advocate is the sociological jurist Engen Ehrlich. He re-asserts the supremacy of the law-making habits of the community as against the law-creating authority of the State.

This school has over-emphasised the importance of custom, a term which it uses as more or less synonymous with law. This is a sheer case of confusing the role of custom as a source of law with law itself. They ignore the position of the Modern State which occupies a powerful authority and plays a dominant part in moulding the conduct of the community. The facts of modern life are definitely against this concept of law which assigns a very secondary place to the State.

Towards a Definition of Law

Following the line of Dr. Paton, we may now sum up the modern thought on law. Thus we must be clear about two things.

(a) the precise meaning of law
(b) a picture of law as it operates today.

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[30] For a discussion of the obligation conception of law see *New Outline of Modern Knowledge,* Chapter on "Law" by A.L. Goodhead p. 581-600.

We have already seen that law presupposes the existence of a community and society. Society can exist only if there exists a fundamental agreement among its members upon its basis *i.e.* upon the basic framework of values. This society, in course of time, sets up a machinery through which law is created and enforced. Law is always *normative* and is enforced through the willing acceptance of the community and the sanctions created by it for its unhampered enforcement. A legal order can be effective only if it is endowed with the following:

(a) An active and efficient machinery for the administration of law and its strict enforcement;
(b) A framework of methods and institutions for incorporating new concepts and ideas into the legal code;
(c) Proper sanctions for the enforcement of law; and
(d) A peaceful method for the transfer of power in the country from one group to another — at least the opportunity to change those who hold reigns of power — should be adequately provided. This is essential for the integrity of the legal system as a whole.

Now we are in a position to state the definition of law.

The *Chambers Encyclopaedia* gives the following definition:

"We can define law as the rules of conduct laid down by the authority of the sovereign power in the state as applied and enforced by all authorities entrusted with their application.[31]

Although quite comprehensive this definition does not take full cognizance of the obligation aspect of law which is being given greater importance in modern legal thought. However, we may safely say that it can roughly be a representative of the modern trends of thought. Professor Paton says that there are two sides of the problem. Law, on the one side, is "an abstract body of rules" and on another side it is" a social process for

[31] *Chamber's Encyclopaedia* (1950) Vol: VIII, p. 406

compromising the conflicting interests of men" in society. Law, may thus be defined as

> "a legal order tacitly or formally accepted by a community and it consists of the body of rules which that community considers essential to its welfare and which it is willing to enforce by the creation of a specific mechanism for securing compliance".[32]

III

PHILOSOPHY OF LAW

Law is an important instrument in fashioning the life of a community. Perhaps, it can be justifiably said that life, for its growth and manifestation, employs the channels of law. As such some basic questions have always remained the pivot of discussion among the jurists and philosophers. What is the real underlying basis of law? What are its moral foundations? What purpose it is going to serve? What values it seeks to uphold? What is its relationship with justice? What is justice itself? — the task of legal philosophy is to provide answer to these vital questions. The German Philosopher Radbranch regards legal philosophy's task as: "The clarification of legal values and postulates upto their ultimate philosophical foundations".[33] Throughout the history of law we find that it is invariably linked up with philosophy and political theory. This is so because, in the words of the famous judge Lord Wright:

"Law is not an end in itself. It is a part in the system of Government of the nation in which it functions, and it has to justify itself by its ability to subserve the ends of government, that is, to help to promote the ordered

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[32] G.W. Paton, *A Textbook of Jurisprudence,* p. *83*
[33] *Interpretation of Modern Legal Philosophies,* p. 794

existence of the nation and the good life of the people"[34] Lord Wright has, on another occasion, put the thing more squarely when he says:

> "I am firmly convinced by all my experience and study of and reflection upon law that its primary purpose is the quest of justice".[35]

Thus, it is the job of legal theory to find out what is justice. In the words of Professor Friedman:

> "To formulate political ideals in terms of justice and to ascertain the means by which these ideals can be translated into social reality, through the agency of a legal order, is the vital function which legal theory must fulfil."[36]

This being the task of the legal theory, now let us see what the main trends of thought are?

The natural law philosophy

The Modern Western legal thought is the product of Greek philosophy, Roman Jurisprudence, Medieval scholasticism and the secular and materialistic approach of the post-renaissance period. It is a conglomeration of all these strands of thought and is infested with the conflicts and antimonies which dominate them.

Greeks regarded law as essentially related to justice and morality. Plato in his Republic tried to reconcile between law and justice. He believed in absolute values and visualised legal rules as conforming to them. Aristotle tried. to distinguish between natural law and the positive law. Natural law was the embodiment of reason and universal justice and it was the dictate of reason to abide by it. Positive law on the other hand, was binding only because it was decreed by a particular authority.

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[34] Vide W. Friedman, *Legal Theory, p.* 446-47
[35] *Ibid*
[36] Friedman. Legal Theory,

The stoics popularised the concept of natural law. They upheld the maxim: "live according to nature" and pleaded that "a thing was in accord with nature when it was governed by its own leading principle; and in the case of man this was reason".

The natural law philosophy has eversince grown and flourished. During the Middle Ages Christian Scholastics tried to give the natural law a divine sanction. In the age of renaissance and after, it prospered in a more secular atmosphere. Grotins (1583-1645) based natural law on the nature of man and his inward need of living in society. It was in this background that the theories of natural rights emerged. French Revolution derived its inspiration from this very stream of thought. American constitution incorporated the essence of the natural law thinking of the eighteenth century. This was the golden period of natural law theories and its imprints are visible even today on the American thought and institutions. Bodenheimer rightly says that "no other philosophy moulded and shaped American thinking and American institutions to such an extent as did the philosophy of natural law in the form given to it in the seventeenth and eighteenth centru ries"[37].

Nineteenth century witnessed a reaction against natural law theories. Real emphasis was given to technical problems or to the natural reform of law. The author of the article on legal theory in the *Chamber's Encyclopaedia* justifiably says that "The nineteenth century was as lean in the production of fertile thought about the ends and purposes of law as it was productive in the systematization and development of law as a specialised science."[38]

the twentieth century a reaction against specialisation and departmentalisation of the 19th century has set in and there is the realisation that "a completely self-contained legal science is an illusion". Revival of natural law thinking is taking place in the disturbed times that our century has witnessed.

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[37] Bodenheimer, *Jurisprudence,* Page 164

[38] *Chamber's Encyclopaedia,* Vol: VIII page 443

The basis of all natural law theories seems to be the belief that law is an essential foundation for the life of man in society and that it is based on reason, on the needs of man as a reasonable being. Two great ideas have mainly dominated over the intellectual scene of natural law *viz:* a universal order governing all men and the concept of indestructible rights of the individual.

But despite such prolific thought the problem remains confused and unresolved. W. Friedman comes to the conclusions that:

> "the history of natural law is a tale of the search, of mankind for absolute justice and of its failure. Again and again, in the course of last 2,500 years, the idea of natural law has appeared, in some form or another, as an expression of the search for an ideal higher than positive law after having been rejected and derided in the interval. The problem is as acute and as unsolved as ever. With changing social and political conditions the notions of natural law have changed. *The only thing that has remained constant is the appeal to something higher than positive law.* It is easy to derive natural law as it is easy to derive the futility of mankinds' social and political life in general, in its unceasing but hitherto vain search for a way out of the injustices and imperfections, for which so far Western civilization at any rate has found no other solution but to move between one extreme and another"[39]. This is a very correct portrayal of the state of natural law theories. Despite ceaseless yearnings man has failed to solve the problem of the ends of law in the light of this set of theories. These theories have been used by revolutionaries and reactionaries alike and they were unable to give any sound foundations to law.

Some other Modern Theories

The failure of natural law gave birth to the historical school whose main thesis is that it is not possible to arrive at any universal rules of law at all.

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[39] W. Friedman, *Legal Theory,* (1953), Page 17-18

They hold that law is relative to time and place and is a peculiar produce of each society. As such it is futile to try to formulate some general and universal basis of Law.

Kohler develops the thought of historical school and adapts it to the streams of evolutionary thought and approach. Law, in his view, is a social fact and is the product of culture. Cultures vary in time and place, so must law. Evolution is the basis of his work and he comes to the conclusion that "there is no eternal law: the law that is suitable for one period is not so for another. We can only strive to provide every culture with its corresponding system of law. What is good for one would mean ruin for another"[40]

Further developments on similar lines have brought us to the so-called realism which has robbed law of all stability. It is heading towards atomistic relativism, and without an absolute foundation, can go nowhere else. This modern relativism, which throws all values into jeopardy, is coming more and more under criticism now. The way fascism has exploited this relativism has opened the eyes of a vast majority of thinkers. Roscoe Pound calls it "sceptical realism" and "give-it-up" philosophy. The author says:

> "Absolute ideas of justice have made for free Government and skeptical ideas of justice have gone with autocracy….
>
> If the idea **is** absolute, those who wield the force of politically organised society are not. Skeptical realism puts nothing above the ruler or ruling body"[41]

This is the dilemma of the modern man. This realisation is spreading far and wide that modern philosophies have failed to deliver the goods and man is where he was, bewildered and aghast. Paton writes:

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[40] Kohler, *Philosophy of Law* (Translated by Albrecht) p. 5
[41] Quoted by Friedman, *Legal Theory,* p. 453

"Philosophy has not yet evolved an acceptable scale of values, its answers to the fundamental problems of jurisprudence are still confused."[42]

Morris Cohen says that

"No ideal so far suggested is both formally necessary and materially adequate to determine definitely which of our actually conflicting interests should justly prevail".[43]

W. Friedman comes to the conclustion that

"What is the purpose of the life ? is the fundamental question to be answered by legal theory as by philosophy, political theory, ethics and religion.

"In many endeavours to give an answer the principal movements in legal thought veer between certain fundamental values of life. Western civilization at any rate has hitherto been unable to agree even theoretically on the ultimate values and purposes of life. So persistently has the pendulum swung backward and forwards between certain antinomic values that we cannot but register a tension which perpetually produces new efforts and a search for harmony".[44]

Earlier in the same work Dr. Friedman has emphasised that

"What emerges from all these varying attempts is the failure to establish absolute standards of justice except on a religious basis". "A theological basis provides the simplest and perhaps the only genuine foundation for absolute ideals of justice".[45]

But the simplest, it seems, is still the farthest from the West. The to-and fro-movement of the pendulum is going on and perhaps will go on:

"Law is closely related to the deepest aspirations of mankind, and the

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[42] G.W. Paton, ***A*** *Textbook of Jurisprudence,* ***p.*** 106
[43] Morris Cohen, *Reason and Nature.*
[44] *Legal Theory* p. 465
[45] *Ibid* p. 450

theories of what the law ought to be, play their part in changing the law that is. Any true standard of legal criticism requires a basis in a theory of eternal values, but no acceptable doctrine has yet been developed".[46]

IV

MAIN PROBLEMS OF LEGAL THEORY

Now we are in a position to refer some of the major problems of legal theory.

The most important problem is that of the ends of law. The question can be simplified if it is discussed in two parts: what have actually been the ends of law? and what they should be ? Professor Pound says that in the past establishment of peace, protection of liberty from within and without, economic welfare and quest for increasing freedom for the human will have been the major purposes of law. As far as the question of the ideal is concerned different school of thought stand for different ideals. Analytical school would strive for logical harmony; Historical school for progress through evolution and the Positivists for cooperation of interests. But the fact is that no satisfactory ideal has been put forth by legal theory as yet. The failure of modern thought on this count has been discussed in an earlier section and we need not delineate upon the same here. The problem of ends of law continues to stare us in the shape of a question mark and no one can say how long this haunt would continue?

Stability and change

Another major problem that besets the modern legal theory is that of stability and change. Roscoe Pound puts the problem in these words:

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[46] Paton, *Op. Cil.* p. 98. Also see Fuller's *The Law in Quest of itself* (1940)

> "Law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change."[47]

The history of legal thought reflects a constant and unending conflict between the demands of stability and change, of rigidity and elasticity, of tradition and progress. To maintain order and establish internal peace it is necessary that the laws should be rigid. Law determines the complexion of a polity and sets its four-corners. If it is ever-changing, every thing would be cast into a melting pot. Therefore in the interest of peace and other stability law must have strength and permanence. If it changes with every social and political change it would lose its force and strength.

But if rigidity is maintained at the cost of justice then it is too costly. Changes, when they are material and affect justice, should be taken cognizance of. But how to adjust change with rigidity? What element of law is eternal and what changeable is a question that remains unsolved in the metrix of modern thought. American Judge Cardoza has rightly said that one of the greatest need of the law today is:

> "A philosophy that will mediate between conflicting claims of stability and progress and supply a principle of growth."[48]

Idealism and Positivism

Eversince the dawn of legal philosophy a tussle is going on between legal idealism and legal positivism. Idealistic theories reduce the law from the first principles while the materialistic and positivistic theories regard it as essentially a product of social organism. This tussle seems to be a reflection of the struggle that prevails in philosophy between idealism and naturalism. The Marxist materialism has accentuated the conflict and perhaps the tussle

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[47] Roscoe Pound, *Interpretation of Legal History,* p. 1
[48] Justice Cardoza, 37 H.L.R. page 279

is most acute between German idealists and Marxist materialists. The tussle is again unresolved and in the words of W. Friedman

> "The struggle never ceases. Tired of ideals and abstractions, man turns towards correctness and positive fact, towards action and power. Disillusioned he turns back again to ideals and metaphysical principles."[49]
> *Individualism and Collectivism*

Whether community is supreme over the individual, or the individual is an end in itself? has been a basic problem of political thought. Legal theory has also inherited this problem and great divergence of thought is rampant in respect of it. Plato made the community supreme. Christian church also leaded its support to this view. The stoics, on the other hand, made the individual supreme. In the contemporary world communists and fascists have subdued the individual to the community while the protagonists of modern democracy regard individual as the ultimate value. Lock and Mill were the upholders of individualism and the American Constitution is its high charter. All attempts at the solution of the conflict and for the establishment of a balance between the needs of individualism and collectivism have not succeeded as yet. This problem also provides the modern legal thinker with a challenge to grapple with.

The Question of International Law

If the imperative schools' views on law are upheld and law is regarded as a command enforced by a specific sanction, then international law does not remain law at all. And Austin actually did not regard it law as such. The controversy is live in legal theory and widely conflicting views hold the swing. The fact is that the demands of nationalism and internationalism are conflicting with each other. Submission to international law abridges the sovereignty of the nation-states. No sanctions have as yet been discovered in

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[49] W. Friedman, *Legal Theory* page 471

the international field. How the rules of international ethics are to be enforced? Wars are no sanction at ail, they do not deter the powerful. Rather they have been the instruments of the mighty powers against the weaker nations. Can International law reign alongwith the concept of national sovereignty — this is a question that confronts the modern man. And on the solution of it depends the peace and tranquillity in future.

The Task Ahead

In the foregoing pages we have given an exposition of the problems of legal theory. The vast ground we have tried to survey will give a fairly general idea of the nature of the problems the researcher in jurisprudence is to face. If we want to reconstruct the juridical thought in accordance with the principles enunciated in the Quran and *Sunnah,* as Iqbal has emphasized time and again, then the proper course for the researcher will be to find out the answers to the questions posed in legal theory from the original sources of Islam. An effort should also be made to study the development of the juridical thought in Islam to see how the Muslim thinkers tried to tackle these problems in the past. The crying need of the hour is to organise thorough research on problems of legal theory and thus endeavour to reconstruct the modern science of jurisprudence in accordance with the principles of Islam. It would, perhaps, be correct to say that the twentieth century renaissance of Islam will depend upon the successful performance of this primary task.