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# DREADFUL MAN: Sovereign or not?

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## ABSTRACT

*The title of the paper is 'Dreadful Man: Sovereign or Not'. As the name suggests, the paper will primarily deal with the concept of sovereignty as has been established by John Austin in his Legal Positivism. It will elaborate upon the Analytical School of Thought and similarities between the works of John Austin and Jeremy Bentham. The paper will cover Adolf Hitler as a hostile dictator that the world governance has seen, his emergence as a dictator and how he acted under the impression of being 'Sovereign' whilst his rule. Ultimately the paper will conclude with the political relationship that the reader might be able to outline between Adolf Hitler and the theory of Sovereignty as per John Austin.*

**Keywords:** *sovereign, positivism, dictators, popularism*

## I. INTRODUCTION

*"If there is a specific authority in a particular society, or those who are not loyal to any other authority, but have the general loyalty of all the people of that society, then that superior authority is called sovereign and the society with that sovereign authority is an independent and political society."<sup>2</sup>*

John Austin, renowned globally as the Father of English Jurisprudence gave his theory of jurisprudence in the form of Legal Positivism. As per his jurisprudence, the law does not evolve naturally and has no significant connection with morality. Law is nothing but mere command issued by a political superior of the society who is known as the sovereign. The only recognised law of any society is the command enforced by the sovereign who exposes the members of the society to habitual obedience. This habitual obedience is subject to certain sanctions or punitive measures which help keep the rule of the sovereign intact and unruffled. World history has witnessed the emergence as well as the downfall of such sovereigns. Adolf Hitler, Muammar Gaddafi, Benito

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<sup>2</sup> John Austin, *The Province of Jurisprudence Determined* (John Murray, London, 1832)

Mussolini and Saddam Hussein are notable among the infamous dictators that rose to power in the 21<sup>st</sup> century and held no rules barred during their different regimes over the respected nations. One might go to the extent to argue that they might have been deeply intrigued by Austin's approach towards a law that they completely discarded the concept of morality, basic human rights and whatnot in their pursuit of totalitarianism.

## II. JURISPRUDENCE AS PER JOHN AUSTIN

Jurisprudence has been called as the philosophy of positive law by John Austin. Positive law or *jus positivism* is the true law of a society which has been presented by a political superior for commanding obedience from his subjects or political inferiors.<sup>3</sup>

Austin is the first jurist to treat jurisprudence as a science. Jurisprudence can be truly understood only by the continuous study of its principles and concepts, much like what science usually revolves around. Another division cast by John Austin is the types of jurisprudence of a society. They are General Jurisprudence and Particular Jurisprudence. The study of fundamental issues regarding law and legal systems falls under the ambit of general jurisprudence, also referred to as theoretical jurisprudence or the philosophy of law. It investigates the nature of law, its history, how it relates to morality, and how it affects society. At the onset of the nineteenth century, the nature of jurisprudence was presupposed by jurists especially those belonging to the English legal system to be general in nature. Much credit goes to Jeremy Bentham who set out to implement a system of jurisprudence having universality as its prime feature; it was his disciple John Austin who gave the name General Jurisprudence to this system.<sup>4</sup> General jurisprudence would tend to be the legal system of multiple states and such features which are found to be common to them.

The second part of the division is Particular Jurisprudence. As the name itself suggests, particular jurisprudence revolves around law within a specific boundary of a nation. All sorts of principles of law applicable to that nation are already well shaped in their system which makes it particular and distinct from the general jurisprudence of the world.

## III. LEGAL POSITIVISM BY JOHN AUSTIN

John Austin has been said to be an admirer of the Roman legal system. Instances can be drawn from Roman law which recognised the supreme authority of the Emperor as the ultimate source of law. Jurists have argued that it was this inspiration that gave rise to Legal Positivism or Positive Law.

<sup>3</sup> Dr. N.V. Paranjape, *Studies in Jurisprudence and Legal Theory* 4 (Central Law Agency, Allahabad, 9th Edition)

<sup>4</sup> William Twining, "General Jurisprudence" *Anales de la Cátedra Francisco Suárez*, 39 (2005), 645-688

Law is a rule laid down for the guidance of intelligent beings by an intelligent being who has power over them. It is this intelligent being who is called the sovereign. He is the political superior of the society having a divine purpose to command other political inferiors and his command is bound to be followed.

The theory of Legal Positivism aims to elucidate the position of “*what law is*” and not “*what law ought to be*”. The theory does not consider the moral goals set out by law but confirms its surroundings only to the existing threshold of the norms and rules of the society and the source (singular because the only source of law as per Austin is the command of the sovereign) backing it. The 4 attributes of law as been decided by Austin are command, duty, sanction and political sovereignty.

#### a). COMMAND

Command involves three things: -

- i. A desire concerning someone's behaviour
- ii. An expression of that desire
- iii. A sanction threatened harm for non-compliance

A command is imperative that generates an obligation by the presence of a consequence that would be imposed if noncompliance occurs.<sup>5</sup> It is not a mere wish of the sovereign and is quite different from the concept of a wish or desire since disobedience of the command has its own repercussions. It can be distinguished on the sole ground of the power it holds for inflicting pain or pleasure as per the situation.

#### b). DUTY

The political inferiors of the society are bound or obliged by the command of the sovereign. It is the enforcement of obedience to such command which is termed as a duty. There exists a correlation between command and duty. A command can be enforced as long as duty exists and similarly, where there lies a duty, it can be issued through a command. Austin has covered this notion in his book *The Province of Jurisprudence Determined*:

*He who will inflict an evil in case his desire be disregarded, utters a command by expressing or intimating his desire: He is liable to the evil in case he disregard the desire, is bound or obliged by the command.*<sup>6</sup>

#### c). SANCTION

Sanction or enforcement of disobedience can be said to be factors for ensuring

<sup>5</sup> John Austin, Lectures on Jurisprudence (John Murray, Albemarle Street, London, 1885)

<sup>6</sup> John Austin, The Province of Jurisprudence Determined (John Murray, London, 1832)

compliance to the command. Sanction is the tool of coercion used to impose any system of imperative law. To assure and administer justice, the state employs physical force as a penalty. As a result, it is the main focus of Positive Law. It instils fear of retribution if one violates the laws. Sanction is related to duty shaped by a sovereign authority's demand, and sanction becomes an imperative prerequisite for law enforcement.

#### d). SOVEREIGN

The Sovereign is the most powerful individual of society exercising unparalleled political influence. It is the only source of emergence of law and all other individuals of the society must be habitually obedient towards it. Austin has discussed two sorts of marks that sovereignty has on a political society – *positive mark of sovereignty* which means that bulk of the society shall pay habitual obedience to a determinant or political superior. This mark of sovereignty can also be termed as internal sovereignty because it focuses on the political conditions within a state. The other is the *negative mark of sovereignty* which clearly states that this determinant or political superior shall not be in the habit of obedience to any other superior. In other ways, it means that there can only be one sovereign in a political society.<sup>7</sup>

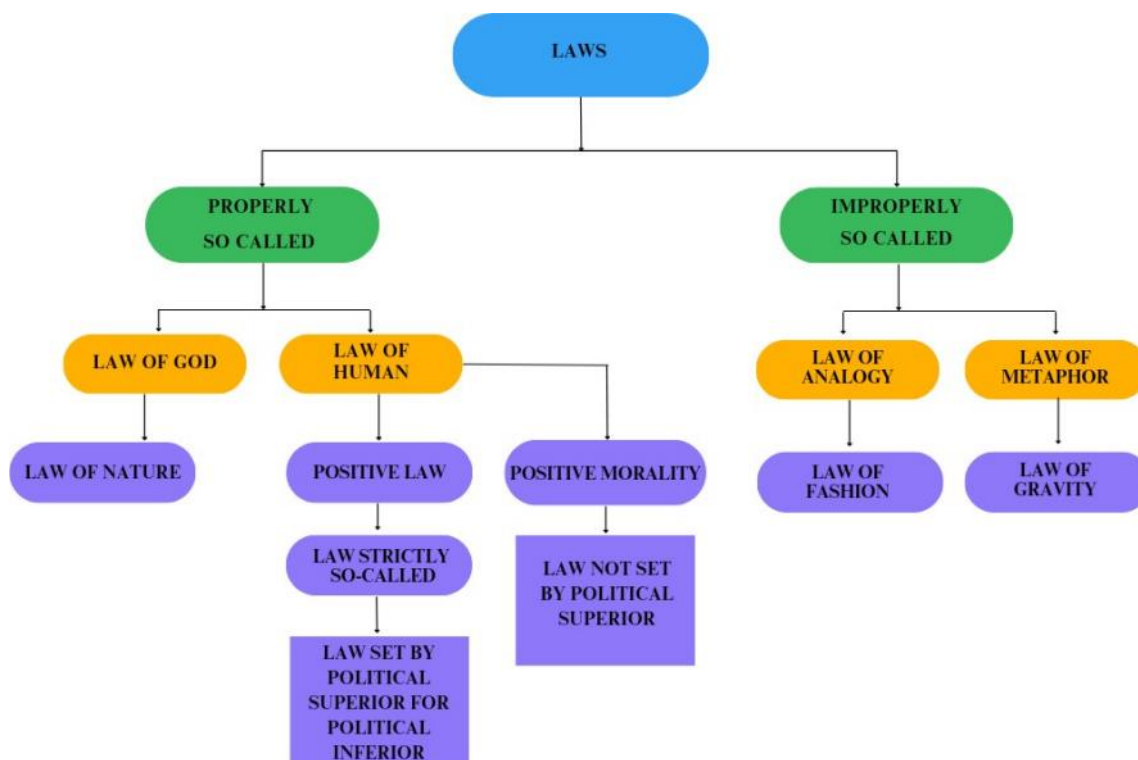
#### IV. TYPES OF LAW

The position of Positive Law has been evidently made clear so far; it actually exists in the society unlike law which ought to be. These two categories have been termed as *law properly so-called* and *law improperly so-called*.

A complete classification of law is given below:

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<sup>7</sup> Ramesh Bajiya, “Critically Analyse Sovereignty and Independent Political Society and Locate Sovereign in Indian Legal System”, SSRN 1 (2010)



The two types of law recognised by Austin are Law of God or Natural Law and Law Made by Humans or Positive Law. Divine Law is defined as that which God himself establishes for the beings. The scriptures are widely acknowledged as the source of divine law.

The political superior is the direct source of human law, correctly referred to as 'positive law' by Austin. According to Austin, jurisprudence has solely been connected with positive law.

Laws Improperly So-Called do not fit the requirements of a true legal system and hence they are not the true form of law. In spite of their false nature, they do tend to exist in society in the form of analogy such as the laws of fashion or in the form of metaphors such as the law of gravity.

Laws made by humans consist of true law or positive law and positive morality. John Austin has fully ignored morality in his jurisprudence to the extent that it may be considered as the law only at the discretion of the sovereign:

*“Now a merely moral, or merely customary rule, may take the quality of a legal rule in two ways: -it may be adopted by a sovereign or subordinate legislature, and turned into a law in the direct mode; or it may be taken as the ground of a judicial decision, which afterwards obtains as a precedent; and in this case it is converted into a law after the judicial fashion. In whichever of these ways, it becomes a legal rule, the law into which it is turned emanates from the sovereign or . . . judge, who transmutes the moral or imperfect rule into a legal or perfect*

*one.*"<sup>8</sup>

Legal Positivism defines itself as law with force. The "essence" of law, therefore, becomes a force, for not only does "the idea of coercion..., become inseparably connected with that of law," but even more specifically "it is upon punishment that everything turns."<sup>9</sup> The ingredients forming positive law have already been discussed. They are command, duty, sanction and sovereign. It is only this command theory which forms the crux of Austin's jurisprudence.

## V. EXCEPTIONS

Austin might have disregarded any other source of law other than the words of the sovereign but he has also been competent enough to appreciate some exceptions regarding his work. They include laws not strictly so-called but can be justified to some extent and form part of jurisprudence.

- 1) Declaratory laws: also called as explanatory laws, they cannot be classified as true law because the sole nexus behind them is to explain the law that is already been practised in the society. They merely declare the duties of the citizens and explain to them the interpretation of the command being imposed on them.
- 2) Repealed laws: these laws are not commands but act as revocations of commands. The process of eliminating some laws may impose new duties or perhaps resurrect parts of the earlier laws.
- 3) Imperfect laws: they consist of such laws which are not backed by any legal sanction. No sanction means that the habitual obedience of the society is at risk and hence Austin does not classify them into the command theory.

John Austin's work pioneered a new wave of sovereign rule into the practice of jurisprudence. On the same note, he was subjected to heavy criticism from multiple jurists and lawmakers of the world. Dr Jethro Brown had observed, "even the most despotic legislator cannot think of or act without availing himself of the spirit of his race and time".<sup>10</sup>

## VI. THE DREADFUL MAN

The annals of history bear witness to the rise and fall of dictators, individuals who wielded

<sup>8</sup> John Austin, *The Province of Jurisprudence Determined* (John Murray, London, 1832)

<sup>9</sup> Jeremy Bentham, *Limits of Jurisprudence Defined* (Everett, 1945 Ed)

<sup>10</sup> Dr. N.V. Paranjape, *Studies in Jurisprudence and Legal Theory* 34 (Central Law Agency, Allahabad, 9th Edition)

immense power and shaped the destinies of nations. Among the notorious figures that stand out are Adolf Hitler, Muammar Gaddafi, Benito Mussolini, and Saddam Hussein. These dictators left an indelible mark through their ruthless reigns, characterized by oppression, human rights abuses and brazen disregard for the principles of democracy and justice.

Interestingly, the theories of legal positivism, particularly John Austin's command theory, provide a lens through which we can examine the actions of these dictators. Austin's theory posits that laws are mere commands of a sovereign authority, raising intriguing questions about how these dictators utilized their authority and manipulated the legal systems to enforce their will and perpetrate heinous acts. By exploring the correlation between the actions of these dictators and Austin's command theory, we can shed light on the disturbing reality of how authoritarian leaders exploit their authority and subvert legal frameworks, highlighting the potential dangers that arise when power goes unchecked.

## VII. ADOLF HITLER (1889-1945)

Adolf Hitler was born in Braunau am Inn, Austria-Hungary, on April 20, 1889, and rose to become the head of Nazi Germany from 1934 to 1945. In Munich, he joined the German Workers' Party, which was later renamed the National Socialist German Workers' Party (NSDAP) or Nazi Party. Many Germans responded well to Hitler's captivating speeches and nationalist rhetoric, helping to his surge in popularity.

### a). HITLER'S RISE TO POWER

A series of events unwhirled after the end of World War I led to the rising of Adolf Hitler. Germany was already recovering from the backlash after World War I when Adolf Hitler introduced himself to the masses with a propagation to ensure national unity among the masses and the ultimate goal of restoring the greatness of their nation. The social discontent at the time was enough to refuel the hearts of the German crowd who started looking up to Adolf as their Messiah.

In 1919, Hitler joined the German Workers' Party (DAP), subsequently known as the National Socialist German Workers' Party (NSDAP) or Nazi Party. Because of his great oratory talents, charisma, and ability to connect with the public, he quickly climbed up the ranks. As party head, Hitler instituted organisational changes, increased membership, and built a powerful propaganda machine. Much credit also goes to the autobiography he wrote during his imprisonment which was the result of a failed coup against the government at that time period. The book *Mein Kampf* highlighted his own political ideology and the visions he had set out to achieve for ensuring the greatness of German blood.

Situations steered completely in his favour when he was appointed as the Chancellor of

Germany in 1933 following a series of electoral victories by the Nazi Party. Shortly afterwards, a fire broke out in Berlin's Reichstag building, and officials apprehended a young Dutch communist who admitted to setting it. Hitler exploited this incident to persuade President Hindenburg to proclaim a state of emergency, suspending several civil liberties throughout Germany, including freedom of the press, freedom of expression, and the ability to attend public gatherings. The police were given the right to hold persons without a warrant, and the authority normally exercised by regional governments became subject to Hitler's national regime's control. Hitler quickly began undermining Germany's democratic institutions and imprisoning or murdering his main opponents. When Hindenburg died the next year, Hitler assumed the titles of führer, chancellor, and army commander-in-chief. He massively increased the army, restored conscription, and began creating a new air force, all in contravention of the Treaty of Versailles.<sup>11</sup>

#### **b). POLITICAL MINDSET POPULARISED**

The quote "Either victory of the Aryan, or annihilation of the Aryan and the victory of the Jew" itself sufficiently gives a clear reflection of the ideology propagated by Hitler during his regime.<sup>12</sup> Hitler believed in the Aryan race's superiority, regarding it as the finest and purest form of humanity. He promoted a racist philosophy aimed at eliminating or subjugating perceived inferior races, particularly Jews, Roma, and Slavic peoples. The foreign policy of the Nazi Party aspired to eliminate Europe of Jews and other "inferior" peoples, assimilate pure-blooded Aryans into a substantially expanded Germany—a "Third Reich," and pursue the continuous war on Russia's Slavic "hordes," whom Hitler considered Untermenschen (subhuman). Jews were blamed for the downfall of the Weimer Republic and all representation of Jews was despised by the Nazis and their leader Adolf Hitler; finance capitalism (which the Nazis believed was controlled by powerful Jewish financiers), international communism (Karl Marx was a German Jew, and the German Communist Party's leadership was heavily Jewish) and modernist cultural movements such as psychoanalysis and swing music.<sup>13</sup>

#### **c). HORRORS COMMITTED**

It is also important to discuss The Holocaust which was perpetrated at any official level by the Germans under the pretext of the commands given by their ruler or Führer, Hitler. The Holocaust was the systematic, well-planned state-sponsored persecution and murder of millions of Jews by the Nazis and their allies and collaborators. The United States

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<sup>11</sup> <https://www.nationalww2museum.org/> (Visited on 18 June 2023)

<sup>12</sup> Adolf Hitler during his rally in Munich in 1922

<sup>13</sup> <https://www.jewishvirtuallibrary.org/adolf-hitler> (Visited on 18 June 2023)



Holocaust Memorial Museum defines the years of the Holocaust as 1933–1945.<sup>14</sup> The affected people did not only include the Jewish sect but also targeted Roma people, disabled individuals, political dissidents, LGBTQ+ individuals and other sections of society that were deemed 'undesirable' by the Nazis. The Holocaust was distinguished by a network of concentration camps, forced labor, mass shootings, and extermination camps created particularly for mass murder, such as Auschwitz, Treblinka, and Sobibór. Throughout Nazi-occupied Europe, Jewish communities were targeted for deportation, discrimination, and, ultimately, annihilation. To carry out their murderous purpose, the Nazis used a variety of means, including gas chambers, mass killings, starvation, and horrific medical experimentation.

A proper timeline for the events leading to The Holocaust has been provided:

- **1933:** Adolf Hitler becomes Chancellor of Germany, The Nazi Party begins implementing discriminatory laws against Jews
- **1938:** Germany annexes Austria (Anschluss), Kristallnacht (Night of Broken Glass): A nationwide pogrom against Jews in Germany and Austria
- **1939:** Germany invades Poland, marking the beginning of World War II, Ghettos are established to segregate Jews
- **1941:** Einsatzgruppen, mobile killing units, carry out mass shootings of Jews in Eastern Europe, Germany invades the Soviet Union, The Wannsee Conference discusses the implementation of the "Final Solution."
- **1942:** The systematic deportation of Jews to extermination camps begins, Auschwitz-Birkenau becomes fully operational as an extermination camp, Mass deportations from ghettos to death camps increase.
- **1943:** Warsaw Ghetto Uprising: Jews in the Warsaw Ghetto resist deportation, but are ultimately suppressed, Heinrich Himmler orders the cessation of mass killings by mobile killing units.
- **1944:** The deportation and extermination of Jews from Hungary begins, Resistance movements and uprisings occur in various ghettos and concentration camps
- **1945:** Allied forces liberate concentration camps, The Nuremberg Trials begin, holding Nazi officials accountable for their crimes, World War II ends in Europe

The amount of information readily available on the horrors that the people had to witness

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<sup>14</sup> <https://encyclopedia.ushmm.org/content/en/article/introduction-to-the-holocaust> (Visited on 18 June 2023)

during Hitler's regime can altogether account for another different research. It should also be noted that the information regarding The Holocaust has not been exhaustively covered in the research paper due to certain reasons. The aim of the paper has been to align the political regime of Adolf Hitler with the Sovereign Theory of John Austin to see how well both instances complement one another.

### **VIII. ADOLF HITLER AND AUSTINISM**

Austin's legal theory emphasises that law is a directive issued by a sovereign power and enforced through sanctions. Hitler wielded enormous power and influence as the head of Nazi Germany, effectively serving as the sovereign. He utilised his authority to issue orders that shaped Nazi Germany's legal system. Totalitarianism characterised Hitler's rule, in which the state had complete authority over all parts of society, including the legal system. Hitler's orders were intended to develop and enforce his ideology, stifle criticism, and maintain total control over the population.

Hitler's acts showed his belief in his will's supremacy. He considered himself as the embodiment of the state, and his instructions as the pinnacle of power. Under Hitler's dictatorship, the legal system was subjugated to his personal goals and objectives, making his will the source of law. Hitler's orders and actions were intended to eliminate resistance and consolidate his control. He employed legal methods to harass and marginalise unwanted groups including as Jews, political dissidents, and minority groups. The judicial system was used to implement his discriminatory policies and to put into action his vision of a racially pure society.

Austin's theory emphasises the significance of obeying the sovereign's commandments. Hitler expected complete submission from both the legal authority and the general public. Disobeying Hitler's orders typically resulted in harsh punishments such as incarceration, torture, or death.

### **IX. CONCLUSION**

The investigation of Adolf Hitler's acts and their relationship to Austin's theory of sovereignty and command demonstrates a strong alignment with legal positivist concepts. As the head of Nazi Germany, Hitler possessed enormous power and acted as the sovereign authority. As he imposed his ideology, crushed criticism, and solidified his power over the population, his instructions effectively changed the legal structure. Hitler's regime exhibited a totalitarian system in which the state exercised ultimate control over all parts of society, including the judicial system. The supremacy of Hitler's will and the requirement of unswerving obedience to his directives reflected Austin's command theory

of law's core foundations. Hitler's use of the law to enforce discriminatory policies, persecute particular groups, and advance his goal of a racially pure society demonstrated the legal system's subordination to his personal desires. The consequences for violating his directives, including jail and death, emphasised his regime's authoritative nature.

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