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Law as Power: Exploring the Dynamics of Legal Authority

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This point of view contends that a law's legality is independent of its social value. For instance, it is clear that autocracies, monarchies, and democracies have generated laws that are good for society. Additionally, they have generated wrongful and unjust laws. The fact that each of these many types of government is founded on power and that having the ability to enforce its rules is essential to each one's survival is what unites them. It is possible to criticise this concept for establishing unjust laws and disregarding tyranny, abuses of authority, and arbitrariness[1], [2].

Natural Law

According to natural law theorists, law is that which reflects or is founded on the inherent sense of good and evil that each individual has at birth. Each individual has the ability to independently uncover moral truth thanks to this moral barometer, which functions via the operation of conscience. Some people believed that this sense was a gift from God, while others held that it was ingrained in every person.2 Moral goodness, according to natural law theorists, is fundamentally distinct from institutional notions of good and evil. Therefore, no government has the power to turn a law from being morally good to being morally wicked.

Moral goodness predates institutional lawmaking and establishes a moral barometer by which effective legislation should be judged. Therefore, even if the all-white South African government may have had the authority to implement racial discrimination laws under apartheid, such laws were not really law since they were morally repugnant. This natural law concept had a significant impact on European thought in the seventeenth and eighteenth centuries. Natural law provided a conceptual framework for political change, which attracted revolutionaries who attempted to topple existing monarchs.

American law has also been significantly affected by natural law theory. American civil rights activists still argue against racial discrimination using the same tried-and-true natural law justifications that they used thirty or forty years ago. They contend that since discriminatory laws are so obviously unjust, they should not be upheld as legal precedent. Another example is the Equal Protection and Due Process Clauses, which mandate that the government must treat everyone equally and fairly[3]–[5].Natural law principles are also reflected in our tort system. It is right that those who negligently cause harm to others while having no malice in their hearts should be required to pay damages.

Similar to this, it is right for parties to a contract they freely sign into to uphold its terms or face financial penalties for breaking them.Finally, it is right to hold criminals accountable for their actions.Natural law is no longer a reliable foundation for legislation when there is no social agreement on what is ethically acceptable and evil. Current instances of this subject include the death penalty, physician-assisted suicide, and abortion.

Historical Jurisprudence

The natural law school of thought influenced the development of historical jurisprudence. Because it offered a defence for maintaining the status quo and the preferential treatment of wealthy elites that was

strongly ingrained in cultural heritage, aristocrats were drawn to this school. The concept that law is the sovereign's will and the notion of the spirit of the people were merged into the historical philosophy of lawa law is only enforceable to the degree that it comports with enduring societal norms, beliefs, and practises. According to this perspective, lawmakers whose legal justification was right thinking could not unilaterally enforce the law. The historical school maintained that only customs that have endured the test of time could be considered to be laws.4These thinkers also held the view that changes in human behaviour result in gradual, invisible changes in the law.

The fact that historical jurisprudence encourages legal stability is one of its main benefits. In actuality, a lot of legislation is founded on accepted tradition by the courts. Long-standing practises are nevertheless accepted as law in various areas of our modern American law, including contract law, property law, and real estate law5. The meaning of the Constitution has also been significantly influenced by custom. Appellate courts, like the U.S. Supreme Court, may trace specific Bill of Rights clauses back to prior legislative and case law precedents. They operate in this way because they understand that certain attitudes, customs, rules, and interactions between citizens and the government have shaped our culture.Sometimes a sovereign will pass law that drastically deviates from long-standing convention.The Massachusetts legislature passed a legislation requiring seat belt usage a few years ago. Many people felt that the state was encroaching on their right to personal choice. They demanded that it be put on the ballot, and a statewide vote resulted in the law's repeal[3], [5], [6].

Utilitarian Law

The utilitarian school of law placed more emphasis on the social benefits of legislation than it did on metaphysical ideas of justice and virtue.Utilitarians believed that it was the duty of the state to make laws that advance the pleasure of the populace as a whole. They held that humans are motivated by a desire to maximise pleasure and minimise suffering, and that governments are in charge of persuading citizens to behave in ways that are socially acceptable via the establishment of a formalized system of incentives and disincentives.For instance, further criminal behaviour will be discouraged if the suffering brought on by a criminal penalty outweighs the benefit achieved by the offender in committing the offence. Additionally, they believed that the goal of legislation should be to ensure that everyone has access to security and opportunity. They argued that property rights should be upheld since happiness depends on having secure property. They believed that because increasing trade and economic expansion result in more jobs that are socially good, people should honor their contracts.

Utilitarians were likewise in favor of streamlining legal processes. They were hostile to legal jargon, convoluted processes, and checks and balances.They argued that these formalities made the judicial process more expensive and time-consuming, as well as ineffectual and inattentive to the concerns of a sizable portion of the general populace.Small claims courts are preferred by contemporary utilitarians due to their streamlined pleading requirements, informality, cheap expense, and discretionary employment of solicitors.Legislative enactments requiring the nation's broadcasters to perform in the public interest, lemon laws, and other consumer protection measures all exhibit utilitarian influences. The fact that not everyone shares the same definitions of what is enjoyable and unpleasant is a serious flaw in utilitarianism. And many, if not most, political scientists would disagree that lawmakers genuinely follow the pleasure-pain principle when making choices.

Analytical Positivism

According to analytical positivists, law is a self-sufficient set of legal regulations that the sovereign provides to the governed in the form of orders.These directives were not justified by extrinsic factors like reason, morality, ethics, or even societal repercussions. But only if it was created in accordance with legitimately established processes, like the enactments of a national legislature, was the sovereigns will be considered to be law.Therefore, the apartheid laws approved by the South African legislature, which was previously entirely composed of white people, were the law of that nation at the time in the same way that the civil rights legislation passed by the U.S. Congress was. Each of these legislative bodies was acting in line with a national constitution to exercise sovereign authority. Positivism holds

that people and government officials have no right to defy laws they personally disagree with because of moral, ethical, or policy concerns. Positivism would also contend that trial jurors are required by law to apply the law in accordance with the judge's directives, even if doing so requires putting aside deeply held personal opinions about the legality of the legislation or how it should be applied in a specific factual disagreement.

This philosophical school would consider disagreements about the morality or immorality of laws to be extra-legal. They would argue that these matters have no bearing on the law as it now stands.Stability and security are fostered by this strategy. It also justifies the establishment of governmental boundaries, such as those governing the legal drinking and voting ages and speed limits for cars.People in the United States often disagree with governmental choices on foreign policy, as well as housing, public school funding, healthcare, abortion, environmental protection, and nuclear power plant licencing. Many claim that government representatives are working towards improper, and perhaps immoral, goals. But in our courts, these arguments often fall flat. Even judgements that certain sections of society find objectionable become law if governmental representatives are given the authority to do so, operate within constitutional restraints, and adhere to established processes.

After the Civil War, the country's economy grew quickly and America began to transition to a market economy. New technology, new goods, and shifting legal perspectives about the government's authority to intervene with private property all came along with this growth. It was fashionable to practise laissez-faire, which led to monopolies, political corruption, environmental degradation, unsafe working conditions, and labor-management conflict in addition to helping the economy grow. The United States Supreme Court often disagreed with state-led social changes. For instance, the Court invalidated a reform act that restricted bakers to ten-hour workdays and sixty-hour work weeks in Lochner v. New York.According to the majority, this law unfairly restricted the ability of both employers and workers to negotiate their own contracts. Adair v. United States, the Court also ruled that the Erdman Act was unconstitutional[7], [8].

The Erdman Act was passed by Congress to prevent railway monopolies from firing workers who joined unions. The Supreme Court ruled that Congress lacked authority to regulate labour relations in the railroad sector under the interstate commerce clause.Farmers and workers in particular experienced social and economic dissatisfaction as a result of the excesses of laissez-faire, which also led to political pressure for changes. The progressive movement emerged as a result of these causes coming together. The Progressives favoured a bigger role for the government in the economy. They demanded that the government focus on reforming and pass legislation regulating special interests. The idea that law is founded on unchangeable principles and logical reasoning and is thus unconnected to political, social, and economic aspects in society was rejected by the Progressives.They argued that the courts had neglected the pursuit of social justice far too often.

Sociological Jurisprudence

In 1911, Harvard Law School professor Roscoe Pound wrote an essay in the Harvard Law Review that drew from Progressive ideas and introduced the concept of sociological jurisprudence as a legal philosophy.16 Pound advocated against mechanical jurisprudence, which he saw as outdated and having unfair results in certain circumstances. He argued that governments should take the initiative to push for social and economic changes and that judges should become more socially conscious of the social consequences of their judgements.Early sociologists were intrigued by the idea of studying law from a social-scientific angle.They concentrated on what they termed the living law, which is not just the official regulations established by legislators and courts but also the unwritten guidelines that really shape social behaviour. According to the sociological school, the formal system of rules must be seen in the context of social reality or facts in order to be understood. It is comparable to the historical school in this regard. However, the sociological school concentrated on ten- or twenty-year periods, while the historical school addressed time in terms of centuries.

For instance, sociological jurisprudence theorists would point out that during the last 60 years, several efforts have been made by courts and legislators to end racial discrimination in housing, employment, and education, and that a large amount of legislation has changed as a result. But it is also evident from academic research that prejudice persists. The written law guarantees equal opportunity, and racial prejudice is less overt now than it formerly was. But despite legislation and legal judgements, social realities continue to point to subtle kinds of racism. Similar to this, despite the passing of federal and state laws that prohibit such practises, discrimination against women, older employees, and people with disabilities still occurs in the workplace. It is difficult to pass legislation to eliminate societal standards that are officially enforced, condone racism, and cause personal humiliation and economic injustice to some groups in society.

Legal Realists

In the first half of the 20th century, the social sciences were just starting to take off. In order to evaluate social institutions, academics and judges tried to employ the same scientific procedures that had been utilised to research the natural and physical sciences. Reformers like Jerome Frank and Karl Llewellyn, who identified as legal realists, conducted empirical studies on jurors and judges in especially from the late 1920s through the middle of the 1930s. The realists focused on how far formal legal standards deviated from actual practises. They held the opinion that judges were more affected by their own personal beliefs than by fixed and unchangeable standards.Lewellyn made a crucial distinction between the paper rulesthe legal principles and precedent-setting cases that were frequently used as the foundation for determining why cases were won or lostand the real ruleswhich were kept secret unless behavioral research made them clear. Llewellyn said that law was essentially what officials do about disputes because he thought judges created it rather than discovered it.The realists noted that regulations do not fully account for witness perjury and prejudice as well as the varying degrees of skill, expertise, and prejudice of particular attorneys, judges, and jurors. Realists generated little theory and research; therefore their main contribution was to pave the way for legal sociologists.

Legal Sociologists

Legal sociologists have advanced beyond the legal realists, including Donald Black. They look at things including the parties' financial condition, race, social class, respectability, and cultural differences using quantitative methodological approaches. In addition, they assess the social backgrounds of the parties and the solicitors and judges involved in the case. Theoretically, since everyone is equal before the law, inequalities in the socioeconomic level of the litigants shouldn't have an impact on the result of judicial proceedings. For instance, individual litigants who sue multinational firms ought to be permitted to prevail. However, legal sociologists contend that the evidence does not back up this notion. They contend that the absence of the rule of law is due to the legal system's failure to consider how socioeconomic diversity affects court cases. Discrimination is a reality of contemporary life, and various social component combinations will result in diverse legal consequences. Because law varies directly with relational distance, Donald Black notes that disagreements between acquaintances, neighbors, and family members are seldom contested[9]–[11].

Well-trained solicitors should carefully evaluate the relevant social aspects and connections before deciding whether to settle a matter before trial or go to trial, try a case in front of a judge or jury, and determine whether to appeal.Legal sociologists present questions that cast doubt on some of our society's core tenets. The integrity of the judicial system itself will be compromised, as would the legitimacy of government, if people start to believe that legal decisions are mostly determined by social factors rather than the application of impartial standards. However, if studies can more clearly show how certain combinations of social elements affect legal results, this knowledge might be utilised to either remove the bias or build alternate systems for settling specific sorts of conflicts.

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