

## LAW, SCIENCE, AND POLITICS

### *DIREITO, CIÊNCIA E POLÍTICA*

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Convidado

**ABSTRACT:** Law, science, and politics belong together because they are three attributes of the same reality. Science begins in the accurate knowledge of reality. Since both law and politics seek (or ought to seek) justice, the science of law and the science of politics must always recur to the science of justice itself. This study of justice begins with the substantive question which form of society will best achieve worthwhile and fulfilling lives for all. The science of law concerns the permissions, prohibitions, and obligations that will best establish justice in any given society or State. The science of politics concerns the epistemic techniques through which we can best discover and establish justice and the law. Justice is the substance. Law is the rules. Politics is the procedures for establishing a just State and society for all.

**Keywords:** Law. Science. Politics. Philosophy. Justice. Reason. Reality. Religion. Knowledge. Human Nature.

**RESUMO:** Direito, ciência e política devem estar juntos porque são três atributos da mesma realidade. A ciência começa com o conhecimento preciso da realidade. Já que tanto o direito quanto a política buscam (ou deveriam buscar) a justiça, a ciência do direito e a ciência da política devem sempre recorrer à ciência da própria justiça, que se inicia pela questão substantiva sobre qual forma de sociedade melhor proporcionará vidas que valham a pena e que sejam gratificantes para todos. Por sua vez, a ciência do direito trata das permissões, proibições e obrigações que melhor estabelecerão a justiça em dado Estado ou sociedade. Finalmente, a ciência da política diz respeito às técnicas epistêmicas através das quais podemos melhor descobrir e estabelecer a justiça e a lei. Justiça é a substância. Direito são as regras. Política são os procedimentos para estabelecer um Estado e uma sociedade justos para todos.

**Palavras-Chave:** Direito. Ciência. Política. Filosofia. Justiça. Razão. Realidade. Religião. Conhecimento. Natureza Humana.

**SUMÁRIO:** Introduction. 1 Law. 2 Science. 3 Philosophy. 4 Politics. 5 The Claim of Justice. 6 Right Reason. 7 Normative Reality. 8 Religion. 9 The Known and the Unknown. 10 Justice. 11 Human Nature. Conclusion. References.

## INTRODUCTION

What a pleasure it is to be in Brazil again and to be at the Federal University of Rio de Janeiro! I am very grateful to Professor Margarida Lacombe Camargo for inviting me here to speak about “Law, Science, and Politics”.

Prof. Camargo and I first met here more than 25 years ago, working together on the Brazil – United States Administration of Justice Project with Minister Ellen Gracie Norfleet, Professor Nadia de Araujo, and other Brazilian and United States judges and scholars, with impressive and lasting results. Later we considered the nature and purpose of law with Professor Robert Alexy at the Casa Rui Barbosa. So, this has been a long friendship.

I have always loved Brazil and respected Brazilian scholars – such as my admired friends and colleagues Professor Marcelo Campos Galuppo and Professor Joao Mauricio Adeodato, two leaders in the International Association for the Philosophy of Law and Social Philosophy (IVR). Brazil and ABRAFI have played a vital part in IVR, including the very successful World Congress of the Philosophy of Law in Belo Horizonte in 2013. We see Brazil’s strength once again in this impressive gathering of scholars, organized by ABRAFI. It is an honor to be here with you.

### 1 LAW

We are here to discuss law, science, and politics and how they relate to one another. We must consider not only what they are, but how they connect with each other. This requires definition, which in turn requires clarity. These sister attributes of definition and clarity are great virtues in every element of life, but most of all in law. Law cannot be effective – or just – unless it is understood. To understand and advance the law is the first duty of all lawyers, as it is of the IVR and of ABRAFI.

By “law” in its simplest form I mean the dictates of right reason, commanding us to fulfill our duties and prohibiting us from fraud and harm. This well-known definition was set out by Marcus Tullius Cicero in his dialogues *de re publica* (III.33.xxii) and perpetuated by Lactantius in his *Institutiones Divinae*: “est quidem vera lex recta ratio naturae congruens, diffusa in omnes, constans, sempiterna, quae vocet ad officium jubendo, vetando a fraude deterreat.”

Cicero’s well-known definition is appropriate for many reasons, but particularly here in a nation that derives its language and many of its laws ultimately from Rome. Cicero is valuable not only because of his unrivalled influence on the history and philosophy of law, but also because he reminds us that law is at heart a *normative* science. Law is the science not only of what is, but also of what *ought to be* required or prohibited by the State, or by those in authority.

### 2 SCIENCE

This introduces our second significant concept, “science”. We do and should speak of law as a science because law is a field of inquiry in which there are both *right* and *wrong* answers. The use of the word *science* here implies that the rightness or wrongness of these answers is to some extent discoverable, that what is right or wrong in the field of law can to some extent be *known*.

To be clear, what I mean by “science” is that which can be known with a high degree of certainty. Science is that which can be discovered and understood with some confidence by those who are willing to apply reason to reality. Science rests on what Cicero called “*recta ratio*” (right reason) in all the fields to which it can be applied, including law.

The term “science” therefore is best used of topics on which well-informed and reasonable people of good will fairly easily achieve consensus, when most of the facts are known. Thus, all of science is determined by right reason, but right reason extends beyond science into those areas in

which truth is less easily demonstrable and consensus is harder to achieve. Right reason extends beyond science to questions about which there are right and wrong answers, but less certainty in knowing what they are.

### 3 PHILOSOPHY

Philosophy was not listed among the central concepts for our consideration today. But since we are gathered here as philosophers, under the aegis of the Brazilian Association for the Philosophy of Law and Social Philosophy, I think we should take a moment to explain what philosophy *is*, and to make the distinction between philosophy and science, which is one of our primary concerns.

The two words are very close. Science, as we have just seen, is that which is *known*. Philosophy, in contrast, is the *love* of knowledge, the pursuit of knowledge, and the advancement of knowledge. Philosophy only becomes science once the matter is actually known. Put more precisely, philosophy becomes science when the matter is known with a fairly high degree of certainty -- because nothing is ever known with complete certainty in this transient and imperfect world.

Understood in this way, philosophy contains all of science within it. Science is that area within philosophy that yields the most definite results. Philosophy also extends beyond science into areas where certainty is harder to achieve. And so, in a way, does law. Because although law is a science, law also extends to those parts of philosophy that are beyond science, the broader philosophy of law.

### 4 POLITICS

This brings us to politics, the third concept in today's trinity. Politics has two meanings. First, politics is, like law, both the *science* and the *philosophy* of how to guide and govern the State well. Second, politics is the *practice* of doing so, because both law and politics are theoretical as well as practical disciplines. They both concern, not only substantive norms and values, but also the procedures necessary to make their substantive norms effective in reality.

Politics, like law, consists both in knowledge about norms and in the techniques necessary to discover the governing norms and to make them real. The same is true of all sciences. Science must be supported by epistemology. Law, politics, and all sciences require epistemic techniques for finding, approximating, or agreeing upon the *truth* about reality.

The science of law and the science of politics are very closely related to one another, because they have the same aim. The *telos* or purpose of politics, as of law, is *justice*. Politics is the science and practice of discovering or establishing justice in the State. Law is the science or practice of determining and applying the prohibitions, obligations, or permissions necessary to establish justice in society or the State, as Cicero explained so many years ago.

### 5 THE CLAIM OF JUSTICE

This inescapable connection between politics and the law should remind philosophers why Plato, for example, first wrote his *Politeia* discussing the ideal polity or state, and then wrote his *Nomoi*, to clarify the laws required to make that polity just. Cicero did the same, first writing about the republic, *de re publica*, and then writing about the laws, *de legibus*. You cannot have one without the other. Law and politics are necessarily intertwined because they both claim to seek and establish *justice* for the State.

This strong and important assertion gets to the heart of our discipline. Law and politics are deeply connected sciences because their common object and purpose is *justice*. This is a

necessary truth to which some of you may object because you know that most States are not just. You may even insist that every State or polity that has ever existed is to some extent *unjust*. And I would have to agree.

The assertion here is not that all law or politics as we actually know them are just – or even seek justice -- but rather that they *claim* to do so. Every legal system that has ever existed claims to pursue justice. And this claim is inherent in the concept of law. If any supposed legal system did not make the claim of justice, it would not be “law”. And there would be very little motivation to respect it.

## 6 RIGHT REASON

Lawyers have known for centuries that the science of law rests on the science of right – the right order of society. Law is the study and practice of the obligations, permissions, or prohibitions that should be imposed or established to maintain a just society, polity, or state. This is a matter of right reason – “*recta ratio*” – about the law. The science of law arises from the study of what would be right – or necessary – in order to establish and maintain a just society.

The relationship between law and science is very close because the law *is* a science. But what about the other sciences? What is – or should be – the relationship between law and other forms of knowledge? These too are closely related because law and justice must be based on *reality*. Justice must be built on the world as it really is, including the insights of physics, biology, chemistry, and everything else that can be known or understood.

This makes law, science, and politics inevitable partners. They are wholly compatible and mutually necessary components in the concept of right. Rightness depends on truth and justice arises from the really existent components of the physical world, history, and human nature. What is *right* cannot depend on imagined or invented facts. Law and politics must be attentive to science and reality in order to be right in the only sense that can justify their legitimacy -- and very existence.

## 7 NORMATIVE REALITY

Here again some of you may object to my assertion of normative reality. Perhaps you will agree that science is the knowledge of reality but deny the possibility of *normative* reality. I myself conceded that the concept of “science” applies best to those areas of knowledge that are most easily demonstrable, restricting the province of “science” to those areas of knowledge about which it is easiest to reach consensus, such as physics, chemistry, and mathematics. Some might argue that in matters that concern human well-being – such as law or politics or justice -- this consensus will be much harder to achieve. I agree.

The issue here may be primarily semantic. If science requires strong or easy consensus about reality, much of law may not be science in its strongest sense. But those who claim that there is no normative or deontological reality to be discovered -- and therefore no science of the law -- have gone too far.

Recall that science concerns what is known or can be known with a high degree of certainty, whereas philosophy is broader and extends to the love of knowledge, and the pursuit and advancement of knowledge, even when high degrees of certainty or consensus will be hard to achieve. This may make normative reality more often a matter of philosophy than science, provided one concedes that philosophy, like science, concerns discoverable truths about reality itself.

## 8 RELIGION

For the sake of completeness, I am tempted at this point to make one small further observation about religion. This has no real place in the main argument about law, science, and politics, but relates to the conceptual distinction between philosophy and science. We have seen that all of science is within philosophy because philosophy is more inclusive than science. The same is true of religion, when the word is understood in its oldest and best sense. Just as philosophy embraces all of science, so religion includes all of science and philosophy.

Their connection arises from their relationship with truth. Science is that which is true and fairly easily demonstrable. Philosophy extends further to that which is true but difficult to demonstrate. Religion extends further still to those things that claim to be true but not demonstrable at all. Religion, philosophy, and science all concern truth and right answers. Falsifiable beliefs are not religion, philosophy, or science, but superstition (“*superstitio*”) in all the languages that use the old Roman vocabulary. And superstition does not deserve our support.

For Romans and also for Christians and others who use the Latin vocabulary, religion signifies beliefs that are compatible with science and philosophy, while superstition signifies beliefs that are not compatible with science and philosophy. This is the usage of Cicero, but also of the Gospel of John. We cannot apply the word “religion” to anything that is contrary to *ratio* (in Latin) or to *logos* (in Greek). Religion, philosophy, and science are compatible, because anything contrary to reason is superstition, and has no place in religion, politics, or law.

## 9 THE KNOWN AND THE UNKNOWN

More relevant to our proper topic are the underlying concepts of law and politics. Both extend beyond science to include philosophy and perhaps at times religion, because there are some areas of law and justice that are hard to know with great certainty. But this is true of all sciences. Every science extends beyond the known into the less well-known, and the boundaries of science will always be expanding into what used to be philosophy, or even speculation about the true nature of the world.

Just as there is no conflict between science and philosophy, so too should there be no conflict between science, philosophy, and law. All of science is within philosophy and in accord with philosophy. This is as much true of law and politics as it is of everything else. But much remains unknown. Uncertainty survives at the borders of law, science, and philosophy. At best, we must approximate the truth in all areas of scientific and philosophical endeavor.

This should teach us to be particularly attentive to those things we know to be untrue, and to study the science of probability to avoid those mistakes which are most easily made. Humility should direct us towards reasonable *procedures* for reaching consensus and avoiding unfounded claims of authority or dominion. *Law* and *politics* are the study and practice of the rules and procedures that will most effectively make *known* and effective the necessary structures of a *just* State or society – to the greatest extent possible.

## 10 JUSTICE

This brings us back to law’s claim to seek and establish justice -- and the skeptics’ denial that such a search or accomplishment is possible. This claim to truth about justice demands a definition of justice, and some hope that human institutions can advance or establish justice in the imperfect world in which we actually exist. Justice in this context is best defined as: “that ordering of society and the State in which it is most possible for *all* those subject to society and the State to live worthwhile and fulfilling lives.”

This definition of justice determines the object and purpose of the science (and philosophy) of law. The object and purpose of law is to make worthwhile and fulfilling lives as much as possible available to all. This pursuit of justice opens an inquiry to which there are right and wrong answers, or at least some answers that are better than others. Justice rests on truth about humans and society, which brings law into the province of science – or philosophy – or both.

The question to be answered here is not just what are the best *substantive* answers to questions about law and justice, but also, what are the best *procedures* for verifying or clarifying the answers that we think are correct. I may think long and hard and come to certain conclusions about what justice requires, but if you and I come to different conclusions, we are at an *impasse*. The science of justice and therefore also the science of law require techniques for moving past our failures of persuasion.

## 11 HUMAN NATURE

The study of justice – and therefore the study of law – must ultimately rest on the study of human nature. The concept of a worthwhile and fulfilling life depends upon an understanding of what humans need and what makes life worthwhile. Which human emotions should be cultivated? Which should not? And how can we achieve social consensus necessary to establish the just world necessary to bring worthwhile and fulfilling lives to all?

Politics is at heart the study of human nature – and in this sense *prior* to the laws. Political science concerns social cause and effect, considering which laws will have the best effects for society as a whole. But politics is also *subsequent* to the laws, because politics is also the practice of implementing the laws, when they actually exist.

The science of politics is the study and understanding of the procedures and the institutions – and therefore of the laws – that are best designed to establish and maintain a just society. This depends upon human nature because what counts as *justice* arises from what makes a human life worth living, the fundamental nature of humanity itself.

## CONCLUSION

Law, science, and politics belong together because they are three attributes of the same reality. Science begins in the accurate *knowledge* of reality. Since both law and politics seek (or *claim* to seek) justice, the science of law and the science of politics must always recur to the science of justice itself. This study of justice begins with the substantive question which form of society will best achieve worthwhile and fulfilling lives for all.

The science of law concerns the permissions, prohibitions, and obligations that will best establish justice in any given society or State. The science of politics concerns the epistemic techniques through which we can best discover and establish justice and the law. Justice is the substance. Law is the rules. Politics is the procedures for establishing a just state and society for all.

Law, science, and politics meet and cooperate in the effort to establish a just society. Both science and politics are necessary foundations for the law. Legal science is the study of the truth about normative reality, resting on human nature. Politics is the study and implementation of techniques and procedures we need to discover, establish, and maintain the law. All work together to serve the same central purpose, which is justice for all.

Thank you very much for your kind attention and insightful scholarship. I am very grateful to you, my respected colleagues in Brazil.

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