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Legal Formalism vs Moral Humanism in Contemporary Jurisprudence: A Critical Appraisal

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Abstract

In this paper, the author takes a critical look at the conflict between legal formalism and moral humanism in the present-day jurisprudence. Legal formalism is a preference for the meaningful application of the law through hard and fast rules, deductive knowledge, and adherence to moral humanism, which emphasizes ethical and social circumstances, as well as human dignity, in court judgments. The research draws on the classical and modern legal theories of H.L.A. Hart and Ronald Dworkin, as well as those of Martha Nussbaum and Jeremy Waldron, to investigate the role these paradigms play in shaping the interpretation and application of law in formally democratic and pluralistic societies. By providing a qualitative literature review of theoretically oriented and case-based literature, the paper advocates the approach that balances procedural consistency and moral responsiveness as a dimension of jurisprudence. The process of analysis adds to current legal theory literature on the issues of judicial activism and constitutional interpretation, in extending the protection of fundamental rights. The findings of the paper therefore will significantly influence the interpretation and application of law, thereby shaping the legal landscape.

Keywords: legalism, humanism, formalism, moralism, jurisprudence

1. Introduction

Contemporary legal systems are increasingly faced with situations that expose the limitations of a strict-rule guided interpretation of the law. Formalism, rooted in classical legal positivism, asserts that judges must adhere to the written law, without recourse to moral or social

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considerations. It upholds predictability, non-consequentialism, and institutional authority by demanding that legal outcomes be logically derived from clearly laid statutes and case law (Hart, 2012; Petersen, 2010). This approach, which gained prominence in the 19th century, particularly through jurists like Christopher Columbus Langdell (1871), has exerted significant influence, especially in common law jurisdictions. However, the evolving needs of modern societies, such as an understanding of pluralism, inequality, and a growing moral consciousness, have raised questions about the adequacy of a formalist approach in delivering substantive justice.

On the other hand, moral humanism asserts that the law should be attuned to human conditions, morality, and societal facts. This approach, rooted in the tradition of natural law and modern jurisprudence, places the human experience at the center of legal interpretation. Theories such as those developed by Ronald Dworkin have focused on the interpretive characteristics of judges in applying moral principles to legal texts (Dworkin, 1977; Priyma, 2018). Attention to law as a priority to ensure human dignity and social well-being is also emphasized by the capabilities approach proposed by Martha Nussbaum (Nussbaum, 2001). A significant part of the legal-formalistic-versus-moral-humanism contrast can be seen in constitutional decision-making, transitional justice, and human rights court litigation. To identify what these two paradigms imply on justice in the pluralistic and dynamic societies, this paper aims at critically appraising these two paradigms against both classical theory of justice and contemporary legal trends. This paper assumes that both contrasting paradigms fall within the domain of political philosophy, as the legal system itself is inherently a political institution (Sapkota, 2025). In this context, legal formalism aligns with a positivist paradigm, whereas moral humanism gravitates toward a constructivist paradigm.

2. Methodology

This paper uses the qualitative review approach to find answers to the jurisprudential tension of legal formalism and moral humanism. It is a synthesis of classical texts on law, existing peer-reviewed literature, and doctrinal analyses of important judicial rulings, especially in the area of comparative constitutional law. This comprehensive synthesis of various sources reassures the reader about the thoroughness of the research. The sample of sources is intentional, focusing on jurisdictions where the interaction between procedures, procedural legality, and moral reasoning has played the most pivotal role in determining legal outcomes. The research focuses on exegesis, following the insights of interpretivism in legal studies (Chynoweth, 2008), and also scrutinizes case law in order to elucidate how the various courts carry out a formalist or humanist paradigm in operation. Such a method makes possible the critical and contextual interpretation of the development of legal reasoning in various legal cultures and normative systems.

3. Results and Discussion

3.1 Classical Foundations

Legal formalism, a reality that emerged in the 19th century, introduced the concept of law as a self-contained set of rules, which can be applied without considering any external moral or political reasons. This systematic view of law was championed by Christopher Columbus Langdell (1871), the father of formalism in American legal education, who believed that law was a science, made of logically deducible principles that could be learned by looking at judicial precedents. His procedural and deductive perspective, which viewed law as a systematic and logical entity, was further endorsed by the legal positivists, such as John Austin (1832). They emphasized the sovereignty of the law as an act of a command that is of determinate authority regardless of its moral content. A more developed form of legal positivism was introduced by H.L.A. Hart (2012), which provided legal positivism with the legal positivist rule of recognition, a social rule applied by the officials of a legal system to determine what the valid laws are within it. Despite his appreciation for the need for a minimum moral content in law to prevent societal collapse, Hart practically distinguished between the parameters of legal validity and moral obligation, thereby supporting the main principles of legal formalism.

Conversely, theorists of natural law rejected the idea that the law should, or can, be morally neutral (Khaitan & Steel, 2022). According to Lon L. Fuller (1969), we want and ought to think of a system of law as one that has to meet some procedural standards of morality; that is, some test must be met before a system of law can be regarded as legitimate, and these tests include generality, consistency, and publicity. His idea of the inner morality of law underlined the fact that law inherently carries a moral aspect. After going beyond both positivism and procedural natural law, Ronald Dworkin (1977) played a pivotal role in shaping the concept of law as integrity. He urged that adjudication is not a mechanical rule-application process, but the interpretation of legal principles within the moral and political culture of a given community. He proposed that judges should interpret laws in a manner that shapes the legal system into one that appears wholesome and justifiable. For Dworkin, principles like fairness and equality are indispensable to the practice of law, making legal reasoning an inherently moral enterprise. These classical debates laid the groundwork for contemporary tensions between formalist and humanist approaches in legal theory and judicial practice.

3.2 Contemporary Perspectives

3.2.1 Expansion of Moral Humanism in Legal Theory

Over the past couple of decades, humanist legal theory has experienced significant growth through an interdisciplinary approach, dealing with various human rights discourses, ethics, and political theory. The influential capabilities approach was advanced by Martha Nussbaum (2001), who held that legal and political institutions must be considered in terms of their success in ensuring that an individual leads a life of dignity and flourishing. Her work heavily emphasizes the role of emotion, empathetic reasoning, and justice in law design and decision

making, connecting the law to human experiences and feelings. Similarly, Jeremy Waldron (1999, 2012) argues that morality has provisions that must be conformed to when applied in legal reasoning, particularly in the area of law which shapes the fundamental rights laws through legislation.

Criticizing the boundaries of legal positivism has also been the interest of other scholars of the contemporary world. Julie Dickson (2001) raised doubts about the supposed neutrality of the positivist jurisprudence in a mixed, pluralistic society, assuming that even so-called objective legal systems may have their roots in the normative framework. The fact that it is challenging to advance sharp distinctions between law and morality, especially in constitutional and human rights adjudication, is also highlighted by Brian Bix (2023). Such views have led to the increasing awareness that it is impossible to separate legal interpretation of a text, morality, and politics, enlightening us about the intricate interconnectedness of these elements.

3.2.2 Contemporary Defenses of Legal Formalism

Although humanism of a moral kind is increasingly featuring in legal thought, there is a body of powerful legal thinking that is wary of excessively including moral considerations as part of the thought process in law. Pragmatic legal formalism, as articulated by Richard Posner (2007), one of the movement's foremost exponents, provides a scathing critique of moralist stances. He argues that courts cannot effectively settle complicated moral controversies and that they should not make law based on too much moral thinking, as doing so makes the legal consequences uncertain and, therefore, unstable. Posner thinks that a rule of law demands some degree of formal detachment, thus requiring impersonality, uniformity, and deference to democratic institutions of lawmaking. In his case, judicial restraint and procedural formalism are needed to act as a firewall against the dangers of judicial lawmaking, court populism, and politicization.

Formalism continues to exert a significant influence on the judicial culture of most jurisdictions, particularly those that follow the civil law or originalist traditions of constitutionalism. In these settings, the interpretive mandate of the judiciary is confined to the text and form of legal provisions, without any reference to extra-legal or normative issues (Soavi et al., 2022). For instance, in the United States, originalist belt and braces interpretations focus on the intent of the framers and the textualist approach, thereby reducing the potential for subjective moral influence. Similarly, many judicial systems in Europe have codified hierarchies embedded in their legal systems, which prioritize legal certainty over values-laden decision-making. This formalist mindset underscores the belief that the legitimacy of law lies in its predictability and neutrality, rather than its moral content.

3.2.3 Jurisprudence in Practice: Humanist Shifts and Persistent Formalism

Empirical jurisprudence portrays the conflict between humanist and formalist strictures facing a variety of legal traditions. The constitutional courts of such jurisdictions as South Africa, India, and Colombia have adopted a more humanist paradigm of interpretation, at least in reading the socio-economic rights, dignity, and equality. Some of the values commonly represented by

these courts include constitutional morality, transformative justice, and the actual lives of marginalized communities. One such good example is Navtej Singh Johar v. Union of India (2018), when the Indian Supreme Court decriminalized Section 377 of the Indian Penal Code. By prioritizing the concepts of human dignity, the right to personal autonomy, and the history of changes in the nation through the social values, the judgment gave precedence to the moral reasoning and constitutional ethics over pure textualism or originalism based on statutory text. This trend indicates a paradigm shift towards constitutional jurisprudence that is less rigid and grounded in values, including societal and ethical changes.

Legal interpretation in U.S. federal courts (and particularly in the era of originalism and textualism) is deeply and unwaveringly embedded in a formalist approach. These schools are resolutely committed to adhering to the text of the Constitution and the framers' original intent, often placing societal and ethical changes in the back seat. The Supreme Court of the U.S. ruled in Dobbs v. Jackson Women's Health Organization (2022), which overturned Roe v. Wade, demonstrating the same tendency. The majority opinion reflected on historical precedent and constitutional silence as opposed to substantive moral or lived rights, thus restoring the right of single states to govern the life of the unborn baby. The case points out a longstanding adherence to formalist reasoning that gives more concern to legal certainty and continuity causing truncation of individual rights previously recognized. The making of such decisions is representative of the fact that the sphere of jurisprudential practices still swings between normative development and doctrinaire orthodoxy.

3.2.4 Toward a Jurisprudential Balance

Comparative jurisprudence suggests that legal formalism as well as moral humanism continue to have normative density and pragmatic application in modern day adjudication (Sieckmann, 2021). The predictability of procedures, institutional integrity and democracy is provided by legal formalism through the fixation by judicial thinking on defined statutes and precedent. Nonetheless, its dogmatism usually does not correspond to the moral and social intricacies of modern societies especially where matters that involve marginalized factions (such as ethnic minorities, LGBTQ+ communities, or economically disadvantaged groups), increasing rights and moral quandaries are present. Moral humanism, on the other hand, makes the law more responsive to justice, equity, and dignity, but on the negative front, it undermines legal certainty through being unreasonably subjective or living outside legal writing (Dworkin, 1977; Posner, 2007).

Amidst these tensions, a balanced synthesis is increasingly advocated, one that does not lean towards either extreme of textual rigidity or moral voluntarism. This balanced approach necessitates reflective equilibrium in the judicial reasoning process, which steers clear of both rule-bound and rule-sceptic positions, ensuring a normatively grounded and contextually sensitive process. Developing this kind of jurisprudence requires a shift in legal education towards jurisprudential pluralism and the fusion of moral philosophy and interdisciplinary learning. Courts are now compelled to adopt a process of dialogical reasoning, allowing legal

and ethical discourses to interact dynamically, thereby making decisions that uphold both legal legitimacy and substantive justice, particularly in pluralistic constitutional democracies (Galston, 2018; Rosenfeld, 2023).

3.3 The Debate in Nepalese Context

The clash of legal formalism and moral humanism has an especially ingenious existence in the context of Nepal because of the constitutional democracy and pluralistic social structure that Nepal is continuously striving to reinstitute. The fundamental rights and directive principles incorporated in the Constitution of 2015 encompass a broad spectrum of normative interpretations, addressing normative problems in key fields such as social justice, federal restructuring, and identity-based inclusion. Nevertheless, courts have historically tended to be formalist, or deeply committed to the strict language of a statute or precedent, at the cost of actual fulfillment of the transformative nature of the Constitution. This has prompted critics to say that the courts do not go far enough to deal with higher moral and social-political intents of the constitutional text (Chapagain, B. (2024).

Meanwhile, the potential threat of excessive court moralism, particularly in politically charged or populist cases, to the system of separation of powers and public trust in the law is a concern. It is the responsibility of the judiciary to maintain this trust. However, the establishment of a jurisprudential balance is crucial for democratic consolidation in Nepal. This balance, which integrates critical legal thinking, constitutional morality, and openness to interdisciplinary approaches into legal training and judicial preparation, will help courts navigate complex cases in transitional justice, federal conflicts, and socio-cultural pluralism. The adoption of a self-reflective and dialogical jurisprudence in Nepal will not only enhance the institutional credibility of the judiciary but also better reflect the foundational principles of the law, such as equity, dignity, and participatory legal justice, as framed in the Constitution. In this context, Sapkota (2023) argues that the legal system of Nepal should also be analyzed from the governance paradigms which needs an immediate revisiting in terms of methodological interventions.

4. Conclusion

The two fundamental but frequently antagonistic paradigms of jurisprudence, i.e., legal formalism and moral humanism, represent the embodiment of supreme lawfulness and morality, of each bearing unique advantages and drawbacks. The glue of consistency, predictability, and institutional restraint that legal formalism ensures is exemplified in the preservation of the rule of law and in guarding democratic government against arbitrary rule. On the other hand, the prominent priority of moral humanism includes justice, empathy, and ethical responsiveness that cover the substantive needs of underprivileged groups and shifting values in society. Each paradigm alone would be insufficient to meet the contemporary requirements of legal frameworks, particularly in pluralistic and transitional communities, as law should aim to reconcile conflicting rights, identities, and societal pursuits within society.

In this paper, the author advocates for an integrative jurisprudential method that combines procedural rigor and normative flexibility. This balanced model has the potential to inspire courts and legal actors to interpret the law in a more reflective way that respects both legal text and precedent, and is morally and socially aware. This approach can enhance the legitimacy and efficacy of law as a dynamic instrument of justice, leading to the defense of human rights, social responsibility, and constitutional change in the face of modern socio-legal challenges. As legal scholars, law students, and practitioners, you have a crucial role in promoting this synthesis, ensuring that legal systems are more coherent and play a significant role in advancing democracy and social justice.

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