

Demystifying the Legal Art of Order, Power and Fun

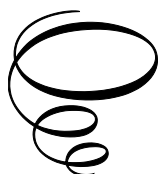
Demystifying the Legal Art of Order, Power and Fun:

An Introduction to Pop Law

By

Bruno Aguilera-Barchet

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This book is dedicated to Honoré de Balzac, Leonard Cohen, Henry Fielding, Gustave Flaubert, Federico García Lorca, Gabriel García Márquez, Johann Wolfgang von Goethe, Georg Frideric Handel, Franz Kafka, Wassily Kandinsky, Henri Matisse, Leopold Mozart, Benito Pérez Galdós, Charles Perrault, Robert Schumann, Igor Stravinsky, Pyotr Illych Tchaikovsky, Georg Philipp Telemann, Leo Tolstoy, Mario Vargas Llosa, Jules Verne, and all the writers, musicians and painters who studied law before becoming artists.

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FOREWORD

“And although I may consider this work unworthy of your countenance, nevertheless I trust much to your benignity that it may be acceptable, seeing that it is not possible for me to make a better gift than to offer you the opportunity to understand in the shortest time all that I have learnt in so many years, and with so many troubles and dangers; it is a work that I have not embellished with swelling or magnificent words, nor stuffed with rounded periods, nor with any extrinsic allurements or adornments whatever, with which so many are accustomed to embellishing their works; for I have wished either that no honour should be given it, or else that the truth of the matter and the weightiness of the theme shall make it acceptable”.¹

Niccolo Machiavelli (1469-1527) *The Prince*

These words excerpted from the beginning of Machiavelli’s *The Prince* (1532) capture my thoughts, as an academic with four decades of teaching and researching experience in the legal field, on the utility of education, and how it should be carried out to be effectual.

I cite them because, first, I agree that the role of a professor is primarily to offer his audience the opportunity to “understand in the shortest time all that I have learnt in so many years”. Thus, the aim of education should be to help people understand things and situations that are difficult or complex, ones that might otherwise only be grasped after many years of experience. In this way it is a shortcut to information, ideas and realizations that the professor provides his pupils based on his many years of experience.

Second, I must say that I appreciate the idea of teaching as a “gift”. Machiavelli offered a clear explanation of his experience at no charge. He did not wish to make money in exchange for his knowledge, which constitutes a resounding rejection of mercenary education. This point is particularly important in this day and age, in which education has become a very lucrative and booming business. Personally, I prefer the vision of

¹ Niccolo Machiavelli. “Dedication to Lorenzo di Piero de Medici“. *The Prince*. Trans. W. K. Marriott. (The Project Gutenberg eBook 2022) Accessed May 4, 2023. <https://www.gutenberg.org/files/1232/1232-h/1232-h.htm>

Antoine de Saint-Éxupéry, who wrote that “Intelligence is worthless if it is not used at the service of love”.²

Thirdly I consider Machiavelli’s advice for teaching effectively very apt, when he suggests that the golden rule is not to over inform one’s students, that less is more, and when he recommends avoiding too many details (“swelling”), and using simple words that are easy to understand. This preference for simplicity is what Machiavelli refers to when he states that he has avoided using “magnificent words”.³

Machiavelli, thus, encourage teachers to get to the point of what you wish to transmit, and to avoid “detours”, when he mentions that his text is not “stuffed with rounded periods” and has no “extrinsic allurements or adornments whatever, with which so many are accustomed to embellishing their works”. If you want to be an effective professor, do not try to boast about your knowledge, he suggests, and avoid overly elaborate and baroque teachings. Rather, simply work to facilitate your students’ understanding and to keep their attention.

Finally, and most importantly, the subject you are teaching has to be made so clear to your pupils that “no honour should be given it, or else that the truth of the matter and the weightiness of the theme shall make it acceptable”. In other words, what is most crucial is that what you are teaching be relevant and important to your students. If you teach them, things of deep concern to them from the outset, they are bound to hang on your every word and understand everything you say.

Machiavelli used his wealth of experience to teach the average citizen how politics really work. He was the first to use the word “State” to describe the political system under which most of Humanity is still living today, and his work is still relevant, even essential, more than 500 years after its publication. Why? Because he expressed himself in the simplest and most efficient way he could.

Thus, after 40 years as an academic, I have decided that it might make sense to concentrate my efforts as a legal scholar on offering an accessible initiation to Law, an important subject that affects all of us, but that the average person finds incomprehensible. The result is the book you have in your hands, which could be considered an academic gift, not only for students or scholars in the legal field, but also for any cultivated or curious

² Saint-Éxupéry, Antoine de, *Flight to Arras* (Reading Essentials 2019) XXIV, Kindle. In this book published in 1942, two years before his disappearance on the 31 July 1944 on a reconnaissance mission, Saint-Éxupéry summarizes his experience as a war pilot during the Battle of France in 1940.

³ In Italian he mentions “*parole ampullose e magnifiche*”.

reader. Please, enjoy it, because, as you will realize if you keep on reading, Law, besides being useful, can be fun. How does that sound?



Img. 1 Statue by Lorenzo Bartolini (1843),
outside the Uffizi (Florence)

INTRODUCTION

“It is not so much the science of law that produces litigation, as the ignorance of it”

Cicero, *De legibus*⁴

“Pop” is the abbreviation of “popular”, which is what artists like Roy Lichtenstein and Andy Warhol dubbed the famous artistic movement that emerged in the mid-1950s and reached its climax in the following decade: “Pop Art”. This was a trend that sought to dispel art’s aura of exclusivity and elitism by democratizing it and having it reflect ordinary, mundane scenes; that is, to turn art into something relevant, directly connected to real people and everyday lives.

This was also the case with “pop music”, produced by solo performers and groups that topped the charts and filled radio airwaves starting in the 1950s. Wildly popular, 45 and 33 rpm vinyls delighted throngs of passionate adolescent consumers. Since then, “pop” has come to encompass all kinds of catchy music that is hummed in the shower, whether it is, or leans towards, jazz, rock, folk, soul, funk, techno, salsa, merengue or rap. Pop music, then, might be considered a very wide-ranging hodgepodge spanning all mass-consumed music that is enjoyed by common people rather than just a cultivated minority.

Proceeding from the premise that “pop” refers, by definition, to things *that many people like*, what is “pop” is anything that connects with real people, using everyday, ordinary and commonplace instruments that are familiar to them.

All this is well and good, you might say, but, what the heck does it have to do with the Law? First off, let’s be honest: the word “Law” is a real turnoff, even frightening for the average person, who often considers lawyers little more than glorified con men, and the Law an inscrutable mystery. Thus, at first glance the Law might seem like the last thing that is

⁴ Marcus Tullius Cicero, *The Political Works of Marcus Tullius Cicero; Comprising His Treatise on the Republic; and His Treatise on the Laws*. Translated ... with Dissertations and Notes ... By Francis Barham. (London: Edmund Spettigue, Print 1841) Book 1, 67.

going to ever be “pop”; that is, that people are going to enjoy learning. Law might be inevitable, one might assume, but in no case can it be fascinating or fun.

But I would argue, and will try to convince you here, my dear reader, that this is nothing more than a misplaced, widespread prejudice.

Let’s start with something obvious: the Law concerns us all, whether we like it or not. We are born under the Law, and we die under it. This “monster” we are so afraid of is a daily part of our lives. From the cradle to the grave, we are surrounded by the Law, so it would be a bit irresponsible of us to not give a damn about it. Of course, the average person, who has never studied or practiced Law, often complains (and not without justification) that it is incomprehensible, and that lawyers, judges, and its whole inner circle of insiders speak another language, and live on another planet, as it were. For a lot of people legal professionals are little more than crooks at the service of the powerful and the wealthy, but this is largely due to the fact that Law has, historically, only been studied at universities, and with a complicated and technical approach.

I have no doubt that studying at a Law school is essential for those who want to become professional jurists. But I do believe that it is reasonable to ask: “What about everyone else? Don’t everyday people have a “right” to understand the law too? Should the Law continue to be a province restricted to a small circle of experts in the know, or, on the contrary, is it possible, and even desirable, to reveal its most distinctive and essential features to a broader audience? The legal world is famous for being labyrinthine, but, insofar as it is possible to act against injustice by means of the Law, it makes sense for us to be aware of its essence, its key features, and, above all, the role that it must play in any society, by having it explained in the clearest and simplest possible way. In the fact, I would contend that the Law should be taught at the pre-university level; the French revolutionaries agreed, as in 1791 they had the Constituent Assembly approve a “decree” calling for the teaching of Law as a compulsory subject in primary school.⁵

With all due respect for my fellow faculty members at Law schools, whose sensibilities must, necessarily, be taken into close account by anyone intending to exercise an honourable role in the legal sphere, I am of the opinion that the times we live in call upon us to place the legal

⁵ Mentioned by Ralph Weisheit and Frank Morn, who have argued that access to justice requires, firstly, that people be educated on the Law (“Educating the Public”). Ralph Weisheit and Frank Morn “Individual Strategies for Achieving Justice“, in *Pursuing Justice: Traditional and Contemporary Issues in Our Communities and the World*. (Thomson /Wadsworth, 2019), 185-202.

realm within the average citizen's reach, and that divulging the law, and rendering it intelligible, is not only possible, and positive, but necessary.

The crucial importance of rendering the Law intelligible was crystal clear to one of the finest jurists of all time, Jean Domat, who lived during a glorious era in French history: the reign of Louis XIV. After a lifetime devoted to the Law, Domat took upon himself the singular undertaking of organising all the Law he had practiced in a simple way so that people could easily understand it, as he was aware of the many advantages that this would entail, as individuals could benefit from learning about the Law to, for example, avoid unjust proceedings.⁶ After all, as politicians and the powerful have the financial might to hire legions of lawyers to explain and exploit the law for their purposes, if the people have no way to understand it, they are destined to be trampled upon.

The problem is that the Law, hitherto, has largely been the result of centuries of either the cunning technical machinations of lawyers, or the profound reflections of cerebral, scholarly legal thinkers, which explains why it is, for too many people, either a series of traps set for them, or unfathomable. It all goes back to the 12th century, when those who aspired to learn the Law had had to be initiated into a kind of arcane cult through a long and complex program of studies, a phenomenon that Michel Foucault strongly condemned in his reflections on truth and legal forms, as he resented all power that was amassed and wielded through the majority's ignorance.

A couple of centuries ago, Goethe voiced this same complaint: that the Law was out of touch with the reality of the average citizen. In his *Faust* (1808), based on a classic German legend, he includes a dialogue between a student who is about to attend university, and is flummoxed about what to study, and Faust, an eminent and reputed man of science. In order to ease his distress, the young man turns to the protagonist to solicit his advice. But, in reality, unbeknownst to the student, he is dealing with the devil, Mephistopheles, disguised as Faust. Actually, this curious fact really is not crucial to their conversation. What is of interest is the dialogue itself between the two characters, as it contains an enumeration of possible scientific disciplines that, purportedly, guide the spirit towards wisdom, such as Chemistry, Metaphysics, Theology and Medicine. The student, from the outset, discards the study of Law, a decision supported by the

⁶ In his colossal work "The Civil Law In Its Natural Order" (*Les Loix civiles dans leur ordre naturel*) published in 1694, without any doubt one of the cornerstones of the Napoleonic Code. I have used an exquisite edition published in Paris by Samson in 1777, a present from my father Carlos Aguilera Siller (1926-2011), a distinguished Andalusian, fine intellectual and outstanding jurist.

devil, who wields expressive arguments in which he underscores the gap between formal law, academic law, and actual legal practice.

“Student:

I do not care for the study of Jurisprudence.

Mephistopheles:

*I cannot blame you for that, as I know what happens with that science.
Laws and rights continue to arise
like a perpetual disease,
lingering from generation to generation
and slogging from one place to another.
Reason becomes madness, and that which is good, agony;
woe to you, who are a descendant of the Law that was born with us,
because, unfortunately, this is never spoken of”.⁷*

Here Goethe points to the stark contrast between the “vulgar” (intuitive) vision that people have of the Law, and a scientific, immutable, enduring one, which, “like an eternal disease” is repeated with scholastic phlegm, year after year, by professors to future lawyers, judges, attorneys, notaries and legislators. Law that is unintelligible for the rest of mortal men, who must grapple with real-life, day-to-day Law, that which “is born with us” and we come across regularly just by living in society. The question, of course, is how to do this, and the only possible way is, as suggested by one of the 20th century’s most important legal philosophers, Britain’s H.L. Hart (1907-1992), by proceeding to “demystify” the Law.

It is true that for many years I too prided myself on belonging to the intellectual elite of Law professors. I plead guilty, but I was proud of mastering the difficult and largely esoteric “art” of the Law. Fortunately, after all these years of legal experience, I have come to the conclusion that, at this stage, the best contribution I can make as a professor of Law is to do my best to make my field not only accessible to everyone, but also fun. The question now is how to convince everyone else of this approach.

Dispelling the Law’s bad reputation, and the widespread prejudices that many people have about it is a difficult proposition, but it is this very aspect of challenge that induced me to write this book. My mission,

⁷ Johann Wolfgang von Goethe, *Sämtliche Werke* (Zürich: Artemis, 1977), 201-202.

therefore, is to try to convince you that not only can the Law be something that is understandable, and extremely useful, but that you can have a great time learning all about it. I believe that a good way to do this is, as you will see, approaching the legal universe not only through legal texts, but turning as well to other media and formats that we enjoy in our ordinary lives, like novels, films, TV series, music and works of art; actually, believe it or not, the Law is the “star” of many of the best films ever made, and some of the best books ever written, which should hardly surprise us, because Law can be really thrilling if approached in the right way. ‘

Itching to learn more?

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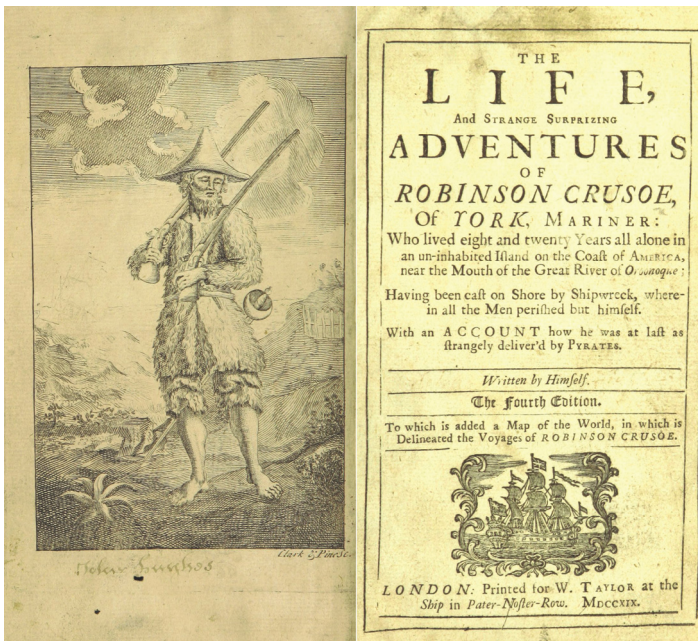


Img. 2 Medieval funerary sculpture of Martin Vazquez de Arce
(between 1486 and 1504). Cathedral of Sigüenza (Spain)
(Photography by the author)

SEASON 1

WHY DO WE NEED THE LAW AT ALL?

It's time to get started, and a good way to do this is by asking ourselves why we have to deal with the Law in the first place. Why are we, whether we like it or not, destined to have to grapple with legal realities? Wouldn't it be preferable to live our lives carefree, like Robinson Crusoe, never having to give a thought to the Law? This would seem to be all but a pipe dream today, barely conceivable in our crowded, regulated and litigious world.



Img. 3 Frontispiece of the first edition of *Robinson Crusoe*. London 1719

EPISODE 1

ON HOW WE “SAPIENS” CONQUERED THE WORLD BY GETTING ORGANIZED

How happy in his low degree,
How rich, in humble poverty, is he,
Who leads a quiet country life;
Discharg'd of business, void of strife,
And from the griping scrivener free!
Thus, ere the seeds of vice were sown,
Liv'd men in better ages born,
Who plow'd, with oxen of their own,
Their small paternal field of corn.
Nor trumpets summon him to war,
Nor drums disturb his morning sleep,
Nor knows he merchants' gainful care,
Nor fears the dangers of the deep⁹

Horace *Epodes*, 2 (30 BC)

An Overcrowded World

“.. cities are full of people; houses, full of tenants; hotels, full of guests; the trains, full of commuters; the cafes, full of consumers; the boulevards, full of pedestrians; the waiting rooms of famous doctors, full of patients; the shows, full of audiences; the beaches, full of swimmers. What was once, generally speaking, not a problem, has become an almost constant one: to find some room”¹⁰

⁹ Horace. *The Odes, Epodes, Satires, and Epistles*. Trans. John Dryden (London and New York: F. Warne and co. 1889), 158-161. Accessed March 23, of 2024.

https://archive.org/details/horaceodesepodes00hora_0/page/n5/mode/2up

¹⁰ José Ortega y Gasset *La rebelión de las masas* (Madrid: Espasa Calpe, 1986), 66.

This text was written, a century ago, by the internationally renowned Spanish philosopher José Ortega y Gasset at a time when the world’s population was a mere 2 billion. Today, in the third decade of the 21st century, the Earth’s population stands at a staggering 8 billion (!) and the phenomenon of overcrowding is, obviously, far more overwhelming. Our highways are packed with cars; our streets, teeming with people; our skies, criss-crossed by an average 120,000 planes daily, travelling between massive airports thronged with passengers, serving megalopolises home to million.¹¹

If finding some elbow room was already a problem back in Ortega’s time, in ours it is practically impossible to be *truly* alone; even when we are deprived of physical company, we are permanently “connected” to others through our ever-present mobile phones and the World Wide Web.

We can seek solace by reading the Roman writer Horace’s *Beatus ille* and his idealization of a simple, rustic life far removed from civilization; or turn to “survival fiction” and imagine ourselves living like Daniel Defoe’s *Robinson Crusoe*, on a deserted island, beholden to no one; or watch the reality show *Survivors* to envision how we too might escape what Thomas Hardy famously dubbed the “madding crowd”. If you believe in God, it might also help to retire to a monastery in order to withdraw from worldly life and dedicate yourself to meditation and prayer, but none of these initiatives would change the fact that the world is flooded by the “human plague”.

The question is: why are there so many of us? As we’ll see, the real reason is that, many thousands of years ago, we humans discovered that by organizing ourselves effectively we could meet our needs, exploit the planet, bending it to our wishes; and, to borrow from the Bible, “Be fruitful and multiply; fill the earth and subdue it; have dominion over the fish of the sea, over the birds of the air, and over every living thing that moves on the earth”.¹²

¹¹ Perhaps it should be noted that the Earth is not literally crowded. That is, most of the surface area of the planet is completely empty. But those places that are inhabited are quite crowded, and the world’s cities, in recent decades, have become increasingly so, as there has been a demographic shift giving rise to, and augmenting the size of, the world’s megacities. Skyrocketing urban populations, especially outside Europe and the US, have been jaw-dropping. To give the reader an idea: in 1895 Japan had a population of 1.3 million; in 2021, it was 125 million!

¹² Genesis 1:28.

70,000 Years of “Social Networks”

In his already-classic book of popular history and anthropology *Sapiens*, Noah Harari states that human domination of the planet can be traced back to 70,000 years ago when, in a “Cognitive Revolution”, *homo sapiens* developed the capacity to “socialize”. That is, we human beings became the masters of the planet thanks to our ability to communicate with each other through a series of surprisingly flexible languages encompassing an unlimited number of sounds, thanks to which we can absorb, store and communicate a massive amount of information about the world and, above all, generate collective fictions and myths – religious, political and economic – in which large groups of humans believe.¹³

At the beginning we were just animals. Darwin said it: man is – or, was at least – an animal; an ape, to be more exact. We are, to brazenly borrow from the popular sociobiologist Desmond Morris, a “naked ape”, but one that today boasts the distinction of dominating the world, because we are a creature that has harnessed the exponential power of organising into large and specialised groups. While many animals, particularly insects, organise very effectively, and in complex ways, they do not have man’s unique combination of brainpower and the capacity for complex and massive social organisation, which has enabled us to build pyramids, cathedrals and rockets.

It is striking that a 21st century historian came to the same conclusion as Aristotle (384-322 BC), who, 2,300 years earlier (!) was of the same opinion:

“[...] man is by nature a political animal, And why man is a political animal in a greater measure than any bee or any gregarious animal is clear. For nature, as we declare, does nothing without purpose; and man alone of the animals possesses speech. The mere voice, it is true, can indicate pain and pleasure, and therefore is possessed by the other animals as well (for their nature has been developed so far as to have sensations of what is painful and pleasant and to indicate those sensations to one another), but speech is designed to indicate the advantageous and the harmful, and therefore also the right and the wrong; for it is the special property of man in distinction from the other animals that he alone has perception of good

¹³ Yuval Noah Harari, “The Cognitive Revolution“. In *Sapiens: A Brief History of Humankind*. (London UK.: Penguin Random House, 2015), 3-83.

and bad and right and wrong and the other moral qualities, and it is partnership in these things that makes a household and a city-state.¹⁴

Simply put, our associative capacity allows us to form powerful groups capable of expansion and conquest, and to build the cities and empires that dominated the ancient world; the powerful nation-states that have shaped the modern era; supranational confederations, such as the European Union; and the colossal multinational corporations behind the acronym GAMAM (Google, Amazon, Meta, Apple and Microsoft), which, due to their massive impact on the world economy, constitute entities even mightier than many states.¹⁵

The fact is that, thanks to his ability to create large, well-organised human groups, *homo sapiens* ended up conquering the world, proving the veracity of the adage “unity is strength”. This was a principle that the ancient Greeks grasped perfectly, particularly the people of classical Athens, whose foremost festival was the Panathenaic Games, at which they celebrated, precisely, that all the villages in the Attica region had come together to form a great polis. Thus, in the most emblematic building on Athens’ Acropolis, the Parthenon, a temple to Athena, the city’s guardian goddess, and the site of the city’s treasury, the authorities ordered the great Phidias to sculpt scenes depicting this important celebration.

The social ties forged by the peoples of Attica not only generated wealth for the Athenian polis, but they also gave rise to a pivotal cultural and intellectual blossoming in Philosophy, Literature, the Arts and even Politics. Under leaders like Cleisthenes and Pericles, and an amazing woman, Aspasia of Miletus,¹⁶ the Athenians pioneered a new way of gov-

¹⁴ Aristotle. *Politics* Vol. 21 of Aristotle in 23 Volumes. Trans. H. Rackham. (Cambridge, MA: Harvard University Press, 1944) Book 1, section 1253 a. Accessed January 5, 2024. <https://www.perseus.tufts.edu/hopper/>.

¹⁵ Zachary Snowdon Smith “Apple Becomes 1st Company Worth \$3 Trillion—Greater Than The GDP Of The UK“ in *Forbes Business*. Accessed April 14, 2022. <https://www.forbes.com/sites/zacharysmith/2022/01/03/apple-becomes-1st-company-worth-3-trillion-greater-than-the-gdp-of-the-uk/>

¹⁶ Aspasia was not born in Athens, where she was a *metic*, or alien resident. She was a courtesan (essentially, a high-class prostitute), and extremely well educated. Won over by her cultured mind, Pericles even divorced his wife to be with her, even though he could not marry her, as *metics* were barred from marrying Athenian citizens (a law that, ironically, Pericles himself approved before meeting Aspasia). As a foreigner, Aspasia had a greater degree of independence than the average Athenian woman and was able to participate in public life. Pericles and her lived together, and had a child, despite harsh social criticism for this, and Plutarch

erning themselves: democracy. Thanks to their ability to cooperate, the Athenians prospered, and flourished, enabling them to lay the foundations for our entire Western Civilisation. To a large extent, we continue to live in the very long shadow they cast, and to parrot the ideas they articulated.

Itching to learn more?

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tell us that Pericles kissed Aspasia every day, both when he left the house and when he returned, and she had a major influence on Pericles' rule. See Plutarch. *Life of Pericles*. Trans. A. J. Podlecki (London UK: Bloomsbury, 2013), XXIV, 6.



Img. 4 Crowd in Nanjin Road (Shanghai),
(Photography by Verónica Velasco Barthel)

EPISODE 2

HOW TO KEEP EVERYONE FROM KILLING EACH OTHER

“I had nothing to covet, for I had all that I was now capable of enjoying; I was lord of the whole manor, or, if I pleased, I might call myself a king, or emperor, over the whole country which I had possession of; there were no rivals; I had no competitor, none to dispute sovereignty or command with me...”¹⁷

Daniel Defoe, *Robinson Crusoe* (1719)

We humans tend to live in large groups, but doing so is no easy task. All alone, Robinson Crusoe may have become bored, but he was not entangled in any webs of social conflict, because there were no people to spin them (save for Friday, who was but one and, let’s face it, submissive). For better or for worse, few of us will ever be able to live the solitary life envisioned by Defoe. Rather, our fate is to live in groups of people, which, sooner or later, means friction and conflict. The problem is that disputes can escalate, affecting group stability.

All Hell Breaks Loose in Troy

Consider, for example, the Trojan War, whose last days Homer narrates in his seminal epic *The Iliad*. To this day, we do not know exactly why the Achaeans and Trojans fought each other. What we do know is the cause Homer cites in his poem: the abduction of the beautiful Spartan princess, Helen, by the handsome Trojan prince Paris. Everything might have been overlooked, yet another forgettable affair, had it not been for the small fact that not only was Helen married, but her husband was Menelaus, king of

¹⁷ Daniel Defoe. *The Life and Adventures of Robinson Crusoe* (The Project Gutenberg eBook of The Life and Adventures of Robinson Crusoe, by Daniel Defoe, 2021) Chapter 9. Accessed November 3, 2024. <https://www.gutenberg.org/files/521/521-h/521-h.htm#chap09>

the warlike Spartans. And, as if that were not enough, he was the brother of an even more powerful sovereign: Agamemnon, King of the Mycenaeans. Hence, understandably, the abduction was taken as a Trojan affront to the Spartans and, by extension, the Achaeans, a sentiment that Agamemnon, always keen to wage war to expand his power, knew how to exploit to initiate a conflict that would lead to the destruction of Troy. Or so the legend goes.



Img. 5 Mask of Agamemnon.
National Archeological Museum of Athens
(Photography by the author)

For our purposes, it is not important whether Agamemnon wished to conquer Troy for economic reasons, simple imperialist expansion, or out of sincere moral outrage at Helen's elopement – or even whether this abduction actually ever happened. Rather, what matters is that some kind of individual conflict, in Homer's mind, could escalate into a war embroiling two entire peoples, resulting in one's destruction. For our aims

here, then, the Trojan War – part history, part legend – illustrates the importance of quelling conflict to prevent social chaos.

Homer's epic poem, apart from its superb literary quality, points to a basic need of any society for its proper functioning: for a group to be powerful and survive, it must develop mechanisms to prevent clashes between individuals from snowballing into mayhem. At its simplest, this set of mechanisms is Law, whose entire *raison d'être* is to prevent disputes between individuals from escalating into unconstrained conflicts. Law, then, is the bedrock of society, and society is what allows mankind to control the world.

A Bloodbath at Waterloo

I hope that, at this point, you are already beginning to understand that Law is more important than you might have thought. Without Law, you have war, and war destroys human groups. Consider, for instance, the Battle of Waterloo, at which, in a single day, on 18 June 1815, from noon to 9 pm, 50,000 men fell on the battlefield. Think of how many lives would have been spared if Napoleon and his enemies, instead of fighting, had turned to the Law; in this case, international law, including treaties and nations' capacity to interact peacefully and resolve their differences without getting involved in an armed conflict.

It is, thus, clear that the survival of humanity depends, to a large extent, on the possibility of finding ways to avert conflict and to keep people from killing each other. This is why humans invariably end up, sooner or later, devising a systematic formulation of conflict resolution mechanisms to prevent chaos and conflict, in other words, Law. Consequently, I do not think I exaggerate if I say that the history of civilisation is, to a large extent, the history of the Law.

A Very Bad Habit: Retaliation

Forgetting about Troy and Waterloo, let's imagine for a moment that, in your neighbourhood, a man punches another. The victim's natural reaction will be to hit his aggressor back. The second blow will, in turn, lead to another from the initial attacker and, just like that, the two are soon engaged in an outright brawl. At this point the initial victim's best friend shows up to help him, and, likewise, the assailant's friends are likely to enter the fight to support their man. In a heartbeat, the conflict can escalate into a veritable battle royale.

Such a chain of reciprocal reprisals can be devastating, and certainly lethal for a group. It is, therefore, expedient to halt the aggression as soon as possible, restricting the conflict to one between two members of the group. But this is no easy task, as we shall see; first, because it is necessary to determine who started the fight, and why, in order to determine whether or not the initial aggression was justified. Of course, this is not something that the parties involved can decide, because they are, obviously, not objective, as each will blame the other and look out for number one. Hence, the group must step in to prevent a potential successive series of retaliations.

The restoration of order cannot, then, be placed in the hands of the parties involved in the conflict, who may wish to continue it, while it is in the group's best interest to put an end to it. The aim of the law, then, is to replace the principle of "private revenge", according to which each individual defends himself or herself, or "takes justice into his or her own hands," with that of adherence to a collective order, as only this can effectively determine what the common rules are, set the limits that no member of the group may disobey, and, finally, determine what the offender's punishment should be, in order to prevent violence between individuals from degenerating into a widespread conflict affecting everyone.

An Eye for an Eye ... Unless you Pay me

A relatively simple way to curtail private revenge is to establish an equivalence between the offence and retribution for the victim. This is the legal principle that permits retaliation in response to an aggression provided that it is proportional to the initial attack, in order to keep the victim from causing harm greater than that which he had suffered. This is the famous "an eye for eye and a tooth for tooth" principle, or *lex talionis*, from the Latin word *talis* or *tal*, meaning "identical" or "similar".

The *lex talionis* is one of the first legal precepts in history, appearing 40 centuries ago in one of the oldest legal texts known to man: the Code of Hammurabi (18th century BC), which states that "*if a free man takes the eye of a free man's son, his eye shall be taken too* (Law 196)"; and that if a free man "*breaks the bone of a man, his bone shall be broken too*" (Law 197); and 200 that "*if a free man pulls out the tooth of another free man, his equal, his tooth shall be pulled out to*" (Law 200).¹⁸ These same

¹⁸ Hammurabi. *The Code of Hammurabi*, Trans. L. W. King. (New Haven CT: Yale Law School. The Avalon Project. Lillian Goldman Law Library, 2008). Accessed August 10, 2022. <https://avalon.law.yale.edu/ancient/hamcode.asp>

precepts can be found in the early books of the Bible, a text that began to take shape some 8 centuries later, under the reign of King Solomon (970-931); or at least the oldest section of the Bible, the first five books of the Old Testament (Pentateuch), containing rules like: “life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe” (Exodus 21: 23-25).¹⁹ And the *lex talionis* would resurface again, eighteen centuries later, in the Muslims’ holy book, the *Koran*, apparently inspired by the Jews’ first law.²⁰

This principle of equivalence, as an early solution to avert reprisals, was still too harsh, and the penalties imposed were often excessive. Hence, new, less bloody ways of punishing anti-social behaviour – such as the imposition of fines on the offender – would soon emerge. In fact, the Code of Hammurabi itself already includes the principle of monetary compensation, which, however, varied depending on the social rank of the victim, such that assailing a poor, powerless person was less costly than assaulting a wealthy or socially important one.

What we have seen so far, however, is rudimentary. Every human group needs to devise mechanisms to keep conflicts from escalating, but if you really want to develop into a big and powerful group you need very effective mechanisms. Even today, in our complex, modern, hyper-regulated societies, there are still a few groups that continue to resolve issues affecting their own on their own, flouting the authority of the State, such as the Roma people, amongst whom any offences against a member of a clan are collectively avenged, with any family member of the victim’s clan being “authorised” to retaliate against any member of the aggressor’s.²¹

¹⁹ Other examples may be found in Leviticus 24, verses 17, 19 and 20.

²⁰ It states, for example, “Do not take a human life—made sacred by Allah, except with a legal right. If anyone is killed unjustly, We have given their heirs the authority, but do not let them exceed limits in retaliation, for they are already supported by law“. (Quran.com), Episode 17, Verse 33. Accessed April 5, 2020. <https://quran.com/17/33?translations=17,20,84,18,85,95,21,101>

²¹ The case of gypsy or Roma “law” is strikingly unique because, even in the 21st century, it continues to function as an unwritten set of principles and regulations that are transmitted orally, even during this cybernetic era. In this regard, the unique features of the Roma community have contributed greatly to their marginalisation from mainstream society, though the factors contributing to this isolation are manifold. This stereotypical view of this subgroup has endured in the collective consciousness of *paya* (non-gypsy) society, fuelled by the fact that gypsies have continued, in large measure, to preserve their traditional customs, defying the imposition of modern regulations and the universal aspirations of the State and its