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Does a Law have Social Functions?

According to Joseph Raz, the concept of the functions of law is of major importance to any theory of law, which attempts a general explanation of the nature of law. It is important to the lawyers, judges and officials faced with problems of the correct interpretation and application of the law. It is relevant to sociologist and political scientist wishing to explain the interaction of the law with other social norms and institutions. Philosophers have occasion to refer to the functions of law in at least three different contexts. (1) Some are concerned with the functions that all legal systems necessarily fulfill or are fulfilled by some or the most legal systems; (2) Similarly, the performance of certain functions might be a defining characteristic of certain branches of the law; (3) Theorists are interested in claims that legal systems ought to fulfill certain functions in certain ways. According to Raz, it is important to distinguish between normative and social functions of the law. Every legal system has necessarily a normative and usually also a social function.

Denis Galligan argues that the common sense and experience show that laws are commonly used as instruments for realizing ends and goals. Constitutions and international conventions, legislations and regulations, judicial rulings and administrative guidelines are all products of deliberative action on the part of peoples and states, of legislator, administrators, and judges, and all my be presumed to have some point and purpose. The law making process is often ending in compromise and accommodation rather than the expression of clear intentions and purposes. Nevertheless, the resulting laws are directed at and are instruments for achieving social goods. Questions about the social worth of law are usually posed in terms of its functions, the idea being that law performs specific functions in society. Second main issue considers on how law contributes to social goods. Here the idea is to consider its role in different situations, facilitating private arrangements, imposing criminal sanctions, regulating private arrangements, imposing criminal sanctions etc.

Bentham was a prominent figure of the instrumental approach and made it sound straightforward: law is an instrument for pursuing whatever social goals are considered desirable within a society. It can be used for good or bad, it can fall into hands of special interests, or it can be the engine of cruelty and oppression; it can also be used to advance the good of society.

Roscoe Pound understood law as a highly specialized form of social control in a developed politically organized society. He had argued that the law has a function of fulfilling human interests/social ends; law is a social mechanism, a means to further the ends of society.

Brian Z. Tamanaha, on the other hand, proposes a non-essential concept of law. What law is and what law does cannot be captured in any single concept or by any single definition. There is no: "law is", because law doesn't have an essence. Consequently, we cannot understand law in the terms of its possible functions.

Does a law necessarily have a function? If so, can we speak of one or more different functions of the law? Aim of this paper is to critically analyze different approaches and to propose theoretically sound one.