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Constitutional Law

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What is Law

Introduction

When asked what law is, off the top of one's head people would answer, it is the words of the various statutes passed by the legislature. However it can equally be asked whether it is not law if it is not written in the form of a law.

Ofcourse it is not an easy task trying to define law with a lot of varying perspectives. Here I would like to put aside the various theories and diverse philosophical views and focus mainly on the understanding of what is generally considered law.

Law is a social norm

'Ubi societas, ibi ius', a famous latin legal maxim meaning where there is society there is law best explains this view. It can equally be said from the maxim that law exists only in society. Law, unlike the rules of nature such as "the sun rises from the east and sets in the

west" is not about how things are but about a norm of how things

should be.

Humans cannot live alone, and yet we are so diverse that in our society there are endless conflicts. Law is a social norm that regulates those diversity and conflicts to full fill what the society should be.

Law is a norm that has enforceability within a politically established society

Law is a social norm wial in a politically established society mainly the state that has force as a means to enforce it. therefore it can be said that to some extent the norms that do not have any enforceability it is not law.

Law is a cultural norm with justice as a goal.

Radbruch defined law as a meaningful reality serving the ideals of law. The ideals of law can be abstracted to justice. Radbruch in his effort to define law divided law into three categorizes. First is a law that is not a

law. A law that has given up the ideals of law, justice, human intrinsic rights etc. Second a just law. Lastly a unjust law but which is still legally binding. Ile believed that among these kind of laws, law that has ceased to fulfill its goal to bring justice is no longer aw therefore a object of civil disobedience.

Humans place themselves in reality and drives for a certain value. The outcome can be defines as a cultural norm such as art or law. Meaning that law is not just a reflection of reality but also a reflection of our dreams. Therefore law can only be understood on the line of reality and dreams at each end and our current law somewhere in between which is the reason for the next characteristic of law.

Law is the nature of things or order between 'what is' and 'what should be'

Law is relative yet absolute.

Law is relative in the sense that it is limited to the time and place, that it changes through time and space. At the same time it is absolute in the sense that it is aiming for a universal value called justice.

[[[.What is the function of law.

The function of law can be rightly defined as to maintain a system of social control while facilitating social life. Though law is not the only method of social control, law function as a systematic way to resolve disputes between individuals.

M. 5 forms of social control

1. **Custom** : Works as a source of law and it has to some extent enforceability of its own
2. **Religion** : Ancient times religion was a source of law. However it is merely a rule within the religion. However it cannot be overlooked

because of its effect on custom.

3. **Ethics** : Ethics function as the upper and the lower limit of law.

4. Manners

5. Law

IV. Three views of law

Natural law : view that law reflects fundamental and absolute principles of justice that are inherent in human life. They believe that law is derived from absolute moral and ethical scheme.

Positivist : view that law is truly law only if it has the form of a law, and can be enforced. A bad law is as much a law as a good one.

Social Science : Focuses mainly on the practicality of the application of law. Law is never absolute and based on experience not logic.

V Rejection of authority- Socrates.

In ancient Greece scholars perceived justice as something natural, outside of men's subjective judgement. Later Protagoras defines men as the index of all things. The center of all judgements. He denies the objective value of justice and perceived justice as relative and subjective.

However Socrates viewed justice equals law. Law and justice does not derive from the personal interest of individuals but from the nature of human beings. However it should be noted that "law" here does **not** necessarily mean the law in the positivist approach. The meaning of his decision to die willingly than break the law should therefore be understood not as acknowledgement of the positivist approach but as a passive rejection of authority, civil disobedience.

Civil disobedience is an inherent right. The right to resist unlawful law which does not reflect the ideals of law, and therefore not law to begin with.

Socrates, by willing to die and go along with the authority, is showing the discrepancy of the current law and justice and announcing that the law is unjust.

VI Legalization of marijuana.

1. Natural law approach

pro : The current law banning marijuana is in violation of the inherent right to choose what to eat, drink, and smoke, etc. unless it trespasses others right. Considering the fact that the reason why cigarettes were legalized and marijuana banned even though cigarettes are more addictive was that marijuana is easily home grown therefore does not help the revenue of the government, which is not enough to restrict the lights.

con: It is absolutely morally and ethically wrong.

ii. Positivist approach

pro : if it is passed by the legislature and legalized there is no problem in legalizing marijuana. The ethical, moral issues should not be considered

ifi. Social science approach

pro : Times are changing and it is not considered wrong to smoke marijuana. Even though it is currently illegal there are already a lot of people smoking marijuana. Therefore it should be legalized and be controlled. (Protection of underage kids) *con* : It cannot be controlled like cigarettes. it is not practical. how do we protect the rights of the children to have a safe environment.