# LAW AND POLITICAL SCIENCE

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**Abstract** - A critical analysis of law and political science, how it relates together and the output of its relation in a group, entity or society. Law is perceived as a legislative pronouncement, rules that should guide one's action in a group, entity or society, however law means more than mere rules of human conduct established and enforced by the authority of an organized society through its government, and this brings us to political science which is the branch of knowledge that deals with the state and systems of government, the scientific analysis of political activities and behaviours, political science denotes politics and politics is present in every group, entity or society. A blend of law and political science, gives birth to the rule of law.

**Keywords** - Law, Political Science, Politics, Rule of Law.

## I. INTRODUCTION

Law and political science are very important subject matter to a group, entity or society, they regulate human behaviour in a given jurisdiction as well as its mode of rulership, it is a means of social change. While law connote the system of rules which a particular group, entity or society recognize as regulating the actions of its members and which is usually enforced by the imposition of penalties, political science on the other hand is a social science concerned with the analysis of system of government and governance which indeed influence and deal on the social structure. The extent of social stability in a given jurisdiction, is the extent to which law and political science have evolved. A stable political system exists once the law is properly implemented and venerated above the rulers, this is called the rule of law, for without politics law carries no value and without law politics become harmful.

## II. LAW

Law is the whole body of rules, written or unwritten, binding on members of a particular group, entity or society. It is usually backed up with sanctions. Law accordingly to the Black Law dictionary [1] is that which is laid down, ordained or established. A rule or method according to which phenomena or actions coexist or follow each other, a system of principles and rules of human conduct being the aggregate of those commandments and principles which are either presented or recognized by the governing power in an organized jural society as it will in relation to the conduct of the members of such society, and which it undertakes to maintain and sanction and to use as the criteria of the action of such members. Law is a solemn expression of legislative will, it orders and permits and forbids, it announces rewards and punishment, its provisions generally relate not to solitary or singular cases, but to what posses in the ordinary cause of affairs. According to Roland R. Foulke [2] A number of different definitions of law have been collected in the note which do not by any means include all which have been propounded. A sufficient number have been referred to, however, to indicate the general trend of opinion and demonstrate that the failure of the definitions arises from an insufficient analysis of the facts and an attempt to lay stress on one or more external factors to the exclusion of others. None of these definitions brings out the abstract nature of law as a pure metal conception, and all overlook variety of factors which determine conduct. The popular view, and that of English-speaking judges and lawyers, is that law describes the power of the state in determining conduct, which power may be exercised by prescribing a rule, with or without a sanction, or by affording redress according to the external factors operating in the community independently of any action by the legislature. This view, however, appears inaccurate upon careful analysis. We have two element, the description of the conduct and the power of the state through various organization enforcing the conduct so described. The power of the state is one element, the description of the conduct another. These elements may be separated, but the two are generally both designated by the team law. If we look at the conduct solely through the description, we include all conduct, past and present, which may be reduced to teams of order. If we consider solely the power of the state, we consider only future conduct and endeavor to state what the conduct may be expected to be.

John Austine work "The Province of Jurisprudence Determined"[3] defined law as a command set by a superior being to an inferior being and enforced by sanctions (punishment). The superior being is the state or authority and the inferior being is the individual, Austine ascribed the command of a sovereign authority and the presence of sanctions as definite features of law and stated that the essential characteristics of law were the command of a sovereign authority, supported by sanctions. Law is a system (or order) of social relationships which correspond to the interest of the dominant class and is safeguarded by the organized force of that class [4].

Law is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated [5]. Law is the sum of the compulsory rules in force in a state [6]. The prophesies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law [7]. Law is not a brooding omnipresence in the sky but a flexible instrument of social order, dependant on the political values of the society which it purports to regulate [8]. Law is rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong [9]. The law of the state or any organized body of men is composed of the rules which the courts, that is, the judicial organs of that body, lay down for the determination of legal right and duties [10].

**Theories of Law:** There are various theories of law which include but not limited to; natural Law theory, positive law theory, marxist law theory, and realist theory of law.

Natural law theory is the earliest of all theories. It was developed in Greece by Philosophers like Theraclitus, Socrates, Plato and Aristole. It was then followed by other philosophers like Gairus, Cicero, Dquinas, Gratius, Hobbes, Lock, Rousseau, Kant and Hume. In their studies of the relation between nature and society, these philosophers have arrived at the conclusion that there are two types of law that govern social relations. One of them is made by person to control the relations within a society and so it may vary from society to society and also from time to time within a society. The other one is that not made by person but controls all human beings of the world. Such laws do not vary from place to place and from time to time and even used to control or weigh the laws made by human beings. These philosophers named the laws made by human beings as positive laws and the laws not made by human being as natural laws. Natural law is given different names based on its characteristics. Some of them are law of reason, eternal law, rational law and principles of natural justice. Natural law is defined by Salmond as "the principle of natural justice if we use the term justice in its widest sense to include all forms of rightful actions". Natural law theory has served different societies in many ways. The Romans used it to develop their laws as Jus Civile, laws governing roman citizens, and Jus Gentium, laws governing all their colonies and foreigners. However, no scholar could provide the precise contents of the natural law. As a result, it was subjected to criticisms of scholar like John Austin who rejected this theory and later developed the imperative called positive law theory [11]

**Positive law theory:** it is also called imperative or analysts law theory. It refers to the law that is actually laid down. It has the belief that law is the rule made and enforced by the sovereign body of the state and there is no need to use reason, morality or justice to determine the validity of law. According to this theory, rules made by the sovereign are laws irrespective of any other considerations. These law therefore, vary from place to place and from time to time. The followers of this theory include Ausitn, Bentham and H.L.A Hart. For these philosophers and their follower law is a command of the sovereign to his/her subjects and there are three elements in it; command, sovereign, and sanction command is the rule given by the sovereign to the subject or people under the rule of the sovereign. Refers to a person or a group of persons demanding obedience in the state sanction is the evil that follows violations of the rule. This theory has been criticized by scholars for defining law in relation to sovereignty or state because law is older than the state historically and this shows that law exists in the absence of state. Thus, primitive law (a law at the time of primitive society) serves the same function as does nature law.

With regard to sanction as a condition of law in positive law, it is criticized that the observance of many rules is secured by the promise of reward (for example, the fulfillment of expectations) rather than imposing a sanction. Even though sanction plays a role in minority who is reluctant, the law is obeyed because of its acceptance by the community "habit, respect for the law as such and a desire to reap the rewards which legal protection of acts will bring" are important factors for the law to be obeyed. The third main criticism of definition of law by Austin (positive law theory) is that it is superficial to regard the command of the sovereign as the real source of the validity of law. It is argued that many regard law as valid because it is the expression of natural justice or the embodiment of the spirit of people. [12]

**Marxist law theory:** believe that private property is the basis for the coming into existence of law and state. They provide that property was the cause for creation of classes in the society in which those who have the means of production can exploit those who do not have these means by making laws to protect the private property. They base their arguments on the fact that there was neither law nor state in primitive society for there was no private property. The theory has the assumption that people can attain a perfect equality at the communism stage in which there would be no private property, no state and no law. But, this was not yet attained and even the practice of the major countries like the former united soviet socialist Russia (U.S.S.R) has proved that the theory is too good to be true. Nevertheless, this theory is challenged, the theory of private property triumphs [13].

**Realist theory of law:** it is interested in the actual working of the law rather than its traditional definitions. It provides that law is what the judge decides in court. According to this theory, rules not

put to use to solve practical cases are not laws but merely existing as dead words and theses dead words of law get life only when applied in reality. Therefore, it is the decision given of the judge but not the legislators that is considered as law according to this theory. Hence, this theory believes that the lawmaker is the judge and not the legislative body. This theory has its basis in the common law legal system in which the decision previously given by a court is considered as a precedent to be used as a law to decide future similar case. This is not applicable in civil law legal system, which is the other major legal system of the world, and as a result this theory has been criticized by scholars and countries following this legal system for the only laws of their legal system are legislation but not precedents. This implies that the lawmaker in civil law legal system is the legislative body but not the judge. The followers of this theory include justice Homes, Lawrence Friedman, John C. Gray, Jerom Frank, Karl N. Lewelln and Yntema. [14]

**Types and classification of law:** There are many and different types and classification of law, depending on the standpoint of a particular subject matter, for the purpose of these paper we shall stick to the broad and major types and classification of law, and following the various theories of law, the major type of law are natural law and positive law.

Natural law rest on eternal or divine law, divine law is the law of God as the creator of nature. He is said to direct the powers and forces governing everything in the universe including man and the way man conduct his affairs on earth. Natural law is thus the fixed principles governing the physical world, and the pattern of human conduct laid down eternally as God's law to man, these laws are capable of being grasped by the human mind, they are common to all of mankind.

Positive law is man made law, it is law that is actually and specifically enacted or adopted by proper authority. The source of positive law is traceable to the will of the sovereign that is the sovereign authority. Positive law is dependent on legal sanctions and subject to enforcement; the sanctions may be punitive or prohibitive.

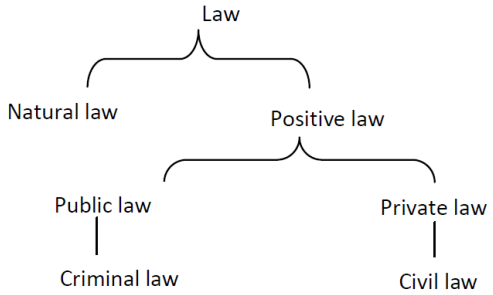
The main types of classification of positive law are public law and private law, civil and criminal law.

**Public law:** A branch of law that involves the state or government and its citizenry, its governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to society.

**Private law:** A branch of law involved with private persons, properties, and relationships.

**Civil law:** They are laws enacted to settle dispute between individuals (which can include companies and co-operations.), they are laid down to control the conduct of private life in all respect. If found liable for breach of a civil law, the consequences is usually payment of compensation and grants of injunctions among other remedies.

**Criminal laws:** They are laws created to protect the society as a whole, and it provides punishment for those who break those laws. Criminal law sets out types of behaviour that are forbidden within society, and if the behaviour occurs, the perpetuator will be made to go through the criminal justices system. It is the state or governing authority that prosecute under criminal law and not the victims.




The above diagram is not exhaustive, but covers the types and classifications of law for the purpose of this paper.

**Functions of Law:**

1. The primary function of law is to maintain public order. This is usually expressed in the cliché "Law and Order" in the first instance, law evolved as an alternative to private fend and vengeance, and as a supplement to informal social processes by which individuals deal with disputes. Law provides a rationalized and conclusive settlement to disputes, which is subject to public scrutiny.
2. Law suppresses deviant behavior, the meaning of "deviance" changes with time and the law mirrors these changes and acts to suppress deviance as it is perceived in a group, entity or society.
3. Law regulates the affairs of men by enforcing a uniform and accepted code of conduct, it recognizes basic human interests and provides a framework of rules for their enforcement.
4. Law constitutes and regulates the use of power in a group, entity or society. It does this by defining the extent to which the recipients of power can exercise their rights. Thus, the law provides for a clear regulation of governance.
5. Law communicates and enforce social values. In this regard, law endorses some moral values into the legal system, it promotes or regulates the social order by forbidding certain types of conduct and encouraging others, a wide range of matters formerly left to the individuals conscience, have been made the subject of state control through law.

## III. POLITICAL SCIENCE

Political science is the branch of knowledge that deals with the state and systems of government, the scientific analysis of political activity and behavior, it is a social science and Aristotle called it the Master Science in tribute to its crucial role in the ordering of the various relationship within human society [15]. Political science is the science of politics and politics are those activities associated with governance, it is also the process of making decision that apply to members of a group, entity or society. Science according to Oxford Advanced Learner's Dictionary [16] is "knowledge about the structure and behavior of the natural and physical world, based on facts that you can prove". Political science deals extensively with the theory and practices of politics, which is commonly thought of as determining of the distribution of power and resources. The term political science has not always been distinguished from political philosophy or political thought from which political science evolved and some of the early propounders were Socrate, Plato and Aristotle among others. Political science generally deals with all that has to do with constituted authorities and governance. Political science is synonymous to politology and [17] it is the branch of social science concerned with theory, description analysis and prediction of political behaviour, political system and politics broadly construed. Politics is a (if not the) quintessential human activity, it brings to bear on the relations between persons many of the qualities that are unique to the human species. All of those involved in politics are agents of some kind or another. Their action are not completely predetermined by the physical or social context in which they find themselves, and they are intrinsically restless with regard to that environment. Some are dissatisfied with the existing situation and, hence, willing to try to change it. In so doing, they are very likely to provoke a response from those who are not so dissatisfied. The latter will react to defend the status quo and therefore, also become agents to do so, both types have to be able to imagine future conditions and the alternative actions that might improve or threaten the quality of within it [18]. According to Philippe C. Schmitter, what we think of as politics rest on the exercise (or the threat of the exercise) of power and of resistance to it. What is unique to human beings is their capacity to domesticate this activity by inserting rules and practices that serve to channel the actions and reactions of agents according to mutually agreed upon rules and/or reliably applied practices. These regulated exchange, negotiation, deliberations and decision-making allow conflicts to be resolved pacifically and, thereby, preclude the resort to violence that would otherwise be needed to resolve the differences in resources and preferences that give rise to political activity in the first place. Power in turn rest on the uneven distribution of resources and returns among human beings living within a given political unit. Some of these asymmetries may be "natural" given the different endowments that human beings receive upon birth, but most will be "social" and rooted in subsequent accomplishments (or non accomplishments) during their respective life-cycles along with the unequal inheritance of previously established social, economic and political privilege. Agents seeking to change the status quo - progressive in the generic sense, whether individual or organizations, will be tempted to exploit asymmetries when they try to compel others to conform to their preferences, either by threatening to deprive them of resources or by promising to reward them with greater resources. The defenders of the status quo - conservatives, will resist these efforts and will usually have an intrinsic advantage due precisely to their incumbency. They will try to control the agenda of public choice, influence the course of decision-making, suppress the demands for change and/or alter the preferences of the challengers of these challenges and conflicts should be a reaffirmation (or, in many cases, a revision) of the status quo ante-provided they are contained within a pre-established, mutually acceptable set of rules and that the incumbents have come to power by observing those rules [19].

Branches of political sciences: Political science has several primary branches and they are;

1. Political Philosophy: It is the oldest of the branches and is often referred to as normative (how it should be). It is a philosophical reflection on how best to arrange our collective life, our political institution and our social practices.
2. Empirical Data Analysis: The newest area of the discipline, marked by the behaviourist attempts to the theorise political behavior. The empirical approach relies on real world data and results rather than theories and concepts.
3. Theories of the State: The most famous theory is the social contract theory, the theory goes to tell that the state came into existence out of a contract between the people and the sovereign at some point in time. The other theories are evolutionary theories, force theory and divine right theory.
4. Political Economy: It is a study of philosophy and ideology that studies the evolution of political and economic ideas, it is the study of the relationship between individuals and society.
5. Comparative Politics: This is the study of a broad range of political activities, government and other political institution, it is characterized by an empirical approach based on the comparative method, it is the study of the domestic politics, political institution and conflicts of countries.
6. International Relations: Is the study of the interactions of states through trade and commerce, migration, the internet and through social media and concerns about pressing global environmental problems.

7. Public Administration: It is the studies of the implementation of government policy, the branch of political science that deals with bureaucracies.

## IV. RULE OF LAW

Rule of law connote the supremacy of the law over a political space, it is the rule of law as opposed to the rule of man.

In the words of Nelson Mandela [19] "The rule of law, as I (admittedly a long retired old lawyer) understand it, refers to a structural exercise of rule as opposed to the Idiosyncratic will of kings and princess. Even where the later may express itself benevolently, the former is morally and politically superior. Where the rule of law does not apply, rulers assume entitlement to rule, the rule of law on the other hand, places the emphasis upon structured responsibility and obligation".

Rule of law is the authority and influence of law in governance, especially when viewed as a constraint on individual and institutional behaviour, under the rule of law all members of a society or entity are considered equally subject to publicly disclosed law or legal codes and processes. The essence of the rule of law is the absolute supremacy or predominance of the law over everybody both the rulers and the ruled, this presupposes that men should rule according to the law as stated and not according to their own whims and caprices.

The concept of rule of law is that the state is governed, not by the ruler or the nominated representatives of the people but by the law. The rule of law requires that people should be governed by accepted rules, rather than by the arbitrary decisions of rulers. These rules should be general and abstract, known and certain, and apply equally to all individuals. Constitutionally governments are based on a previous commitment to freedom under the rule of law. The essential attribute of constitutionalism is a legal limitation on government. Under constitutionalism, rulers are not above the law, government power is divided with laws enacted by one body and administered by another, and an independent judiciary exist to ensure laws are administered objectively. An efficient and effective constitution allows government to function to protect the lives and liberties of citizens without violating the rights of some to provide gains to others. Rule of law is of old origin and is an ancient ideal. It was discussed by ancient Greek philosophers such as Plato and Aristotle around 350BC. Plato wrote: "where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state." Likewise, Aristotle also endorsed that "law should govern and those who are in power should be servants of the laws" [21]. The phrase 'Rule of law' is derived from the French phrase 'la principe de legalite' (the principle of legality) which refers to a government based on principles of law and not of men [22]. Rule of law is one of the basic principles of the English constitution and the doctrine is accepted in the constitution of the United State of America (U.S.A) and other developed countries of the world, and even developing countries because it is trending and it is indeed the present day political arrangement realities. The entire bases of Administrative law is the doctrine of the rule of law, legal historians have amply demonstrated the intrinsic linkage between legal developments and the historical settings in which they take place. The concept of the Rule of law is no exception. It is grounded in the ideas of justice, fairness, and inclusiveness discussed by Aristotle; in the foundations of religious thought such as the ten commandments and in seminal historical documents such as the Magna Carta, which embodied the principle that government itself is bound to abide by the law. Since then, philosophers and jurists from all corners of the world have molded the philosophical under pinning's and judicial content of the Rule of Law. Today, the Rule of law is the foundation of good governance. This requires adherence to constitutional supremacy, recognition that government and the governed are equal before the law, acknowledgment that government itself is limited by the law and can not engage in any arbitrary exercise of power, and recognition that individuals are endowed with certain inalienable rights that can not be denied even by legitimately constituted governments.

Today, the rule of law is comprised of an intricate chain of fundamental ideas, which include equality before the law, equal treatment before the law for government and the governed, the independence of the judiciary, transparency, consistency, and accountability in the administration of law, and the notions of equity, justice and fairness, like all chains, the rule of law is only as strong as its weakest link.

The term Rule of Law means that no man is above the law and that every person is subject to the jurisdiction of ordinary courts of law, irrespective of his rank and position. Rule of law requires that no person should be subjected to harsh, uncivilized or arbitrary treatment. Rule of law is associated with the 'law' which means that man or a society must not be govern by man or ruler but rather they must be govern by law. The expression rule of law explains a state of affairs in which everything must be done according to law, it is a state of affair in which there are legal barriers to governmental arbitrariness and there are available legal safeguards for the protection of the individuals [23].

Sir Edward Coke, the Chief Justice in James I's reign was the originator of this concept. In a battle against the king, he maintained successfully that the king should be under God and the law, and he established

the supremacy of the law [24]. The doctrine of the rule of law was popularized by Professor A. V. Dicey in 1885 [20] and its principles are as follows;

Supremacy of the Law: This is the first principle of the rule of law according to Professor A.V. Dicey, he emphasised that the rule of law means there should be lacking of arbitrariness or wide discretionary power, that every act should be controlled by law. The rule of law stipulates that government should be subject to the law, rather than the law subject to government. Supremacy of the Law implies that both the citizenry and the government are subject to the law and hence the law is supreme over all the players in a political setting.

Equality before the Law: Professor A.V. Dicey expressed equality before the law and equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts, are the attribute of the rule of law. This second principle of the rule of law emphasizes that everyone irrespective of rank, shall be subject to the same law and courts.
Individual Rights: Professor A.V Dicey in the third principle of the rule of law has advocated that fundamental human rights of individuals as stated in the constitution or written laws of states or countries, should not just be guaranteed on legal documents but rather that such rights must be made available to individuals or citizens by enforcement of the court of law. For example, in England there are no written constitution and as such rights are the results of judicial decisions.

## V. CONCLUSION

From the foregoing, it is obvious that law and political science run along side, as one cannot healthily strive without the input of the other in a group, entity or society. Law and political science both seek to check and control human behaviour, set acceptable standards for everyone within an entity.

It must be noted that while political science affects law-making process, the law controls and affects the structures and implementation of political science, as both seeks to regulate social life and a successful blend of law and political science, would lead to the rule of law.

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