

LAW w/o VALUES (Alschuler, 2000)

UNITED SKEPTICISM: LAW + VALUES

2 Post-Holmes: PRAGMATISM / LAW-AS-POWER

PRAGMATISM: AM. MISTRUST OF ABSTRACTION

- CONSEQUENTIALIST [rejects UTIL 'no systematic]
- FUTURE-ORIENTED / THOUGHT-AS-WEAPON
- VAGUE ABOUT ENDS
- DARWINISM - THOUGHT = ADAPTATION
- STEALTH UTIL. - BALANCING

5 EQUALITY

8 THRAASYMACHUS: JUSTICE = STRONG v. SOCRATES: SOUL / Cicero

Hobbes: APPETITES

10 Holmes: 19th C. FORMALISTS - SUBTRACTED FROM LAW 'no Natural Law

17 REJECTED UTIL. -> DARWINIAN

" PRAGMATISM: REALITY = MIND-INDEPENDENT

19 EXISTENTIALIST: SARTRE / NIETZSCHE

23 blind COMMITMENT 'no PURPOSE

• ALL SOCIETY RESTS ON DEATH OF MEN

26 EQUALITY PASSION = ENVY

28 EUGENICS -> GENETIC ENGINEERING

30 LIFE = FUNCTION

cyber-modern

"

Gilmore: OWM = MYTH = cold, SAVAGE, HARSH

49 SPENCER'S IMPORTANCE

59 Jurisprudence: POWER

62 Judicial RESTRAINT - BASED ON COSMIC INDIFFERENCE

74 ABRAMS: MENTAL STATE 'no clear + present

• PARADOXICAL: SUBJECTIVE STANDARD

78 BRANDIS INFLUENCE

MARKETPLACE OF IDEAS + DARWINISM

• ACCEPTANCE = TRUTH

23 + 78 = ↑ AMIABILITY

84 Common Law: ≠ Topic = EXPERIENCE

· VICTORIAN SCIENTISM

86 post-war: ANALYTIC (AUSTIN) v. HISTORICISM (EVOLUTION)

· SIMILAR / CONGRUENT

(CL) - historicist:

88 · CLASSIFICATION

· ≠ MORALITY

· ≠ JUSTICE

· CASE STUDY (LANGDELL)

· SMALL ≠ FUNDAMENTAL DOCTRINES ("")

· PRECISE PREDICTION

90 · CODE - HINDERS PROGRESS

· PAST CONTINUITY = SUCCESSORY "no duty

INET

Q, 93 Logic / EXPERIENCE : MAITLAND

≠ FORMALISM REVOLT = MORALITY REVOLT

· REAL EXPERIENCE = CONST. CONVENTION

· NECESSARY + PROPER CLAUSE

97 - STORY: COMMON LAW - EXPANDS

99 LANGDELL ≠ STRICT FORMALIST / hx

NATURAL LAW = DECENCY PRESERVED

101 COURTS: DECLINE OF COLLECTIVE JUSTICE (ARISTOTLE)

· PUBLIC POLICY "no PRIVATE JUSTICE

104 COPYING MAINE

history IGNORES INDIVIDUAL

108 MENS REA ≠ FACTOR IN CRIM. → PREVENTION = goal

126 Formalism: low opinion - human beings

130 MECHANISTIC Judging

REJECTS EXPERIENTIAL

132 Path: recapitulation - C.L. - HOLMESIAN POSITIVISM

· PREDICTION THEORY

· BAD MAN

· NON-MORAL

· ALTERNATE K THEORY : DAMAGES

*> Smuggling Normativity

- 134 Thought + language - prevent law/moral separation. - 1/6 OWH
- 136 OWH: ≠ EVER CLAIMING LAW AS FORCE FOR GOOD
 • NO HIGHER MEANING
- 139 LAW = WHAT LAW DOES
 prediction: ≠ realistic
- 141 problem OF UNENFORCED law
 • discretion + law
- 144 BAD MAN AS LAW CONSUMER
 Courts - AS - CENTER = INTRINSICALLY PROBLEMATIC
- 147 Good people look to law
 • NATURAL law = INNATE MORAL SENSE
 • Corpus = A FEW KEY PRINCIPLES
- *> 151 Law/morals sep. + GRABINESS
 • Fuller: morals MUST describe LAW
- 153 Functional des.: NOTICE, ETC = MORAL + EFFICIENT
- *> 157 NORMATIVE CONVENTIONS MAY DIRECT POS. LAW when = New ISSUES CS/INET
- 159 LAW = DIFFERENT STATUS THAN "NOT LAW"
 obligation = MESSY
 • Holmes: ONLY QUESTION OF POWER
- 171 Skepticism = HOLMES
- 173 • Law = what law will do - NOT what = EXPECTED
- 176 • CONSUMER LAW
- *> • CYNICISM = DEFINES: DUTIES, JUSTICE, OBLIGATION, RIGHTS
 ↳ LAW + ECONOMICS
- PRISON FOR CIVIL CASES
- 178 • CONTRACT - AS - BET
- *> • HOLMES, LAW + ECON = DEPENDENT ON LEGAL FICTION
 • ADEQUACY OF REMEDY
- 182 Fortuitous Judicial reputation
- Q-2 191 EINSTEIN: Simple as possible, but NOT MORE SO.
- 197 Holmes - AS - CYNICAL - cop-out