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To the Origins of Discourse, or on the Birth of Society and Law

Abstract

I consider the beginning of society to be the integration of hostile Homo Sapiens communities into dual-group alliances, which ensured superiority over Neanderthals, made possible by the formation of legal discourse between the parties of a dual alliance who remained aliens to each other, which provided peace and stimulated a leap in linguistic and cognitive development, including the formation of the coercive power of logic.

Keywords

Law Genesis, Sociogenesis, Legal Discourse, Neanderthals, Homo Sapiens

Introduction: Modifying Lévi-Strauss, or The Triumph of "Molecular" *Homo Sapiens* Communities over "Atomic" Neanderthal groups

The proud meme "Homo Sapiens," invented by Linnaeus and firmly imprinted in the scientific and mass consciousness, is hardly adequate as the name of our biological species. For lack of another word, we will have to use this name. According to modern anthropologists, this species has existed for more than two hundred thousand years. The early groups of *Homo Sapiens* numbered hardly more than two or three dozen people like their contemporary *Neanderthals*, *Denisovans*, and other *Homo*; they were in a state of absolute enmity. Hobbes's speculative reconstruction of the war (Hobbes 1651) of all against all turned out to be close to reality. Today, parochial altruism is often used to denote relations between people in those ancient times. High

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intragroup cohesion and readiness for self-sacrifice emerged in the context of irreconcilable confrontation with the environment. Unlike, for example, ants or bees, in which rigid deterministic mechanisms support such phenomena, cohesion in humans is due to resilient intra-group empathy, which, especially in some circumstances, forms almost a common psyche, when the pain of another is felt as one's own, where interindividual boundaries are erased. The group almost turns into a single multi-headed creature.

According to Levi-Strauss's hypothesis, formulated in the middle of the last century, human society begins with the formation of intergroup alliances, the cause of which was the emergence of exogamy (*Levi-Strauss* 1983, 19*)*. Thirty years later, primatologists discovered exogamy in apes. Another quarter of a century later, paleoanthropologists showed that exogamy existed throughout the entire period of anthropological evolution, and, therefore, in terms of the mechanism of the emergence of intergroup alliances, Levi-Strauss was mistaken. However, as I will show later, the idea that just such alliances became the starting point of a qualitatively new type of being, which it makes sense to call society, is undoubtedly productive. At the same time, the crucial role in forming the first dual-group alliances[1] could be played by the rational-legal discourse forming between the communities of *Homo Sapiens* in the context of their tough opposition to the *Neanderthals*. The term Sapiens can be applied relatively adequately to the human world from this time.

According to modern anthropology, it seems mysterious that the hybridisation of *Sapiens* and *Neanderthals* occurred only during the first (Markov 2012, 324-325) unsuccessful[2] attempt by *Homo Sapiens* to leave Africa. However, while the exodus occupied Europe, no hybridisation occurred despite neighbouring *Neanderthals* for several millennia. Forty to fifty thousand years is insufficient for the emergence of a biological barrier to interbreeding. Such a period separated the failed attempt from the blitzkrieg for human evolution, though not a moment. However, the mystery can be explained by the formation of a cultural chasm, in the light of which, as the Russian evolutionist Markov put it, "former kin were now only good for lunch" (Markov 2012, 358).

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[1] For a rationale as to why inter-group alliances should have remained dual rather than larger alliances involving more than two basic groups for quite some time, see (Shalyutin 2011, 17).

[2] As L. Vishnyatsky writes, "The first attempt to settle outside Africa was… unsuccessful. Apparently, about 70,000 years ago, the Neanderthals, who came to the Middle East from the north, displaced Homo sapiens from there" (Vishnyatsky 2010, 83).

When *Homo Sapiens* first came out of Africa, the *Neanderthals* who came down from the north drove them back a little later, which is not surprising, as *Neanderthals* were physically much more robust. What seems strange is that only a few tens of millennia later, the balance of power had changed dramatically, "...the indigenous Neanderthal population of Europe has fallen under the onslaught of Middle Eastern aliens much faster than [previously] thought" (Markov 2012, 357-358). The process took no more than 6,000 years (ibidem). "After that, the surviving Neanderthals survived in secluded corners of Europe (such as the Gibraltar Peninsula, the Balkans, and the Crimea)—until their eventual extinction" (ibidem).

Crucially, archaeology not only fails to confirm any decisive military-technical superiority of *Homo Sapiens* over *Neanderthals* at the time but, on the contrary, casts increasing doubt on the very existence of a significant superiority at all. Nevertheless, the organisation of *Homo Sapiens* into dual-group alliances, as I hope to further show in this article, may well explain both their decisive martial dominance, due to numerical advantage, and their rapid cultural break from their *Neanderthal* rivals.

E. Evans-Pritchard described how groups of Nuer who were at odds with each other united in the face of a common enemy (Evans-Pritchard 1985, 129). Such unification is a typical behavioural pattern characteristic of non-literate societies, the prerequisite for which is some common self-identification of the uniting groups against the background of opposition to others—strangers. Could ancient *Homo Sapiens*, who were moving out of Africa because of demographic pressure, create intergroup associations (Vishnyatsky 2000, 247) by pushing directly against *Neanderthals*? Would this be an alternative account to the empirically refuted Levi-Strauss hypothesis of exogamy?

In principle, our ancestors' capacity for such unification is undoubted, for anthropologically, they are practically identical to us. However, unlike the Nuer, they did not have ready-made unification mechanisms, and they still had to pave the way from "atomic" to "molecular" human groups.[3] The formation of these complex mechanisms took several millennia. However, it resulted in the emergence of stable dual-group alliances, the complete domination and "triumphal procession" of *Homo Sapiens*, and the displacement of *Neanderthals* and other human species from Europe and eventually other territories on Earth.

[3] By analogy with atomic and molecular propositions.

Formation of Law as a Decisive Factor in the Emergence of Society

There is no doubt that the main threat to the sustainability of the early dual unions was the enmity of their halves. Even today, where a dual organisation is found—and, according to Lévi-Strauss, it is common in the Americas, Asia, and Oceania—relations between such halves are expressed "both in close cooperation and latent enmity" (*Levi-Strauss 2001, 17*). In the period of interest to us now, the explosive tension that permeated the coexistence of the halves was most probably primarily due to that recent absolute hostility, which could not help but persist in the historical memory and collective consciousness of each side.

Constant communication between people of different halves, who disliked each other, to say the least, was bound to create a threat of quarrels in which each participant had the strong support of their home group, which maintained the old principle of internal relations: "one for all, all for one." This permanent explosive situation in its most initial stages of brinkmanship (and there is no doubt that such clashes occurred thousands and thousands of times during the alliance formation process) could only be "extinguished" by an institutionally organised conflict resolution mechanism. Its formation constituted the main content of the transition from the pre-social phase of human history to society. The starting point for such a mechanism would be some decisive factor capable of blocking a combat response and damage in the broadest sense of the word, from insult to murder, inflicted by any member of the opposing half.

In my view, there are good reasons to believe that such a factor was mutual hostage-taking. Today, hostage-taking is primarily associated with terrorists or bandits who take hostages to make demands to the authorities. A far more significant role in history has been played by situations where, on the contrary, it has been the authorities who have taken hostages in order to keep subdued peoples, groups, territories, etc., firmly in their obedience. However, "vertical" hostage-taking (bottom-up or top-down) is historically preceded by the large-scale institution of "horizontal" mutual hostage-taking, in which there is no power relationship between the parties and their forces are approximately equal (Hammer, Salvin 1944, 20). What is happening here is not a takeover but a voluntary exchange of hostages. According to Joel Allen, this type of hostage-taking acts more as a bridge linking sovereign countries than as evidence of blackmail (Allen 2006, 72). In former times, "no treaty, no major transaction, went without them [hostages - B.S.]" (Smir-

nov 1973, 553); “the exchange of hostages is an archetypal form [...] of the settlement of inter-tribal relations” (Il’in 1994, 118). Historically and logically, the first function of hostage-taking, one of the most important and ancient social institutions, was precisely the establishment of peace. It ranged from “conciliation,” guaranteed by a short-term exchange of hostages immediately after hostilities, a “customary method of settling trouble between clans or tribes after a war” (Emmons 1993, 310), to securing long-term peaceful relations through dynastic marriages and exchanges of ambassadors.

The logical connection between exogamy and hostage-taking was recorded by W. Warner, on the basis of whose research H. Johnson writes: “Moreover, since the clans were exogamous, each had given hostages to some of the others, in the form of out-marrying women” (Johnson 2006, 187). The safety threat to the male victim half’s women, daughters, and sisters —who had become wives to the men of the counteragent half—was (in my opinion, already at the dawn of society) a potent deterrent to such an attack. It prevented the event of an attack in retaliation for any harm inflicted. The reciprocity of the exogamous hostage meant enforcing peace.

In anthropology, it is common knowledge that every group is highly jealous of its status compared to other groups, reacting most decisively to any attempts to belittle it from someone else. In dual social organisms, the equality of the parties is a fundamental systemic principle. The damage caused by the actions of the opposing half constitutes an imbalance. The impossibility of a retaliatory attack against the offending half does not mean that the injured party humbly accepts what has happened. Conflict can only be resolved by restoring balance.

In modern non-literate societies, the forms of restoration of equilibrium are incredibly varied. Undoubtedly, they were so at the dawn of humanity too, and we can hardly ever reconstruct them. Nevertheless, there are logically necessary moments without which the restoration of equilibrium is impossible. These establish the damage, the perpetrators and decide how the balance should be restored. The procedure that establishes the fact of the damage (or the event of the crime), the culprit, the amount and form of compensation, etc., is a judicial procedure in modern language. Thus, the emergence of the primary form of human society, the dual-group community, was only possible by forming a judicial procedure for conflict resolution.

The judicial conflict resolution procedure is a crucial element, but only an element, within a system, without which the procedure cannot exist. It assumes the existence of rules. The minimum is the rule of the court itself, i.e.,

compulsory recourse to the judicial procedure; in case of conflict between parties and the judicial process's organisational rules, this procedure substituted for an aggressive attack. In addition, the primary judicial procedure also had a mandatory contractual component: the absence of coercive institutions to coerce the guilty party meant that, at the end of the trial, the parties not only agreed on the decision itself but also agreed to enforce it.

Thus, we find that a fundamentally new mechanism for regulating people's behaviour emerges in the relations between the parties of the dual-group community, which comprises a single complex of genetically and functionally interrelated moments: contract, normativity, court, and coercion. There is only one term for this mechanism in the social knowledge system: law. Wherever there is a law, these components are present. Moreover, the development of legal regulation has probably not added anything typologically new to them. Of course, the circle and types of subjects of legal relations have expanded, the content of rules has changed, and specialised structures have emerged that undertake the functions immanent to legal regulation: parliament, courts, police, etc. However, all those systemic elements of law, which in their totality constitute it, were formed in inseparable connection with each other as an attributive aspect of sociality in its historically first form, the dual-group community. *Ubi societas, ibi jus est*. It should be emphasised that the dual-group community could not form without the legal mechanism of the relationship between the halves; it would disintegrate before it could have taken shape. All this allows me to conclude that the formation of law is not simply a side of the process of constituting society but a decisive factor in it.[4]

The Formation of Law as a Driver of Cognitive Progress

The most important aspect of the formation and deployment of legal regulation, a consequence and factor in this process at the same time, I believe, was the enormous linguistic and cognitive progress, which seems to be a vital component of the leap that formed the cultural gap between *Homo Sapiens* and *Neanderthals* and made possible the form of human communication that today is known as discourse.

The phenomenon of conflict resolution has already been documented in great apes. However, the trial is separated from the conflict in time in a judicial procedure. This separation means that, first and foremost, the conflict

[4] The interpretation of law proposed here, which starts from its constitutive role in the formation of society, can be designated as the societal concept of law.

situation itself needs to be reproduced in sufficient detail, which requires the formation of cultural mechanisms that make it possible to reconstruct and represent the event that once occurred.

The participants in the litigation create a kind of reality that is alternative to the physically existing one. In describing contemporary mechanisms for dealing with conflict in non-literate cultures, social anthropology makes it clear that initially, such reconstructions made extensive use of physical demonstrations. Over time they have been reduced, replaced by linguistic means. This replacement required the expansion of the vocabulary and the development of other means of exercising the descriptive function of language: that essential function by which we can talk about what is not here and now, allowing us, through language, to create worlds that do not physically exist, including never having existed and could never have existed. Language begins to transform itself into a grandiose demiurge, the creator of an invisible culture but the primary and authentic content of the everyday life of people in society.

As you know, two different people perceive, interpret, and reproduce the same situation differently, even if they are sincere. Understandably, it is difficult to assume such absolute honesty from the parties to a conflict. Primatologists have established that even great apes have mastered the tools of concealment and lying. It would be strange to think that *Homo Sapiens* did not use this toolkit when dealing with inter-group conflicts. In doing so, verbal language offers enormous and fundamentally new possibilities for lying compared to non-verbal means of communication.

Conversations between intimates and between aliens are entirely different conversations. Intimates often understand each other with little or no words. Aliens do not and do not want to feel subtexts, do not know and do not want to know contexts, not only lack empathic interpenetration, but are instead mutually hostile, have no presumption of the trust attributable to their communication, and often, on the contrary, come from a presumption of distrust. Communication that ensures the understanding of aliens is incomparably more complex than that which ensures the understanding of intimates. A conversation between aliens should be expanded and detailed, containing the most reliable safeguards against undesirable interpretations, etc. At the same time, the language of the dialogue of the opposing subjects should also contain possibilities for evaluating the statements of the opposing side in terms of their veracity/falsity, accuracy/inaccuracy, etc. This evaluation means that the subject of the conversation is not only the events themselves but also the judgments about these events, assessments, and

evaluations of evaluations. Language, and the thought it expresses, become hierarchically organised systems relating to physical reality by complex and mediated links.

The ancient judicial reconstruction of an event could only be realised by forming a whole complex. It includes the linguistic and other cultural, above all cognitive, innovations—transferring an event from the past to the present means extracting it from the actual flow of events, abstracting it from the mass of circumstances and actual relationships, creating a particular picture of events as an ideal object constructed through human consciousness. Thus, the focus is not on a natural or manufactured physical object but on an ideal object that exists only virtually, which in itself is a radical innovation, but also generates a whole set of related radical innovations. The ideal construct, removed from the actual flow of events, appears abstracted, among other things, from the system of temporal relations and is out of time. As a result, the very temporal structuring of the world changes fundamentally. An episode of the past that has lost its temporal shackles moves freely into the present, where it coexists with the "present present" and has an impact on it, a causal role. The past no longer passes away, does not fade into oblivion, but is integrated into the present; in other words, the present begins to absorb the past. The (re)construction and reflection of past events form the matrix of the presence of the past in the present. This matrix is the condition for the emergence of historical memory, of course, mythologised, unique to each community, and transformed into its cultural-identificational code.

The essential point is that a collective cognitive activity occurs within the judicial process. The subject of cognition—and litigation is essentially (though not exclusively) a judicial inquiry, i.e., cognition—is not the individual but all participants in the process. An actual, supra-individual cognitive subject is formed. Opposing parties must represent the cognitive process unfolding in court proceedings. This representation means that every statement comes under the fire of criticism and assesses its consistency with reality. Thus, not only a situation that has taken place becomes the subject of discussion, but also a judgment about this situation, which means that logical-linguistic reflection begins to form and language itself becomes the focus of attention, which of course is radically different from the usual statements about physical reality.

The work of public consciousness in a trial is not limited to the cognitive component. Having established (accepted as established) certain events, the court must evaluate them. Accordingly, value and value-normative reflection are formed: what is good and evil, acceptable and unacceptable, etc.

Moreover, over time, inevitably, qualitative assessments begin to require quantitative specification: how wrong, how unacceptable. Quantitative certainty is a prerequisite for the proportionality of punishment. Thus, from the axiological point of view, one way or another value correlates the most different aspects of human behaviour and the functioning of society. The judicial process turns out to be the procedure during and as a consequence of which social norms, values, and ideas are explicated, verbalised and crystallised.

Another—and in some respects, the most important, decisive—moment of the constitution of discourse in the process of the genesis of law was the formation of the coercive power of logic, which I will discuss in more detail later.

On the Essential Specificity of Subject-Subject Communication in Legal Discourse

The sublime conception of natural law would be remarkable if not for its fundamental fallacy. Law is a discourse, a special kind of subject-subject interaction; there is no discourse in nature. The entangled births of law, discourse, and society mean the formation of specific subjects of this interaction and thus of the interaction itself.

There was no subject-subject relationship until a particular stage in the evolution of the animal world. The primary cognitive images, which appeared with the emergence of the psyche, were images of obstacles to physical movement.[5] For a long time, animals "knew" the surrounding reality as exclusively passive because they did not have the cognitive tools to represent external active agents in their psyche.

A singling out must originally have been associated with the emergence of a new type of relationship in nature: predator-prey. In evolution, the ability was formed to distinguish subjects from this object environment—beings capable of generating their activity. The behaviour of the predator and prey relative to each other has become fundamentally more competent and effective in the formation of a new type of cognitive unit in their psyche. Namely, units representing the counterparty as a subject whose activity is not wholly predetermined and in its final certainty is built independently. In highly developed animals, such as mammals or birds, the relationship between predator and prey, the competition between predators over prey, and many other relationships between individuals belonging to different species and

[5] For more information, see (Shalyutin 2002, 35-48).

communities, undoubtedly have a subject-subject character. Each understands that the other chooses behaviour, that is, acts as a subject, that they can be tried, for example, to deceive, outwit, etc.

Later on, another aspect of subject-subject relations based on empathy is added to the purely cognitive separation of subjects from the object world. This separation was mentioned above in the case of humans, but empathy emerges at much earlier stages of evolution and is inherent in at least all warm-blooded species. However, recognising the other as a legal subject (counterpart) differs fundamentally from the cognitive fixation of it as a subject and the empathic subject-subject relationship (which includes the cognitive component as a prerequisite).

The mere cognitive fixation of the other as a subject does not change the pattern of behaviour that contains no limitations beyond the limits of realistic possibilities in objective circumstances. The other subject here is just a special kind of objective reality. The attitude towards them is no different from that towards non-subject environmental elements—mountains, bodies of water, trees, etc. If another subject prevents the first from getting something they want, and the first is physically superior to the second, they will eliminate them (chase them away or kill them), as they would, for example, eliminate an obstructing stone.

The human atomic group, in terms of its relationship to its environment, is not fundamentally different from any living being for whom the environment is, firstly, a source of sustenance, obtained by all available means, and secondly, a source of threats, which it avoids, also using the whole arsenal of means provided by nature.

Adding to the cognitive recognition of the other as a subject of empathy towards them changes things radically. The subject cannot inflict death or pain on the person they empathise with because empathy means inflicting pain on someone else; they are inflicting pain on themselves.[6] Empathy means a kind of co-subjectivity. The empathetic subjects are not opposing each other; the emotional interpenetration turns them into a single subject in a sense. Empathy is a kind of natural, physical barrier to harming another being in any way. However, unlike the individuals within each, the parties to the primary intergroup alliances are generally not empathetically linked. They are aliens to one another.

[6] Excluding a special kind of situations where, for example, a painful action saves from worse consequences, i.e., it is the lesser evil.

A fundamentally new aspect that constitutes a qualitatively different type of an inter-subjective relationship in comparison to previous ones is the rational recognition of the pretensions of the other subject, the agreement with these pretensions, which thus means the renunciation of one's previous pretensions to everything. The unlimited pretensions of each group, claims to everything inevitably give rise to an inter-group war of all against all. The reconciliation of pretensions instead of everyone's claim to everything means the emergence of a fundamentally different mode of existence, a new ontology! The discovery of a clash of pretensions and wills no longer generates a physical clash of the parties, i.e., a war, but a dialogue that results in an agreed self-limitation and mutual limitation of wills, i.e., a treaty that creates a rule. War, violence is replaced by rational interaction. The ontology of dialogue replaces the ontology of war.

Recognising the opposing group as the subject of the pretensions means renouncing war, renouncing recourse to force. Law is an alternative to violence, an alternative to war. The fundamental truth once formulated by Cicero is widely known: *Inter arma leges silent* (when weapons speak, laws are silent). If you wrap this saying around it, a new one proves just as true: when laws are spoken, guns are silent. Law and violence are antonyms. The rejection of violence against a counterpart is part of the constitutional basis of the law.[7] Resorting to violence is a rejection of the law.

The construction of legal discourse is highly complex, so much so that at present, it is difficult to imagine the process of its formation, the stages, the logic, and mechanisms of transition from one to the other. It seems possible now only to highlight its invariant constitutive characteristics, without the complete set of which the sustainable replacement of the logic of force by the force of logic would be impossible.

First of all, it should be recorded that the inter-group connection in which legal discourse is formed does not arise through conquest or any other kind of coercion, but as a free alliance, and, accordingly, recognition of the counterpart's pretensions and thereby relinquishment of part of their pretensions is done by free subjects. Mutual recognition by the counterparties of each other's freedom, a refusal to try to influence the counterparty's will in

[7] I would point out that legal non-violence, strange as it may seem at first glance, is more reliable than empathic non-violence. A loving mother may smack a child who is reaching for a socket to keep them out of danger. An empathic relationship does not necessarily equalize people and, for example, the elder may use force against the younger person in their interests (at least as they understand them), without considering their own will to be mature enough and ready for freedom. In a legal relationship influencing the will of the counterpart is only possible through rational argumentation.

any way other than by presenting arguments on which the counterparty decides for itself, that is, freely—the starting point of legal discourse. Law and legal discourse only exist where free actors operate.

Since the parties forming the dual structure are free, it is understandable that neither party would accept a worse position compared to the counterparty in anything. This comparison means that all restrictions and self-restriction arising in the formation of this structure can only be symmetrical, mirror-like: we recognise your pretensions exactly as much as you recognise ours, we restrict our pretensions exactly as much as you do, and so on. The most important corollary to this is the equality of the parties as counterparts in rational discourse. Let us look at what the most significant points of this equality are.

Let us start with the point about the argumentation. Equality of the parties as subjects of argumentation means, firstly, that each party has the opportunity to argue its position in the event of a conflict fully. While other points are important, this one should be highlighted. Only an equal opportunity for the counterparties to present a complete argument can ensure peace: since the aspiration to assert oneself, one's interests is immanent to each side, a restriction on either side's ability to argue means that it can only assert itself by force. Ensuring procedural equality in argumentation is, in fact, the basic principle, the very essence of procedural law, be it criminal, civil, arbitration, or any other process. Specific rules of procedural law may vary, but they must be aimed precisely at ensuring the implementation of this principle; otherwise, the law will fail in its mission to replace the logic of force with the force of logic, provoking violence. The process is only legal to the extent that it implements this principle, deviation from which transforms the process into a political or another non-legal one. Secondly, this equality means that the strength of an argument does not depend on which side has made it but only on its intrinsic content. Here it is hard not to see similarities with the well-known principle of universalism formulated by R. Merton in his description of the ethos of science, which assumes both that people have equal rights to engage in science regardless of their social, cultural, or anthropological characteristics, and that the veracity of statements is not dependent on who makes them.

The next aspect of equality of counterparts is equality in the discourse's immanent obligations of the parties. First of all, this means that each party is under an obligation to listen to the counterparty's arguments and has no right to refuse to do so. The obligation to respond logically to the counterpart's arguments, the poles of which are agreement and refutation, is based on compulsory perception.

Equality of the parties also includes an evaluative moment, namely the parties' assessment of each other, in which cognitive and behavioural components are essential. Cognitive assumes that each party relies on the other's ability to perceive, to understand its logic. Argumentation is not simply a process of self-deploying some logical chain. I am not just arguing a specific thesis for certain reasons. Fundamentally, I argue with a particular person. My task is to convince the counterparty, to make them agree with me. It is not just the other, but an opposing, antithetical subject whose approach and stance are the opposite of my own. The hope of succeeding in persuasion is only possible whenever mutual intellectual respect between the parties exists. Rational discourse is only possible with someone to whom the logic of the argument is accessible. Appealing to the counterpart as a logical subject means recognising them as such a subject.

Regarding the behavioural assessment, the parties must proceed on a presumption. The argumentation will determine the counterparty's behaviour if they agree with the argumentation. Let me remind you that there were no unique coercive power structures in dual societies. The parties themselves were equal in power and therefore had to have a developed mechanism for self-coercion and assume it in the counterpart.

In addition to the freedom and equality of the subjects of legal discourse, its fundamental condition is that the parties recognise as axiomatic the existence of a coercive logic, the existence of logical constructs with which there can be no disagreement, which has an absolute coercive force. Each side assumes such a logic, which constitutes the premise, the invisible but unshakable foundation of discourse because, without such a foundation, there is no way to get the counterpart to agree to a position that contradicts its existential attitudes. In the earliest courts, decisions were sometimes made to take a person's life. For one party to agree to the death penalty of someone of their intimates, it must proceed from an unquestioning acceptance of the idea of some absolute logic. This logic thus acquired a status not simply cognitive but existential, ontological, stronger than the systemic emotional bond that constitutes the integrity of each of the halves. The presence of this logical power overpowering empathy is evidence of the formation of a qualitatively new level of being, the principles of which, when confronted with the principles of the previous level, win out. Legal onto-logic turns out to be the basis of social ontology.

The mechanism for the emergence of logical coercion remains to be explored. However, we can not just assume but confidently state that the formation of the logic of the Due preceded the formation of the logic of the

Things Existent.[8] Legal discourse includes as its main components a discourse about actual behaviour in terms of its compliance with the rules and discourse about the rules themselves, i.e., the invisible laws. The invisible becomes the focus of collective reflection, which is, among other things, a prerequisite for scientific discourse. The relationship between rules and behaviour is very similar to that of the theoretical and the empirical in science: the laws of nature, verbally expressed in the laws of science, are a system of dispositions prescribed (according to some, by God) to nature; in other words, the scientific picture of nature is constructed by analogy with the law.

The further evolution of legal discourse involves modifications, including substantial ones. The most important and partly interrelated (although the nature of this interrelation is complex and cannot be dealt with here) of these are the emergence, alongside the supra-individual, of individual subjects of discourse, in certain circumstances an unlimited and a vast number of participants, and the emergence from the system of legal interactions of specialised separate bodies for justice, rule-making, and enforcement, with an additional important point being the partial or complete fusion of these structures with the institution of the state. These modifications meant that the characteristics previously intrinsic to each subject of legal discourse could now be partially shared between them. For example, the existence of specialised institutions of social coercion removes both the requirement for each party to have a developed capacity for self-coercion and internal agreement with the decision. At the same time, the presence of a judge means that one party now does not necessarily have to understand the reasoning that the other presents. A detailed description of these transformations requires separate consideration.

Conclusion

Since, as we have seen, the emergence of law, legal discourse is historically the emergence of discourse in general, *Homo Juridicus* is the formation of *Homo Sapiens*. By becoming *Homo Sapien*s, people have created new spheres of discourse by acquiring the capacity to act as a subject of discourse. Thus, moral discourse seems to follow immediately after legal discourse, almost hand in hand with it, while, for example, antiquity marks the birth of world-

[8] Interesting in this sense are Heraclitus' Logos and Plato's ideas, in which the Due and the Things Existent are syncretic.

view (philosophical), political and proto-scientific, partly even scientific, discourse. However, since discourse is historically established precisely through the law, its socio-ontological status is also established here. The logical reality of legal discourse becomes ontologically prioritised over physical reality, determines people's physical behaviour, and wins out when it collides with other determinants of behaviour. Of course, this does not mean that every discourse can play a decisive role in determining behaviour (this is hardly possible for, for example, art or culinary discourse), but this is the fundamental capacity of discourse. Behind the visible physical, social reality lies the invisible one, the essence of a socio-cultural being. Within this invisible reality, which cannot be reduced to discourse and includes many other things, discourse occupies a crucial place and sometimes determines social order and social movement.

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