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Jurisprudential Aspect of Taxation Law

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ABSTRACT

In this paper, we shall be exploring the views of tax law in different schools of jurisprudence. Starting from the very first modern legal take on the idea of tax to the past centuries when different opposing schools came up in contrast to each other with regard to the jurisprudential perception of taxation.

Tax law is the legislation that requires taxpayers to provide a public authority some of their income or property. Governments can tax, as is commonly accepted. Although there are parallels and commonalities, each nation has its own tax legislation. Tax law focuses on taxation's legal components, not its financial, economic, or other implications. instead than being directly dictated by the tax laws themselves.

Tax law falls within the jurisdiction of public law. This concerns the enforcement of existing tax laws on individuals, corporations, and companies, particularly in areas where tax income is created or imposed, such as income tax, estate tax, corporate tax, employment/payroll tax, property tax, gift tax, and import/export tax. Advocates contend that consumer law is a superior method for achieving broad redistribution in comparison to tax law. The absence of legislative action is the reason why consumer law does not need it, making it more efficient, especially when considering the complexities of tax laws.

Therefore, while the natural school is in favour of taxation law, while sociological school's proponents believe it to be something that is not as essential; however, tax is a requirement for protection in the world where a lack of military and social construct where vulnerability can soon become a victim of anarchy.

Therefore, different views on taxation will be delved into deeply to understand the perspectives of different legal and jurisprudential schools within this paper.

Keywords: Jurisprudence; Taxation; Taxes; Tithe, Schools of Law.

INTRODUCTION

Jurisprudence encompasses the philosophical and theoretical aspects of law. Its primary focus is on the current state of the law and its ideal state. This include inquiries into the conceptualization of individuals and social interactions within the context of law, as well as the examination of the principles and ideals that underlie the legal system. Jurisprudence encompasses primarily philosophical study, but it also incorporates contributions from other disciplines, including sociology, history, politics, and economics.

The origins of modern jurisprudence may be traced back to the 18th century, where it was founded upon the fundamental ideas of natural law, civil law, and the law of nations.[1]

Tax law, sometimes known as revenue law, is a field of legal study that focuses on the rules and methods used by government agencies, such as federal, state, and local governments in the US, to legally evaluate and collect taxes. The rates and benefits of different taxes, enforced by the authorities, are determined through the political process inside these governing organisations, rather than being directly determined by the tax laws themselves.

Tax law is under the purview of public law. This pertains to the implementation of current tax legislation on persons, organisations, and businesses, specifically in domains where tax revenue is generated or imposed, such as income tax, inheritance tax, company tax, employment/payroll tax, property tax, gift tax, and exports/imports tax. Some proponents argue that consumer law is a more effective means of achieving widespread redistribution compared to tax law. This is because consumer law does not require legislative action and can be more efficient, considering the intricacies of tax legislation.

In this paper, we shall explore different ways in which tax law is perceived with regard to different schools of jurisprudence. Furthermore, we will also discuss the take and perspectives of the proponents from different school on tax with an analysis of their theories and how they impact tax laws.

1 R. H. S. Tur, "What is Jurisprudence?" 28 The Philosophical Quarterly 149–16 (1978).

NATURAL SCHOOL OF LAW

Natural law is a philosophy in the field of jurisprudence that asserts legislation should be grounded in ethics and morality. This legislation also stipulates that the legal system should prioritise what is deemed 'accurate'. Furthermore, people discovered natural law through their capacity for rationality and discernment in distinguishing between what is morally right and wrong.

Natural law is a legal theory that focuses on the principles derived from the laws of nature. This school of jurisprudence holds the view that there exist intrinsic rules that are universally applicable to all cultures.

The term "natural law" is synonymous with "moral law." Divine law, also known as the law of God, the law of Reason, the law of nature, Universal law, and unwritten law.

According to this perspective, the law is characterised by rationality and reasonableness. The concept of natural law posits that rules are derived logically from moral principles. Hence, conduct deemed morally reprehensible will be in violation of the law.Natural law is a legal philosophy that centres around the principles governing the natural world. Furthermore, this school of jurisprudence espouses the notion that there exist universal rules applicable to all cultures. This applies regardless of whether they are documented or have the authority to be implemented.

THOMAS ACQUINAS

The reasoning of the great mediaeval scholastic Thomas Aquinas does not exhibit a disregard for basic concerns. The renowned theologian, known as The Angelic Doctor, comprehends the ramifications of Augustine's analogy between kingdoms and thefts in relation to tax ethics. He references City of God 4.4 in his Summa Theologica while discussing thievery and robbery. Contrary to the notion that robbery may be justified when earthly rulers forcibly take possessions from their citizens, Aquinas argues that the moral prohibition against robbery applies equally to both rulers and private individuals. However, taxes is not inherently an act of theft. The differentiation between equitable taxation and illicit confiscation depends on the prince's official role as the protector of the common welfare. "Robbery," he clarifies, "entails the use of force and coercion to wrongfully take away from an individual what rightfully belongs to them."[2] Human communities rightfully limit the application of force to those who possess public power. Princes are given the responsibility of public power in order to act as protectors of justice. As a result, they have the moral right to use force, but only within the limits of what is just. This includes actions such as fighting against enemies or punishing wrongdoers. Aquinas refutes the notion that princes engage in theft when they "demand from their subjects what is rightfully owed to them for the protection of the collective welfare, even if they employ force in the process." Although he acknowledges that "anything acquired through this type of force is not considered the proceeds of theft, as it does not go against justice," he still argues that "to forcefully seize someone else's belongings in violation of justice, while acting in an official capacity, is an unlawful act and constitutes robbery."[3] He asserts that monarchs who unlawfully seize property from their subjects are obligated to return it, just like private sector robbers would be.

JOHN LOCKE

Locke insisted that property right entailed that all taxes be voluntary, requiring the consent of the taxpayer or the consent of a majority of representatives. However, Locke did not think that everyone who paid sales taxes was entitled to vote for the government to which they were subject but claimed that these taxes were passed on to, and borne by, landowners. Taxes on land were voluntary in that they were subject to gentlemanly agreements between landowners, whereas excise taxes fell on all without their consent. Locke did not specify a property qualification for the franchise in his Two Treatise of Government, as he did in other writings, but indicated that political representation should be proportionate to tax burdens. Although Locke's doctrine of taxation and representation is far from clear and unambiguous, the legacy of voluntary taxation continues to haunt us.

John Locke assumes the indispensability of taxes, but establishes three prerequisites for taxes and other governmental acquisitions of property to be considered valid.[4]

1. The taxes must not exceed a level where certain persons would find it more advantageous to live in a state of nature rather than being taxpayers within the nation.
2. The taxes must be accepted by a majority vote of the representatives of the population who genuinely prioritise the interests of the populace.
3. The taxes should primarily serve the collective welfare of the nation, and ideally benefit a wide range of individuals who may not possess significant political influence.

John Locke's primary assertion is to the lawful objectives of taxes. In the latter portion of Section 139, the author does not explicitly specify the exact permissible purposes. However, he provides an illuminating parable: a military commander can command a soldier to undertake a highly risky task for

2 Thomas Aquinas, Summa Theologica [hereafter ST] II-II, Q. 66, art. 8, obj. 3, responsio, and reply obj. 3. I quote from the translation of the Fathers of the English Dominican Province, rev. ed. (1920; rep., Allen, Tex.: Christian Classics, 1981). Aquinas cites City of God 4.4 in the reply to objection 3.
3 Ibid
4 John Locke’s 2d Treatise on Government: Of Civil Government, Chapter XI (“Of the Extent of the Legislative Power”), Sections 138-140.

the greater good of the nation, such as protecting it from destruction by enemy forces during war. Nevertheless, the commander is not justified in unlawfully appropriating even a small amount of money from the soldier for personal gain.

THOMAS HOBBES

Hobbes promotes a very hierarchical form of administration. The ruler exercises authority through the implementation of laws that are conceived as authoritative directives. His authority to impose taxes is nearly boundless, unless there are inherent property rights and principles of fair distribution. Tax is the monetary compensation required in exchange for the provision of security. The government, namely tax officials, must depend on pressure and deterrence to compel its citizens to adhere to their legal commitments. However, a prudent ruler adheres to the principles of natural law. Equity is a crucial idea in this regard. Hobbes' perspective on the benefit theory of taxation involves levying taxes on consumption, with the aim of restricting extravagant spending as a secondary objective.

The essence of Hobbes' response remains the same as the one now provided: taxes are used to fund the essential expenses of the governing authority (the government). While there may be disagreements on the extent of what qualifies as 'necessary expenditure', the fundamental political rationale for taxes remains unquestioned.[5]

HUME

Hume considers governance to be of secondary importance, as the concept of absolute sovereignty is not a concern for him. Endowed with inherent yet restricted kindness and cultivated via parental education, human beings collaborate without the need for contractual involvement. Given that individuals possess a collective understanding of the greater welfare, they may willingly contribute to taxes.[6] However, if they exhibit reluctance in doing so for the betterment of society, the government assumes the responsibility of enforcing tax payment. Institutions should not resort to coercion to ensure compliance from self-interested people, but instead should foster and bolster individuals' inherent yet finite capacity for empathy towards their fellow human beings in order to promote collaboration within larger communities. They are motivated to behave in accordance with the common interest due to sympathy.

ANALYTICAL SCHOOL

The analytical school of jurisprudence is founded on the legal adage, 'Ubi civitas ibi lex', which conveys the idea that where there is a functioning government, there will not be chaos. Consequently, the fundamental tenet of this school is the connection between law and the existence of a governing body. The fundamental principle of the Analytical school of jurisprudence is to address the law in its current state. According to the Analytical school, law is the authoritative guidance provided by the sovereign. Analytical schools are sometimes referred to as imperative schools.

Analytical Jurists contend that law is a manifestation of human volition, signifying that it is brought into being by an individual or a governing body. This ideology strongly opposes ethics and only emphasises positive law, prioritising the empirical features of the legal system.

JEREMY BENTHAM

Jeremy Bentham is recognised as the founder of classical utilitarianism. Bentham himself stated that he discovered "the principle of utility" in 1769, after being influenced by the writings of Hume, Priestley, Helvétius, and Beccaria. The idea underlying utilitarian ethics posits that an activity is morally correct to the extent that it enhances happiness, and morally wrong to the extent that it causes suffering. Bentham defined happiness as the experience of pleasure and the absence of pain, which could be measured based on its intensity and length. He famously dismissed the concept of inalienable natural rights, which are rights that exist regardless of government enforcement, as "nonsense on stilts."[7]

When determining the most appropriate tax policies, it is important to consider the benefit principle. This concept states that taxes should be paid based on the benefits received from the government. Defining the government entails acknowledging its essential role in safeguarding us from the chaotic state of nature, characterised by a constant conflict among individuals.[8] Given the complexity of the benefit-tax ratio, it is necessary to further examine the baseline. Baseline refers to the minimum level of wellbeing. The government's presence establishes a minimum standard for income, which represents the chances individuals have to generate money.

Bentham advocated for the implementation of the law of escheat, as well as a tax on the earnings of bankers and stock dealers, under the condition that it adheres to the principle of minimising the loss of pleasure. In addition, he intended to rectify the disparity in the land tax by expanding it to encompass a comprehensive income tax.

5 Jackson, (1973). Thomas Hobbes' Theory of Taxation. Political Studies, 21(2), 175-182.

6 Gribnau, Hans and Dijkstra, Contractualism and Tax Governance: Hobbes and Hume (September 15, 2019). P. Harris and D. de Cogan (eds.), Studies in the History of Tax Law, Volume 9, Oxford/Portland: Hart Publishing 2019, Tilburg Law School Research Paper Forthcoming,

7 Jeremy Bentham. Anarchical Fallacies. (1848)

8 Liam Murphy and Thomas Nagel, The Myth of Ownership: Taxes and Justice (New York, 2002; online edn, Oxford Academic, 1 Nov. 2003)

JS MILL

Mill's philosophy is significant in relation to taxation and the distribution of income. Mill's interpretation of a functional and equitable capitalism required equality in advance, but not after the fact. It is important to consider the intertemporal aspect of this perspective on justice when analysing Mill's policy perspectives. To achieve economic progress and personal development in society, it was necessary to establish incentive systems that promote initiative and productivity[9], both inside the tax structure and in other areas. However, as we will contend, a suitable system of rewards and motivations was insufficient. Progress necessitates the presence of "fluidity" and "mobility" within society, both in the present and throughout history. Furthermore, Mill's policy position cannot be comprehended without considering his support for the spread of property rights at a microeconomic level in British society.

In his 1852 statement, Mill defended the existing land tax and even suggested increasing it, arguing that feudal levies had been abolished without any corresponding benefit to landowners. Mill argues that feudal taxes were abolished in the past, but without any kind of compensation, which he considers to be a significant injustice. He believes that it is unfair to eliminate charges on property that was formerly held with these duties, and to make it exempt from those requirements.

ANALYTICAL POSITIVIST SCHOOL OF JURISPRUDENCE

Analytical jurisprudence aims to analyse the current state of law without considering its historical origins or evolution. Its primary focus is on the objective facts of law as they exist in the present. The positive school assumes the existence of a well-established legal system and systematically examines its fundamental notions, categorising them in order to highlight their interconnections. The school has earned the label "analytical school of jurisprudence" due to its focus on the methodical examination of legal issues.

Austin limited his study only to positive law and employed an analytical approach for this objective. Austin defined positive law as laws that are officially recognised and enforced by the state, in contrast to moral and other laws that lack the authority or endorsement of the state. Austin defined positive law as the collection of regulations established by individuals in positions of political authority over those who are politically subordinate. He identifies command, obligation, sanction, and sovereignty as the four key elements of positive law.

HLA HART

HLA Hart famously contended that taxes, when examined only through a formalistic and command-theory perspective, would seem identical to penalties. Hart identified this as a key issue associated with command theory. Over time, he gradually evolved the idea that taxes had a unique characteristic of not affecting conduct, which he continually stressed. Hart's fascination in the differential between taxes and fines stemmed from his examination of the objective of punishment within the criminal justice system.

In two separate versions of his 'Prolegomenon to the Principles of Punishment', which served as his Presidential speech to the Aristotelian Society (PAS)[10], he presented his thesis about the distinction between taxes and penalties. These versions were published nine years apart. The second edition, which has undergone minimal revisions and updates, serves as the opening chapter in his 1968 anthology Punishment and Responsibility (P&R).[11] The PAS version, however, provides a more comprehensive explanation of Hart's views on the differentiation between laws that impose taxes and those that impose criminal culpability.

JOHN AUSTIN

John Austin was an English legal theorist who posthumously influenced British and American law with an analytical approach to jurisprudence and a theory of legal positivism.

When the impost or tax itself is harmful, smuggling is not prohibited by anyone's ideas or feelings. Therefore, it is done shamelessly and without any fear of facing widespread criticism. One example of this is when a tax is imposed on imported goods, not to generate public income, but to preserve a local industry, which is both illogical and harmful. Violations of the game laws are also relevant in this context, as they are not violations of inherent morality, but rather prohibited by legal statutes.

A person does not lose his dignity or face social exclusion from other men just because he shoots without a qualification. A commoner who snares a hare avoids criticism from other commoners, but the landowners, acting as judges, condemn him to imprisonment and hard labour on the treadmill.

9 T. Dome, (1999). Bentham and J. S. Mill on Tax Reform. Utilitas, 11(3), 320-339.

10 HLA Hart, 'The presidential address: Prolegomenon to the principles of punishment,' (1959) 60 Proceedings of the Aristotelian society 1-26.

11 H. L. A. Hart, Punishment and Responsibility: Essays in the Philosophy of Law (2nd ed. Oxford University Press 2008, John Gardner, ed.; orig ed 1968), 1.

SOCIOLOGICAL SCHOOL OF JURISPRUDENCE

The Sociological school of Jurisprudence asserts that there is a correlation between the Law and society. This school posits that the law is a social phenomenon due to its significant influence on society. The sociological school of law is dedicated to examining the practical application of law in relation to society.

HANS KELSEN

Hans Kelsen is the founder of the Grundnorm theory of law. The notion of the basic norm, also known as the Grundnorm in German, was developed by Hans Kelsen, a legal philosopher and lawyer, within the framework of the Pure Theory of Law. Kelsen employed this term to designate the fundamental norm, arrangement, or principle that constitutes a foundational basis for a legal framework.[12] The idea posits the necessity of identifying a fundamental source from which all laws get their validity, serving as the foundation for basic law and the constitution, similar to the notion of first principles. This "basic norm", however, is frequently characterised as hypothetical.

The ‘Grundnorm’ theory of Kelsen is neither in favour or against the idea of tithe and taxes. According to him, the basic nature of the legal set-up would be enough to understand if taxes were needed. Furthermore, if taxes were needed then the basic norm would also dictate how the calculation of such taxes must take place. Kelsen’s idea is that since the basic legal principles cannot change. The tax requirement calculations would, as a corollary, remain the same.

HISTORICAL SCHOOL OF JURISPRUDENCE

The Historical School of Jurisprudence is based on the conventions and habits of individuals, which evolve in response to their changing requirements. It is sometimes referred to as the Continental School of Jurisprudence. The Historical School refutes the notion that judges possess the authority to establish laws or that laws are of divine origin.

FRIEDRICH KARL VON SAVIGNY

Friedrich Karl von Savigny, born in 1779 and died in 1861, established the historical school of law. Savigny claimed that the primary objective of this school was to assert that a nation's customary law represents its authentic and dynamic legal system. Furthermore, the sole objective of jurisprudence is to reveal and elucidate this law.

The UK has exported a significant legal precedent on the establishment of corporate residency for tax and jurisdiction. This precedent was set by the House of Lords in the case of De Beers Case.[13] This presentation will explain the study findings on the conceptual origins of the judicial criteria known as 'central management and control', which has led to the recognition of De Beers as a significant decision in nations that have a legal tradition similar to the UK.[14] Compelling evidence suggests that significant concepts were derived from the writings of the German legal scholar, Friedrich Carl von Savigny. This analysis will emphasise the similarities between Savigny's research on corporate domicile and the establishment of a legal assessment in England to determine tax residency. It will also address the challenges that emerged when implementing the assessment once the transplantation process started.

CONCLUSION

General jurisprudence can be categorised based on the nature of the problems that researchers want to address and the theories of jurisprudence, or different schools of thought, that provide the most effective ways to answer such questions.

Analytic jurisprudence opposes the blending of the definition of law and its moral obligations, as advocated by natural law theory. The approach advocates for adopting an impartial perspective and use descriptive language when discussing elements of legal systems. Legal positivism is a theory of jurisprudence that asserts the absence of an inherent link between law and morality. It posits that the authority of law is derived from fundamental social realities.

Historical jurisprudence gained significance during the discussion around the planned codification of German law. Friedrich Carl von Savigny contended that Germany lacked a suitable legal language for codification due to the absence of a belief in a code within the traditions, customs, and beliefs of the German populace.[15] Historicists claim that law has its origins within society.

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12 Von Bernstorff, J. (2010). The quest for objectivity: The method and construction of universal law. In The Public International Law Theory of Hans Kelsen: Believing in Universal Law (Cambridge Studies in International and Comparative Law, pp. 13-14). Cambridge: Cambridge University Press.

13 De Beers Consolidated Mines Ltd v Howe [1906] AC 455

14 Daniel Visser, 'Unjustified Enrichment', in Reinhard Zimmermann, and Daniel Visser (eds), Southern Cross: Civil Law and Common Law in South Africa (Oxford, 1996; online edn, Oxford Academic, 22 Mar. 2012)

15 Frederick Charles von Savigny, (1831) Of the Vocation of Our Age for Legislation and Jurisprudence, Abraham Hayward trans). London: Littlewood.

The "free law" thinkers, such as Ernst Fuchs, Hermann Kantorowicz, Eugen Ehrlich, and François Gény, promoted the incorporation of sociological perspectives into the advancement of legal and juristic thought in Germany, Austria, and France. In the United States, Roscoe Pound, who served as the Dean of Harvard Law School for a significant period during the first half of the twentieth century, played a prominent role in promoting the concept of "sociological jurisprudence" as a framework for his legal philosophy. Many subsequent writers in the United States either emulated Pound's influence or created unique methodologies in the field of sociological jurisprudence.

Tax law falls within the domain of public law. This concerns the application of existing tax legislation to individuals, entities, and corporations, particularly in areas where tax revenue is generated or imposed: exports/imports tax, income tax, inheritance tax, company tax, employment/payroll tax, property tax, and gift tax. Certain advocates contend that consumer law is a more efficacious mechanism than tax law for attaining extensive redistribution. Due to the absence of legislative intervention, consumer law can operate with greater efficiency, in contrast to the complexities inherent in tax legislation.

This has examined the various perspectives that differing schools of jurisprudence have regarding tax law. In addition, it has also analysed the viewpoints and positions of tax advocates from various academic institutions, conducting an in-depth study of their theories and the manner in which they influence tax legislation and precedent.