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Toward a Phenomenological Approach to Law: A Treatment for the Schizophrenia of Contemporary Legal Regimes

George S. Robinson†

Very interesting! I'm glad I didn't know any of this or I might not have gone.¹

I. Fictional Underpinnings of Contemporary Travel

This casual observation could refer to innumerable practical and speculative situations which the average man encounters every day of the week. One reason for such an exclamation is the infinite maze of fictions each of man's cultures has created to facilitate the daily necessities of the world's cultural groupings, as well as the various individual fictions each person creates to ameliorate his own existence. Each facilitating fiction has its value in the comparative accuracy of sustained predictability of biotic and abiotic behavior. The conglomerate of fictions characterizing a given cultural grouping is embodied in the institution we all refer to as "the law." It is submitted that "the law" must be re-evaluated, within the guidelines set forth in the ensuing discussion, as a necessary first step in replacing the schizophrenic complexion of legal fictions with realistic and quantifiable components of the nature of man and his ecosystem.

A particularly apt and familiar example of refined horizontal layerings of legal fictions, which are inherently alien one to the other, is found in the environment of international air travel. Indeed, even domestic air travel from one remote region to another in some of the more vast political boundaries, such as Brazil, Australia, and the Soviet Union, would provide an adequate model for study. Rapid and massive contemporary air transportation as a communications medium forces the internationally-minded jurist to re-evaluate the intellectual-professional-economic characteristics of representatives of alien cultures...


¹ The views expressed herein are those of the author alone and are not intended to be attributable to any institution or organization with which he is associated.

¹ Quip by Michael Collins, former Apollo XI astronaut and presently Director of the Smithsonian Institution's Air and Space Museum, after reading several of the author's articles dealing with law and space activities.
communicating within the framework of this medium. The businessman no longer is the principal air traveler. Representatives of such diverse activities and professions as athletes, teachers, housewives, students, and skilled as well as unskilled workers, are all traveling in large numbers throughout the world. While some are on business, some are merely traveling for private reasons, and still others are resuscitating the Victorian concept of the "Grand Tour." The common thread of these travelers is that, for the most part, they will confront on a practical level — usually for comparatively short periods of time — characteristics of several cultures wholly alien to their own. For example, the parochial interests and concepts intercommunicated will be less than complete and satisfactory as the African Masai warrior leaves the sophisticated surroundings of Munich's World Olympics and returns to his remote, nomadic tribe.

Quite simply, the massive and rapid movement of people about the world is creating a supra-national culture — an economically unselective "jet set" with one foot in extremely parochial cultural institutions, and the other firmly in the schizophrenic manifestations of a very cosmopolitan international fraternity of broad views and tentative relations. One only has to be aware, during an average international flight, of the multifaceted civil and criminal legal relations established by the Chicago, Warsaw, and Tokyo Conventions, bilateral extradition treaties, the innumerable alien jurisdictions silently acquiesced in, immigrations, customs, and health regulations, to deplane at destination, gasp in awe and disbelief, and murmur "I'm glad I didn't know any of this or I might not have gone."

II. LEGAL FICTIONS V. EMPIRICISM OF NATURAL DISCIPLINES

The vast web of intricate relations among biotic and abiotic components of man's environment — man's ecosystem — ultimately dictates the shape of his cultures and their quantifiable variations. Culture,

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2. For a partially detailed discussion of this problematic area and its potential consequences, see Robinson, New Nomads — Mass Air Transportation and the Need for Juridical Institutions to Minimize Cultural Shock, 5 INT'L LAW. 452, 452-78 (1971).

3. For a statistical breakdown and description of representative characteristics of the contemporary air traveler, see Institut du Transport Aérien, The Air Traveller — A Modern Proteus, Bull. No. 4, at 75, Jan. 22, 1968. The general trend indicated by this report is an evolving pattern of mass cultural confrontations.


thus defined, is now so sophisticated in procedures and colorful trappings
that it is not only a collective response to, but also an integral com-
ponent of, the human ecosystem, such that basic biological influences
tend to inhibit intercultural integration or accommodation. This author
has previously argued that:

[A]ccommodation of alien cultures, as opposed to their attempted
integration through force, was an essential requirement for avoiding con-

Subsequently he has departed somewhat from reliance upon the accom-
modation of alien cultural contradictions as a means of avoiding con-
flict. In the present era of technology and speed, the necessary accom-
modation corollary of cultural lag cannot be relied upon to avoid
conflict. All the functional drawbacks of cultural lag are intensified
by the compounding of legal fictions, which are applied in error to
correct the problems arising from confrontations of representatives
from alien cultures. A refined aspect of this view is that the under-
lying bio-ecological dictates leading to aggressive behavior, violence,
and cultural conflict, must be redirected through interdisciplinary engi-
neering techniques. This, in turn, necessitates an evaluation of cultures
(and juridical institutions as one component of many in a given
culture) through the use of natural disciplines and within the frame-
work of an ecological methodology.

As a necessary first step, what the preceding view contemplates
is a restructuring of a good portion of legal academic curricula through-
out most of the Western world. Most law, in this writer's view, is
taught on the basis of rote — "the use of memory [usually] with little
intelligence. . . . [R]outine carried out without understanding of its
meaning or purpose." While this method is responsive to the need
for good tailors and mechanics of the law, it is not acceptable as a
means of training and cultivating creative jurisprudents. Although
this is a matter which should be explored extensively in its own right,
it is sufficient for present purposes to realize that most law is taught
by law school faculties which are unable — by training and use —
to separate juridical treatments of "law" subjects from their own
parochial, political considerations and quasi-convictions regarding uni-
versal, but very flexible, concepts of morality and ethics. For the most

7. Robinson, supra note 2, at 478.
8. See generally Robinson, NASA's Space Station and the Need for Quantifiable
Components of a Responsive Legal Regime, 6 INT'L LAW. 292 (1972).
10. For preliminary discussions about academic inadequacies in the area of train-
ing creative researchers in the origins of law and legal regimes, see Robinson,
Metalaw — Prolegomena to Quantification of Jus Naturale, 40 GEO. WASH. L. REV.
722 (1972).
part, law seems to be taught and understood as a set of shop-worn, unresponsive, and rather questionable legal positivisms which have been distorted and disfigured by individual political and theological opinions. Students of the law are left with no tangible sense of, or feeling for, their subject. Their gift at commencement is a fleeting sense of positivistic abstractions, some with Latin and Greek symbols, and others of such common nature as to obviate distinctions between the proud holder of a new law degree and any other individual with his semantically-structured view of the law and human relations in general. Small wonder that the average, and not-so-average, international and planetary traveler would view the world of the jurist as a haven for professional schizophrenics. Thus, the law graduate of today is more often than not, intellectually crippled by his law school experience.

For centuries man has looked for the common denominator in satisfactory legal relations among all geo-ethnic groupings. Consistent failure led to accentuations of the differences among such groupings, and emphasis upon the need to establish laws to protect the integrity of those differences. But few jurists, particularly in the Western World,11 looked beyond cultural variations to the real differences, i.e., the controlling physical factors leading to cultural variations. These factors are real, measureable, often tangible, capable of stimulating most senses, and — most importantly — they are universal for Earth’s ecosphere. In this discussion they are referred to as biocultural dictates intellectually articulated by man in the form of cultural manifestations.

The vast majority of law schools offer their students no more than a one-semester, two-to-three hour course dealing with the cultural origins of law, generally referred to in a rather deadening and uninspiring fashion as “legal philosophy” or “jurisprudence.” It invariably challenges the student to untangle, in as short a time as possible, the completely absurd “soul mutterings” derived from a half century or more of a given individual’s imperfectly articulated introspections. Occasionally, a rare individual will elucidate the principal issues surrounding the natural underpinnings of laws and legal regimes,12 but that truly is a rare occasion. Even the contemporary, no-nonsense,

11. Two notable exceptions were Jeremy Bentham and Roscoe Pound, the latter of whom appeared to be a biologist first, and a jurist second. The accuracy and depth of their views seem to have been constrained only by the lack of certain empirical evidence presently in the embryonic stages of quantification. See generally A. Hacker, Political Theory: Philosophy, Ideology, Science (2d ed. 1968).

12. The obvious example is Lon L. Fuller who prepared the provocative fictional inquiry that has delighted all recent law students. Fuller, The Case of the Speluncean Explorers — In the Supreme Court of New Garth, 4300, in Landmarks of Law 59 (R. Henson ed. 1960).
seek-tangible-truth, law student, when demanding drastic curriculum reform "to deal with the inefficiency and non-responsiveness of the legal and judicial systems," is really not asking for a restructuring permitting analysis of the generation of legal institutions, but rather is asking for the addition of consumer-protection law, community law, ghetto-relevant law, and other similar courses. This, it is submitted, is a reaction confined to lesions. It is not the sacrifice necessary to tear apart, study, evaluate, and design corrective procedures. The maze of the cultural surface is barely scratched — there is no breakthrough to the underlying causal mechanics. The "relevant-minded" law student is really saying:

We do not want to sit around like sheep and be led into the big corporations. We all do not know what we want to do when we get out of law school, but we do not want to end up as the quasitraditional movement lawyer.13

And so, the fictions of law are pyramided and perpetuated.

III. LONG-DURATION SPACE ACTIVITIES — ANALYSIS OF A JURIDICAL MICRO COSM FROM AN EXISTENTIAL POSTURE

Today, long-duration manned space flights under extreme stress are a reality. Exceedingly long-duration space flights in manned orbiting space stations are close to becoming a reality. In view of the recent United States—U.S.S.R space station accord,14 space station participants in the very foreseeable future are apt to be representatives of alien cultures, different races, and both sexes. This is one environment in which legal fictions cannot be relied on, even for short periods of time. The overall Earth/space operational environment, is too alien and synthetically oriented to permit reliance on untested and unquantified fictions. Such reliance would lead to a broad-scale failure in much the same manner as tradition legal fictions have failed on Earth.15

15. A very delightful summation of this view appears in Gordon, Old Orthodoxies Amid New Experiences: The South West Africa (Namibia) Litigation and the Uncertain Jurisprudence of the International Court of Justice, 1 Denver J. Int'l L. & Pol. 65, 92 (1971): However, beset by a decline in popular enchantment with international adjudication as a dispute settlement modality, the judges have instead chosen to cling publicly to outworn jurisprudential banners and to accept the verity of reified concepts which, for the most part, are alienated from rational and empirical judicial analysis. Dancing to rhythms the band is no longer playing, the Court remains inelegantly out of step, its latest judgment... an attempt to vindicate old orthodoxies in the face of new experiences.
Although the National Aeronautics and Space Administration (NASA) has developed hard, practical experience in managing (1) limited resources in a synthetic life-support system, and (2) attendant relationships among participants in the manned space programs, one integral facet of these operations has not received the attention it demands — namely, the study of legal principles applicable to all biotic and abiotic components essential to effective management of the total synthetic ecosystem upon which manned space flight is dependent.

In this respect, jurisprudential "scientists/engineers" should be ripe for the opportunity to view and evaluate the interactions of man in a totally controlled environment, and to develop responsive juridical institutions accordingly. Without question, it will be difficult for them to refrain from extending the usual anthropocentric legal positivisms into the new and unusual arena of man-in-space.

Why should we search for the underlying, universal precipitants of legal principles in a bizarre, remote, synthetic, continuously experimental, limited, and constrained, orbiting space station? The rather fundamental and somewhat pristine response is that comparative methodology of the extremes is the most fruitful for creating a quantifiable and effective understanding of our Earth-indigenous legal regimes. Realistic perspective often can be attained by temporarily avoiding direct confrontation with seemingly insurmountable, complex problems, and drawing applicable parallels from peripheral, but unique and creative, constructs. A space station and shuttle transport system with international participants provides a microcosm of a transnational ecotone society\(^6\) in laboratory conditions under which every physiological, psychopathalogical, morphological, and like requirements of each participating individual is measured with precision. The principal liability in this approach is that it requires a team of universally cosmopolitan and well-disciplined minds, capable of grasping the essence of these disciplines at any given time in the evaluation of a phenomenon, or of interrelated phenomena, and then formulating a resolution of an attendant problem.

As a methodology, we need to study anthropocentric legal regimes in an environment alien to our genetic coding, as in man's protracted space activities as influenced by synthetic life-support systems. Hence, there is the need to postulate responsive legal regimes

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16. A social grouping of this nature might be referred to as an "ecotone society." If one accepts the view that cultures are intellectually articulated responses to, or manifestations of, bio-ecological dictates, then it might be said that adjacent alien cultural groupings are separated by a buffer zone, much in the same manner as the buffer zone of mutual accommodation between two or more biotic provinces. This inter-ecosystem zone of tension is referred to as an "ecotone."
based upon analysis through practical and theoretical physics. In this methodology, quantification of sensed or perceived phenomena provides the absolutely essential tool for reasoned speculation. To postulate or develop a measurable legal system which is responsive to the realities of physical laws — or alternatively, a truly effective *jus naturale*, man must leave his innumerable and unstable senses of ethic and morality to the realm of individual motivation, and evaluate his self/social-preservation requirements within the context of all biotic and abiotic influences of, at a minimum, his immediate ecosystem.

It may be helpful at this point if a brief review is made of the type of biocultural studies and evaluations that must be made to (1) ensure total understanding of the relationships in a space station society, and (2) anticipate the most appropriate, effective, and responsive biocultural engineering techniques to be applied to such a society. In 1966, in a symposium sponsored by NASA to discuss the effects of confinement on long-duration, manned space flights, seven of the major problem areas deemed likely to arise in establishing the psychological and engineering requirements necessary for the type of environment envisioned for long-duration space flights were identified as follows:

1. Failure of individuals to adjust to confinement in isolation.
2. Unsatisfactory relations between crew members.
3. Deterioration of performance of individuals and crews.
4. Failure to meet personal satisfactions of crew members.
5. Physiological impairment occasioned by exposure to the space environment.
6. Inadequate mission simulation.
7. Space equipment improperly designed for long missions.

Definition of these major areas has been refined to some degree by the observation that five factors will command the societal relationships of a space crew: (1) crew size, (2) crew composition,
(3) use of leisure time, (4) protecting the right to be different, and (5) optimal organizational considerations. It can be seen rather easily that these factors can be studied in terms of the biological sciences, as well as in the form of legal principles. Some of the broad biological subheadings involved in the methodology of study are: (1) pecking order, (2) status leveling, (3) xenophobic attitudes, (4) sensory deprivation and violence, and (5) violence as a congenital dictate and acceptable principle of group behavior.

IV. ARE THE BIOLOGICAL SCIENCES THE PROPER FOUNDATIONS FOR UNDERSTANDING THE ORIGIN OF CULTURES GENERALLY, AND LEGAL INSTITUTIONS SPECIFICALLY?

Morality or ethics or theology is not the cause of culture, but an integral manifestation thereof. A productive laboratory for the most objective observation and evaluation of the true precipitant causes of cultural institutions is the space station or other long-duration manned space probes. At this point, it is timely to discuss why culture — specifically, evolved laws of a culture — has its roots in bio-ecological origins. Much of the basis for this view is still at an unacceptable level of quantification and empirical verification. On the other hand, enough such verification is available to indicate strongly that the cultures of *homo sapiens* derive their forms and contents from genetic coding and the type of nurturing permitted them in a particular environment. For this we have a certain amount of parallel bio-data from experimentation with, and observations of, the taxonomic sub-species. Dr. S. Dillon Ripley, Secretary of the Smithsonian Institution, has quite properly emphasized:

> [C]omparisons most often made to human societies from the findings of behavioral biology have been the intriguing ones, not necessarily those that are valid. The breadth of the implications of discoveries of animal behavior is recognized by all, but the manner of applying them to specific human situations is con-

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20. These five major areas were established by the Institute for Creative Studies, Washington, D.C., and were discussed in the report of a study undertaken for NASA. *National Aeronautics and Space Administration, Long-Duration Manned Space Missions — Certain Non-Engineering Aspects* (1970).

21. This writer makes no attempt, herein, to resolve the issue of "nature" versus "nurture," bitterly debated for so long by the hereditarians on the one side, and the cultural environmentalists on the other. Neither genetics nor the environment has independent significance, either biologically or within the context of the learning processes. The only facet of the issue which has functional significance, both in the natural disciplines and juridically, is the controlling fabric of interdependent relationships between nature and nurture.
tested everywhere. It was in just this way that social Darwinism accumulated destructive legacies for our century.\textsuperscript{22}

As a general caveat, Dr. Ripley's observation is quite good. However, it must be kept in mind that Darwin's data and the resultant theories which evolved are not the causal factors of the "accumulated destructive legacies." Scientific data and knowledge are always at a relative level, always inchoate. Social or political perversions of data are, for the most part, the designed consequences of political, economic, theological, moral, or ethical parochialisms which may be traced to very definite and measurable bio-ecological dictates, once the intellectual articulation of moral and ethical values is rejected as inappropriate to our scientific methodology.

Trite or obsolete polemics too often have the tendency to raise man above and beyond the reach of his biological origins — to isolate man's tremendous cerebral imaging and reasoning capabilities by disregarding the integral and sophisticated interdependence of abstract thought and the morphophysiology that serves as, and in support of, an extremely sensitive data-sensing station. Representatives of the natural science disciplines and the exacting "science of law" must not be frightened into abandoning the rigors of true scientific methodology by the terrorism of contemporary polemics and irrational indictments.

The use of comparative anatomy and social behavior in the non-human zoological species, for conducting objective investigations into the nature of man and the cultural manifestations responding to that nature, is essential. Further, it helps man to view his biological nature and cultural characteristics from as close to a non-anthropocentric view as possible.\textsuperscript{23} The majority of scientists in the various subdisciplines of behavioral biology probably agree that culture is "not an appropriate word to use in regard to animal societies."\textsuperscript{24} Dr. Ripley is inclined to agree, but only to the extent that culture "is a human word drawn from our own vocabulary . . . [and] it may be . . . too overlain with our own prejudices."\textsuperscript{25} In confirmation of this writer's own firm beliefs, Dr. Ripley appears to share a concern that anthropocentrically oriented definitions of sentiency and

\textsuperscript{22} Ripley, Preface to MAN AND BEAST: COMPARATIVE SOCIAL BEHAVIOR at 5-6 (J. Eisenberg & W. Dillon eds. 1971) [hereinafter referred to as MAN AND BEAST].

\textsuperscript{23} The advantage of this approach can be seen in the recognition of certain of the cetaceans (particularly porpoises) as intelligent, even according to anthropocentric standards and value-forming processes. For a discussion of this non-anthropocentric posture for studying man, in his individual as well as societal capacity, see Robinson, supra note 10, at 710.

\textsuperscript{24} Ripley, supra note 22, at 9.

\textsuperscript{25} Id. at 10.
culture are disintegrating with still further discoveries in the language of animal species, such as vocal dynamics being discovered in the unexpected range and variety of bird song and the sophisticated vocalizations and "cultural" activities of certain of the cetaceans. "We may be in the presence of a kind of language for which our own experience and habits of thought may not be prepared." Of course, all the legal institutions of the world's cultures are, by definition, anthropocentrically derived and oriented. Mankind is now only beginning to sense that "intelligence" assumes many alien forms on Earth and that the classical anthropocentric criteria and definitions of that distinguishing characteristic are no longer to be considered exclusive. Obviously, it is very difficult for man to associate both his intellectual and biological traits with the behavioral characteristics of the phylogenetically lower (more accurately described as "alien") orders of animals. The difficulty very likely has its roots in the much articulated view:

> [O]vertly at least, humans differ from other animals in the possession of [an abstract] language and in the evolution through language with social dynamics, introspective thinking, and patterns of behavior which having long since evolved through language, now overlie and subordinate instinctive behavior.

The issue to be studied, then, is not the nature of symbolic language and abstract conceptualization; rather, it is the degree of sophistication and complexity of the interrelationship between man and his total eco-system which those genetically derived assets have created. Herein lies the common thread consisting of universal factors dictating man's multitude of varied cultural laws.

## V. The Empirical "Implication"

Rather extensive studies are being made in the area of biochemical changes that precipitate the "emotions" of fear, anxiety, anger, and guilt. In the area of applied medical research, equal effort is

26. Id.

27. Id. at 9. It is interesting to note that the most highly evolved and sophisticated facet of human communication is neither verbal nor written; rather, it is the "silent language" in which gesture, facial expression, social spacing, fashion, timing, failure to speak or respond, and like devices, offer a subtle and extensive, in-depth form of communication. Except for the necessary speed for communicating symbols of technology, refinement of the "silent language" could well be the methodology for international and/or culturally-alien space crews. It should be recalled that this long has been the principal means of communicating the basic biological and societal requisites of many subhuman animal species. See E. Lenneberg, Biological Foundations of Language (1967). See also Wilson, Chemical Communication Within Animal Species, in Chemical Ecology 133 (A. Sondheimer & B. Simeone eds. 1970).
being put into the other end of the problem, i.e., how to restore a state of proper biochemical balance and, hence, emotional stability or normalcy. Glen McBride, and others, have worked to show that caste organization in the social groupings of lower animals is a response to the workings of the endocrine system, or what he refers to as the "hormone environment." Furthermore, in the smaller behavioral unit of societal roles, there appear to be biochemical changes attendant to behavior expressing such roles; for example, fear results when:

[D]eviation in external context has produced an internal state expressing the deviation, and the animals move to reduce their internal deviation by removing the external disturbance. The common strategy is for the group to gather tightly or flee.

McBride continues by observing that there is an electrochemical basis for the organization and expression of these behavior units. The "electrical system" initiates, modifies, and terminates the overall chemical state of an organism; it probably controls the "intensity and concentration of the chemical organizers" as well. To confirm the conclusions of direct observation and experimentation, weakened by empirical gaps, McBride reasons inversely from the behavioral manifestations:

We sense these internal conditions and name them as the emotions of fear, anger, anxiety, guilt, and so on. We know very little about the [biochemical] organization of emotions, yet we have methods of reducing their intensity: negative feedback mechanisms which restore the equilibrium state.

After briefly reviewing the evidence of biochemistry (not simply neurophysiology) as the basis of emotions, with the long-range im-

28. McBride defined society in its simplest form as "a non-random distribution of animals in space, arising from the spacing behavior of animals to neighbors rather than from discontinuities in the physical environment." For a full discussion of this definition, see McBride, Society Evolution, in 1 PROCEEDINGS OF THE ECOLOGICAL SOCIETY OF AUSTRALIA 1-13 (1966). "Society" is also defined by relying on man's unique capacity to communicate, and subsequently to act in concert, through the use of abstract conceptualization and symbolics: "An association or company of persons... united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose." BLACK'S LAW DICTIONARY 1562 (rev. 4th ed. 1968) (emphasis added). The only apparent functional difference between the two definitions is the objective of a common purpose. However, the first definition appears to assume a common purpose in spacing, with the additional assumption of direction by genetic coding. Since various lower orders of animals can communicate, by mutual consent, for the purpose of learning, deliberating, and determining a common course of action, we see that there really is no inherent, substantive difference in these definitions, but only a semantic difference.

30. Id. at 48.
31. Id.
plication that it serves in an almost inconceivably sophisticated way as the foundation of abstract conceptualization, McBride suggests the obvious concluding speculation — many, if not all, aspects of behavior may be genetically coded, "and in this form . . . transmitted automatically from generation to generation." Further, the real problem of applying observations of genetically coded behavior in the lower primates to man is the need to account for the evolution of learning. McBride states that a new and very complex system of coding behavior was required:

[It had to retain] only behavior reinforced positively, avoiding that reinforced negatively. . . . Yet the ability to code behavior could not become a new genetic system until the routine transmission of behavior in regular patterns could evolve.35

After this had occurred, selective coding and uniform transmission of behavioral patterns "became a new inheritance system itself coded in the genotype and evolved by natural selection." This system is referred to, generally, as cultural genetics.35 While it is only one among several theories, partially validated empirically, it is not intended to account for the sophisticated learning processes of man that lead to his apparently unique capacity to conceptualize abstractly, e.g., to rationalize the "higher law" controlling the evolution of man's more mundane legal positivisms. That is much too remote a conclusion — indeed, speculation — to accommodate the present void between hypothesis and quantifiable conclusion. However, it should be emphatically recalled at this point that the principal objective of connecting bio-ecological dictates with behavioral manifestations and cultural characteristics is to provide a certain amount of behavior pattern predictability for structuring accurately responsive legal regimes. Such regimes are necessary to correct unacceptable imbalances in societal behavior, or provide a sanctioned framework in which the maximum societally beneficial, biological demands can be satisfied.

The two basic behavior modes, with both genetic and environmental roots, are (1) violent and aggressive characteristics and (2)

32. Id. at 51.
33. Id.
34. Id.
35. For that dichotomous branch of cultural genetics dealing with the influence of neurological evolution on behavior patterns, see Plogg, Neurological Aspects in Social Behavior, in MAN AND BEAST, supra note 22, at 94-125. For a discussion of the biological foundations of the more subjective behavior traits, see Hamilton, Selection of Selfish and Altruistic Behavior in Some Extreme Models, in MAN AND BEAST, supra note 22, at 57-91, wherein it is posited that altruistic and selfish behavior patterns are of genetic derivation for the purpose of population or societal (as opposed to individual) preservation. Further, that spite, if of mutant derivation, leads to termination of a species.
manifestations of societal cooperation. These two modes are precisely what legal regimes are designed to accommodate (aggression) and encourage (cooperation). Some biologists believe that aggression and violence show characteristics of neurological control equatable with man's basic drives — thirst, hunger, and sex. For this reason, "aggressive behavior may have an appetitive phase where the organism actually seeks out an object to fight." Of course, there are scientific views to the contrary which place emphasis on early experience and conditioning as the origin of aggressive behavior, suggesting that "an organism can be conditioned to fight and positively reinforced by winning." The extent of the physiological basis of aggression is in dispute. Although these views are based on empirical observations of non-human species, it should be re-emphasized that the caveat is not to avoid comparison of behavior patterns; rather, it is to avoid being "too rash in extending the results from the study of one species to another."

The second basic mode — cooperation — usually occurs within the framework of shared societal norms. Cooperation might be defined readily as "the collaborative behavior of two or more . . . [organisms] in the production of some common behavioral effect." As in the definition of "society", the concerted behavior is usually directed toward some goal of common interest. Although, to date, we have

37. Eisenberg, Introduction to Part II of Man and Beast, supra note 22, at 131. Competition should not be confused with aggression, although the two occasionally can be interdependent operants. Intra- and inter-species competition generally are considered to result from population density with respect to availability of necessary resources, such as sex, food, and space.
38. Id.
39. The work of J.H. Crook in animal cooperation, for example, has emphasized principally the biological and pattern characteristics of the primates. See Crook, Cooperation in Primates, 58 Eugenics Rev. 63-70 (1966); The Socio-ecology of Primates, in The Social Life of Birds and Mammals (J. Crook ed. 1970). See also Crook, Sources of Cooperation in Animals and Man, in Man and Beast, supra note 22, at 235-60. Obviously, the rationale is that man must turn to his primate heritage for the more accurate homologies dealing with behavior. However, as Eisenberg has quite appropriately observed:
[1] It is prudent to bear in mind that many of the emergent mechanisms one can discern in the primates have developed in a parallel fashion if not in a homologous fashion within other related mammalian taxa. . . .

Knowledge of the existence of functionally similar behavioral mechanisms within mammalian societies other than these primates is fundamental to an understanding of social evolution. Only when mechanisms for spacing, promoting cohesion, bonding, and cooperation have been defined for many species can we meaningfully examine the questions of homology with respect to physiological substrates. Much confusion concerning the biological bases for so-called "drives" can be dispelled only if we continue to study and infer within a broadly based series of comparisons.

See Eisenberg, supra note 37, at 137-38.
40. Crook, Sources of Cooperation in Animals and Man, in Man and Beast, supra note 22, at 238.
no means whereby lower orders of animals can be asked their reasons for a given behavioral characteristic, "the past history of an organism and the environmental context may allow us to infer something regarding its motivation." For that matter, most men are incapable of meaningful articulation of those measurable reasons for certain facets of their own conduct. The evolution of cooperation as a consistent behavior pattern involved both genetic and environmental nurturing, "adaptive rather than merely homeostatic and responsive rather than autonomic, Lamarckian as well as Darwinian." Separation and isolation of individual members of a social grouping is insufficient to study and determine both the individual and social natures of such members. Reductionism simply is inadequate to understand evolution of group processes. Inferences from comparative anatomy, physiology, and behavior, and then employment of an empirical ecological methodology are necessary to quantify the bases of man's behavior patterns.

In summarizing the role of cooperation in comparative behavior patterns, J. H. Crook observed that both *homo sapiens* and simians cooperate better when closely identified with the needs of the group of which he considers himself a member:

Men, like monkeys . . . are socially mobile, and may change the frame of reference of their activities from a narrow sectarian concern to broader issues of wider significance. An understanding of the forces controlling the maintenance of social position in relation to human needs in terms of identity, in group membership, self-esteem, and compassionate empathy would much improve our chances of social control.

Although only a few examples of verifiable lower animal behavior patterns validly applicable to man have been touched upon herein, there are a multitude of even more "frightening" similarities. The frightening aspect arises from an appalling neglect — even designed avoidance — of man's biological roots by social scientists. The fact is, we have not progressed very far from the "great revelations" wrought by the famous Scopes monkey trial.

41. *Id.* at 239.
42. *Id.*
43. As with man, cooperation can be ensured in the lower primate groups through social control of individual behavior. In this respect, see Gartlan, *Structure and Function in Primate Society*; *Folia Primatologica* (Switzerland) 89-120 (1968). See also Crook & Butterfield, *Gender Role in the Social System of Quelea*, 16 Animal Behavior 370-84 (1970).
44. In this respect, see M. SHERIF & C. SHERIF, *Groups in Harmony and Tension* (1956).
45. Crook, *supra* note 40, at 256.
VI. Biological Foundations of "Anthroposentiency" — Sufficiently Unique to Remove Man's Juridical Institutions from Bio-Ecological Dictates?

To determine whether it is proper to pursue the empirical data, and consequent lessons, afforded by natural disciplines as the path to the universal thread common to all cultures and superficially alien legal regimes, it is necessary first to resolve the state of uniqueness of man’s intellectual perceptiveness. The question can be framed simply: are the behavioral attributes which characterize man unique to him? In the alternative, as posed by Eisenberg:

If not unique, do all of man's behavioral attributes have a continuity in the past and, in an evolutionary sense, are the well springs for man’s behavior tied to physiological mechanisms which are indeed homologous to those mechanisms that can be discerned in other animals?46

There are representative scientists who believe that man's predisposition to learn or perceive is an inherited characteristic and that cerebral physiology accommodates certain learning patterns usually manifested at critical stages in biological development. The interesting aspect of this view is that culture — the consummate aggregate of learning patterns and conceptualization — has a reverse influence on the morphophysiological development of its biological foundation. Concisely, symbolic communication preceded, at certain stages of neurological evolution, the development of an ever-enlarging brain in man. Ultimately, “culture became, by a feed-back process, the major selective pressure operating on humans to shape their forms of behavior and indeed their ultimate brain size.”47 If one accepts this postulate, it can be seen that not only must the relationship between the biological roots of man’s behavior patterns and his societal or group characteristics be studied; those characteristics — or culture — must be studied solely within the framework of their bio-ecological origins. Only through this methodology can the needs of alien cultures, or behavior patterns, be understood with the accuracy essential to formulate properly responsive legal principles, or, indeed, entire legal regimes.48

The greatest obstacle to legitimate contemporary analysis of human biology as the foundation of culture and its juridical components is

46. Eisenberg, Introduction to Part III of Man and Beast, supra note 22, at 265.
47. Id. at 266.
48. For an interesting treatment of the difficult problems of the origin of intuition, clearly the mode of learning or knowing most closely tied to biological, as opposed to rational, factors, see S. Langer, Mind: An Essay on Human Feeling (1967); Langer, Speculations on the Origin of Speech and its Communicative Function, 46 J.Q. Speech 121-34 (1960); Langer, The Great Shift: Instinct to Intuition, in Man and Beast, supra note 22, at 313-32.
an anthropocentric obsession with man's unique stature within Earth's biosphere. It was, and continues to be, a truly sentient attempt by man to define himself. The definition has always started from the premise that in the animal world, man is unique — not simply different — from other animals. Since man is allegedly catholic in his uniqueness and not just different from the "lower" orders of animals, the search for a definable substance of that uniqueness has never seriously incorporated the total fabric of man's biological origins. Only recently has the colonial tactic of forcefully superimposing one culture, always believed to be superior, upon another, been recognized as non-responsive and harmful. Indeed, entire alien legal systems were, and are now to a lesser degree, forced upon bioculturally insensitive societal groupings, e.g., the British in India, the French in Indo-China, or, of course, America in its treatment of the American Indian.

Culture has always been considered a phenomenon unique, or peculiar, to man. Similar and even identical characteristics in "lower" orders of animals are distinguished, for example, by reference to "social traits," notwithstanding the fact that those "traits" often render the lesser species equally as successful in their respective media, perhaps even more so than man is in his. It should be recalled that the issue of man's uniqueness is being discussed here solely within the context of its relation to similar behavior patterns in lower orders of animals. This should not be confused with the evolutionary fact that every species is unique since it is the end product of a particular path of evolution. Man's sentiency does not render him unique in the traditional sense — only biologically different. To avoid facing similarities in cultural criteria, man has incorporated into his definition of culture a reliance upon abstract symbols for communication and a capacity for an individual to satisfy the anthropocentrically-oriented criteria for intelligence, as opposed to intelligence or culture manifested only in a societal context. As observed by Robin Fox:

We get a little uneasy when told that [lower] animal communities also have "traditions" that get passed on, so we retreat into symbols . . . . Preeminent among the symbol systems is language, and when all else fails we can cling to language. "By their speech ye shall know them." 49

The more that proponents of eugenics emphasized the biological origins of human behavior, the more intensely did the politicists and

49. Fox, The Cultural Animal, in Man and Beast, supra note 22, at 278. Fox provides a rough definition of "culture," in the anthropological vernacular, as referring to "traditional modes of behaving and thinking that are passed on from one generation to another by social learning of one kind or another." Id. at 277–78.
social scientists emboil the concept in the tangled polemics of "racism." Even today, attempts to illuminate congenital biological influences on human behavior patterns are castigated both within and without the scientific community as nothing more than the dialogue of "incipient racism." The fear of such racist epithets paralyzes analysis. Contemporary social scientists suffer more than anthropologists from this aberration of scientific methodology since sociologists are taught (1) the need for direct involvement in social interactions and (2) that the need for corrective measures in societal imbalances must be predicated on existing definitions of morality and ethics. In any event, the consequence is the denial of any connection between culture and biology, even at the universal level. And so, legal principles and institutions continue to be established on foundations of contemporary, but ever-shifting, fictions, i.e., the prevailing ethic and morality.

Ever since Karl Marx predicated social behavior on economic theory and summarily dismissed the virtues of reductionist methods for determining the applicability of comparative zoological behavior patterns in understanding societal dynamics, political/legal emphasis seems to have shifted even more to fictions. Further, anthropologists such as Sir Arthur Keith were expounding the view that the human infant was a tabula rasa on which culture imprinted itself, and that the development of the various elements of culture was such that one simply never discovered a given society having a religion, but no language, or a sophisticated legal regime, but no religion, and so forth. Everywhere, one is inundated with scientific, as well as political, rhetoric that "[b]iological universals cannot explain cultural differentials." After all, everyone knows (tongue firmly in cheek) that

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50. A recent example of the perpetuation of incipient racism hiding under the heading of "Pure Science," is William Shockley, of Nobel fame. Apparently, his scientific methodology in the discipline of electronics is not applicable to the field of genetics where his "expertise" is less well known. See Rogers, Brave New William Shockley, ESQUIRE, Jan. 1973, at 130. In this respect, B. F. Skinner also has suffered his share of professional and personal attacks for the eccentricity of his methodology in the discipline of psychology. See B. Skinner, Beyond Freedom and Dignity (1971); R. Evans, B.F. Skinner: The Man and His Ideas (1968).

51. See generally Karl Marx: Economy, Class, & Social Revolution (J. Jordan ed. 1971). For discussions more directly related to the present context, see Marx and Engels: Selections from Their Writings on Thomas Robert Malthus (R. Meek ed. & transl. 1953).


53. Fox, supra note 49, at 279. Fox further explains her advocacy of a broad biological base for understanding culture:

Muslims, I was told, take off their shoes to go into church while Christians take off their laits. Now find me a biological explanation for that! I was never sure I wanted to find any kind of explanation for it. It seem to me a pretty arbitrary thing.

Id. Lionel Tiger confirmed Fox's observation that regardless of the multitude of overt symbolic variations in male group behavior, one fact stands out:

Men form themselves into associations from which they exclude women. These associations [vary in their expressed purposes] but in many of their processes they
the sophisticated variations in courtship patterns among different species of birds is the result of genetic coding, while the variations in courtship patterns among different human ethnic groupings finds its elevated origins in culture.

Perhaps the most intriguing, as well as frustrating, obstacle to overcome in connecting the biological origins of man with his cultural manifestations is the determination of the extent of influence of those origins on man's capacity to conceptualize. As should be clearly evident by now, there is no doubt in this writer's mind that man's cultural complexion — specifically, his legal institutions — are dictated by the vast permutations afforded by the interplay of genetic coding and environmental permissiveness and encouragement of those heritable capabilities. What is not necessarily constrained biologically is man's capacity to conceptualize abstractly, i.e., there is no physical limitation upon his dreams and fantasies. However, even the boundlessness of his imagination is limited in substantive articulation and manifestation to the constraints imposed by biological preservation of the organism and its species. In short, we have the kinds of cultures and societies we have because we are the kind of biological species we are. 54

If one uses the available data from physical anthropology to trace the biocultural evolution of man, within the context of the present discussion, two basic facts stand out: (1) important elements of anthropocentrically-defined cultures were evident in representatives of pre-*homo sapiens* simian troops with brain sizes significantly less than the minimal limit of 750 cc. set by Sir Arthur Keith,55 and (2) if our ancestors were to survive the rapidly changing circumstances of the Pleistocene epoch, they had to rely more on a synthesis of data from the left and right sides of their brains than did their relatively immediate predecessors, and "a premium was put on the capacity for cultural behavior."56 Long before there was a clear distinction between *homo sapiens* and the "lower" primates, our ancestors had opted (probably through a mixture of conscious determination and instinctive reaction to existing physical circumstances) for the skill, cunning, and rapid adaptation permitted by the conglomerate responses of culture as their means of survival. The success of this approach very likely are remarkably uniform. A seemingly bewildering variety of male behavior can be reduced in effect to a few [universal comparative behavior] principles once this is grasped.


54. This position is tantamount to the argument of the psychic unity of mankind, i.e., that certain basic cultural activities are stock responses of the human psyche to external pressures.

55. *See* Fox, *supra* note 49, at 278.

56. *Id.* at 291.
was rough and spotty at first. As with all selective evolution patterns, there also must have been a strong element of risk in timing and in ecological circumstances that could have made the relatively gradual reliance on culture for survival distinctly lethal in the final analysis.\textsuperscript{57}

In short, man's uniqueness is his traditional biological weakness:

\begin{quote}
[C]ulture does not in some mysterious sense represent a break with biology . . . . [I]t does not represent a triumph over nature, for such a thing is impossible; it represents an end product of a natural process.\textsuperscript{58}
\end{quote}

Based on the above discussion, man's cultural characteristics might be best expressed as deriving from a conglomerate of biological-environmental \textit{potentialities} for action, instinct, learning, and the development of habits or neurophysiological patterns subliminal to the conscious.\textsuperscript{59}

These genetic predispositions or "leanings" may be considered the results — severally and collectively — of that form of Darwinism peculiar to the human species. As noted by Fox, one aspect of this view is the capacity to study the "quasi-instinctive cultural behavior of man . . . in much the same way and by much the same methods as ethologists study the truly instinctive behavior of other animals."\textsuperscript{60}

The importance of this penultimate inclination lies in the universal behavior pattern continuities and alternatives expressed by \textit{homo sapiens}, as opposed to those of specific geo-ethnic groupings of man. In the present context, it is the bio-ecologically induced continuities and the predictable alternatives in behavior patterns which permit accurately responsive legal regimes for all men, regardless of their respective morality, ethics, geo-ethnic origin, and location at any given time.\textsuperscript{61}

\textsuperscript{57} Although the changeover for early man from principally instinct to principally culture as a means of survival was, and continues to be, an inherently risky option, it did provide for a survival technique greater than, for example, the instinct that makes the common honeybee and ant societies superior in organization and efficiency to that of man. While human cultural processes allow for a certain amount of adaptability, the instinct of the individual honeybee or ant is too rigid to accommodate rapid change.

It is questionable whether this observation is still valid if one views the total activity of a given honeybee or ant society as a culture composed of the distinct, but integrated, activities of component individuals. Likewise, an individual human can be thought of as a cultural entity composed of billions of individual cells functioning through genetically coded instinct. It is submitted that such a shift in perspective changes the import of certain biological constraints on "culture." It is this principle that is being suggested for the establishment of a creative and accurately responsive — in a biocultural sense — legal regime.

\textsuperscript{58} Fox, \textit{supra} note 49, at 291-92.

\textsuperscript{59} Id. at 292-96.

\textsuperscript{60} Id. at 295. For a good discussion of the instinct/intuition/intellect issue, see \textit{generally} N. \textit{Tinbergen}, \textit{The Study of Instinct} (1951).

\textsuperscript{61} See Jaynes \& Bressler, \textit{Evolutionary Universals, Continuities, and Alternatives}, in \textit{Man and Beast, supra} note 22, at 337-39.
Is the Cultural Genius of Man Capable of Formulating Juridical Institutions to Guide His Transnational Behavior Within Acceptable Limits of Violence?

Although application of certain conditioning techniques may be instrumental in assisting future nonviolent cross-flows of alien cultures in acutely different ecosystems, the point in time for effective mass application is quite distant. Aggression control and latent cultural antagonism are the principal juridical problems in moving individuals, as well as rather sizable groups, from a familiar and secure ethno-ecosystem through one or more distinct communities with different — perhaps intensely abrasive — biocultural allegiances, and back again. Although contemporary research is beginning to probe methods of aggression control (e.g., in addition to the Masters/Houston type of research, there is use of brain stimulation, brain lesions, hormone administration, and appropriate drugs), the state of the art vis-à-vis application to the world’s traveling public is tantamount in accuracy and responsiveness to the witchcraft of the Druids exercising the ancient rites of the Celtic priesthood. In short, reliance for successful inter-societal accommodation for the foreseeable future will remain on legal precepts. The main challenge, of course, will be the transformation of such precepts from fictional foundations to immediately responsive and flexible bio-ecological foundations. The use of norms as symbolic bases for ideal human behavior patterns must be replaced by data gathered by the methodology of existential phenomenology. Lorenz often observed that one of the principal factors for influencing acceptable manifestations of aggression — regardless of the intensity or multitude of variations — “is not to deny its existence but to accept its existence and strive to redirect aggressive impulses into group-coordinated activities and sublimates.”

Although the most dour and pragmatic of the natural discipline scientists would agree that political and legal institutions are necessary — although not devices of salvation by themselves — these institutions generally are considered secondary in nature in that they “reg-

62. For a discussion of phenomenological research in the area of mind expansion and discernment of all levels of the conscious and subconscious, see R. Masters & J. Houston, Psychedelic Art (1968); R. Masters & J. Houston, The Varieties of Psychedelic Experience (1966).
63. Id.
65. See Eisenberg, Introduction to Part IV of Man and Beast, supra note 22, at 351; See generally K. Lorenz, On Aggression (1966). See also Robinson, supra note 8, at 292-312, in which the author discusses violence as an acceptable principle of law during isolated, long-duration space flights.
ister changes of a more basic cultural character, once such changes have
gone far enough to make such registration possible.66 Despite this,
many, if not most, scientists believe that the time span in which man's
accreted critical problems of societal survival can be resolved through
changes in genetically derived behavior patterns is too short to anticipate
successful aversion of biologically catastrophic consequences. Cultural
solutions to these problems must be imposed; substantive laws and
effective sanctions must be embodied in a bio-ecologically sensitive legal
regime. It is submitted, therefore, that the real question is not whether
man has the creative genius to formulate juridical institutions to guide
his transnational behavior patterns within acceptable limits of abrasive-
ness or violence. Rather, will man remove the fictional constraints from
his behavioral patterns? Will he rely on accurate observations of the
interplay between his congenital dictates and his environment? Will
he escape the sterile, but compelling, sanctuary inherent in the observa-
tion: "If I had known all that I would not have gone!"

VIII. Conclusion

The preceding discussion has highlighted the basic problem in-
herent in the rapid movement of one or more persons from an indig-
enous ecosystem, through several alien ecosystems, and back again,
within a comparatively short time-frame. That problem, specifically,
is the conflict of alien ecosystems manifested as cultures.

It is submitted that legal positivisms are formulated to minimize
the effects — not the causes — of such conflicts. Because jurists and
legislators deal with manifestations and effects, and not with quanti-
fiable cause-and-effect relationships, the predominant tendency is to
experiment with, and search for, methods and principles that mitigate
expressions of abrasiveness and conflict. The result is the establish-
ment of a matrix of interconnected legal fictions that respond to the
symptoms and not to the etiology. For this reason, the pattern of
Western jurisprudence, at least within the framework of communica-
tion through rapid transportation, has been to develop bodies of law
having no direct contact with the total environment, which in turn has
led to the ultimate disintegration of an effective identification of that
law. The result is a corpus of schizophrenic law which suffers from
the inherent self-destruction attendant to the inability of its legal fictions
to deal with the cause of a problem after the shifting concepts of
morality and ethics have changed the symptoms.

AND BEAST, supra note 22, at 359.
If one accepts that universal human behavior patterns exist, regardless of genotypes or eco-ethnological origins, then it is necessary for the jurist to set about isolating and quantifying them with scientific methodology. It has been submitted that such behavior patterns are biochemically dictated. Further, that jurists looking for the common threads influencing behavior patterns of all mankind may well find the operation of a space station or lunar colony to be a productive microcosmic laboratory. Much research is needed in order to isolate factors of common interest as the foundation of transecosystem legal regimes. The adversary method of developing a body of conflicts of laws to deal with confrontations among alien cultures and representatives of alien ecosystems has proved to be superficial, temporary, and progressively antagonistic on a protracted basis.67

It has certainly not been the intent of this Article to arrive at definitive conclusions. Rather, a position has been taken which seriously questions the responsiveness and effectiveness of the traditional law school curriculum and teaching methodology. It also has been submitted that the mutuality of interest factor existing among all representatives of mankind, regardless of geo-ethnic origins, has its roots in bio-ecological origins. It is finally submitted that law schools ought to develop basic programs designed to interrelate law with current quantifiable knowledge deriving from the application of technology to the natural sciences, and that definitive research be undertaken, within the framework of a graduate law school curriculum, using scientific techniques to obtain a more precise understanding of basic legal mechanisms. Such programs would involve analysis and quantifiable evaluation of the natural discipline underpinnings of legal principles and/or regimes in order that the amenity of existing legal institutions to future modification could be determined and that juridically related institutions, likely to be of critical importance in the distant, but foreseeable future, could be identified.