

Law - An Ordinance of Reason

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The Meaning of Law in General

John Austin's law definition states "law is the aggregate set of rules set by a man as politically superior, or sovereign to men, as political subjects." Thus, this definition defines law as a set of rules to be followed by everyone, regardless of their stature (The Austinian Theory of Law, 1906). Hans Kelsen states that law is a 'normative science'. In Kelsen's law definition, the law does not seek to describe what must occur, but rather only defines certain rules to abide by (Hans Kelsen, Pure Theory of Law, 2002).

According to Aquinas, law is an ordinance of reason because it must be reasonable or based in reason and not merely in the will of the legislator. ... It is promulgated so that the law can be known. Thus, from this the definition of law may be gathered; and it is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated (Aquinas, St. Thomas. Treatise on Law (Summa Theologica, Questions 90-97).

The Link between Law and Reason

Aquinas speaks of the law of

nature, which refers to normative properties that are inherent by virtue of human nature and universally cognizable through human reason. Historically, natural law refers to the use of reason to analyze both social and personal human nature to deduce binding rules of moral behavior. Aquinas believes that reason is the first thing human acts upon. According to Aquinas, law belongs to reason. (90.1) This provides a clear link between law and reason. The end of law is the common good or the good of the community. The law must be reasonable or based in reason and not merely in the will of the legislator. It follows that there is a link between law and reason as we cannot find the common good without reason.

Further, Aquinas establishes four types of laws: eternal law, natural law, human law, and divine law. Eternal Law means that "God's providence rules the world...his reason evidently governs the entire community in the universe." (91.1) Aquinas believes that eternal law is all God's doing. Natural Law is the participation in the eternal law by rational creatures demonstrating further the link between law and reason. Natural law allows us to decide

between good and evil. Next we have Human Law: the particular applications of law resulting from the use of reason. "Human law originally sprang from nature." (91.3) The last is Divine Law, which is important because "it belongs to any law to be directed to the common good at its end." (91.4) These laws all go together and the relationship must be presented to comprehend them individually.

Corruption as a Form of Irrationality

Unlike law, which is based on reason, corruption is a high form of irrationality which is diametrically opposed to the rationality espoused by law. Whereas the end of law is the common good, the end of corruption is a state pure selfishness. Corruption in Zambia seems to be on the rise and permeating all areas and corners of the governance system. Corruption has also manifested itself on a larger scale at the national level through for instance the highly publicized forty-eight houses whose owner the Anticorruption Commission has failed to trace and the forty-two fire trucks bought for the inflated figure of US\$42 million. The 2019 Transparency International Corruption Perception Index, reports that Zambia's corruption record is worsening with a rank of 34 in 2019 from 35 in 2018 and 37 in 2017 out of 100 countries (The Corruption Perceptions Index (CPI) is an index that scores countries on how corrupt



their governments are believed to be. A country's score can range from zero to 100, with zero indicating high levels of corruption and 100 indicating low levels). Government however continues to dismiss the reports of worsening incidences of corruption in the country and claims to be resolved in fighting it. The sad reality is that corruption is on the increase and ordinary people are the ones bearing the brunt of this endemic form of irrationality.

The term "corruption" refers to the misuse of resources or power for private gain. Transparency International defines corruption as 'the abuse of entrusted power for private gain'. It takes various forms and occurs at different levels that include bribery, extortion, nepotism, patronage, graft and embezzlement. Corruption can take place at the highest level

of authority, sometimes referred to as political corruption or at low levels of governance referred to as bureaucratic corruption. It is worth noting that political corruption could be a precursor to bureaucratic corruption. Chand and Moen (1999), in their study provide evidence that corruption at the top of the bureaucracy increases corruption at the lower levels. What is clear is that any type of corruption is antithetical to law and reason.

Corruption Militates Against the Common Good

Corruption is not only an irrationality but it is also an immorality. Many studies suggest that corruption can affect the nature of a state's economic development in that it raises income inequality and affect the poor disproportionately. Lower income households for instance are made to allocate

a higher share of their income to bribes in countries where corruption is rampant than middle income households would allocate. The poor are also more often subject to corrupt practices in the course of their routine interactions with public institutions than people with money. Corruption negatively affects both the volume and the quality of public service delivery. This occurs both directly through distortions of resource allocation and indirectly through reductions in revenue.

When a bribe is paid to a traffic police officer to avoid a traffic fine that is intended to augment government revenues, this act reduces government revenues and limits government's capacity to provide services and development to its citizens. Furthermore, corruption has a dispro-



portionate impact on the lives of the poor as they depend more on public services. Corruption leads to worsened environmental outcomes, such as increased pollution, higher rates of deforestation, increased depletion of natural resources and trafficking in illegal or highly regulated environmental products like wildlife and wood. Because of corruption, government environmental institutions fail to enforce regulations that protect the environment.

How to Combat Corruption

In his article entitled “Corruption, Causes and Consequences” Stefan Sumah asserts that the level of efficiency of public administration determines the extent to which corruption can find fertile soil and sprout. This is because ineffective and unclear regulations inhibit the smooth running of government business and therefore encourages people to pay bribes in order to speed up the bureaucratic procedures. When government systems are simplified and rules and regulations made clear, corruption is

immediately curtailed. Reforms introduced for instance in Zambia in the issuance of passports and administration of speed limits on the roads where people are expected to pay fees to the bank and speed cameras replacing traffic officers respectively are said to have reduced bribery and corruption.

These kinds of reform must extend to other areas of public service delivery if corruption has to be fought. Countries with the most efficient public service system in the world such as Singapore, Denmark and New Zealand are the least corrupt countries according to the Transparency International Corruption Perception Index. The creation of SMART Zambia Division by government aimed at coordinating and implementing electronic (E-Government) for the citizens, businesses and within government for improved service delivery is therefore a welcome move. If well implemented, it will improve the efficiency of running govern-

ment, cut down on wastage and reduce incidences of corruption.

Promotion of professional ethics and the enactment of efficient laws regulating corruption as a criminal offence, successful prosecution and stiff sentencing of causes of corruption at all levels will be effective in stemming corruption. A country therefore needs strong institutions to fight corruption. This is why it is said that corruption is not the weakness of people but of institutions as they should be the ones to effectively obstruct the greed and temptation of individuals within them (Stefan Sumah, 2018).

Conclusion

According to Aquinas, in order for law to make people good that law needs to guide people to their right virtue. Hence “virtue makes those possessing it good, the proper effect of law is consequently to make its subject good, either absolutely or in some respect.” (92.1) Aquinas believes that some human acts are good and some evil and in order to enhance good acts and rationality, we need to focus on designating suitable legal acts, namely, “commanding, forbidding, permitting, and punishing.” (92.2) This underscores the need to promote professional ethics in all sectors of life, enact efficient laws and systems, introduce public service delivery reforms such as E-Government, and put in place strong and independent institutions in order to promote the ordinance of reason for the common good.