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COMPLIANCE JURISPRUDENCE

*S.G. Sreejith**

I Introduction

"PEOPLE OBEY laws because…". This proposition, no doubt, sounds mundane amid the bulky treatises on jurisprudence and banal to the reader. However, if one were to assert that the concept of "compliance jurisprudence" could help complete the statement effectively, it takes on enhanced interest. Clearly, an explanation is in order and this article is an attempt to frame one. At the same time, it must be admitted that the article does not proceed along Benthamian lines with an "emotions machine" or indulge in Newtonian style *Principia*. What it hopes to do is to capture an account for the proposition "people obey laws because…" in a single frame, making modest novelty claims in the process.

This article is not intended as an exercise in crude radicalism or a revival of the existing theories of compliance, nor is its purpose to reject any established thinking. Rather, it attempts to optimistically examine all the fundamental notions of orthodoxy, traditionalism, and modernity and knot them collectively into one conception, while retaining and upholding the identity of each. The author does not intend to create a school, it is a first attempt to introduce the elements of compliance into the new-generation legal scholarship, explore them, and sketch a discipline – compliance jurisprudence – with a distinct identity.

The first step is to apply a formal theoretical approach. Despite the body of empirical studies on compliance, there have been no insightful theoretical contributions, mainly because researchers have focused on

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legal rules regulating only certain aspects of human behaviour. This is in no way to question the efficacy of the tools used in such empirical studies. The idea in this article is to study – on the basis of theoretical insights provided by several disciplines, e.g., theology, philosophy, psychology, semantics, and law – the preconditions as to why human beings follow legal rules. Given that compliance is a ubiquitous feature of law, it would be virtually impossible, at least within the scope of this article, to acknowledge all the relevant scholarship. However, it is the author's hope that none of the pivotal contributions to the field have been passed over in what follows.

To take an example, a father gives a command to his son not to smoke. This command is likened to a law and raises the question, "Why among all kinds of social rules and pressures, do legal rules have a particularly strong influence on human behaviour"? The article goes on to argue that law has a parental power over human beings (II). After distinguishing legal commands from other societal pressures and compulsions, it examines the cognitive process that takes place in the mind of an individual when reacting to a command of law (III). This part ends with the finding that law generates standards which cause human minds to converge at a focal point. Next, compliance is examined from the perspective of law and this analysis reveals that the substance of law, despite all its official apparatus, fails to reach society. It also becomes evident that this failure of law to reach society influences the cognitive process and has detrimental effects on compliance with the law (IV). This prompts the author to assume that a refined legal culture could resolve these drawbacks, whereupon the article proceeds to consider briefly – but ultimately dismisses – the legal culture project as envisaged by Lawrence Friedman (V). The problem with compliance is analyzed in the conclusion, where it becomes apparent that the root of the problem lies in an altogether different realm than earlier parts of the article may have suggested. In the conclusion, certain evaluations of the article are made.

So again, why do people obey laws? The most earthly reply is "they do so because they have a moral duty to obey laws". In other words, if there is a law, it ought to be obeyed, just like when a father orders his son not to smoke cigarettes, the son normally obeys because one who orders is his father and the son has a duty to obey him. It is assumed that Mr. A received such a command from his father to refrain from smoking and he obeyed. The father might have given this order for many reasons; one perhaps being that smoking would be injurious to the son's health. In that case A might have been scared by the consequences the father pointed out and decided not to smoke. Then again, had the father not told A to smoke, A might still have not smoked anyway under any circumstances because his conscience said that he should not. So

his nonsmoking could have three reasons: (1) his father told him not to, (2) his conscience told him not to, or (3) he fears the consequences. To the father, as the one giving the order, A is an obedient son who obeys his order out of respect or because of the consequences he points out; as for the son, he did what his conscience said. An external observer would conclude that there was something in the father's command that made A comply, but which need not make the observer do so. However, in the process the observer would also understand that there is some danger in smoking.

If one assumes that the father's command is law, and if the question of the son's conscience is taken in isolation, his decision is more than a mere idiosyncratic judgment. H.L.A. Hart in his *Concept of Law* asserted that human beings have such an *internal aspect* towards *rules*.[1] But this is not a mere feeling, it takes the form of a critical reflective attitude towards rules, which find their characteristic expression in the normative terminology of "ought", "must and should", "right and wrong", etc. If Hart's assertion is taken seriously, then it means that some protracted cognitive process takes place in an individual's mind when he receives a legal command. And for this to happen there must be some pre-determined standards or guides to the conduct of social life, for Hart, rules serve this purpose. If this position is applied to the situation which Hart himself made rather famous where a gunman threatens a bank clerk and demands that the clerk hand over the money, would it produce the same reflective feelings in the mind of the bank clerk? Certainly, the clerk might experience some manner of psychological conflict, but ultimately this will give way to fear of the consequences and end up in his handing over the notes. If so, how is a command of law different from that of the gunman? According to Hart, law is pre-eminently of a persistent character and hence is different from the gunman's order, which is a short-lived coercive one.[2] Moreover, for the bank clerk, the gunman's order is neither a guide as to conduct nor does it engender any critical reflective attitude towards the command to hand over the money. In sum, going with Hart, law is persistent in character and has the ability to generate a critical reflective attitude and act as a guide for conduct. Hart avoided the puzzle with the gunman situation by presupposing that law takes the form of rules which possess a special disposition to have a psychological hold over human beings; however, he failed to explain *why* this was the case. Hart's work nevertheless highlights the view that law exerts a certain "pull" on human beings towards compliance with law. If this pull is not inherent in the law then Hart's internalization cannot be justified, for in the absence of such a

1. H.L.A. Hart, *Concept of Law* 56 (1961).
2. *Id*. at 23.

pull rules cannot act as standards and there would be no distinction between a rule and a gunman's order. Accordingly, it is imperative to seek out this pull towards compliance, if one is to postulate a sound jurisprudential theory of compliance.

II A paternity analogy

It seems that the most effective way to approach a question as formidable as the pull of law is to address the epistemological peculiarities of law. This is done in what follows by viewing compliance as a concept and setting up an analogy, *i.e.*, the father's command not to smoke. The argumentation in this section pursues the hypothesis formulated earlier – leaving other considerations aside – that the son's obedience to the father owes to the plain fact of paternity.[3] This hypothesis is justified with reference to the paternity thesis of Robert Filmer, the shortcomings in which are patched up using John Locke's counterarguments to Filmer. The article then demonstrates how the paternity analogy complements the law. Once this is done, Locke's thesis on paternal power is explored in depth. A second stage of analogizing then reveals that the basic analogy is sound. This also gives new insights into the character and philosophy of law.

A father and his authority: The fact of paternity confers authority and force on a father's command. A justification for this argument is found in the *Patriarcha* of Robert Filmer.[4] He starts with a contradictory position that men are not naturally free. To prove this position he points out that men are born into subjection to their parents and, therefore, cannot be free.[5] It is this element of his thesis that is of interest here. The root of paternal authority for him lies in Adam. "Not only Adam, but the succeeding patriarchs, have by right of fatherhood royal authority over their children", says Filmer. "This lordship which Adam by command had over the whole world, and by right descending from him the patriarchs enjoyed was as large and ample as the absolutist domain of any monarch who has been since the

3. The paternity of law must not be confused with "paternalism" as it appears in political thought. Any "state coercion to protect individuals" is beyond the scope of this article. However, in the application of a "paternity" analogy in the context of law, a new thesis is postulated. When the author stresses paternity, this is not disregard for the equivalent role and authority of maternity. What is intended here is only parental sway over children. A sound justification for not abstracting these concepts is articulated in Carol Delaney, "The Meaning of Paternity and the Virgin Birth Debate" 21 *Man (NS)* 494-513 (1986).

4. Robert Filmer, *Patriarcha of the Natural Power of Kings*, 1680 *available at* www.constitution.org/eng/patriarcha.htm.

5. *Id.*, Ch.1.

Creation."[6] Having said this, Filmer, with the support of other authorities goes to an extreme and claims that the paternal right carries with it the right over the lives, liberties, and estates of one's children. Filmer's account goes even further, in fact giving fatherhood an odd and frightful image,[7] at which point his theory becomes meaningless for present purposes. On the whole, as "a theory that lacks any argument" – to quote Locke – Filmer's patriarchalism stumbles in the dark. Yet Filmer has his constructive points, for example, he is persuasive when he attributes the paternal sway of Adam to his creation by the omnipotency.[8] His thinking on natural law and his conviction that the institutions of the family and the state were established to fulfill the purposes of human nature give his thesis a strong foundation. Yet *Patriarcha* fails to focus attention on paternity, for his purpose as an enthusiastic royalist was not to write a monograph on paternity but to oppose the monarchomachs such as Bellarmine and Suarez. In this pursuit he used the paternity thesis as a figurative device for his propaganda. Overall, the theory lacks the substance to carry forward the argument in the present context.

Locke's critical approach to Filmer sounds more prudent. Opposing Filmer, Locke starts with the assertion that all men by nature are equal.[9] At the same time, he supposes that equality does not mean all forms of equality. Some people may gain precedence over others, especially those for whom nature, gratitude, or other forces may have made it due, one's father being among these.[10] A father has a role and jurisdiction of sorts over his children when they come into this world. Here, Locke presents a father much like Filmer's Adam with his natural paternal power, but certainly not the domineering phantom called "father". The Lockean account of the paternity theory starts at this point. According to the theory, children are not born in a full state of equality, although they are born to it.[11] What makes them unequal is the lack of capacity to reason. Since they are incapable of making rational judgments, the parent that understands the children must exercise his will for them and regulate their actions. The power that a father has over his children arises from a duty that is incumbent upon him to take care of his offsprings during

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6. *Id*., Ch.1.4.

7. This is evident in Locke's reproach: "…very disagreeing, which what either Children imagine of their parents, or Subjects of their Kings, …like a wary Physician, when he [Filmer] would have his Patient swallow some harsh or Corrosive liquor, he mingles it with a large quantity of that, which may dilute it; that the scatter'd parts may go down with less feeling, and less aversion". See John Locke, *Two Treatises of Government* 146 (1991). (hereinafter *Treatises*)

8. *Patriarcha*, Ch.1.3.

9. *Supra* note 7 at 304.

10. *Ibid.*

11. *Ibid*.

the imperfect state of childhood.[12] However, the Lockean father must be seen not only as acting in ways which imply he is wiser, better informed, and stronger but also as acting in the child's interest in ways which are derived from the close family relationship of the father and the child. As a father, the father hovers over his children, anticipating those outside dangers which he has some control over, satisfying their needs whenever possible and, if necessary, preventing children from harming themselves.[13] If the children persist in engaging in activities which will harm them, the father may be forced to deter or even punish them. But once age and reason give them the capacity to think rationally, they become liberated from parental tutelage.[14]

Although Locke criticizes Filmer for amplifying paternity beyond every other power, he does not contest the paternal power conferred upon Adam by the omnipotency. Unlike Filmer, however, Locke is not fanatical about the concept of paternity and never predicates it on any sort of coercion. From Locke's perspective, Filmer's mistake was to see the father's role purely in terms of depriving the child of its freedom and administering punishment.[15] One can sense a somewhat conciliatory tone on the part of Filmer and Locke. For both, nature has subjected man to the rule of his father, the purpose being to protect him from any harm that he is likely to invite due to his lack of rationality. According to Locke, once reason takes its place, man is no longer under parental subjugation.

Law as father: If Adam obtained authority over his children from God and this was passed on, making Adam's progeny fathers with the same authority, then this leads to a presumption that, in the context of law, the father's authority is the supreme law. In that case the primordial law might have emanated from God. This would, most probably, put the arguments in a purely theistic vein – regrettably a position that cannot be discussed with philosophical precision. Yet the theistic approach to law was a well-established one even in pre-Socratic days and it permeated the Greek schools of thought,[16] including the stoics. All the philosophers

12. *Id.* at 306.

13. See "Locke on Paternal Power" 15 *Population and Development* 749-57 (1989).

14. *Supra* note 7 at 306.

15. Filmer went so far as to say that a father has the right to sell, give away, enslave, castrate, and kill his children. He supported this by citing the cases of Abraham, Isaac, and Jacob. *Supra* note 8.

16. The early Greek philosophers had spoken of an unwritten highest law of divine origin which precedes all human laws and which is coextensive with the eternal order of things. Plato and Aristotle were convinced of the existence and necessity of such a law. For support see Anton-Hermann Chroust, "The Philosophy of Law of St. Augustine" 53 *The Philosophical Review* 195-202 (1944); Frederick

derived the authority of law from its status as a divine command, the law had to be obeyed because it was a command from the divine. Even though accounts were given of the origins of these commands or, more frequently, of their mode of communication to men, the justification always rested on the existence of the will of a deity.[17] Here law resembles Adam, the divine progeny, born with an innate authority. Being of divine origin, law, like Adam, was also in an ideal form, its content and value invested with the power and reason implanted in it by God and a source of knowledge of what is good in its own right. In sum, law commands what it commands because of its intrinsic worth.

Locke maintained that man is too feeble, too ignorant, and too sinful to be able to recognize the good in the world, the reason being that he has a material way of entering the world – natural birth. He lacks divine elements implanted directly by God, which renders him ignorant and devoid of reason. In this childlike state, man needs to have someone powerful, wise, and righteous to reveal good to him. Here, law, with its natural reason bequeathed by God, enlightens and guides man, helps him attain the order prescribed by the divine, and protects his interests through means derived from the relationship of man to God. In this process, if man strays from the ways set for the world, he becomes immoral. In other words, when man, who is otherwise moral, fails to observe the morality prescribed for him, he becomes immoral (this is a Hegelian position, *i.e.*, the violator's right to get punishment and thereby be brought back to morality[18]). In most cases, this happens because of man's lack of rationality to understand what is good for him. In other cases, man might be aware of the correct path but because the temptations to stray from it are too strong, he decides to violate them. This can be attributed to a lack of full rationality. In both cases, law, like a father, has the authority to punish the offender and bring him back to his prescribed moral state.

Copleston, *A History of Philosophy I* (1962). A characteristic view of the ancient Greek approach to law-giving occurs in the opening passage of Plato's *Laws*, where the Athenian puts this question to the Cretan: "To whom is the merit of instituting your laws ascribed? To a god, or to some man?" To this the man of Crete replies: "why, to a god, indubitably to a god". For details see Dennis Lloyd, *The Idea of Law* 46-53 (1981).

17. Samuel M. Thompson, "Religion, Nature, and the Autonomy of Law" 73 *Ethics* 2 (1962).

18. Hegel held the view that in sin, man rejects and defies moral law. Punishment is pain inflicted on him because he has done this and in order that he may, by the fact of his punishment, be forced into recognizing as valid the law, which he rejected in sinning, and so repents of his sin. A criminal has a right to be punished, which indicates that the punishment is in a sense for his sake. J. Ellis Mc Taggart, "Hegel's Theory of Punishment" 6 *International Journal of Ethics* 479-502 (1986). For the original source, see G.W.F. Hegel, *Philosophy of Right* 66-74 (1952).

The attainment of reason and liberation: Following this analogy, if it is presumed that it is the paternal character of law that commands compliance, there will also be a point when the one complying will be able to liberate himself from its tutelage. This point is the "attainment of reason". Should this be taken to mean that after reaching this state of "rationality" the individual is free to flout the law? Was the selection and structure of the analogy defective? Or is it that the analogy ought to have been restricted to Filmer's domineering fatherhood of *absolute lordship and dominion of life and death*? If this were the case, it would, of course, be necessary to now recite the sanction theory of law, which is in no way the intention here. This conundrum urges a closer scrutiny of the Lockean thesis.

One aspect of fatherhood is certain for Locke, *i.e.*, that "freedom exempts no son from the *honour* which he ought, by the law of God and Nature, to *pay* his *parents.*"[19] No freedom can absolve him from this obligation:[20]

> God having made the Parents Instruments in his great design of continuing the Race of Mankind, and the occasions of their Life to their Children, as he hath laid on the man obligation to nourish, preserve, and bring up their Offspring; So he has laid on the Children a perpetual Obligation of *honouring their Parents*, which containing in it an inward esteem and reverence to be shown by all outward Expressions, ties up the Child from any thing that may ever injure or affront, disturb, or endanger the Happiness or Life of those, from whom he received his.

Having said this, Locke tries to distance himself from Filmer: [21]

> But this is very far from giving Parents a power of command over their Children, or an Authority to make Laws and dispose as they please, of their Lives or Liberties.

Then again he adopts a conciliatory stance: [22]

> Tis' one thing to owe honour, respect, gratitude and assistance; another to require an absolute obedience and submission.

Despite these situational adjustments within his account, Locke was certain that the subjection of a child gives the father a temporary control that terminates with the attainment of maturity (reason), therefore, the *honour* due from the child gives the father a perpetual right to be respected, revered, supported, and obeyed.[23] It would be a mistake to

19. *Supra* note 7 at 311.
20. *Id*. at 310.
21. *Ibid.*
22. *Ibid.*
23. *Id*. at 313.

see the child's attainment of reason as freeing him from all restraint to do as he pleases. Instead, according to Locke, reason preserves and enlarges the freedom gained as a result of reason itself.[24] In the absence of reason, man cannot realize and exercise his freedom, its presence enables him to recognize the limits of that freedom, to act within the scope of the rules that are prescribed for him, and to rationally judge the correctness of every action. Yet ultimately Locke has a concern: [25]

> If through defects that may happen out of the ordinary course of Nature, any one comes not to such a degree of Reason, wherein he might be supposed capable of knowing the Law (reason) and so living within the Rules of it, he is *never capable of being a Free Man*, he is never let loose to the disposure of his own Will.

This is the Lockean farsightedness as to noncompliance cases, however, Locke does not explain how such cases should be dealt with.

Reason, law, and social change: The analogy was left with some skepticism as to the supposition that the individual, when he reaches the state of having a rational approach to society, would be free to exercise his own will. Now, the cause of skepticism – Locke's thesis – itself has clarified this concern but left behind the onus of determining what state of insight equals "reasoning". Is it a phenomenon synonymous with the maturation of a child? This would mean that individuals who are under the fatherly protection of law feel, at some point, that the protection rendered to them by the law is inadequate to meet their social requirements, this trend emerged when natural law thinking dominated legal thought.[26] This feeling of inadequacy and the subsequent turn of events (a "revolution"), in all probability, is the equivalent of the "attainment of reasoning."[27] But what was the point at which reflective men felt the inadequacy of laws? What brought about such a revelation?

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24. *Id*. at 306.

25. *Id*. at 309.

26. Although it was the natural law school under Thomas Aquinas that first developed the rational approach to law, the approach only supplied the notion that rational thinking could act as a medium to interpret divine commands. The feeling of inadequacy of the law among men of rational thinking was identified and incorporated into a doctrine only by the positive school towards the seventeenth century. For a detailed exposition on this see Ewart Lewis, "Natural Law and Expediency in Medieval Political Theory" 50 *Ethics* 147-63 (1940); Thompson, *supra* note 17. For the original version of "reasoning" under natural law see St. Thomas Aquinas, *Summa Theologica* Ia-IIae. For the abstraction of the concept into legal positivism, see Thomas Hobbes, *The Leviathan* (1991).

27. The capacity of rational thinking gained by a child is not the equivalent of "reason" as perceived by the natural law school. Instead, that capacity parallels the "general feeling of inadequacy with the laws".

To answer these questions the events are best put in a sequence. When law originated from the divine, it brought with it the fatherly power to enlighten, guide, and rationally judge the rightness of every action of irrational man. Man then lacked any individuality. What law commanded was definitive for man and he had neither the prudence nor the right to question its will. He met his societal needs well within the limits of what was commanded. Every action was explained and justified on the basis of divine command. Over time, the human outlook towards the world shifted from a religious to an ethical one and man began to perceive everything in terms of his own cognition. This made him realize the gap between his societal life and the rules that constrained him. With the emergence of societies, the cultural gap became wider, generating friction between law and society and calls for change. These demands led to pressure – pressures for action – and then reaction. The reaction in turn prompted a revolution that brought about a whole set of social changes, which included a relocation of authority and power. This socialization placed law in a position of rationality and maturity. This recalls the position of the sociological school of jurisprudence that in the first and early states of legal development, lawmaking was totally subconscious[28] and that the process then was only declaratory, *i.e.*, an authoritative publication of law that already existed in the traditional modes. According to the sociological school, the first conscious making of law took place when a choice was made between conflicting traditions.[29]

This disintegration from the observance of conventional dogmas typifies the freedom of law. Law has become laden with a societal outlook at the same time as it has come to bear the image of a man whose individual cognition made this freedom possible. The next question of import is how law could make use of its rationality in ensuring its rule. The analogy employed teaches that law ought to preserve and enlarge one's freedom while keeping one within its limits. The enlargement and preservation of freedom are feasible only when social requirements are adequately met, thereby ensuring the right to life, liberty, and free will. However, law must maintain these rights with better coherence, uniformity, adaptability, and flexibility. Although this instills dynamism into the nature of law, law's normativity still remains inert

28. Although the sociological school believed in a subconscious state of law making, what they intended was that the judge would precede the law and the court the legislature. But in the present context the author's attributes this to the divine command, the paternal power, and then the state until reflective men felt the inadequacy.

29. Roscoe Pound, "Legislation as a Social Function" 18 *The American Journal of Sociology* 761 (1913).

and requires a force to set it in motion. But what are the forces that could do this? These should be social forces. Paradoxically, it is the inertness of normativity that itself creates these forces; with every social friction, there emerges social forces that create normative motion, transform and maintain law in a state of adequacy.

Law and authority: With the paternity of law authenticated and its ensuing role confirmed, the task left for this section is to prove what makes the command of law obligatory. Significantly, the point which has been reached in the analysis is the point from which the positive theory of law starts, whence a succinct account of the theory is in order.[30] "Legal positivism" is a theory about the nature of law commonly characterized by two major tenets: (1) that there is no necessary connection between law and morality (the separability thesis); and (2) that legal validity is ultimately determined by reference to certain basic social facts (the social thesis). Although both tenets have engaged the minds of positivists, it is the social thesis that is more germane here. According to this tenet, the existence and content of law depend on basic social facts, e.g., the command of the sovereign (Austin), the *grundnorm* (Kelsen) or the ultimate rule of recognition (Hart), where norms or rules gain authority from preceding ones until they arrive at the *grundnorm*, or ultimate rule, that forms the underlying basis of a legal system. These social facts validate the legal system. In whatever manner these facts are perceived they constitute a non-legal realm. Every version of positive theory ends up in this realm, it is the starting point of legal positivism. Having said this, a number of questions remain that may vitiate the social thesis, e.g., is there perpetuity or transcendence behind these social facts? Could there be a possibility that social facts are conditioned by law?

Nevertheless, legal positivism is a sound jurisprudential theory for present purposes because it provides an insight into the function of law and depicts law as the true image of man and society.[31] It facilitates law in making better use of its maturity. The weaknesses of the social thesis do not prove wrong the positivists' primary tenet that there is no

30. When the author says legal positivism, he means the general and more fundamental theory of positivism, which asserts that the existence and content of law depends on social facts and not on its merits. However, there are many theses within the theory but they are all various refinements and elaborations of this approximate formulation. For more on the general theory, see John Austin, *Province of Jurisprudence Determined* (1995); H.L.A. Hart, *Concept of Law* (1994), Joseph Raz, *The Authority of Law: Essays on Law and Morality* (1979); W.J. Waluchow, *Inclusive Legal Positivism* (1994); For a critical approach, see Stephen Guest ed., *Positivism Today* (1996).

31. The core of this argument is borrowed from Joseph Raz, who used it in an altogether different context. Raz, *id.* at 45-52.

necessary connection between law and morality; the content of law would still be determined by social conventions and not by morality. However, the positivists erred when they asserted that the authority of law derives from the meta-legal world immediately preceding the world of normativity.

Before proceeding to the next section, a summary is in order. Born of the divine, law became a fatherly power inherently possessing the reason and values to command, guide, and lead man, who is enmeshed in irrationality. As man began to feel the inadequacy of the divine order in his changing social order, he effected a revolution that modified the laws in conformity with his societal wants. Every inadequacy was thus followed by a revolution and further changes. Although the changes moulded the appearance of law and sharpened its values into a more mature social instrument, its divinity radiated as invariably as ever and demanded respect and compliance from society. This was mistaken by the positivists as, owing to social conventions, they lacked the insight to see beyond the conventions that validated their norms and rules.[32] But divinity cannot sustain the authority of law unless law finds expression through social phenomena.

III The internal aspect

Having distinguished law's command from other societal pressures and compulsions, the discussion will now proceed with the internal aspects of law. It was brought up earlier that when a command of law enters an individual's mind, some kind of reflective process takes place. If so, his compliance or noncompliance with the command depends on that reflective process. Here one says that law becomes "internalized". This section examines this process by considering the question what is the element in an individual's cognition that motivates him to comply or not to comply? This attribute is most certainly a variable one.

In addressing the above question, the discussion will draw on the structural theory of psychoanalysis.[33] According to the theory, the reflective personality of an individual is divided into three processes –

32. A similar view has been put forward by the Scandinavian realists such as Karl Olivecrona. In the context of the origin of law, he maintains that although the making of new imperatives presupposes the existence of a legal system, we cannot trace law to its ultimate historical origin, since however far back we go there is always some social organization in existence. But he did, indeed, go a bit farther back than the positivists for he believed that the origin of law is purely a question of factual and historical origins, *i.e.*, law grew out of the customary, magico-religious rules found in ancient societies. See Lord Lloyd and M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence* 811-18 (1985). For the original version see Karl Olivecrona, *Law as Fact* 72-74 (1971).

33. Sigmund Freud, *The Ego and the Id* (1960).

the *id*, the *ego*, and the *superego*. The *id* is the unconscious mind, which represents an individual's most primitive and need-gratifying impulses. The *ego* is the source of individual's spontaneous attitude towards the outer world. Both are originally determined by the living body with its circulatory system, sympathetic and parasympathetic nervous systems, endocrine system, as well as by some events in childhood.[34] The *superego* is an individual's potential personality, which exercises a steady pressure upon his conduct. It might also be called the moral part of the human mind. The importance of the *superego* lies in the fact that it is a feeling inscribed in the individual's psyche, one originating when the childhood Oedipus complex is relinquished.[35] Sigmund Freud claimed that with the breaking down of the Oedipus complex an individual's object-cathexis towards the parent of the opposite sex changes and is filled by an intensification of his/her identification with the parent of his/her own sex.[36] In this process the parent becomes internalized and the child proceeds towards further moral development. Individuals' ability to exercise moral authority over themselves can thus be explained by the familiar psychological process of internalizing other people.[37]

The following explains how these processes function in the context of the father's command not to smoke.

The *id* requires instant gratification of the individual's desires. This could be to smoke or not to smoke. An individual also has a *superego* (in whatever form it may be) and *ego*. The son's mind perceives his father's command within the frame of his *superego*, which is his conscience. He now has two alternatives to choose from – to smoke or not to smoke. His mind starts to discern certain consequences traced out by his imagination, to make comparisons, and to ponder disparate features.[38] The son's societal experience also gives him some attitude regarding smoking. It has had him doing some kind of homework in his mind – subconsciously – changing his system of values and his personality and preparing him to make a decision. Now it is time for the *ego* to mediate between the *id* and *superego*, in which process it looks to the *superego* itself for guidance. The manner in which the *superego* is shaped *over the years* would be the qualitative element in his making the decision to smoke or not to smoke. Once the *superego* sends the

34. H. Birnbaum, "The Origin of the Moral Call" 56 *Ethics* 34(1945)

35. *Id.* at 32.

36. Freud, *supra* note 33 at 27.

37. J. David Velleman, "A Rational Superego" 108 *The Philosophical Review* 531(1999) *et seq.* Velleman here has done a comparative study of Kant's and Freud's view on the exercise of external authority of morality.

38. For a similar situation see T.F. Daveney, "Choosing" 73 *Mind (NS)* 518 (1964).

internalized voice of its authority, the *ego* reacts impulsively to that internal moral call.

According to Hart's concept of law, the father's command acted as a standard for shaping the son's behaviour. Had the father not told his son A not to smoke, however, the son still might not have smoked because of the moral call coming from his *superego*. Does this mean that internalization can take place with morals acting as the *standard*? This would evoke skepticism on the *role of law* in the internalization process. To dispel any skepticism, it is assumed that the father has neither told A not to smoke nor pointed out the dangers associated with smoking. The son is in a state of uncertainty. Here, he turns to society and follows the collective patterns of behaviour that are detectable externally. These collective patterns of behaviour serve as standards for behaviour. The standard thus created becomes part of the son's *superego* and allows him to pass successfully as having an internal attitude. This situation is analogous to the position of an external observer who builds perceptions regarding smoking on the basis of the father's command to his son. This only signifies that there should be some standards for a successful social life – morals or collective patterns of behaviour. Now departing from the analogy, the question is repeated, what is the *role of law* in the internalization process? Why did scholars like Hart perceive it as standards or guides of behaviour? For standards to materialize there must be a convergence of individual expectations. This observation is sound as far as it goes, but a more systematic account of individual expectations is required. To this end, a plausible approach is to consider that some kind of focal points can cause individual expectations to converge and thereby generate standards. If it is presumed that law has the characteristics of focal points, then one may go on to ask if it is only a focal point that is required for creating standards? Cannot some kind of moral code act as such a focal point to bring together individual expectations? However, what is the rationale for arguing that law is capable of being a focal point to generate standards? To dispel the skepticism, a metaphysical formulation is invoked.

Individual *superegos* approach a focal point following varied and bizarre contours. They all move within the societal sphere in different directions and at different altitudes. The movement could be parallel to that of other *superegos*, or diagonally opposite, or at upper and lower elevations, etc. Unless there is a magnetic pull by a focal point, the floating *superegos* cannot be brought to a single point. If a moral code has to act as a focal point then it must have the power to magnetize the individual *superegos* and cause them to converge, the same applies to law. The two candidates – law and morality – need to be tested as to their magnetic pull. The salient question becomes, what makes law different from morals? Here we face another question that has persistently

confronted legal scholarship ever since the revival of the scientific study of jurisprudence. Every variety of opinion has been entertained – from the extreme doctrine, held by Austin, that law is absolutely independent of morality, to the opposite position, held by every Oriental cadi, that morality and law are one. The intention here is not to recount those postulations whose validity has been tested and then rejected by many philosophers in their armchairs. A different path will be taken.

By way of context for the ensuing discussion, it is acknowledged that what is followed is the postmodernist view of a shift away from the juridico-political theory to a study of how individuals are shaped by non-juridical forces.[39] The presentation is as succinct as possible so as not to let the points made thus far to fade away.

As regards the question of law and morals, mainstream legal scholarship is divided into two groups – lawyers and jurists.[40] For the lawyers, law must come with an absolute obligation, which requires no justification. They argue the theory of jurisprudence. For the jurists, law should be in the best interest of states in conformity with the moral ideals of the people. They argue the theory of legislation.[41] There is also an intermediary between the groups – the law schools – they impart a conceptual cocktail that most of the time leads graduates to take a stand with certain prejudices: *law and morals are different; morality is predicated on divine and natural law; law does not rest upon morals for its authority*. All this perplexity and the subsequent conceptual confusion are due to the refusal of mainstream scholarship to admit the complementarity of law and morals. Scholars do so because they predicate morality on divine will or natural law, which in fact is not a totally misleading conception, as morality emanates from the divine only. Consequently, law and morality constitute a whole, both emerge from the same source and exist in tandem. Where morality exists in abstract form, law exists in concrete form, both being separate components of a single phenomenon. What differentiates them is their malleability. Morals are modified and adjusted with changes in society, whereas law, which is characterized by an inert normativity, needs outside forces to set it in motion. Such forces arise when a changing morality begins to clash with the inertness of the law. When this feeling of inadequacy multiplies

39. This approach is found in the writings of Michael Foucault. His approach to legal theory has been critical in nature; he argues that the dominant paradigms in political theory and jurisprudence commit a grave and fundamental error by focusing on the power relations between the state and the individual. However, Foucault has been criticized for failing to offer a program of legal change within the system of modern law. See Douglas E. Litowitz, *Post Modern Philosophy of Law* 65-86(1996).

40. T.W. Taylor Jr., "The Conception of Morality in Jurisprudence" 5 *The Philosophical Review* 39 (1896).

41. *Ibid.*

among many individual moralities, it prompts a revolution and calls for change. Hence to discover the true nature of law, one must take into account the genetical oneness law has with morality and *vice versa*. Taylor has offered an apposite summary of this argument:[42]

> A theory of what is law, built upon a careful investigation of the history of the law, its origin and development, an analysis of its various conceptions, an examination of the part which it plays in the society, the ends which it serves, the forces which have produced it and the forces which are continually modifying it, in short, a really comprehensive and accurate science of what law is, contains in itself at once the theory of what ought to be law.

This insight has considerable bearing on the question raised earlier, *i.e.*, which of the two – law or morals – is the focal point that generates standards? With the finding that law and morals are complementary, the question has become irrelevant, all that is needed is a greater coherence in arguments. It has become irrelevant because morals are no longer a candidate, as they are the elements that need to be brought to the focal point. Since law is the twin of morals, probably no force other than law would be the most effectual magnet to pull together the floating morals on a single focus. In psychoanalytical terms, it is the *superegos* moving in the societal planes that need to be brought together. Hence, *superegos*/ morals that vary from individual to individual are directed to a single point by law, creating common expectations among all the individuals in a society. These common expectations are the standards of behaviour. Thus, the role of law in the internalization process is to generate standards, although law is normally perceived as the standard itself.

Elaborating the process, when law acts as a focal point, its connotative character, one of its special properties, is embodied in descriptive language. Normally, mainstream legal scholarship mistakenly identifies this descriptive language with the structured semantics of statutes and then voices the criticism that there are many legal standards that have no canonical linguistic formulation. Scholars normally put forward the case of the common law system, customary law etc., but all these misconceptions exist because authors adopt a narrow perspective on language and its use. They are unaware of the social and constructivist role of language. Paradoxically, it is precisely this dimension of language that makes it possible for law to act as a standard for societal conduct and change.[43]

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42. *Id*. at 40.

43. For a review of the anthropological-linguistic scholarship and its impact on law see Elizabeth Mertz, "Legal Language: Pragmatics, Poetics, and Social Power" 23 *Annual Review of Anthropology* 435-55 (1994).

In the normal transfer of information, individuals use language to send vital social messages about who they are, what their role in society is, how they should conduct their affairs, etc. To put it more technically, language use symbolically represents fundamental dimensions of social behaviour and human interaction. This relationship between language and society affects a wide range of interaction, from broadly based inter-societal relationships to narrowly defined interpersonal ones. Society exists and is transformed through these relationships. Every societal activity is reflected in language use, be it family affairs, economic dealings, or other forms of socialization. In addition to these everyday pursuits, each discontent, each reaction, and all revolutions are also communicated through the medium of language. Hence, language is both an instrument of and a supra-human force governing not only corporal activities but also the psychological plane of individuals' lives. In this scheme of things, individual morality is also reflected in language. To go further, even the diversity among moralities is reflected in language use. If they are to converge, the moralities must also be addressed through language. This is where descriptive language use by the focal points (law) assumes meaning, where the magnetic power of the focal points is transmitted through linguistic structures that embrace moralities and shape them into a coherent whole.

This linguistic character of the standards that are generated by the focal points creates a critical reflective attitude – towards either particular rules or patterns of behaviour – in the minds of the relevant actors, with this attitude then finding its characteristic expression in the form of normative terms such as "ought", "must and should", "right and wrong", etc. It is this linguistic character of the standards that renders the internalization process in the form of normative terminologies.

Before proceeding to the next issue, a recapitulation of the arguments made thus far in this section may be helpful. An individual receives the command of law within the framework of his *superego*, which has been shaped by his family and societal life. This is followed by a psychological process that shapes the decision to comply or not to comply with the command of law. It was then conjectured that if it is a qualitative element (*superego*/morals) that determines an individual's behaviour then these same morals can act as standards of behaviour. If so, what role does law fulfill? The article endeavoured to answer this by assuming a situation where there is no command of law. There it was found that collective patterned behaviour acts as a standard. Yet an answer to the question what role law has in the internalization process could not be formulated. Accordingly, attention was directed to how standards emerge in human society and found that this occurs when there is a convergence of individuals' expectations relative to a course of action. Such a convergence happens at a focal point. But here, too, skepticism lingered.

If a focal point is all that is needed for standards to emerge, then cannot morals act as such a focal point? A critical look revealing some of the conceptual fallacies in legal dogmatics suggested that law and morals are concrete and abstract forms of one and the same reality. Morals are *superegos* that need to be brought to a focal point, and law serves as that focal point.

The last point in this section to be examined is how compliance jurisprudence views the negative side of the internalization process – noncompliance. Noncompliance occurs when individual *superegos* fail to adhere to the standards generated by the focal points. In other words, it happens when certain *superegos* escape the magnetic pull of focal points and thus fail to adopt the standards. Culpability in such cases lies with the actors' *superegos*. Some of these are moderate cases or cases of *quasi*-compliance that could be brought back to the focal points. This is done by threatening to deprive the agents of societal benefits. This threat of deprivation creates a weighing of actions and consequences in their minds to determine whether the pleasure of deviation is worth the deprivation. This conundrum will push these feelings into the sub-conscious mind to be replaced by some arational imperative symbol such as "ought not" in the conscious mind.[44] This kind of internalization has been emphasized by Karl Olivecrona.[45] But this is different from the protracted cognitive process seen in the case of a normal agent. There are also certain extreme cases where the agents cannot be magnetized either by the standards or by the threat of deprivation. In such cases, the result is absolute noncompliance.

IV Broadcasting the mind of the law

In this section, returning to the paternity analogy, the father's viewpoint regarding his son's compliance is examined, revealing some of the flawed notions that the father had. Then the same position is replayed for law through a hypothetical illustration. It appears that law has failed to broadcast its "true feelings" to society.

While first introducing the analogy of the father's command, a supposition was made as to how the father viewed the fact of his son's obedience. It could have either followed from his natural paternal power over the son or his having frightened the son with consequences. The son's obedience, in this case, actually stemmed from a third factor, *i.e.*, his conscience told him not to smoke. But the father remained under the impression that his son's obedience owed to the fact of paternity or the threat attached to his command. This impression may influence him the

44. J.W. Harris, *Legal Philosophies* 100 (1980).
45. *Ibid.* Also see Olivecrona, *supra* note 32.

next time he gives an order to his son. The son's *superego*/conscience may not be able to reconcile itself with the father's order and might lead to noncompliance. Certainly, with his parental authority or by threatening the son with the consequences of his actions the father might be able to secure obedience. Ironically, the apparently dutiful son, would fall into the category of moderate cases of noncompliance discussed earlier. This may not be enduring and he may even end up among the extreme cases of noncompliance. All of these outcomes stem from a communication gap between son and the father. Indeed, the father communicated his command through descriptive language. The son understood it too, but failed to interpret its subtext. In the case of smoking, the son's moral judgments and subsequent compliance inadvertently conformed to the father's command. It need not always be so. But had the father been able to transmit the substance and rationale of his order, it might have evoked a different response. This would have enabled him to assess his son's outlook towards society and to shape his demands accordingly.

This situation would be even more confounding in the case of law. In what follows, it is replayed in that context using a concise hypothetical illustration, which will serve to pinpoint the problem.

Polaria is a democracy located in the polar region of the globe. Polarians are normally sober and sedate in nature. They are also generally known in the crime statistics as law-abiding citizens. Where most of the grievous crimes are concerned, Polaria's curve is low and horizontal. Even as regards minor offences, Polaria has, thus far, not attracted the attention of any criminologists.

There is a law in Polaria that cyclists must have a headlamp fitted to their bicycles[46] and all Polarians know it. But a high proportion of the law-abiding Polarians refuse to comply with this law. They in fact feel that the requirement of a headlamp is needless in a place where there are separate paths for cycles that are brightly lit most of the time. The law requiring headlamps carries a relatively big fine in case of noncompliance, but even this does not ensure compliance from the people. The police officers of Polaria are very gentle and agreeable. Ironically, none of them know the rationale behind the headlamp law. They are also not so keen on this law and seldom fine cyclists.

Why do the Polarians refuse to comply with Statute X? For them, Statute X gets in the way of their routine social life. Such feelings probably exist because the law cannot communicate its rationale, whatever it is, to the Polarians. They know the law but only as structured statutory texts, and think of it as a tangible network of codes. This situation causes most of the law-abiding Polarians to be categorized as extreme cases of noncompliance. The fine associated with the law secures

46. Statute X.

obedience from the rest, placing them in the moderate category of *quasi*-compliance. On balance, mere awareness of the existence of a law is not enough to ensure compliance. This vitiates the internalization theory in that failure to communicate the spirit of the law (as opposed to the letter of the law) changed the course of the internalization process towards the negative outcome of noncompliance.

Can it be that law has attempted to reach the conscience of the Polarians all the while but has failed? And is it not possible that it has been unable to find a medium to reach them? That means that law needs personification to reach the people – a regularized medium of intervention in their daily social life. This observation sounds the first note of realism, which stresses the empirical and pragmatic aspect of law.[47] Realism provides law with personification – institutional as well as human – in the form of courts, governments, lawyers, enforcers, and other "men-of-law".[48] These forces can channel the mind of law towards the society,[49] as Hart said, "opening the mind of men to the happenings".[50] Yet, despite the existence of all these forces in Polaria, law failed to reach the conscience of the people. Does this, albeit minor, noncompliance reveals a democratic deficit in an otherwise law-abiding state? But it is not the people who are at fault nor, it seems, the law. Does noncompliance then stem from a failure to transmit legal culture to the masses? Or is the root of all these problems in the legal culture itself? In an attempt to answer this question, the next section, examines the legal culture project envisaged by Lawrence M. Friedman. However,

47. Legal realism was an attempt to inject the methodological rigor and spirit of scientific investigation into a study of law dominated by deductive logic. Realism is said to have attained its full form with Oliver Wendell Holmes J. He considered law as predictions of what courts would decide. Holmes was followed by Jerome Frank who classified realists into "rule skeptics" and "fact skeptics". Legal realism was also highly influenced by the sociological school of jurisprudence. For a thoughtful treatment see Wilfrid E. Rumble, Jr., "Legal Realism, Sociological Jurisprudence, and Mr. Justice Holmes" 26 *Journal of the History of Ideas* 547-66 (1965); Karl Llewellyn, "American Legal Realism, and Contemporary Behaviouralism" 76 *Ethics* 253-66 (1966).

48. The expression was coined by Karl Llewellyn.

49. Realism has developed various techniques for buttressing its main tenet. These include jurimetrics and behaviouralism. Llewellyn's "law-jobs" also assume significance. He breaks down law-jobs into four categories: 1) the disposition of troubled cases, 2) the preventive channeling and the reorientation of conduct and expectations so as to avoid trouble, 3) the allocation of authority and the arrangement of procedures which legitimize action as being authoritative and 4) the net organization of the group or society as a whole so as to provide direction and incentive. For details, see Karl Llewellyn, "The Normative, the Legal and the Law-Jobs: The Problem of Juristic Method" 49*Yale Law Journal* 1355-1400 (1940).

50. H.L.A. Hart, "Positivism and the Separation of Law and Morals" 71 *Harvard Law Review* 593-629 (1958).

one point deserves mention first – the Hartian concept of "internal perspective among the officials" – for officials constitute a crucial element in the legal institutional hierarchy.

For Hart, a necessary condition for the existence of a legal system is that its officials must have a critical attitude (internal perspective) towards the rules. But what sort of internalization is this? From Hart's assertion it could be conjectured that it is an awareness in the mind of a single official or officials collectively that a given rule is valid.[51] But this internalization cannot be likened to the process that takes place in the mind of an individual or individuals who receive a command of law. Leaving this issue to the list of vague cases as Hart did in his work,[52] this article will adopt a two-tier internalization process where one is a protracted cognitive process for the general public and the other an awareness of the validity of a rule by the relevant officials.

In the case of Polaria, the police officers have an awareness of the existence of the rule and its validity and thus have gone through Hart's "officers' internalization". But regardless of this they remain unaware of the objectivity of that law and resemble, to use Hart's own image, "sheeps walking to the slaughter house".

V Legal culture

Studies of legal culture have been brought into the limelight by Professor Lawrence M. Friedman[53] but have remained the interest of only a determined faction amongst the mainstream and the socio-legal scholarship. It seems that, apart from Friedman's contribution, there have not been any contributions to the concept of legal culture. Yet, aficionado will find an adequate stockpile of literature – a goodly amount

51. Hart, *supra* note 1 at 114.

52. Such vagueness exists mainly because of the *duality* employed by Hart in the external and internal aspects. He gives a dual role to this concept, one in the case of primary rules, which is the protracted cognitive process and the other in relation to secondary rules, which is based on a theoretical presupposition that statements made about the validity of rules by "men of law" are internal statements of law. The vagueness that Hart left in his *Concept of Law* had been the subject of analysis by many occidental positivists. For example see Colin M. Campbell, "The Career of the Concept" in Philip Leith and Peter Ingram (eds.), *The Jurisprudence of Orthodoxy: Queen's University Essays on H.L.A. Hart* 1-26 (1988); P.M.S. Hacker, "Hart's Philosophy of Law" in P.M.S. Hacker and J. Raz (eds.), *Law, Morality and Society: Essays in Honour of H.L.A. Hart* 1-25 (1977). For support see Nicola Lacey, *Life of H.L.A. Hart: A Nightmare and the Noble Dream* (2004).

53. See Lawrence M. Friedman, *A History of American Law* (1973); *Id.*, *The Legal System: A Social Science Perspective* 193-267 (1975); *Id.*, "Legal Culture and the Welfare State" in Gunther Teubner (ed.), *Dilemmas of Law in the Welfare State* 13-27 (1986)

from the non-English speaking traditions[54] – and a highly fertile conceptual matrix. Friedman's project is undoubtedly inspiring in every way.

A brief description of Friedman's legal culture project follows. Friedman understands legal culture as the ideas, attitudes, values, and beliefs that people hold about the legal system.[55] A look at his work[56] reveals that legal culture includes:

i. Public knowledge of attitudes and behaviour patterns regarding the legal system;

ii. group legal culture, which includes the ideologies and principles of professionals such as lawyers and judges;

iii. cultural specificity, whereby a rule transferred from one culture to another simply cannot be expected to induce the same sort of role-performance as it did in the place of origin; and

iv. subcultures, *i.e.*, distinct legal systems within a single political community or hierarchy in the above mentioned cultures.

Friedman's definition of legal culture purports to cover the totality of transmitted behaviour patterns as well as all values and knowledge shared by a society. But his scheme, when it took shape, concerned only with the elements of homogeneity in legal cultures. Friedman breaks down homogeneity into different levels of abstraction, e.g., legal system homogeneity,[57] ideological homogeneity,[58] and world order homogeneity.[59] The focus then shifts to a conceptual partition into *internal* legal culture and *external* legal culture. The internal legal culture is the legal culture of those members of society who perform specialized legal tasks, such as lawyers and judges; the external legal culture is the legal culture of the population at large.[60]

Problems with the internal legal culture of officials ought to be the reason why law fails to convey its true message to society. Here Friedman is right on the mark. He says that a legal culture must be one of *reasoned* law rather than of naked statutes that come into the world as mere propositions and conclusions. He finds the existing legislative process a rather haphazard affair:[61]

54. *Id.*, for example see the references in Friedman, *Legal System.*
55. *Supra* note 53 "Legal Culture and Welfare State" at17.
56. *Supra* note 53, *Legal System* at 193-222.
57. *Id.* at 195-96.
58. *Id*. at 204-07 and 213-18.
59. *Id*. at .208.
60. *Id*. at 223.
61. *Id*. at 236.

> Some [laws] begin with a declaration of policy; others have no preamble, no declaration of policy at all. Often, of course, there are debates on the floor about the bill. Proponents and opponents give reasons on one side or the other, but this is not essential to the life cycle of a law; some laws are never debated. An opinion does not come attached to the statute.

To overcome this problem, law in a good legal system must be *reasoned* law, reasoned in the sense that it must be able to effectively broadcast to the society not only the fact of its existence and validity but also its values and rationale.

Certain skepticism would seem to be pertinent here. Are all legal systems devoid of these traits? Can one assert with confidence that all the institutional structures of law – bureaucratic as well as judicial – have failed to reach society? Do they not make the legal system more accessible in providing its statutes with interpretations and meaning? In most of legal systems they do: the judiciary produces and publishes statements which justify decisions and purport to describe how the judges reached their conclusion; the bureaucratic machinery adopts measures to ensure more legal awareness in society; innovative efforts are undertaken jointly by the branches of government; and intra-judicial programs are established, mostly in the case of private statutes, to reach the consumers of law. In sum, the accusations against institutions do not hold water. Moreover, law, which expresses itself to society in the form of language, ought to give a good performance at the operational level in magnetizing individual morals, as these also find expression through language. Its failure means that the problem is at neither the structural nor the institutional level. It lies elsewhere. This will be dealt with in the conclusion.

VI Conclusion

To return to the compliance problem in Polaria, despite the existence of law and its allied machinery, compliance could not be secured. The investigation of the institutions revealed no structural or normative problems. Hence the analysis must turn to individual morality. It was postulated that morality finds expression in language and that compliance is a product of the congruity between the language of morality and of law. Accordingly, the first question is, is the language of morality structurally flawed? This prompts one to say that the language which morality speaks depends on the social situation. Any change in the moral language (rights and wrongs) will depend on social change. Thus morality is subjectively determined, *i.e.*, by whether given actions are deemed right or wrong in a given social situation. It appears that the

problem lies somewhere here, so the notion of social change and the change in morality merit further analysis.

Social change refers to variations in the social relationships or culture in a society. This is a natural phenomenon for societies, being reflected in human factors such as population explosion, urbanization, industrialization, bureaucratization, and modernization. However, social change may be so incremental that the members of the society either remain unaware of it or find it difficult to resist. They need social continuities in order to bring about social change.[62] Yet, whatever those continuities may be, they cannot keep pace with social change most of the time. Social change is a natural phenomenon appearing in certain human conduct, whereas moral change is a voluntary action. Morality, like social changes, brings about change in human nature but fails to adapt. Feelings of loss and ostracism induce morality to negotiate with incessant social demands.[63] In other words, the morality that one sees is a synthetic morality. It is this synthetic morality that is projected through the language of rights and wrongs, whereas analytic morality (real morality) is perhaps left elsewhere. This is an extreme case that does not always occur. In some instances, morality finds social change suitable, in some tolerable.

When law demands compliance, it is making this demand of the morality present in any one of three stages: complete agreement with the change, complete disagreement with the change, and tolerance of changes. In the case of Polaria, the law probably addressed the synthetic morality of the people and hence failed to magnetize it and bring it to a focus. Accordingly, law and the legal machinery cannot be blamed for ineptitude. Could the individuals be blamed then? Perhaps not. Is the social order then the culprit? If it is, then it will always have the defense of being a natural phenomenon. This state of indeterminacy is not a sign of desperation, rather, it is a revelation that it is not law alone that legitimizes disorder in the society. However, Polaria's example need not be taken as given. It was intended to serve as an illustration only. The situation presented is not necessarily a natural one and the arguments that draw on it may be flawed in various particulars. However, the example may provide a foundation for the larger scheme of things.

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62. Contemporary sociologists consider institutions such as law, family, and religion as engines that could provide continuity, but in fact these institutions themselves need continuities for change. And only the incongruity of morality with society can provide continuity for these institutions. Since this creates a state of indeterminacy, this argument is not invoked in this article. For a discussion elucidating this situation see Karl Polanyi, *The Great Transformations* (1973).

63. A justification for this argument appears in David M. Minar, "Ideology and Political Behavior" 5*Midwest Journal of Political Science* 322 (1961).

A brief summary and introspection will serve to conclude the article. The article has overtly confessed that the research has modest novelty claims. But it did study the conventional as well as contemporary wisdom. There, the sole preoccupation, as said elsewhere, was to play the first note of a new composition – the juridical science of compliance. In that process, it has performed numerous morphings of law, albeit not synthetic ones. Here, too, to some extent, it has followed the path of its precursors. Its creativity, if the reader will allow, probably lies in reconciling those legal schools of thought that stood isolated from one another, each claiming to have overpowered its predecessors. In this process, every school has retained its identity. None were indicted for any serious conceptual deception (this cannot be claimed with honesty in the case of legal positivism, as there were intrusions into the theory – one on the "social thesis", which maintains that legal validity is ultimately determined by reference to certain basic social facts, and one on the "separability thesis", which asserts that there is no necessary connection between law and morality). Minor patchwork has been done elsewhere as well. Had this not been done, legal positivism would have eclipsed the notions of compliance altogether, for it was unabashedly dismissive of much conventional wisdom with its claim that law gains its authority from social forces. The present intervention, while accomplishing its goal, has safely retained the basic tenet of positivism that the validity of law is based on social conventions. Here authority was differentiated from validity.

Another intervention was made when law was designated as a focal point that generates standards of behaviour. There, it might have struck some readers that the arguments on law and morality challenge the separability thesis. While describing law and morals as siblings, the parallelism between them in their operation was maintained in the sense that both were given their own space in which to move. There then comes a point when both display their genetical oneness, with morality magnetized by law. This again would prompt skepticism. However, the separability thesis was limited only to making claims on the validity and definition of law as based on morality. This is in fact the case, as the validity of a given law is based on social conventions and not on morality. Moreover, the definition of law must not be based on moral considerations but, as was seen, on the harmonious correlation between various streams of thought. In sum the article most resolutely rejects the notion of law and morality as concepts totally alien to each other.

The third intervention was made in the case of realism. It is admitted that there the theory was taken as it stands – a critique would have been beyond the scope of the present contribution but a critical treatment of the theory will most certainly figure in the subsequent phases of the author's project. When the realists personified law, it reached society

but seemed encased in crude semantics, thereby suppressing the "true feelings" of law elsewhere. This prompted skepticism on the role of other legal institutions too. The subsequent examination of social change and morality revealed that the realists cannot be indicted for a conceptual deception.

This article concludes in the earnest belief that it has not deluded the reader with the argumentative patterns, since it attempted to sketch a discourse that has been ubiquitous in legal thought ever since the concept of law was born. That discourse continues.