

Might 'biological'  
rather than a juristic  
law, the



**ASSIGN  
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Might as right was the governing principle regulating the conduct of men in society.

Justice was, then, even according to its own criterion of judgment in a state of grave uncertainty for the ones without enough physical strength, the old, the sick or the infirm could not but be silent spectators to their own injuries at the hands of others. That crude system of parties developed into a chain of wrongs through a counter wrong for a wrong, the one even disproportionate with the other. It did not remain confined to the wrong-doer and the wronged but came to involve families, even whole tribes. It led to group conflicts and tribal feuds. The blood feuds led to blood money or compensation to the victim or his relatives to avoid amending disastrous consequences and save society from utter ruin. Before the emergence of the State there was no law in primitive society. There could be no law as we know it, law as defined by Holland and Austin without a sovereign political authority, no 'will' of the State without the State itself.

If at all there was any law, it was a law of natural phenomena, a 'biological' rather than a juristic law, the law of the struggle for existence and the survival of the fittest and that too on its crude physical plane with a feeble but a growing play of intelligence in it. Law according to the historical school "found" rather "made" pre-existed the State, existed, even prior to political consciousness as maintained by James Carter an American Jurist. It has grown, according to Hugo, as the result of the habits and the ways of the people themselves, acquired through necessities, accidents and other pleasant and unpleasant processes. The State itself is a creature of such necessities and its 'will' did not operate in vacuum; it had an inheritance to

work upon, the crude habit and usages of primitive society to which it gave recognition as 'law', 'the law' which according to our current, highly evolved concept of the law, is 'a negation of law', the law of "tooth for a tooth, an eye for an eye, a life for a life", the forerunner of criminal justice retaining as it does alongside the reformatory theory, the civilised methods of punishment, the retributed theory also, the theory of the wrong-doer's own misdeed being visited upon him reinforced with the Kantian doctrine "Do unto others as you wish to be done unto yourself." As time advanced the injured person agreed to accept compensation; instead of killing his adversary.

In this way archaic criminal law came into existence. The second stage came with the rise of the State which did not assume the function of dispensing justice but intervened to regulate the revenge and make it proportionate to the injury within the prevailing system of private revenge and violent self-help. The State prescribed rules for regulating private vengeance and violent self-help.

It developed the idea of "a tooth for a tooth, an eye for an eye, a thumb for a thumb, a limb for a limb, a life for a life", one could not now take a life for a limb, nor even more than one tooth for a tooth, otherwise the victim was still his own judge and dispenser of justice into himself. The idea of proportion was accelerated with the idea of blood money or compensation requiring a scale for determination. The third stage came with the State assuming wider powers as it developed and became better organised.

It substituted public enquiry and punishment for private vengeance and violent self-help. It assumed the function of dispensing justice and assuring liability. This stage witnessed the splitting of justice into civil and criminal justice according to the nature of the wrong. The modern State, no longer reposing or pining faith in any so-called system of divine revalidates in devising its own laws beside dispensing justice and enforcing it and has as such wider powers than the medieval State which dispensed justice but did not make or interfere with its inheritance of laws supposed to be of divine origin.