

AN APPRAISAL OF IDEOLOGICAL INSPIRATIONS OF MARRIAGE REDEFINITION IN THE 21ST CENTURY LEGAL REGIMES*

Abstract

More than ever, the 21st century man has found reason(s) to challenge the traditional institution of marriage through the instrumentality of the laws. Hence, natural law understanding of marriage as a union of a man and a woman for the course of their lives and to the exclusion of all others has been represented as unfashionable and unacceptable by the modern man. Accordingly, contemporary legal regimes across nations have moved for a redefinition of marriage and it appears to be working out. This paper explores, examines and criticizes the ideological bases of this 'revisionism'. To accomplish this purpose, the methods of hermeneutics and analysis of contemporary cultures and laws are used. It is the finding of this paper that whatever ideas that are prominent in the society by all means influence her laws and the laws reinforce the ideas in return. This work recommends an organic re-orientation of the society through the formal/informal educational institutions. It further proposes the natural law theory as the recondite guide of all marriage legislation the world-over.

Key words: Ideological Inspirations, Marriage Redefinition, Natural Law, 21st Century

Introduction

Every social or cultural change involving the foundational institutions or direction/orientation of values starts one way or the other from some ideological revolution. This is true in the sciences as it is in the humanities and laws. Hence, the transition from the traditional concept and values of marriage to the revisionist options is accountable to a certain change in the logic of ideas mediated by intervening events hostile to nature and finality of marriage and orchestrated in the jurisprudence of modern legalism (positivism). In what follows, an attempt is made to engage and/or interrogate some of the notable presuppositions of the paradigm change in the concept and definition of marriage, namely, Materialism, Naturalism, Empiricism, Rationalism, Atomism, Pragmatism, Positivism, Relativism, Subjectivism, Modernism, Post modernism and Nihilism.

Aspects of the Ideological Foundation of Marriage Redefinition

The remotest ideological framework which sponsored the eventual attack on the traditional marriage - type is materialism. In its essential tenets, it holds that matter is the one and only kind of being - the primary substance and that the universe is a material world and all objects of experience are composed of matter.¹ In its most dogmatic aspects, materialism professes that all-that-there-is and could possibly be: life, mind, human society, art, literature, history, institutions like marriage, the laws and practice etc, resolve to nothing but chance redistribution of matter over time. There is no room for purpose, value, finality or entelechy. Gradually, *naturalism* replaced the rather naive dogmatism of materialism. What is peculiar about naturalism is its unique emphasis on the concept of energy.² It is inclined to assume that the laws of the sciences (physics and chemistry) are sufficient to explain the world even in its most evolved form such as consciousness, human history and institutions, family and marriage inclusive. Hence hormones, feelings and desire are operationalized as if life is a laboratory and the question of the purpose of marriage and why it is necessary are rarely asked. The laws and practices of the modern society came to be seduced by this ideological trend.

The next threshold was the intellectual ambivalence of the enlightenment which gave rise to the reductionist philosophy of empiricism and rationalism. As it were, the sense-dominated empiricism came to claim that man and society can only thrive on banal sense experience and not otherwise. In its more radical formulation, it defends the position that the only reality that exists is that much which is empirically verifiable.³ In principle, this was a momentous denial of all meta-empirical values, all non-material essences/purposes and foundations formed by such presuppositions. Such norms like 'indissolubility', 'exclusivity,' 'heterosexuality' and 'monogamy' were therefore placed on index.

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¹ GTW Patrick, *Introduction to Philosophy* (Delhi: Surfect Pub., 1978) p. 200.

² *Ibid.*

³ See Generally, MP Cosgrove, *The Essence of Human Nature*, (Michigan: Zondervan Pub., 1977) p. 18.

Rationalism on the other hand ambushes modern legislations and practices, indeed contemporary culture, by liberating the intelligence from extrinsic control. In this way, it denied the rights of reason entirely and gradually falls down before the altar of sentiment.⁴ The obvious implication is that in pulling the mitre from intellectual man, it pulled the head off with it. Hence ‘we are no longer men, but animals. We ‘feel’ our way instead of knowing it’⁵. It is no surprise in such venue of irrational sentiments, that such thought as a man being married to a fellow man, finds logical support and legal confirmation.

Truth met a similar violence in the historical development of pragmatism. It heralded a redefinition of truth which directly affected the nature of marriage in history. This philosophical doctrine holds that what is useful is true. It argues that the individual is all-important. Hence if the individual desires to marry many wives, to marry from identical sex and gender or to live in single parent venue, then it is good. Accordingly, what works for the man is good. The rule is therefore about satisfactory consequences. *Ipsa facto*, ‘truth is not transcendental, it is declared, it is ambulatory. It is personal and individual’.⁶ Hidden in cloak smokescreen of sympathy to human needs, it ambushes the perennial objectivity of the human nature which does not rely on mere needs but rather anchors on the wings of truth and eternal verities. Indeed, pragmatism is the logical consequence of a denial of the objectivity of truth. It may glory in the fact that as an epistemology it can be said to correspond to human needs, yet it still remains true that one of the greatest human needs, is to be something more than a pragmatist.⁷ What all pragmatic legislations do is to undo the objectivity of truth. Pragmatism courts within its embers, a subtle agnosticism which operates to deny that truth exists. The defenders of this ethical ‘opinionism’, ‘by a cultivated indifference to the distinction between truth and error, hope to render themselves immune from any responsibility for the way they live.’⁸ Accordingly, the heterosexual and homosexual, the monogamist and polygamist, the married and the unmarried are all typologies of life styles and personal choices guaranteed by freedom and autonomy of the individual and perhaps, rendered enforceable as rights in the laws. Yet, ‘the studied refusal to distinguish between right and wrong is not, in fact, indifference, or neutrality. It is an acceptance of the wrong.’⁹ Without doubt all laws that operate to legalize gay marriage and the rest of the unnatural and/or amoral/immoral practices in the guise of marriage, are without more, aspects of legislative pragmatism.

Contemporary Culture, Legislative Nihilism and Marriage Redefinition

Laws and policies are not made in the vacuum; they are cast upon the firm fabrics of ‘existing cultures’. Hence, every legislation or public policy, defends what appears fashionable to it. Thus cultures providing support for laws/policies of the contemporary times are well designated as ‘contemporary cultures’. Describing the nature of the contemporary culture, Montefiore observes that among the most important of its ingredients are the unconscious assumptions which underlie the thinking of a society and by which its members live their lives. Anthropologists call these, ‘root paradigms’, which may be described as a set of assumptions about the fundamental nature of the universe, humankind, or the way in which people behave, which are so deeply held by the members of a society as to be essentially unquestioned by them.¹⁰

These set of presuppositions are being adopted into laws and policies in the name of ‘modernization’ to the detriment of the society, and for its excessive emphasis on the indices of the times than the question of value and meaning of those, the contemporary culture came to be tagged ‘modernism’. As it were, modernism especially in its operation in the laws dislodged morals from the basic questions. It illusorily deified man in the project of ‘humanism’. Thus rejecting the ontological/transcendent in man, the subjectness of man became the primordial philosophical question and man gives reality to the universe.

⁴ FJ Sheen *God and Intelligence* (New York: Longmans, 1949) p. 213.

⁵ *Ibid*

⁶ FJ Sheen, *Old Errors and New Label* (New York: Garden City, 1950) p. 122.

⁷ FJ Sheen *Religion without God* (New York: Longmans, 1928) p. 293.

⁸ FJ Sheen *Lift Up Your Heart* (New York: Garden City Pub., 1942) p. 23.

⁹ *Ibid*.

¹⁰ H Montefiore (ed.), *The Gospel and Contemporary Culture* (New York: Mowbray, 1992) p. 2.

Laws and policies discountenance morals and the institutions of the society especially marriage, were to be the greatest victim. As a matter of facts, modernisms emphasis on human effort, progress and rationality, was adverse to the idea of God. In the nine-tenth century when Friedrich Nietzsche declared, 'God is dead,' he meant that humans would no longer believe in a transcendent Being who determined the universal moral code. The thinking went that it would be better to trust in humanity. This kind of secular humanism led not to world peace but to the bloodiest century in human history, marked by the Holocaust and the Second World War Indeed, apartheid, and other atrocities (including the revision of marriage norms) became prevalent.¹¹ It turned out that human rationality has limits and that progress (or freedom) for its own sake can quickly corrupt a culture.¹²

This corruption did not wait to manifest in the laws of the modern world. As it were, the legal rationalism of the contemporary culture inspired man to grapple with his problems outside the venue of what is moral. Hence world legislatures are content to legalize free unions, single-parenthood, marriage of hermaphrodites etc. No doubt, whenever nothing in particular is recognized as absolute, then everything and anything can go. Simply put, moral and spiritual values gone, workability and hedonistic calculus became the root of the legislative process or policy formulation and implementation. Hence, 'legal polyamory, free union, cohabitation and right of concubines', are represented as neutral options. In this, the modern autonomous subject destroys itself in the destruction of the sanctity and perhaps the procreative quintessence of marriage. It is also characteristic of the modern legal studies to pretend that God is unknown to law and hence to discriminate against God - values in all elaboration of law and policy. Nietzsche anticipated this pretention when he announced to humanity that God is dead.¹³ To formalize the sordid announcement, Altizer echoed that God is not simply hidden from view, nor is the lurking in the depth of our unconscious or on the boundaries of infinite space, nor will he appear on the next turn of historical will of faith. The contemporary Christian must accept the death of God as a final and irrevocable end¹⁴

Smith so much orchestrated this exist/flight of God that according to him God has apparently vanished from the scene 'no telescope discovers him'¹⁵. Consistent with this anti - God world order, Stalin made a decree in 1932 to the effect that 'On May 1, 1937, there must not remain on the territory of USSR, a single house of prayer to God and the very conception of God will be banished from the Soviet Union.¹⁶ Note that a world without the God-idea is inferentially one in which there are no morals, no reference points, no absolutes, no reason for justice and so no inspiration for sound legislation. It is not surprising that in such a world, marriage could be treated with similar levity as any other jargon in the society of men and with an increasing profane and secular reference. The great difficulty in this pretension is that the society will be the ultimate victim. For once those traditional mores that cement the family culture are dispensed with; the ingredients of turmoil will be transmitted without resistance into the society. Men in deciding to marry the same sex partners may slide into marrying animals and having sex with beasts. In the end, the eugenic, genetic and pathological consequences of these depravities for humanity cannot be predicted.

The substance of the argument is that the 'God concept' and so, the idea of religion and morals are essential for the good ordering of our social institutions. To dispense with God as Nietzsche tried to do in his Nihilism, meant for law, the removal of its mind (*epikai*) and for policy the unmasking of purpose (entelechy). This is because Nihilism in its ethical form looks upon metaphysical reality as absolutely

¹¹ Emphasis mine.

¹² B Demarest and KJ Matthews (eds.) *Dictionary of Everyday Theology and Culture* (Colorado: Nav Press, 2010) p. 271.

¹³ K Nietzsche, *The Joyful Wisdom* (London: Frans. Common, 1910) p.125.

¹⁴ TTF Altizer and W Hamilton, *Radical Theology and the Death of God* (Harmondsworth: Penguin, 1966) p. 129.

¹⁵ WM Smith, *Therefore Stand* (Connecticut: Keats Pub. 1981) p. 73.

¹⁶ *Ibid.*

binding values as empty and fictions of the mind¹⁷. Indeed, it was Albert Camus who clearly derived and formulated the consequences of atheistic legislations when he reckoned that the death of God will mean ‘the demise of abiding moral verities as well’.¹⁸ The lists of the abiding moral verities are not exhaustive. They include but are not limited to: fidelity, heterosexuality, exclusivity, monogamy and indissolubility in marriage etc. Though these values are founded on Judeo-Christian ethics, they are axiomatic of the belief in the existence of a transcendent God and the reality of a Natural Law, both of which humanity embrace with great devotion. Hence, in a society where legislation and policy makers attempt to do their engagement without a natural and religious predilection, the result as it is already, will be the abolition of absolute standards of right and wrong and of good and evil. It will further entail the degradation of moral codes that claim divine origin. In the final analysis, mankind will be left forsaken and alone in a cruel and confusing environment without a compass.¹⁹ Such a world will be characterized by indifference to truth and permissiveness of conduct. “Choice” not “truth” will be the rule since ‘all the ethical systems are either in ruins or empty’.²⁰ Note that Nietzsche himself did say that with the death of God ‘all old Christian values and morals will be dead as well’.²¹ The logical result is nihilism, the belief that nothing remains. Where nothing remains, everything can exist, where nothing in particular is true, anything at all can apply. Little wonder in the modern society, all forms and manners of unimaginable legislations and policies are espoused and welcomed. Among them is the legalization of marriage.

It was left for Jean Paul Sartre to properly describe the ethical universe of the contemporary world in the following words ‘since God is dead,... therefore morals are dead, there is no such thing as right decision or a wrong decision....The authentic man is one who accepts his God-like responsibilities seriously’.²² What this means is that there is no more left, any objective moral standard, to direct the movement of the laws. With the crisis of the concept of God, the galaxy of the ethical and spiritual values attendant to the same become moribund. But since reality does not admit of a vacuum whether in the physical or normative levels, the eclipse of absolute moral verities meant the birth/inauguration of the new god of the modern world with its ethical presuppositions. The new god is ‘man’ and the new ethical assumptions are efficiency and workability. These translate to satisfactory consequences and utility calculus. The norms of the new society are freedom, sex, class, politics and science. In that world, there are ‘... no absolute norms, no eternal foundations [and] no spiritual dimensions to human nature’.²³ The fashionable idea is that man is alone in the universe, left ‘with nothing but a future of arthritis, arteriosclerosis, senility and death’.²⁴ What appears as the unbending logic of the situation is that laws and policies, conducts and social behaviors, remain apparently undirected but becoming victims of changes and chances of desires and choices of morally dismembered subjects. The laws are caught up in the web. No doubt, it is as regards the laws relating to the family and marriage in particular that nihilism has done the greatest offensive. Thus, in a world where freedom is absolute and where satisfactory principle enjoys absolute primacy, ‘a descralizing process inevitably sets in, that is directed against life and its manifestations and particularly the family and everything connected with it’.²⁵ Hence that a movement for redefining marriage arises from such a concept is not surprising.

The ideological emphasis proximate to legal positivism, which as it were, marked the outlines of the contemporary policy pretensions is *Postmodernism*. This encompasses the era from the mid twentieth century through the present. The Postmodern thinkers and Ideologues asked the very questions which the ancient philosophers did ask namely: what is truth? What is reality? Where does the authority to

¹⁷ JB Lotz, ‘Nothing’ in W Brugger (ed.), *Philosophical Dictionary* (Washington: Gonzaga University Press, 1974). p. 279.

¹⁸ A Camus, *The Rebel* (New York: Knopf Publishers, 1961) p.280

¹⁹ FC Schwartz, *Why I am Against Communism* (California: Christian Anti –Communism Crusade (MDD) p16.

²⁰ J Elluh, *Living Faith* (San Francisco: Herper and Row, 1973) p. 51.

²¹ F Nietzsche as cited in D Alexander, *Beyond Science* (Herts: Lion Publishers 1972) p. 105.

²² JP Sartre as cited in *ibid*.

²³ JC Hefley, *Life in the Balance* (Illinois: SP Publishers, 1980) p. 17.

²⁴ FC Schwarz, *op. cit.* p. 17.

²⁵ FJ Lescoe, *Existentialism with or without God* (New York: Alba House Publishers, 1974) p. 118.

answer these questions lie? But ...instead of looking for some transcendent, overarching, universal answer to these questions, they looked at the details of human existence: who we are; where we live; what we believe. In other words, they concluded, truth came out of context. Truth became subjective²⁶ The point is that the postmodernist orientation is characterized by a general skepticism of social institutions, common ideas and the cultural assumptions behind them. All their efforts are directed towards a deconstruction of the institutions so as to strip them of all the cultural wrappings that surround them, better put, to technically ‘demythologize’ them so as to situate them to the influences of the prevailing contexts.²⁷ In the instant case, the postmodernist takes up the institution of marriage, strips it of its traditional norms and makes it to be available to the overreaching influences of the contexts of the 21st century preferences. According to Demarest and Matthews, this skepticism and questioning of ‘traditional’ ideas has led to the charge that postmodernism is little more than relativism in disguise. If every idea is up for debate, critics argue, then how do we even get to the truth? In the end, the postmodern thinkers landed on this analogy of human knowledge: we are sailing as a ship, and we don’t get to take it to dry – dock and rebuild it wholesale. Instead, we have to rebuild the ship, plank – by – plank, at the same time we are sailing it. This they say is how human knowledge works. It’s fluid, evolving and communal. For postmodernists, truth is not a destination, but an ongoing pursuit²⁸

Relativism, Subjectivism and Legal Positivism in Marriage Legislation

The free conclusion of the postmodernist thinking is that truth is subjective and in its criticism of all traditional institutions and ideas, it ended up in relativism. Note that relativism and subjectivism are cultural intellectual precursors to legal positivism which in turn came to be the greatest affliction to absolute standards in law and morals.

For one, relativism is a term which describes a dangerous philosophy that is directive of the minds of most people today. It has given rise to a relativistic jurisprudence which advocates for a libertine legislative attitude of the sort that either uses the law to enforce whatever preferred tendency a people may have, or a type that becomes neutral, that is, not enforcing or prohibiting particular social attitudes having public consequences. In general, ‘relativism holds that no objective, absolute, and universal truth exists either in morality [law] or religion’.²⁹ However, this claim as above stated, is classically called moral relativism and is in turn divided into: *cultural relativism and private subjectivism*.³⁰

Cultural relativism claims that moral truth is determined by consensus among social groupings. Understood in this way, there are many moralities as there are many cultures in the world and none of these can legitimately claim superiority over others. Simply put, ‘what is right in one culture may be wrong in another culture’³¹. The instant argument is flawed by reason of the fact that few major moral differences exist among cultures throughout history. Hence, cultural relativism is not implied where only few insignificant differences in moral values exist among cultures.³²

The fact that cultures sustain differential viewpoints with regard to certain issues as monogamy versus polygamy, ‘does not support the conclusion that both cultures are correct morally. Just as cultures can make mistakes about science (thinking that the sun revolves around the earth), they might err on morality as well (thinking that there is no problem with Same-sex marriage or sex change operations). Notice that the absurdity of cultural relativism is further betrayed in its position that moral disagreement cannot occur between cultures. Indeed, to hold that an English cannot say that Africa is wrong in practicing polygamy simply because polygamy is supported by the African culture and is thus correct/right for Africans, is a display of logical absurdity. In the same way, to hold as cultural relativism does, that those who in the name of higher law, oppose the social norms of their day are deviant, is a second order absurdity in logic. All-in-all, cultural relativism is shown to be false.

²⁶ B Demarest and KS Matthews (eds.), *op. cit.*, p. 300.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 327.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 328.

³² Cf CS Lewis, *The Abolition of Man* (Oxford: Oxford University Press, 1943)

Cultural relativism is behind the fast paradigm-shift noticeable in the concept and practice of marriage across jurisdictions in the contemporary times. It is in the name of relativism that sometimes marriages are forced on parties, more than a man and a woman enter into marriage, same-sex persons marry each other and perhaps matrimonial consortium opened up to the enjoyment of non-parties to a marriage etc. In the circumstances of the contemporary realities it is strongly argued that cultural relativism makes genuine moral progress impossible. If no moral standard exists outside of cultures, then cultures can't be evaluated morally regarding how close or how far they are from the standard. However, this is unacceptable because we have evidence that moral progress occurs. For example, when the United States outlawed slavery, it moved closer to the moral ideal of treating human beings justly and honoring their 'unalienable rights' (in the words of the Declaration of Independence). When the country gave the African Americans additional rights during the civil right era, it moved closer to the standard of equality.³³

It is not enough that modern legislations are becoming slaves of cultures through what is popularly known as historical and/or sociological jurisprudence, they are currently falling into the precipice of legislating for autonomous individual preferences by either making the laws passive in the face of such options or creating exceptions that will accommodate unimaginable selfish human designs. For instance, where the Nigerian laws have remained silent on the issue of single-parenthood or commercial surrogacy, the floodgate is opened for freedom of indulgence. On the other hand, in places like US, where alternative legislative arrangements, with similar rights and privileges are made for people who wish to marry persons of their own sex in the name of registered partnership, the laws operate without standards or moral considerations. As it were, private subjectivism which anchors all such individual preferences holds that right and wrong are determined by individuals, not cultures. Private subjectivism teaches that morality is not dependent on culture at large, but on the individual's moral judgments. This is also called individual relativism. This belief is defeated because we know intuitively and directly that some things are morally wrong, no matter what any individual might claim. For example, rape, murder, torture, and racism are wrong, because they violate essential human rights.³⁴

Notice that in 1992, a 'prisoner' of private subjectivism in the person of Ted Bundy went about murdering people and taking women hostage for purpose of rape and accomplished the same. His idea of the world was one in which a man was free to do what he wished and this inspired as well as sustained his atrocious undertakings. He believed that the universe was morally neutral and that social laws were arbitrary and had no authority over him.³⁵ Were these beliefs of his to be true and thus adopted by all persons, human society will be thrown into anarchy, ends will be deemed to justify means, might shall become right and preponderance of force becomes the law. The truth is that private subjectivism is ridiculous and counter-intuitive and ought not to sustain any valid legal system. It is all the more defeated because 'we know intuitively and directly that some things are morally wrong, no matter what any individual or society might claim,³⁶ for instance murder, rape, same-sex marriage, are wrong because they violate the demand and purposes of human nature and ordering of the society and rights. The ensemble of theories and ideological frameworks which fossilized into relativism and private subjectivism were eventually to herald a jurisprudential school called positivism. Precisely as articulated by Auguste Comte, positivism suspends all interest in the Ultimate Reality or First Cause. It argues that law and philosophy must limit themselves to phenomena and the invariable modes of behavior. According to Patrick, positivism espouses what is useful and positive in the perfection of society.³⁷ No valid knowledge can be claimed in the laws except it has the scientific character of the sort espoused in the empirical sciences.³⁸ All questions about God, morals, purpose, finality, mind, soul and perhaps evil are cosigned to the meaningless category.³⁹ The question is; what is the fate and consequence of a law without morality? It is but a container without content.

³³ B Demarest and K J Matthews (eds.) *op. cit.* , p. 328

³⁴ *Ibid.*, p. 329.

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ GWT Patrick, *op. cit.* p. 47.

³⁸ D Alexander, *op. cit.*, p. 98.

³⁹ Cf MP Cosgrove, *BF Skinner's Behaviourism: An Analysis* (Michigan: Zondervon, 1982) p.43.

Legal positivism, preaches that ‘laws are purely based on what the government officially decides. This basically means that law and morality don’t necessarily have to be connected in any way’.⁴⁰ According to legal positivism, ‘if a law is written down by an official authority, it should be followed, even if it isn’t necessarily justified or ethical.’⁴¹ In essence, this school which also is called the imperative theory of law claims that the law as it ought to be should not affect the interpretation of the law as it is. It is the argument of the legal positivist that ‘at any given moment... the existing law is analytically separate from any moral ideas of what that law should be’.⁴² The inference is that law is not only morally neutral but is merely a body of technical rules and concept to be analyzed.⁴³ Notice that a peculiar logic connects the propositions of legal positivism with those of realist school, sociological school and historical school. What actually constitutes the nexus among them is the deliberate and methodological suspension of the transcendent and enduring/inexorable moral principles. To say the least, the realist, sociological and historical school of law are variations and differential modulations of the positivist understanding of the law and by reason of that, they are responsible for the attack on the family and marriage by way of legislations and or social policies inimical to traditional concept of marriage.

Particularly, the sociological school of jurisprudence which developed at the end of the 19th and in the early 20th centuries is an offspring of positivism... which seek to interpret the rule of law of a given society as a balancing of various kinds of interests. Each legal decision is thus seen as the result of the weighing of the social consequences of alternatives. Indeed ‘sociological jurisprudence’ is not a systematic theory of law but rather a classification of interests for the guidance of those who make and interpret law. Adherents of this school oppose the wooden application of rules according to the internal logic of their concepts, and urge their application according to their social functions.⁴⁴

With regard to ‘legal realism’, the truth is that it is ‘built on positivism in rejecting reason and nature as foundations of law’⁴⁵ but turns to psychological, economic, ideological and other factors as directive principles of formal legislations and judicial decisions.⁴⁶

Also the historical school of Jurisprudence shares in the positivist belief by arguing that it is a mistake to view law as a body of ideal or ‘natural’ propositions.⁴⁷ It insists that legislations and prophecies of the courts must reflect ‘a particular expression of the common consciousness of a people at a given time and place’.⁴⁸ All-in-all, it is hereby considered that legal positivism in its sundry manifestations is an assault to the meaning of law and is the framework on which the corruption and revision of traditional concept of marriage and family is anchored. Note that if one considers positivism in its strict separation of law and morality, one faces the difficulty of interpreting legal principles which are explicitly derived from moral conceptions. In fact, it is impossible to obviate the moral content of the laws, for in asking the positivist question; what is *the law as it is?* one is unavoidably led into a discussion of the purpose of the law viz what it ought to accomplish.⁴⁹ No matter how much we fight to wash the moral off the law’s nature, the ethical element will persevere and the body of ideals, handed down in the laws is much more long-lived and deep-seated than particular rules of law and the ideals are much more far reaching in their effects.⁵⁰

⁴⁰ J Queen ‘What is legal positivism’ Available at <http://www.wisegeek.com/what-is-legal-positivism.htm>. accessed on 30/12/2014, 7:40 pm

⁴¹ *Ibid.*

⁴² HJ Berman and WR Greiner, *The Nature and Functions of Law* (New York: Foundation Press, 1972) p.20

⁴³ This school of Jurisprudence which is injurious to society is called Analytical Jurisprudence as against the Natural law school of Jurisprudence.

⁴⁴ R Pound, *Interpretation of Legal History* (Cambridge: Mass., 1946) p. 141-142.

⁴⁵ HJ Berman and WR Greiner, *op. cit.*, p.22.

⁴⁶ Cf KN Lewellyn, *The Bramble Bush* (New York: Oceana Publications, 1930) chapter 1.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

Conclusion

The abysmal legal anarchy and moral ineptitude which the world has plunged into and which guaranteed the thoughts about revision of the meaning of marriage is possible because aligning with a positivist jurisprudence, the nations tended to develop broad theories which make law co-extensive with regulations of any kind⁵¹ and inspired by any philosophy. CK Allen has opportunity to tag all such legal permissions as aspects of ‘megalomaniac jurisprudence.’⁵² Such jurisprudence will no doubt permit everything and prohibit nothing. It will find no essential difference between right and wrong, good and bad. It remains for the right-thinking members of the society to establish avenues for rethinking such theories, ideas and philosophies which are not compliant with the nature and conditions of natural law concept of marriage. This paper reasons that no such avenue is more apt than an educational re-orientation of the masses by way of manifold value-jurisprudence pedagogy. The teaching of proper philosophy of law, natural law based ideologies/value is a desideratum.

⁵¹ *Ibid.*

⁵² CK Allen, *Law in the Making* (Oxford: Oxford University Press, 1935) p. 35.