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Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38047F

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Law Without Force

Thomas A. Cowan*

It would be hard to overestimate the influence of Hans Kelsen's legal positivism on the jurisprudence of a large part of the world during the past half century. It is true that in common law countries many of his doctrines had already been anticipated in the prevailing analytical jurisprudence—an Anglo-American view of the nature of law that became authoritative at Blackstone's time and remained so until the massive encroachments of sociological jurisprudence and the New Realism of the twenties and thirties of the present century. Even so, Kelsen's doctrines have always received a warm welcome in this country from political science and sociology of law.

Bluntly put, Kelsen prefers what we might nowadays call "hard law." By ignoring the content of positive legal enactments and attending only to their purpose, he arrives at what he feels is the only possible scientific view of the nature of law: every legal enactment has for its purpose the coercive ordering of human behavior. Questions of justice or reason are irrelevant to this ordering, for as a matter of course everyone charged with the obligation to make law believes his dictates to be just and reasonable. To introduce conceptions such as morality, justice and reasonableness into the study of law creates havoc with its structure and destroys it as a science; such considerations, important as they are, must remain outside the realm of law proper. Kelsen, a close student of the philosopher Kant, agrees with Kant's separation of morality from law and argues that law consists of a body of rules or norms that prescribe how those bound by them ought to act. Law coerces obedience. Its essence, in a word, is force, and Anglo-American ana-

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* Professor of Law, Rutgers University. B.S. 1926, LL.B. 1931, Ph.D. 1932, University of Pennsylvania; S.J.D. 1933, Harvard University.

1. "The first characteristic, then, common to all social orders designated by the word 'law' is that they are orders of human behavior. A second characteristic is that they are coercive orders." H. Kelsen, PURE THEORY OF LAW 33 (1967). For a succinct account of Kelsen's legal positivism, see the article under his name by an influential follower, William Ebenstein, in 8 W. Ebenstein, ENCYCLOPEDIA OF THE SOCIAL SCIENCES 360 (1968).

2. But the Pure Theory of Law simply declares itself incompetent to answer either the question whether a given law is just or not, or the more fundamental question of what constitutes justice. The Pure Theory of Law—a science—cannot answer these questions because they cannot be answered scientifically at all.

lytical jurisprudence reaches the same result.\textsuperscript{8}

It is difficult for many students of legal philosophy to understand why force should occupy so prominent a place in these influential systems of jurisprudence. The answer given by proponents of these systems is simple: analyze the idea of law and you will be led inexorably to deduce from it the idea of constraint. By its nature, law logically implies force. An empirical examination of legal materials—any of them, all of them—reveals that they are all in fact attended by express or implied coercion. Thus, both reason and experience combine in concluding that when force is absent there is no law.

A quick glance at the history of western culture seems to confirm this notion. When law is religious, it carries with it the sanction of the gods; when it is secular, it is the will of the sovereign—not his whim, wish or hope, but his will. To disobey the dictates of sovereign will is to challenge its very foundation; in earlier times all violations of law were either sacrilege or treason. Philosophical speculation can be read to come to the same result, that law is the order of nature, with deviations leading to the grievous pains of a life contra naturam; or that law is immemorial custom, with departures entailing ostracism, outlawry, or death; or that law is a conspiracy of the weak against the strong (Sophists), with the many wreaking vengeance on the few in order to clip their power. So, whether law is the will of God, the order of nature, the dictates of right reason or the fiat of a dominant person or group, its pronouncements issue in the form of coercion. The very words "will," "order," "dictate," "command" reveal their peremptory character.

Lawman and layman alike hold the conviction that law is a species of force. For the lawyer, this idea associates his profession with the roots of power. The lawyer finds it pleasurable to be able to speak with the voice of authority. But even when this need is not being felt and speculation can be indulged, force provides the legal analyst with a most convenient concept to delimit his subject matter: that is to say, to separate law from what is not law. It is this methodological delimiting feature that legal positivists like the most. Kelsen believes that to deny its efficacy is to destroy the boundaries of law and to merge it with the indiscriminate flux of random human behavior. For the positivist such a merging would be unthinkable and it is easy for him to remind those who think otherwise that the vast army of legal practitioners agree

\textsuperscript{3} Every law or rule . . . is a command.

\textit{If you express or intimate a wish that I shall do or forbear from some act, and if you will visit me with an evil in case I comply not with your wish, the expression or intimation is a command.}

J. AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED 5 (2d ed. 1861). For a
not with them but with him. The legal community regularly acts as though it expects law to be sanctioned, rejecting non-sanctioned proscriptions as simply not law, whatever else they might be.

Laymen also have every reason to believe that law is force. They, much more than the legal community, bear the full burden of law's pains and penalties, since for them to disregard law's force invites disaster. In secular cultures, fear of the Lord has been succeeded by fear of the law and circumspection induces all of us, so the story goes, to know that law can hurt us if we disobey it. Such a realization is primitive, even instinctual, good sense. It follows, then, that the mark by which the analyst distinguishes law from everything not-law rests upon the general experience of mankind. Theory and practice coincide to produce a common opinion, one which enjoys the sanction of ubiquitous agreement, and one which, so to speak, *enforces* itself. To disregard this opinion is tantamount to professional suicide.

I

**POSITIVISM: THE FORCE OF LAW AS WAR**

Is law good? If so, its force must also be good, and the good citizen has an obligation to help enforce the law. If the citizen calls for more law, he must want more force. Yet governments that use internal force are increasingly perceived as becoming totalitarian.

Eighteenth century liberals sought to escape this dilemma by terming all force evil, asserting that the force that law uses is good only if it prevents greater restrictions on liberty. That government is best which governs least.

The hope that law could be kept at a minimum or could be made to disappear entirely has proved illusory. Currently peoples all over the world demand more and more law regardless of the political form of their states. As a result, legal force has grown astronomically with demands for security measures keeping pace with the proliferation of laws. Society seems to be at war with itself. War prevails, not only internationally but within each nation and even within its tiniest subdivisions. The Romans long ago warned about what happens when the demand for law becomes maximal: *Summum jus; summa injuria.*

The opposite of war is not peace, as Thomas Hobbes shrewdly reminds us. Peace is the interval between wars during which the contending factions recuperate and prepare for the next war. *The opposite of war is law.* But what about law's devastating partner, force? The

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full length study of the differences between analytical jurisprudence and legal positivism, see S. SHUMAN, LEGAL POSITIVISM 12-30 (1963).

4. T. HOBBES, LEVIATHAN 1-83 (1651).
hard choice seems to lie only between war with others and war with ourselves. Is there an alternative?

The regularized civil warfare that a government wages upon its citizens (peace through law) is little different from the international wars governments wage against each other. If civil warfare is ruled by law, must not this international species of warfare likewise be ruled by law? The frank recognition that war and law are inseparable companions should have raised the perennial quarrel about the nature of law to a new level of realism. But even Grotius in his monumental treatise _On the Law of War and Peace_ was not able to face squarely the unpleasant fact that law inevitably generates warfare. His hope was that the rigors of unbridled warfare could be harnessed by the force of law. Although optimistic, or, as some would say, utopian, his program did seem to offer the hope that if wars were governed by law their devastations could be lessened, and something faintly resembling a minimal condition of civilized conduct could be made to prevail even during times of warfare. Perhaps as warfare came to be more and more "civilized" by law, it would approach nearer and nearer to the more tolerable conditions of peace. But how is this to be done? What element in the complex that we call law is to bring about this miracle? Positivists can only answer, legal force; there must be enforcible law among nations as there is among sub-national groups and among individuals. But this substitutes for the usual unregulated war among nations the war that law uses—one kind of warfare is to be swapped for another. This is a grim prospect, and such a program for ending war by universalizing it is not inviting. The positivists' notion of a set of norms—each detailing the mode by which inferior norms should be enforced—breaks down completely in the absence of a highest norm forcefully binding all mankind. So, law enforcement that generates civil war in the smallest units of government does not even have a chance at the highest level, the point at which the notion of sovereignty, or highest norm, peters out. Wars among nations remain "uncivil." World peace means world law, and world law means world war. Universal peace by means of universal force is hopeless.

II

THE NATURAL LAW: AN ALTERNATIVE TO POSITIVISM?

The natural enemy of both legal positivism and analytical jurisprudence is a species of law higher than positive law: the natural law. Whether it be the law implanted in the hearts of all men by God or the dictates of right reason analyzed out of the nature of human nature, natural law's prescriptions are held to be paramount over all positive enactment. Indeed, positive law is under the obligation to seek to rea-
lize the principles of natural law. These principles are principles not of law only but of morality as well. What then is the nature of a legal prescription that, although it has the form of positive law, is in fact immoral under natural law?

When cornered, natural law theorists admit that any law that is not in accordance with the will of God or of right reason is not law at all; therefore an immoral positive law is not law. Understandably, this is dangerous doctrine, the stuff of which revolutions are made, and accordingly most natural law lawyers put off the admission as long as possible. Still, it is there and it has been used.

Legal positivism and analytical jurisprudence emphatically deny to natural law the quality of being law—lawyer’s law. These jurisprudential systems hold natural law to be part of religion or of morality, but not part of legal law. This radical secularization of law completes its emancipation from religion, erecting a wall of separation that legal positivism and analytical jurisprudence mean to preserve intact. The common law lawyers erected this wall of separation in the late 18th century, but civilian lawyers, especially those in the Catholic countries, still need Kelsen’s intransigent secularism late in the 20th.

Now we ask: what position does the natural law take in regard to force? Kant, who stands as the chief exponent of the separation of law and morality, nevertheless speaks in terms that suggest force. The law constrains man’s outer conduct; conscience binds the inner life. Force is common to both systems, and this conclusion serves to reinforce positivism’s stand on it.

Natural law is the great ally of revolutions. To justify overthrow of an existing legal regime one must appeal to a law higher than positive law since legal systems are notoriously lacking in convenient devices for their own dissolution. The French Revolution was fought in the name of Reason, the personified goddess of the philosophy of rationalism and of the Enlightenment. Our own revolutionaries founded their Declaration of Independence from the positive law of George III on both secular and religious natural law: Reason and Reason’s God.

Natural law is not only a great ally of revolution, it may also legally

5. A plain statement of the matter is put by Roscoe E. Hill in Hill, Legal Validity and Legal Obligation, 80 YALE L.J. 47 (1970):

Does a person have a legal obligation to obey an unjust law? According to some, call them positivists, the answer is clearly affirmative: so long as the unjust law is a valid law, one has a legal obligation to obey it—although this does not entail that one has a moral obligation to obey it. According to others, call them the natural law school, the answer is clearly negative: since an unjust law is not truly a valid law, one clearly has no obligation (legal or moral) to obey it. This disagreement is not just a matter of word usage, for there are ground level issues at stake here regarding the choice of the basic elements required for analyzing these two key jurisprudential concepts of legal validity and legal obligation.
compel revolution. If such a revolution then falls into the hands of despots, they will seize and begin to use the regular organs of positive law. Positivism can only brand such activities "bad law," since it cannot bring itself to declare them illegal. This is not merely a semantic difference, for citizens are accustomed to endure what they feel are bad laws. Positivism has no rationale for legal revolt. Positivism has no higher law, no norm, by which despotic use of positive law may be tested such that the activity may be declared illegal. Natural law, on the other hand, is such a norm; the nature of law is justice, and injustice—positivism's "bad law"—is not law at all.

Natural law may be a powerful aid to revolutionary action but it does not lead to diminution of the use of force. It may indeed augment it. Not only are natural law theorists hard put to define the content of natural law in a way that will discourage the ease with which conscience sees injustice in positive law, but the countries in which natural law jurisprudence is prevalent are just as hostile to radical reform by peaceable methods as are those that embrace positivism. All prefer their own survival to even the highest interests of dissident groups, whatever their grounds for dissent may be. Thus, the two great systems of jurisprudence, dominant in western thought since antiquity, arrive at much the same conclusions on the necessity for the use of force—both require it.

III

LAW WITHOUT FORCE: CONTROL

Are civil disobedience and conscientious objection to war the heralding of a new system of ordering of human relations without force? To the extent that specific acts of civil disobedience gain recognition under existing legal regimes they cease to be "disobedient." For example, in the United States conscientious objection to war has almost, but not quite, achieved this status of recognition or has had recognition thrust upon it. These highly specialized forms of resistance to existing law seem either to become sanitized as amendments to the ordinary legal regime or else they are quickly crushed.

With their immense power, non-violent mass movements pose a real threat to the continued existence of the legal regimes they oppose. Existentially, however, they are a countervailing force. Like the difference between misfeasance and non-feasance in the law of torts, each tends to resemble its opposite. The objective of nonviolent political programs is not non-violence itself but, rather, some ulterior purpose. To the extent that this purpose is not adequately served by non-violence, non-violence is perceived to be merely a strategy, to be abandoned when other means promise a greater pay-off.
Is a full system of law without force even conceivable, or does the mind of western man simply refuse to entertain the idea? I mean a practical working legal regime for a sizable state. Many so-called primitive communities have flourished under what appear to be such systems of law without force. But they tend to disintegrate or to degenerate upon contact with warlike cultures, although some of them, for instance, certain of the Pueblo communities of the Southwest, are remarkably tenacious.

The history of western culture is steeped in the traditions of warfare. Neither religion nor law has ever been called upon to exert social control over any sizable political community in the West that did not conceive itself as a system of organized force. War has been taken to be not only the inevitable fate of man but also his greatest glory. It is fair to say that law has never had a chance to show what it could do without a system of force. If force is its very nature, then law without force is a contradiction in terms. But is this so? Suppose western man, deeply disenchanted with the glories of war and strongly suspicious that his legal regimes as now constituted exacerbate the human tendency to acrimonious dispute, really should call upon law to prove itself a viable alternative to internal and external fighting?

Traditional theories of jurisprudence are not equipped for this task. Positivism believes that force is the nature of law and natural law believes that justice must be enforced. Historical jurisprudence knows only a succession of regimes based on enforced custom. Sociological jurisprudence sees only conflict of interests. If law's task as viewed by all these systems of jurisprudence is the forcible ordering of society, then law is, paradoxically, a monumental failure, for force destroys order. The paradox demands explication. Law in fact does achieve order in much of the massively complex interrelations of human society, but perhaps this is accomplished not because of force but in spite of it. Perhaps order is the very antithesis of force.

6. Over the centuries, tort law moves steadily from the idea of punishment to the ideal of compensation. See Samuel I. Shuman's call for a society without criminal law; one utilizing the more humane and, he feels, more efficacious sanctions of tort law. Shuman, The Place of Punishment in the Struggle Between Security and Justice, GEDÄCHTNISSCHRIFT FÜR GUSTAV RADBRUCH 151 (A. Kaufmann ed. 1969).

7. Little is known of the mysterious turn of events by which the churches of the western world gave up the political instrument of war and the prosecutor's and judge's role in matters deemed religious. It would be naive to imagine that the churches surrendered their weapons willingly; rather, it seems truer to history to see their forced spiritualization as a result of a long series of defeats by the secular arm. For religions violence is endemic in the churches even today. Still, force is no longer a regularized aspect of their mode of social control and there is no doubt that they have advanced spiritually at least in this regard. The churches are to be envied for their good luck.
Military strategy holds that warlike strength should take the form of a show of force only, with armament, if possible, never to be used. Folk wisdom, however, is otherwise, believing that if guns are handy, they go off by themselves. Relying on military strategy, our leaders, most of whom are law-trained, play the game of nuclear overkill, a show of force, as a mode of diplomacy—an attempt at world order through omnipotent force. But will the nuclear guns not go off? A learned and experienced game theorist calls this practice of gaming with human survival immoral, stopping just short of calling it insane. The moral philosopher might point out the inherent immorality of risking the innocent lives of all nonhuman mammals on Earth, even assuming that the human species is privileged to bring about its own extinction.

Is it too late to reverse the apparent determination of mankind to universalize civil war? Perhaps it is too late. Even in our country elaborate plans for dealing with mass riots are in existence and whole classes of citizens, under the guise of security forces, are being trained to wage war on dissenters. The garrison state, so feared by Harold Lasswell, is rapidly coming into being. “Security” is big business. Force of law is big business.

But it may not be too late for law to take a modest stand against this maniacal proliferation of force, even that force wielded in the name of law. Could not our jurisprudentialists boldly assert that force and law are basically and essentially incompatible—that force is law’s pathology, as much like law as illness is like health and death is like life? It would be a serious error to assume that mere theory can do nothing to stop the avalanche of force generated to cope with the malaise of the modern world.

Ideas are deadlier than weapons, more practical than guns or butter. Ideas rule the world, said the philosopher Hegel. Do we believe it? If so, let us think; at first, practically. Only a tiny fraction of our law, even at present, needs force. Contract affords a good example. I have entered into a myriad of contractual relations in my time: countless purchases, infinite numbers of bus rides, taxi trips, train, ship and

9. Friedman, Civil Disorder and Mass Arrest (pts. 1-2), 75 CASE & COM. No. 5, at 20, No. 6, at 12 (1970). In the introduction to the second part of the article, the editors noted that Mr. Friedman explained that only by advance contingency planning for the administration of justice during civil disorder and mass arrest can a community develop the specialized techniques necessary to insure the successful prosecution of persons guilty of lawless conduct, while at the same time insuring the protection of individual rights. Since Mr. Friedman is in fact calling for civil war, the rhetoric of the military would be more appropriate to his purpose than that of law.
plane voyages. I have walked into restaurants innumerable and dealt with an indefinitely large number of legal relations involving real and personal property, sales, bailments. I have been a trespasser countlessly often, a tolerated intruder, a licensee, a social guest, a business invitee. I have used and cursed a myriad of defective products, and suffered interminably from badly performed services. I have leased and let leases, bought chattels that might extend from Maine to California if placed end to end (and I have often wished they were). And I have never sued nor been sued in my life! And most of the people I know have not either, and neither have their friends. All of this I have experienced as a regime of law. Yet where was and is the force? One could say in reply, that it is latent or virtual, that it is there without our noticing it, an omnipotent force compelling obedience. In this view, the billions of interpersonal transactions that take the form of contract owe their "legality" to the fact that an infinitesimal fraction of them are enforced. The enforcer is Justice Holmes' sheriff who stands brooding ominously behind all of our contractual obligations. But surely this "enforcer" is a spook. Realistic jurisprudence should convict the realist Holmes of rank metaphysical speculation.

Logical positivism fares no better. It claims to be a science, and states that one of the chief tenets of this science is that law is force. In effect this is a scientific law for law. This scientific law cannot be tested. Any attempt to prove it would be catastrophic. So it is merely assumed, and since the assumption is false in the overwhelming majority of cases, why not assume its contradictory, namely, that a contract is not intended to be "enforced"? This would be so nearly in accord with the facts that one might presume that a scientific jurisprudence would adopt it as a matter of course.

A legal conception which is in vigorous use but which has little relation to reality is often called a legal fiction. We have much rank growth of this kind in the law. An instance of legal fiction that the Supreme Court of California recently rejected is the doctrine of implied warranty in the law of products liability. Another that still has a firm hold in the law of contracts is the doctrine of consideration. Roscoe Pound used to say that consideration is as much a matter of form as is seal. When anything whatever will do as consideration, is it not proper to say that "nothing" will do just as well? This would then lead to an analysis of the social policies that are in fact exemplified in the handful of cases critically involving consideration or seal. The idea that consideration is an essential element of every contract is preposterous.

I think that the notion that all contractual agreements depend upon

force is just such a fiction. At one time the Roman law proclaimed that the law of obligation rested on the right of the creditor to claim the body of the debtor upon default. In the case of multiple creditors, each took his proportionate share of the debtor's body. Can anyone imagine that the vast business of the Roman economy really depended on this gruesome species of force? In the common law, it was thought that our own law of obligation had to be enforced by imprisonment of the body of the debtor, a notion that is now vanished. What then is the nature of the "force" that is left? Any resemblance to physical force has all but disappeared. At present it would be more realistic to say that remedies for breach of contract may entail loss distribution. If one should nevertheless insist that such loss distribution necessarily implies the idea of force, I should have to admit that since the requirement of force is a metaphysical principle no demonstration of its inapplicability in fact can disprove it. A contrary or competing principle is needed, and one will be offered later. But before entering upon this task, we must examine the doctrine of force as it applies to the law of crimes, for the terms "law" and "force" are thought to be virtually synonymous in the criminal law.

I think positivists must rest their case on the criminal law, since elsewhere, it is as weak as water. But the criminal law is force, often naked force, or rather, war—civil war between us "good people" and the countless criminals that prey upon us. The bite of positivism sinks deepest when the criminal law is up for consideration. No one doubts that regardless of its ultimate aim, whether vengeance, social self-preservation, or rehabilitation, its means is force, always and everywhere. But it is time that we begin to use the correct name for what is called the "Criminal Law." It is civil war. Our country, at least our centers of culture, the big cities, are the scene of a civil war. I estimate that about one-quarter of the adult male black population of the city of Newark is "criminal." These men are not citizens, they are enemies. Armies of police, prosecutors, judges and security officers wage relentless war against them and others of our declassed citizens. This is not race warfare, even though its heaviest incidence falls on our black people, for they are vastly outnumbered by the criminal whites. Suppose we call them all enemies, give them belligerent status, and formally recognize the defacto war that is going on? Then law can emerge with the status it usually assumes in time of war, which is that it is in abeyance. It preserves itself free from the stigma of war and is ready to assume its course when the warring factions exhaust themselves. This notion of the criminal law suits me, for I resent bitterly the common assumption that what happens to criminals is "law." I agree that it is force, but I deny that it is law.

Let all the schools of jurisprudence try to imagine what "law with-
out force" would be like, including the criminal law. Professor Herbert Packer sounds an alarm against the proliferating use of the criminal sanction to achieve all kinds of social ends for which it is ill-fitted. I accept these limitations gratefully and am led to wonder what Professor Packer would do with the "thought experiment" of a criminal law without criminal sanctions at all. Although reaffirming his faith in the residual necessity for the criminal sanction by concluding that "the criminal sanction is at once the prime guarantor and prime threatener of human freedom," Professor Packer uses his learning and insight into the nature of the criminal sanction mainly to show how much it really does threaten human freedom, especially in freedom's higher aspirations. Perhaps implicit in this noted criminalist's views on the limits of the criminal sanction is the inference that there might be so little of it left that we could safely conclude that in thought at least it had disappeared.

I suggest that legal positivism join hands with what Jerome Frank first called "experimental jurisprudence" to sketch out a theory of law in which law is not force but control, the necessary control that social science must have if it is to be truly scientific. I see no reason

12. Id. at 23.
13. Id. at 366.
14. I should like to call attention to a recent article by Professor John Griffiths proposing an alternative to Professor Packer's view that the criminal sanction is cast in one of two contrasting models, that is, either the "Crime Control Model" or the "Due Process Model." Griffiths, Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process, 80 Yale L.J. 359 (1970). The third model is called "The Family Model" and is intended to supplant both of Professor Packer's models, which are called "The Battle Model." I welcome the idea of thought constructs that are alternative to the model of the criminal sanction as war. But the notion of using the human family as a methodological root metaphor in opposition to a "Battle Model" is disturbing to me. I am at a loss to understand how the manner in which the members of the human family treat one another is, overall, any better than society's current treatment of the criminal. If Professor Griffiths had set out to show that the "Family Model" is a prototype of warfare he would have had an easier time of it—he would have had extensive aid from psychoanalysis. He must be aware that the especially heinous crimes are family based and that the family's most atrocious outrages are not even recognized as crimes at all. He must also know that the progress of the human family is toward disintegration to its biological nucleus not the other way about; and that family law is, if anything, in a worse state of confusion than even the criminal law. I wish he had chosen almost any other idea or institution as a heuristic instead of the most contentious one of all. Most unfortunately for me, Professor Griffiths uses force as the ultimate sanction even within the family, although for many of us family inflicted force is particularly tragic. Finally, this "Family Model" is itself a model. The good family is only to serve as paradigm. I wish I knew a "Good Family" I could trust with the use of force. Nevertheless, with all of this said, I believe that the major idea behind Professor Griffiths' work is of vast consequence for us; his difficulties with it are a measure in some sense of the great need for scholarly reinforcement from others.
why Hans Kelsen could not substitute the notion of "control" for that of "force," and thus come more nearly to a methodological realization of his ideal to make law a science.\textsuperscript{16} The scientist's "control" of his subject matter is not force. Law, I suggest to the positivist, the legal scientist par excellence, is not force either. It is control. The idea of law without force should as well be congenial to the natural law theorist. Surely it would put law on a higher moral plane than the system of force to which these thinkers now believe they are compelled to agree. And if our sociological jurists—almost all of us today—would accept the postulate that force in law is pathological, the essence of anti-law, they could be as realistic as they choose in adjusting law in the books to law in life. What they could not do is to call force, law.

\textsuperscript{16} I have struggled with the philosophical and methodological difficulties in this readjustment in an early article. Cowan, Experimental Jurisprudence and the "Pure Theory of Law," 12 J. PHILOS. & PHENOMENOLOGICAL RESEARCH 164 (1950). Later, the idea of the internal informal law of a small group was studied in T. Cowan, D. Strickland, and others, the Legal Structure of a Confined Microsociety (Internal Working Paper No. 34, Space Sci. Lab., Univ. of Cal., Berkeley, Aug. 1965).