

THE NORMATIVITY OF LAW AND THE POSSIBILITY OF SOCIAL CHANGE: REVISITING THE MORAL FOUNDATIONS OF JURISPRUDENCE

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Abstract

Can law drive genuine social change if it is divorced from morality? This paper addresses the tension between the normativity of law and its capacity to transform society by revisiting the moral foundations of jurisprudence. It defends the view that, law cannot be reduced to mere command or technical rule, but must be understood as a normative enterprise oriented toward justice, fairness, and human dignity. We argue in this paper that, traditions from natural law to contemporary African communitarianism reveal that the moral legitimacy of law is the condition for its transformative power. This paper examines how positivist separations of law and morality often entrench domination, while integrative approaches inspired by thinkers like Fuller, Dworkin, and African philosophers open the path to liberation. The objective is to show that without moral foundations, law risks becoming an instrument of oppression rather than a vehicle for justice. The findings affirm that embedding moral values in jurisprudence enhances law's capacity to challenge corruption, protect rights, and nurture communal solidarity. The paper recommends a reorientation of African legal institutions toward normative commitments that prioritize social justice, and it concludes that the normativity of law is not an abstract ideal but a practical necessity for achieving meaningful social change.

Keywords: Normativity of Law, Jurisprudence, Social Change, Moral Foundations, Justice

1. Introduction

The inquiry into the normativity of law remains the holy grail of jurisprudential discourse, as it seeks to explain the fundamental bindingness of legal rules, the quality that distinguishes a legitimate command from the mere exercise of brute power. To ask about the normativity of law is to confront the distinction between being obliged by a threat and having an obligation to a rule, a distinction that H.L.A. Hart famously identified as the bedrock of a functioning legal system. (82) In contemporary society, where law is frequently invoked as the primary instrument for addressing systemic inequality and social stagnation, the source of this “bindingness” becomes a question of existential importance. If law is perceived as nothing more than a series of commands backed by force, it lacks the moral gravity necessary to inspire voluntary allegiance, particularly in societies undergoing rapid and often painful social transitions.

Historically, this debate has been bifurcated by the competing claims of legal positivism and natural law theory. Legal positivism, as articulated by thinkers like Hans Kelsen, insists that the normativity of law is derived from a hierarchy of social facts, culminating in a “Basic Norm” (*Grundnorm*) that provides formal validity but remains silent on moral merit. (193-205) Conversely, the natural law tradition, rejuvenated by John Finnis, argues that law’s authority is hollow unless it serves the requirements of “practical reasonableness” and the pursuit of basic human goods. (23) This tension creates a significant philosophical fissure: can a law be truly normative if it is profoundly unjust? If we accept that law is merely what the sovereign says, we risk legitimising oppression under the guise of legality.

The central concern of this paper however, is the phenomenon of normative alienation, the state in which a legal system exists as a formal, procedural apparatus that has lost its connection to the moral and cultural pulse of the community. In many post-colonial jurisdictions, the persistence of laws that are formally valid but morally alien to the populace has led to a crisis of legitimacy. When law is severed from its moral foundations, its capacity to drive social change is severely compromised, as it fails to engage what Hart refers to as the “internal point of view” of the citizens. (89) Without this engagement, legal reforms are met with apathy or resistance, and the law becomes a static instrument of control rather than a dynamic catalyst for justice.

The moral legitimacy of law is not a secondary attribute but a primary requirement for its transformative power. To move beyond the status quo, jurisprudence must revisit its ethical roots and embrace an integrative approach that harmonises institutional validity with moral purpose. It is against this backdrop, that this paper intends to demonstrate that by re-embedding law in the principles of human dignity and communal well-being, drawing heavily on both Western normative jurisprudence and African communitarian philosophy, we can reclaim law as a purposive enterprise capable of facilitating sustainable social change.

2. The Concept of the Normativity of Law in Jurisprudence

The normativity of law is fundamentally defined by its capacity to provide reasons for action that are independent of the subject's personal desires. Joseph Raz's "Normal Justification Thesis" posits that, an authority is legitimate if following its directives makes the subject more likely to act in accordance with the reasons that already apply to them. (53) In this sense, law claims a "pre-emptive" authority; it replaces the individual's private deliberations with a communal standard. However, for this replacement to be normative rather than merely coercive, the subject must be able to recognise the law's claim as right. This recognition constitutes the internal point of view, where rules are accepted as common standards for behaviour rather than mere predictions of punishment.

Also, the normativity of law is inextricably linked to its telos or purpose. As Lon Fuller argued that, law is the "enterprise of subjecting human conduct to the guidance of rules." (106) It is clear that, Fuller views law not as a thing that exists in a vacuum, but as an activity that requires the cooperation of both the governor and the governed. If the law-making process violates the "internal morality of law", by being secret, retroactive, or contradictory, it fails to provide the normative guidance necessary for a functioning society. This failure is not just a technical error; it is a moral failure that strips the law of its authority to command.

The dialogue between Hart and Fuller highlights that normativity cannot be purely mechanical. If the rules are so flawed in their form that they cannot be followed, they lose their normative pull. Therefore, the "bindingness" of law is contingent upon a minimal level of procedural and substantive rationality. In a transformative context, this means that the law must not only be clear and public, but it must also be perceived as a genuine attempt to order society toward a recognisable good. Without this, the law remains a series of empty commands that the populace may observe out of fear but will never accept as a standard for social life.

The natural law tradition provides a robust ontological foundation for normativity by grounding legal authority in objective moral truth. St. Thomas Aquinas famously asserted that "human law has the nature of law in so far as it partakes of right reason." (997) For Aquinas, a law that deviates from the common good or the natural law is a "perversion of law" (*lex corrupta*) and does not bind the conscience of the citizen. This creates a moral threshold for legal validity: the "ought" of the law must be an extension of the "ought" of morality.

This perspective is crucial because it allows for a critique of law that is not merely political but deeply philosophical. If we accept the Thomistic view, then a law that promotes injustice, such as a law enforcing racial segregation, is not just a bad law; it only lacks the essential quality of lawness. It is a directive that may be enforced by power, but it carries no moral weight. This moral foundation serves as a safety valve for the legal system, ensuring that the state cannot demand absolute obedience for acts that violate the fundamental principles of humanity and reason.

In the modern era, scholars like John Finnis have shifted this argument toward “practical reasonableness.” Finnis argues that law is a requirement of the common good because it coordinates the pursuit of basic human goods like life, friendship, and aesthetic experience. (276-281) By framing law as a tool for human flourishing, Finnis provides a normative justification for social change. If a legal system fails to protect these basic goods, it loses its “justificatory force.” This is vital for transformative jurisprudence, as it allows the law to be critiqued for its failure to serve the ultimate purpose of human existence. This moral foundation ensures that the legal system remains human-centric.

By grounding law in the requirements of reason and the common good, natural law theory prevents jurisprudence from becoming a cold, bureaucratic exercise. It reminds the legislator that their power is a trust, and the validity of their decrees is tied to their commitment to justice. For a society in transition, this provides a powerful moral compass, guiding the legal system away from the arbitrary exercise of power and toward a stable, value-oriented social order.

3. Positivism and the Separation of Law and Morality

3.1 The Separation Thesis and the Crisis of Legalism

Legal positivism, rooted in the “Separation Thesis,” argues that there is no necessary conceptual link between law and morality. As John Austin famously put it, “the existence of law is one thing; its merit or demerit is another.”(157) This approach sought to bring clarity to the legal profession by focusing on the pedigree of rules, that is, whether they were created by a sovereign according to established procedures. However, by excluding moral evaluation from the definition of law, positivism arguably creates a “normative vacuum” where the lawyer’s only duty is to follow the rules, regardless of their ethical content.

This pure proceduralism was famously challenged by Gustav Radbruch in the wake of the Second World War. Radbruch, who had seen how the Nazi regime used valid laws to commit atrocities, proposed that when the conflict between positive law and justice reaches an “unbearable degree,” the law must yield to justice. (7) Radbruch’s shift however, highlights the central weakness of positivism in promoting social change: if the law is self-contained and morally neutral, it lacks the internal mechanism to correct itself when it becomes an instrument of domination.

The problem with purely procedural law is that it prioritises stability over substance. In a positivist framework, the fact that a rule was passed by a majority in parliament is sufficient for its validity. While this provides a clear method for identifying law, it does not explain why that law should be respected if it violates fundamental rights. This leads to a form of “legalism” where the formal correctness of the law is used as a shield against moral criticism. In a society struggling with systemic injustice, this mindset can be fatal to the cause of reform, as it delegitimises moral resistance in favour of institutional compliance.

On the whole, the crisis of legalism is a crisis of meaning. If law is just a set of instructions issued by those in power, it becomes a tool for the maintenance of that power. It ceases to be a shared social project and becomes a mechanism for control. This detachment from the moral reality of the people is what leads to "normative alienation," where the populace obeys the law out of necessity but remains psychologically and ethically divorced from the legal order. To resolve this, the law must be reconnected to its moral purpose, ensuring that its validity is not just a matter of procedure, but a matter of justice.

3.2 The Limits of Command-Based Jurisprudence in Transformation

The social implications of a command-based understanding of law are particularly evident in contexts of systemic injustice. When law is viewed merely as the "command of a sovereign," as advanced by Austin, it encourages a culture of legalism, a focus on the letter of the law rather than its spirit. In such systems, social change is often viewed as a threat to legal stability. Ronald Dworkin critiqued in his *Taking Rights Seriously* that, "positivism fails to account for the principles of justice that exist even when they are not codified." (22-28) It is sad to note that, without these principles, the law becomes a rigid set of constraints that cannot adapt to new moral realisations.

Also, a positivist legal culture often results in "judicial abdication," this is where judges claim they have no choice but to apply an unjust law because it is valid. This was a common feature of the legal systems in Apartheid South Africa and Jim Crow America. Commenting on this, it is clear that for law to be a vehicle for social change, it must possess an interpretive flexibility that allows it to evolve toward justice. An integrative approach, which recognises that law includes moral principles as well as rules, provides the necessary framework for this evolution.

The command theory also fails to account for the complexity of modern democratic governance. Law today is not just about commands; it is about coordination, rights protection, and the distribution of resources. A model that focuses solely on the power of the sovereign ignores the participatory nature of modern law. In a transformative society, the law must be a dialogue between the state and the citizens. If the law is only a command, it shuts down this dialogue, making it impossible for the community to own the legal process.

Lastly, the limits of command-based systems are seen in their reliance on sanctions. If the only reason to follow the law is to avoid punishment, then the legal system is constantly under threat. As soon as the state's ability to punish weakens, the law collapses. A morally grounded system, by contrast, relies on the voluntary cooperation of the citizens. This normative resilience is essential for long-term social change. Without a moral commitment to the law, a society can never achieve the level of trust and stability required for sustainable development and justice.

4. African Communitarian Philosophy: A Normative Alternative

4.1 Ubuntu and the Ontological Harmony of Law

In the African jurisprudential landscape, normativity is not a product of legislative fiat but an expression of ontological harmony. The philosophy of Ubuntu, often summarised as “I am because we are,” suggests that, the individual exists only within the web of community relations. Consequently, law is not a set of external constraints imposed by a Leviathan, but the vital force that sustains the community’s equilibrium. Mogobe Ramose argues that African law is “living and becoming, rather than a dead letter on a page.” (52) This ontological grounding redefines the “ought” of the law. In Western positivism, a law “ought” to be followed because it is valid; in Ubuntu-based jurisprudence, a law “ought” to be followed because it promotes humanity. This view offers a strong critique of contemporary issues like corruption. In a communitarian framework, corruption is not merely a violation of a bureaucratic rule; it is a moral assault on the community’s shared life. It is a breach of the trust that binds the people together.

Ubuntu also emphasizes the interconnectedness of rights and duties. In many Western systems, rights are seen as “trumps” that individuals hold against the community. In African communitarianism, rights are inseparable from the duties one owes to others. This creates a more balanced legal system where the pursuit of individual interest is always weighed against the common good. This is a powerful model for social change, as it encourages citizens to view the law not just as a source of personal entitlement, but as a framework for collective responsibility.

On a whole, the living nature of African law allows for a high degree of flexibility. Because the law is rooted in the communal conscience, it can evolve quickly to address new social challenges. This is a stark contrast to the rigid; formalist legal systems often inherited from colonial regimes. By embracing this ontological harmony, African legal systems can reclaim their legitimacy and become genuine drivers of social transformation, ensuring that the law serves the people rather than just the state.

4.2 Comparing Western Procedural Justice and African Restorative Justice

The distinction between Western and African legal models is most pronounced in their divergent approaches to justice. Western procedural justice, influenced by John Rawls, focuses on the “original position” and the “veil of ignorance” to ensure that rules are impartial and individual liberties are protected.(11)While this protects against the “tyranny of the majority,” it often results in an adversarial “zero-sum” game where one party wins and another loses.In what seems a sharp contrast to Western Procedural justice is the holistic nature of African restorative justice. Polycarp Ikuenobein his *Philosophical Perspectives on Communalism and Morality in African Tradition*explains this holistic nature that, “traditional African legal processes were not designed to determine a “winner,” but to reconcile the parties and restore the community’s broken harmony.” (60)This model is inherently

transformative. It views the offender not as a social pariah to be discarded, but as a member of the community whose actions must be corrected through social dialogue and reparations.

Western justice is often backwards-looking, focusing on finding guilt for a past act. African restorative justice is forwards-looking, focusing on how the parties can live together in the future. This difference is vital for societies recovering from conflict or systemic division. A purely retributive system can deepen divisions, whereas a restorative system can heal them. By comparing these two models, we see that while the West offers a strong framework for individual rights, Africa offers a strong framework for social cohesion. So, the goal of social change is to create a society where everyone can flourish. A legal system that only focuses on procedures and punishment may achieve order, but it will never achieve peace. By integrating restorative principles, the law becomes a tool for reconciliation. It moves from being a cold judge to being a community facilitator. This shift is essential for any nation that seeks to build a sustainable and just future, making the comparison between these two models a central theme of modern jurisprudence.

4.3 Relational Justice as a Catalyst for Social Transformation

The concept of relational justice offers a unique tool for addressing systemic inequality. Unlike the Western focus on distributive justice, which often concerns the allocation of goods, relational justice concerns the allocation of dignity. In African communitarian thought, if one member of the community is degraded, the entire community is diminished. This moral imperative creates a normative pressure on the state to actively protect the vulnerable and ensure that no one is left behind. Relational justice also changes how we view the rule of law. In a relational framework, the rule of law is not just about the consistency of rules; it is about the quality of the relationship between the governor and the governed. It requires transparency, empathy, and a commitment to the common good. When applied to modern legal institutions, this demands that the law does more than just provide a remedy. It demands that the law restore a relationship and build trust between citizens and the state.

This is seen in the transformative constitutionalism of post-apartheid South Africa, where justice is understood as a process of historical rectification and social inclusion. (Klare 157) By integrating these communal values, the legal system ceases to be an alien imposition and becomes a genuine expression of the people's collective will for a better society. It becomes a catalyst for transformation because it addresses the underlying social and moral wounds that procedural law often ignores.

In conclusion, relational justice provides the normative heart that modern law often lacks. It reminds us that at the end of every legal rule is a human being and a community. By prioritising the restoration of dignity and harmony, the law becomes a powerful force for progress. It moves beyond being a static set of rules and becomes a dynamic project of social building, proving that the most effective way to change a society is to change the way its members relate to one another through the law.

5. Conclusion

This discussion has demonstrated that the normativity of law is fundamentally an ethical achievement. While the formal identification of legal rules is necessary for institutional stability, it is the moral foundation of those rules that determines their capacity to inspire social change. Whether through the lens of Aquinas's "right reason," Fuller's "internal morality," or the African philosophy of Ubuntu, law is revealed to be a purposive enterprise aimed at the flourishing of the human person in community. A legal system that ignores this purpose loses its normative pull and becomes a hollow structure of coercion.

The tension between law as a system of rules and law as a moral enterprise is the defining feature of modern jurisprudence. As we have seen, the separation of law and morality, while theoretically neat, fails to account for the lived reality of justice. For law to be a meaningful force in society, it must be perceived as a legitimate extension of the community's ethical commitments. Without this, the law is merely a technical tool that can be used or ignored depending on the interests of those in power. Reclaiming the moral core of law is therefore the first step in reclaiming the law's power to transform society.

To facilitate genuine social transformation, jurisprudence must move beyond the "separation thesis" and embrace an integrative model. This model recognizes that law is not merely a set of procedures but a moral project. Reaffirming this foundation ensures that legal reforms are not just superficial changes in the law as it is, but substantive shifts in the law as it ought to be. By placing justice, dignity, and communal harmony at the centre of legal reasoning, we empower the law to act as a resilient shield against oppression and a dynamic engine for progress. So, the future of a just society depends on our ability to embed ethical commitments within the heart of our legal institutions. The law must be seen as a shared moral enterprise, one that requires the active participation and moral commitment of all members of society. Only then can the law fulfill its potential as a catalyst for sustainable social change and a true guardian of human dignity.

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