CAUSE IN LAW AND METAPHYSICS.

The concept of cause is commonly used in the various sciences and in the affairs of daily life. It presents little difficulty to the layman, but the student who sets out to think consistently on the subject finds that careful attempts at definition not only fail to give a clear meaning but result in the unearthing of perplexities which carry the inquiry far beyond the original field. It is proposed to sketch some of the difficulties arising from its use in Law and Metaphysics with the object of ascertaining if any similarities exist in the problems raised and the solutions offered.

That the problems would be identical could hardly be expected. For the physicist the cause of the fire that destroyed the informant's house is the match which put into operation the process of combustion. For the judge it is the guilty thought in the mind of the prisoner. For the sociologist it may be defects in education or moral training or the existence of conditions bearing heavily upon the accused who thereby became an enemy to society. The term as used in physical science will have a significance differing from that attending its use in Economics, Biology or Law and its meaning for Metaphysics may differ again from any of these. The meaning of such a concept is always relative to the subject-matter of the inquiry.

Somewhat related to the above is the difference in outlook. Law operates in a field limited in time and space. To these limitations are added others resulting from the existing state and usages of society and the practical needs and possibilities of the inquiry. Within this limited outlook many elements will be found which may be regarded as fixed or static. For Metaphysics there are no fixed conditions and the field is without limit embracing the whole of experience and reality. But notwithstanding the relativity of terms and the difference in outlook, some similarities in treatment will be found to exist.

One of the difficulties in the metaphysical discussion of casuality is the puzzle of the indefinite regress. This arises in dealing with the structure of time. Events are perceived in succession, and it would appear that this succession must extend indefinitely both into the past and the future. The notion of cause becomes entangled with that of the time series and the cause of an event is believed to be an antecedent event or condition which in turn has a similar prior cause. In the result a solution of the metaphysical problem becomes impossible, as the series, stretching to infinity, is without beginning

or end. The obstacle is sometimes avoided by the assumption of a First or Original Cause. For Metaphysics, concerned as it is with logical consistency, this solution is unsatisfactory, for it involves the contradiction of the original postulate, namely, that every event or condition is determined by antecedent events or conditions. A more satisfactory method of escape is to regard space and time as phenomenal or relative. Such a conception has been expressed in various forms since the beginnings of philosophy and has in recent times been adopted by science. For Metaphysics, therefore, the puzzle of the indefinite regress may be solved by abandoning the view that space and time as ordinarily understood are a part of reality.

A similar problem, as might be expected, appears early in the development of Law. The indefinite regress is recognized and accepted as a fact. The difficulties resulting therefrom have been summarily if not satisfactorily dealt with. "It were infinite for the law to judge the causes of causes and their impulsions one of another; therefore it contenteth itself with the immediate cause and judgeth the acts by that, without looking to any further degree." The indefinite regress is disposed of by cutting off the series at a point antecedent to what is described as the "immediate cause."

This solution involves the adoption of temporal and spatial categories. They have been found unsatisfactory in Metaphysics and will be seen to be equally unsatisfactory in Law. The legal problem may be to determine which of two or more factors involved in an event is to be held responsible for the damage done the plaintiff. These factors will not be related to each other as links in a chain stretching backwards in time but may co-exist and operate simultaneously and apart up to the point in time when the damage occurs. There will be a problem in four dimensions instead of in one, and the jurist applying the principle is faced with the initial difficulty of devising some rule for the selection of the immediate cause out of the various elements involved. No rule has ever been laid down to govern such a selection.

Perhaps this difficulty has been responsible for a general lack of confidence which, while not definitely expressed in the earlier judgments, appears from the findings. The principle may appear to be acknowledged but a little consideration will reveal that the cause actually selected by the law may not be immediate in any of these dimensions. The man who sets spring guns for his neighbour's dogs is not the "immediate" cause in the sense that that term is used in relation to notions of time and space. The position is, in fact,

tacitly abandoned. The law has adopted or implied another basis for the liability.

Various terms have been employed to denote this latter basis. Such are causa causans, proximate cause, efficient or effective cause, inducing cause. The first is obnoxious being mere repetition. The second is unsatisfactory being synonymous with "immediate." The other terms are better and the reason for this seems to be that they suggest action or volition. But within the area covered by the legal inquiry there may be more than one efficient cause as distinguished from one merely static. Advance from this point will be difficult for here the legal problem approaches the metaphysical and definition is frustrated by the elusive nature of the concept. When Law speaks of "the intervention of an independent volition" its language approximates to that of Metaphysics and its problem will be found to be similar. What seems to be needed is a term that will imply purposive action with responsibility resulting therefrom. This may need to be supplemented by some practical rules or devices. It might therefore be better to adopt a term which would take its significance from the cases rather than to continue the use of those whose meanings are either already fixed or so ambiguous as to be of little help in clarifying the position. It is clear, however, that Law, following the example of Metaphysics, has freed itself from the puzzle of the indefinite regress by abandoning the spatial and temporal implications inherent in Bacon's principle.

The position in regard to final causes is more obscure. A final cause operates where the process or condition seems to be determined not by antecedent conditions but by an end or object to the attainment of which the process in question contributes. The man may be regarded as the final cause of the child; the production of acorns and the perpetuation of its species thereby the final cause of the oak tree.

The operation of a final cause falls short of purposive action. The oak tree discloses no evidence of a course pursued with conscious knowledge of the result, and comparison with much of our own experience leads us to conclude that such conscious purpose is not present. It is only after the result has been obtained that the object of the process is disclosed. One might suppose therefore, that Law, being concerned only with what is known or capable of anticipation, would not have to deal with or be affected by final causes.

One must except, of course, the obvious case where the process while not known to the subject-matter of it, is known to the law. The latter knows that fruit trees are for the purpose of producing

fruit and in so far as it is concerned with such matters, full recognition will be given to them, as known facts of value to society.

But the law is itself involved in the operation of final causes. Not only are there in our individual experiences processes whose ends are not clearly anticipated, but similar processes exist in society. The importance of the family was not foreseen by those who first established it, nor is it understood to-day by the vast majority of those entering into that relationship. The state did not arise from agreement or for the purpose of attaining definitely known or preconceived ends such as have been served by its formation. There never was and there may not be to-day full consciousness of the results brought about by its creation. But as time goes on these become apparent: the benefits and advantages are disclosed, and, viewed from a distance, it seems to indicate a conscious effort to an end.

Now the law has been intimately connected with the preservation and growth of both family and state. The family relationships and duties have been maintained and enforced by the strength of legal sanctions. The contract of marriage, its dissolution, the duties and obligations of the parties as between themselves and to the issue of the marriage—these have for many centuries been the subject of commandments by law-givers, decisions by judges and legislation by governments. But it is difficult to believe that either law-givers, judges or governments foresaw or understood the full use or ultimate purpose of what they did.

So also with the state. The social contract invoked by Hobbes was an afterthought. He saw the results obtained and as the process indicated a reaching out to a desired end he presumed a contract entered into by the parties with knowledge of that end. Such knowledge did not exist. But the state has been preserved by the law, resting as it does on systems of civil and criminal jurisprudence partly judge-made and partly enacted, defining the duties of the citizens towards each other and to the state. For these reasons Hegel regarded both family and state as divine institutions—the embodiment of purposes not fully disclosed to the conscious mind of man. It is obvious that Law has had to deal with and has been affected by the operation of these final causes. How does its position in this regard compare with that of Metaphysics?

The latter deals with much that the thinker of pre-Cambrian ages (if any such existed) would not have found in his material. It is true that the laws of Nature operated then as now: the beginnings of life were apparent, and out of these, it is alleged, have come

what we now have. But how could the ancient philosopher, in his search for reality, have anticipated the spacious fabric of society and all that it contains? And if unable so to find, his conception of reality must have been to that extent deficient. And the metaphysician of to-day may be equally at a loss if he cannot discover and understand the seeds of things that are to come, which, it seems, must in some sense be inherent in what is, and therefore a part of reality.

The conclusion seems to be that both Law and Metaphysics are subject to the operation of final causes, whose ultimate meanings are beyond discovery. Into the matters with which they deal there enter elements whose significance is only partially understood. What is done by the law to-day to meet the requirements of a limited and apparently obvious need turns out to-morrow to serve a purpose transcending that need. For Metaphysics, the element of appearance can never be eliminated and the meaning of the real is clouded by the unborn things of to-morrow. The subject-matter produced or dealt with is in a process of continual change and growth, the final direction of which cannot be predicted, from which it follows that the actual meaning thereof cannot be fully ascertained.

H. S. PATTERSON.

Calgary.