Page 1871 - 1884 **DOI:** *http://doi.one/10.1732/IJLMH.25948*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 1

2021

Normative Jurisprudence: A Combination Law & Morals

AKANKSHA SINGH[1] AND SANJANA SRIVASTAVA[2]

ABSTRACT

The paper revolves around normative jurisprudence and commences with an introduction to legal philosophy and the relationship between law and morality. It then gives the meaning of normative jurisprudence and explains its various integtral concepts such as Liberty and Its Legal Limits and Legal Moralism. It further goes on to talk about the influence of Morals on laws and Legal Paternalism. The paper also sheds light on The Model on Legal Theory, The Insult Principle and The Law Obeying Obligation. We have also included brief explanations about the meaning of legal structure/systems from the perspective of prominent legal philosophers such as Hans Kelsen, H.L.A. Hart, Joseph Raz and John Austin. The paper has been concluded by a personal take on the summing of the definition of jurisprudence as a normative science and how it can be only be deciphered by combining past morals and present laws.

I. INTRODUCTION

Law philosophy (or legal philosophy) attempts to provide a general philosophical study of the law and legal institutions. Issues in the field vary from abstract philosophical concerns on the essence of law and legal structures to substantive questions on the relationship between law and morality, and justification for different legal institutions.[3] Issues in the field vary from abstract philosophical concerns on the essence of law and legal structures to substantive questions on the relationship between law and morality, and justification for different legal institutions. Subjects tend to be more abstract in legal philosophy than similar topics in political philosophy and applied ethics. For instance, while the issue of how to interpret the U.S. properly Constitution belongs to the theory of democracy (and thus falls within the heading of political philosophy), the study of legal interpretation falls within the heading of legal philosophy. Any discussion of jurisprudence risks becoming a semantic nightmare with a particular theory's labels and jargon. Clouding the actual aims of any truly useful analysis in

[1] Author is a student at Amity Law School, Noida, India.
[2] Author is a student at Amity Law School, Noida, India.
[3] https://iep.utm.edu/law-phil/

 [ISSN 2581-5369]

this field. Any useful examination of the "meaning of law" should be less concerned with providing verbal formulae which in all cases are true than with the actual workings of the law and the symbiotic relationship between law and the community it serves.[4] Normative jurisprudence is generally based on a refusal of the view that specifying what law is (as such) is a separate enterprise and it is interpreted as meaning that philosophical approach should be strictly descriptive rather than providing an account of what legislation should be. Intriguingly, Hart (1994: 211) seems to indicate, contrary to almost everything else he has said about methodology, that a philosophical theory of law is often properly judged on the basis of normative principles that go beyond the norms governing sound reasoning and argument: a principle of law that makes it possible to separate the invalidity of law from its immorality;[5] Whereas we may be blinded by a narrow concept of law which denies legal validity to iniquitous rules. One should not make too much of this claim, because Hart clearly considers conceptual methodology as being adequately descriptive of character; It is important to realize that this remark is at odds with Hart 's clear commitments insofar as recourse to any such practical considerations in justifying a conceptual theory is irrelevant to a purely descriptive approach to conceptual methodology.

Normative jurisprudence seeks to reignite normative legal theory on the basis of established moral principles and legalistic beliefs that both critique progressive law and propose changes for it. It sequentially and in depth looks at the three main jurisprudence trends-natural law, legal positivism, and theoretical legal studies that have in the past provided philosophical foundations for just such normative scholarship. The normative theory of law is concerned with the purposes and justifications of the law as a whole and of specific legal laws. Previous legal entries looked at examples of the three great moral theory traditions — consequentialist, deontological, and aretaic (or virtue-centered) viewpoints. There are variations in the large families between particular theories: within consequentialism, for example, welfare workers emphasize preference gratification, while hedonistic utilitarians emphasize enjoyment and pain.[6]

II. LIBERTY AND THE LEGAL LIMITS

By limiting the rights, laws limit human autonomy. For example, criminal laws exclude such actions from the continuum of conduct choices by penalizing them with incarceration and, in

[4] Christopher P. Portman, Jurisprudence: A Descriptive and Normative Analysis of Law, 84 MICH. L. REV. 1041 (1986).
[5] normative jurisprudence, see Dickson (2001: Ch. 1, Sect. A).
[6] Ibdi.

certain cases, death. Similarly, civil law mandates that parties take reasonable care not to harm others and uphold their contracts. Since human liberty deserves prima facie moral consideration, the question arises as to what are the limits of the legitimate authority of the State to restrict its citizens' freedoms. In the form of the harm theory John Stuart Mill offers the classic liberal answer: The sole reason for which humanity is required, individually or collectively, is self-protection in interfering with the freedom of action of any of its numbers. The only reason for which power can be exercised rightly against its will against any member of a civilized society is to avoid harm to others. His own health, physical or moral, is no warrant enough. The man is sovereign upon himself, over his own body and mind. Although Mill left underdeveloped the notion of harm, it is most often taken to mean only physical harm and more serious types of psychological damage. While Mill's view enjoys popularity among the public, it has created considerable controversy among law philosophers and philosophers of politics. .Many philosophers conclude that Mill highlights the limits of valid state power over the individual, arguing that law can be used to impose morality, protect the individual from himself and, in some cases, protect citizens from offensive behaviour.

III. LEGAL MORALISM

Legal morality is the belief that the law should reasonably be used to ban actions that clash with the common moral values of society even though such actions do not result in harm to others physically or psychologically. According to this view, the freedom of an individual may be legally limited simply because it is in conflict with the collective morality of society. Legal morality is the principle of jurisprudence and the philosophy of law that holds that laws can be used to forbid or compel actions based on the common opinion of whether it is moral in society. It is also viewed as an alternative to legal liberalism, which holds that laws should be used only to the degree that they support equality.[5] Legal morality means that the State is allowed to use its economic power to impose social morality in society. Patrick Devlin, the most prominent legal moralist, argues that a common morality is central to the life of a society. The controversy between morality and liberalism attracted a great deal of attention following the publication of the Wolfenden Report by the UK Parliament in 1957, which proposed that homosexuality be decriminalized on the grounds that the role of the law "is not, in our opinion, to interfere in citizens' private lives or to attempt to impose any particular pattern of behaviour."[6] If men and women want to establish a society where there is no basic consensus regarding good and bad, they will fail; if the consensus goes, the society will disintegrate, based on popular agreement. That culture is not something which is physically preserved together; it is kept by the intangible ties of popular thinking. If the ties were relaxed so much the members would be drifting apart.

 [ISSN 2581-5369]

A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price.[7] H.L.A. Hart (1963) points out that Devlin overstates the extent to which preservation of a shared morality is necessary to the continuing existence of a society. Devlin attempts to conclude from the necessity of a shared social morality that it is permissible for the state to legislate sexual morality (in particular, to legislate against same-sex sexual relations), but Hart argues it is implausible to think that "deviation from accepted sexual morality, even by adults in private, is something which, like treason, threatens the existence of society"[7]

IV. INFLUENCE OF MORALS ON LAW

About the influence of morals on law, H.L.A Hart says:

'The law of every modern state shows at a thousand points the influence of both the accepted social morality and wider moral ideals. These influences enter into law either abruptly and avowedly through legislation or silently and piecemeal through the judicial process. In some systems as in the United States, the ultimate criteria of legal validity explicitly incorporate principles of justice or substantive moral values. In other systems as in England where there are no formal restrictions on the competency of the supreme legislature, its legislation may yet no less scrupulously conform to justice or morality. The further ways in which law mirrors morality which are myriad and still insufficiently studied; statutes may be a mere legal shell and demand by their express terms to be filled out with the aid of moral principles; the range of enforceable contracts may be limited by reference to conceptions to morality and fairness; liability for both civil and criminal wrong may be adjusted to prevailing views of moral responsibility. No positivist could deny that these are facts or that the stability of legal systems depends in part upon such types of correspondence with morals. If this is what is meant by the necessary correction of law and morals, its existence should be conceded.'[9]

While compliance of certain social standards protecting life, protection, and property is undoubtedly central to a society's survival, a community may withstand a variety of conduct in many other areas of moral concern — as demonstrated by the debate in the U.S. over abortion and homosexuality.

V. LEGAL PATERNALISM

Legal paternalism is the belief that if it is appropriate to deter individuals from causing physical or serious emotional harm on themselves, it is acceptable for the state to legislate against what

[7](Hart 1963, p. 50).

 [ISSN 2581-5369]

Mill calls "self-regarding behavior." As Gerald Dworkin puts it, paternalistic intervention is a "interference with the freedom of action of an individual justified by motives relating solely to the individual being coerced's health, goodness, pleasure, desires, wishes or values.' A law requiring the use of a helmet while riding a motorcycle is a paternalistic intrusion, insofar as fears about the safety of the rider are justified.[10] Dworkin argues that Mill's view that a person "cannot be rightly compelled to do or to forbear because it's going to be better for him" precludes paternalistic legislation that would be accepted by completely reasonable individuals[11]. There are things, like health and education, according to Dworkin, every decent individual wants to seek their own good-no matter how that good is conceived. The attainment of these basic goods can legitimately be promoted in certain circumstances by using the state's coercive force. Dworkin gives his narrow legal paternalism a conceptual reason for consent. There are a variety of different scenarios where adults who are completely reasonable may agree to parental limits on rights.

VI. MODEL ON LEGAL THEORY: WELFARE, WELL-BEING AND HAPPINESS

Welfare— the word "welfare" is heavily laden with ideology. Welfare also acts as a technical term for students of contemporary law and economics. One's wellbeing is a function of one's usefulness, and most contemporary economists consider usefulness as a function of one's interests about matters.

Well-being — In the general and non-technical context, the word "well-being" is similar to "welfare." In ordinary language we also equate "well-being" with health — primarily physical but also mental health. Philosophers use this term to refer to what is ideal for anyone non-instrumentally.

Happiness — In ordinary language the word "happiness" is also used to refer to a state of mind. One could think of happiness as a sensation of joy, contentment, fulfillment, or joy. But the term "happiness" is sometimes used as a translation for the Greek word "flourishing," and even the use of phrases like "real happiness" in ordinary speech indicates that one cannot have good feeling moment to moment and lack happiness. Some philosophers would reserve the word "happiness" for a stable or lasting quality created by the proper characteristics of one's own life. So it may be that "a job well done" may make you "happy," but a delicious desert can only give you "enjoyment" or "pleasure."

Three Hypotheses of the Good

One way we can get a better perspective on the principles of health, well-being and happiness is by exploring three basic theories of success for humans:

 [ISSN 2581-5369]

Hedonism: Psychological hedonism (which may or may not be related to the belief that lots of sex, drugs, and rock 'n roll create good human life) is the belief that happiness (or more commonly positive or pleasurable mental states) is good for humans and bad for humans is suffering (or negative mental states). Hedonists may think enjoyment is a distinctive condition of the brain that continually differs.

But some hedonists think pains are qualitatively distinct. For example, John Stuart Mill thought there were higher pleasures (such as listening to great music or reading a great novel) and lower pleasures (such as strong drinks, drugs, or playing video games).

Welfare: Welfare is strongly associated with normative law and economics in the legal academy. (But the terms 'welfare' and 'welfare' have different meanings in other disciplines.) Of course, economists differ on the nature of welfare.

Eudaimonism: The third view that describes is based on Aristotle's argument that "eudaimonia," which translates as "flourishing" is the highest humanly possible happiness. Aristotle claimed that humans flourished if both performed well (lived in the right circumstances) and did well (engaged in useful activities), Aristotle's argument was that eudaimonia consisted of well-being and good doing.

VII. THE INSULT PRINCIPLE

Joel Feinberg believes that the harm principle does not provide adequate protection against other people 's wrongful behaviours, as it is inconsistent with many criminal prohibitions we take for granted as justified. If the only legitimate use of State coercive force is to protect people against harm from others. Subsequently, statutes prohibiting public sex are inadmissible because public sex may be offensive but does not harm others (in the Million sense). Accordingly, Feinberg argues that the harm principle must be enhanced by the offence principle, which he defines as follows: "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way to prevent serious offences (as opposed to injury or harm) against persons other than the actor, and that it is probably a necessary means for that purpose"[8] By "offence," Feinberg intends a subjective and objective element: the subjective element consists of the experience of an unpleasant mental state (for instance, shame, disgust, anxiety, embarrassment); the objective element consists of the existence of an unjust cause of such a mental condition.

[8] (Feinberg 1985)

 [ISSN 2581-5369]

VIII. THE LAW OBEYING OBLIGATION

Natural law critics of positivism (Fuller 1958, for example) frequently complain that if positivism is correct, there can be no moral obligation to obey the law qua law (that is, to obey the law as such, no matter what the laws are, just because it is the law). As Feinberg puts it (1979): It is hard to reconcile the positivist account of legal validity with the [claim] that valid law as such deserves our respect and general fidelity, no matter what its content. Even if valid law is bad law, we simply have an obligation to obey it because it is law. But how can this be if the validity of a law has nothing to do with the content thereof? The idea is this: if only that there are specified recipes for making law is essential to law, then there can be no moral obligation to obey a rule simply because it is the law. For the most part, contemporary positivists accept the notion that positivism is inconsistent with an obligation to obey qua law (compare Himma 1998), but argue that the mere status of a norm as law cannot give rise to any moral obligation to obey that norm. While there might be a moral obligation to obey a particular law because of its moral content (e.g., laws prohibiting murder) or because it solves a problem of coordination (e.g. laws requiring people to drive on the right side of the road), the mere fact that rule is law does not provide a moral reason to do what the law requires. Arguments for the existence of even a prima facie obligation to obey the law (that is, an obligation which may be outweighed by competing obligations) have largely failed. Arguments in favour of an obligation to obey the law fall roughly into four categories:

(1) gratitude arguments;

(2) fair play arguments;

(3) implied consent arguments; and

(4) general use arguments.

The argument of gratitude begins with the observation that all persons, even the worst off, derive some benefit from the enforcement of the law by the State. In this perspective, a person who accepts benefits from another person thus incurs a duty of gratitude toward the benefactor. And the only plausible way to fulfil that duty to the government is by obeying its laws. Nevertheless, as M.B.E. Smith points out, "if anybody gives me benefits without any consideration as to whether I want them, and if he does so in order to advance a purpose other than to promote my particular welfare, I have no obligation to be grateful to him."[14] Since the state does not give citizens a choice regarding such benefits, their mere enjoyment cannot give rise to a duty of thankfulness.

 [ISSN 2581-5369]

John Rawls (1964) argues that in societies where there is a mutually beneficial and just scheme of social cooperation there is a moral obligation to obey the law qua law. What gives rise to a moral obligation in such societies to obey law qua law is a duty of fair play: fairness requires obedience from persons who intentionally accept the benefits made available in a society organized around a just scheme of mutually beneficial cooperation. There are a few issues in here. First, Rawls' argument does not establish the existence of a content-independent duty to obey law; the duty arises only in those societies which institutionalize a just social cooperation scheme. Second, citizens are not presented with a genuine option, even in such societies, to refuse those benefits. I can't avoid the benefits of laws ensuring clean air, for example. But accepting benefits cannot give rise to a fair play obligation if one is not in a position to refuse them.

The consent argument forms an obligation to obey law on some sort of implied promise. As is obvious, we can assume obligations voluntarily by consenting to them or making a promise. Of course, most citizens never expressly promise or consent to obey the laws; for this reason, advocates of this argument try to infer consent from considerations such as continued residence and acceptance of state benefits. Nonetheless, acceptance of benefits that one cannot decline implies no more consent to obey law than fair play or gratitude duties. Furthermore, the prohibitive difficulties associated with emigration prevent consent from being inferred from continuing residence.

Finally, the general utility argument forms the obligation to obey the law in the consequences of universal disobedience. Since the consequences of general disobedience would be catastrophic according to this argument, it is wrong for any individual to disobey the law; for no one can disobey the law unless everyone can.

In reply, Smith points out that this argument strategy leads to absurdities: "For example, we will have to maintain that there is a prima facie obligation not to eat dinner at five o'clock, because if everyone did that, certain essential services could not be maintained"[9]

c. The Justification of punishments

Punishment is unique among putatively legitimate acts in that its purpose is to inflict discomfort on the recipient; an act which is incapable of causing a person minimal discomfort cannot be characterized as a punishment. The commission of an act for the purpose of inflicting discomfort in most contexts is morally problematic because of its resemblance to torture. For this reason, institutional punishment requires a sufficient moral justification to distinguish it

[9] (Smith 1973, p. 966)

 [ISSN 2581-5369]

from other practices designed to inflict discomfort on others.

Punishment justifications typically take five forms: (1) retributive; (2) deterrent;

(3) preventive; (4) rehabilitative; and (5) restitutional.

What justifies punishing a person is, according to the retributive justification, that she has committed an offence that deserves the punishment. It is morally appropriate, in this view, that a person who has committed a wrongdoing should suffer in proportion to the magnitude of his wrongdoing.

However, the problem is that the mere fact that someone deserves punishment does not imply that it is morally permissible for the state to administer punishment; it would be wrong for me, for example, to punish the child of someone else even though its behaviour might merit it. Unlike the retributivist theories that look back on a person's prior wrongdoing as a justification for punishment, utilitarian theories look forward to the beneficial consequences of punishing a person. Three principal lines of utilitarian reasoning exist. According to the justification for deterrence, punishment is justified by the socially beneficial effects it has on other individuals.

According to that view, punishment deters wrongdoing by people who would otherwise commit wrongdoing. The problem with the theory of deterrence is that it justifies one person being punished on the strength of the effects it has on others. The idea that it is permissible to deliberately inflict discomfort on one person because doing so may have beneficial effects on other people's behaviour appears to be inconsistent with the Kantian principle that using people as a mere means is wrong. The preventive justification argues that incarcerating a person for wrongdoing is justified insofar as it prevents that person during the incarceration period from committing wrongful acts against society. The rehabilitative justification argues that punishment is justified by virtue of its effect on the offender's moral character. Each of these justifications suffers from the same flaw: crime prevention and the offender's rehabilitation can be accomplished without the deliberate infliction of the punishment that constitutes discomfort. For example, crime prevention may require the offender to be detained but it does not require detention in an environment that is as unpleasant as the ones typically found in prisons. The restitutional justification focuses on the impact on the victim of the offender's wrongful act. Other punishment theories conceptualize the wrongful act as an offence against society; the theory of restitution regards wrongdoing as an offence against the victim. Thus, in this view, the main purpose of punishment must be to make the victim whole to the extent that this can be done: "The point is not that the offender deserves to suffer; it is rather that the offended

 [ISSN 2581-5369]

party desires compensation"[10] Thus, a criminal convicted of wrongdoing should be sentenced to compensate her victim in proportion to the loss of the victim. The problem with the restitution theory is that it doesn't differentiate between compensation and punishment. Compensatory targets focus on the victim whereas punitive targets focus on the offender.

IX. FOUNDATIONS OF NORMATIVITY: KELSEN–HART–RAZ–AUSTIN

As a normative science, jurisprudence is the study of legal norms, or, to put it slightly differently, legal thoughts. Jurisprudence as normative science does not study what law should be, but it does study how law tells other people – law subjects, or judges – what they should be doing. In the study of normative orders, jurisprudence as normative science attempts to explain and analyse how normative orders function, as opposed to how they should function. In that sense, the Continental normative tradition still lies within the positivist tradition, although in the analytic system the focus is very different from the positivist approaches of John Austin, H. L. A. Hart, Joseph Raz and others. Within Continental law, Austrian jurist Hans Kelsen (1881–1973) theoreticized the normative character of the law, i.e. legal systems with patterns of command and obedience and characterised by the role of coercive force and the threat of sanctions; Whereas in the Anglo-American analytical philosophy of the law tradition the two main figures for a revised form of legal positivism are H. Joseph Raz (1939 –) and L. A. Hart (1907–1992). However, it is interesting that Kelsen's understanding of the centrality of sanctions and coercion followed, as he recognised, from John Austin's writings (Kelsen 1941), even as Hart and his successors in the Anglo-American analytic tradition rejected Austin 's view of threats of sanctions as necessary to an account of the operation of law.

HANS KELSEN

For Hans Kelsen, and for a significant part of the Continental tradition (e.g., Norberto Bobbio (1904–2004)), law is normative (i.e., essentially constituted by duty-imposing standards) and must be understood as such. For Kelsen the law is a system of coercion-regulating norms. Coercion is the substantive characteristic of the legal norm, and of the legal order intended to apply the coercive sanctions. This means that the form of any "primary" law is that of a conditional prescription to judges or law enforcers as to where sanctions should be applied when a certain behaviour, the "crime," is performed. Therefore, the legal order becomes a system of behavioural guidance, not because it tells the subjects of law how to behave, but because it tells officials how they should be dealing with the subject under certain conditions. Therefore Kelsen's legal order is a normative system, and law is a set of norms with the type

[10] (Barnett 1977, p. 289).

 [ISSN 2581-5369]

of unity typical of a system. This unity of the legal order is based on a basic norm (the Grundnorm): it is a norm, although not put forward by positive law, which Kelsen considers to be the fundamental precondition for legal thinking and which explains the "validity" or binding force of law, the result is that the grounding basis of a norm's validity is always a different norm. No ought to be derived from a fact-a is. It follows that the legal order is a pyramid-shaped chain of norms, where the basic norm is a hypothetical and transcendental norm which constitutes the epistemological condition necessary for considering all the norms of a given legal order as being objectively valid or binding.

The specific reference point of any legal norm is the constitution, which was itself created by an earlier constitution, and this line can be traced back to the very first constitution, from constitution to constitution.

According to Kelsen, the Grundnorm's authority (validity or binding force) (the "constitution" in a "logical-transcendental" sense) is to be presupposed, and this endows with binding force the first historical constitution (the "legal-positive constitution"). For the Reine Rechtslehre School (Kelsen, Adolf Merkl (1890–1970), Franz Weyr (1879–1951), legal science is nothing more than legal noetics (jurisprudence deals with knowledge of law), legal logic, and legal methodology. From this point of view, the philosophy of law is a fundamental theory of law: it is a system of fundamental legal concepts which is the prerequisites for a possible science. Jurisprudence as a science of law has the task of determining the concept of law and the "formal" or "structural" linkages between norms without regard to their specific content, and of providing legal science with a methodological theory. Consequently, jurisprudence can be designated as legal science, as a science of the "form" of law. The norm as an idea is the quintessence of legal thinking in general when compared with the form of law. That form is what gives legal character and normativity. In the phenomenon of law the character of normativity (Kubeš 1977) can be recognized precisely. But normativity's origin cannot be inferred from the real world. So it is impossible to deduce an ought from a is[11]. Nevertheless the normativity of the legal sphere is closely linked to the reality of the world as an ideality. This becomes possible because man is capable, in the form of an imperative, of translating the ought and the content of the norm into reality as an idea of law. The legal norm becomes the basis of normativity, that is to say, of the obligatory nature of the law. Therefore, the transfer of the norm as an idea of law into the world of reality occurs when individuals, contingently, make the norms part of an actual legal system and of a functioning legal order. A large number

[11](Kelsen 1967).

 [ISSN 2581-5369]

of basic concepts (such as, for example, the concepts of norm, duty, person subject to duty, and subject-matter of law, together with the concepts of right and validity) that are constantly used in legal science were based on the concept of normativity: that is, of the imperative or prescriptive or compulsory nature of law, as opposed to simply descriptive law. And thus a law is normative by definition, and only valid legal norms – those that impose sanctions and are part of a system of organised coercion – are normative in fact (Kelsen 1960). Having a legal right or obligation, therefore, means having a strictly legal right or obligation, which is a legal right or obligation tout tribunal (Spaak 2003).

H. L. A. HART

As a presupposed norm, Kelsen 's basic norm does not explain the empirical existence of legal systems, and therefore does not explain a legal system as an existing set of rules endowed with force of law or authority. H offered a significant solution to this problem. L. A. Hart (1961) who makes the existence of a (mature, municipal) legal system dependent on what is actually a social rule practiced, and therefore real: the ultimate rule of recognition, a meta-rule in any legal system that includes the criteria of legal validity for all other rules within the legal system. For Hart, the existence of the ultimate rule of recognition rests on officials accepting it (It is an essential aspect that the recognition rule is an official custom) as to who is allowed to decide on legal matters, what judges or other officials may consider as binding reasons for the decision, what sources of law will be considered legitimate and what rules and sources will regulate official acts. The substance of the ultimate rule of recognition can be established from the officials' social activities that regard the rule as a valid norm of conduct and fulfil the requirements of the rule. For Hart this ultimate rule of recognition has the following functions:

(1)providing a test for the legitimacy of the law in the legal framework underlying it and everything that belongs to the legal system;

(2)That the legal system unifying its laws be united. Consequently, a legal rule is a true legal rule insofar as it is created in some form (prescribed, for example, by a rule of change) as required by the rule of recognition. Therefore any rule that satisfies the recognition criterion is a true rule of law.

The normativity of law, in his tradition to Hart and others, depends on the empirical nature of what actually constitute social norms.

JOSEPH RAZ

Joseph Raz, who has depended heavily on Kelsen in one of his earlier books, The Definition of a Legal Structure (Raz 1980), often focuses on normativity and, above all, on three issues:

 [ISSN 2581-5369]

(1) How are normative laws and how do they vary from ordinary reasons?

(2) Why are regulatory systems systemic?

(3) What differentiates legal from other systems, and what is their normativity?

Raz (1999) answers all three questions by considering reasons for action as the fundamental normative concept, and by providing a unified account of normativity in his theory of norms. Norms are rules that require the execution of a certain action, as well as rules that grant permission. The various types of norms and their logical features make up the normative structures, that is, rule structures. For Raz the legal system is one of the most important forms of normative system. For Raz, certain kinds of laws, such as categorical and permissive ones, are reasons for a particular form of behaviour, and other laws, such as power-conferring rules, are logically related to those reasons. Raz has been trying to demonstrate how expectations and explanations help clarify prescriptions like commands and orders.

Raz argues that moral philosophy is all about what people can do. Individuals should act on the basis of values derived from a value theory, and normative theory should determine who should be understood, and which values. The key principles are 'goods' and (as the most fundamental) motives for action, with contractual force laws, responsibilities, rights and norms. And the logical analysis is for Raz theory. Conceptual analysis often encompasses the philosophical characteristics of concepts such as meaning, principle and the essence of the laws governing functional reasoning, and thus goes beyond the mere study of norms and normative

structures.

JOHN AUSTIN

What was given by John Austin (1790–1859) is a significant contrast to the accounts of both Kelsen and Raz, as well as those in the natural law tradition. Austin, as is well recognised, described a "properly so-called" law as the one that imposed the application of negative penalties – evils – on disobedience.

A prescription or imperative not accompanied by a penalty has simply not been a law at all. As a result, the idea of normativity was inextricably bound up with sanctions and the force of law was a function of capacity-imposing sanction by law. Insofar normativity is the function which explains how law can offer its subjects reasons for action. Austin insisted that the fear of sanctions was a property necessary or essential to the normativity of law. Without a sanction the subject would have no reason whatsoever to follow the law or to take a law as a reason for action.

 [ISSN 2581-5369]

The critique of Austin's conception of normativity is an important component of the insights of Hart and his followers. Arguing against Austin, Hart argued that laws could be taken as reasons for action for both officials and subjects even if there were no sanctions attached to those laws. Hart called this "internalization," and it was central to his claims against the Austinian image that internalization without sanctions was conceptually feasible. Although there is controversy about the degree to which Austin (and Jeremy Bentham before him) actually held that a sanction-free legal norm was a logical or philosophical matter, the normativity of law with the sanctions that law contingently imposes is a stance that contemporary legal theorists seldom hold.

X. CONCLUSION

To sum up the definition of "jurisprudence as a normative science," the word "normative" must not be interpreted as a summary of specific laws or legal structures, but in the context of a field of study and a field of cognition that has norms as its object. In the latter case, legal science in the sense that norms are its object can be understood as "normative." Consequently, the role of legal science is not to administer norms but to define them and, perhaps more significantly, to provide an overview of exactly what norms are, and what follows from the presence of a norm – in general. A core concept of law as the normative science is the term "sought," which has to be interpreted in a strictly normative sense. It is through the "purpose" that legal science grasps the normative characteristics of its object, not in the sense of enforcing a duty but in accordance with an imputation relationship, that is, according to the Kelsenian scheme, it is worth noting in conclusion that the study of the rational nature of legal norms is not a characteristic function exclusively of legal science but also of the more analytical sociology of law. Although a common feature of all normative social sciences is the study of the logical form of the norms studied by the sociology of law and the logical concepts as nexuses for imputation. The empirical sociology of law, as well as the doctrinal study of the law, seeks to determine the specific content of the law in comparison with other social-normative legislation. Legal definitions can be elaborated only, and the precise nature of the legal rules can be decided only on the basis of empirical and moral inquiries based on subjective historical-social fact.

*****

 [ISSN 2581-5369]