# Good example of law is politics essay

Law, Criminal Justice

# Law

Cerar (2010, p. 4) “ stated that it is an imminent characteristic of every law that it is also the means of certain politics”. It bears to stress, however, that law cannot be considered as a pure form through which the political content may be achieved since it is in the very nature of law to become independent or autonomous since it can stand on its own. However, in the case of politics, it cannot exist without the law for it is the law which gives its structure and maintains it within certain limits that are dictated by the concepts of justice and social order (Cerar, 2010. However, law cannot exist without politics since politics gives law the motivation or the driving force, along with its substance and content. Hence, the law has to adapt to its autonomous structure for it to be developed into its final form and being expressed in a specific normative manner (Cerar, 2010). Maintaining a proper balance between politics and law is a challenging task.

Law and politics are related in such a way that politics is the will and that law is reason (Post, 2010). The best perspective that can be used in analyzing “ law is politics” is by using the perspective that should law can be considered as a weapon and power to resolve social conflict (Turk, 2004). Law promotes social values since it is characterized as a means to settle disputes by articulating the requirements of the idea of justice (Turk, 1978, p 214). On the other hand, politics has a relationship to the law in the sense that constitutional conventions and ratifications are part of the political process (Bayles, 1978, p. 138). It is politics that created the constitution, and thus politics establishes legal order. This relationship between laws and politics is completely different in an authoritarian or totalitarian state in comparison to

a democratic state based on the rule of law. The rationale behind this is due to the fact that the authoritarian or totalitarian state which creates the legal policy is a subordinate to the political policy (Cerar, 2010). This is opposed to the democratic state where a dynamic, partner-competitor relationship exists between the two policies wherein there will be times when the politics prevail, and other times it shall be the law which will reign. The dependence of law on politics is based on an analytical relationship that it is impossible for a legal system to exist without the rule of recognition that is generally accepted by the government officials (Bayles, 1978). A legal system shall only become successful if there is a union of primary and secondary rules that creates the constitutional structure of the state. It shall be dependent on the political recognition of the public officials on how they will accept the rules. The effectiveness of the law shall be dependent on the political order. Essentially, the people who hold powerful positions in the government must be controlled by those who shall agree with the constitutional structure of power (Bayles, 1978).

As such, law and politics have their own distinct institutional characteristics even if their own spheres are supposed to be based on basic human rights, democratic procedures, and principles and values (Post, 2010). Cerar (2010, p. 20) has defined the relationship between law and politics as social phenomena that resulted from the same entity, which is a monistic ontological point of view. The other conception which separates the existence of law and politics is based on the human dualistic or pluralistic perception of the world, which gives the law and politics their own distinct existence (Cerar, 2010).

The relation between politics and law holds a dual function known as the progressive function and the safeguarding function (Cerar, 2010). When law and politics are taken separately or together, they have a tendency to promote and at the same time, suppress the development of societal relations. However, they also have the power to bring about justice and order in society. The spirit of the " separate and connected" relationship between law and politics is not necessarily for their integral existence, but rather, it will be able to map out each other's boundaries. The borders or boundaries serve the " checks and balances" mechanism which aims to prevent the excessive one-sidedness in politics or the law (Cerar, 2010). However, in reality, all legal institutes represent a " partial reflection of individual or collective political decisions that were made in a given time and in a particular environment that had assumed a legal form and nature" (Cerar, 2010). Such statement holds true for the systems where the main rule-framer is being governed by a highly politically legitimized body (Cerar, 2010). This is also applicable to a judicial-precedent law that bears a strong influence for the reason that the most autonomous judiciary has been determined by political influence.

The relationship of law and politics is deontic or normative in such a way that politics should be able to provide the normative force to law (Bayles, 1978). In order that the relationship will exist, the just political order must rest upon the consent of the majority of the people, and in effect, the political order will confer a normative force to the constitution (Bayles, 1978). Under the theory of natural law, a deontic relationship between law and politics is also implied. Thus, if political principles shall become part of natural law, they

shall be deemed to have conferred legitimacy upon the legal system. Hence, if the rules are made by an illegitimate political order, they cannot be considered as valid laws. The Nazi political system violated the internal morality of law when there was failure to constitute a legal system based on the view of Professor Lon Fuller (Bayles, 1978).

Thus, once the constitution has been duly established, the constitutional law has a tendency to restrict politics. This can be illustrated in the requirements enumerated in the constitution in order to make valid amendments or revisions thereto. In effect, the constitutional amending provision regulates the forms of political activities (Bayles, 1978). In the case of America, the requirement for the ratification of the amendments by a vote of three-fourths of the states has significantly affected the political activity that may result to an equal rights amendment. It shall be impractical to change the structure of representation within the U. S. Senate since it will be impossible for the state to deprive its two (2) elected senators without its consent (Bayles, 1978).

Another illustration is the case of Canada where relationship of constitutional law to politics has become complicated. The Canadian Constitution is the British North America Act that has been passed last century by the British parliament. However, the Trudeau federal government is not willing to reach an agreement with the majority of provinces on the request for patriation of the constitution by amending the formula for approving a revision (Bayles, 1978). As part of recourse, the issue was submitted to the Canadian Supreme Court. On the part of the federal government, it contends that the issue is purely legal. It further contends that the Parliament is empowered to pass any regulation, and this includes a request for patriation of the

constitution (Bayles, 1978). However, the majority of the dissenting provinces maintain that the issue is purely a political in nature which involves the nature of federal-provincial relations where unilateral alteration of one party is not allowed. On the part of the federal government, it contends that the decision of the court should be respected and maintains that politics depends on the law (Bayles, 1978).

In the same manner, law is also responsible for conflict management between the people in relation to its social diversity aspect. In reality, law has the power to bring order within the cultural and social structure, by avoiding physical violence such as war and conflicts. This is in the exercise of police power and controlling of use or allocation of resources, in connection to its decision-making process, and establishment of values, knowledge and beliefs of the people (Turk, 2004, p. 102). Law now becomes the power which sets peace and order in society by regulating conflicts. Even though law may be referred to as the force or power that may be used as a weapon in social conflict resolutions, this power may also produce negative results such as racial inequality. Having a law on one’s side in a conflict means that one person can rightfully use or call upon others to use violence to support a person’s claims against others. The decisions made by authorities, including decisions regarding the respective claims of disputing parties may favor one party over another. In a case decided by a court, it may be prejudicial against the defendant on the basis of his or her race, using the law as a power of the court to render decisions. In this manner, politics can interpret the law as an obstacle towards the achievement of political goals (Cerar, 2010).

According to Post (2010), one of the salient features of politics is that it is designed to represent social reality to be primarily agonistic in the sense that the salient features of the law are structured to represent the union of social reality. Both politics and law misrepresent the actual social reality since the present social life cannot be considered as agonistic nor essentially unified (Post, 2010). This gives the idea that disagreements or conflicts may rise between the two concepts even if the government has opted to deploy the social form of law, or has decided to engage in politics. This can be illustrated in the example of racial prejudice. The controversy about racial discrimination has existed since time immemorial and it will not simply disappear even if society has enacted a law which prohibits such discrimination or even if the courts have ordered the enforcement of such statute. Post (2010) argued that there is a high probability that the disagreement will persist due to conflicting judicial interpretations of the statute. In fact, there can be several courts that will reach different conclusions as long as there is an ongoing political disagreement about surrounding the issue on racial discrimination.

One classic example is the U. S. case of Powell v. Alabama where the court ruled for the unjust imposition of the death penalty against nine (9) African-American boys who were discriminated based on their race or color. Based from the facts of the case, there were seven (7) white boys who boarded the train that was scheduled to leave for Alabama. The station master was informed that a group Negroes boys started a fight, but the white American boys were ordered to step out of the train except for one passenger. In the mean time, two white female passengers made an accusation that the

passengers who were African American boys sexually abused them. The state court ruled in favor of the victims and the eight (8) African-American boys were found guilty by the courts and ordered to suffer the death penalty. On appeal before the Supreme Court, the High Court reversed the decision and ruled in favor of the defendants. It was held that the African-American boys were deprived of their right to due process and the right to be assisted by an attorney.

Hence, this is a clear manifestation that the law, through the courts, may abuse its power to work injustice against the people based on race, color and ethnicity. Therefore, the power of the law may cause prejudices that may result to racial inequality. In a similar manner, the decision of the court may also be politically motivated to favor the whites against the blacks. The idea that was presented in this particular case is that the law may also be a weapon that may cause injustice since there was no fair play for the white Americans were favored than black Americans on the basis of an implicit bias resulting to racial inequality.

Post (2010) argued that to be able to accurately theorize the relationship between politics and law, there should be the recognition of the agreement and disagreement brought about by social facts continue to exist, through the use of either politics or law. Politics has been referred to as a social practice that allows the assumption of disagreement, yet it is dependent upon the social fact of agreement. On the other hand, law is a social practice that presumes an agreement, yet it finds ways to tame and resolve ongoing disagreement within its own boundaries (Post, 2010). However, law as a power may also be abused and may cause chaos, rather than to serve its

purpose of becoming a weapon to resolve social conflicts. Law is politics if it serves as a power that promotes the interest of fairness, equality, reasonableness, justice and recognized by the authorities of the political structure. The law must rest on society and work for the common goal that will promote the interest of the greater majority, rather than to favor the caprice of a limited few. The power of the law must not be abused as a means of social control through the use of force, threat, duress, habits and generality. The relationship of law and politics is to serve as the " checks and balances mechanism" to ensure that each one works within the prescribed limits (Cerar, 2010). Therefore, even if law is synonymous to politics, it should conform to the basic requisites of genuine morality and justice.

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