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Code Red: An Analysis under Legal Positivism

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ABSTRACT

Code Red is an unofficial phrase for the extra-judicial punishment within the Armed Forces for disciplining the subordinate officers for reasons ranging from the violation of official protocol to the washout of one's duties. The Indian version of Code Red is Kambal Parade. The legal validity of Code Red is analysed in the light of 'A Few Good Men' due to the paucity of real-life instances of Code Red barring the isolated instances of PFC William Alvarado (the United States of America) and Second Lieutenant Shatrughan Singh Chauhan (India). The film is assumed to be a mainstream reflection of the tenets of military discipline. Hard Positivism dissociates itself from the moral bearing of Col Nathan R. Jessup's command of Code Red since Hard Positivism champions the command of a supreme sovereign authority even if the command lacks moral footing. Soft Positivism believes in the sound interpretation of legal principles in the light of moral provisions and ideologies, wherein the moral provisions emanate from the moral beliefs and customs of the physical community instead of birthing from Natural Law and Divine Law. Soft Positivism upholds the rejection of Code Red on two grounds: a) The Marines at the base must obey Code Red out of reflective acceptance instead of the coercive force of the fear of Col Nathan R. Jessup (H. L. A. Hart), and b) Code Red is inconsistent with the acceptable sound interpretation of legal principles that condemn the harming of another human being (Ronald M. Dworkin). The court of law in the film adheres to the credos of Soft Positivism while convicting Col Nathan R. Jessup for ordering the lethal Code Red on PFC William Santiago.

Keywords: *Code Red, A Few Good Men, Legal Positivism, Hard Positivism, Soft Positivism.*

I. INTRODUCTION

Code Red is a militarized phrase for any illegal, extra-judicial punishment awarded by a superior authority to instil a sense of discipline in lacking subordinates, wherein the grounds for lacking can range anywhere from the breach of official protocol to the downplay of one's responsibilities and duties.² An eminent case involving Code Red rests with former Marine

¹ Author is a student at National Law University and Judicial Academy, Assam, India.

² *What Is a "Code Red" in the Marines?* REFERENCE. (Mar. 29, 2020), <https://www.reference.com/world-view/code-red-marines-5fa5cc90e8f4f8aa>.

David Cox, wherein he was an abettor along with his fellow Marines in the violent assault of a fellow Marine in 1986 under the customary Code Red.³ Contemporary films act as narratives to portray the coetaneous issues and events within a community.⁴ A film is merchandise of a community; hence, it either consciously or unknowingly upholds the marked culture, beliefs and widespread ideologies of the said community.⁵ In a way, mainstream films bolster the widely held beliefs and shared experiences of society while critiquing certain existing ideologies to influence and shape the future outlook of the said society.⁶ Although the existence of Code Red is largely dismissed by the Armed Forces across the globe, writer Aaron Sorkin posits that it subtly exists.⁷ One of the few instances of Code Red is the death of Private First Class [hereinafter PFC] William Alvarado at Guantanamo Bay, Cuba in 1986, wherein ten marines, including David Cox, were allegedly commanded to inflict the extra-judicial punishment on PFC William Alvarado.⁸ The marines dragged the latter into the bathroom where PFC William Alvarado was blindfolded and gagged while his head was being shaved by the rest.⁹ The disavowal of Code Red within the Armed Forces was reinforced when David Cox was accused of assault instead of being charged with aggravated battery, wherein he was not only punished with a simpler sentence of time-served but also allowed to be honourably discharged after serving two years as a Marine.¹⁰ Mainstream media has managed to reflect the subtle existence of Code Red in the Armed Forces.

A viewing of Rajesh Joshi's Marathi stage-play, named, *Code Mantra*, illustrates the story of Officer Cadet Ravi Shelar of the Maratha regiment who is extirpated in his barracks by his fellow senior cadets after the former allegedly breaks the supposed chain-of-command by complaining to his senior-most regiment authority about an unauthorized firing across the Line-Of-Control [hereinafter the L.O.C].¹¹ The Marathi play finds its roots in Aaron Sorkin's *A Few*

³ *Cold case: Who killed David Cox, Marine who inspired 'A Few Good Men'?* DAYTON DAILY NEWS. (Feb. 10, 2019), <https://www.daytondailynews.com/news/national/cold-case-who-killed-david-cox-marine-who-inspired-few-good-men/Fjw9HvKUIPodgmwtHRWBJP>.

⁴ *How Movies Reflect Culture*, GLIDE MAGAZINE. (Apr. 20, 2020), <https://glidemagazine.com/242770/how-movies-reflect-culture>.

⁵ UNIVERSITY OF MINNESOTA, UNDERSTANDING MEDIA AND CULTURE: AN INTRODUCTION TO MASS COMMUNICATION 8.3 (2010), <https://open.lib.umn.edu/mediaandculture/chapter/8-3-movies-and-culture>.

⁶ *Id.*

⁷ Erin Wisti, *The Real Story That 'A Few Good Men' Is Based On Is More Shocking And Violent Than The Actual Movie*, RANKER (Jun. 14, 2019), <https://www.ranker.com/list/real-story-behind-a-few-good-men-film/erin-wisti>.

⁸ Lisa Marie Fuqua, *The Real Murder Behind a Few Good Men - True Crime*, MEDIUM (Nov. 10, 2019), <https://medium.com/true-crime-addiction/the-real-murder-behind-a-few-good-men-true-crime-ce42c9c85b2f>.

⁹ *Id.*

¹⁰ Wisti, *supra* note 8.

¹¹ Suyash Sethiya, *Code Mantra: Brilliant performances and a gripping plot makes this Marathi play a must watch!* NATION NEXT (Oct. 05, 2016), <https://www.nationnext.com/code-mantra-marathi-play-nagpur>.

Good Men that inaugurated in the Music Box Theatre, Broadway, New York, on November 15, 1989, under director Don Scardino and producer David Brown.¹² Although most people remember *A Few Good Men* for its film-adaptation in 1992 by writer Aaron Sorkin and director Rob Reiner owing to Jack Nicholson's climactic disquisition spiralling around the vociferous phrase "You Can't Handle The Truth,"¹³ its recent re-renderings in Germany as a stage-play in 1992¹⁴ and India not only as an acclimatized film in 2008 (as director Samar Khan's Shaurya)¹⁵ but also as an English stage-production in 2019 (director Nadir Khan for Aditya Birla Group's Aadyam),¹⁶ have been centric to the question of Code Red. The original film follows the courtroom proceedings in Washington D. C. where PFC Loudon Downey and Lance Corporal [hereinafter LCpl] Harold Dawson are on trial for the murder of PFC William Santiago at Guantanamo Bay, Cuba (a naval base of the United States of America). The defence side consists of Lieutenant Junior Grade [hereinafter LtJG] Daniel Kaffee, Lieutenant Commander [hereinafter LtCdr] Joanne Galloway and Lt Sam Weinberg while Captain [hereinafter Capt] Jack Ross is leading the prosecution side. The film begins with a belief that the accused murdered the deceased after the latter supposedly broke the official Marine chain-of-command by complaining to the National Investigative Service [hereinafter the NIS] about Lieutenant Colonel [hereinafter LCpl] Harold Dawson for allegedly firing on the Cuban side of Guantanamo Bay. It is worth noting that the Base Commander, Colonel [hereinafter Col] Nathan R. Jessup, the Base Executive Officer, Lieutenant Colonel [hereinafter LtCol] Matthew Markinson and PFC William Santiago's Commanding Officer, Lt Jonathan Kendrick (Lt: Lieutenant) posit an oddity in Santiago's esoteric demeanour, wherein Santiago's performance in the base's exercises were consistently perceived as being unsatisfactory. The trio notice that PFC William Santiago had been lacerating himself from the rest of his peers. The film's inflexion point occurs when LCpl Harold Dawson shows marked subordination towards LtJG Daniel Kaffee when the latter presents him with a 'cowardly' plea-deal of imprisonment of six months; hereafter, LtJG Daniel Kaffee's team begins to prepare a defence for the accused by showcasing the tacit disciplining techniques that run rampant at the naval base of Guantanamo

¹² *A Few Good Men*, IBDB. <https://www.ibdb.com/broadway-production/a-few-good-men-4255> (last visited May. 01, 2021).

¹³ Anvita Singh, *Hollywood Rewind / Tom Cruise and Jack Nicholson go head-to-head in the well-written A Few Good Men*, THE INDIAN EXPRESS (Sep. 15, 2020), <https://indianexpress.com/article/entertainment/hollywood/hollywood-rewind-tom-cruise-jack-nicholson-a-few-good-men-5948137>.

¹⁴ Sethiya, *supra* note 12.

¹⁵ Gaurav Malani, *Shaurya: Movie Review*, THE ECONOMIC TIMES (Apr. 07, 2008), <https://m.economictimes.com/industry/media/entertainment/shaurya-movie-review/articleshow/2932732.cms>.

¹⁶ Vikram Phukan, *A Few Good Men: debating the morality code*, THE HINDU (Jul. 17, 2019), <https://www.thehindu.com/entertainment/theatre/a-few-good-men-debating-the-morality-code/article28490916.ece>.

Bay at the hands of Col Nathan R. Jessup and Lt Jonathan Kendrick, wherein PFC William Santiago was an alleged victim of an erred Code Red at the hands of the accused who beseeched that they were following the immutable orders of their superiors.

The situation of Code Red is obscure in India. A viral video in 2016 provided a glimpse of the extra-judicial punishment within the Indian Armed Forces, wherein a junior cadet's head was allegedly held between the knees of a senior officer while receiving lashings on its back and buttocks from other senior officers who were armed with canes and whips.¹⁷ The junior cadet squirmed in pain while trying to free himself from the said knee-lock.¹⁸ *Kambal Parade* is an unofficial extra-judicial punishment in military academies, wherein socially awkward and unfocused cadets are attacked in their sleep by their senior officers who cover the former in a thick blanket before beating them; consequently, the blanket not only protects the identities of the said senior officers but also curtails the extent of injury marks on the said junior cadets.¹⁹ In April 1990, Second Lieutenant Shatrughan Singh Chauhan conducted his inaugural search operation in Srinagar, Jammu & Kashmir as a part of the 6th Rajput Battalion, wherein his team uncovered 147 gold biscuits that were allegedly used by the local militant organisations to finance their terror-related activities in the area.²⁰ The 27.5 kilograms of gold was allegedly handed over to Colonel K. R. S. Panwar and Lieutenant General Zaki Mohammad Ahmad instead of reporting the gold to the government officials. The Second Lieutenant was pressurized by the aforementioned duo to avoid mentioning the gold to anyone; however, the former complained to the higher officials about the alleged embezzlement.²¹ The Second Lieutenant received the brutal version of *Kambal Parade* for complaining against his senior peers; additionally, the junior officer was awarded an imprisonment term of seven years in November 1991 after facing a court-martial.²² It is not prudent to think that the Indian Armed Forces is immune from the extra-judicial punishments akin to Code Red. The aforementioned incidences provide conclusive evidence of the existence of the Indian version of Code Red: *Kambal Parade*; additionally, the Indian renditions (ex: *Code Mantra*) of *A Few Good Men* should not be regarded as works of fiction since they cautiously reflect the unspoken norms

¹⁷ *Army Senior Cadets Dish Out Barbaric Punishment To Juniors*, OUTLOOK INDIA. (Dec. 13, 2016), <https://www.outlookindia.com/website/story/army-senior-cadets-dish-out-barbaric-punishment-to-juniors/297483>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Ushinor Majumdar, *I Didn't Know Other Soldiers Testified That Gold Was Seized*, OUTLOOK INDIA MAGAZINE (Feb. 09, 2017), <https://magazine.outlookindia.com/story/i-didnt-know-other-soldiers-testified-that-gold-was-seized/298457>.

²¹ *Id.*

²² *Id.*

and widespread ideology of hardened discipline within the Indian Armed Forces.

(A) Research Statement and Methodology

Code Red is analysed in reference to the contents of the film adaptation of *A Few Good Men* since the film acts as a mainstream reflection of the subtle, yet vehement adherence to the extra-judicial doctrine of Code Red within the Armed Forces; additionally, the incident involving PFC William Alvarado at Guantanamo Bay, Cuba in 1986 indirectly upholds the validity of the elemental contents of the film. The validity of Code Red is investigated as a part of *Lex Iniusta Non Est Lex*, wherein the nuances of the doctrine are studied under the jurisprudential school of Legal Positivism. Etymology deals with the study of the linguistic origin of words and phrases by analysing the historical origins of its components from one language to another.²³ Prof G. Mohan Gopal posits that it is imperative to analyse the etymology of a phrase before trying to understanding its meaning and manifestation.²⁴ The legal apophthegm *Lex Iniusta Non Est Lex* finds its origin in the philosophy of the Bishop of Hippo Regius, Saint Augustine while its absorption as a tenet of Natural Law was undertaken by the 11th-century Italian philosopher Saint Thomas Aquinas.²⁵ The maxim declares any law, which promotes the degradation of human morality and personality as a law that must not be obeyed, wherein the maxim attempts at providing justice from harmful laws.²⁶ Martin Luther King Jr. fancies the idea that one must disobey unjust laws owing to one's moral obligation to do so, wherein an unjust law is any section of the legal code that dissociates itself from the moral standing of the realm of Eternal Order and Natural Law.²⁷

II. ANALYSIS

PFC William Santiago has been performing poorly in his daily exercises even though a routine examination by the base's physician Dr Stone reveals that PFC William Santiago suffers from respiratory distress; this bolsters the image of the tough discipline of rules and regulations that exist within the military.²⁸ The Military Judicial System in India had disbanded from the Civilian Justice System, wherein the Army Act, 1950, the Air Force Act, 1950, and the Navy

²³ *Etymology*, MERRIAM-WEBSTER DICTIONARY. <https://www.merriam-webster.com/dictionary/etymology> (last visited May. 01, 2021).

²⁴ Mohan Gopal, Rajiv Gandhi Institute for Contemporary Studies, Address at the National Law University and Judicial Academy, Assam (Apr. 01, 2021).

²⁵ *Les Iniusta Non Est Lex (An Unjust Law Is Not Law At All)*, ESSAY SAUCE. (Jul. 06, 2019) <https://www.essaysauce.com/law-essays/les-iniusta-non-est-lex-an-unjust-law-is-not-law-at-all>.

²⁶ *Id.*

²⁷ *An Unjust Law Is No Law At All: Excerpts From "Letter From Birmingham Jail"* INTERCOLLEGIATE STUDIES INSTITUTE. (Jan. 18, 2021), <https://isi.org/intercollegiate-review/an-unjust-law-is-no-law-at-all-excerpts-from-letter-from-birmingham-jail>.

²⁸ Ravindra Pathre, *Drama: 'Code Mantra' Fantastic Thrilling Court Martial*, LOKSATTA (Jul. 10, 2016), <https://www.loksatta.com/manoranjan-news/marathi-play-code-mantra-review-1264916>.

Act, 1957 control the conduct of the members of the respective armed military forces by penalizing the disobedience of the chain-of-commands within a military hierarchical system.²⁹ The military requires the execution of on-the-spot decisions to maintain law and order in conflict areas; hence, military protocol leans towards the command structure from the learned, experienced senior officials to the on-the-ground subordinates. American Economist Herbert A. Simon posits that a human is a poor decision-maker since a human cannot possess all the information required to make a decision in a short span of time, wherein the limited cognition of a human coupled with the limited information leads to non-optimal solutions that do not suffice in the long run.³⁰ The Bounded Rationality Model foretells that the decisions of a human seem sufficient because they satisfy the restricted information and the subsequent conditions at hand.³¹ One might hold that the Military Decision-Making is akin to Michael D. Cohen's Garbage Can Model where the decision of the top authorities is whimsical and impulsive since it depends on the present status of the ever-changing dynamics of information, preferences of the person, existing circumstances, intelligence and available resources.³² Although the Garbage Can Model can help the military personnel in making decisions in an ever-changing landscape of problems, which range from cross-border combat, terrorism, insurgency to internal disturbances within the respective military unit, it creates a situation of chaos and despotism; hence, the Armed Forces resort to the Participative Decision-Making Model among a fixed group of higher officials, wherein the sole decision-maker invites the opinions and suggestions of its fellow colleagues on a question even though the end decision rests with the decision-maker.³³

A meeting between Col Nathan R. Jessup, LtCol Matthew Markinson and Lt Jonathan Kendrick in the past reveals the Participative Decision-Making Model where Col Nathan R. Jessup asked the rest about their opinion on PFC William Santiago's poor performance and his breach of the official chain-of-command by complaining to the NIS. Although LtCol Matthew Markinson opined for a transfer of PFC William Santiago on safety grounds since the remaining marines may cause harm to the former for supposedly snitching on LCpl Harold Dawson, he is negated by Col Nathan R. Jessup, the sole decision-maker in the aforementioned

²⁹ Diva Rai, *Military Justice System in India*, IPLEADERS (Jun. 07, 2019), <https://blog.ipleaders.in/military-justice-system-in-india>.

³⁰ Subhasis Das, *Military Decision Making*, INDIAN DEFENCE REVIEW (Sep. 10, 2018), <http://www.indiandefencereview.com/military-decision-making>.

³¹ Charles D. Allen & Breena E. Coates, *Strategic Decision Making Paradigms: A Primer For Senior Leaders* 1-21 (July 20, 2009) (unpublished manuscript) (on file with the United States Army War College).

³² Olga Bugajenko, *The Garbage Can Model of Decision Making*, STUDY (Feb. 23, 2017), <https://study.com/academy/lesson/the-garbage-can-model-of-decision-making.html>,

³³ Das, *supra* note 31.

model. Col Nathan R. Jessup surmised that a transfer will set a bad precedent for others at the base, wherein he held that PFC William Santiago must be taught the protocol of the base while disciplining him to do the tasks and exercises better. In a nutshell, the senior officials within the military follow the Participative Decision-Making Model while making strategic decisions concerning the subordinate personnel; additionally, these decisions are observed to conform to the Bounded Rationality Model. The flow of directives from the superiors to the inferior ranks is inbred into the military culture by cultivating a sense of unwavering and immutable obedience in the face of adversaries, wherein one of the techniques to instil the same is Code Red. The rationality of Code Red is upheld when LtCdr Joanne Galloway questions Col Nathan R. Jessup, wherein he states that Code Red is very effective in enforcing discipline among front-line military personnel.

Code Red can be buoyed by Legal Positivism where philosopher John Austin established law as an objective study, which is devoid of subjective discussions of ethics and morality.³⁴ In the truest sense of the phrase, Legal Positivism translates as any set of rules and regulations posited by a human sovereign authority (including the head of state) in an organized community.³⁵ Positive Law is an artificial body of law that is perpetrated by an authoritative figure (ex: Central Parliament, State Legislative Assembly, State Administrative Agencies, the Executive, etcetera) upon the jurisdictional subjects of the state,³⁶ i.e. the disciplining act of Code Red is a Positive Law from an authoritative Col Nathan R. Jessup. It is worth analysing Code Red's validity through the tenets of Legal Positivism. John Austin calls for the supreme command of the sovereign authority of an independent political state, wherein the commanded rules and regulations are different from the laws of not only close analogy (ex: laws of morality, etcetera) but also remote analogy (ex: Laws of Motion).³⁷ Legal Positivists use a Separability Thesis to pull the inquiry about the conformity of law with the societal standard from the inquiry about the existence of a law.³⁸ In a nutshell, the validity of law must be free from the questions of morality. The existence of Code Red is meritorious since it adheres to the official authoritative social structures (military-specific legislations and its enforcement by Army Tribunals) of the Armed Forces even though Code Red is neither just nor prudent in disciplining military

³⁴ Diva Rai, *Legal Positivism: Evolution and Challenges*, IPLEADERS (Jul. 08, 2019) <https://blog.ipleaders.in/legal-positivism-evolution-and-challenges>.

³⁵ *Positivism And Natural Law*, UK ESSAYS. (May. 17, 2017), <https://www.ukessays.com/essays/philosophy/a-differentiation-between-positivism-and-natural-law-philosophy-essay.php>.

³⁶ *Id.*

³⁷ *Legal Positivism*, LAW TEACHER. (May. 24, 2019), https://www.lawteacher.net/free-law-essays/jurisprudence/legal_positivism.php#:~:text=Legal%20positivism%20is%20a%20school,includin%20administrative%2C%20executive%2C%20legislative%2C.

³⁸ *Id.*

personnel; additionally, Legal Positivists like John Austin would uphold Code Red since the inquiry into the conformity of Code Red with ethical concerns, morals and justice is immaterial while deciding the existence of the legal order. The external criticism of Code Red based on its sociological morality by censors is not the real part of the interpretation of Code Red per British positivist Jeremy Bentham, i.e. the criticism of Code Red on grounds of its inhumanity and community-endorsed unscrupulousness is absurd since the laws enforced by the sanction of a singular sovereign superior is meant to be followed by the subordinates even if the law is unethical (Exclusive Positivism or Hard Positivism).³⁹ John Austin believes that the primary function of Col Nathan R. Jessup is to impose sanctions either with or without force to maintain order in Guantanamo Bay, Cuba; additionally, the murder of PFC William Santiago is valid since it is part of the said supreme force.

English philosopher Thomas Hobbes upholds the Participative Decision-Making Model by positing that human behaviour is inherently chaotic, wherein human life will be short and brutish if human beings were allowed to act on their own devices to decide *What is right? What is prudent? What one wants?*⁴⁰ Human beings have a natural instinct to protect their unalienable and natural right to self-preservation, wherein the said State of Nature will lead to a situation of perpetual conflict between human beings within a community; consequently, the fear of losing one's liberties subconsciously mandates the people to surrender their natural rights to a political institution, such that the sovereign power is entrusted with the protection of the rights and liberties of its subjects.⁴¹ The subjects of the sovereign authority voluntarily consent to the formation of a covenant where the subjects are obligated to obey the commands of the sovereign authority unless a command either harms or puts the subjects of the state in harm's way, i.e. the subjects of the state ought not to obey the commands of the sovereign whose obedience harms the said subjects (ex: the sovereign's command to kill oneself).⁴² The superior authority in a Participative Decision-Making Model in the Armed Forces derives its sovereign authority from the philosophy of Thomas Hobbes, wherein the commands made by the latter protect the subordinate individuals of Guantanamo Bay from living a life of violence and competition in favour of a life of gain, reputation and peaceful coexistence. It is worth noting

³⁹ Brian Leiter, *Realism, Hard Positivism, and Conceptual Analysis*, CAMBRIDGE UNIVERSITY PRESS (Feb. 16, 2009), <https://www.cambridge.org/core/journals/legal-theory/article/abs/realism-hard-positivism-and-conceptual-analysis/12390DCE2E5EDF2466873801DE4EDE7F>.

⁴⁰ Katherine J. Wolfenden, *Hobbes' Leviathan and Views on the Origins of Civil Government: Conservatism by Covenant*, 2 INQUIRIES JOURNAL 1, 1-2 (2010).

⁴¹ Sharon A. Lloyd & Susanne Sreedhar, *Hobbes's Moral and Political Philosophy*, THE STANFORD ENCYCLOPAEDIA OF PHILOSOPHY (Feb. 12, 2002), <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=hobbes-moral>.

⁴² Mark C. Murphy, *Was Hobbes a Legal Positivist?* 105 Ethics 846, 848-849 (1995).

that the sovereign authority of Col Nathan R. Jessup is absolute, wherein he enjoys the essential rights of sovereignty per Thomas Hobbes to effectively and efficiently regulate the conduct at the base;⁴³ additionally, Col Nathan R. Jessup is allowed to use terror (without being arbitrary) to coerce his subordinates into a state of discipline (Code Red) under the Pedigree Thesis of Legal Positivism.⁴⁴

The Pedigree Thesis of Legal Positivism ascribes Hard Positivism to Thomas Hobbes, wherein Hobbes believed that the pedigree (Col Nathan R. Jessup) of a provision (Code Red) decides the legal validity of the said provision, wherein it was held by Hobbes that the sovereign authority (Col Nathan R. Jessup) can never make a wrongful and unjust law.⁴⁵ Austrian philosopher Hans Kelsen's Hierarchy of Legal Norms can be extricated to explain Code Red, wherein the norms at Guantanamo Bay are not a coordinated set of moral norms, justiciable natural norms and legal norms, rather norms at Guantanamo Bay form a hierarchy where immutable, supreme legal norms are placed at the top since the legal norms are born neither observably (free, moral Natural Law) nor arbitrarily (Divine Law).⁴⁶ It is worth noting that Code Red emanates from the top of the hierarchy; hence, its validity based on the lowly-placed Natural Law and Divine Law is immaterial. In a nutshell, Legal Positivist John Austin considers Col Nathan R. Jessup as a superior sovereign authority on five cardinal grounds:⁴⁷

1. Col Nathan R. Jessup is the determinate human superior at Guantanamo Bay whose authority cannot be identifiably outranked by anyone at the base.⁴⁸
2. The personnel at the independent naval base are in a habit of obeying the orders of Col Nathan R. Jessup.⁴⁹ It is worth noting that Col Nathan R. Jessup's orders are obeyed without question at the base; this is reaffirmed in the film when LtJG Daniel Kaffee asks the same to the former in the court of law.
3. The meeting between Col Nathan R. Jessup, LtCol Matthew Markinson and Lt Jonathan Kendrick shows the conflicting opinions of Col Nathan R. Jessup and LtCol Matthew Markinson, wherein the latter advocated for the transfer of PFC William Santiago owing to the threat to his life from the senior Marines for complaining to the NIS while the former rejects the idea with the thought that the transfer will create chaos in the

⁴³ Lloyd, *supra* note 42.

⁴⁴ Wolfenden, *supra* note 41.

⁴⁵ Arinze Agbanusi, *Unjust Law As A Justification For Civil Disobedience*, 4 J. AFR. STUD. 1, 3-4 (2015).

⁴⁶ Leslie Green & Thomas Adams, *Legal Positivism*, STANFORD ENCYCLOPAEDIA OF PHILOSOPHY (Dec. 17, 2019), <https://plato.stanford.edu/entries/legal-positivism>.

⁴⁷ SURI RATNAPALA, JURISPRUDENCE 41 (Cambridge ed., 2009).

⁴⁸ *Id.*, at 43.

⁴⁹ *Id.*

discipline of the base. Col Nathan R. Jessup threateningly orders Lt Jonathan Kendrick to look into the insubordination and the unsatisfactory performance of PFC William Santiago. Col Nathan R. Jessup is not habitual in obeying the opinions of anyone else.⁵⁰

4. The sovereign authority of Col Nathan R. Jessup is indivisible, i.e. the decisions are taken by him alone. Although Col Nathan R. Jessup discreetly and individually heads Guantanamo Bay as one of the bases of the Armed Forces, he enjoys sovereignty in the respective unit of the Armed Forces.⁵¹
5. The authority and power of Col Nathan R. Jessup is absolute and unlimited within the confines of Guantanamo Bay without any regard for a self-imposed limitation in the declaration of commands.⁵²

The Marines at Guantanamo Bay voluntarily surrender their liberties to the superior authority (Col Nathan R. Jessup) to lead an orderly life of military cohesion; additionally, the cadets within the Armed Forces receive disciplined training to mould their mental attitude and physical state to endure the strident conditions on the front lines of their respective nations.⁵³ Military training abrogates the individualistic approach of its cadets while chiselling a group-based attitude among the cadets to ensure their adherence to the orders and commands of the superior authority (in the Participative Decision-Making Model) in situations of warfare and insurgency.⁵⁴ Per Thomas Hobbes, the consensual indoctrination of a covenant mandates the Marines to obey the orders of Col Nathan R. Jessup (he is a sovereign by institution) even if the Marines do not choose the individual who holds the position of sovereign power.⁵⁵ The voluntary submission to a sovereign authority creates an obligatory duty and moral responsibility among the Marines to fulfil their promise to the said covenant of obeying the commands of the sovereign authority for the greater utilitarian good of Guantanamo Bay as a whole.⁵⁶ It is worth noting that per Thomas Hobbes the Marines are obligated to obey Code Red even if they might not have a moral obligation to do so unless the Marines are asked to kill themselves under Code Red;⁵⁷ however, Code Red is perceived to lack the intent to either

⁵⁰ *Id.*

⁵¹ *Id.*, at 44-45.

⁵² *Id.*

⁵³ Gary Sheffield, *Military Discipline and Punishment*, BRITISH LIBRARY (Jan. 29, 2014), <https://www.bl.uk/world-war-one/articles/military-discipline#>.

⁵⁴ *Id.*

⁵⁵ Richard Dagger & David Lefkowitz, *Political Obligation*, STANFORD ENCYCLOPAEDIA OF PHILOSOPHY (Apr. 17, 2007), <https://plato.stanford.edu/entries/political-obligation/#:~:text=In%20either%20case%2C%20Hobbes%20said,sovereignty%20be%20instituted%20or%20acquired.>

⁵⁶ *Id.*

⁵⁷ The School of Life, *POLITICAL THEORY - Thomas Hobbes*, YouTube (Jul. 31, 2015), <https://www.youtube.com/watch?v=9i4jb5XBX5s&t=234s>.

kill or cause grievous bodily harm to the wrongdoing Marine (i.e. the disciplinary edicts of Code Red conforms to Thomas Hobbes' theory).

A cardinal argument regarding Code Red is its association with morality. Austrian philosopher Hans Kelsen delineates two forms of rules: a) Moral Rule: The content of a Moral Rule lies in a higher moral principle (either Natural Law or Divine Law), and b) Legal Rule: The content of a Legal Rule is enforced by a superior sovereign authority in adherence to the due procedure of law.⁵⁸ A moral provision may acquire the legal strength of validity if and only if the said sovereign authority enforces the moral provision as a legal rule.⁵⁹ Although the Marines at Guantanamo Bay have good moral reasons to dissociate from Code Red, they ought to obey the provisions of Code Red (i.e. they have good legal reasons to obey Code Red) since it strengthens the military discipline. Legal Positivists place rules enforced by an authority on a level higher than the unsanctioned moral provisions and opinions about the said rule.⁶⁰ It is worth mentioning that John Austin upholds the validity of Code Red while rejecting the hypothesis of *Lex Iniusta Non Est Lex*, wherein the repudiation of the eternal moral values (either from Divine Law or from Natural Law) does not invalidate a Positive Law, i.e. an individual (the Marine) is dutifully bound to obey a Positive Law even if the said law berates the widely accepted moral values of the community (Guantanamo Bay).⁶¹ It is worth noting that John Austin upheld a proposition that a Positive Law may be rejected by an individual if and only if the arbitrariness of the said law is extremely heinous and abhorrent to justify a moral obligation from the said individual to obey the tenets of the unjust law.⁶² John Austin may reject the immoral manifestation of Code Red in *A Few Good Men* where the said Positive Law leads to the death of PFC William Santiago.

Although Legal Positivism accepts the collective competency and capability of the supreme authority as the apex legal norm where an implied threat exists to penalize the violators of the Positive Law, it does not provide for the absolute power of the sovereign authority. The strongest opposition to Code Red is *Lex Iniusta Non Est Lex*, wherein Inclusive Positivism or Soft Positivism allows for the understanding of the legal norms based on certain moral principles. It is worth understanding that the morality in Soft Positivism is not the moral principles of Natural Law, rather it is the moral standard helmed by the independent political

⁵⁸ Julius Cohen, *The Political Element in Legal Theory: A Look at Kelsen's Pure Theory*, 88 YALE. L. J. 1, 10 (1978).

⁵⁹ RATNAPALA, *supra* note 48, at 26.

⁶⁰ Cohen, *supra* note 59, at 11.

⁶¹ RATNAPALA, *supra* note 48, at 47.

⁶² Seow H. Tan, *Validity And Obligation In Natural Law Theory: Does Finnis Come Too Close To Positivism*, 15 REGENT U. L. 195, 214-215 (2003).

society as a whole.⁶³ British legal philosopher H. L. A. Hart put forth the Rules of Recognition, wherein the validity of the law is not completely free of moral constraints.⁶⁴ H. L. A. Hart clarified that the Positive Law is not immoral even if Positive Law does not seek the validation of Natural Law and Moral Law; additionally, Positive Law is not void of moral grounding under Soft Positivism per H. L. A. Hart.⁶⁵ H. L. A. Hart believes that the validity of law rests entirely on the social conduct that is largely practised by the community as a whole, wherein the law does not stem from an apex legal norm (as told by Hans Kelsen), rather the recognizable source of law is the social behaviour of the community; for example: if a community practices secularism, then the supreme sovereign authority must make a law that allows the community to conform to its desired behaviour of secularism.⁶⁶ The law must conform to the largely adopted customs of the society (ex: How will the disputes between two parties on a question of law be resolved within the independent political state? Who has the authority to enforce the laws? How will the violator of law be punished?). In a nutshell, H. L. A. Hart believes that the obedience by an individual of a Positive Law under Hard Positivism stems from the said individual's fear of punishment from the sovereign authority for non-adherence of the said law, wherein the binding force of such a law rests on a wrongful threat instead of the reflective acceptance by the individual.⁶⁷ H. L. A. Hart demolishes the doctrine of Code Red since it is acceptable neither by LtCol Matthew Markinson nor by the accused, wherein the former dismisses the need of a strict extra-judicial disciplining method akin to Code Red to improve the supposedly weak performance of PFC William Santiago while the latter accepts the infliction of Code Red on PFC William Santiago out of the fear of disobeying Col Nathan R. Jessup's orders. The acknowledgement at the end of the film by the accused that they ought to stand up for "weak" individuals akin to PFC William Santiago cements the idea where the accused followed Col Nathan R. Jessup's orders due to their fear of being punished by the latter for non-compliance of the said orders, wherein the accused acknowledge the moral malignity of Code Red. The end of the film upholds H. L. A. Hart's hypothesis about providing just justice, wherein Col Nathan R. Jessup's order harms the weaker section of Guantanamo Bay (the Marines) by creating a moral imbalance where the strong individuals can harm the weaker individuals; hence, the court of law recognizes the wrongdoer's responsibility to level the status

⁶³ H. Hammer Hill, *Judicial Reasoning: Legal Positivism*, SOUTH-EAST MISSOURI STATE UNIVERSITY, <http://cstl-cla.semo.edu/hhill/ui305/positivism.html> (last visited May. 03, 2021).

⁶⁴ STANFORD ENCYCLOPAEDIA OF PHILOSOPHY, *supra* note 47.

⁶⁵ LAW TEACHER, *supra* note 38.

⁶⁶ STANFORD ENCYCLOPAEDIA OF PHILOSOPHY, *supra* note 47.

⁶⁷ Kenneth E. Himma, *Legal Positivism*, Internet Encyclopaedia Of Philosophy, <https://iep.utm.edu/legalpos> (last visited May. 03, 2021).

quo⁶⁸ by providing compensation to the aggrieved individual (PFC William Santiago).⁶⁹ It is worth noting that the wrongdoer (Col Nathan R. Jessup) restores the status quo at the behest of the court of law by going to prison for harming PFC William Santiago (the compensation to the aggrieved individual is the conviction of the wrongdoer).

American philosopher Ronald Myles Dworkin is the most important supporter of Soft Positivism, wherein he ideates that the judicial system of any nation has to rely significantly on extra-judicial legal provisions along with the eternal, moral and natural principles to correctly adjudicate on a dispute.⁷⁰ Ronald M. Dworkin rejects the coercive nature of Hard Positivism of the political sovereign authority, rather he feels that the inspiration behind a law must be its ability to adjudicate disputes in a court of law. Dworkin's philosophy narrows the source of legal principles to its prospective ability to regulate the conditions and situations where the incumbent sovereign system may turn despotic against the ulterior rights and interests of the society.⁷¹ Ronald M. Dworkin suggests that a legal provision can be optimally understood by interpreting the existing legislative statutes and laws, wherein the optimal interpretation of a disputed legal provision rides on the examination of moral principles in the best possible light.⁷² Ronald M. Dworkin rejects Code Red since it is inconsistent with the judicial interpretation of harming any individual being morally wrongful, i.e. the optimal interpretation of judicial interpretations in the light of moral principles dictates that harming another human being is morally incorrect.⁷³

One can argue that the decision of the court of law at the end of the film conforms with Ronald M. Dworkin's idea of interpreting commands of the sovereign authority in the light of sound moral principles. In a nutshell, Soft Positivists disregard the complete exclusion of moral principles while not only making but also enforcing the law, wherein social, political, moral considerations are important while making legal decisions even if the considerations are explicitly devoid of a source in their respective Legislative to drive them into action. Positive Law must consider non-source-based communal morality while deciding on legal principles. The film ends with the conviction of Col Nathan R. Jessup for ordering the Code Red on PFC

⁶⁸ The Status Quo is the just and equal treatment in the eyes of the law, wherein the weaker sections of the society can vehemently object to the harm inflicted upon them by the relatively stronger sections of the said society in the court of law since H. L. A. Hart's just justice distributes the benefits and burdens of justice fairly on all individuals of society.

⁶⁹ Robert S. Summers, *H. L. A. Hart On Justice*, 59 J. PHILOS. 497, 498-499 (1962).

⁷⁰ Rai, *supra* note 35.

⁷¹ STANFORD ENCYCLOPAEDIA OF PHILOSOPHY, *supra* note 46.

⁷² David Lyons, *The Connection Between Law and Morality: Comments on Dworkin*, 36 J. LEGAL EDUC. 485, 486-487 (1986).

⁷³ David Lyons, *Moral Limits Of Dworkin's Theory Of Law And Legal Interpretation*, 90 B. U. L. REV. 595, 596 (2010).

William Santiago. It can be inferred that the court decided to adhere to Soft Positivism while declaring the illegality of Code Red. Although Code Red is an immutable command of the supreme sovereign authority (Col Nathan R. Jessup), it violates the core ideal of Soft Positivism: Code Red gives rise to a situation where the organization (the Naval Base at Guantanamo Bay, Cuba) can coerce its personnel to act in a certain way with the implied fear of court-martial. *Lex Iniusta Non Est Lex* forms the cornerstone of Soft Positivism where any law that unjustly allows the superior authority to use coercion against the interests and rights of its subjects is not a valid law. The unjust consideration of Code Red has no source to propel it into action; yet, the court in the film decided to rely on the moral repercussions of the unjust consideration to convict Col Nathan R. Jessup for the murder of PFC William Santiago. The coercive effect of Code Red is showcased within the film, wherein PFC William Santiago is not excused from exercises even though Dr Stone certifies the former's respiratory distress; additionally, the transfer of the deceased is rejected by his superiors.⁷⁴ The threatening horrors of Code Red are evident when the authorities at the base hire LtJG Daniel Kaffee who is renowned for getting plea deals for his clients, to represent the accused. It was believed that LtJG Daniel Kaffee would get a plea deal, wherein the accused will serve a mere six-month imprisonment while the true criminal, Col Nathan R. Jessup, gets to save his image in the public eye.⁷⁵ Code Red allows the superior authority (Col Nathan R. Jessup) to threaten not only the deceased but only the interests of the accused (false imprisonment without a trial). The coercive nature of Code Red warrants the law to be deemed as unjust in the spirit of Soft Positivism; hence, the maxim *Lex Iniusta Non Est Lex* holds.

III. CONCLUSION

The film *A Few Good Men* provides us with the reflection of Code Red within the military of a nation, wherein the subordinate military personnel are disciplined into following the rigid protocol of their respective military by using extra-judicial disciplining methods like Code Red that includes the inhumane treatment of the personnel, including assault. The subtle existence of Code Red within the Armed Forces across the globe is validated at the instances of PFC William Alvarado and Second Lieutenant Shatrughan Singh Chauhan. The understanding of Code Red was done through the lens of Legal Positivism. Hard Positivism champions Code Red by upholding the irrationality of testing the morality and ethics of law to validate the

⁷⁴ 'A Few Good Men' picks up where 'Patton' left off. WIDE SCREENINGS. <http://www.widescreenings.com/few-good-men-analysis-review.html#:~:text=The%20goal%20of%20the%20film,a%20Princess%20Leia%20Desque%20equal> (last visited May. 03, 2021).

⁷⁵ *A Few Good Men: Plot*, IMDB. https://www.imdb.com/title/tt0104257/plotsummary?ref_=tt_stry_pl#synopsis (last visited May. 03, 2021).

existence of the said law. Hard Positivism allows the superior sovereign authority to use coercive force to make the subordinate individuals comply with their orders and commands. Soft Positivists like Ronald M. Dworkin and H. L. A. Hart shift the focus of law to the adjudication of disputes in a court of law where the non-source-based principles of morality are employed while judging a case. It is worth noting that Soft Positivism considers the morality that is practised by the society at large while rejecting the arbitrary morality from Natural Law and Divine Law.

Soft Positivism champions the rejection of Code Red on two grounds: a) The Marines at the base must obey Code Red out of reflective acceptance instead of the coercive force of the fear of Col Nathan R. Jessup (H. L. A. Hart), and b) Code Red is inconsistent with the acceptable sound interpretation of legal principles that condemn the harming of another human being (Ronald M. Dworkin). The court of law conforms to the ideals of Soft Positivism by convicting Col Nathan R. Jessup for ordering the Code Red, wherein the said conviction allows the court of law to reinstate the imbalanced equilibrium between the weaker members (the Marines) and the stronger members (Col Nathan R. Jessup) of Guantanamo bay in the eyes of the law (per H. L. A. Hart); additionally, the said equilibrium is an outcome of the sound interpretation of judicial principles to treat everyone equally in the moral paradigm (per Ronald M. Dworkin)..
