

GROUP7 Predictability

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I. Introduction

When the principle of constitutional state means governing according to the law, the law performs two different functions as a principle of governing. Actively it performs a function as a basis for the initiation of a nation's powers, and passively it performs a function of limiting and controlling a nation's power. In a liberal democratic nation, in the constitutional state principle, more emphasis given on the latter.

As one of the constituents of the principle of constitutional state, we can look at the guarantee of predictability about the use of public powers and the rule of trust and protection.

II. Prediction

In sociological writing the term "prediction" means a stated expectation about a given aspect of social behavior that may be verified by subsequent observation.

For deductions from known to unknown events within a conceptually static system and for statements about future outcomes based on recurring sequences of events.

In principal sense the term "prediction" refers to assertions about future outcomes based on the observed regularities among consecutive events of the past.

A. Prediction as a social process

The contemporary emphasis in sociology, as described below, is thus consistent with traditional enterprise, answering to the same general purposes but differing in the process by which the fore knowledge is obtained. The social purpose of prediction, whether of physical or social events, is to secure a measure of control over what otherwise would be less manageable circumstances.

B. The process of sociological prediction

Sociological prediction has arisen naturally from the concerns of sociology itself, both theoretical and empirical, and thus sociologists now take prediction of the forms and processes of social life as one of their principal tasks.

Max Weber held that the purpose of sociology is to predict the patterns of social interaction.

C. Prediction research

Although many sociological investigations have a bearing on the predictability of social and cultural events, relatively few studies have had prediction as their primary goal. For the purposes of outlining these more specialized studies, prediction research will be classified here according to whether its focus is the collective characteristics of the group or the characteristics of its constituent members.

D. Conclusion

It should be noted that prediction and sociology have always been closely linked : sociology grew out of a concern with prediction and has always had the securing of predictive knowledge as one of its express aims. However, relatively few empirical studies have been specifically concerned with producing it. Thus, the importance of recent prediction studies lies as much in the methodological understanding that have grown out of them as in the substantive findings themselves. As these

understandings become systematized and gain in currency, a wider variety of factual investigations will probably appear as a sequel to the pioneering work of the last several decades

III. Prediction and Predictability

Prediction is used in all branches of studies we call "science". In natural sciences, prediction has to do with a hypothesis, derived from observation of nature itself. Through repeated manipulated experiments using possible variants, this hypothesis becomes a law or principle. This makes possible a prediction to become a general fact. This characterizes the ultimate goal of science, which we can call a quest for truth.

In sociology, a branch of "social science", prediction takes on a more distinct role, because it is almost impossible to carry out manipulated experiments. Therefore, it is much harder to find a set law in human behavior or social phenomenon. This means prediction is all we have to rely on before we reach a conclusion during the course of time that events actually occur.

Legal predictability also starts from social sciences. Legislation in one sense can be a hypothesis, and subsequent judicial process can be seen as repeated experiment which creates a legal fact. This in turn is reflected in legislation and through this process people get to trust the legal system.

So what does this have to do with people's rights? For one thing, predictability makes people put a certain trust in the legal system and so people can act accordingly to it. This means they will abide by the law. Because the law has effect on the people, they act by the legal statements and not infringe other's rights. Another thing is that predictability confines the behavior pattern of the government. As we see it as a principle of the constitution and other laws, it guides the government to act uniformly. So people will know exactly what to expect from the government. This means people can monitor government actions and point out wrongs, requesting correction. However, predictability is not a universal concept. Change of an outside factor such as natural disasters, economic crisis, wars, etc. can make predictability an impossible thing. In such cases predictability is not utilized and legislation is needed to cover the gap between legislation and reality so as to enhance predictability. This can be explained as a process, where legal phenomenon and social phenomenon interact to reach high predictability (A spiral structure).

IV. Application of Predictability in Law

I. Civil law

A. Notice of Assignment and Estoppel

If an assigner has given notice of assignment of a claim to the obligor, even in a case where assignment has not been made or the assignment is null and void, an obligor acting in good faith may be set up against the assignee, against the assignor. The notice mentioned in the preceding paragraph cannot be withdrawn without the consent of the assignee.

B. Clausula rebus sic stantibus

The circumstances which were a basis for forming a legal action have changed in a way he didn't have expected or could not have expected, that sustaining or enforcing such effect of legal action would be improper, the concerned party can ask the other party to change its effect of commission of the act properly or cancel and terminate the contract.

C. Theory of Lapse

If a legal claim is not enforced that the other party has a rightful excuse to believe there would

be no more claims, claiming a legal action would be against 'Treu und Glaben' and would be extravagant use of rights. The other party can demur to the claims as a 'Einwand der Verwirking'

2. Labor Law- prohibition of changing disadvantageously

An employer shall, with regard to the preparation or alteration of the rules of employment, hear the opinion of trade union if there is no trade union composed of the majority of the workers in the business or workplace concerned, or otherwise hear the opinion of the majority of the said workers: Provided, That in case of amending the rules of employment unfavorably to workers, an employer shall obtain their consent. When an employer submits the rules of employment pursuant to Article 96, he shall attach a document containing the opinion. H. Application of Predictability in Law

3.Criminal law

A. The principle of "Nulla poena, nullum crimen sine lege."

(1) The principle of "Nulla poena, nullum crimen sine lege." is the general principle of modern criminal law that an act cannot constitute a crime or call for punishment unless there exists a written provision. This principle is the ultimate one of criminal law to protect the freedom of citizen from the expansion and wayward exercise of national punishment authority.

(2) The first clause of article 12 and 13 of the constitutional law states as follows

§12①No person may be arrested, detained, searched, seized, or interrogated except as provided by law. No person may be punished, placed under preventive restrictions, or subject to involuntary labor except as provided law and through lawful procedures.

§13① No citizen may be prosecuted for an act which does not constitute a crime under the law in force at the time it was committed, nor may he be placed in double jeopardy.

(3)The modernized meaning of the principle of "nulla poena,nullum crimen sine lege." is based on the principle of a constitutional state, using judiciary stability and predictability of the law as collateral, to protect the trust of the citizens toward this subject.

B. The principle of "Prohibition of Retroactivity."

(1) The principle of "prohibition of retroactivity" refers to the fact that criminal law is only applied to acts that were committed after its legislation, and that it cannot be applied retroactively to acts committed before its legislation. The principle of "prohibition of retroactivity" is based on the principle of a constitutional state, using judiciary stability and predictability as collateral.

(2) The first clause of Article 1 of the criminal law states that "The criminality and punishability of an act shall be determined by the law in effect at the time of the commission of that act."

(3)The prohibition of retroactivity is applicable not only to prosecution, but also to aggravation of punishment by retroactive legislation. Thus, an act that was not a crime at the point of being committed cannot be prosecuted as a crime according to retroactive legislation and cannot be applied in the case of aggravation of punishment.