International Journal of Law and Public Policy
Vol. 1, Issue. 2, June 2025, pp. 13~23

A Basic Study on American Legal Realism

Fredalynn Kyndiah
Guest Lecturer - Business Law, Martin Luther Christian University, Shillong, India.

Article Info

Article history:

Received Apr 9, 2025
Revised May 15, 2025
Accepted Jun 5, 2025

Keywords:

STS
critical algorithm studies
Algorithms
Law
Epistemology

ABSTRACT

Naturally, the first thing that comes to mind when discussing This can be a "New Legal Realism" in contrast to the well-known original movement. Can we also mention that, unlike Karl Llewellyn, we have a website? Our current legal, political, and social climate differs from that of the democratic reformers, the academics who opposed legal formalism, and the few who tried empirical legal study in the late 1920s and early 1930s. Classical realism is essentially misrepresented by Jonathan Kirshner. He wants to bring classical realism back, yet he never gives us an explanation or talks to other scholars who developed the paradigm. Despite advocating for a more complex form of realism, he spends a significant amount of the book talking about modernism and "hyper reasoning." Although he puts Thucydides front and center, his interpretation of him is shallow and unsupportable in light of modern realism clichés. We can hum "ThingsAin't What They Used to Be" by Duke Ellington after forty years of the Law and Society Association. We are aware of a great deal that was only anecdotally known throughout the 1920s and 1930s by academics. This essay discusses in detail two key elements of this tradition: realism and historicism. It concludes by making the case that returning to some of these earlier legal writers and texts may be a more underlying way to develop a constructive standpoint in the contexts of international law and human rights, as opposed to relying too heavily on Carl Schmitt's politically provocative (and problematic) rhetorical flourishes.

Corresponding Author:

Fredalynn Kyndiah,
Guest Lecturer - Business Law,
Martin Luther Christian University, Shillong, India.

1. INTRODUCTION

A naturalistic method for the study of law is known as "legal realism." It investigates the effects and real-world operation of the law. Legal realists hold that only the value-free techniques of the scientific sciences should be used by the legal sciences to study the law. In several continental languages [1], it is also referred to as the "sciences of the real." But it's crucial to remember that this school's primary goal is to view law as a legitimate science. They exclusively focus on the rulings made by the judges, rejecting the conventional understanding of law, which holds that it is a set of rules and values that the court upholds. And for that reason, proponents of legal realism criticize the conventional legal system.

"Realism is defined as fidelity to nature, accurately describing things as they are, as opposed to things as they are imagined to be, as wished to be, or as one feels they ought to be," explains Pound."[2].

The term "legal realism" is substantially different and has a more limited connotation in English-speaking nations. It largely refers to adjudication rather than the law in general. American legal realism believes that there is more to adjudication than the mere process of mechanically finding out the principles relating to the controversial facts. Some realists of this viewpoint even go so far as to say that it is impossible to be certain that the judge's findings and the law were the true basis for the decision [3].

From World War I to World War II, American legal realism emerged as a response to the formalism unique to the conventional view of law that had taken root in the country starting in the second half of the 1800s. The most recent area of sociological jurisprudence that focuses on court rulings is the realist

consensus in the United States. Around the 1930s, a number of American jurists, including [14] Holmes, Cardoza, and Gray, spoke out against legal conceptualization and emphasized the importance of studying the law as it truly functions. They were referred to be realists because of the way they approached law and social institutions, combining sociological ideas with analytical positivism. To put it another way, idealism is the opposite of realism. Some jurists think that legal realism is better described as a subset of sociological jurisprudence and reject it as a distinct school of thought. But perhaps it would be better to refer to it as "a strategy for scholarly approach to law."

It is crucial to remember that realists only recognize laws created by judges as authentic laws, giving laws created and passed by the legislature little to no weight [5]. Legal realists hold that legal certainty is essentially a fantasy. In the United States of America, legal realism emerged from a practical viewpoint to the legislation. It began in the early decades of the 20th [6] century when thinkers started to view law not only as an abstract phenomenon but as something that should be based on facts and actions. This inspired jurist to view law only upon its actual workings including its effect and not only as something in theory. At every stage of the legal process, it is critical that attorneys possess the necessary understanding of the advantages and disadvantages of various witness groups, such as youngsters versus adults [7]. Research can assist educational programs for the relevant professional groups in improving the training given regarding the reliability of children's (and adults') testimony in court and the data that children provide to the police throughout police investigations through recognizing knowledge gaps in the present knowledge of legal professionals. It should be noted in this regard that the majority of the participating attorneys stated that they had received at least some training in eyewitness investigations.

Prior to talking about the differing opinions that legal experts have regarding child and adult eyewitnesses it should be mentioned that the rules governing child and adult witnessing in Swedish courts are significantly different [8]. Children rarely, if ever, attend court and are not required to take an oath in front of a judge. Rather, recorded interviews are aired.

In contrast, adult witnesses take an oath before the court and are subject to legal consequences if they lie in court, which could result in a jail sentence. As a result, legal experts—particularly those who appear in court—are probably going to have rather different experiences with juvenile and adult eyewitnesses which could have affected their responses [9]. One crucial topic is whether legal experts are aware of the distinctions between children's and adults' event recall report capabilities that have been verified in eyewitness studies. According to the findings, they generally are. The findings are examined here with respect to each of the twelve belief domains that were evaluated. The fullness of event memory reports was the subject of the first belief area. According to hypothesis [10] (i), experts would consider children's mental reports to be less comprehensive than adults'. Because only one of the three question scores matched expectations, this hypothesis earned a mixed response. The professionals did not think that children might be different in the quantity of reported details about a perpetrator's appearance or other acts in the event, even though they (rightly) thought those children’s accounts were generally less thorough than adults'. This finding only partially aligns with the findings of recent eyewitness studies.

The third area of belief was suggestion. According to hypothesis (iii), specialists would judge youngsters to be more persuaded by various types of suggestions than adults. This idea was amply confirmed by the answers to each of the eight inquiries on this belief area. Eyewitness memory study does support the idea youngsters are more susceptible to suggestion, despite earlier surveys suggesting that professionals may be unduly negative about this trait. According to hypothesis (iv), professionals would assess children's memory reports as being more influenced by emotional elements, including fear, than those of adults in belief area 4. The findings revealed conflicting support [11]. The experts did not believe that youngsters would have more trouble recalling violent incidents than adults for two of four inquiries in this belief category. These inquiries focused on children's recall of violent incidents in general as well as key specifics such the perpetrator's conduct and hair color. However, it was shown that when the event was terrifying, children's recollection of the incident was more likely to be painful. Oddly [12], when questioned about variants of event recall and the type of emotions was left open-ended, that is, when asked about emotionally charged experiences in general, scientists thought that children's event memory would be superior to adults'. Research, albeit limited and equivocal, suggests that there may be less developmental differences for emotional knowledge than non-emotional data as was covered in the introduction. Professional opinions therefore appear to be in good agreement with recent findings.

In conclusion, police officers, prosecutors, and lawyers are usually aware that children may recall experienced events as reliably and freely as adults can, despite the fact that they are more prone to forgetting and are more susceptible to various types of recommendations [13].

These experts are also aware that kids struggle with time estimation and providing thorough, well-organized memory records.

In summary, the opinions of the experts frequently agreed rather well with the findings of recent studies. The one glaring exception to this was the field of met memory beliefs, where experts did not appear to pay enough attention to how the sort of remembering report question asked affected witness confidence accurately. In this case, it appeared that the participants were unaware of how crucial it was to discern whether the witness was asked a free-recall question or another kind of memory test, like a directed question or one with two or more possible answers [14]. Therefore, the distinctions between the various memory question types in eyewitness memory accounts and trust accuracy should be given more attention in training for professionals working in the legal system concept of report option [15]—that is, how memory impacts when coerced recall is not enforced—may also are appropriate in this situation [16]. According to research, this kind of training should make it easier to get deeper data from kids and other susceptible witnesses.

2. RELATED WORKS

In order to address simple possession of illegal drugs [17]—that is, the substances included in the categories of the 1961 Single Convention on narcotics and the subsequent conventions—we concentrate on alternatives to criminalization in this article. We can classify these approaches under the three general headings of depenalization, diversion, and decriminalization as there isn't a globally accepted framework for doing so. Depenalization is the decrease of the application of current criminal penalties. Since no legislation needs to be changed, this is a de facto action. The Dutch gedoogbeleid policy [18], which permits possession for personal use, is one such instance. Diversions are defined as de facto programs or de jure laws that steer individuals away from criminal penalties and into social, therapeutic, or educational activities. Law Enforcement Assisted Diversion (LEAD) programs in the United States are one example of this. The de jure elimination of criminal penalties for drug possession for personal use is known as legalization. Civil penalties policies that direct people toward social or health assistance (as in Portugal), or no sanctions at all may take the place of these liabilities [19].

We should think about ethical issues that have already been discussed regarding the usage of XR generally before delving into the ethics of a particular feature of it—super realism. Some of these problems are made worse by the virtual experience's growing realism, as will be covered later. The usage of XR equipment within a scientific setting is governed by legislation and ethics guidelines that differ from one nation to the next but generally follow certain rules [20]. For instance, in the UK, standard research ethical standards in a scientific setting include contributing to scientific significance, respect for individual liberty and dignity, and maximising gain and avoiding harm. For an imaginary super realism to exist, sensory rendering must first reach a level of quality that makes it impossible to tell it apart from reality. Over the past three decades, the difference between photographic reality and virtual realism has significantly decreased thanks to developments in computer graphics, including real-time ray tracing, adiposity, and—most importantly—light field rendering. However, the available data indicates that the degree of visual realism is not as significant as one might think when considering how people react to events and circumstances in XR [21].

We use a differences-in-differences framework to quantify the influence on language and decision-making. Many time-invariant traits of judges, such as the selection party, schooling, and prior work experience, are controlled for in judge-fixed effects. To account for court and case-level variables and make sure that treated judges are not favoring certain case categories, we employ circuit-by-year fixed effects. Records from the Manne program show that the recruitment process was oversubscribed and first-come, first-served, which reduced the number of options for selection in reaction to temporary shifts in judging attitudes and opinions. In line with external timing, we demonstrate that a large number of judge biographical factors (such as the party of the president-elect) predict attendance but not its time. Furthermore, we make sure to look for pre-trends in the result variable, and our findings remain true even after adjusting for the limited number of judicial traits that actually predict the timing of participation and relate to treatment and time.

Critical realism is viewed as having developed as a scientific alternative to positivism and interpretivism in its explanation of both ontology and epistemology, combining elements of both methodological schools. Although positivists and critical realists agree that [22] "knowledge should be positively applied," they disagree with positivism's approach, contending that causal reasoning must be grounded on references to unnoticed patterns rather than empirical consistency. Critical realists and interpretivists, on the other hand, acknowledge the significance of concepts, experiences, stories, and discourses in comprehending social phenomena; however, realists go one step further and clarify that these modes of expression are used to investigate theories of causality. A philosophy known as realism provides insight into social behavior in which social structure and agency coexist. Realism acknowledges the function of the players' subjective knowledge while accepting the presence of different structure that affects the actors'

actions in a given situation. Therefore, critical realism proposes that human agency, mechanisms, and social norms interact to produce effects or consequences.

The 1990s saw the widespread use of person- or agent-based theories [23] (abbreviated ABMs) in ecology, and about 2000, they spread to the social and socio-ecological sciences. Although mathematical models can be fully and succinctly explained in the common language of numbers, the key features of simulation models cannot be fully or conveniently captured in mathematics. Because no one knew where to put or expect different types of data related to the model and in what depth, the annotations of early ABMs were challenging to write and interpret. Because ABM descriptions were frequently lacking, it was unable to fully comprehend the model sufficiently to enable reimplementation. The fundamental tenet of science, which states that materials and procedures must be sufficiently detailed to enable replication of results, is broken by incomplete descriptions. However, ABMs all share traits, suggesting that having one language for them would be practical and beneficial. The ODD protocol was put forth as a standard method for characterizing ABMs in order to capitalize on this circumstance. In actuality, the creation and uptake of ODD is one of multiple concurrent efforts to address the "replication crisis," which has been acknowledged in numerous fields as impeding scientists' ability to effectively expand upon current data, methodologies, research designs, and systems.

Statement of Problem:

The statement of problem in this assignment is how with the rise of globalization, the idea of American legal realism has an effect on Indian society. How does American legal realism differ from Scandinavian realism, and what is its value to jurisprudence? Do Indian courts embrace the adjudication procedure used by the American legal system?

Scope of Study:

Explaining American jurisprudence and its impact on the Indian legal system is the goal of this work. Additionally, it seeks to highlight the American Legal Realist School's contributions to the field of jurisprudence research.

Objectives:

The following are the objectives of this assignment:

- To study the development and origin of the notion of American Legal Realism.
- To study the basic features of the American Legal System.
- To study the American Realist Movement.
- To study how American Realism contributes to other institutes of jurisprudence.
- To study how American Saneness is different from Scandinavian Realism
- To study how American Realism affects the Indian Society

Research Question:

1. How is American Legal Realism different from other schools of jurisprudence?What are its contributions to jurisprudence?
2. How is American Legal Realism different from Scandinavian Realism?
3. How is it applicable to the Indian Society?
4. What are its contributions to jurisprudence?
5. What are its drawbacks?

Development and Origin of The American Practicality:

The most significant indigenous jurisprudential trend in the United States during the nineteenth century was the American Legal Realism notion. Not just the intellectuals and attorneys in Northern America, but people everywhere, were greatly impacted by this idea. American realism, in contrast to its Scandinavian cousin, was reinterpreted away from the philosophical tenets of the law rather than being essentially an extension of the law itself. This school of law's Realists were responding to the prevalent "mechanical jurisprudence" or what is properly called the "formalism".

According to "formalism," as it applies in this context, judges make decisions based on unique legal principles and justifications that, in the majority of cases [24]—possibly all of them—justify a particular outcome. Realists contend that thorough empirical analysis of how courts actually resolve cases shows that they make decisions based on more than just the law. However, based on their assessment of what is reasonable given the case's premises.

The Classical legal theory that traditional legal institutions offered an independent, self-executing frame for legal language free from political influence is frequently contested by American legal realism. There are several fundamental components to the realist school:

- The Scandinavian Sanity.
- The American Sanity

Together the schools of thinking are hostile to the age old “mechanical jurisprudence” or Theory of Formalismthat treats law only as a subject of rules and phenomenon. Both seek to impart an empirical method to law that involves a sense of thinking and accepting the effects of law in is flesh. Europe, Sweden, Norway, England, and the Scandinavian nations are all home to Scandinavian Realism. Karl Olivecrona, Axel Hagerstrom, and A.V. Lundstedt all backed this school of realism.

The American Experimenter Movement:

Oliver Wendell Holmes introduced American jurisprudence to the American Realist way of thinking. It has been said that Oliver Holmes served as the American Realist Movement's intellectual and even spiritual influence. Holmes doubted that a judge could use the general rules to solve a specific situation by just applying the laws without considering any other factors. In his paper [25] "The Path of the Law," published in 1897, Holmes laid the foundation for realism by providing the earliest and traditional explanation of the court-focused strategy.

At most, realism can be characterized as a "motion" or a historical phenomenon rather than an institution of thinking. It cannot be reduced to a single, cohesive theoretical theory. Beginning in the early 1900s, the wave of realists in the US gained strength during President Franklin D. Roosevelt's presidency. The most recent development in sociological jurisprudence is the American Realist School. This kind of realism solely focuses on judicial rulings. Another name for this school is "the left wing of the functioning school." The movement of realism lacked a well-defined theoretical underpinning. It is even rejected by some jurists as a distinct school of law.

"There is no realist school as such; it is just a movement in thought and work about law," claims Llewellyn.

The realist movement, according to Julius Stone, is a "gloss" on the sociological method.

Basic Topographies Of American Legal Realism:

Realists reject conventional legal theories and principles and focus solely on the actions taken by the courts to obtain their ultimate ruling in a given case. Realists describe law in the strictest meaning of the word as broad forecasts of what justices will do. According to Goodhart, the primary traits of American realism are as follows:

1. Realists hold that there can never be absolute certainty in the law since the set of facts that the court considers while making decisions determines how predictable the law will be.
2. They oppose the courts' formal, logical, and conceptual approach to the law; instead, they base their decisions on "emotive" rather than rational considerations.
3. They place more emphasis on the psychological method of correctly comprehending the law because it deals with the beliefs and actions of judges and attorneys.
4. Realists disagree with the usefulness of legal jargon because they see it as an implicit means of reducing legal ambiguity.
5. They would rather assess any aspect of the law based on its impact.

3. MAIN JURIST OF AMERICAN REALISM AND THEIR THEORIES

American Realism would not be possible without the following jurist. These jurists have explained and propounded the concept of American Realism and have also provided their own theories. The following are the jurists and their philosophies:

Justice Holmes: The Theory of Bad Men:

It was Justice Holmes who planted the foundations of realism. "Law is not like math," he continued. A law is merely a forecast. He asserts that both experience and logic are essential to the practice of law. Formal deductive logic is insufficient to understand the true essence of law. Judges base their rulings on their personal moral convictions. He took the perspective of a hypothetical "Bad Man" on trial in order to understand what the law actually is. Thus, the Bad Man Argument is the name given to his theory. According to this notion, a wicked guy is better than others at predicting the actual law. According to Holmes, one should view law from the viewpoint of a villain. Holmes characterized the law as "projections (ability to understand) of what the judiciary will do in act and nothing else pretentious" based on this foreseeing.”

Honesty Gray:

The realists and John Chapman Gray shared very few characteristics. His method was undoubtedly just as court-oriented as the realistic individuals'. For Gary, the law was only the ruling of the court. Statutes and everything else were merely sources of law. "The laws that the authorities, that is, the judicial instruments of that body, and laid down for the identification of legal obligations and freedoms, constitute the legislation of the State or of any organized body of men," he stated."

A Law Jobs Theory by Karl N. Llewellyn:

Karl Llewellyn was a Columbia University law professor. He acknowledged that there is no such thing as the realism school; rather, it is a specific way of thinking that is part of the sociological jurisprudence. Llewellyn defines realism as a shift in legal theory and practice. Karl Llewellyn listed the main characteristics of the realist methodology. The method is as follows:-

A concept of law in flux and the judicial production of law must exist. Laws must always be improved because society changes more quickly than the law does. For the sake of research, is and ought to must be temporarily separated.

Karl Llewellyn referred to the fundamental duties of the legal profession as "law-jobs." In addition to being a necessary institution in society, law also contains an ideology and a set of powerful and widespread principles that are mostly unwritten, mostly implicit, and not described in the legal texts. Within a society, law has a role to play. These are:

i. The trouble case was resolved incorrectly. A complaint, a disagreement. This is the ongoing social worry or garage-repair job that has a constant impact on the observation of social order.

ii. The effective redirection of conduct and standards in a similar manner, along with the preventive channelling of conduct and expectations to avoid difficulty.

iii. The distribution of power and the construction of protocols that designate an action as authoritative; this encompasses all provisions of any constitution and much more.

iv. The net structuring of human society as a whole, which offers integration, guidance, and incentives, is a benefit of the activity of law.

v. The "Juristic Method," which uses a single phrase to summarize the process of managing the legal materials, tools, and personnel created for the other jobs until the end, and ensuring that those resources, tools, and personnel continue to perform their legal jobs, improving them, until they reveal new possibilities and accomplishments.

Jerome Frank: Father's Symbol Philosophy:

At first, Jerome Frank was recognized as an active attorney. He spent almost ten years in the government's Law Department. He was appointed to the US Circuit Court as a judge in 1942. Additionally, he taught law at Yale Law School as a visiting professor. His seminal work, "Law and the Modern Mind," is replete with real-world examples and offers a detailed analysis of the legal system. His argument is that the law is ambiguous and that legal certainty is an illusion. He dispelled the fallacy that the law is constant, consistent, and unchangeable, claiming that judges actually find the law rather than creating it. Frank notes that a judge's ruling represents the culmination of his entire existence. His family, friends, career, education, and religion are all significant influences.

Jerome Frank has provided the Father's Symbol Theory in this regard. The child relies on his father's strength and knowledge to provide a safe environment. The adult equivalent of this emotion is faith in the permanence and stability of human systems. Even while he gave the security issue a lot of weight, Frank only offered it as a "partial explanation" of what he referred to as the "basic myth," listing further factors.

Frank emphasized that there is inherent legal uncertainty and that the law is not just a set of impersonal principles. Therefore, comprehending the operation of the law requires more than just technical legal study. As a result, Frank separated realists into two groups, referred to as "rule skeptics" and "fact skeptics." The rule skeptics disapproved of the idea that laws provide uniformity and instead looked for consistency in laws that came from fields such as sociology, anthropology, psychology, the economy, and government. Even this goal of homogeneity was rejected by the fact-finding skeptics. He gave up on trying to get rule certainty and emphasized how difficult it is to prove even the facts in the trial courts. The degree of fallibility and persuasiveness of a given witness's lies cannot be predicted with any sort of confidence.

4. DISTINGUISHING AMERICAN REALIST SCHOOL FROM OTHER JURISPRUDENCE SCHOOLS

The American Realist School differs significantly from other legal schools. We can see its difference from other schools of jurisprudence in the following ways:

- AMERICAN REALISM AND LEGAL POSITIVISM: these two schools of jurisprudence are quite different from one another, but before pointing out their difference it is important to point out their similarity. Both these schools share the distinction between "the law as it is" and "the law as it ought to be" is comparable. According to Hart, positivism identifies main and secondary rules as the fundamental prerequisites for creating laws. Conversely, American realists are skeptical of the idea that the government is the only one who can enact laws. The Realist School's primary goal is to learn more about how judges truly make decisions. The realist division between "is" and "ought" is a transient divorce, according to Karl Llewellyn'.
- AMERICAN REALISM AND SOCIOLOGICAL APPROACH: The Realist School differs from the sociological approach in that it focuses primarily on the scientific observation of the law and its operation rather than the goals of the law. They are also referred to as the "left wing of the practical school" because of this. Nonetheless, some critics believe that the American realism movement should only be viewed as a new approach that the sociological school will use, rather than as a brand-new, autonomous school of law.
- AMERICAN REALISM AND NATURAL LAW PHILOSOPHY: The Realist school and Natural Law are extremely different. Realists hold that jurists or judges themselves create laws, while naturalists assert that nature or God itself creates them. Natural law is said to arise through human conduct by making a reasonable choice between good and evil. It is based on a sense of morality and ethics. Realism however, is said to have arisen through observing the law courts and accepting Law as it is.

The American Realist School's Impact on Jurisprudence:

This school's primary contribution to jurisprudence is that it avoided recognizing law with the idea of natural justice and considered law as more than just a theoretical paper. They had a more upbeat attitude while dealing with the law. The realists adopted the expression "certainty of law is a myth" in opposition to the positivist belief that the law is certain".

Friedman claims that the realist movement is an effort to use the scientific method and take into consideration the actual realities of social life in order to modernize and improve the law, including administrative law and the materials for legislative change.

"The realist movement is a gloss on the sociological approach to jurisprudence," according to Julius Stone. Julius Stone claims to have two perspectives on the law. According to the first interpretation, the law is a positive law, meaning that people ought to embrace it in its entirety. In the second sense, he sees law as a social approach to jurisprudence, contending that the goals of society should be served by the application of the law. Therefore, we may argue that the realism school adds a scientific and rational approach to law in addition to being a subset of sociological jurisprudence.

Difference between American Legal Realism and Scandinavian Realism:

As they say, "We are all Realists now." However, the ambiguity of this phrase is rarely acknowledged by the American legal thinkers who repeat it. There have been two "Legal Realist" jurisprudential movements in the past. Scandinavian and American.The second of these two moves is unknown to both of them legally. They have not been compared by American legal authorities. Comparing several schools of philosophy is dangerous, as is the case with any comparative law.

The way that American realism and Scandinavian realism approach property as an idea and as a legal entity is one of their primary differences. Comparing American and Scandinavian Realism via the lens of property proves to be particularly illuminating. On the surface, there are significant differences between the two groups in these realists' discussions of property. American Realists talked extensively and extensively about property issues, whereas their Scandinavian colleagues gave the idea little thought. They virtually entirely addressed conceptual or purely analytical issues when they talked about property, as opposed to the Americans. A variant of legal positivism, Scandinavian Legal Realism aimed to maintain a clear division between morality and the law as well as between politics and the law. In contrast, American Realism was a continuation of political progressivism, arguing that power issues are fundamental to the law. Accordingly, it appears that the jurisprudential tendencies of Scandinavian and American legal reality were almost diametrically opposed.

An additional distinction between American and Scandinavian realism might be observed from a naturalist perspective.Since the publication of W. V. Quine's essay "Epistemology Naturalized" (Quine 1969), naturalism has gained attention once more.Among them are Scandinavian Realists like Axel Hägerström, Vilhelm Lundstedt, Karl Olivecrona, and Alf Ross, as well as American Realists like Walter

Wheeler Cook, Felix Cohen, and Oliver Wendell Holmes. In addition to natural law theorists and legal positivists, these Scandinavian and American jurisprudential realists are occasionally seen as constituting a third school of jurisprudence. This is deceptive, though, because while both Americans and Scandinavians believed that they provided a somewhat realistic depiction of law and legal occurrences, they differed not only in the main study object they chose, but also in their philosophical aspirations and aptitudes. The Scandinavians were primarily interested in the analysis of basic legal ideas, such as the idea of law, the concept of a rule of law, or the idea of a legal right, while the Americans, with the exception of Felix Cohen, were lawyers rather than philosophers. Ross and Olivecrona were relatively successful legal philosophers. The distinction in the study object selection is especially significant because it indicates that, generally speaking, Scandinavians—but not Americans—were legal positivists and natural law theorists like Gustav Radbruch, Hans Kelsen, and H. L. A. Hartdeed. In fact, the Scandinavians were legal positivists their own lives. However, it is easy to assume that the Scandinavians and Americans had a similar philosophical perspective. For instance, Scandinavian and Anglo-American jurists agree that we must interpret law and legal events in terms of social realities and consider the study of law as a subfield of social psychology, according to Alf Ross's preface to his 1946 book Boon towards a Realistic Jurisprudence.

Broadmindedness:

The Indian Constitution Many people believe that India's long history of creating constitutions began with the Bill of 1895. This bill was written by the pioneers of the liberation movement, albeit its genesis is unknown. Although the document contains liberal institutions such as the separation of powers and certain fundamental rights, its liberal orientation is not stated clearly.

This study focuses on the Constituent Assembly's most intense period of constitution-drafting, even if a more in-depth analysis of the nature of Indian liberalism throughout that process deserves more research. After discussing the issue for 165 days spanning just under three years, a Constituent Assembly (henceforth referred to as a "CA") drafted the Indian Constitution in 1950. The extent to which the men who formed the Constitution invoked liberalism in an effort to defend or explain their choices about its construction can be determined by carefully examining these arguments. Notably, the CA never took part in a discussion about whether or not the terms "liberal" or "liberalism" may be included in the actual wording of the constitution. Nonetheless, the word "liberalism" was used in two discussions to advocate for changes to the Constitution's draft provisions. These two discussions were held in favor of the amendments.

K.T. Shah requested that the Constituent Assembly establish a new "Article 40A" that would explicitly require the three most significant branches of government—the legislative, executive, and judicial—to be completely separated. He contends that this is an incredibly basic requirement for a liberal constitution to show that there is a full "separation of powers between all three branches" of government in the "American model," which should be the model for the "Indian Constitution," he clearly distinguished "between the institutional arrangements' characteristic of the 'liberalism of the English constitution' and the 'liberal constitution'" of the United States. Although this amendment was rejected, the "separation of powers principle that guarantees" the separation of the judicial and executive branches at the lower levels of government is still present in Article 50 of the constitution in a slightly modified form.

"Sought to add the freedom of the press and publication specifically to the existing Article 19(1)(a), which guarantees free speech and expression," was the second argument that used liberalism to advocate a constitutional amendment. Once more, it was K.T. Shah who made the compelling case that the Indian Constitution must expressly protect press freedom in order to qualify as a "progressive liberal constitution." K.T. Shah made this point.

Despite his strong argument, the CA rejected the amendment, and the Supreme Court was left to interpret the Constitution to include press freedom. First of all, as was already indicated, liberalism was rarely invoked in the constitution-writing process as an attempt to defend or explain the constitutional rulings made in the CA; Second, if CA constituents defended suggested changes with liberalism, they were typically political outsiders in the CA, and as a result, their amendments were rejected. Thirdly, each time a member brought up liberalism in their explanation of the constitution, they did so to emphasize how lacking it was. While some members bemoaned the lack of liberalism in the Constitution, others were appreciative of the move away from constitutional feminism.

As a result, after closely observing the CA discussions, we are starting to question the assumptions that the Indian Constitution is steadfastly liberal. This discussion of the drafting process leads to a different conclusion, which is that the authors of the Constitution deliberately avoided presenting their work as being focused on crafting a liberal constitution.

5. HOW AMERICAN REALISM AFFECTS THE INDIAN SOCIETY

The realism school of law has not gained traction on the subcontinent for the apparent reason that Indian social life differs from American social life. The scope of legal activism has been greatly expanded by recent trends in public interest litigation; yet, judges must use their interpretive abilities to develop their rulings when the law's constitutional boundaries are reached. In other words, Indian judges are unable to disregard the laws and statutes that are already in effect. They must limit their judicial activism to the statute law's bounds. They have the authority to overturn earlier rulings on the grounds of inconsistency, incompatibility, ambiguity, conditional changes, etc. Therefore, even while the Indian legal system gives judges a great deal of discretion; it does not grant them absolute authority over the creation of laws. The judicial system in India is inextricably linked to legislative acts and enactments, precedents, and the principles of equity, justice, and good conscience. The Indian constitution itself gives judges plenty of leeway to take into account the harsh reality of the Indian people's socioeconomic and cultural lives while granting them social and economic justice.

In summary, Indian jurisprudence does not place a lot of emphasis on the functional side of the law and connects the law to the reality of social life, even though it does not technically subscribe to the realism legal theory. Once more, it rejects the idea that judge-made law is the only true law and all other laws are useless, but it also acknowledges the part that judges and attorneys play in forming the law. As seen by post-independence socio-economic legislation, it would be inaccurate to claim that the Indian legal system has evolved along the lines of sociological jurisprudence. Instead, it views the realism concept as foreign to Indian culture, which has a different way of life and social environment.

Given the monetary, political, societal, historical, and geographic diversity of Indian society, Indian courts unquestionably have the freedom to interpret the law in its historical setting and society.

Judicial Response:

Some of the cases that have been decided to better comprehend the idea of American realistically in the Indian context are listed below.

The Supreme Court declared that "the court is bound to obey the Constitution rather than every choice of the the Court, if the decision is shown to have been mistaken" in the Bengal Immunity Case, overturning its previous ruling in Dwarkas v. Sholapur Spinning Co. The Court further noted in support of its position that it should not be reluctant to overrule a constitutional decision that impacts the lives and property of the public and that it is clearly incorrect and detrimental to the public interest.

Using the same strategy In KeshavMills v. Income Tax Commissioner, Justice B.B. Gajendragadkar noted that the Supreme Court has the inherent authority to reexamine and amend its previous ruling if it is not in the public interest.

The Supreme Court ordered the corporation that produces deadly and dangerous chemicals and gasses that endanger the health and lives of its employees and neighbors in the Shri Ram Food and Fertilizer case to take all required safety precautions before reopening the plant.

The petitioner in the Ganga Water Pollution Case asked the Supreme Court to order the respondents to refrain from releasing trade effluents into the Ganga River until they installed the required treatment facilities to stop the pollution of the water in the river.

The Supreme Court ruled in Parmanand Katara v. Union of India that every medical facility has a critical duty to provide medical assistance to any injured citizen who is brought in for treatment right away, without waiting for the completion of formalities, in order to prevent death.

In the Vellore Citizen Welfare Forum v. Union of India case, the Supreme Court ordered the closure of 162 tanneries in Tamil Nadu due to their pollution of the surrounding air and water, which rendered the water unfit for human consumption.

In M.C. Mehta v. Union of India, the court ordered the cessation of mining operations within two kilometers of the popular tourist destinations of Badkhal and Surajkund in order to protect the environment and reduce pollution in the area.

The Supreme Court established comprehensive guidelines for preventing sexual harassment of working women at work until legislation is passed specifically for this purpose in the landmark ruling in Vishakha v. State of Rajasthan.

Criticism of the American Legal Realism:

The realist school has received criticism from many areas. Realists confuse natural and cultural science. Natural science, deals only with real events governed by natural laws. Cultural science deals with human actions and is governed by laws of men and these actions can either be lawful or unlawful.[1]

The Realist School have also made the mistake of confusing law and ethics. The former requires some external behaviour and can be complied with whatever maybe the motives. The latter always takes notice of a motive, for instance an altruistic man and a selfish man.

The critics have allegedly stated that the realism school's proponents have erred by utterly ignoring the significance of laws and legal concepts. They viewed the definition of law as involving merely following court rulings, which is insufficient on its own. Their understanding of the law is based solely on the rulings made by the judges in the case or disagreement. Therefore, the concept of law lacks certainty and definiteness when relying solely on one factor. Because of this school, the judges' role is overestimated. Judges undoubtedly have a significant influence on legislation, but it's crucial to remember that their primary responsibility is to interpret the law.

Another disparagement that can be put forth against this school of law is that they fail to recognize laws that do not develop from court decisions. Therefore it become erroneous on the part of realist to recognise only laws that develop through judicial decisions as they are many laws that evolve and develop not only through the law courts. In fact many laws enacted by the legislature are hardly discussed in the court of law.

Another criticism is that the realist have undermine the importance of precedents, and argue that in many circumstances case laws are often made in haste without any regard to wider implications. However in reality courts generally make decisions only after relying on evidence and arguments presented before them.

This school is also criticized for placing an excessive amount of weight on the human element in court rulings. It would be incorrect to claim that the judge's personality determines the decision rendered in a given case law. There are other aspects that influence a case's outcome as well, thus relying solely on the judge's personality turns out to be inaccurate.

One significant critique of the American Realist School is that, in contrast to other schools of jurisprudence, it believes that its application is only suitable in American judicial situations. It is not applicable everywhere.

6. CONCLUSION

The Realist School's volume, sophistication, and radicalism significantly increased in the 1920s. The spike was caused by two factors. First, a large number of youthful, dynamic academics joined the faculty of prestigious American law schools. The majority of the younger generation is less likely than their elders to perceive the value in the current legal system because to the irreverent political legacy of progressivism. Second, innovations in other academic fields that appeared to challenge the tenets of traditional legal philosophy became increasingly apparent to legal scholars, and younger instructors in particular. The usefulness of systems and theorems, the worth of inductive and deductive reasoning, and the ability of formal rules to govern human affairs all appeared to be called into question by pragmatism in philosophy, non-Euclidean geometry, Einstein's theories of physics, and novel approaches in psychology and anthropology. Legal historians usually refer to this expanded and revitalized group of critics' work as Legal Realism.

Only when there is a great deal of freedom in the interaction of social forces cans the emergence of the realist movement function. In a totalitarian government, it has no place. A movement like American Realism can only function and thrive in societies where the legislative is relatively inactive and neutral in relation to the social dynamics at play.

REFERENCES

[1] Macaulay, Stewart. "The new versus the old legal realism:“Things ain’t what they used to be”." Stewart Macaulay: Selected Works (2020): 495-529.
[2] Green, B., & Viljoen, S. (2020, January). Algorithmic realism: expanding the boundaries of algorithmic thought. In Proceedings of the 2020 conference on fairness, accountability, and transparency (pp. 19-31).
[3] Davis, Z. S. (2020). The realist nuclear regime. In The Proliferation Puzzle (pp. 79-99). Routledge.
[4] Lebow, R. N. (2024). What is Classical Realism?. Analyse & Kritik, 46(1), 215-228.

[1]Dr. S.P, Diwedi, “Jurisprudence and Legal Theory”, Central Law Publications, Allahabad, Fifth Edition,2007,p.104

[5] Hale, R. L. (2024). Bargaining, duress, and economic liberty. In Law and Economics Vol 1 (pp. 339-364). Routledge.
[6] Hale, R. L. (2024). Coercion and distribution in a supposedly non-coercive state. In Law and Economics Vol 1 (pp. 307-332). Routledge.
[7] Mercuro, N., & Medema, S. G. (2020). Economics and the law: From Posner to postmodernism and beyond.
[8] Putnam, H. (2020). The many faces of realism. In Pragmatism (pp. 163-181). Routledge.
[9] Macaulay, S. (2020). The real and the paper deal: empirical pictures of relationships, complexity and the urge for transparent simple rules. Stewart Macaulay: Selected Works, 415-456.
[10] Ash, E., Chen, D. L., & Naidu, S. (2022). Ideas have consequences: The impact of law and economics on american justice (No. w29788). National Bureau of Economic Research.
[11] Campbell, R. W. (2023). Artificial intelligence in the courtroom: The delivery of justice in the age of machine learning. Revista Forumul Judecatorilor, 15.
[12] Choi, J. H., & Schwarcz, D. (2024). Ai assistance in legal analysis: An empirical study. J. Legal Educ., 73, 384.
[13] Ronkainen, N. J., & Wiltshire, G. (2021). Rethinking validity in qualitative sport and exercise psychology research: A realist perspective. International Journal of Sport and Exercise Psychology, 19(1), 13-28.
[14] Jagosh, J. (2020). Retroductive theorizing in Pawson and Tilley's applied scientific realism. Journal of Critical Realism, 19(2), 121-130.
[15] Benvenisti, E. (2023). The international law of occupation. In Leading Works in International Law (pp. 22-36). Routledge.
[16] Mukumbang, F. C., Marchal, B., Van Belle, S., & van Wyk, B. (2020). Using the realist interview approach to maintain theoretical awareness in realist studies. Qualitative Research, 20(4), 485-515.
[17] Ladson-Billings, G. (2020). Just what is critical race theory and what's it doing in a nice field like education?. In Critical race theory in education (pp. 9-26). Routledge.
[18] Simmons, B. A. (2023). Mobilizing for human rights: international law in domestic politics. In Leading Works in International Law (pp. 177-188). Routledge.
[19] Tayar, J., Claytor, Z. R., Huber, D., & van Saders, J. (2022). A guide to realistic uncertainties on the fundamental properties of solar-type exoplanet host stars. The Astrophysical Journal, 927(1), 31.
[20] Grimm, V., Railsback, S. F., Vincenot, C. E., Berger, U., Gallagher, C., DeAngelis, D. L., ... & Ayllón, D. (2020). The ODD protocol for describing agent-based and other simulation models: A second update to improve clarity, replication, and structural realism. Journal of Artificial Societies and Social Simulation, 23(2).
[21] Harrison, G., Hanson, J., Jacinto, C., Ramirez, J., & Ur, B. (2020, January). An empirical study on the perceived fairness of realistic, imperfect machine learning models. In Proceedings of the 2020 conference on fairness, accountability, and transparency (pp. 392-402).
[22] Pölzler, T., & Wright, J. C. (2020). Anti-realist pluralism: A new approach to folk metaethics. Review of Philosophy and Psychology, 11, 53-82.
[23] Greenhalgh, J., & Manzano, A. (2022). Understanding 'context'in realist evaluation and synthesis. International Journal of Social Research Methodology, 25(5), 583-595.
[24] Mukumbang, F. C. (2023). Retroductive theorizing: a contribution of critical realism to mixed methods research. Journal of Mixed Methods Research, 17(1), 93-114.
[25] Siegel, M. (2020). Racial disparities in fatal police shootings: An empirical analysis informed by critical race theory. BUL Rev., 100, 1069.