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PETER HARRISON

A THEORY OF LEGISLATION FROM A SYSTEMS PERSPECTIVE

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ABSTRACT

In this thesis I outline a view of primary legislation from a systems perspective. I suggest that systems theory and, in particular, autopoietic theory, as modified by field theory, is a mechanism for understanding how society operates.

The description of primary legislation that I outline differs markedly from any conventional definition in that I argue that primary legislation is not, and indeed cannot be, either a law or any of the euphemisms that are usually accorded to an enactment by a parliament. I cite two reasons for such a conclusion.

The primary reason for my conclusion is that I see primary legislation as being an output of a particular subsystem of society, while the law is the output of another subsystem of society. I argue that these outputs are the discrete products of separate subsystems of society. I argue that primary legislation should be viewed as a trinity. The first state of this trinity is that, upon enactment, primary legislation is a brute fact in that it is but a thing and the only property of this thing is that of being a text. The second state of this trinity is that following the act of enactment, the thing enacted will be reproduced and this reproduction is a separate thing that will sit in some repository until used. The third state of this trinity is that, upon use, this thing that is primary legislation will be transformed into an object and the user will attribute such functions and attributes to that object as are appropriate to the context within which the object is used. The thing has therefore become an object and an institutional fact. The second reason for my conclusion that primary legislation is not a law relates to the fact that the thing that is primary legislation is a text and the only function of a text is that it is available to be read. That is to say, of itself, a text is incapable of doing anything: it is the reader who defines the status of the text and attributes functions and attributes. Upon use, primary legislation thus becomes a censored input for future action and one of these actions may be some statement by a court of law.
I assert that the view of primary legislation that has been accepted within the body politic is the product of the discourse of a particular subsystem of society that I have designated ‘the legal practice’, and I outline why and how this has occurred. Outlining a view about primary legislation also necessitates outlining a view as to the nature of the law. I assert that the law is a myth and I see this myth as a product of the discourse of the legal practice. I have asserted that although it is the judges that state the law, such statements flow from the discourse of those who practise the law.
ACKNOWLEDGEMENTS

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The general form of a proposition is: This how things are. That is the kind of proposition one repeats to oneself countless times. One thinks that one is tracing the outline of the thing’s nature over and over again, and one is merely tracing round the frame through which we look at it.

Hughes John

*Essays on Ludwig Wittgenstein*

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