INTRODUCTION

This paper will be discussing the law of the society of the movie ‘V for Vendetta’ with respect to different jurisprudential school of thoughts. The movie V for Vendetta depicts a dystopian society. This film shows a world which is destroyed by nuclear war and is mostly centred on London, which is shown to be ruled by a fascist party called Norsefire. It is 2032, and the world is in turmoil. The United Kingdom is ruled as a fascist police state by the Norsefire Party, under the all-powerful High Chancellor Adam Sutler1. The protagonist of this movie is an anonymous masked terrorist, who is waging a war of vendetta against the totalitarian government of England. The main issue under scrutiny here is of the loss of individual freedom and totalitarianism. The control that the Norsefire party exercises over London is absolute in nature with no area for any sort of political dissent. The people of London also silently obey this fascist government as any kind of retaliation by the people would lead to severe punishment. The movie portrays a society very similar to our own, a society which is riddled with various problems and chaos.

All the major elements of the movie show how a government can impose total control through the use of their legislature, executive and judiciary. The Norsefire party imposed laws which suited the interests of the High Chancellor and the ruling elite and ignored what the people wanted. Their only goal was to maintain total control of the society. The totalitarian government depicted in the movie legitimised its control in the name of religion and all the god-fearing Christian Englishmen obeyed the party because they thought by obeying the ruling party, they were following god. This movie portrays the message that such a situation could soon happen to any government, if the people themselves allow the government to take control and do not retaliate. The protagonist is depicted to be a lethal terrorist because he disobeys the rule of the government and believes in true justice. This paper will examine the themes of this movie using the school of thought of Critical Legal

1 Chris Muise, Quicklet on V for vendetta B Alan Moore, 1, 1-2, (2001)
Studies (CLS) and will also attempt to provide a critique to the school of thought of Legal Positivism.

CRITICAL LEGAL STUDIES

Critical legal studies (CLS) is a school of critical theory that first emerged as a movement in the United States during the 1970s. Critical Legal Studies adherents claim that laws are used to maintain the status quo of society's power structures; it is also held that the law is a codified form of society's biases against marginalized groups. The key goals of Critical Legal Studies are to depict that the law is completely ambiguous and preferential and tries to give a hint as to what the outcome of such rigid legal doctrines would be. The main aim of critical legal studies is to demystify legal culture and legal process.

Critical Legal theorists lean towards the imposition of transparency on all legal procedures so that they can righteously get power through the general support and approval of society. Critical legal studies was committed to shaping society based on a vision of human personality devoid of the hidden interests and class domination that CLS scholars argued are at the root of liberal legal institutions in the West. According to CLS scholar Duncan Kennedy, critical legal studies are "concerned with the relationship of legal scholarship and practice to the struggle to create a more humane, egalitarian, and democratic society." These theorists try to make clearer what they saw as the numerous myths at the heart of mainstream legal practice and thought. Critical Legal scholars share a significant wariness about a considerable lot of the undertakings that have, for quite some time, been thought to be at the core of law. CLS is a direct attack on the orthodoxy of legal theory, scholarship, and education. More than that, it is an important intellectual assault on the very organization of modern society itself. Their idea is that law is not based on reason, but on bogus legitimacy. According to them law in reality is not independent from politics. The law reflects economic and political power.

In pursuit of neutrality, the law deploys a number of fictions or illusions. In particular, the exalted idea of a liberal society under the rule of law in which all are treated equally, is

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3 Cornell law school, Critical Legal Theory (2010)
6 Raymond Wacks, Understanding Jurisprudence, 283
treated with deep suspicion by Critical Legal Studies. Social Justice is an empty promise. Since the law is irretrievably wedded to power, it cannot transcend this power which is therefore chiefly ideological. This school of thought is relevant to the movie in question because the way that critical legal scholars define law, is the kind of law which is in existence and in power in the movie. In the film, the totalitarian government claims that the world is in crisis because of godlessness, and is characterised by homophobia, islamophobia and discrimination against disabled people. There is no justice in such a society. The citizens of United Kingdom in the movie were persecuted and tortured just because they were different from other people. This movie complements the theory of CLS as the party in power manipulates everything to their own needs and interests without applying rationality or reason. The government maintained silent and obedient consent to their rule through the fear of repercussions and punishment. The general idea of law and politics is that people should not be afraid of governments, but the governments should be afraid of people, since the governments are supposed to derive their power through the consensus of people.

A strand of CLS school is that more than often law tends to serve the interests of the powerful and wealthy by protecting them against the demands of the poor. Even laws which claim to be for the benefit of the poor, end up benefitting the elite. In the film, the government released a biological virus on its own country and killed hundreds and thousands of innocents just to create chaos and get absolute control of power in the country. After that, the ruling party had no regard for political process and there was complete and total hegemonic domination. The government gained power through the generation of fear among the populace. Just because it suited the government and helped them maintain control, they banned music, imposed heavy censorship, there was no freedom of speech and the right to privacy of the citizens was being treated as a joke. All of this reaffirms the idea behind the school of thought of CLS. If the law in a society only dances to the whims and fancies of the ruling elite in a society, then such legal regulations cannot be called law. In the existence of such a situation, there would be no social justice.

The critique of order by CLS scholars challenges the idea that a legal order exists in any society. The critique is based on four principles: indeterminacy, antiformalism, contradiction and marginality. The law which was imposed in United Kingdom in the movie

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7 Raymond Wacks, *Understanding Jurisprudence*, 281
was cruel, unjust, intolerant and oppressive. It fulfilled all the four principles mentioned above. The movie depicts what would happen to society if the theory of CLS scholars is true. This also reaffirms the idea that law is not separate from politics. If law is indeterminate, all legal scholarship on what the law is becomes merely a form of advocacy; if there is no distinct form of legal reasoning, such scholarship becomes a political debate; if legal ‘doctrine’ is essentially contradictory, legal argument cannot rely on legal materials. The Norsefire party used to manipulate law to keep themselves in power and unchallenged. There was no opposition party, the government imposed martial law whenever it had the chance to and the defence forces were occasionally given orders to shoot any/all protestors. CLS seeks to demonstrate that law is neither neutral nor objective. It was very aptly shown in the movie, how law is only created by the ruling class to maintain political power. Having dealt with the topic of CLS, the paper will now provide a critique to the school of thought of Legal Positivism.

Critique of Legal Positivism

Legal positivism is a school of thought of analytical jurisprudence largely developed by legal thinkers in the 18th and 19th centuries, such as Jeremy Bentham and John Austin. While Bentham and Austin developed legal positivist theory, empiricism set the theoretical foundations for such developments to occur. The most prominent legal positivist writer in English has been H. L. A. Hart. The word positivism means to firmly affix the existence of something. Legal positivism is a school of thought whose followers and advocates believe that the only legitimate sources of law are those written regulations, principles and rules that have been expressly recognised or enacted by a political institution or a governmental entity. Law according to them is defined as the will of the authority that created them. Legal positivists view law as a social construct, a product made by man. They argue that law is created as an expression of power and brute force, not for realizing moral values or social goals. Law, according to them is only valid if it is enacted by a legitimate authority and is accepted by society.

English jurists such as John Austin and Thomas Hobbes came out with the command theory of law, which forwarded the idea that the only legal rules and authorities which should be recognised are those of the sovereign. No matter what a law's content, no matter how

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9 Raymond Wacks, Understanding Jurisprudence, 284
10 Raymond Wacks, Understanding Jurisprudence, 281
unjust it seems, if it has been commanded by the sovereign, then and only then is it law.\textsuperscript{12} This is so, because only the sovereign has the power to enforce its rules and regulations through defence and police forces. In Hobbes’s opinion, the content of law does not matter, the only thing that matters is whether the command for the enforcement of such law came from the sovereign. John Austin followed in the theoretical footsteps of Bentham by writing \textit{The Province of jurisprudence Determined}.\textsuperscript{13} Austin is of the opinion that the merits or demerits of law do not matter. If there is an unjust or immoral law, but it is backed by the command of the sovereign, it is still law and it can be enforced. Austin believes that each and every society has a sovereign, and they give such commands which are imposed on people through the fear of punishment.

Positivists are not of the view that law’s merits are completely unimportant. However, they do believe that the merits of law do no determine whether a law exists or not. According to them, the existence of a legal system depends on the various forms of governance present, not on democracy, rule of law or the ideals of justice. They are of the view that just because law is unwise, unjust or inefficient does not give rise to reason for doubting it. Positivists are firm believers of the logic that both the concepts of law and morality are completely different. The state is both the creator and the enforcer of law, and hence, vested with the power to uphold its law through force. No right can be claimed against the state even if the state is wrong. Hans Kelsen, an Austrian jurist reiterated Austin’s idea that law has no connections to morality. Kelsen claimed that law was contaminated with moralizing and political ideology. Kelsen forwarded a theory of positive law, called the ‘\textit{Pure theory of law}’. He characterises it as a pure theory of law because it focuses on law alone and eliminates everything which is not law, such as politics or morals.

H.L.A Hart has been regarded as one of the most influential legal positivists. Although he did not agree with a few details of the theories of other positivist theorists such as Austin and Kelsen, he too believed that law and morality are completely separate and any linkage between the two is merely accidental. A pupil of Hart's, Joseph Raz has been important in continuing Hart's arguments of legal positivism since Hart's death.\textsuperscript{14} Raz has also argued, that the validity of a law can \textit{never} depend on its morality.\textsuperscript{15}

\textsuperscript{13} John Austin, \textit{The province of Jurisprudence Determined} (Cambridge University Press) (1832)
\textsuperscript{15} Joseph Raz, \textit{The Authority of Law: Essays on law and morality} 47-50 (Oxford Clarendon) (1979)
These theories of legal positivism are relevant to the movie in question because the society in *V for Vendetta* is one whose law completely rejects all moral values and norms. The idea behind this theory is that law is law, no matter how unjust it may seem. And since the sovereign has the effective means of power to enforce their rules and regulations, people are forced to obey their laws, even if they don’t agree with those laws. Each and every law enacted by the Norsefire party in the movie was extremely immoral and it did not pursue social justice. The law has important functions of creating peace and harmony in our lives. Law is supposed to secure human rights, advance the common good and govern with integrity. This paper puts forward the argument that law without morals is not law at all. A society in which such immoral rules are enforced on the populace can give rise to terrorists such as the protagonist of the movie who are willing to create chaos and take back control of the country from the ruling elite.

A rule of law such as that can cause chaos, where people only obey their governments because of fear. There is no integrity in living such a life. The movie puts forward the point that if a government is allowed to maintain control through immoral laws, the government will soon become authoritative. In the beginning of the film, it is shown how, even the Norsefire party gained control through legitimacy. They helped the country bounce back from nuclear war and destruction. The argument which is depicted here is that if a government is allowed to enforce immoral laws just because they are the sovereign, it would eventually lead to a totalitarian control because the government is being given de-facto power to do whatever they want and enforce it in whichever way they can. The crux of this argument is that law and morality are related. Positivism argues for the separation of the two. The author challenges this view and states that there are necessary connections between law and morality and there is normative reasoning for moral concepts in the elements of law.

Hobbes and Austin are of the view that the power to make laws and rules only rests with the sovereign because they control the institutions of power and governance. The protagonist of the movie, V, intended to blow up the parliament of London as it was the sovereign in their society. The act of blowing up the parliament was, in effect, an act of blowing up the sovereign. Other acts of the protagonists such as killing men who wielded power and occupied important positions in the society was also a way of attacking the sovereign because by that he was breaking down the governance structure of the sovereign.
Ronald Dowrkin rejects the whole idea behind the institution of legal positivism. He
denies the theory that legal systems can identify law without recourse to its merits. His theory
of law as integrity as presented in his book titled Law’s Empire, in which judges interpret the
law in terms of consistent moral principles, especially justice and fairness, is among the most
influential contemporary theories about the nature of law. Dworkin advocated a "moral
reading" of the United States Constitution, and an interpretivist approach to law and
morality.\(^{16}\) Dworkin denies that there can be any general theory of the existence and content
of law; he denies that local theories of particular legal systems can identify law without
recourse to its moral merits, and he rejects the whole institutional focus of positivism. A
theory of law is for Dworkin a theory of how cases ought to be decided and it begins, not
with an account of the political organization of a legal system, but with an abstract ideal
regulating the conditions under which governments may use coercive force over their
subjects.\(^{17}\) A society has a legal system only when it honours this ideal and the law is a set of
all rules and regulations that the courts of such a society would be morally justified in
enforcing. He argues that law is interpretive in nature, by this he means that the courts of a
country interpret the legal data to articulate an interpretation which justifies past legal
practice.

Dworkin moves away from positivism's separation of law and morality, since
constructive interpretation implicates moral judgments in every decision about what the law
is.\(^{18}\) Ronald Dworkin can be regarded as a defender of the compatibility of judicial review in
a democracy. He has always been an advocate of a moral reading of the constitution of a
country. The courts in the movie V for vendetta had no power of their own since they were
being controlled by an autocratic government which did not consider any aspect of morality.
There was a complete absence of an independent judiciary and morality, this in the end gave
rise to popular uprising and outlaws who fought the dystopian political scenario. The law
which the court was enforcing was not morally justified and, therefore the society was living
in fear. The only reason that ‘V’ became a terrorist was to fight such immoral legal
procedures of the fascist party, Norsefire, which was in power. This movie depicts a society
where there is no connection between moral rights and legal rights. It shows what kind of a
society would come in effect if law was made according to theory of legal positivists.

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\(^{17}\) Legal Positivism (Stanford Encyclopaedia of Philosophy)  
\(^{18}\) Godfrey Hodgson, Ronald Dworkin Obituary, The Guardian, (2-14-2013)
Lon Fuller also completely denies the separation of morality and law. Fuller believes that whatever values follow from prospective, clear, open and consistent practices can be found not only in the legal procedures or rule of law but in all other social practices, including positive morality and custom. There should be no obligation to obey laws which are completely amoral in nature. If the rule of law in the film would have been moral, a situation of autocratic government would never have arisen and there would have been justice in society, as the citizens would have identified with the rules and regulations in place. The rule of law in the movie can be compared to the regime of Hitler, where the government had total control and people who were different (Jews) were prosecuted. A similar analogy can be drawn to the ‘Larkhill Detention Centre’ in the movie where the protagonist was sent for punishment and torture just for being different. All these arguments show what would happen if the law is completely separated from morals.

*V for Vendetta* has been seen by many political groups as an allegory of oppression by government; libertarians and anarchists have used it to promote their beliefs. David Lloyd stated: "The Guy Fawkes mask has now become a common brand and a convenient placard to use in protest against tyranny – and I’m happy with people using it, it seems quite unique, an icon of popular culture being used this way."19 ‘V for Vendetta’ portrays a lot of different political messages. In conclusion, this paper has supplemented the theory of Critical Legal Studies by providing a comparison and an analysis of the film with the school of thought. In addition, the paper also provides a critique of Legal Positivism and examines the fact that immoral laws lead to unjust societies.