LAW PHD RESEARCH PROPOSAL SAMPLE

MORAL AND RIGHTNESS IN CONTEMPORARY LEGAL PHILOSOPHY

In social everyday life, but also in the domain of theory, it is hard to dispute the claim that the right and the moral are of paramount importance for the formation and regulation of relations within the human community. Both for the right as well as for the morality, it may be said to represent systems of rules on the basis of which the human behavior is determined, directed and valued. From the roughly sketched conceptual definition of both phenomena, the significance of the rights and morals for Aristotle's "holy human things" is evident. Therefore every attempt to understand an individual, society, or state directly or indirectly leads to theming both rights and morals. The complex character of social relations shows that morality and right are difficult to perceive as two completely separate and rounded entities. And concrete life and theory are in agreement that directing and evaluating human actions through rights and morals can be presented in the most appropriate way if both right and morality become separate entities in a complex context of their relationships. The inscrutable character of the relationship between morality and law can best be expressed in the position of its polar character. The affirmation of polarity is a claim of relative contradiction. It implies that the fundamentally different elements of the relationship are not entirely excluded, but that there is a very specific level of mediation. Specifically, it was said that the relationship between morality and law has no radical contradiction or complete identity. At first glance it becomes clear that the idea of relative contradiction opens up a broad and rich field for philosophical-legal reflection. She needs to see the nuances in the moral-right relationship or how it has formulated Arthur Kaufman to discover the "rich field of their mutual touch, refinement, and rejection". The legal philosophy of H. L .A Heart as well as his student Ronald Dworkin are striking examples of polarization

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theses. Like most philosophical concepts and the notion of polarity, it is not even close to self-discernment and has always been superseded and represented in the history of legal philosophy.

Like almost all of the relevant philosophical concepts and the meaning and significance mentioned above gains in contrast to other terms. So it is a polemical concept. Interpretation of the relationship between law and morality in the context of the concept of polarity implies a critical review of influential schools of legal opinion-classical theory of natural law and legal positivism. Both of these legal and philosophical views express very decisive but also a lot of attuned attitudes regarding the relationship of rights or morals. The relationship between the law and the morality of the natural law theory is viewed from the perspective of the identity thesis. The main claim of this philosophical-legal theory is the attitude on the unity of legal and ethical norms. The study of the historical sources of natural-legal theory leads to the philosophy of St. Thomas Aquinas. For the most well-known philosopher of the Middle Ages, understandable principles of morality and ethics are a "higher order" or a system of norms superseded by a positive legal order. Any legal regulation that has not been implemented or does not comply with the natural law principles cannot have any legal validity. In the period of Modern, natural-legal theories gain a central place within political and legal theory and indirectly affect the specific socio-historical processes. With the inevitable addition to the novel concept of rationality, and in relation to the Christian Middle Ages, different interpretations of human nature, the natural-legal notions of Hobbes, Locke and Rousseau are, in a smaller or a large extent, the main idea of classical natural law teaching. Natural-legal principles are a normative model of positive legal regulations. Positive legal norms can be derived from abstract legal norms, while further concrete legal decisions are made. Regardless of how well theoretically developed, the concept of primary law has led to a number of unacceptable consequences.

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The abstract character of natural law principles is manifested through legal self-sufficiency in lawfulness and arbitrariness in the application of the law, resulting in legal uncertainty and general social instability. Socially unacceptable consequences as well as the need for legal certainty of the capitalist economy in the expansive development led to a critical revision and then the rejection of the concept of natural law in the 19th century. On the one hand, it is strongly inspired by the intellectual need to reject metaphysics, and on the other hand, it is primarily focused on the experience and principles of logic, legal positivism creates a completely different theoretical framework for understanding the law. Instead of natural legal principles from which the right is deduced, the essence of research is in the forms and structures of law. Right is perceived as a set of procedures deprived of moral or any other for a legal norm of relevant content. As a credo of legal positivism, it can serve the great formulation of British lawyer John Austin "The Existence of Rights is One Thing; its virtue or deprivation is another "Slogan" Right is Right - legal positivism emphatically emphasizes the above-mentioned tendency as rejecting metaphysical obscurity and any normative obscurity and indefinition.

At the same time, insisting on the ultimate determination both in the domain of adoption and in the domain of the application of legal regulations, he seeks to establish a stable legal order. Such a natural-legal lesson, without any call for experience, from a set of appropriate formal procedures, it is possible to come up with a set of concrete legally valid decisions. The struggle with the clearer and more discerning knowledge, and the almost obsessive reference to facts, initiates the effort to complete the codification of legal life. The development of positivist-oriented legal science has led to a significant codification of legal life in the 19th century Europe. The appearance of the French Code Civil, the Austrian General Civil Code, the German Civil Code are just some of the concrete manifestations of positivist gravity.

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The positives of positivist analysis are the state and its institutions, more precisely the rules that define their timetable and determine the ways of functioning. Particular importance was given to the judiciary, whose role was to sanction all formally correct laws, not excluding those who were wrong in their content. The experience of authoritarian and especially totalitarian political order has shown disastrous effects of unconditional sanctioning of all formal correct and enforced laws. At the same time, it turned out that the logic of legal positivism is based on strict separation of rights and morals disputed. The fact of the existence of the legal system is insufficient to adequately define obligations and protect the rights and interests of citizens. On the contrary, in a political order based on deeply immoral and unjust ideological contents, the legal system transcends its opposite. Life in such political quarters is characterized by the phenomenon of "legal obsession" or "the existence of morally bad laws".

The deprivation of the lives of innumerable innocent people and mass violations of fundamental human rights are not only a justification for the use of a state apparatus for the purpose of achieving morally disputed ideals, but the proof that formal regulations are correctly adopted without the appropriate moral ground can lead to the establishment of the regime of organized terror. The experience of authoritarian and especially totalitarian political orders in the twentieth century draws attention to the fatal and painful realities of the mentioned facts of legal life. The totalitarian political order also reactivates old debates in legal philosophy.

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