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A Brief Introduction to Law

Neha Saxena
Assistant Professor,
Department of Law, Presidency University, Bangalore, India,
Email Id-nehasinha@presidencyuniversity.in

The first issue that must be addressed in any introduction to law concerns the essence of the law. It does not seem to be very helpful to write about law if the definition of law is not clear.While the necessity for characterization of the essence of law is evident, it is not readily met. The legislation is complex, and it may have evolved through time. It is evolving g at a rapid pace in this era of globalisation and Europeanization. As a result, it is impossible to provide a brief definition of law from the start. Yet, it is feasible to list a few legal features. The majority of legal phenomena have the majority of these features, although not all legal phenomena do.

Characteristics of Law

Regulations constitute a significant portion of the law. These rules not only outline how individuals should act, but they also define vocabulary and generate competencies, among other things.Collective Repression One feature that separates legal norms from other rules is that the former are typically enforced collectively, particularly by state authorities, whilst the latter are not. Moreover, legal penalties contain extremely precise punishments, such as jail, fines, reimbursement for damages, and so on, while nonlegal sanctions are less specific[1]–[3].Positive Regulation Another feature that separates law from other normative systems is that the vast majority of legal norms are developed by state entities such as legislatures, courts, and governmental authorities. This has not always been the case, as we shall see, but most laws are now formally made. Positive law refers to enacted legislation. In this context, the term positive is derived from the Latin positums, which literally means set down.

Law and Morality

Legal norms are often contrasted with moral rules. One reason for this is because we believe it is desirable that the law not contravene morals. According to some, conformity of the law with morality is a requirement for the existence of law: a rule that manifestly breaches morality wouldn't qualify as a binding legal norm at all.Another reason is that government consider it as their responsibility to enforce the law but not morals. As a result, it is critical that legal norms be explicitly designated as such and separated from merely moral standards.

Differences Between Law and Morality

Binary vs. Degrees One of the primary responsibilities of the law is to direct conduct by instructing individuals what to do or not do in the form of banning and prescribing behaviourYet, most morality is not focused with behavioral guidelines: it does not tell us what we should or should not do. Morality basically establishes rules by which we might categories conduct as good, not so good, or simply bad. There are degrees of good and bad: better or worse. Without such grey zones, a certain behaviour is either lawful or prohibited under the law.State Regulation A further distinction between law and morality is that being legal is required for laws to be enforced by state agencies, but moral precepts are not. Nonetheless, since many moral principles and standards have legal equivalents, state enforcement of morality is conceivable in the form of state enforcement of the law[4].

Positive and Critical Morality

Moral Strength While considering the link between law and morality, it is important to remember that the term morality itself is unclear. On the one hand, it might refer to positive morality, or the moral norms and precepts that are widely accepted at a certain period and location. A positive morality in one period or place may not be the same as positive morality at that other time or place.Moral Criticism On the other hand, morality might refer to critical morality, the moral laws and standards that should be accepted logically regardless of what positive morality says. In general, these norms and standards will not be completely consistent with positive morality.Disagreement If the problem is not what the positive law is, but what is really correct, reaching an agreement may be far more difficult. People usually agree on what is good and bad in terms of critical morality, but they also regularly disagree. This is less appealing as a foundation for a well-functioning society than the certainty of positive law. It is sometimes preferable to have no disputes or quick resolutions to conflicts rather than a laboriously acquired correct answer. As a consequence, the law often favors the assurance of a clear outcome over the ambiguity of the best answer to a situation.

Roman Law

Our current legal system did not appear out of nothing. It is the result of a historical evolution in which sources of law play an essential role. Since history is the best approach to grasp legal sources, we shall outline the evolution of the law in Europe. In this regard, Roman law and common law are crucial.Historical accounts of the history of law in Europe often begin with the remarkable legal system constructed by the Romans between the eighth century BC Before Christ and the sixth century AD Anno Domini or After Christ. As impressive as the Roman system has grown over the years, it began in a modest form, that of tribal customary law.

Tribal Customary Law

Presently, we are used to thinking of law as the law of a certain nation, such as German or English law. More recently, we have witnessed the establishment of European law as coexisting with national law in the European Union's member nations. And, of course, there has been a body of law that rules the ties between governments for millennia. This body is known as international law.

Immutability

Its attribution to a past legislator explains another feature of customary law: it is assumed to be unchanging. Throughout time immemorial, the law has been such and such and will never change. Yet, since customary law begins as unwritten law, there may be slow changes that go unreported because there are no documents that allow for a comparison of modern legislation with that of previous generations. As a result, customary law may evolve slowly over time, responding to circumstances, although its image of natural and immutable rule may stay unchanged[5], [6].

Codification

Customary law begins as unwritten law, but it is not impossible for it to be written down at some point. The Roman ius civile, for example, was set down on the Twelve Tables in 451 BC. The rationale for this was that, if there was any uncertainty, customary law could be interpreted by the pontiffs, who were patricians, the social top class. The plebeians, or lower social class, were opposed to this practice because they felt the pontiffs would use their position to interpret the law in favour of the patricians. If customary law was written down and publicized, everyone who could read it could examine its substance.

Praetor and Iudex

Whenever two parties disagree on a specific issue, the legal remedy will be determined by two factors: the circumstances of the case and the substance of the law. In Roman law, these two criteria were

associated with two functions in a legal proceeding, notably the praetor and the iudex judge.Jurists Whenever one party sought to sue another, he had to present his case before the praetor. If the praetor thought the case had a chance, he would issue a type of instruction the formula to the iudex, instructing this court to award the suing party a legal remedy provided specific factual requirements were met. It was then up to the judge to establish what the circumstances of the case were and whether those facts, in light of the praetor's prescription, warranted the remedy. The praetor was in charge of determining the specific substance of the law, while the iudex was in charge of determining the case circumstances. Since the function of the iudex did not need extensive legal expertise, it could performed by laypeople.Since the praetor was in charge of interpreting the law, he had a large impact on its substance. Nonetheless, the praetor's role was primarily political, serving as a stepping stone to the position of consul. As a result, the praetor was not always a skilled lawyer. To perhaps compensate for this shortcoming, the praetor was advised by jurists, who also counselled process parties. As a result, jurists had a significant impact on the evolution of the law via their counsel.

The Corpus Iuris Civilis

The Roman Empire, which had evolved to cover significant sections of Europe, Northern Africa, and parts of the Middle East, was divided into a Western and an Eastern half in 395 AD. Not long later, the Western Empire was defeated by an invasion of Germanic tribes, and Rome fell and was sacked in 455 AD.The Eastern Empire lasted until 1453, when its capital, Constantinople now Istanbul, fell in a conflict against the Turkish Ottoman. Even before that, however, the Eastern Empire attained a cultural pinnacle with the Corpus Iuris Civilis. This Corpus attempted to codify current Roman law. It was issued on the decree of Emperor Justinianus between 529 and 534 AD and was divided into numerous sections. One section was the Codex, which included imperial.

Common Law

Many changes occurred throughout the High Middle Ages from the eleventh to the fifteenth centuries that had a lasting impact on the evolution of law in Europe. Beginning in the eleventh century, one of these was the rediscovery of Roman law. The following reception of Roman law had a significant impact on the evolution of private law across the European continent. In England, Legal system had far less sway, thanks to a second significant development, the establishment of common law.

Royal Justices

The origins of common law as a distinct legal system may be traced back to 1066 AD, when Norman King William I invaded and conquered England. This sparked a campaign to unify the English legal system, which had hitherto been dominated by local customary law.

The unity was accomplished via the use of a system of royal delegates who went across the kingdom to enforce the legislation. These royal judges used the same law, which was to become English Common Law.Another aspect that contributed to the development of common law was the establishment of central courts of justice in the thirteenth century. The establishment of central courts helped the consistent application of the law across the nation.Case-Based Thinking The practise of deciding cases by analogy to earlier judgements, as well as the theory of stare decisis, indicate that common law has evolved on the basis of precedents and case law. As a result, English legal reasoning has evolved into a kind of case-based reasoning, searching for parallels and contrasts between new cases and previously resolved cases.

While legislation is important in English law, the focus has historically been on common law, which is comprised of a substantial corpus of cases. It may be argued, however, that this emphasis on cases rather than legislation has lost some of its significance now that the United Kingdom has joined the European Union and the laws of the European Member States are convergent.Common Law Custom The legal heritage of England has been transferred to members of the British Commonwealth. As a result, not only is England a common law nation, but so are Ireland, Wales, the majority of states in the

United States, Canada, Australia, and other countries. All of these nations' common law is based on historical precedents dating back to the period when these countries were part of the British Empire, although it has grown apart since these countries gained independence.Yet, precedents in other common law nations have a role in other common law countries. In this respect, common law is a prominent legal tradition, coexisting with the civil law history of continental Europe.

Equity

Any portrait of the common law tradition would be incomplete if it did not include some consideration of the phenomena of equity. In common law nations, equity, like common law and legislation, is part of the law. Equity, like common law, is a kind of judge-made law. Nonetheless, there are some distinctions.Equity began in the fourteenth 4th Century in England, when those who were dissatisfied with the results of common law processes petitioned the King to intervene on their behalf. If the result of a certain case under common law. Fairness Equity is a set of norms and concepts that were created to ameliorate the unpleasant outcomes that may follow from the application of common law in specific instances. As the word equity implies, this branch of the law is especially concerned with producing just outcomes. Initially, equity might have been meant to be a corrective to common law, with common law being the starting point for deciding issues. Nonetheless, several fields of law were only created in equity, the most significant example being trust law.

Ius Commune

Western Europe was split into a number of smaller or bigger areas inhabited by various peoples during the majority of the Middle Ages approximately the sixth to fifteenth century AD. These areas had their own local customary law, and as a result, European law was different. In terms of legal knowledge, this condition progressively altered with the rediscovery of the Digest in Northern Italy at the end of the eleventh century. The Digest was studied at the newly established University of Bologna.

Law schools at an expanding number of institutions grew in popularity and drew students from all across Europe. As the scholars went home, they brought with them knowledge of Roman and Canon law. As a result, the same corpus of legal knowledge diffused across Europe.Initially, the practical significance of this European common law, called in Latin as ius commune, was limited since local customary law remained dominant. Nonetheless, the ius commune gradually gained clout, particularly when local customary law was determined to be insufficient.National Regulations One of the results of this evolution was that law became largely national in nature. The law was originally the law of a people or tribe rather than a region. As the many peoples that flooded Europe during the time of mass migrations fourth to sixth century AD settled down and started to mingle, the law became local law, tied to regions of differing sizes.Only with the formation of national states could the law become the law of a nation state.

The Westphalian Duo Together with this national law, there existed legislation dealing with the mutual ties of the national states. This is known as International Public Law. National state law and international public law were used to exhaust the possible forms of the legislation. They were dubbed the Westphalian duet.The law may become national law with the establishment of national states, but this process of nationalization of the law took centuries to complete. During the French Revolution 1789-1799, the line of French monarchs was displaced, first by revolutionary agents and then by an emperor, Napoleon Bonaparte. Napoleon's rule resulted in the codification of French law.The link between the law and the spirit of the people would be severed. As a result, codification should be preceded by historical study on the origins of law and the reasoning behind the legislation, thus the name of this movement, the Historical School, of which Von Savigny was a key exponent.In reality, legal academics maintained the stated link here between spirit of the people and the emerging law by writing comments on the Digest and progressively adapting the law to the demands of society. As a result, legal experts drove the development of the law in Germany.

Interpretation

Although the common law history begins with instances, the main civil law tradition on the European continent concentrates on reasoning on the basis of rules. To enable legal decision makers to achieve desired results using these rules, so-called canons of interpretation were devised, which allowed the rules' outcomes to be tailored to the demands of specific instances**.**The Grammatical Interpretation or the Literal Rule It is sometimes required to determine the right extent of applicability of a regulation. For example, does a restriction prohibiting the presence of dogs in butcheries apply to guide dogs? Whenever a problem with a guide dog develops in a butchery, it is required to decide if guide dogs are dogs in the meaning of the legislation, and this judgement must be motivated.

One rationale for motivating rule interpretation is that the interpretation corresponds to the literal meaning of the terms in the rule. Aren't guide dogs just dogs? As a result, a regulation that applies to dogs also applies to guide dogs. The Literal Rule is a canon of interpretation that specifies that rules should be read literally, and the resultant interpretation is known as grammatical or literal interpretation.The Rule of Mischief or Legislative Intent Written rules are often made to address difficulties. The legislature intended to attain certain outcomes, and the regulation was seen as a method to that end. When a legal decision maker interprets a law to meet the legislator's objective, he is said to be using the Mischief Rule.

The Golden Rule; Teleological or Purposive Interpretation When interpreting a regulation, an interpreter may return to the intention of the lawmaker who drafted the rule. That is how the Mischief Rule is used. He may, however, attempt to discern the objective of the regulation himself. When we talk about teleological or purposeful interpretation, the decision maker follows the so-called Golden Rule.Suppose once again that the lawmaker enacted the ban on dogs in butcher shops to avoid unsanitary conditions in food stores. If a legal decision maker understands this interest but believes that the interest of visually impaired people is more essential, she may construe the law to exclude guide dogs from its scope.

The Toolbox of a Lawyer We've shown that a legal decision maker who has to defend his choice for a certain rule formulation has many options. Some of these strategies are quite formalist in nature: the decision maker refers to the decision of someone else, such as a legislator or a court, and avoids making a value judgement himself. Some strategies are more substantive: the decision maker thinks about what a good rule might be. He forms his own value judgement and rests his understanding of the regulation on it. Nonetheless, in both circumstances, the decision maker mustchoose a method.The many legal sources, reasoning methodologies, and interpretation canons might be likened to a collection of decision-making instruments in a lawyer's toolbox. A legal decision maker selects a tool that will assist him in reaching a desired conclusion based on the demands of the case. He has some wiggle room in this regard.

From National to Transnational Laws

The codification era began a trend towards the employment of more and more positive legislation. Codifications in the nineteenth century still generally mirrored prior legislation. But, throughout the twentieth century, particularly after WWII, legislation was widely employed to establish new law. This evolution occurred both on the European continent and in the United Kingdom. The huge rise in the quantity of administrative law, which controls interactions between a government and its population, generated a general increase in the amount of legislation, much of which was positive, state-made, national law.

Following WWII, various further innovations occurred, which meant that the Westphalian pair had to abandon its claim to have exhausted all types of law, even in the Western world. These advances includeHuman rights were no longer only the realm of state law when they were declared and protected by international treaties. While governments may theoretically withdraw from treaties, this is frequently

not a practical option in practise.Governments that have committed to the preservation of human freedoms have made pledges to their populations who are, for the most part, outside their control. This issue is exacerbated if the execution and interpretation of treaties is delegated to judicial organisations outside the jurisdiction of sovereign governments.

This loss of power is exacerbated when it is considered that nations might also be bound by individual rights to which they did not initially assent.This is true if human rights are part of the ius cogens, a set of peremptory standards of international law approved and recognised by the worldwide community of states as norms from which no deviation is permissible. Torture and genocide prohibitions, as well as basic humanitarian law standards, have been recognised as ius cogens human rights.

Lex Mercatoria

The Lex Mercatoria is a collection of laws developed by merchants to govern their mutual transactions. In general, business ties are controlled by the norms of private law, which governs the mutual trust of private actors. But, the existing norms of private law were not always considered acceptable for the specific demands of commercial transactions, and therefore a distinct and independent body of laws arose as early as the Middle Ages. For the same purpose, specialised courts with more knowledge in business cases and greater speed were established.There is still a set of norms that regulate international economic interactions today. This body includes treaties such as the Vienna Convention on the 6International Sale of Goods 1980, as well as conventions that are not legally binding but have an impact on the conduct of economic partners.

Transnational Law

The concept exemplified by human rights, European Union law, and the Lex Mercatoria, meaning that there are many and significant legal phenomena that do not fit into the image of law that emerged following the Westphalia peace treaties, has come to be known as transnational law. Law that is not produced or enforced by national governments, or that is not intended to regulate the conduct of legal subjects inside nation states or the reciprocal relations between nation states, may be defined broadly. This is a negative definition: transnational law is law that does not fall within the purview of the Westphalian pair. The growing relevance of this field of law is a significant change in the lengthy history of the law, raising new problems regarding the nature of the law.

The assumption that legal norms always come from a source may gain part of its validity from the ambiguity of the concept of a legal source. There are legal sources in at least two meanings of the term origin sources and legal validity sources.Apart from sources of origin and sources of validity, knowledge sources may be distinguished. Several sources may be utilised to learn about the law. For example, one may learn about the substance of the law through reading the texts of treaties, legislation, judicial judgements, and doctrinal literature.

Ordinary Law The concept of origin is strongly tied to the many ways in which legal rules and principles might arise. that law was initially customary law, consisting of norms that were really applied and acknowledged as obligatory. As a result, customary law is often regarded as a source.Law of Rationalists Some components of the law, such as legal principles and human rights to the degree that they and their interpretation have not been codified, are regarded as law because it seems logical that they are. This tendency is bolstered further if appropriate norms and principles are recognised in legal theory or even in writings that achieve soft law status. Reason, in this sense, is also a source of law.

By far the majority of laws are produced law, or legislation that was established by a body with the authority to do so, such as a legislature, a court in the common law tradition, or governments that have signed a treaty. As a result, legislation, lawsuits, and treaties are all regarded as sources of law.

All of these instances have one thing in common: they all depict methods in which the law came into being. Law arose through tradition, reason, doctrine, legislation, precedent, and treaties, as stated by the

phrase custom, reason, doctrine, and so on are sources of origin of law. This observationthat the law has come into being in a variety of ways—is only a matter of fact with no legal importance. Sources of origin have no bearing on the substance of the legislation. Nevertheless, this differs from reliable sources.

Sources of Validity

The legal significance of validity sources is connected to two phenomena:

Legal norms may be made by individuals or entities with the authority to do so. These rules are known as institutional rules since they are legitimate because they were developed by acknowledged rule makers.According to the sources thesis, only such rules may be legal rules if they come from a source of law: a source of validity.

Social Rules

A rule may exist inside a social group in two ways: as a social rule and as what is known as a institutional rule. A social norm exists within a group if the members of that group prefer to obey it, perceive breaches of it as grounds for self-criticism, and think that the other members of the group do as well.A club of cinema buffs is one example. They have a regulation but not a legal one that every member of the club must attend to the movies at least once a week and submit a review of the film for the club's website. The rule's presence is most visible in the fact that most members go to the movies every week and blog about it. Also, if a member of the club does not attend to watch a movie during a certain week, she tends to blame herself, and the other members of the group may criticise her for it[5], [7].

Moreover, she anticipates that other club members would feel somewhat bad if they did not attend the movies and will face criticism as a result.This circumstance should be separated from a bunch of teens who only go to the movies once a week and then write about it. If they don't go to the movies in a given week, they don't feel bad about it, and they don't blame themselves. These youngsters have a practise, but no rule.Social norms can exist only if they are generally effective. Its efficacy demands that members of the group in which the rule exists prefer to follow the norm and see infractions of the rule as grounds for criticism.

Sources of Validity

A rule transforms anything into a source of legal validity when it grants legal validity to what emerges from it. In common law nations, judges are required to follow precedents established by their own or higher courts. This notion of stare decisis transforms precedents in common law jurisdictions into a source of legal legitimacy. Legislation is the most significant source of validity in the civil law tradition. 6As a result, regulations enacted in the form of legislation are legally binding. A source of legal validity is distinguished by the fact that rules derived from such a source are, as a result, legitimate legal norms[1], [2], [8].

The Sources Thesis

Institutional norms exist because they were enacted by a person or entity with the authority to do so. Most legal norms are now institutional rules. The sources thesis, on the other hand, contends that all legal norms are institutional rules. Only rules derived from a legitimate source, and hence institutional norms, would be considered legal rules. This indicates that a court seeking legal standards should only study legitimate sources such as legislation, case law, and treaties. If one accepts the sources thesis, it concerns what qualifies as a validity source since finding such a source is required for every valid legal rule[4], [9], [10].

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