THE IMPERATIVE PHILOSOPHY OF LAW AND THE CONSTITUTION OF BANGLADESH: A LEGAL ANALYSIS

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Abstract- This article examines John Austin's imperative theory of law, which portrays law as a command from a sovereign that is reinforced by sanctions and applies this concept to the constitutional transition in Bangladesh. It addresses how Austin's legal positivism distinguishes legal validity from moral judgment, emphasizing authority and enforcement over ethical considerations. The analysis rigorously evaluates Bangladesh's constitutional modification through the lens of command theory, illustrating how sovereign power has often superseded democratic principles and individual rights. Some revisions conform to utilitarian principles or express widespread acceptance, while others exhibit authoritarian imposition apart from ethical considerations. The study finds that while Austin's theory offers a coherent structural account of legal authority, it insufficiently addresses the ethical foundations necessary for constitutional legitimacy. In Bangladesh, the Constitution frequently functions more as a tool of sovereign authority than as a guardian of rights, highlighting the conflict between legal positivism and democratic constitutionalism.

Keywords: *Command; Sovereign; Sanction; Constitution; Amendment.*

INTRODUCTION

The Latin phrase "juris prudentia," which means "skill in the law" or "knowledge of the law," is where the word "jurisprudence" comes from. The concept of legal positivism developed from the jurisprudence of legal norms throughout the 18th and 19th centuries. One of the main proponents of the Command Law idea, which he proposed as the best legal foundation for creating an effective society, was Mr. John Lang Shaw Austin. According to this philosophy, a sovereign—whether an individual or a group—will issue directives that govern the whole country, and anyone who disobeys these instructions will face consequences. Natural law and positive law are two categories of laws. Positive law refers to the rules that humans have made for human administration, whereas natural law refers to the laws that God has provided for humanity.[1]

According to Austin, the "philosophy of positive law" is jurisprudence. In opposition to natural law philosophy, English barrister and law professor John Austin (1790–1859) created the imperative theory.[2] In 1832, he authored an essay called "The Province of Jurisprudence Determined." According to Austin, a law is a command made for the guiding of an intelligent entity by another intelligent entity that has power over it.[3] Austin proposed that law is a category of command. He defined "command" as "an indication or expression of a desire to act or refrain from acting, supported by the authority to inflict harm on the actor in the event of disobedience." Furthermore, he stated that the person receiving the command is compelled to follow it, and

[1] FITZGERALD PJ, Salmond on Jurisprudence, 12th edn (SWEET & MAXWELL LTD, 1966) 25

[2] ROHINTON MEHHTA, 50 Lectures on jurisprudence, 2nd edn (Snow White Publications, 2000) 29

[3] '*Austin's Legal Positivism*' <http://carneades.pomona.edu/2016Law/02.Austin.html> accessed on 3 October 2018

the resulting injury is described as a "sanction."[4] H.L.A. Hart has criticized this position, arguing that the concept of law as a set of directives supported by threats fails to adequately describe current legal systems.[5]

INTERPRETATION CLAUSE

1) Positive Law and Legal Positivism:

Positivism is derived from the Latin term 'positium', which means posited. Positive law differs from natural law in that it is not based on divine authority and is created by people. Judicial standards are created by the sovereign power of the state, and these laws are not concerned with moral considerations; rather, they focus only on the fairness or inequity of the law. Individuals of the state are required to comply with these laws.[6] Austin is well known for his views on positive law and his "Legal Positivism" theory, which is sometimes called the "command theory of law" since it holds that the sovereign has the authority to impose laws and that noncompliance would result in consequences. The origin of a standard determines its legality, not the content's worth (i.e., whether it embodies a moral principle).[7]

2) Analytical Jurisprudence and Legal Positivism:

Austin was inspired by Jeremy Bentham early in his career, and Bentham's utilitarianism may be seen (with important exceptions) throughout Austin's most well-known works. Austin understands utilitarianism as connecting God's will with utilitarian principles: "The commands revealed by God must be discerned from the language in which they are communicated." The hidden command must be evaluated in terms of usefulness. This particular version of utilitarianism, however, has had no long-term impact, despite being the most popular portion of his work during his lifetime. Some see Austin as an early proponent of 'Rule Utilitarianism', advocating for the examination of the usefulness of 'classes of action' rather than individual actions.

3) Description of Legitimate Positivism Theory:

According to Austin, "a society is politically organized and independent if a dominant human superior, who is not used to obeying a similar superior, commands habitual obedience from a majority of that society."

After clarifying his definition, we get at Austin's theory's characteristics and main focus, which are outlined as follows:

a) General Law constitutes a command.

b) Sovereign is the primary source of law.

c) Sanction is essential for the enforcement of law.

d) Distinction between legal principles and ethical standards.

4) Positivism and Its Three Theoretical Commitments:

a) Justified legislation is based on certain social realities.

b) Legitimacy of law relies on authority acknowledging specified norms of validity as authoritative.

c) There is no overlap between law and morality.

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[4] Gautam Bhatia, '*The Command Theory of Law: A Brief Summary, and Hart's Objections*' <http://legaltheoryandjurisprudence.blogspot.nl/2008/05/command-theory-of-law-brief-summary_and.html> accessed on 9 November 2015

[5] See Gautam, above n. 4 at 2

[6] Kavya Gupta, '*John Austin's Analytical Approach to Positive Law : Explanation, appreciation and criticism*' < https://blog.ipleaders.in/john-austins-analytical-approach-positive-law/> accessed on 1 December 2024

[7] See Kavya, above n. 6 at 3

Austin's theory is based on three key concepts: sovereignty, command, and sanction. We shall now look at some crucial terms:

Sovereign:

Austin defines a sovereign as a person or collective entity with ultimate power over which the majority of political society constantly defers. Positively, this definite superior should be obeyed on a regular basis; negatively, this superior is unaccustomed to obeying others of comparable rank. The direction of the sovereign power must be followed by the majority of persons. Individuals' absolute obedience is not required to create a law.[8]

Command:

The legislation comprises obligatory instruction. Adherence is crucial. The orders are sent from above to down, and citizens are required to follow. According to Austin, if inferiors have a choice, the order does not constitute a law; hence, imperative law is considered national law. Positivism sees law as a representation of the state's will, transmitted via the legislature. Only the overarching instructions are recognized as laws. This idea holds that all laws must have a general command character, separating them from petitions; the former are obligatory when given by the state's top power. In contrast to instructions, failure to comply with a request carries no consequences or punishments. A command has been stated wherever a duty is present, and a duty is then imposed whenever a command is specified.[9]

Sanction:

A penalty is a punitive action linked with a directive that has become law, such as fines, imprisonment, or restitution. Austin uses the term ‘sanction' in a legal sense. According to Austin, penalties are critical for law enforcement because people avoid committing crimes because they are afraid of the consequences of not following the law. Austin contends that if there is no accompanying sanction, all laws must be removed from the category of positive law; hence, in his opinion, all laws devoid of sanction is just positive morality.[10]

CRITICISM OF AUSTIN’S THEORY

Sovereignty:

Austin's idea of sovereignty is today unappreciated in many countries, since power is now divided across three departments of government: legislative, executive, and judicial. Initially, many cultures make it difficult to identify a ‘sovereign’ as described by Austin. Furthermore, focusing on a ‘sovereign’ confuses the understanding of legal system continuity: a new ruler is unlikely to have the 'habit of obedience' that Austin cites as a criterion for a system's rule-maker.

Sanction:

Sanction is not the only tool used by law enforcement; people may follow the law for a variety of reasons, including fear, empathy, respect, and reason. The last resort is punishment and force.

Judge-Made Law (Precedent):

According to Austin's perspective, if law is defined as the command of the sovereign, then judge-made law (precedent) cannot be recognized as law, therefore rendering precedents useless.

[8].Shafia.Lati,’‘*LEGAL.POSITIVISM.AUSTIN’S.THEORY*’<https://www.academia.edu/38080745/LEGAL_POSITIVISM_AUSTINS_THEORY>accessed on 10 December 2024

[9] See Shafia, above n. 8 at 4

[10] Above n. 8 at 4

Theory Conflicts with Other Laws:

The Austinian idea differs from other traditional legal conceptions. International law and constitutional law, like customary law, are not considered law under the Austinian definition since they lack a command from a sovereign power. Austin's "command" model fails to account for certain aspects of law, such as rules that grant authority to officials and private citizens—exemplified by regulations governing wills, trusts, and contracts—while also excluding other areas, such as international law, that we do not typically dismiss as part of the legal framework.

Customs:

Austin's theory ignores tradition. Religious beliefs have an impact on legal systems in several cases; for instance, Muslim and Hindu laws in Pakistan and India are based on religious precepts.

Disrespect to the Moral and Ethical Elements:

Salmond claims that the imperative approach ignores the moral and ethical aspects of the law. Austin maintains that unjust law is law. This is incorrect since the purpose of the law is justice. Another criticism leveled at Austin's command theory is that a framework that depicts law solely in terms of power fails to distinguish between oppressive regimes and governance structures deemed reasonable enough to be recognized as legitimate, or at least as justifications for action, by their own citizens.

THE NOTION OF 'SOVEREIGN' IN INTERNATIONAL LAW

The concept of sovereignty in international law refers to the laws, norms, and conventions that regulate interactions between states and other recognized legal organizations.[11] International law lacks an enforcement authority or, as Austin described, a 'sovereign,' making it completely voluntary undertakings by states.[12] The Permanent Court of International Justice (henceforth referred to as the "PCIJ") decided this issue in the Lotus case, stating that sovereign states' interactions are governed by international law. The legal duties placed on states are the result of their own free will, as expressed in conventions or by customs generally accepted to be representative of the rule of law. Therefore, it is impossible to assume that states' autonomy will be limited.[13]

Additionally, the ability to implement international law depends on states' consent to be bound by an agreement; for example, treaties are considered binding among ratifying states.[14]

The Preamble to the UN Charter defines the United Nations' principal objective, which is to create conditions that require the exercise of respect and good faith in relation to duties drawn from treaties and other sources of international law. Austin's assertion that international law is not 'real law' because of the lack of a 'sovereign' may have some merit; nonetheless, a comprehensive study is necessary to determine the reality of his claim. The consent of states is the cornerstone of international law governing state responsibilities. This is explicit for treaties that need states' permission to be bound, and it is implicit for customary international law, to which states agree to be bound via consensus.[15]

[11] United Nations, Uphold International Law <http://www.un.org/en/sections/what-we-do/uphold- international-law/> accessed on 9 December 2015

[12] See United Nations, above n. 11 at 7

[13] France v Turkey (S.S. Lotus) [1927] PCIJ at para. 44

[14] Vienna Convention on the Law of Treaties 1969, art. 2 (1) (a)

[15] Malcom N. Shaw, International Law, (Grotius Publications Ltd, 2008) 69-128

Furthermore, the enforcement authority of international law for the issues it covers is relatively lacking.[16] The consent of the concerned governments is the only need for the ICJ's jurisdiction in contentious matters.[17] There is no worldwide police force, institutional law enforcement system, or ultimate administrative power. The Security Council may order military action to restore peace and security if an act of aggression has occurred or is imminent.[18] Additionally, any permanent member of the Council may impede any enforcement action.[19] Therefore, as analyzed, there is no legitimate 'sovereign' power for the implementation of international law. On the other hand, several provisions of the UN Charter may be associated with aspects of "sovereign power."[20]

Command Theory, Constitution and the Constitutional Amendments of Bangladesh

The Constitution of Bangladesh,[21] like many modern constitutions, seeks to limit authority in order to ensure democratic government through legal structures rather than human caprice. From many perspectives, the Preamble and Fundamental Principles of State Policy (Part II of the Constitution) embody the Constitution's moral core or natural law component. The Preamble emphasizes that the Constitution's guiding values must be nationalism, secularism, democracy, and socialism. The state's principal goal is to develop a socialist society free of exploitation, providing political, economic, and social equality for all.[22]

Article 8 of Part II (the moral or natural law part of the Constitution) states that these principles are not enforceable in a court of law. These aspects are necessary for governance and constitutional interpretation, and they will serve as the cornerstone of the state's activities. To date, due to the stipulation that Part II is unenforceable in a court of law, our judiciary has consistently held that nothing in Part II applies to a court of law. In some cases, parties sought to use specific Fundamental Principles of State Policy to support their different perspectives. Nonetheless, invoking the Fundamental Principles has not traditionally received strong support from the courts. It is claimed that a more sympathetic, natural law-based approach would have given the Fundamental concepts some legal support, but it is not contended that these notions would be enforceable. These Principles would have played a different role in our legal system under a rights-based interpretation of the law, which is often based on a natural law perspective.

In contrast, the "command" approach to legislation is most prominently reflected in our constitutional amendments. The **1st Amendment**[23] incorporated Article 47A into the Constitution. It modified Article 47(3), collectively safeguarding legislation pertaining to crimes against humanity, genocide, and war crimes from being contested based on infringing fundamental rights.[24] From the standpoint of command theory, it constituted a definitive expression of sovereign legislative authority. This modification can be perceived positively, as it reflects the post-WWII universal recognition of the unequivocal unacceptability of such acts. While it restricted the exercise of fundamental rights, it conformed to international moral standards, exemplifying a convergence of authority and morality.

[16] The United Nations Charter 1945, Art. 17(2)

[17] Statute of the International Court of Justice 1945, Art. 59

[18] Statute of the International Court of Justice 1945, Art. 42

[19] Statute of the International Court of Justice 1945, Art. 23

[20] Allan Munyao Mukuki, 'THE NORMATIVE IRRELEVANCE OF AUSTIN'S COMMAND THEORY IN INTERNATIONAL LAW' (2016) 28 (3) JMH < https://www.neliti.com/publications/139190/the-normative-irrelevance-of-austins-command-theory-in-international-law#cite> accessed on 6 December 2024

[21] The Constitution of the People's Republic of Bangladesh 1972

[22] The Constitution of the People's Republic of Bangladesh 1972, preamble

[23] The Constitution (First Amendment) Act 1973

[24] The Constitution of the People's Republic of Bangladesh 1972, Art. 47

The **2nd Amendment** established preventive detention laws and the constitutional basis for emergency powers. Article 33 was amended to provide detention without trial under "preventive detention," and Articles 141A–141C were added to regulate the emergency declaration.[25] This represents a crucial point that fully adopted the Austinian command idea when the law was severed from morality and diminished to an instrument of political authority. Numerous individuals were apprehended under the Special Powers Act of 1974, which was enacted as a consequence of this modification. Although courts subsequently sought to restrict this authority by consistently deeming such detentions unlawful, the amendment signified a substantial reduction of liberty.[26] The Appellate Division's interpretation in **Ataur Rahman v. Mohibur Rahman**[27] indicated that the emergency provisions permitted the suspension of all fundamental rights, placing citizens in complete legal jeopardy. The verdict effectively asserted that no rights are enforceable upon the declaration of an emergency, undermining the fundamental principles of constitutionalism.

The **3rd Amendment** addressed the execution of a territorial boundary treaty between Bangladesh and India, which entailed the exchange of enclaves.[28] Subsequent to the Supreme Court's ruling in **Kazi Mukhlesur Rahman v. Bangladesh**[29], the revision was essential to confer constitutional legitimacy upon the treaty. This change can be regarded as procedural and impartial—an unambiguous illustration of legal positivism, although not hazardous. It did not violate citizens' rights or exhibit totalitarian control. It only conformed the Constitution to a treaty ratified by two sovereign states.

The **4th Amendment** radically transformed Bangladesh's government by substituting the parliamentary system with a presidential system, diminishing the judiciary's authority, prohibiting political parties, and centralizing executive power in the President. It revoked the High Court's jurisdiction to uphold fundamental rights by abolishing Article 102(1) and amending Article 44.[30] This amendment can be denounced as a quintessential representation of the command theory. It epitomized the pinnacle of governmental authority, disregarding both democratic principles and natural law. Rights, checks and balances, and institutional autonomy were effectively eradicated. Despite its subsequent repeal, the amendment exemplifies how legal authority can be manipulated to undermine justice and democratic ideals.

The **5th to 10th Amendments** were introduced during martial law or military-backed regimes, with some being technical in nature (e.g., increasing reserved seats for women or restricting presidential terms). Nonetheless, it is noteworthy that these modifications were retroactively legitimized through comprehensive provisions that rendered all martial law activities legitimate, so cementing the concept of law as a command devoid of legitimacy or morality.

The **11th Amendment** validated Chief Justice Shahabuddin Ahmed's assumption of the Vice Presidency and his reinstatement to the judiciary following his tenure as interim head of government during the 1990–91 democratic transition. This amendment had moral endorsement from the major political alliances and emerged from a widespread democratic movement.[31] This may be regarded as an exception to the command model. The statute reflected the collective desire and moral agreement of the people, legitimizing an extra-constitutional action with widespread acceptance. This illustrates the potential alignment between natural law and positive law.

[25] The Constitution (Second Amendment) Act 1974

[26] Bilkis Akhter Hossain v Bangladesh [1997] 17 BLD (HCD) at 395

[27] Ataur Rahman and others v B.M. Mohibur Rahman and others [2009] 14 MLR (AD) at 138, 147

[28] The Constitution (Third Amendment) Act 1974

[29] Kazi Mukhlesur Rahman v Bangladesh [1974] 26 DLR (SC) at 44

[30] The Constitution (Fourth Amendment) Act 1975

[31] The Constitution (Eleventh Amendment) Act 1991

The **12th Amendment** reinstated the parliamentary system of governance, which had been nullified by the 4th Amendment. Although it reinstated parliamentary governance, it concurrently centralized authority in the Prime Minister's office, as indicated in Article 55. The extensive power granted to the Prime Minister and the restrictions imposed on Members of Parliament by Article 70, which forbids floor-crossing, are subject to criticism.[32] This indicated that, despite its democratic appearance, actual authority was consolidated, thereby strengthening the sovereign-command model. The outcome was a parliament devoid of significant dissent, so undermining representative democracy.

The **13th Amendment** established the Caretaker Government (CTG) mechanism to supervise general elections.[33] This exemplifies positivist lawmaking at its finest and represents a procedural innovation lacking a moral basis. Although designed to guarantee equitable elections, it temporarily halted representative democracy for several months in each electoral cycle. The risk for abuse was acknowledged throughout the 2007–2008 CTG era, which spanned two years. The courts subsequently deemed this change illegal in **Abdul Mannan Khan v. Bangladesh**,[34] emphasizing formal constitutional structure over pragmatic considerations. Notably, the majority of amicus curiae endorsed CTG as a protective measure for democracy, citing natural law reasoning, although most judges rejected it based on strict positivist principles.

The **14th Amendment** elevated the retirement age for judges and extended the allocated seats for women in Parliament.[35] It was broadly perceived as politically driven to sway the selection of the Chief Adviser for the forthcoming CTG. This may be condemned as an obvious exploitation of the law, advancing party objectives instead of the general good. It was procedurally valid yet devoid of moral credibility, resulting in considerable public dissent. This illustrates how directives from the sovereign, even being legally valid, might undermine trust in the legal system when they seem self-interested.

The **15th Amendment** abolished the Caretaker Government system and instituted Article 7A, which rendered attempts to undermine the Constitution, including non-violent methods, as criminal offenses.[36] The wording of Article 7A is expansive, retributive, and founded on a fear of confrontation. This can be interpreted as a forceful declaration of authority, merging Kelsenian legal structure with Austinian essence—law as a regulation upheld by the prospect of sanction. The provision allows no room for peaceful dissent, thus limiting citizens' rights to challenge or oppose power. This may be the most accurate contemporary example of law functioning as an instrument of authoritarian control, completely detached from democratic legitimacy.

The **16th Amendment** reinstated Parliament's authority to impeach judges, substituting the Supreme Judicial Council.[37] This may be perceived as an endeavor to reestablish legislative supremacy over the court, notwithstanding the absence of popular demand or obvious requirement. The lack of judicial independence, particularly under Article 70 (which obligates MPs to adhere to party directives), rendered judges subject to political persecution. The Appellate Division unanimously ruled the amendment illegal, contending it infringed upon the basic structure of the Constitution. This ruling can be commended as a defense of judicial independence grounded in natural law.

The **17th Amendment** is an official mandate from the sovereign (Parliament) stipulating the reservation of 50 seats for women for a duration of 25 years.[38] The citizens and entities of the state, such as the Election Commission, are anticipated to comply with this directive. Although not directly penalized in a criminal

[32] The Constitution (Twelfth Amendment) Act 1991

[33] The Constitution (Thirteenth Amendment) Act 1996

[34] Abdul Mannan Khan v Bangladesh [2012] 64 DLR (AD) at 169

[35] The Constitution (Fourteenth Amendment) Act 2004

[36] The Constitution (Fifteenth Amendment) Act 2011

[37] The Constitution (Sixteenth Amendment) Act 2014

[38] The Constitution (Seventeenth Amendment) Act, 2018

manner, noncompliance (e.g., failing to reserve those seats) would render the parliamentary composition unconstitutional, potentially leading to judicial review, election nullification, or political crises—these serve as indirect sanctions to ensure adherence. From a positivist perspective, such as Austin's, the ethical implications or desirability of the modification (e.g., whether 25 years is excessively lengthy or insufficient) are inconsequential to its classification as law. What is significant is that it was properly enacted by the sovereign authority in accordance with the constitutional procedure.

Eventually, it might be contended that constitutional modifications in Bangladesh predominantly embody a "command" interpretation of law, wherein laws are promulgated by the sovereign to be adhered to, disregarding morals, rights, or the interests of the people.

Pragmatism of Command Theory in the Present-Day Epoch

John Austin established the notion of penalty to guarantee that citizens constantly follow directives. Deeper investigation reveals that the idea of penalties is intrinsically coercive. Penalties have been set for disobedience with orders, but no reward system has been implemented to encourage people to follow these guidelines. It appears to be a cruel system that punishes the person while delivering no rewards. This strategy does not guarantee the pleasure and motivation of everyone in society. An employee who is penalized for every poor decision made for the company may lack adequate desire to pursue decisions that improve the company's performance, unless rewarded by the potential of promotion or compensation rise.

The famed jurist Jeremy Bentham expressed a similar concept, emphasizing that the requirement for ‘rewards' is as important as the necessity for ‘sanctions.’[39] Austin is encouraging people to live in constant fear of punishment in a country that strives to guarantee freedom for everyone. According to John Austin, the sovereign's role is to just act as lawmakers; the state's role is to enforce the rule of law and adhere to its own laws. To understand the relevance of command theory in modern society, it is also necessary to address the extra problems posed by the execution of laws, which are determined by a single authority known as the sovereign. One major challenge is the idea of *morality*, which sometimes seems to be overlooked while giving directions. Since man-made values are created by society's members rather than by the sovereign power, Austin made it clear that he believed they would not legally bind individuals if they were introduced into society.[40]

There is a substantial discrepancy between the laws of the sovereign and the moral principles that society considers fundamental as orders of the sovereign are only instructions to individuals with consequences for noncompliance rather than laws that grant authority. Understanding the difference between morality and legality is crucial; while it is not recognized by the law, one may be morally obligated to help someone who has just been in an accident in their presence. In the end, the concept of command is a positive law, denoting rules that were made by people. As a result, the sovereign cannot possibly account for all of society's morals, ethics, and values; yet this gap will not be filled until citizens have access to penalties or remedies.

Notably, those who share Austin's beliefs will obey with ease, while those who do not will do so out of fear of harsh punishment from a malicious power. Furthermore, rules must continuously evolve in order to accommodate the quickly shifting dynamics of modern society. Achieving the same will be difficult because of the strict rules set by the sovereign and the lack of decision-making power given to institutions like the country's court.

Sanctions are essential for controlling how people behave in society. Although the impact of this endeavor is subjective, Austin's justification for its execution seems to be an attempt to guarantee individual compliance, hence promoting societal pleasure. Consolidating authority to reduce the complexities of duplicating tasks and procedural delays seems like a reasonable philosophical idea put forth by John Austin.[41]

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[39] Monarch Mittal, ‘*John Austin’s Theory of Command Law: Its Practicality in Today’s World*’ <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4157659> accessed on 10 December 2024

[40] See Monarch, above n. 39 at 13

[41] Above n. 39 at 13

CONCLUSION

Legal Positivism is a major school of thought in jurisprudence that sees law as a factual thing. Many jurists from this school try to understand the law as it is, rather than as it should be. Among these jurists, John Austin made substantial contributions. Although his theory has many flaws, it is apparent that Austin did not claim that these are the only effective civilizations. Rather, he offered his idea as a means of maintaining social order, peace, law, and security. His theory of legal positivism makes an important contribution to jurisprudence. Certain modern observers notice characteristics of Austin that were probably not key concerns for him or his contemporaneous audience. Austin is frequently seen as the first "realist"; unlike previous theorists and some modern legal authors, he is viewed as having a more keen understanding of the relationship between law and power, emphasizing the need to prioritize this connection in analysis. Austin's theory has nothing to do with the Rule of Law, which is defined as legal governance. It is a notion of the 'rule of men': government that uses law as a weapon of authority. This viewpoint might be seen as realistic or merely cynical. However, its overall framework is essentially cohesive.

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