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Appraising Legal Dilemmas in Philosophical Jurisprudence

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Abstract

Philosophical jurisprudence distinguishes between "law as it is" and "law as it ought to be". These two categories together constitute the thrust of debate between natural lawyers and legal positivists. Incidentally this "is – ought" dichotomy in law has led to the distinction between what is right and what is merely rational, as well as the separation of law and morality. Legal realists follow the path of decisions which involve the view that with certainty of legal rules it is possible to make predictions. But it would seem that this is not always so, given the reality of the "is – ought" conflict in the judicial process. More so, there seems to be an "is – ought" distinction in human action which tends to unite experience and reason by bringing law and morality together. It is therefore impossible to avoid dilemmas in law, given the possibility of conflict between actions which are morally right and those which are legally binding. Although legal dilemmas depend for their justification on the certainty of conflict of rules, nevertheless their resolution rests on how we define our concepts of "letter" and "spirit" of law. This paper thus studies the concept of dilemma and how it is adapted to law.

1. Introduction

Appraising dialemmas in philosophical jurisprudence engages method of problem solving. We see problem solving is a by-product of the study of logic. It involves our ability to construct arguments in the attempt to confront the day-to-day problems of life. This is because logic provides us with the language according to which things are done. Logic specifies the nature of our arguments into formal and informal categories with deduction in the first category and induction and analogy in the second. It studies our arguments, the statements that compose them, and the words that are used in constructing such sentences so that we can gain clarity of thought in order to understand difficult or conflicting situations in our daily life. Legal and dilemmas constitute on such area of human confrontations that has come to stay with us. And it is in toeing the path of logic that we come to understand how best to go about various situations of conflict in human experience that need one solution or the other. Incidentally, we need understanding in order to deal with this. And the process of appraising legal dialemmas involves defining, classifying criticizing and resolving them.

2. Conceptualizing the Dilemma

Ordinarily the word "dilemma" may be used as **a synonym for predicament**. Such is meant when we use the term to describe "a situation in which one has to choose between two undesirable things or causes of action" (Crowther 323). This is to say that a person is facing **a difficult or unpleasant situation**. For this reason, Rundell (411) describes the situation as one in which the person so affected has to make a difficult decision. However, in logic the word "dilemma" is used to refer to a particular kind of argument by suggesting alternatives whether unpleasant or comical and which are especially apt to be misleading or even dangerous. To demonstrate this, Blackburn (105) maintains that the simplest form of a dilemma is an argument of the form:

If p, then q

If not p, then q

So, in any event q.

What Blackburn means is that the consequence "q" follows whether the premise "p" is or is not the case. The Ibibio people of Akwa Ibom State of Nigeria have a proverbial saying which similarly reflects this form of simplest dilemma. They say:

Udoekpud ate ikpud, mkpud

Ate ikpudokpud, mkpud

Ke akpudokpud ye me ikpudokpud, kpa suk mkpud.

On this argument, there is a man whom the Ibibio people call "Udoekpud". His name is synonymous with action or inaction. The argument suggests that whether or not he likes to do a thing, is the same as doing a thing: which is what they call "mkpud". Whichever alternative he chooses is also a way of doing something, and this is also called "mkpud" (action). In other words, whichever course of action he takes he is facing the same consequence. The logical interpretation of this argument raises a moral dialemma that says: if a person wants to do good, he does it for himself; if he does not want to do good, he does it for himself; whether he wants to do good or he does not want to do good, he does so for himself.

Another typical example of this kind of argument may be found in the work of Henry S. Commager, titled ***The Blue and Gray***. As he writes:

> *During the civil war, James Mason and John Slidell were confederate commissioners to Britain and France. Learning that they had left Havana for England on the British ship, TRENT, Union Captain Wilkes stopped*

> *the TRENT and removed them. Wilkes' action was contrary to international law. The British government demanded that the US release the prisoners and apologize for Wilkes, action. "Lincoln and Seaward were in a dilemma. If they did not satisfy Britain they might find themselves with another war on their heads. If they did, public opinion – which had made a hero of Wilkes – would be outraged (529)*

The argument requires stating it formally. And if written out fully the argument would look something like this:

1. If we satisfy Britain, then the Us public will be outraged;
2. If we do not satisfy Britain, then there might be war
3. Either we satisfy Britain by releasing the prisoners and apologizing for Wilkes' action or we do not satisfy Britain;
4. Therefore either the US public will be outraged or there will be war.

The logical interest of this argument begins with its form, since all dialemmas are not characterized the same way. We have brought out the concrete materials (propositions) of the dilemma. Then given that each statement is assigned a separate symbol, the expressed argument will take the following form:

If A, then B

If C, then D

Either A or C

Therefore, either B or D.

The argument may also be rewritten more formally to show that it is a mixed (complex) standard form hypothetical syllogism.

1. (if A, then B) and (if C, then D);
2. Either A or C;

Therefore either B or D.

So far, we will agree the argument we call "dilemma" **is a syllogism that is both conditional and disjunctive**. The major premise is a compound complex proposition, which has two conditional propositions connected together by the word (or conjunction) "and" or its equivalent such as "but", "in addition to" and so on. The minor premise is a disjunctive proposition that alternatively posits the antecedents (constructive) or sublets the consequents (destructive) of each of these simple conditional propositions. The conclusion is also a disjunctive proposition that posits the consequents (constructive) or sublets the antedents (destructive) of each of these simple conditional propositions. It should be noted that a simple conditional proposition is determined by the "if … then" clause (e.g. if rain, then wetness) while a simple disjunctive proposition is determined by the either … or" clause (e.g. either rain, or wetness).

A dilemma may be classified as **constructive** or **destructive**. This approach to classifying the concept is a **horizontal** way of looking at the argument. A constructive dilemma is one in which we posit the antecedents of the conditional statements as a disjunctive statement in the minor premise and also posit the consequents of the conditional statements as a disjunctive statement in the conclusion. In the case of a destructive dilemma we sublet the consequents of the conditional statements as disjuncts in the minor premise and sublet the antecedents of the conditional statements as disjuncts in the conclusion. An example of each of these types of dilemma is given in the forms below:

(a) Constructive dilemma:

1. Either A or C;
2. (IF A, then B) AND (IF C, then D);

Therefore, Either B or D.

(b) Destructive Dilemma:

1. (If A, then B) AND (if C, then D);
2. Either not –B or not-D;

Therefore, Either not-A or not -C.

Importantly it should be noted from the foregoing two arguments that: in the constructive dilemma the disjunctive premise is commonly placed first, but in the destructive dilemma it is the conditional premise that is commonly placed first.

A dilemma may also be classified as simple or complex. This approach to classifying the concept is a vertical way of looking at the argument. A simple dilemma is one which has a singular conclusion, while a complex dilemma has a compound conclusion. Examples of these arguments are given below:

(a) The simple dilemma

1. Either A or C;
2. (If A, then B) AND (if C, then B);

Therefore B.

(b) The complex dilemma:

1. Either A or C;
2. (IF A, then B) AND (if C, then D);

Therefore Either B or D

There is an important thing to learn about these ways of describing the concept. From the fact that a dilemma may be classified as either constructive or destructive and as either simple or complex, we can identify four forms of a dilemma. These are simple constructive dilemma, simple destructive dilemma, complex constructive dilemma and complex destructive dilemma.

Still another way of classifying a dilemma is from the standpoint of its value. This is to say that a dilemma is either **realistic** or **unrealistic**. When we view the dilemma in this way, the intention is to bring out its pragmatic aspects. A realistic dilemma is one which correctly represents the situation in a neat and rigorous way, while an unrealistic dilemma dose not. For this reason, the value of a dilemma lies in correctly stating the situation. In other words if it correctly represents a situation, then it states the alternatives confronting someone and the consequences which must be faced.

We have said it already that a dilemma ought to be **neat** and rigorous for it to be realistic. The requirement of neatness is to us a matter of form. However, two conditions seem to be relevant in assessing the rigorousness of a dilemma. First, its disjunctive premise must be exhaustive. Second, its hypothetical statements (conditionals) must be true. When a dilemma satisfies these two conditions it is regarded as rigorous. And on this basis, it would seem that in the "dilemma of the TRENT", which we examined earlier in the previous section – these stated conditions were not satisfied. So, we can refer to the dilemma of the TRENT as unrealistic.

As our prior analysis tries to show, the TRENT argument gives us the appearance of realistically representing the actual situation when in reality it does not. For instance, it aspires to show that the alternatives so stated are all that are open to the solution of the problem and that the consequences must be faced, thus **making it dangerous**. The argument makes it appear as if Lincoln and Seward must prepare either for war with England or for an outraged US public. The consequences of such a belief are not far-fetched. Yet it is not the case that the only alternatives open to these men were those given in the argument. In otherwords, its disjunctive premise violates the condition of exhaustiveness.

Again, there is a way in which the word "satisfy" can be interpreted so that the TRENT argument violates the truth condition. For instance, let us examine the disjunctive premise which says: Either we satisfy Britain by releasing the prisoners and apologizing for Wilkes' action or we do not satisfy Britain. As we can see it, this sentence does not exhaust the alternatives and so it is not true that the only alternative available to the US is that of releasing the prisoners and apologizing for Wilkes' action. One other possibility might be to release the prisoners without any apology. For instance, Seward actually avoided the consequences of the predicament by ignoring the stated alternatives. He did not apologize for their action. Instead he congratulated England on their willingness to adopt the principles of international law, claming that this was what the US had long contended. And then Seaward had Mason and Slidell shipped off to England. Yet by taking these three steps, neither war nor an enraged US public was instigated.

It should then be noted that if the disjunctive premise is of the type "either A or not-A", then it is not vulnerable to the criticism associated with truth or exhaustiveness of premise. We will understand this aspect better by considering this other case. As Carney and Scheer write in their ***Fundamentals of Logic***:

> *Marx in Das Kapital maintains that there are certain irreversible laws operating in history. One of the consequences of these dialectical laws is that capitalism will shatter and out of it will come communism. Communism can emerge only from capitalism. Russia was one of the first countries where the ideas of communism flourished. Yet Russia at that time was a backward country, ruled by the Tsar, and would take many years to catch up to this stage Marx calls "capitalism". In 1881 a member of the populists in Russia wrote to Marx and asked for his support in their movement. Marx was in a dilemma. If he encouraged the movement, then this would conflict with his theory. If he did not encourage it, then perhaps the strongest communist movement would die or be taken over by other ideologies. (166)*

It would seem that this dilemma correctly predicts the actual situation. First, it satisfies the condition that the disjunctive premise must be exhaustive, since Marx must either encourage the populists or not do so (that is, A or not-A), whereas a third alternative is not possible. Second, its two conditional statements are true. It follows that the Marx- **Populists dilemma is a realistic one**. Its premises are (as required by logic) exhaustive and true, and the consequences could actually not be avoided. This therefore **made it dangerous for Marx either way.**

But there is a form of the dialemma that is called "counter-dilemma, which is designed to rebut an existing argument. Carney and Scheer (170) see a counter-dilemma as **a dilemma which is constructed as a rebuttal in response to another already made dilemma.** This type of argument is essentially like the original dilemma in structure but has a conclusion that is opposed to it. The purpose of a rebuttal is not to show that an original dilemma is unrealistic but to **expose the relevance of features**. However, it is not all counter-dilemmas

that have conclusions which are compatible with the conclusion of its original dilemma. By changing the positions of the consequents in the conditional statements and negating them we can construct a counter-dilemma, as shown below:

(a) Original Dilemma (formal)

If A, then B;

AND

If C, then D;

Either A or C,

Therefore, Either B or D.

(b) Counter Dilemma (formal)

If A, then not-D,

AND

If C, then not-B;

Either A or C;

Therefore Either not- D or not- B.

2. (a) Original Dilemma (material)

If I am just, then the gods will love me,

AND

If I am unjust, then men will love me;

Either I am just or I am unjust;

Therefore, either the gods will love me or men will love me.

(b) Counter Dilemma (material)

If I am just, then men will not love me;

AND

If I am unjust, then the gods will not love me;

Either I am just or I am unjust

Therefore Either men will not love me or the gods will not love me.

Now, can we evaluate a dialemma? Generally, an important practice in evaluating an argument is to criticize it. Criticizing a dilemma involves three ways. One of them is by **taking a dilemma by the horns**. Another way is by **slipping between the horns of a dilemma.** A third approach is by **constructing** a **counter-dilemma.** On the one hand, the way of avoiding or criticizing a dilemma through showing the inexhaustiveness of the disjunctive premise is what has traditionally been called **slipping between the horns of the dilemma**. On the other hand, the method of criticizing one or both of the conditional premises to be false is what has traditionally been referred to **as taking the dilemma by the horns.** In the third place, the attempt to expose good or bad features in the argument through rebuttal is what we traditionally call counter dilemma.

3. An Analysis of Legal Dilemmas

Our attempt to examine legal dialemmas philosophically relies upon the age-old controversy surrounding the relationship between law and morality, with respect to human

actions. This controversy derives from the belief that law has a two-fold reality, one of which is scientific and the other metaphysical. This dichotomy reflects "law as it is" and "law as it ought to be", which together go to show that human actions can be judged by reference to "action as it is" and "action as it ought to be". How this helps us in justifying legal decisions is the crux of this section of our work. Thus, we shall be concerned here with:

a) Is and Ought of actions
b) Is and Ought to laws
c) Paradigms of legal dilemma

Aristotle (1098a) maintains that the ultimate goal of an action is to obtain a certain good, which he names as happiness. According to Popkin and Stroll (125), the epicureans have the believe that whatever is good to be pursued must be tailored to some kind of pleasure. Also some thinkers share belief in the existence of conflict concerning how to measure happiness or pleasure, while others maintain that even pleasure and happiness share a conflict that may be difficult to resolve. Such arguments constitute the basis of dialemmas in legal thought.

Legal dilemma is rooted in the ability to take a decision concerning what is conflicting in the face of judicial decisions. As such, it is concerned with the 'is' and 'ought' of action: thus the idea of which course of action is legally binding, and on which grounds those actions are said to be valid become central. This brings to mind some fundamental questions. Which path is the right way of attaining a good action? Are our actions tailored by the value laden statement of 'ought' as well as driving our thought without our knowledge? Why are some actions termed 'is' and some 'ought'? Or why are there rules and regulations to guide our actions?

From these questions, it seems that it is always problematic to make a complete severity of 'is' from 'ought', given a stylistic venture in the field of law as well as ethics. Also, questions of these kinds must be the reason why David Hume sees that the apparent gap between 'is' statements and 'ought' statements "renders ought" statement of dubious validity" (***Wikipedia***). Hume (12) argues for this position by saying that the distinction between vice and virtue is neither founded on the relations of objects nor is it perceived by reason. It is always problematic, because all items of knowledge are either based on logic and definition or else on observation. Therefore, the 'is-ought problems' has been recognized as an important issue for the validity of certain ends.

Human laws are by realistic standards said to be facts, and our system of morality without which there is no justice, is also said to consist of facts. Why do people hold some actions more esteemed than some? Legal naturalists contend that moral truth exists, and that the truth value of a moral proposition relates to facts about physical reality. Many of them see no impenetrable barrier in deriving 'ought' from 'is', their belief being that it can be done whenever we analyze goal-oriented behaviour. For instance, we may take the argument for an agent 'A' to achieve goal 'B' in which the fact that 'A' reasonably ought to do 'C' exhibits no category error and may be factually verified or refuted. Therefore, 'ought' exists in light of the existence of goals. But suppose the belief that "in order for agent 'A' to achieve goal 'B', then 'A' reasonably ought to do C", is rendered otherwise by human or societal laws (the fact that it is not legal), it follows that ought exists in light of the existence of laws. It is therefore obvious that in the attempt to uphold objectivity in human action there is a barrier of subjectivity, as a result of which we may see something wrong even if every human person believes otherwise. Incidentally whether an action is anchored by utility, or happiness, or pleasure or anything other than these, the paramount apparent condition seems to be that whatever acts is acting towards an end.

Dilemmas as regards 'is' and 'ought' of action entail the fact that human beings are sometimes influenced by external forces unknown to them when considering actions. For instance, studies in psychology show that human behaviour is coordinated by a stimuli response (S-R) nexus to some external factors. Lepper Mark, Greene David, and Nisbet Richard (129-37) opine that such external factors can serve the purpose of fitting into the values and beliefs system of the people, thereby helping to fulfill their basic psychological needs. These scholars believe that there is a motivational drive that gives rise to every conceivable human action. The question to be addressed here is, are human beings so determined to act in ways which they do not contribute their freedom? Or can human beings use the power of reason to will their ways to the ultimate good? And if we ought to behave in a certain way, is there any justification for why human beings should hold swear to their belief or self independence? Otherwise, what then is the right way to take?

Barnes (43) maintain that what makes an action the right action is that it leads to the best possible situation. Situations are compared or contrasted by determining the total ought outcomes of actions concerned. So whether the action is determined or not, does not matter but the outcome matters. Just like the utilitarian would say, there is a difference between doing the right thing and doing the rational thing. In making this distinction, Barnes writes in his ***Philosophy in Practice***, that:

> *…action is right if the actual consequences of that action turn out to be better than the consequences of any other possible action (44).*

This means that the very likely consequences of an action do not determine whether the action is right or not, rather the important thing is only how things actually turn out (which is to say, no matter how unlikely the actual consequences were) thus, Barnes goes on to say that:

> *an action is rational if the probable outcome, the expected utility, of that action is better than the probable outcome of any other possible action at that time. So the actual consequences of the action do not affect whether the action was rational, only the probability that the action would produce the best consequences (44).*

A dilemma of 'is' and 'ought' of action emerges from the foregoing analysis of some concepts, which entail some forms of relationship between what is right and what is rational. Some people describe it more succinctly by saying that "by right we have to do this"; and "by reason we ought to do that". The possible argument that may be drawn from these two statements is as follows:

If by right, then we are to do Q

If by reason, then we ought to do S

Either it is by right or it is by reason

Therefore, either we are to do Q or we ought to do S.

Can we possibly link this expression of conflict to situations of fact? Perhaps, it may be the case that the concepts of right and reason in fact share something in common. We may say: By right, the law says that no man is allowed to harm his fellow man and by reason every person knows that he ought to help his fellow brother who is in need. And the common ground between these two proposals seems to be that whatever justification is given to human actions remains a matter of theories. The utilitarian sees it in terms of the need for maximization of good for the greater number. The Kantian sees it as a form of categorical imperative. Scholars like John Rawls, Thomas Hobbes, John Locke, and Jean Jacques Rousseau see it in terms of human justice.

But in identifying human actions as being right, rational, and duty bound, we seem to suppose categories which scholars have pointed to as being conflicting. For instance, one can talk about the relationship between natural rights and societal rights as well as the relationship between moral rights and legal rights. As such, the justification of a given right can be located on the disjunction scheme of either natural or societal, either moral right or legal right and so on.

It is necessary to consider the application of these conceptions of rights. According to Barnes (75), these rights are: natural, societal, moral and legal. For him, natural rights are those rights that all persons have just because they are people and for no further reason. One can question the bases of such rights by seeking to know their source. The question is, who determines which rights are natural? Societal rights are those rights that a person possesses due to his membership in a particular society, and which only apply to people in that society. One may want to know why we should care about what particular societal rights are. After all, can a society not have rights, like allowing slavery or not giving right to women? Moral rights are defined as claims which ought morally to be respected. These rights give use reason to respect their claims because it follows logically from the concept of a moral right that it should be fulfilled. The question to be addressed here is how do we determine who has what moral rights? Legal rights can give us reason to respect their claims, even though not necessarily. There always remains the question of whether or not the law which provides the right is a good (moral) law. This amounts to saying that if the law is not morally good, then there seems to be no good reason to respect the legal rights it creates. It can then be shown that the "is" and "ought" of human actions depends on what society considers to be right for them or what is naturally given as right. Consequently, the dilemma follows such that if an action is legally wrong, then society would collapse. And if an action is morally wrong, then people would perish. It is the case that either an action is legally wrong or morally wrong. Therefore, either the society would collapse or the people would perish.

In his ***Essays on Moral Development***, Kohlberge presents a notable case in appraising dilemmas in human action which is fondly attributed as "Heinz dilemma". As he writes:

> *A woman was near death from a special kind of cancer. There was one drug that the doctors thought might save her. It was a form of radium that a druggist in the same town had recently discovered. The drug was expensive to make, but the druggist was charging ten times what the drug cost him to produce. He paid 200 dollar for the radium and charged 2000 dollar for a small dose of the drug. The sick woman's husband, Heinz, went to everyone he knew to borrow the money, but he could only get together about 1000 dollar which is half of what it cost. He told the druggist that his wife was dying and ask him to sell it cheaper or let him pay later. But the druggist said, "No, I discovered the drug and I'm going to make money from it". So Heinz got desperate and broke into the man's store to steal the drug for his wife, leaving the 1000 dollar where the drug was (Wikipedia).*

The question for us to answer is, should Heinz have broken into the store to steal the drug for his wife? Why or why not? Kohlberge has identified six arguments based on his conception of stages of moral development in human experience. These are; obedience, self interest, conformity, law and order, human right and universal human ethics. Each of these arguments is a disjunction of propositions involving the clause 'either … or'. Obedience involves the view that Heinz should not steal the medicine because he will consequently be put in prison and this will mean that he is a bad person. Or Heinz should steal the medicine because it is only worth 200 dollar and not how much the druggist wanted for it; Heinz had

even offered to pay for it later and was therefore not stealing anything else. Self interest involves the belief that Heinz should steal the medicine because he will be much happier if he saves his wife, even if he will have to serve a prison sentence. Or Heinz should not steal the medicine because prison is an awful place, and he would more likely languish in a jail cell than over his wife's death. Conformity holds that Heinz should steal the medicine because his wife expects it; he wants to be a good husband. Or Heinz should not steal the drug because stealing is bad and he is not a criminal; he has tried to do everything he can without breaking the law, therefore you cannot blame him. Law and Order concerns the view that Heinz should not steal the medicine because the law prohibits stealing, thus making it illegal. Or it would seem that actions have consequences. Human Rights imply that Heinz should steal the medicine because everyone has a right to chose life, regardless of law. Or, Heinz should not steal the medicine because the scientist has a right for fair compensation. Even if his wife is sick, it does not make his actions right. Universal Human Ethics entails that Heinz should steal the medicine, because saving a human life is a more fundamental value than the property rights of another person. Or Heinz should not steal the medicine just as badly, and their lives are equally significant. In all these, what characterizes dilemmas in human actions are cases in which situations warrant some actions to be bad while others may be intrinsically bad.

Some people may wonder why (and if) there are dilemmas in the field of law. It seems reasonable to say that legal dilemmas are considered in terms of naturalists' versus positivists' interpretations of the nature of law. There is however a need to be a little more practical here in dealing with this aspect of our discussion because of the longing of our societies. A subtle argument of this kind relies upon insight with some diverse logical approaches. So it is better to begin this aspect of problem solving by saying that the spirit of the law differs from the letter of the law. One can point out the existence of dilemmas by bringing to bare the reason why some people say that law is this; and law ought to be that; that there should be morality in law; and law should be separated from any system of norms. It is possible to find such reason in Morrison's ***Jurisprudence,*** concerning Antigone who incidentally happens to be an ancient character. According to Morrison:

> *Antigone was one of the daughters of Oedipus, that tragic figure of male power who had been cursed by the gods for mistakenly killing his father (the king of Thebes) and subsequently marrying his mother and assuming the throne of Thebes. After the death of Oedipus, civil war broke out a battle was waged in front of the seventh gates of Thebes. His two sons led opposing factions and at the height of the battle fought and killed each other. Oedipus' brother, Creon, uncle of Antigone, was now undisputed master of the city. Creon resolved to make an example of the brother who had fought against him, Polynices, by refusing the right of honourable burial. The penalty of death was promulgated against any who should defy this order, and the order was accepted as a lawful command of the ruler throughout the city. Antigone is distraught, while her brother Eteocles' has been buried in full honour of the state. Polynices has been left unburied, unwept, a feast of flesh for keen eyed carrion birds (20).*

As we can see in Morison's argument, the idle threat is obvious. The punishment for disobedience is death. Antigone perceives that the dilemma is both acute and challenging. To make it plain, it is either Antigone desert the burial of her brother (her royal blood) or suffers the punishment of disobeying the law and die. Morrison (20) argues that it is such cases that brought about the juxtaposition of 'laws' and 'obligation'. This means that Antigone feels herself bound by a normative obligation to bury her brother while she is at the same time bound by the laws of Thebes not to bury him. This aspect of the problem really shows the

conflicting nature of our laws. Thus, the nature of legal dilemmas cuts across the scope of generating a high tensioned conflict between what our society sees as law and what we have been naturally induced to be a law.

The categories of 'law as it is' and 'law as it ought to be' refer to the empirical and rational domains of human knowledge. Their concern with arguments involving dilemma was formally raised in the broad schools of naturalism and positivism. The positivists claim that there is no necessary connection between 'law as it is' actually done and 'law as it ought to be' done. They base their conviction on the belief that law should be separated from morality. And it has been observed that the relationship between the laws and Heaven (natural laws) and the laws of the state (positive laws) holds in a sharp contrast, such that choosing any one of them amounts to a breach of the other. A notable case is to be found in Wyzanski's ***Nuremberg,*** concerning war trial. As he writes:

> *the Nuremberg War Trial has a strong claim to be considered the most significant as well as the most debatable event since the conclusion of hostilities. To those who support the trial it promises the first effective recognition of a world law for the punishment of the malefactors who start war or conduct them in bestial fashion. To the adverse critics the trial appears in many aspects a negation of principles which they regard as the heart of my system of Justice under law (12).*

In this case, the Nuremberg tribunal rejects the premise that soldiers were ordered to kill in violation of the international law which is guided by the principle of Human Rights. Thus, the positivist idea of law as an order backed by force stands to contradict the naturalist idea of law as an ordinance of reason. Sequel to the 'separability thesis' of law morality, scholars have made a sharp distinction between the task of giving an accurate, descriptive account of law in terms of expository or 'analytical' jurisprudence, and the task of evaluating the law morally stating what it ought to be in terms of 'censorial' or 'normative' jurisprudence. Some of these issues have raised the junctures in the evolution of natural law theory and legal positivism. Although it may not be correct in identifying exactly the attributes of the end of law, nevertheless there is a common understanding of law as an end in itself. This fact "is partly due to the vexing issues of what 'law is' and what 'law ought to be' (Yalaju 156). Based on this Yalaju (158) argues that law is perceived through an examination of theories of law. Operationally then, a good theory gives rise to a good law, and so it is that a bad theory is likely to give rise to a bad law. Exemplified by the Nazi regime in the then U.S.S.R, scholars believe that the problem was as a result of Hitler's adoption of a bad theory which acted contrary to the will of the people. That is why the failure of Nazi government may be tagged a 'failure of legal positivism'.

4. Conclusion

Dilemmas pose problems for all persons who come by them. They arise in the normal course of human affairs generally. We are also confronted with them in our various disciplines as we study human experiences and try to profer solutions to emerging problems. The attempt to resolve dilemmas requires understanding situations, and we believe that a thing or procedure can be understood if it is accompanied by idea. Such as the concepts we use in formulating arguments. Incidentally our knowledge of words, propositions and elementary inferences (formal or informal) can help us in understanding the ideas that lie in the way to resolving dilemmas.

As part of our jurisprudential endeavour and within the legal system, in which it has been possible to discover dilemmas, it is necessary that judges, philosophers and legal scientists should adopt a jurisprudence that will enable them distinguish between arguments

that are based on adherence to rules and those that are based on a system of rights. This supposed right is a result of the moral right that justifies the foundation of all societies. The suggestion is built around the coming together of the good sides of both legal positivism and legal naturalism, to form a coherent and harmonic us conception or approach to jurisprudence. It follows that an attitude of immoral law ought to be checkmated, for a society to have a justifiable way of dong things. It is obvious that laws or theories can be conflicting and likewise give opposite guidance. This problem can be evaded by reasoning in accordance to the needed solutions for humane life and existence. This means that scholars need to weigh up their relative significance and balance which principle or theory or law is more important in a given case. So there seems to be no way that morality can be isolated from law, since an attempt to do so will result in moral cum legal decadence and political crises. More so, it should be noted that in lending a clear picture and interpretation of law, human actions and attitudes should be of utmost consideration.

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