

BASIS OF INTERNATIONAL LAW: THEORIES

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INTRODUCTION

The present day International law owes its origin to the great jurist Grotius and his work *De jure Belli Pacis* 1625. His main idea is that there are certain eternal, unchangeable and independent rules of law which have roots in human reason. He calls this law of reason as natural law. In the Grotian theory, there are three basis of International law. Law of reasons, customs and treaties.

Views of the jurists differ on the question as to what is the basis of International law. The difference of opinion has led to the emergence of the following three theories

NATURALIST THEORY

Most of the jurists of the 16th and 17th century were of the view that International law is based on the law of nature. According to them there exists a system of law which emanates from God or reason or morals. *Prominent writers of this view are Grotius*

Pufendorf and Vattel. Writings of these jurists were influenced greatly by the works of religiously oriented Scholars such as Saint Augustine, Vitoria and Suarez.

All laws including International Law, according to them, are based on natural and in turn divine law. The view has been greatly criticized by the writers of the 19th century on the ground that it is too vague. The meaning of the law of nature is not precisely clear. Different jurists have given different meaning to it such as reason, justice and moral

POSITIVIST THEORY

The view that International law is based on the law of nature has been condemned by the followers of another School which is known by the name of positivist. According to them only those principles may be deemed as law which have been adopted with the consent of the states. The rules of law are binding upon the states therefore emanate from their own free will. The consent may be given by States either expressly or impliedly. While Express consent may be given by the conclusion of Treaties , consent may be implied in the case of established usage such as customs. Therefore, custom and treaties by which consent of a state is achieved are the basis of International law.

ECLECTIC THEORY

The views taken by the naturalist and positivist are extreme views. The Jurists belonging to eclectic school have preferred to adopt a middle course in the positivist-naturalist debate. According to them International Law derived from both natural law as well as voluntary law (law made with the consent of the states). This view appears to be appropriate than taken by the jurists of naturalist and positivist schools, and therefore it may be concluded that International law is based solely neither on the law of nature nor on the consent of the states. While most of the rules are based on the basis of the consent of the states, a few of them have, of course, derived from the law of nature

WHETHER INTERNATIONAL LAW IS A WEAK LAW

Starke has expressed the view that International law is a weak law. There is no effective executive authority to enforce the rules of International law. As compared to rules of State Law, the rules of International law suffer from Greater uncertainty. Due to lack of effective sanctions, rules of International law frequently violated. International law has, in many cases, failed to maintain order and peace in the world. Thus, International law is a weak law in comparison to the Municipal Law

THANK YOU

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