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Law and Society Premised on Christian Theology and Anthropology Understandings

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Abstract

Many other institutions and practices might be normative and important for social coherence and political concordance. But they are not law. They are the subjects of theology, ethics, economics, politics, psychology, sociology, anthropology, and other humane disciplines. They stand beyond the province of jurisprudence properly determined. This positivist theory of law, which swept over American universities from the early years onwards, rendered legal study increasingly narrow and insular. Law was simply the sovereign's rules.

Keywords: Legal study; Affected society; Famous aphorisms; Moral phraseology; German counterparts; Structural critiques

Introduction

Legal study was simply the analysis of the rules that were posited, and their application in particular cases. Why these rules were posited, whether their positing was for good or ill, how these rules affected society, politics, or morality were not relevant questions for legal study. By the early twentieth century, it was rather common to read in legal textbooks that law is an autonomous science, that its doctrines, language, and methods are self-sufficient, and that its study is self-contained [1]. It was rather common to think that law has the engines of change within itself that, through its own design and dynamic, law marches tele-logically through time from trespass through case to negligence, from contract to quasi-contract to implied warranty. Holmes was steady champion of this positivist theory of law and legal development. He rebuked more traditional views with a series of famous aphorisms that are still often quoted today. Against those who insisted that the legal tradition was more than simply a product of pragmatic evolution, he wrote, the life of the law has not been logic, it has been experience [2]. Against those who appealed to a higher natural law to guide the positive law of the state, Holmes cracked, the common law is not a brooding omnipresence in the sky. Against those who argued for a more principled jurisprudence, Holmes retorted, general propositions do not decide concrete cases. Against those who insisted that law needed basic moral premises to be cogent, Holmes mused, I should be glad if we could get rid of the whole moral phraseology which I think has tended to distort the law. In fact even in the domain of morals I think that it would be a gain, at least for the educated, to get rid of the word and notion of Sin. Despite its new prominence in the early twentieth century, American legal positivism was not without its ample detractors [3]. Already in the early years, sociologists of law argued that the nature and purpose of law and politics cannot be understood without reference to the spirit of a people and their times-of Volksgeist und Zeitgeist as their German counterparts put it.

Methodology

The legal realist movement of the new insights of psychology and anthropology to cast doubt on the immutability and ineluctability of judicial reasoning [4]. The revived natural law movement of the Hitler's Holocaust and Stalin's gulags, the perils of constructing a legal system without transcendent checks and balances [5]. The international human rights movement of the law to address more directly the sources and sanctions of civil, political, social, cultural, and economic rights, Marxist, feminist, and neo-Kantian movements in the linguistic and structural critiques to expose the fallacies and false equalities of legal and political doctrines. Watergate and other political scandals in the need for a more comprehensive understanding of legal ethics and political accountability [6]. By the early years, the confluence of these and other movements had exposed the limitations of a positivist definition of law standing alone. Leading jurists of the day-Lon Fuller, Jerome Hall, Karl Llewellyn, Harold Berman, and others-were pressing for a broader understanding and definition of law? of course, they said in concurrence with legal positivists, law consists of rules-the black-letter rules of contracts, torts, property, corporations, and sundry other familiar subjects [7] . Of course, law draws to itself a distinctive legal science, an artificial reason, as Sir Edward Coke once put it. But law is much more than the rules of the state and how we apply and analyse them. Law is also the social activity by which certain norms are formulated by legitimate authorities and actualized by persons subject to those authorities [8]. The process of legal formulation involves legislating, adjudicating, administering, and other conduct by legitimate officials as shown in (Figure 1).

Discussion

The process of legal actualization involves obeying, negotiating, litigating, and other conduct by legal subjects. Law is rules, plus

Figure 1: Legal formulation by legitimate officials.

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the social and political processes of formulating, enforcing, and responding to those rules. Numerous other institutions, besides the state, are involved in this legal functionality [9]. The rules, customs, and processes of churches, colleges, corporations, clubs, charities, and other non-state associations are just as much a part of a society's legal system as those of the state [10]. Numerous other norms, besides legal rules, are involved in the legal process. Rule and obedience, authority and liberty are exercised out of a complex blend of concerns, conditions, and character traits-class, gender, persuasion, piety, charisma, clemency, courage, moderation, temperance, force, faith, and more as shown in (Figure 2. Legal positivism could not, by itself, come to terms with law understood in this broader sense. In the last third of the twentieth century, American jurists thus began to return with increasing alacrity to the methods and insights of other disciplines to enhance their formulations. This was the birthing process of the modern movement of interdisciplinary legal study [11]. The movement was born to enhance the province and purview of legal study, to refigure the roots and routes of legal analysis, to render more holistic and realistic our appreciation of law in community, in context, in con- cert with politics, social sciences, and other disciplines? In the early years, a number of interdisciplinary approaches began to enter the mainstream of American legal education-combining legal study with the study of philosophy, economics, medicine, politics, and sociology. In the early years, new interdisciplinary legal approaches were born in rapid succession-the study of law coupled with the study of anthropology, literature, environmental science, urban studies, women's studies, gay-lesbian studies, and African-American studies [12]. And, importantly for our purposes, in these last two decades, the study of law was also recombined with the study of religion, including Christianity. In earlier, the catalogues of the thirty leading law schools listed a total of interdisciplinary legal courses, the number of such courses in these thirty schools had increased [13]. In earlier, law libraries stocked six interdisciplinary legal journals the number of interdisciplinary legal journals had increased, with many other traditional journals suffused with interdisciplinary articles. The pendulum of the law has swung a long way from the predominantly positivist position of two generations ago [14]. The pendulum might well have swung too far. The interdisciplinary legal studies movement was born in an effort to integrate legal studies both internally among its own subjects, and externally among the other disciplines. It is still doing that in some quarters. But in other quarters, ironically, integration is giving way to even further balkanization and isolation of the legal academy-in part because of this interdisciplinary legal studies movement with so many rival methodologies emerging, different schools of interdisciplinary legal study have begun to clamour for legitimacy, even superiority [15]. With so many new interdisciplinary legal terms and texts gaining legitimacy, whole quarters of legal study have become ever more intricate miniatures, increasingly opaque even to well-meaning fellow jurists.

Figure 2: Obedience and liberty exercised out of complex blend of concerns.

Conclusion

Making a causal connection between our criminal law and religious commands is a habit we are widely regarded as having outgrown. Time and opinion move on. Religion now belongs within the private side of modern lives, not the public world of courts and crime.

Acknowledgement

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Conflict of Interest

None

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