

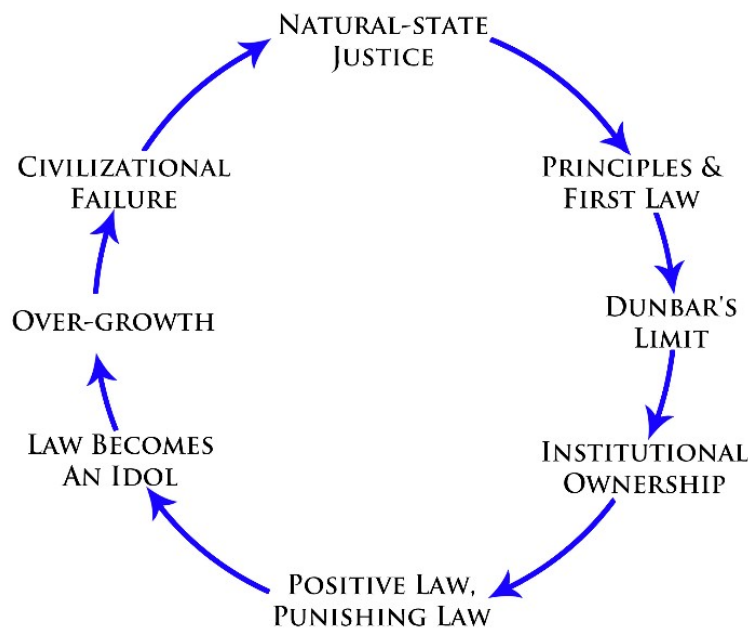
FREE-MAN'S PERSPECTIVE

How Life, Liberty & Sanity Can Win

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The Law & Its Cycle



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Modern people tend to know something of the minutia of law and of legal actions, but they generally know nothing of law's origins. Believe it or not, the origins and philosophy of law are barely even taught in law schools. They are considered unimportant.

As it happens, when the history and philosophy of law are mixed with general history and psychology, a very interesting pattern emerges, which I am calling *the cycle of law*. That cycle is shown in the graphic above. (A larger graphic is included at the end of this issue.)

It is a shame that this cycle of law is not taught, because it points to our place in the cycle, and to a very predictable outcome. The same things that drove this cycle in the past are driving it now, and, barring any fundamental changes, the outcome now will be about the same

as it has been in the past.

An other very important issue that arises in this study is a hidden secret that drives men and women to their unnatural attraction to rules and institutions. We will examine that as well.

These issues have affected millions before us and are affecting billions of us now. So, let's dig back to the central issues and get a clear view of what law is and how it cycles through human civilizations.

LAW IN THE NATURAL STATE

To properly understand law, we need to use John Locke's tool: to strip away the accumulated impositions of the centuries and to isolate the fundamental forces. We do that by looking at men in their natural state. Locke defined that natural state this way:

All men are naturally in a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man.

So, in this state, how do men begin thinking about law?

The answer is that *they don't*... at least not at first.

In the natural state, people are concerned, first of all, with simple safety, and secondly, with justice. Law, as we think of it, is not an issue at these times. For example, W.G. Sumner reports that as Greek civilization began to form, toward the end of their 400 year dark age, they lacked even a word for "law." But they did care very much about safety and justice.

As another dark age example (and you will recall that civilizations form in dark ages), here are lines from the Hebrew Bible, which were written during the same dark age period as that of the Greeks. The great concern of the age was justice, not law:

And they shall keep the way of the LORD, to do justice and judgment

Defend the poor and fatherless: do justice to the afflicted and needy.

To do justice and judgment is more acceptable to the LORD than sacrifice.

Justice, justice shalt thou pursue.

FIRST LAW

First laws are principles of conduct. They are the result of things going badly, and of men trying to assure that they don't go badly again. (Or at least that bad things should be minimized.) Sean Hastings describes the first stages of law in this way:

The things that really bother us, to the degree that we would be willing to use violence to stop them from happening, are the things that we consider illegal under a system of natural law.

The Law of Moses began with only Ten Commandments, of which four related to the Hebrews' relationship with their god, not to other men. There were only six principles of human conduct: Don't murder, don't steal, don't lie, don't covet, don't commit adultery, and honor your parents.

Even among the 613 laws of Moses that have been listed by rabbis, the vast majority relate to religious activities. The rest tend to be very basic laws such as these (all from the third book of Moses, Leviticus):

- Not to oppress the weak.
- Not to speak derogatorily of others.
- Not to take revenge.
- Not to bear a grudge.

Still others are expressions of justice, integrity and empathy, such as this one, from Deuteronomy chapter 24:

When thou gatherest the grapes of thy vineyard, thou shalt not glean it after thee; it shall be for the stranger, for the fatherless, and for the widow. And thou shalt remember that thou wast a bondman in the land of Egypt; therefore I command thee to do this thing.

DUNBAR'S LIMIT

Principles are far superior to rules, as they allow us to consider overall situations, the characteristics of the people involved, and the broader effects on others. This is a healthy method of judging.

However, there is a limit as to how many people a human mind can model and predict at the same time. An anthropologist named Robin Dunbar set this number at about 150.

Once a group of people passes a few hundred, its members cannot think richly and accurately about all those other people – their minds simply are not capable; Dunbar's limit has been passed. In these cases, we can no longer think of all other people as complete beings and must think of them as abstract, categorized 'things'.

Once this limit has been passed, we run into a new set of problems. Again, Sean Hastings describes these developments well:

Now, since different people have different ideas about what really bothers them, it seems like society might be stabilized by finding some normal average of what the people believe to be wrong. That idea is that we should write down the things that, on average, society feels so strongly about that violence will be used to stop or punish someone doing them.

This is done for two reasons. First to keep weirdly insensitive people from doing things that are, on average, considered bad, and warn them that society will object violently to these things. Second to warn weirdly sensitive people against reacting violently to a thing that, on average, society does not care enough about to prevent with violence.

While this seems like a good idea, it is where we start to lose our concept of justice, and replace it with the idea of "Law Enforcement." We stop thinking in terms of what is right and wrong, and start thinking in terms of legal and illegal. If it is written down as "illegal" it must be bad – and we know this, not because of certain results, but because of a label that has been assigned.

Goodbye Justice. Welcome your new icon, The Law.

This is really when law is born... on justice's grave.

It is crucial to remember that a law is an authorization of violence. Rather than looking at a situation and judging that violence is required – based upon the real harms being done – scribbles on a page are

taken as an authorization of violence. That cuts human reason out of the equation. This is a very dangerous thing to teach as an obligation. The thought “if it is written I must do it” replaces the richness of human consciousness with a mindless Yes/No command.

Doubtless, crossing Dunbar's limit has often been necessary, but in a better age it would be something we tried very hard to avoid.

The first people to cross Dunbar's limit come out of natural conditions, so they tend to venture into law slowly: by stating principles, by demanding a short list of rules that can be understood by everyone, and by posting the rules where they are seen by everyone.

Among others, the Twelve Tables of Roman law were of this type: Written in nearly childish words and displayed prominently at the Forum of Rome.

WHAT DRIVES THE CYCLE

You have certainly noticed that nearly all the world is fixated on rules. This is not as natural to us as you might suppose. What directly affects us are physical benefits and harms, not letters on pages. It is not natural that people should devote their energies to marks on papers more than to actual harms. But there is, of course, a reason why they do:

All of us are scarred by shame and fear during infancy and childhood. That biases us toward a fatal error, which is *to avoid the responsibilities that come with consciousness.*

Allow me to explain:

Being conscious, we see and know many things. But seeing also requires us to act. If we see a person drowning, for example, we must either act or condemn ourselves. But if we don't see it, we have nothing to feel bad about.

Seeing things that require action – but being afraid to act – causes us pain and guilt. And so, we learn to *not see...* to avoid consciousness. And, usually, we learn this at a very early age.

Rules overflow the Earth because there is a hidden trick involved: *Rules help us avoid the responsibility of seeing.*

If we delegate our judgment to a set of rules, those rules become the responsible party, not us.

The trick of evading consciousness is to set rules between our minds and the real world. And this is very easy for us to justify, so long as our set of rules has some good ideas contained within it, such as “murder is wrong.”

Following rules lets us off the hook, so far as responsibility goes. And once we get used to rules standing between us and responsibility, it is very easy for us to accept extensions of the same trick: Institutions that separate us from responsibility, and which give us fast, easy approval.

(We'll revisit this subject in future issues.)

THE CYCLE

The cycle that befalls law is a function of this flaw. Once Dunbar's limit is passed, law forms. Then, because of the fatal flaw, it runs directly into institutional ownership of the law. Once there, positive law (“you *must* do this”) and punishing law come into affect. Then, law becomes an idol, grows beyond all usefulness (aside from tyranny), and ultimately chokes its civilization to death.

For clarity, here is a list of the stages:

1. Natural-state Justice
2. Principles & First Law
3. Dunbar's Limit
4. Institutional Ownership
5. Positive Law, Punishing Law
6. Law Becomes An Idol
7. Over-growth
8. Civilizational Failure

We've already discussed the first four stages of this cycle, so let's address the last four stages:

Positive Law, Punishing Law

First laws are nearly always of a type called *negative laws*. These are “thou shalt not” statements: You shall not murder, you shall not steal, and so on.

Positive laws are the opposite: “You *must* do this, or you will be punished.” These laws arise once law has been institutionalized, and when those institutions wish to be seen as instruments of righteousness.

Punishing laws (my term) are those which enforce preferences. First laws are statements of “what we'll use violence to prevent.” Almost never do first laws authorize violence against things that people simply “don't like.” Once law is institutionalized, however, and enforced by specialists, the link between law and force is obscured. People will then authorize “the law” to punish all sorts of things that merely bother them. Prohibitions of intoxicants are prime examples: They punish people for using their bodies in ways that we simply don't like.

During times of positive and punishing law, law becomes a tool for molding the world by force. People clamor to get their hands on the operative mechanisms, and to control the world as they wish. Entire classes of people move into legal and government professions, each seeking to “make a difference” by enforcing their ideas on everyone in the system.

At such times busy-bodies, control-fetishists and imposers of shame are rewarded, while quiet producers are forced to pay for the entire operation, as their income is skimmed away through unavoidable taxation.

Furthermore, a large charity class forms and quickly becomes a class of permanent dependents. These provide moral and political support for what we can call the “positive-law class.”

By these relationships the dependent class loses their morals and their dignity. They also tend to become barbaric and dangerous, easily becoming a rioting class.

The law becomes an idol

One characteristic of positive law societies is that they major on propaganda. This is especially targeted at the quiet producers, whose unending labors are required to keep the system going. If taxes gathered from these people ever stopped coming in, the entire operation would collapse.

So, a stream of propaganda is always aimed at the producers.

During this stage of the Roman Empire there was continual talk of Roman virtues, and the noble Roman farmer. Everyone knew that the rulers were despicable, but they clung to the concept of Roman virtues and kept right on feeding a corrupt system.

In our time, we see politicians endlessly lauding the “middle class” (that is, people who work), while continually skimming away their money by a vast web of taxes. The modern middle class is financially oppressed far worse than the serfs of the middle ages, yet propaganda keeps them compliant.

At these times, law must be almost worshipped, in order to keep the tax-gathering machine working. Few people indeed would pay taxes directly to a corrupt politician, but when “obeying the law” – especially when that law is “our perfect constitution,” or “the sacred laws of our ancestors,” or “the codified genius of our people” – people accept shockingly high levels of taxation.

More than any other group, it is the constantly-bled producers who learn to see the law as if it were sacred. They speak of “the rule of law,” as if it were a magical thing; of their constitutions, as though they were sacred; as if unquestioning compliance was a duty to god himself.

These things are no accident, and they are definitely characteristics of these historical periods.

Over-growth

Arrangements like the above, however, ultimately destroy themselves. Seeing the law as sacred, merely because “we all know the law is sacred,” feeds upon itself and breaks nearly all concern for practicalities.

Once the consequences of policies fail to be a concern (because the law and the system are so wonderful that they transcend all obstacles), men will ride the system to its death in ways that future readers will see as nearly insane.

For example, one of the good sources we have from the collapse of Rome was Salvian the Presbyter. In his book *The Governance Of God* (written in about 440 A.D.), he reports:

Then, indeed, the authors of base pleasures feasted at will in most places, but all things were filled and stuffed to overflowing. Nobody thought of the State's expenses, nobody thought of the State's losses, because the cost was not felt. The State itself sought how it might squander what it was already scarcely able to acquire. The heaping up of wealth which had already exceeded its limit was overflowing even into trifling matters. But what can be said of the present-day situation? That old abundances have gone from us. The resources of former times have gone. We are already poverty-stricken, yet we do not cease to be spendthrift.

At such times debt is beyond all possibility of repayment, but institutions and individuals continue to spend money they don't have, on things they don't need, at an increasing pace. Handouts to a rapidly increasing dependent class are 'improved' continually, the producers continue to treat old virtues as if still they existed, and a thoroughly corrupt system as if it were sacred. Being immersed in the propaganda of the times, they fail to see (or wish not to see) any further than what everyone else admits to seeing.

Thus the system goes mindlessly to its destruction.

Civilizational failure

The Roman Empire is our great example of civilizational failure, because it is the nearest major failure to us in both culture and time. Also because we have better records from Rome than we do from, say, the Sumerian Empire.

The Roman system grew mindlessly into oblivion as mentioned above, and eventually reached failure. The system held, however, far longer than might have been expected. The great history and honor of Rome made the operation seem eternally legitimate in the eyes of its citizens, and even to the quiet producers who were its greatest victims.

Once, however, the producers were hit by abuse they could no longer ignore (which, sadly enough, is usually hunger), they left the game altogether. Here, again, is a report from Salvian the Presbyter:

Thus, far and wide, they migrate either to the Goths or to the Bagaudae, or to other barbarians everywhere in power; yet they do not repent of having migrated. They prefer to live as freemen under an outward form of captivity, than as captives under the appearance of liberty. Therefore, the name of Roman citizens, at one time not only greatly valued, but dearly bought, is now repudiated and fled from, and it is almost considered not only base, but even deserving of abhorrence.

This is also a time when many people became Christians, as the Christians were a non-state group of superior philosophy and morals. They had proved themselves and they had a culture that aided and praised production, instead of punishing it.

Thus began the time of devolution and reset that is now called the Dark Ages; a time when natural-state justice formed anew, as it always does.

Now, let's look at the cycle of justice as it played itself out in several cases. We've already covered the late stages of Rome, but let's jump back to their origins for further details:

THE ROMAN CYCLE

The people that would eventually begin Rome lived in a few fortified settlements during the 700s B.C. They were called *Luceres*, and they were just some of the Italic-speaking communities that had formed by the 1st millennium B.C. They were forcibly ruled by Etruscans for some time, then freed themselves in the years around 500 B.C. They rejected the idea of monarchy and setup a small republic.

Shortly thereafter, the Romans developed a set of laws called The Twelve Tables. As mentioned above, they were written in seemingly childish language, arguably even in the style of a song, and were posted prominently at the Roman Forum: the main public area. These laws were written on either bronze or ivory panels (the early historians disagree), and they were few enough to be understood and remembered by all.

These Twelve Tables were called *The Customs of The Ancestors*. That name is significant, since it shows that these laws were legitimized by common people, not by rulers or institutions.

During those early years, justice was swift, as Table I demands:

If the plaintiff and defendant do not settle their dispute, as above mentioned, let them

state their cases either in the Comitium or the Forum, by making a brief statement in the presence of the judge, between the rising of the sun and noon; and, both of them being present, let them speak so that each party may hear.

In the afternoon, let the judge grant the right to bring the action, and render his decision in the presence of the plaintiff and the defendant.

The setting of the sun shall be the extreme limit of time within which a judge must render his decision.

As 'Rome' changed from a property owner's club to a ruling institution, however, laws were added. Soon, they could be added by a variety of officials, and the number of laws multiplied. Trials became popular events, lawyers became necessary and expensive. By the time Justinian re-organized Roman law in the 6th century, it is said that his men had to go through 2,000 volumes of Roman laws.

Needless to say, the law of Rome became a tool of tyranny, not a tool for aiding production, progress and peace. Soon enough, Rome choked itself to death and collapsed; the law being a primary tool used to tyrannize and plunder the populace.

NEW LAW FOR A NEW CYCLE

Late in the dark ages of our Western civilization (which ran from roughly 500 through 900 A.D.), new types of law began forming, just as they had in other places, late in their dark ages.

Among these indigenous forms of law were the secret courts of the Vehm in Germany. Their origins are unknown, but they probably began in the 900s A.D., initiated by commoners and in response to their needs. Since the Vehm had to protect itself from both princes and criminals, secrecy was necessary. (There is a story that the Vehm were founded in 772 A.D. by Charlemagne, but that's a fabrication.)

Court sessions were held in secret, and the uninitiated were forbidden to attend. The court consisted of a chairman and a number of judges, and any free man of good character could become a judge. The new candidate was given secret identification symbols. All members of the Vehm were required to keep their knowledge secret, even from their closest family.



Judges gave formal warnings to known troublemakers, issued warrants, and took part in executions. After the execution of a death sentence, the corpse would be hung on a tree to advertise the fact and to deter others.

The Vehm never used torture, even though it was common at the time. Furthermore, their trials were only secret when they needed to be, and their meeting-places were known. (The meeting of a Westphalian free court is depicted above.)

After a few centuries, the Vehm were taken over by state institutions. In 1180, the archbishop of Cologne, Philipp von Heinsberg (also duke of Westphalia) placed himself at the head of the Vehm. From then onward, the organization was expanded and overseen by the state, until they closed it in the early 19th century.

THE GREAT COMMON LAW

The fullest expression of new western law was certainly the common law of England.

The common law began to form in the vacuum of Rome's influence. (And especially in England, furthest removed from the vestiges of Roman thinking.) The great empire had fallen, leaving people to develop their own ideas. It was a time of reset and reversion toward a natural state.

England, during the dark ages period, was a mixing place. A variety of peoples had been there for centuries or millennia, but they were joined, in the middle of the 5th century, by the Angles and the Saxons, who came from what is now northwestern Germany. The Vikings invaded from the north during the 9th and 10th centuries, and a large number of them remained and mixed with the others. All these people developed their own thoughts on justice, as well as their first principles and laws.

An early king (Alfred the Great) was the first who attempted to codify the existing laws, and to create a single book of written law called the "Doom book." (*Doom* was pronounced "dome," and meant "law.") In 893 A.D., he wrote:

Now I, King Alfred, have collected these laws, and have given orders for copies to be made of many of those which our predecessors observed, and which I myself approved.

The previous laws he refers to were those written in Kent at about 602, in Wessex at about 694, and in Mercia at about 786.

It is significant that Alfred did not write these laws – he collected the previous laws of the people and put them together. This pattern continued:

The *Charter of Liberties* published by Henry I in 1100 A.D. says that things ought to be done "through force of law and custom," or "in a lawful manner." Henry accepted that that law came from the people (that is, *by custom*) and not from the state.

The 1164 Clarendon Constitution of England cites a "record and recognition of a certain portion of the customs and liberties and rights of... ancestors." Thus laws and customs developed by the citizens, rather than laws imposed by rulers, became the law of England.

The event that forced the English government to accept this model was the signing of Magna Carta. (Securing Magna Carta was a long, complex process that succeeded only with determination and luck, but we won't cover that today.) Article 39 of the Magna Carta (1215 version) read:

No free man shall be taken, or imprisoned or dispossessed, or outlawed, or banished,

nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.

Note that the ultimate arbiter was not the king, but “the law of the land.”

Magna Carta did not give rights to the people. Instead, it bound the king to the law of the people and granted powers to the nobles. King John, the Pope and many others wished to repeal Magna Carta, but the barons of England stood their ground. Thus the law of England did *not* become mere edicts of kings. (But again, the story is complex.)

The law that came out of this formation was called the *common law*. It was developed through decisions of courts and similar tribunals, rather than through legislative statutes or executive edicts. The common law is created and updated by judges, not by legislators.

Under the common law, a decision in any case refers to decisions in previous cases and affects the law to be applied in future cases. Judges define the law by creating *precedent*. This body of precedent binds future decisions to itself.

When a bad decision was made by a judge, other judges were likely to reject it and to publish an explanation. If still other judges agreed, the bad decision was removed from the law books.

THE PINACLE: SOVEREIGN LAW

It is established by authority of the divine law that the prince is subject to the law and to justice.

-- John of Salisbury, 1159 A.D.

Common law was not the only law placed above the king. The State at this time had a minimum of direct legitimacy, and was definitely second to the Church in that regard.

John of Salisbury was among the first continental Europeans to propose that the prince should be subject to law. The Church, conveniently, supported this idea, primarily because they wanted to keep the princes under control. So, since divinity was included in John’s formulation, the Church signed-on and the idea stuck.

During the classical era of Greece and Rome, the citizen was considered the seat of sovereignty. As Western civilization evolved, however, sovereignty slowly accrued to “the law,” instead of the people or the rulers. The ruler was legitimated by upholding the law. Over time, this Sovereignty of Law became the general code of Western civilization, especially so because Western civilization was a Christian civilization, and “justice above the king” is clearly part of the Judeo-Christian ethic.

It is important to understand that what people now think of as “law” is a recent development. When law was sovereign, no one thought that law was created by men; it was *discovered* by men. Legislation was almost unheard of, and *law* was a process of determining whether actions were just or unjust. In practical terms, *laws* were the findings of judges. They were not edicts or commands; they were opinions, and were valuable because they explained justice and its reasonable application.

THE RECONQUEST OF LAW

Along with parliaments and congresses, legislation arose. The edicts of these groups slowly displaced the findings of judges as “law.”

Many people wanted democratic institutions, thinking that it would give them some control over the actions of the state, which could be erratic and dangerous. Unbeknownst to them, however, they were

destroying the sovereignty of law, and endorsing politicians as not only *users* of the law, but *makers of the law*.

When law became legislation, the sovereignty of law died. From then on, rulers were not *subject* to the law – they *created* the law – and they could change it as they saw fit. This was a re-conquest.

By the middle of the 20th Century, the process was mostly complete and rulers were no longer effectively subject to the law; they had taken back their power. The Church was fairly well out of power by this time, so as long as people believed in the democratic process, the law-makers were in control without challenge.

THE WESTERN RENEWAL

Western civilization, however, is nothing if not resilient. So, as the sovereignty of law was lost, the best western thinkers began to assess the situation, and to find ways to limit the now unlimited power of the state. John Locke's work along these lines, for example, led directly to compacts that specifically limited the actions of government. It was akin to the Roman reset of 500 B.C., when they rejected monarchy and demanded a small and limited republic.

Ideas of law had to be revised to match, of course: The idea of limiting the state was incompatible with the practice of politicians creating new laws at their pleasure.

So, this is when the concept of *Natural Law* became popular. Black's *Law Dictionary* defined natural law as:

Law, or legal principles, supposed to be discoverable by the light of nature or abstract reasoning, or to be taught by nature to all nations and men alike, or law supposed to govern men and peoples in a state of nature, i.e., in advance of organized governments or enacted laws.

A wide variety of objections have been raised to the concept of natural law, but the best and freest minds have nearly always appreciated the concept. Nonetheless, it continues to be ridiculed and berated by the intellectual and positive-law classes, not because its ideas are flawed, but because such people recognize natural law as a threat to their plans.

In our time – with legislation now reigning as “law” in the minds of most men – natural law remains an active concept only in the minds of a minority.

FURTHER EXAMPLES

Here are two smaller examples of natural-state justice forming spontaneously, where and when it is allowed to do so. I think it is important to see that natural-state justice is simply “what people do,” when they are not forced to do otherwise.

Jersey Justice

Miriam-Webster's Dictionary had the original meaning of *Jersey justice* as “speedy and effective justice.” (In recent times it has sometimes meant “harsh justice.”) The term originated in the early colonial days of the New Jersey area, when it was settled by Quakers.

These Quakers settled their disputes out of court, voluntarily, through informal mediators. This was simple, direct, peaceful, rapid, efficient, and voluntary method of settling disputes. The original example of it was the practice of a respected man named Thomas Olive, who, in the 1670s, mediated disputes while plowing in his fields.

Notice the similarity between this passage from West New Jersey's 1675 Charter of Fundamental Laws and the Romans' posting of their Twelve Tables, some 2,000 years earlier:

It is further agreed and ordained, that the said Concessions, common law, or great charter of fundamentals, be writ in fair tables in every common hall of justice within this Province, and that they be read in solemn manner four times every year, in the presence of the people, by the chief magistrates of those places.

Like the early Romans, these people demanded a set of laws that were easily written, read, and understood by all.

Neutral Moresnet



Neutral Moresnet was an area between Belgium and Prussia that was a more or less unruled from 1816 to 1920. The the Congress of Vienna (which settled the Napoleonic Wars) decided to just leave it aside, rather than having the various parties fight over it. It endured in that condition until the end of World War One, when the the Treaty of Versailles awarded it to Belgium.

There were no formal law courts in the territory, no military (and no hostile international stances), no tariffs, all but no taxation, no elections and multiple currencies in continuous circulation.

For more than a century, the region thrived. While the law of the land had been specified by the Congress of Vienna as the Napoleonic Code, the only local enforcer was a burgomaster (a small-town mayor), whose headquarters were, as reported by William S. Walsh in his 1913 *Handy Book of Curious Information*, “under his hat.”

It is reported that one burgomaster:

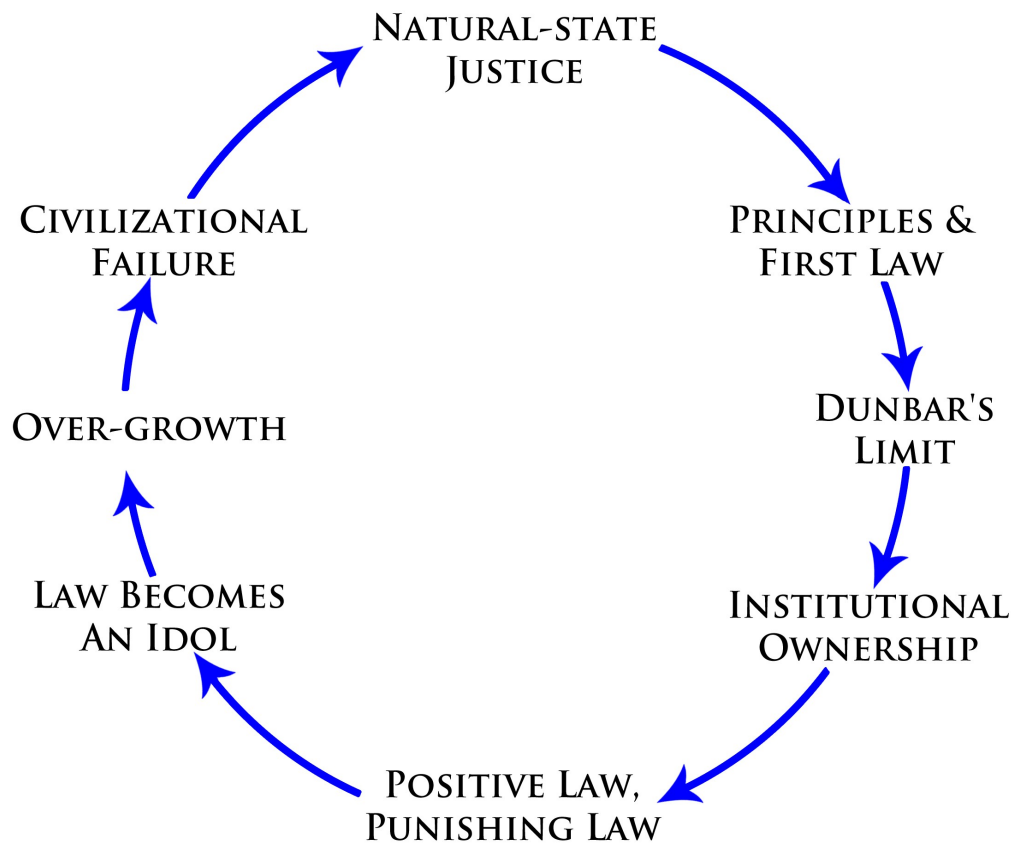
went about town and held court wherever he happened to be when his service as justice was required, which, happily, was not often. When complaint was made to him, he would listen patiently and attentively ... [then] whistle some favorite air, and thus take time to resolve the matter in his mind.... His

judgments were always intelligible and fair; insomuch that they were never excepted to or appealed from during all his term of thirty-five years.

Here again we see a reversion to simple, understandable and fast justice, rather than complex and expensive systems of law.

IN CONCLUSION

In conclusion, I should point out that the Law Cycle diagram (shown larger below) will overlay precisely on the Long Calendar chart of civilizational entropy from FMP#18, though you will need to rotate it clockwise about 45 degrees. They go together because they are both derived from the same set of facts.



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See you next month,

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