An Evaluation of Codification and Imperative Theory of Law

``To seek to be wiser than the laws is the very thing which is by good laws forbidden.''

These, then, are the chief advantages to be derived from the exclusion of individual judgment by fixed principles of law. But these benefits are obtained at heavy costs. ``The law is without a remedy for greater evils, yet it brings with it evils of its own.'' Some of them are inherent in the very nature. Others are the outcome of tendencies, which, however, natural are not beyond the reach of effective control. The fact of a legal system is its rigidity. The result of this inflexibility is that, however, carefully and cunningly a legal rule may be framed. There will in all probabilities by some special instances in which it will worm, hardship and injustice and prove a source of error instead of a guide to truth. So, indefinitely, various are the affairs of man that it is impossible to lay down general principles which will be true and just and every case if we are to have general rules at all. We must be content to pay this price, the time honoured maxim- ``Summum Jusest Summa In Juria''. In an expression of the fact that very few legal principles are founded in truth that they can be pushed to the extremist logical, conclusion without leading to injustice. Analogous to these rigidity and vice is that of conservatism. The former is the failure of the law to confirm itself to the requirements of special instances and unforeseen classes of cases. The later is its failure to confirm to these changes in circumstances and in man's view of truth and justice, which are inevitably brought about by lapse of time. In the absence of law, the administration of justice would automatically adapt itself to the circumstances and the opinions of time but fettered by rules of law. Courts of justice do the bidding not of the present but of the times, cost in which these rules were fashioned.

Another vice of the law is the formalism. By this is meant the tendency to attribute undue importance to form as opposed to substance and to exalt the immaterial to the level of the material. It is incumbent on a perfect legal system to exercise a sound judgment as to the related importance of the matter, which comes within its cognizance and a system is infected with formalism in so far as it falls to meet this requirement.

The last defect is undue and needless complexity. So, we can say our law is filled with needless distinctions, which add enormously to its bulk and nothing to its value, while they render a great part of it unintelligible to any but experts.

From the foregoing considerations as to merits and vices which are inherent in administration of justice according to law, it becomes clear that we must guard against the excessive development of legal systems, if the benefits of law are great the evils of too much law, are not small.

Becon and Aristotle have also observed to this effect, `` we should do something to abolish or minimize the vices of law and it is also good if actions are taken in this regard.''

According to the imperative theory of law, the civil law is essentially and throughout whole compass nothing more than a particular variety of impressive law and consists of general commands issued by the state to its subjects and enforced through the agencies of court of law, by the sanction of physical force. We have seen that it contains an important element of truth. It rightly recognizes the essential fact that civil law is the product of state and depends for its existence on the physical force of the state exercised through the agency of judicial tribunal. When there is no state, which governs community by, the use of physical force, there can be nothing has civil law. It is only if and so far as any rules are recognized by the state in the exercise of this function that these rules possess the essential nature of civil law. But we must see the objections of this theory. First and most important objection will be as follows: ``although the definition of law as the command of law state is plausible and is the first sight sufficient, as applied to be developed political societies of modern times. It is inapplicable to more primitive communities. Every law is not the command of the state. It has its source in custom, religion or public opinion and not in any authority vested in a political superior. It is not until a comparatively late stage of social evaluation that law assumes its modern form and is recognized as a product of supreme power governing a body politics, law is prior to, and independent of political authority and enforcement. It is enforced by the state because it is already law and not vice versa'' to this argument of the advocates of the imperative theory, we can give a valid reply.

If there are any rules, prior to and independent of state, they may greatly resemble law. They may be the primeval substitute for law. They may be the historical source from which law is developed and proceeds. But they are not themselves law. There may have been a time in the past when a man was not distinguishable from the anthropoid ape, but that is no reason for new to define man in such a manner as to include an ape. So to trace two different things of common origin in the beginning of their historical evolution is not to disprove the existence, or the importance of an essential difference between them as they now stand. To all this Salmond himself has provided the answer that the plausibility of the historical argument proceed from the failure adequately to comprehend the distinction, hereafter to be noticed by us between formal and natural sources of law. Its formal source is that from which it obtains the power and will of the state. Its material sources on the other hand are those from which it derives its material contents. Custom and religion may be the material sources in legal system. No less than that express declaration of new legal principles by the state, which we term legislation. In earlier times, indeed, legislation may be unknown. Yet, although the imperative theory contains these elements of truth, it is not wholly true. It is one sided and inadequate-a product of an incomplete analysis of juridical conceptions. In the first place it disregards the ethical

element, which is essential element of complete conception as to special relation between law and justice. This theory is silent and ignorant. This is right or justice, if rules of law are from one point of view, commands issued by the state to its subject from another stand point, they appear as the principle of right and wrong so far as enforced and recognized by the state. In the exercise of the essential function of administering justice. `` Law is not right alone or might alone but a perfect combination of the law.'' It is justice speaking to men by the voice of the state. The established law may be far from corresponding accuracy with true rule or right nor is its legal validity in any way effective by any such imperfection. Nevertheless the idea law and justice are coincident. It is for the expression and realization of justice that law has been created and like every other work it must be defined by reference to its work, end, purpose, object etc.

So, a purely imperative theory is an one sided as a purely or non-imperative theory would be. It mistakes a part of the connection of the term defined for the whole of it: we should be sufficiently reminded of this ethical element in the usage of popular speech, the term law & justice are familiar associates Court of law are also court of justice and the Administrative of Justice is also the enforcement of law. Right, wrong and duty are leading terms of law as well as of morals. If we term from only own to foreign language (German, French, etc.) as we find the law right are usually called by the same name. They all have a double meaning. They all are ethical as well as juridical. They all include the rules of justice as well as these of law are these facts, then of no significance are we to look on them as nothing more than accidental and meaning less coincidence of speech. It is this that the advocate of the theory in question would have us believe. We may, on the contrary, assume with confidence that these relation between names of things are. But the outward manifestation of very and intimate relation between things named. A theory which regard law as the command of the state and nothing more and which entirely ignore the aspects of law as public declaration of the principle of Justice would lose all its plausibility if expressed in a language in which the terms for law signifies justice also even if we will incorporate the missing ethical element is definition even if we define the law as the sum of the principle of justice, recognized and enforced by state, even if we say with Blackstone that law is a rule of Civil] conduct prescribed by] the Supreme Power in a state corresponding what is right & what is wrong" be]denied that there are rules of law as that term is ordinarily used and it is plain that they fall within the definition of law as the principle acted upon by the court of justice. But in what sense are they enforced by the state. They are not command, but permission. They create liberties but net obligations. So, also, the innumerable rule of judicial procedure, are largely, known imperative. They are in no proper sense rules of conduct enforced by the state. For example, the principle that hear say evidence within evidence is superior to verbal that witnesses must be examined on] oath & affirmation etc.

There are various other forms of non-imperative law notable these, which relates to the existence application and interpretation of other rules. All legal principles are not commands of state and those which are such commands of state and those which are such commands are at the same time and in their essential nature same-thing more of which imperative theory takes into account.

In conclusion it may be said that codification is consequential result of the implementation of the imperative theory of the law. Codification has mixed feeling it is boom as well as curse to society. The governmental setup & the judicial system must have a cautious watch for the implementation of the laws through codification. There is a old maxim ``Least laws are the best laws this maxim should be kept in mind by the governmental setup & judiciary while codifying the laws for the public there should be minimum laws for the society for the implementation. If there are huge number of laws, than there are all chances of the confusion and contradiction between laws & misunderstanding among public. Let us hope that the best shall be done by the governmental setup & judiciary in future.

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