

Abstract

Due to changes that globalisation has brought us, it compelled us to reconsider our prevalent theories on law and governance. The stage, which we have entered is that, we not only have to accept different legal systems influencing our nation state- law, but also that the legal system constitutes a part of a whole autonomous, private governance system, of either a community or an association.

I am taking the research question, “How can legal pluralism liberate citizen from oppressive value system imposed by the state.”, as the a read thread, in guiding and leading us through the thesis.

In this respect , I will start off with elaborating on the concept of legal pluralism, and want to develop it further into a comprehensive concept, so that it will cover a totality of ‘social units’ and not only normative systems. As part of this, I am arguing that Eugen Ehrlich’s account of Law, ‘Living Law’, will be an apt concept to underlie the comprehensive concept of legal pluralism.

The ambiguity of the concept of legal pluralism is mainly the result of different approaches to law. Law has been scrutinised either from legal scientific perspective, so from a logical perspective, or from social scientific perspective. What both fields of science did, was to explain certain behaviour in a particular way, either as a logical construction or as social behaviour. But they both went astray to the essence of law, namely that it is a part of a whole social phenomenon, that it is socially embedded. Law, evolved out of its social environment, and without it one cannot comprehend the legal phenomenon, but at the same time there is absolutely ‘something’, which one can identify as law.

In ‘community and law approach’, I am making an attempt to identify the locus of law by employing Ferdinand Tönnies typification of “Gemeinschaft” (Community) and “Gesellschaft” (society). When juxtaposed against the foundational characteristics of our modern concept of law, which are Logic, Rules and Judicatory systems, one will understand where one can find the locus of law.

By analysing the example of the Jewish Diamond Industry, I will illuminate how this industry could maintain its legal systems for so many years, without the intervention of the nation-state. The diamond industry could maintain their peculiar legal system for so long, because of their trust-reputation, Value and ADR based legal system.

Since the “community and law” approach is challenged because of its presumed neglect of protecting individuals, I will refute this claim by posing two arguments. First, I will claim that the harm-principle will constitute enough protection to individuals. And secondly the political framework which accommodates communities and association, namely associationalism, considers the individual as the central point in its theory. By elaborating on Otto von Gierke and Harold Laski, I will outline my arguments.

Lastly, in order to verify the outcome of my research question, which is that community and association will liberate citizens from oppressive value systems imposed by the state, I will apply this on Afghanistan. I will claim initially in the first chapter, that all seven constitutions of Afghanistan

failed, because of its endeavour to centralize. Instead, I will argue that Althusius' political theory of "societal federalism" will provide an opportunity for Afghanistan to elevate its "peasant" society into political framework, by attaching sovereignty to its subsequent "social units". One of the principles of "societal federalism" is that higher units should intervene when lower units are not able to deal.

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