The Journal of Social Sciences Studies and Research
Online ISSN: 2583-0457
Available Online at http://www.tjsssr.com Volume02|Issue 02 (March-April)|2022|Page:41-52

Original Article

Enforceability of law and the will of the people: Tyrannies of the lawmakers and those of people

Fariel Shafee LLB,

University of London, 2020

Article Received: **03-02-2022,** Revised: **23-02- 2022,** Accepted: **13-03- 2022**

Abstract:
We examine the relationship between groups and individuals and observe how law and society evolve together. We connect concepts of western jurisprudence from different eras by examining how social parameters changed to justify the modified understanding of a more general complex concept that is not static. We thus find a relationship between society and the need for law to enhance the needs of individuals and groups. We then see how individuals in a satisfied or dissatisfied society may coin a newer version of law and legitimacy. We examine temporal, personal and social incentives that makes social systems fluid. We further look into the relationship between a society's composition and the practical implication of such composition in the proper implementation of law. We thus analyse why the theoretical understanding and structure of law may or may not guarantee a possible reflection in real world practice.

Keywords: jurisprudence, social identity, personhood, law enforcement

Corresponding Author: Fariel Shafee LLB University of London, 2020

INTRODUCTION

The relationship between lawmakers and law abiders is a complex one and has been subject to much debate throughout centuries in western literature. While people wish to maximise their own gains, they also depend on other individuals. The best choice for a group, again, may be deleterious for a subgroup or for specific people. The origin of social organization and the acceptance of laws at the cost of personal freedom has been analysed in literature (Hobbes 1968; Gourevitch 1997). The structure of law and its boundaries have also been questioned, with some jurists demanding that law allow individuals complete freedom as long as certain fundamental rights are not violated while others arguing for broader considerations(Aquinas 1265; Hart 1961;Kelsen 1941; Fuller 1964; Dworkin 1977). The reason why people should abide by law has been debated, with conclusions ranging from forced imposition and fear to inherent inclinations (Austin 1885; Hart 1961). The purpose of law itself has been analyzed (Raz 2006).

The law deals with individuals placed in societies. As individuals, people try to protect their own rights and happiness and as groups, they try to smooth out individual differences for social cohesion and overall welfare. Then again, the individual's needs themselves demand for protection of others' needs for the purpose of reciprocity given one's own limitations, and hencepaths to maximising one's own happiness as a member of a group may involve equations that allow others with differences to grow and develop in one's personal space so the society itself may benefit from such allowances in the long run.

These parties' acceptances of one another may not be fixed and may vary depending on the multi parameter needs and on acceptance of restraints. A succinct definition for complex processes had been questioned many times: some jurists from evolved societies dismissing past concepts or concepts from other cultures.

In this paper, this complex relationship is further scrutinised by acknowledging and reviewing past concepts and hypotheses, and then by looking into the relationship between people and law where the people play their roles in both groups and as individuals. Whether some of these concepts may or may not have been flawed will be examined as we discuss how the success of a legal system will vary depending upon the nature of these relationships. Further obstacles may be posed by realities and practical possibilities. The balance between population, available technologies

and resources may make perfect laws imperfect with respect to certain scenarios as will be shown. However, while many different balancing and counteracting parameters can be analysed using various scenarios, we have chosen some very specific parameters and two extreme scenarios because of the restriction of length.

1. REVIEW OF THE ORIGIN OF SOCIAL ORDER

In discourse on Inequality (Gourevitch 1997) Rousseau discovers two different forms of human inequality. The non-physical inequality is moral in nature and is a creation of social existence. This sense of inequality is derived from coexistence in a society and the creation of novels forms of needs and wants as a by-product of that coexistence. These new forms of needs push people towards competition and further stratifications. Also, competition and struggles are created so these new goods desired by the people can be attained. Not all endeavours are peaceful. In the Social Contract (Gourevitch 1997). Rousseau indicates how human beings themselves give up some of their raw primitive freedom after their initiation into a society so that they can coexist peacefully to counter the greed and struggle deriving from the social forms.

Hobbes, on the other hand, in Leviathan (Hobbes 1968), claims that human beings are cruel and self-destructive by nature, and a truce within the society allows people to protect their interests from their own characteristic deeds. Hobbes suggests that a just king can offer that protection.

The two scholars differ in the timeline, about exactly when the need to protect humans from others of the same species originates. The two also differ on the nature of the truce. While Rousseau is more democratic, and speaks of a general will which echoes the French revolution, Hobbes points towards submission to a higher power as few other choices would exist to the citizens.

Austin (Austin 1885) initially sounds in tune with Hobbes when he defines laws as commands to be enforced by the application of force while he also uses the word sovereign as the entity that carries out this enforcement. HLA Hart(Hart 1961) disagrees with Austin's definition, which he believes requires the existence of a sovereign King, a concept that is unacceptable in the light of a democratic society. Hart, instead, speaks of law in terms of internalizations. He connects law to the habit to oblige, which is different from the concept of mere habits or traditions. Morrison (2000) holds that Austin's sovereign need not be a King, but could be the democratic state which is given the power to govern by the people themselves, and can be changed by the will of the people.

2.LAW AND CHANGE

The reasons why laws are needed and how laws should be shaped have been subject of fierce debates. In the medieval ages, Aquinas spoke of a divine law and also the law of nature besides the law made by human kings. The divine law was absolute and manifested by scripture. Man was made rational so he could understand the law of nature and also be responsible for one's acts. Natural law is the expression of divine law in the real world. However, the divine law did not restrict the domain of human free will to the point that all of one's choices were predefined. Hence Aquinas allowed for human law as well. Aquinas thus defined freedoms and boundaries for the kings so that these higher laws were accounted for. Men was created as equals and were allowed to protest against unjust laws under specific conditions. Austin and Bentham later found the success of law by means of the utility and mass happiness it achieved (Austin 1885; Bentham 1789), though Mills later distinguished higher and more refined forms of pleasure from primitive and vulgar ones. The concepts of mass happiness were seen as an obstacle for personal fulfilment and freedom and as an excuse to enforce mob interests. Thus, more modern concepts introduce individuality as per Rawls and Nozick (Rawls 1996; Nozick 1974). Nozick went as far as demanding that any general welfare would have to be derived from depriving the individual, and called for the creation of a minimal state, which he believed would emerge naturally by the people accepting the best of competing offers from bidding "watchmen." Dworkin (1977) stopped short of such radical denials of the common good but declared that "rights trumped" mass interests.

From these points of view, it appears that while the jurists coined their own definitions by modifying or denouncing past ideas, it had never been obvious what the right notion of law is or even how social order evolved. While Kings were once the norm, the will of the people later became the only legitimate form. Austin's people needed force to be imposed upon defaulters of law. Hart's people already were in a habit to oblige, and in (Hart 1966), Hart derided Austin's view that the imposition of force was necessary part of law. While Austin introduced the concept of mass happiness to play down the role of a handful of elites and their importance, the liberals found that notion to be tantamount to intrusions into personal freedom.

As time passes, people's experiences, expectations and position with respect to other societies and themselves evolve. People's limitations and restrictions change as newer forms of technologies are invented, redistributing the workforce, or as nature becomes harsh or more benevolent. A tension between different forces become obvious. The players that can be identified: the person or persons in power, how they attain that power, the people who are bound by law, the will of the lawmaker and the will of the people. Yet another player placed in higher divinity

may also be introduced to check the power of the King or to induce fear into the minds of mobs or people filled with desires.

In the first part of the paper, we revisit some of the core concepts of law and dissect how they evolved and if there is indeed one correct answer. We connect ideas from related fields to elaborate the abstract legal concepts.

In the second part, we analyse the interplay between different needs and consider two very special scenarios and analyse how laws and social balance would be affected when the free people are placed in these two toy social scenarios as they try to find the security and fulfil their new needs as defined by Rousseau while they also experience the social forms of inequality and competition.

We discuss a society which is very well-developed following centuries of rule of law and prosperity and place the human animals of Rousseau in that scenario. We look into a society that has all theoretical laws in place but that has a scarcity of resources and where the practicality of following the ideal laws is costly.

2.1 CONCEPTS AND PARAMETERS

In order to understand possible behaviour, we first look into some key concepts discussed earlier in the paper and analyse them in light of an evolving society. We will borrow some concepts from other relevant fields such as psychology and economics to string the concepts together.

2.2 INTERNALIZATION "SOCIAL CONTRACTS" AND GAMES

Hart's habitual obligation echoes the idea of following rules declared by either certain specified sources or by adhering to some due process or rule, such as rules of succession or parliamentary procedures. Hart envisions a society with primary and secondary laws. While the laws of recognition in secondary law need to be internalised by officials, in the minimal legal system, primary laws may be obeyed for many reasons (Hart 1961). However, Hart is critical of Holmes' (1897) bad man and brings in the concept of internalisation to further coin the puzzled man who uses the law for guidance. Dale (2006) maintains that it is possible that citizens also take an internal view of law. Further, Pettit (2019) extends the idea of internalisation to the creation of primary laws. Such an internalization process is not an act of rational decision making at each step but is an output of innate behavioural processes.

In behavioural science, the amygdala associates past traumatic events with an instinctive fear. The reward centres involve several nodes in the basal ganglia as well as the amygdala. A person envisions a reward in the future and instinctively repeats a behavioural pattern. Such mechanisms are also responsible for addiction. Furthermore, mirror neurons (Kilner and Lemon 2013) connect external visual stimuli about others' states with internal similar states. Austin's habit of obeying a monarch might evolve from experience of pain directly or indirectly by other citizens placed under the same laws and parameters.

Pettit (2019) maintains that the fear of loss of reputation is not adequate to explain the process of internalisation. Hart's habitual obligations, though, exists at large-scale, throughout the society. Hence, such internal habitual obligations must involve experiences that either naturally or successively affect groups, creating bonding experiences involving empathy and sympathy and also a larger identity. Thus, Hart's internalization is a conditioning that involved further higher order centres of the brain involving social processing besides conditional learning.

However, in order to get to a state where one associates a cue with an action automatically, one will need to be fed either a shocking trauma or repeated inducements. Hence, the entire group might have undergone a process that induced such habits in them altogether or a particular subgroup might have realized the causal effects and then conditioned the rest to the behaviour. A sense of obligation further connects the person with the rest the person is obligated to, and hence does not stem from fear only but also from a sense of responsibility and possibly shame and guilt from what one brings upon not only himself but on connected others. This is consistent with Green (2008)'s idea that the interest in following law stems not only from self interest but also from others' interests.

While Hart vehemently disagrees with Austin's idea of law where commands are enforced by threats, it is practically possible that such repeated enforcements may give rise to what Hart calls his internalization passively by common experiences of pain bringing people together. One can affiliate with another person's emotions and feel obligated by extending the emotion to oneself (Stueber 2019), so that the brain inherently realizes the danger or loss following noncompliance that disturbs a situation that protects others from pain. However, for this type of obligation to be created, one needs to affiliate with the person to whom this obligation is owed and the law needs to be perceived as a tool for some goodness that will mirror back to oneself.

These consequences may not have just been imposed by Austin's King but also by Aquinas' nature itself, and might have taught one the grave results of defying the "law of nature," given we agree that human beings are indeed limited by their biological making and by their environment, whether this is a divine gift or not. These experiences though are part of a process through which a society as a whole may

evolve and learn. The time scale of the retention of such memory though is another issue.

It is unlikely that the free men in jungles already had experiences about the results of noncompliance of many tenets of life involving commonality and social obligations in such manners that the rules would have been etched deeply in the psyches. What the fear of an omnipotent and related phrases demanding that one "love one's neighbour as oneself" would have achieved in a naïve population may be taken for granted in a society that had gone through many ups and downs and had internalized causal connections between acts and effects.

Pettit (2019) connects the creation of primary laws with internalisation. However, lessons from life form a vast book and come from dispersed scattered events and what the erudite lawmaker is expected to know from lengthy studies are all unlikely to be already understood in every citizen's mind. Many laws, though not the ones directly related to accepted fundamental rights, also, are arbitrary, and are simple conventions that are chosen from many possibilities in order to bring order (Marmor 2006). There is no deep understanding regarding why one rule was chosen over another in those instances (Marmor 2006).Hart initially does not require these laws to be internalised. However, once introduced, following these laws may become conventions and normative so one feels habitually obligated to follow others.

Hart's rule of recognition is internalised at least by the officials. It is a matter of convention. The officials extend their utmost loyalty to the system they uphold (Lagerspetz 2011). Lewis (1968) maintains that this habit is a result of large-scale coordination problems. A population where the members have a desire to align in the same direction in a network form this attribute after repeated interactions. However, Green (1996)questions the normativity of this habit and wonders how "ought"s derive from "if"s that is facts, a transformation Hume(1739)finds to be impossible.

Marmor (2006) finds a reconciliating position by conceptualizing deep conventions that arise as a result of social and psychological demands. He states that these deep conventions have normative values and they are not arbitrary unlike conventions that arise as a result of coordination problems. Further, they become part of the basic definition of the object, for example, of what law is. What Hart calls rules of recognition are surface conventions that are connected to these deep conventions. These rules of recognitions define superficial rules such as how votes are taken or who makes what laws, but are connected to deeper conventions that arise slowly and are durable (Marmor 2006).

Indeed, rules, by definition, signify a pattern in the expected output given an initial condition and if that rule if followed. Hence, rules promise similar causally connected events and outcomes. They are akin to mathematical functions that take in an "is" which is an input and give out another future expected "is." The function that connects the two endpoints is the action to be followed to reach the end point – the "ought." These rules can be learned by experiencing pairs of inputs and outputs repeatedly so that the two end points can be connected with a repeatable series of acts that become normative given the two end points are fixed. Hence, rules that are deeply held would indicate common future expectations and common goals given a condition a group of people share and have further connections with core needs and shared parameters of these individuals. The fundamental agreements in outputs and their connections would thus produce a set of deep conventions with normative requirements. Given the general nature of common expectations within a large group of people, these deep conventions thus would be signified by common generalized repeated experiences.

We thus bring in Austin and Bentham's concept of happiness to extend the concept further to find points of maximum happiness in the society. This might depend on finding points of peace and stability by repeating behaviours that produce such. However, as a society learns, it discovers more possibilities for fulfilment. Once the power balance shifts from a few elites to the mass, individuals become more aware of their rights and the need for protection for the long term greater good of the society. Hence the legal system and the way laws are made and legitimized are also so changed.

Marmor (2006) claims that deep conventions change slowly. However, this is in opposition with Kelsen's formulation where shifts in grund norms (Kelsen 1941), the master rule,is brought about by revolutions. In Kelsen's formulation, each law or rule is consistent in a system that traces itself back the grund norm. While discontent with respect to a status quo may develop slowly, swift changes in initial conditions may also take place because of phenomena likewar or famine that act like a switch. A change in initial conditions may shift the equation for achieving the desired needs. Rules may become obsolete with respect to a newly found initial value. Deep conventions held by the population thus may be challenged by nature and also by revolutions yielding large shifts in practical reality. But once again the learning curve for the whole population may take time to readjust to the new scenario and may require experimentations. Such experimental implementations of law would still be valid law though the whole population may not be in tune with their new niches with firmly held conventions. Similarly, once Kelesn's revolution takes place, the legal system and law-making policies may also shift drastically, though with time, people may adapt with the process, find

coherence with their own needs and the system and hence develop deep conventions.

Howarth (2018) surveys UK's non judicial officers and finds that many do not hold uniform internal views regarding crucial topics such as the place of international law or complying with illegal orders issued by a superior. Howarth attributes this to the possible character of a system that enables the system to update itself and to question the rules. Barczentewicz (2019) similarly discovers that many constitutional changes are not brought about constitutionally but by legal influence.

Indeed, a society goes through many stages of learning to reach the point when it realizes what it "ought to" do for its own goodness and designs it from conventions acquired by interactions. As society keeps adapting to the rest of the world and to changing nature, the learning may never be complete.

Societies evolved in stages from wandering clans to larger organizations and often smaller tribes were assimilated into territories of more powerful rulers. These newly assimilated tribes or people did not on their own create laws of the land they became parts of but learned to adapt and obey. Here, in such stages, a ruler's threats of punishment of laws might have been more effective in establishing order in the land whether the laws were completely just or not as per modern standards. Before a deep convention arises, the conventions need to be learned by interactions within social relations, and these interactions among unlearned and unconditioned people may have occurred under the absolute rule of a cruel and powerful ruler who had threatened or conquered others into obedience.

Hobbes suggest that the fear for one another in the jungle setting may push people to accept such Kings because the option of fighting one an other is worse. The king then enforces his commands by further using force in a case-by-case basis.

This relationship between a ruling party and a ruled population may not have included a deep convention within the ruled though power organization and succession might have been made based on understandings within the smaller ruling class that may or may not have involved all officials or judges. In that case, the citizens and part of the official class would obey rules or create rules to suit specific people based on the possibility of harm to themselves without interest in how these rules were made. This situation might indeed be what Hart calls a robber situation, though instead of one robber with a gun we have a small group of robbers with understanding among themselves. However, the situation would still have differed from the incidence of a robber holding a gun to force people to comply in certain senses:

The ruled group would have been large and thus for practicality would have been subject to an understanding that they would be allowed some freedom to pursue their own needs in return for specific compromises. No state is rich enough to put a large part of the population in prison.

The rulers would have depended on the ruled class engaging in productions to levy taxes.

Large scale insurrections within the ruled class would in return create shortage of production

Given the ruler class would be small compared to the ruled class and that different levels of management procedures are needed to sustain a large economy, the rulers would depend on the ruled class engaging in some free thought and planning, and to some extent practise their own judgement and morality even though not at the highest level, that would also bring prosperity to the ruled class eventually. It is in the area of social pressure and grass root morality enforcers that further constraints of human behaviour can be achieved. If such large-scale moral police forces are to be successful, cooperation from the population and their acceptance of the moral obligations will be needed.

Aquinas had conceded that the scripture did not prescribe all actions and that human beings are rational (Aquinas 1253-7). He had also made space for human law, so that the King had the liberty to promulgate one of many possible laws in areas where the scripture was silent.

He, however, also indicated the right to protest unjust laws but had warned against rash decisions as social instability might arise from erroneous judgements. Hence, often, he insists, people should obey even unjust laws simply to avoid turmoil and harm to oneself using common sense about how the parties in power or how unruly mobs may behave if they did otherwise.

However, any such arrangement under a human King would bring together a large group of people into close proximity and would lead to the group of people acquiring knowledge about group dynamics and their own parameters, as well as sympathy for "similar" fellows. Hence, a society based on Austin's punishment and monarch based legal systems would proceed towards s state of acquiring knowledge and understanding common interests as well as relating to others placed in similar situations. The system, thus, would shift towards a newer arrangement with a more organized ruled class that had acquired deep conventions and that is more ready for self-government.

This trust is at least partly formed by repeated interactions and realizations of common mutual interests and also the possibilities of harm if the members do not cooperate, leading to the understanding of the rules in a stable relationship that in equilibrium with the people's interests.

Rousseau holds that no such powerful King is needed, and that a mass will is created for a contract that people respect.

However, while Rousseau speaks of bare humans coming together and learning to make peace upon discovering their own fierce nature, it is unlikely that a large number of people decided to come together all at once. As mentioned, the evolution from small clans of hunters to large city states might have involved forced grouping of large numbers of people by a conqueror leader first, so the people then later realized the many products of cooperative social structures, got addicted to the goods and then learned to find points of equilibria that would enable them to achieve the common purpose even given their hatred for each other.

It remains a question whether allegiance to individual laws or a very specified system may be created by a general vague fear of humans at war with each other. The simple fear for coexisting with others within a system, having realized other people's brutal nature, might simply give rise anxiety and a temporary truce until one has advantage instead of a stable system. Rousseau maintains that addictions to advantages of a society prevents that truce from breaking down. What the threshold for fragmentation of such a society where desire acts as an additive factor while envy from inequality serves as breaking forces remains a question we shall tend to later.

It is also possible that the mass would find an orderly solution to coexistence and trust when they all agreed to a specific set of morals or virtues or submitted to a common higher being, hence finding a greater meaning of otherwise fragile life.

Some other values are internalised as per Hart. While Marmor (2006) believes that deep conventions are specific to a definition and these rules are not arbitrary, the choice of a specific allegiance or a set of virtues may not be completely fixed by social parameters of a mass scale that habituates all. The existence of a few who made the choice and imposed those choices on others who complied might be a possibility. A scrutiny of enlightenment and the mass may elaborate further.

A mass envisioned by Rousseau might indeed have existed during the French revolution. However, that revolution, though propelled by general mass antipathy against the royals, was led by specific individuals who made the laws that the rest accepted. The general feeling during the French revolution rose because how people felt united against the tyrant Royals, and not because their fear for each other made them come together as one. Rousseau's state of enlightenment of the society followed the episode of rule by monarchs, which induced the further spread of power among many that were united.

Again, the realization for the need of a contract and one's submission to a specific contract are separate issues. Contracts that are not enforceable by law are agreements and are informal. If the mass reaches agreements, it is unclear how stable that agreement would be within the landscape of possibilities of alternate types of agreements that might act as laws for the nation, and whether the parties to the contract would instinctively honour one specific legal agreement as a similar minded mass.

In such a period of instability, Rousseau's realization of a person with desires within socially created in equality would result in the tragedy of the commons (Lloyd 1833). Each individual would hencevie to maximize his own gain from a common poolof the fallen monarchy while trying to cheat others when possible. This scenario might involve subclusters or gangs held by deeper ties of common needs within a loosely held society where each of the groups tries to take advantage of the others. It is questionable whether a large mass put together simply by the induced fear of lawlessness, can sustain a contractual relationship that is not legally enforceable by a higher law imposed on them by a more powerful being or system.

More likely, Rousseau's mass had common deep convictions regarding their needs and not deep conventions. These convictions would have led to their support behind a group that was most suited to fulfil those convictions. The arbitrary rules defined by that group would have solved the large-scale coordination problems. Hence, it is possible that both environmental and specific population-based parameters are involved in how a society and its concepts of law are evolved. The need of the mass, the possibilities offered by the environment, the evolutionary learning of the mass and the specific individuals who are capable of providing solutions and also choose from ill-defined arbitrary values or laws would contribute to how a society would be socially and legally placed at a certain time and space.

The final ingredient in the evolution of a society perhaps is then the existence of group of people who are competent and who are able to lead, not only in politics but also in other fields so that the society advances in parameters that allow more freedom to individuals. These parameters may include development of skill and technology and acquisition of knowledge as well as the understanding of social needs. People's trust in those people to lead them will align the mass behind the leaders. If the leaders emerge from within the crowd and share similar goals and constraints, a unified cohesive evolution is possible. Again, the distribution of labour and sub-groups depends on the natural resources and also technology. In an underdeveloped society manual labour is in great demand. Ancient Egypt did not have any technology to build the pyramids without using slave labour. In a technologically highly developed society, technology may enable many people to be placed in positions requiring less labour, hence promising a better and more secure life to a larger and more diverse population. Again, a society in a

naturally inclement situation may have to reorganize. While technologies may in some cases be bought or perhaps copied off, the visionaries that take a society to the next level and specialists who handle sensitive issues need to be trusted. However, the emergence of a trustworthy exceptional group may often be a matter of luck and not only a function of needs and interactions.

From the examples above, it is evident that having a rule of recognition within a population, which may be a form of deep convention, giving rise to more superficial arbitrary rules governing a population, is one of various possible scenarios in which a population may be placed within a legal system. The system proposed by Hart may be part of an evolution of processed that involve other types of arrangements in different times and under different social parameters. This asks for a further scrutiny into different types of incentives for obeying laws and into different systems that might have a stable construction of rules that are enforced by a central politically ruling body.

2.3 REWARDS AND FEARS, PAST, FUTURE AND PRESENT

Looking back into political systems that invoked various reasons for citizens to align with declared laws, we find a multitude of incentives. In Aquinas' four layered system, the divine law served as both a source for eternal reward and punishment. This final state is not achievable in the world but is the ultimate state dependent on what a person does. A somewhat similar scheme introduced by Aristotle (2007) spoke of Eudaimonia, the highest form of human good. These schemes, though not the same as Austin's King's commands, use analogous and possibly more powerful future states of now both well-being or damnation, hence involving both the brain's reward centre and the fear centre are used. However, statements such as equality and the need to love one's neighbour as oneself as well as the notion of being part of a greater picture brings in more intricate social brain that connect the amygdala with the temporal lobe, cingulate gyrus, prefrontal cortex (PFC) etc, hence performing calculations leading to complex notions and emotions in groups settings.

In alternate scenarios, emotions such as trust and loyalty may become important. Raz's (2006) service conception theory makes the lawmaker a service provider, allowing citizens to have ready-made solutions for scenarios that are too complicated for them to handle. In such cases, the law is created to help the citizens and it exists for the wellbeing of the citizens only. Thus, the citizen's trust in the lawgiver and the lawgiver's intentions may become more important. Such trust may arise from repeated interactions and information, but the notion of a greater identity where the lawmaker is part of a system that includes the law-abiding citizens so that they have similar goals may be useful. Such systems where trust and similar aims of citizens' wellbeing are important may be more prone to create Hart's law-abiding citizens who do not necessarily need the threat of punishment to comply. However, in a system where the citizens are not equal, and where envy cannot be wiped out, the amount of loyalty one possesses will dictate how much one would shun cheating (Lloyd 1833) given a chance to get away.

Dworkin (2003) tries address inequality using an insurance scheme, discerning between brute luck and loss due to intentional and informed decisions, stressing the role of the PFC.

. However, a welfare system that makes up for loss due to brute luck still needs to produce collectively so as to make the payment to the unfortunate.

An interesting point is the PF Calso forms the notion of self within social settings, thus naturally giving rise to distinctions between people and forming identities. Brute luck may be dissociated from option choices easily. If brute luck includes one's genetic makeup, then option choices regarding careers will be restrained by her talent besides the work put into development. One's ability to utilize all information to decide will also depend on genetic talent and education added together. If one is paid a flat rate based on the best choices made by him, then a person producing the most rudimentary or unworkable ideas will be paid the same as the person who is talented but has the highest skills if the first person does not have better capacity and puts in his best effort. Practicalities of not discerning the objectively best decisions and paying the same value for all given effort is put in might lead to difficulties of reconciling the actual outcome with imaginary ones as long as one tries. Furthermore, such an equality in payment may create a different kind of ill feeling based on personal misevaluation. This may prompt the most capable to hide their skills so as to produce less as long as staying in a less qualified tier does not require more effort or is not forced to utilize her talents using state pressure. Then again, envy is not a product of only payment but also of recognition and acknowledgement. If recognition is stripped away from the capable and redistributed to create some other form of equality in a social sense, it might be legitimate to take away parts of one's identity given many products are entangled with her life stories and person hood. Thosewho have earned a reward by "mixing labour with resources" (Locke 1948) may be reluctant to relinquish a large part of their fruit of labour.

Also, disentangling risks and intended gambles may be difficult practically. Risks are often based on incomplete information. An action based on risks are then often based on lack of complete information. In these cases, an informed choice is not possible. While

in some cases, such as stocks, risk models may be made based on average behaviour, if one wishes to compensate for black swan events, the compensation must come from some other source. This may not be possible in cases of large-scale market depression. However, if only actions with known approximate risks are reduced to option choices, an average working person will live a risk-free life while investors will be asked to pay for their choices. A person who loses his job because a company went bankrupt as a result of the choices the administration made must thus be compensated. If the bankrupt company will not have the money to compensate the worker, someone else will have to guarantee his livelihood even though the management will have to pay for their own choices.

However, when a person accepts an employment, he should be aware of the risk that his company might fail. Hence it is unclear which choices clearly fall under option choices and which results are brute luck. A choice that is based on complete information can predict the future perfectly. If the world derived certainty based solely on human decisions, we would perhaps have a different universe that human beings cannot create with all the knowledge they have acquired yet.

It is also unclear who will pay for the insurances. If there is a flat compulsory insurance scheme, the citizens will be forced to restrain their activities within limited risk events when some risks are surely unforeseen. While reasonable and prudent choices certainly lead to a reduction of risk, it is unclear how a person's fate may be completely eliminated by others chipping in. However, the author says nothing against either imposing a reasonable degree of tax on the fortunate so as to contribute to public utility and to create a safety net for the unfortunate or of using intention or reckless behaviour to hold one accountable.

Finally, in a system that has clusters with concentrated interests or parameters, and where all groups are not placed with equal endowments, efforts to cheat the system may also have various degrees of group backings. A system that is aligned with the needs of most citizens may also be favoured by most and hence the citizens themselves might be more cooperative in sustaining the system by admonishing law breakers. Whether such a system where the majority happily comply or determine the laws and the future indeed always yields the best future or protects fundamental social or personal needs may be questioned.

2.4 FREEDOM AND NEEDS

Rousseau speaks of a freedom in the state of nature that man enjoys and later gives up when scarcity develops. His coexistence with others in a society enable the creation of many products and statuses while he agrees to give up some of his freedom. This sacrifice of freedom is based on the promise of security and also because of his addiction to the new products that a society has to offer to him.

The tension between the two demands here is of interest. This arrangement also gives rise to inequality and because of a person's realization of his or her identity as opposed to those of others, this gives rise to discontent, as one tries to maximize ones one needs but cannot achieve a state that Dworkin would like to call luck egalitarianism(Dworkin 2003). As a result, the system that allows a person to have many options and luxuries is one that he also dislikes.

If one believes in the notion of a contract and in the power of the will of the people, a person will agree to this contract and will abide by it only as long as one cannot have theluxuries and the strength against nature that he desires without giving up his freedom and the egalitarian nature of free men in nature.

2.5 PUBLIC CHOICE, CONTROL AND LAW ENFORCEMENT

As Morrison (2000) notes, Austin's sovereign may be dependent on the will of the people. Rawls envisions a just system that citizens with an "overlapping consensus" can formulate (Rawls 1996).

Yet, in that choice of justice, one tries to find the best result for himself given he is unaware of what attributes he is endowed with. The people who abide by such laws are ones that have the will to live together.

Government changes by public voting shows that the blocks of commonality may not be completely fixed though some blocks or groups may be traditional followers for certain groups. Swing states show how fickle public opinion may be over time periods. The glues of commonality may weaken if core needs may be met in multiple or newer ways or if situations change. A good example would be a swing of large number of American socially conservative minorities in certain groups swinging from republican camps to the democratic party past 911.

2.6 LEGITIMACY AND DE FACTO LAWS

As per Sternberger(1968) legitimacy indicates the right for one to rule as well as the acknowledgement of that right by the ruled. Hence, legitimacy does not need to be of a democratic nature. The rules supporting a divine law and an acknowledging one as an agent of that divinity would give that agent legitimacy. The ruled acknowledging defeat in a war and accepting a foreign monarch would also thus grant legitimacy to the laws created by the new foreign ruler.

On the other hand, a perfectly legitimately created government can lose public support in the process of governing. Reasons may include changes in circumstances, changes in needs, incompetence etc. Whether the contract to oblige by a pre agreed rule dictating the process of change in government is enforceable and if people would need to wait until the next election or until the King dies is questionable. Aquinas(1271-2) too had supported the idea of revolting against unjust governments, clarifying that people were equals. However, he had been cautious about the proclamation as revolutions would create instability and also because the possibility exists of errors in judging a person.

Kelsen(1941) has a theoretical framework of the legal structure. A master rule springs out of a change or a revolution and all the laws that follow are consistent. This is hardly ever the scenario when a system changes in practice. The legal system is in reality a patchwork where conflicting principles exist because of momentum, stiffness to changes, the existence of lobbying from different interest groups etc (Rosenfeld 2005). After BREXIT too in the UK, many EU laws will possibly stay in place (Business law blog 2021).

There is thus a tension between the interest of the will of the people and the will of the existing ruler. Even when a government losses public support, it may stay in place because of international politics or because of lobbying from a strong small powerful group. A military ruler may not have any public support at all, but the army may back him and keep him in power. Such de facto rulers also create laws, even if, perhaps, they are technically de facto laws. These periods may be unstable, with the will of the people finally getting the upper-hand in the long run.

Plato, however, had held a certain degree of disdain for the rule of the people (Plato 1943). He considered the mass to be occupied with objects that can be bought with money and with desires and hence he considered democracy to be one of the worse forms of government.

Plato's extreme notion of meritocracy was not embraced by all. However, the creation of the upper houses of the parliament in both the UK and the US acknowledged the possible adverse effects of the fickleness of the mass.

2.7 THE PEOPLE, THE RULERS AND SUBGROUPS: SOCIAL AND INVIDUAL RIGHTS

We thus see how Rousseau's bare people may evolve into societies with various degrees of cohesive factors, some originating within small ruling classes that impose laws on others and some originating within a larger mass that undergoes unifying or empowering experiences, which, in cases, may even spring from former painful states of exploitation. We further see how legitimacy, by definition, still lies within acceptance by the ruled class. As the ruled class's power and organization changes, it might acquire bargaining powers about how the ruling class would behave and it might be less willing to accept conditions they previously had agreed to. Whether such bargaining powers lead to a stronger society is a more complicated question. The rights of individuals and the future of a society and of subgroups as those rights are wielded demands from individuals from the society may not be a straight forward function of legitimacy and empowerment, as we shall see in two scenarios.

3. THE SCENARIOS

CASE A

In this case, we will consider a society that has undergone an ideal social contract envisioned by Rousseau or Hobbes and thus the citizens had forsaken much of their freedom because of their respect for the legal structure of the land. We will assume that the legal framework was largely successful in preserving peace and justice, though parts of the society might have been treated unfairly, and that as a result of work put into the society under some accepted division scheme (either prescribed by Locke, Nozick or Rawls), a certain structure of inequality is now in existence.

In the case of Nozick and Rawls, this inequality will not always favour the most meritorious but will also take into account one's right to transfer his own property, and hence inheritance. The prescription of Rawls will be more egalitarian as the progress of inequality will always accompany the betterment of the worst off. However, the more deserving will still be rewarded.

We will for the time being not discuss Dworkin's (Dworkin 2003)luck egalitarianism where redistribution is made until nobody envies another, and where an insurance scheme exists for brute luck, as that situation is more idealistic and theoretical, based on assumptions of inherent equalities of talent and health that can be redistributed or insured for. In reality the human society still has no insurance for those unfortunate enough to fall prey to many debilitating diseases.

So, our model society in an aggregate will have stringent laws that are observed and citizens who are habituated to their lack of raw freedom and jointly own a sizable amount of aggregate wealth and technologies that is distributed as per some pre agreed distribution scheme that is just by some standard and that incentivized the growth and development of the society to the current point of prosperity.

CASE B

In this scenario, a society has a theoretically perfect legal system that offers everything Fuller argues for

(Fuller 1964). However, the society does not have the resource either for the citizens to observe the ideal laws or for the government to enforce them.

Application of concepts to the Cases:

CASE A

We also assume that currently case A is a country A' that is technologically advanced and affluent and is run as per the will of the people where each person has a vote.

We start at a time when technology has reached a point where many core ideas have been discovered and applications can be created and used in plenty, accelerating growth quickly. Country A' also has adequate wealth and weapons, though the distribution of wealth gives rise to gross inequality such that a fraction of the country controls much of the wealth.

In his Discourses (Grourevitch 1997), Rousseau asserts the existence of inequalities among people, some being natural and others society-made. Even in the affluent society where all have enough, people placed in close proximity will realize the inequalities. They can redesign the social inequality if possible, and not the natural ones. In his first discourse, Rousseau also speaks of how the flourishing of the arts and sciences create senses of ego within high achieving individuals. However, the primitive urge of all man is to be free and the sense of equality rings a bell in many jurisprudence theories though in practice this equality is achieved only by offering equal rights, mostly in contracting and also equal status in the eye of law. The sense of equality in such laws cannot undo the natural inequality among men even though most men will agree a low status within a society only because there is no option but to become part of a system that breeds inequality to offer him what he needs.

If Rousseau is right, as long as an average citizen feels comfortable that he or she can get hold of the technological and military centres and run those themselves, such is the ease of handling or further development at least for the foreseeable future, he or she will be reluctant to accept the social inequality created by the system even though it was through the system that the wealth was created.

A one person one vote system might opt for redistribution of the wealth in a manner where this inequality is reduced. This process of remoulding or rebuilding the system will also broach open voids. Using the concept from the Tragedy of the Common, groups may form who might bid to take over the system themselves and put themselves in a more advantageous position. These new biddings may not be in favour of the past system as in the newer scenarios more people are to be in the position of running the system and creating applications. Hence, criteria for the redistribution might drastically change, although the final bids may not all favour social equality after all. If the past system favoured the meritorious, who were given positions above others and hence strong incentives to create the affluent systems, in the new updated systems, those same people would be seen with disdain and if they are few in number and if the rest can run the already created system with ease, a new system may be on the minds of some, where the top meritorious minority will be enslaved or abused in extreme ends of the spectrum.

CASE B

In case B, the country does not have adequate resources to either technically follow all laws or to enforce laws.

This maybe the case when there are perfect laws needed for governance, but the infrastructure is weak. A person may be asked to pay taxes, but paying taxes may come with further costs as the system is inefficient. There might be traffic laws but inadequate flyovers or over bridges.

Enforcing the laws might be difficult because of lack of manpower or technology making due processes or oversight more costly than can be afforded.

This system is then run by a contract that is not enforceable, and hence by an agreement that all informally acknowledge.

This system still might work to a large extent if Hart's habit to oblige is strong so that people feel the urge to comply with the law even if they have to take long detours and even if they have to stand in lines for days to pay their taxes. The enforcement part will not be necessary if all do their part, and so no watchman will come into play.

Such a mass sense of responsibility will have to be balanced with individual obligations and circumstances, and with what Dworkin calls brute luck as well as bad luck due to one's own choices. Individual obligations may involve feeding one's dependents and working towards an independent life.

Furthermore, once a person breaks the honour code, a systemic inequality is created which was not agreed upon, and which is not tackled by the system efficiently. This may create a sense of depravation in others. The social contract works when one sees the benefit of relinquishing one's primitive urges and freedom for security and for the promise of being treated by the same standards as others, hoping to get a fair chance even within existing inequality. That notion of fair equal contractual chance, and the existence of the same law and standard for all is what Aquinas might have stated as equality among men and what Fuller had cited as one of the core requirements of the rule of law, given obviously men are not equal physically as Rousseau would like to put it. It is in the blindness of justice towards the identity of man that an equality lies in a system where people are inherently different.Once that equilibrium is broken, more and

more people may join in to break the laws so one party may use the existing weak system itself to take advantage of others. This would follow the game theory scenario when two prisoners both speak out against the other, leading to loss for both using the tit for tat strategy originating from distrust stemming from lack of information about the other's motives.

Such a scenario of failure of perfect law and despair in the social scale may not lead the citizens back to the law of nature. Instead, they may find a new equilibrium somewhere between lawlessness and a legally ordered civil society where people retain some freedom and accept some injustice in return for the degree of ease this social structure is able to provide. The weaker members might be in a more fragile position and might agree to give in more in return for shelter. The system will have corruption and inherent injustice and accepted abuse though the people will not walk back to the jungle if better options do not exist.

CONCLUSION

In this paper we have discussed the balancing mechanism of submission of personal freedom and the expectation of fulfilments of needs as well as securities as we ran thought experiments in two extreme situations. We have kept the discussion limited to our assumption that human-beings long for freedom and forego some for fulfilling other requirements. We have also assumed that people need to protect themselves from other people because of the selfishness and the struggle that arise either in free nature or as an after effect of the creation of societies. We have kept the discussion limited to how law may be implemented in such societies by the citizens, and how in different situations people may or may not wish to fulfil their social contracts. We have touched upon the existence of individual notions of self and individual obligations within a possible mass will as suggested by Rousseau. Finally, we have also looked at the role of force and the creation of habitual obedience, whether such habitual obedience is indeed needed in a legal scenario in all circumstances, and how these two scenarios may be sustainable or fragile under different situations. Certainly, further topics such as autonomy, personal rights, boundaries of rights and the balancing of different groups' rights, the overall public welfare and personal rights are moot topics and may be discussed in other papers.

REFERENCESs

1. Aquinas, T. (1253-7) *Scriptum super LibrosSententiarum Petri Lombardiensis* (*A Commentary on Peter Lombard'sSentences* [Collection of Opinions of the Church Fathers]
2. Aquinas, T. (1265-8) *Summa Theologiae* (*A Treatise on Theology*), Parts I
3. Aristotle, Ross, W. D., & Brown, L. (2009). The Nicomachean ethics,Oxford, Oxford University
4. Press.
5. Austin, J. (1885) Lectures on Jurisprudence, or The Philosophy of Positive Law. Lawbook Exchange.
6. Bentham, J. (1789) *An Introduction to the Principles of Morals and Legislation*,T. Payne and Son.
7. Barczentewicz, M. Constitutional change and the rule of recognition [PhD thesis]. University of Oxford.
8. Business law Blog (2021) <https://www.law.ox.ac.uk/business-law-blog/blog/2021/01/eleven-types-post-brexit-eu-law>
9. Dale, A. N.(2006) Rules, Standards, and the Internal Point of View. Fordham L. Rev, 75, 1287.
10. Dworkin, R. (1977) Taking rights seriously. London: Duckworth.
11. Dworkin, R. (1985) A Matter of Principle. Harvard Univ. Press.
12. Dworkin , R. (2003)Equality, Luck and Hierarchy.Philosophy and Public Affairs, 31,190
13. Finnis, J. (1980) Natural Law and Natural Rights.Oxford: Claredon Press.
14. Fuller, L. (1964*) The Morality of Law*.New Haven :Yale University Press.
15. Gourevitch, V. (ed. and trans.) (1997) The Discourses and Other Early Political Writings.Cambridge: Cambridge University
16. Press.
17. Green, L. (1996) The Concept of Law Revisited. Michigan L Rev, 94.
18. Green, L. (2008)Positivism and the Inseparability of Law and Morals. *New York University Law Review*, 83(4), 1035–1058
19. Hart, HLA. (1961) The Concept of Law.Oxford: Clarendon Press.
20. Hobbes, T. (1968)Leviathan. Baltimore:Penguin Books
21. Holmes,O. W, Jr. (1897) The Path of the Law. Harvard Law Review, 10, 457.

22. Howrath, D. and Stark, S. (2018) H.L.A Hart's Secondary Rules: What do 'officials' really think? International Journal of Law in Context, 14(1), 61-86. doi:10.1017/S1744552317000192
23. Hume, D. (1739)A Treatise of Human Nature. London: John Noon. ISBN 9781595478597
24. Jowett, B. (1984) in The Complete Works of Aristotle (Volume 2: The Revised Oxford Translation), Jonathan Barnes (ed.). Princeton: Princeton University Press.
25. Kelsen,H. (1941) The Pure Theory of Law and Analytical Jurisprudence. *Harvard Law Review*, 55, 44–70
26. Kilner JM and Lemon RN (2013)What We Know Currently about Mirror Neurons.Curr. Biol. 23.doi: 10.1016/j.cub.2013.10.051
27. Lagerspetz, E. (2011) Hart's The Concept of Law as a Study in Social Philosophy.Problema: Anuario de Filosofía y Teoría del Derecho, núm. 5, 2011, pp. 243-264
28. Lewis, D.(1968) Convention: A Philosophical Study.Oxford
29. Lloyd, W. F. (1833) Two Lectures on the Checks to Population. England: Oxford Universit. *JSTOR 1972412*
30. Locke, John, 1632-1704. (1948) The second treatise of civil government and A letter concerning toleration. Oxford :B. Blackwell
31. Marmor, A. (2006) How Law is like Chess. Legal Theory 12(04)
32. <https://www.cambridge.org/core/journals/legal-theory/article/abs/how-law-is-like-chess/C05F483C12F9783985A2674A0C557124>
33. Mill, J. S. (1863) *Utilitarianism*.London: Parker, son, and Bourn.
34. Morrison, W. (2000)Jurisprudence from the Greeks to Post-Modernism.London: Cavendish.
35. Nozick, R. (1996) Anarchy, State, and Utopia. New York: Basic Books.
36. Pettit, P. (2019)Social Norms and the Internal Point of View: An Elaboration of Hart's Genealogy. Oxford J. LegalStud. 39, 229.
37. Plato (1943) *Plato's The Republic.* New York :Books, Inc.
38. Rawl, J.(1996)Political Liberalism. New York: Columbia University press.
39. Raz, J. (2006) The Problem of Authority: Revisiting the Service Conception.Minnesota Law Review, Vol. 90, pp. 1003-1044.
40. Rosenfeld, M. (2005) Dworkin and the One Law Principle: A Pluralist Critique.Revue Internationale de Philosophie,233, 363
41. DOI : 10.3917/rip.233.0363.
42. Sternberger, D. (1968) Legitimacy In*International Encyclopedia of the Social Sciences* (ed. D.L. Sills, Vol. 9, p. 244,NewYork: Macmillan.
43. Stueber, K. Empathy. *The Stanford Encyclopedia of Philosophy* (Fall 2019 Edition), EdwardN. Zalta (ed.).
44. URL =https://plato.stanford.edu/archives/fall2019/entries/empathy/