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Austin's Command Theory of Law: Criticism and Modern Relevance

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Abstract

The John Austin Command Theory of Law remains one of the most influential theories in the field of Jurisprudence. Developed during the nineteenth century, Austin's theory sought to distinguish law from morality, religion, and social customs by defining law as the command of a sovereign backed by sanctions. The theory laid the foundation for modern legal positivism and influenced later jurists such as H. L. A. Hart and Hans Kelsen. However, despite its historical significance, Austin's Command Theory has been subjected to extensive criticism on several grounds, including its inability to explain constitutional law, customary law, international law, and modern democratic governance.

This research paper critically analyses Austin's Command Theory of Law by examining its essential features, philosophical foundations, and practical implications. The paper further evaluates the major criticisms advanced by jurists such as Hart, Salmond, and Duguit, while also analysing whether Austin's theory retains relevance in contemporary legal systems characterized by constitutional supremacy, welfare governance, human rights jurisprudence, and international legal obligations. Through doctrinal and analytical methodology, the study concludes that although Austin's theory is inadequate as a complete explanation of modern legal systems, it continues to possess conceptual value in understanding state authority, legal obligation, and the foundations of legal positivism.

Keywords

Command Theory, Sovereignty, Legal Positivism, Jurisprudence, Austin, Sanctions, Modern Law.

Introduction

The study of jurisprudence seeks to understand the nature, origin, and purpose of law. Among the various schools of jurisprudence, the analytical school occupies a prominent place due to its attempt to explain law through logical and scientific analysis. One of the most significant contributors to this school was John Austin, whose Command Theory of Law became a cornerstone of legal positivism.

Austin developed his theory in his famous work *The Province of Jurisprudence Determined* published in 1832. According to Austin, law is “a command issued by a sovereign to political inferiors and enforced through sanctions.” He argued that law derives its validity not from morality or justice but from the authority of the sovereign. The central purpose of his theory was to separate law as it is from law as it ought to be.

Austin’s theory emerged during a period when the English legal system was becoming increasingly centralized and codified. Influenced by Jeremy Bentham, Austin sought to provide a scientific explanation of law by eliminating moral and theological considerations. His theory represented an important shift from natural law thinking toward legal positivism.

Despite its influence, the Command Theory has been criticized for oversimplifying the nature of law. Modern legal systems are based on constitutionalism, separation of powers, democratic accountability, and recognition of fundamental rights, which challenge Austin’s conception of sovereignty. Furthermore, international law and customary practices cannot easily be explained through the framework of sovereign commands backed by sanctions.

This research paper aims to critically examine Austin’s Command Theory of Law, analyse the major criticisms against it, and evaluate its relevance in the contemporary legal framework.

Aims and Objectives of the Study

The primary aim of this research is to critically analyse Austin’s Command Theory of Law and evaluate its relevance in contemporary jurisprudence.

The objectives of the study are:

1. To examine the meaning and essential features of Austin's Command Theory.
2. To analyse the concept of sovereignty in Austinian jurisprudence.
3. To study the major criticisms of the theory.
4. To evaluate the applicability of the theory in modern constitutional democracies.
5. To examine the continuing relevance of Austin's theory in contemporary legal philosophy.

Research Methodology

This research adopts a doctrinal and analytical methodology. The study relies upon primary and secondary legal sources including jurisprudential writings, books, journal articles, and judicial interpretations. The research also analyses the views of prominent jurists such as Hart, Salmond, Kelsen, and Duguit in relation to Austin's theory.

Historical Background of the Command Theory

The nineteenth century witnessed major developments in political and legal thought. During this period, there was growing dissatisfaction with natural law theories which relied heavily on morality and divine principles. Jurists sought a more scientific and objective understanding of law.

Jeremy Bentham laid the foundation for analytical jurisprudence by advocating codification and emphasizing utility in law. Austin expanded Bentham's ideas and attempted to provide a systematic explanation of legal systems.

Austin believed that law should be studied independently from ethics and morality. His theory reflected the political realities of centralized state authority in nineteenth-century England, where Parliament functioned as the supreme law-making authority.

The Command Theory became one of the earliest systematic expressions of legal positivism and significantly influenced later jurisprudential developments.

Austin's Command Theory of Law

According to Austin, positive law consists of commands issued by a sovereign and enforced through sanctions.

Meaning of Command

A command refers to an expression of desire by a superior directed toward an inferior, accompanied by a threat of punishment in case of non-compliance. Thus, a command has three essential elements:

1. Desire or wish of the sovereign.
2. Duty imposed upon subjects.
3. Sanction in case of disobedience.

Austin distinguished commands from requests and moral instructions because commands involve enforceable obligations.

Essential Elements of the Theory

1. Sovereign

The sovereign is the supreme political authority in a state whose commands are habitually obeyed by the people and who does not habitually obey anyone else.

Austin stated that sovereignty is:

- Supreme
- Indivisible
- Unlimited
- Absolute

In Austin's view, Parliament in England represented the sovereign authority.

2. Command

Law originates from the sovereign's command. Every valid law reflects the sovereign's will imposed upon subjects.

Example:

Criminal laws prohibiting theft or murder are commands backed by punishments.

3. Duty

A command creates a corresponding duty upon citizens to obey the law. Failure to perform the duty results in legal consequences.

4. Sanction

Sanctions are penalties imposed for violation of law. Austin believed sanctions are essential because they compel obedience.

Without sanctions, rules cannot be considered laws in the strict sense.

Classification of Laws by Austin

Austin divided laws into two categories:

1. Laws Properly So Called

These include laws made by political superiors such as the sovereign or legislature.

Examples:

- Statutory laws
- Judicial precedents
- Administrative regulations

2. Laws Improperly So Called

These include moral rules, customs, and social conventions that lack sovereign authority.

Examples:

- Religious principles

- Moral duties
- Social etiquette

Merits of Austin's Theory

1. Separation of Law and Morality

Austin clearly distinguished legal rules from moral principles. This separation became the foundation of modern legal positivism.

2. Scientific Analysis of Law

The theory introduced a logical and analytical approach to jurisprudence, encouraging systematic legal study.

3. Emphasis on State Authority

Austin highlighted the importance of political authority and enforcement in maintaining legal order.

4. Influence on Legal Positivism

Austin significantly influenced later positivist jurists, especially H. L. A. Hart and Hans Kelsen.

Criticism of Austin's Command Theory

Although Austin's theory was influential, it faced severe criticism from several jurists.

1. Failure to Explain Constitutional Law

Austin viewed sovereignty as unlimited and absolute. However, modern constitutions impose legal limitations upon state power.

In countries such as India and the United States, constitutional supremacy restricts legislative authority.

For example, under the Constitution of India, Parliament cannot violate fundamental rights guaranteed under Part III.

Thus, sovereignty is not absolute in modern democracies.

2. Inability to Explain International Law

Austin argued that international law is merely “positive morality” because there is no world sovereign enforcing it.

This view has been criticized because international law is widely recognized and followed by states through treaties, conventions, and customary practices.

Institutions such as the United Nations and the International Court of Justice demonstrate that international law possesses legal significance despite the absence of a supreme sovereign.

3. Customary Laws Cannot Be Explained

Many legal systems recognize customs as valid sources of law. Customs evolve through social acceptance rather than sovereign commands.

Austin’s theory fails to explain how customs acquire legal authority.

For example:

- Hindu customary practices
- Tribal customary laws
- Mercantile customs

4. Laws Confer Rights Rather Than Impose Duties

Austin viewed all laws as commands imposing duties. However, many laws merely grant powers and rights.

Examples:

- Laws relating to contracts
- Laws relating to wills
- Corporate laws

These laws enable individuals to create legal relations rather than compel conduct.

This criticism was strongly developed by H. L. A. Hart.

5. Sanctions Are Not Always Necessary

Certain constitutional conventions and international obligations are obeyed without direct sanctions.

Example:

The convention that the President acts on ministerial advice in parliamentary democracies.

Hence, fear of punishment is not the sole basis of legal obedience.

6. Sovereignty Is Not Indivisible

Austin considered sovereignty indivisible, but federal systems divide power between central and state governments.

Examples:

- India
- United States
- Canada

In such systems, sovereignty is constitutionally distributed.

7. Democratic Governments Contradict Austin's Theory

In democracies, governments are accountable to the people and subject to constitutional limitations. Therefore, the sovereign itself is legally constrained.

Austin's theory is more suitable for monarchies or authoritarian states than constitutional democracies.

Hart's Criticism of Austin

H. L. A. Hart provided the most comprehensive critique of Austin in his famous work *The Concept of Law*.

Hart argued that law is not merely a system of commands backed by threats. Instead, law consists of primary and secondary rules.

Primary Rules

These impose duties upon individuals.

Example:

Criminal laws.

Secondary Rules

These provide mechanisms for creating, changing, and interpreting laws.

Examples:

- Rules of recognition
- Rules of adjudication
- Rules of change

Hart argued that Austin's theory ignores the complexity of modern legal systems.

Modern Relevance of Austin's Theory

Despite criticisms, Austin's theory continues to possess relevance in certain respects.

1. Foundation of Legal Positivism

Austin's separation of law and morality remains central to positivist jurisprudence.

Modern legal systems still distinguish legal validity from moral correctness.

2. Importance of Enforcement

Austin correctly emphasized the significance of sanctions and state authority in ensuring legal compliance.

Criminal justice systems continue to rely upon enforceable sanctions.

3. Analytical Approach

Austin introduced clarity and precision in legal analysis, which influenced modern jurisprudential methods.

4. Relevance in Authoritarian Systems

Austin's theory remains more applicable in states where legal authority is highly centralized.

5. Influence on Modern Jurists

Even critics such as Hart developed their theories in response to Austin's framework, demonstrating Austin's enduring intellectual significance.

Comparative Analysis with Modern Legal Systems

Modern constitutional democracies differ significantly from Austin's model.

Austin's Theory	Modern Legal Systems
Absolute sovereignty	Constitutional supremacy
Law as command	Law as institutional framework
Duty-oriented	Rights-oriented
Centralized authority	Separation of powers
Sanctions essential	Compliance through legitimacy and consent

This comparison shows that Austin's theory cannot fully explain contemporary legal realities.

Case Laws Relevant to the Theory

Kesavananda Bharati v State of Kerala, (1973) 4 SCC 225

The Supreme Court of India held that Parliament cannot alter the basic structure of the Constitution. This case demonstrates constitutional limitations upon sovereignty.

Maneka Gandhi v Union of India, (1978) 1 SCC 248.

The Court expanded the interpretation of fundamental rights and emphasized fairness and due process, reflecting the importance of constitutional morality over sovereign will.

Brown v Board of Education of Topeka, 347 U.S. 483 (1954)

The decision illustrates how constitutional principles and morality can override legislative commands.

Findings

1. Austin's theory successfully established the foundation of analytical jurisprudence and legal positivism.
2. The theory provides a simplified understanding of law based upon authority and sanctions.
3. Modern constitutional democracies challenge Austin's conception of sovereignty.
4. The theory inadequately explains international law, customary law, and rights-based legal systems.
5. Despite limitations, Austin's analytical approach continues to influence modern jurisprudence.

Conclusion

John Austin Command Theory of Law represents a landmark contribution to the development of analytical jurisprudence and legal positivism. By defining law as the command of a sovereign backed by sanctions, Austin attempted to provide a scientific and value-neutral understanding of legal systems. His theory played a crucial role in separating law from morality and establishing the foundations of positivist legal thought.

However, the evolution of constitutional democracies, international law, welfare states, and human rights jurisprudence has exposed serious limitations within Austin's theory. The modern legal order is far more complex than a simple system of commands and sanctions.

Constitutional supremacy, judicial review, federalism, and global legal obligations significantly weaken Austin's conception of absolute sovereignty.

Nevertheless, Austin's theory retains enduring significance because it introduced analytical precision into jurisprudence and influenced generations of legal scholars. Even modern criticisms by Hart and others demonstrate the continuing relevance of Austinian thought in jurisprudential discourse.

Thus, while Austin's Command Theory cannot fully explain the complexities of contemporary law, it remains an indispensable part of legal philosophy and continues to provide valuable insights into the nature of legal authority and state power.

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