

**HUMOR,
IRONY,
AND THE
LAW**

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The classical conception of the law

found its perfect expression in Plato and in that form gained universal acceptance throughout the Christian world. According to this conception, the law may be viewed either in the light of its underlying principles or in the light of its consequences. From the first point of view, the law itself is not a primary but only a secondary or delegated power dependent on a supreme principle which is the Good. If men knew what the Good was, or knew how to conform to it, they would not need laws: the law is only a representative of the Good in a world that the Good has more or less forsaken. Hence, from the point of view of its consequences, obedience to the law is “best,” the best being in the image of the Good. The righteous man obeys the laws of the country of his birth or residence, and in so doing acts for the best, even though he retains his freedom of thought, freedom to think of the Good and for the sake of the Good.

This conception, which is seemingly so conventional, nevertheless conceals elements of irony and humor which made political philosophy possible, for it allows the free play of thought at the upper and lower limits of the scale of the law. The death of Socrates is an exemplary illustration of this; the laws place their fate in the hands of the condemned man, and ask that he should sanction their authority by submitting to them as a rational man. There is indeed a great deal of irony in the operation that seeks to trace the laws back to an absolute Good as the necessary principle of their foundation. Equally, there is considerable humor in the attempt to reduce the laws to a relative Best in order to persuade us that we should obey them. Thus it appears that the notion of law is not self-sufficient unless backed by force; ideally it needs to rest on a higher principle as well as on a consideration of its remote consequences. This may be why, according to the mysterious text in the *Phaedo*, disciples present at the death of Socrates could not help laughing. Irony and humor are the essential forms through which we apprehend the law. It is in this essential relation to the law that they acquire their function and their significance. Irony is the process of thought whereby the law is made to depend on an infinitely superior Good, just as humor is the attempt

to sanction the law by recourse to an infinitely more righteous Best.

The final overthrow of the classical conception of the law was certainly not the result of the discovery of the relativity and variability of laws, since these were fully recognized and understood in this conception and were indeed an integral part of it. The true cause must be sought elsewhere. In the *Critique of Practical Reason* Kant gave a rigorous formulation of a radically new conception in which the law is no longer regarded as dependent on the Good, but on the contrary, the Good itself is made to depend on the law. This means that the law no longer has its foundation in some higher principle from which it would derive its authority, but that it is self-grounded and valid solely by virtue of its own form. For the first time we can now speak of THE LAW regarded as an absolute, without further specification or reference to an object. Whereas the classical conception only dealt with the laws according to the various spheres of the Good or the various circumstances attending the Best, Kant can speak of the moral law, and of its application to what otherwise remains totally undetermined. The moral law is the representation of a pure form and is independent of content or object, spheres of activity or circumstances. The moral law is THE LAW, the form of the law and as such it cannot be grounded in a higher principle. In this sense Kant is one of the first to break away from the classical conception of the law and to give us truly modern conception. The Copernican revolution in Kant's *Critique of Pure Reason* consisted in viewing the objects of knowledge as revolving around the subject; but the *Critique of Practical Reason*, where the Good is conceived as revolving around the Law, is perhaps even more revolutionary. It probably reflected major changes in the world. It may have been the expression of the ultimate consequences of a return beyond Christianity to Judaic thought, or it may even have foreshadowed a return to the pre-Socratic (Oedipal) conception of the law, beyond to the world of Plato. However that may be, Kant, by establishing that THE LAW is an ultimate ground or principle, added an essential dimension to modern thought: the object of the law is by definition unknowable and elusive.¹

1 On the elusive character of the object of the law, cf. J. Lacan's commentaries relating both to Kant and to Sade: *Kant avec Sade* (Critique, 1963).

But there is yet a further dimension. We are not concerned here with the architectonics of Kant's system (and the manner in which he salvages the Good in the system), but with a second discovery which is correlated with and complementary to the first. The law can no longer be grounded on the superior principle of the Good, but neither can it be sanctioned any more by recourse to the idea of the Best as representing the good will of the righteous. Clearly *THE LAW*, as defined by its pure form, without substance or object or any determination whatsoever, is such that no one knows nor can know what it is. It operates without making itself known. It defines a realm of transgression where one is already guilty, and where one oversteps the bounds without knowing what they are, as in the case of Oedipus. Even guilt and punishment do not tell us what the law is, but leave it in a state of indeterminacy equaled only by the extreme specificity of the punishment. This is the world described by Kafka. The point is not to compare Kant and Kafka, but to delineate two dimensions of the modern conception of the law.

If the law is no longer based on the Good as a preexisting, higher principle, and it is valid by virtue of its form alone, the content remaining entirely undetermined, it becomes impossible to say that the righteous man obeys the law for the sake of the Best. In other words, the man who obeys the law does not thereby become righteous or feel righteous; on the contrary, he feels guilty and is guilty in advance, and the more strict his obedience, the greater his guilt. This is the process by which the law manifests itself in its absolute purity, and proves us guilty. The two fundamental propositions of the classical conception are overthrown together: the law as grounded in the further principle of the Good; the law as sanctioned by righteousness. Freud was the first to recognize the extraordinary paradox of the conscience. It is far from the case that obedience to the law secures a feeling of righteousness, 'for the more virtuous a man is, the more severe and distrustful' is the behavior of his conscience toward him; Freud goes on to remark on 'the extraordinary severity of conscience in the best and most tractable people.'²

² *Civilization and Its Discontents*, Complete Psychological Works, Vol. XXI, pp. 125, 128.

Freud resolved the paradox by showing that the renunciation of instinctual gratification is not the product of conscience, but on the contrary that conscience itself is born of such renunciation. Hence it follows that the strength and severity of conscience increases in direct proportion to the strength and severity of the renunciation. Conscience is heir to the repressed instinctual drives. 'The effect of instinctual renunciation on the conscience then is that every piece of aggression whose satisfaction the subject gives up is taken over by the superego and increases the latter's aggressiveness (against the ego).' We are now in a position to unravel the second paradox concerning the fundamentally undetermined character of the law. In Lacan's words, the law is the same as repressed desire. The law cannot specify its object without self-contradiction, nor can it define itself with reference to a content without removing the repression on which it rests. The object of the law and the object of desire are one and the same, and remain equally concealed. When Freud shows that the essential nature of the object relates to the mother while that of desire and the law relates to the father, he does not thereby try to restore a determinate content to the law; he does indeed almost the opposite, he shows how the law, by virtue of its Oedipal origins, must of necessity conceal its content in order to operate as a pure form which is the result of a renunciation both of the object (the mother) and of the subject (the father).

The classical irony and humor of Plato that had for so long dominated all thinking on the subject of the law are thus turned upside down. The upper and lower limits of the law, that is to say the superior principle of the Good and the sanction of the righteous in the light of the Best are reduced to nothingness. All that remains is the indeterminate character of the law on the one hand and the specificity of the punishment on the other. Irony and humor immediately take on a different, modern aspect. They still represent a way of conceiving the law, but the law is now seen in terms of the indeterminacy of its content and of the guilt of the person who submits to it. Kafka gives to humor and irony their full modern significance in agreement with the transformed character of the law. Max Brod recalls that when Kafka

gave a reading of *The Trial*, everyone present, including Kafka himself, was overcome by laughter – as mysterious a phenomenon as the laughter that greeted the death of Socrates. A spurious sense of tragedy dulls our intelligence; how many authors are distorted by placing a childishly tragic construction on what is more often the expression of an aggressively comic force! The comic is the only possible mode of conceiving the law, in a peculiar combination of irony and humor.

In modern thought irony and humor take on a new form: they are now directed at a subversion of the law. This leads us back to Sade and Masoch, who represent the two main attempts at subversion, at turning the law upside down. Irony is still in the process or movement which bypasses the law as a merely secondary power and aims at transcending it toward a higher principle. But what if the higher principle no longer exists, and if the Good can no longer provide a basis for the law or a justification of its power? Sade's answer is that in all its forms – natural, moral and political – the law represents the rule of secondary nature which is always geared to the demands of conservation; it is a usurpation of true sovereignty. It is irrelevant whether we see the law as the expression of the rule of the strongest or as the product of the self-protective union of the weak. Masters and slaves, the strong and the weak, all are creatures of secondary nature; the union of the weak merely favors the emergence of the tyrant; his existence depends on it. In every case the law is a mystification; it is not a delegated but a usurped power that depends on the infamous complicity of slaves and masters. It is significant that Sade attacks the regime of laws as being the regime of the tyrannized and of the tyrants. Only the law can tyrannize: 'I have infinitely less reason to fear my neighbor's passions than the laws injustice, for my neighbor's passions are contained by mine, whereas nothing stops or contains the injustices of the law.' Tyrants are created by the law alone: they flourish by virtue of the law. As Chigi says in *Juliette*, 'Tyrants are never born in anarchy; they only flourish in the shadow of the laws and draw their authority from them.' Sade's hatred of tyranny, his demonstration that the law enables the tyrant to exist, form the essence of his thinking. The tyrant

speaks the language of the law, and acknowledges no other, for he lives 'in the shadow of the laws,' The heroes of Sade are inspired with an extraordinary passion against tyranny; they speak as no tyrant ever spoke or could ever speak; theirs is the counter-language of tyrants.

We now note a new attempt to transcend the law, this time no longer in the direction of the Good as superior principle and ground of the law, but in the direction of its opposite, the Idea of Evil, the supreme principle of wickedness, which subverts the law and turns Platonism upside down. Here, the transcendence of the law implies the discovery of a primary nature which is in every way opposed to the demands and the rule of secondary nature. It follows that the idea of absolute evil embodied in primary nature cannot be equated either with tyranny – for tyranny still presupposes laws – or with a combination of whims and arbitrariness; its higher, impersonal model is rather to be found in the anarchic institutions of perpetual motion and permanent revolution. Sade often stresses the fact that the law can only be transcended toward an institutional model of anarchy. The fact that anarchy can only exist in the interval between two regimes based on laws, abolishing the old to give birth to the new, does not prevent this divine interval, this vanishing instant, from testifying to its fundamental difference from all forms of the law. 'The reign of laws is pernicious; it is inferior to that of anarchy; the best proof of this is that all governments are forced to plunge into anarchy when they wish to remake their constitutions.' The law can only be transcended by virtue of a principle that subverts it and denies its power.

While the sadian hero subverts the law, the masochist should not by contrast be regarded as gladly submitting to it. The element of contempt in the submission of the masochist has often been emphasized: his apparent obedience conceals a criticism and a provocation. He simply attacks the law on another flank. What we call humor – in contradistinction to the upward movement of irony toward a transcendent higher principle – is a downward movement from the law to its consequences. We all know ways of twisting the law by excess

of zeal. By scrupulously applying the law we are able to demonstrate its absurdity and provoke the very disorder that it is intended to prevent or to conjure. By observing the very letter of the law, we refrain from questioning its ultimate or primary character; we then behave as if the supreme sovereignty of the law conferred upon it the enjoyment of all those pleasures that it denies us; hence, by the closest adherence to it, and by zealously embracing it, we may hope to partake of its pleasures. The law is no longer subverted by the upward movement of irony to a principle that overrides it, but by the downward movement of humor which seeks to reduce the law to its furthest consequences. A close examination of masochistic fantasies or rites reveals that while they bring into play the very strictest application of the law, the result in every case is the opposite of what might be expected (thus whipping, far from punishing or preventing an erection, provokes and ensures it). It is a demonstration of the law's absurdity. The masochist regards the law as a punitive process and therefore begins by having the punishment inflicted upon himself; once he has undergone the punishment, he feels that he is allowed or indeed commanded to experience the pleasure that the law was supposed to forbid. The essence of masochistic humor lies in this, that the very law which forbids the satisfaction of a desire under threat of subsequent punishment is converted into one which demands the punishment first and then orders that the satisfaction of the desire should necessarily follow upon the punishment. Once more, Theodor Reik gives an excellent analysis of this process: masochism is not pleasure in pain, nor even in punishment; at most, the masochist gets a preliminary pleasure from punishment or discomfort; his real pleasure is obtained subsequently, in that which is made possible by the punishment. The masochist must undergo punishment before experiencing pleasure. It would be a mistake to confuse this temporal succession with logical causality: suffering is not the cause of pleasure itself but the necessary precondition for achieving it. 'The temporal reversal points at a reversal of the contents...The previous "You must not do that" has been transmuted into "You have to do that!" ...What else but a demonstration of absurdity is aimed at, when the punishment for

forbidden pleasure brings about this very same pleasure?’³ The same process is reflected in the other features of masochism, such as disavowal, suspense and fantasy, which should be regarded as so many forms or aspects of humor. The masochist is insolent in his obsequiousness, rebellious in his submission; in short, he is a humorist, a logician of consequences, just as the ironic sadist is a logician of principles.

From the idea that the law should not be based on the principle of the Good but on its form alone, the sadist fashions a new method of ascending from the law to a superior principle; this principle, however, is the informal element of a primary nature which aims at the subversion of all laws. In the other modern discovery that the law increases the guilt of the person who submits to it, the masochist in his turn finds a new way of descending from the law to its consequences: he stands guilt on its head by making punishment into a condition that makes possible the forbidden pleasure. In so doing he overthrows the law as radically as the sadist, though in a different way. We have seen how these methods proceed, ideologically speaking. The Oedipal content, which always remains concealed, undergoes a dual transformation – as though the mother-father complementarity had been shattered twice and asymmetrically. In the case of sadism the father is placed above the laws; he becomes a higher principle with the mother as his essential victim. In the case of masochism the totality of the law is invested upon the mother, who expels the father from the symbolic realm.

³ Theodor Reik, *Masochism*. “The masochist exhibits the punishment but also its failure. He shows his submission certainly, but he also shows his invincible rebellion, demonstrating that he gains pleasure despite the discomfort... He cannot be broken from outside. He has an inexhaustible capacity for taking a beating and yet knows unconsciously he is not licked” (pp. 145, 163).

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