

## RELATIONSHIP BETWEEN LAW AND MORALITY

NATURAL LAW	LEGAL POSITIVISM						
<ul style="list-style-type: none"><li>• The idea that there is a real, pre-political set of rules that provide the paradigm against which human laws can be measured</li><li>• Natural law is a metaphysical concept (not something physical)</li><li>• Cannot be touched, seen or measured</li><li>• Really has 2 parts<ul style="list-style-type: none"><li>◦ Metaphysical = Eternal, unchanging, universal = ideal/rational Customs</li><li>◦ Temporal, changing, local = positive (human) law</li></ul></li><li>• All positive law must meet the requirements of natural law</li><li>• Aristotle, Distributive justice = those who are equal, should be treated equally.<ul style="list-style-type: none"><li>◦ Corrective justice = correcting an imbalance = utilitarian</li></ul></li><li>• Quiero: "ratio recte naturae congruens" = laws are just if they correspond to natural law</li><li>• English law Blackstone = Natural law is morally. Legal rules = based on moral rules</li></ul>	<ul style="list-style-type: none"><li>• Rejection of metaphysics / Rejection of natural law</li><li>• Ideas based on given, factual, positive reality</li><li>• Facts + values must be separated from each other</li><li>• Law must be based on facts, not morality</li><li>• Rights + Rules have different meanings in law and morality</li><li>• Validity of law cannot depend on its moral content</li><li>1. Law is based on social agreement/convention = social product = can be criticised</li><li>• Liberal system of institutions = form of social control</li><li>1. Command Theory: Command by a sovereign to those who are in a habit of obeying = criticised by later legal positivists</li><li>• Hart: Law consists of primary rule-imposing rules + secondary power-conferring rules. These must be generally accepted as common public standards</li><li>• Accepts that laws can be "bad", but it does not make the law invalid</li><li>• There is a problem with morally evil laws-cannot be opposed on basis of morality, must be opposed on other legal grounds</li></ul>						
WHAT IS THE MEANING OF NATURAL ORDER?	3 BASIC POSITIVIST IDEAS APPLIED TO LEGAL POSITIVISM						
<ul style="list-style-type: none"><li>• There is a natural order or natural harmony that applies to social life and the law</li><li>• In legal thinking, the hierarchical structure of these societies were never questioned and were justified (Hobbes, Aquinas)</li><li>• This meant that laws were often regarded as being beyond criticism</li><li>• If your laws are from natural order and your order comes from God, then criticism of laws is indirect criticism of God</li></ul>	<table><tr><th>EMPIRIOLOGICAL THESES</th><th>SOCIAL THESES</th><th>COMMAND THESES</th></tr><tr><td><ul style="list-style-type: none"><li>• is based on the positivist idea that knowledge of facts and knowledge of values are learnt in different ways</li><li>• Rejects metaphysical assumptions</li><li>• That is because rules can be physically observed while values cannot be so observed</li><li>• Therefore rules are relevant to science and values are not</li></ul></td><td><ul style="list-style-type: none"><li>• is about the idea that law does not depend on a natural order, but on social and scientific facts</li><li>• Rejects the idea of a natural order</li><li>• Legal rules come from humans, not from Gods</li><li>• Therefore legal rules can be criticised</li></ul></td><td><ul style="list-style-type: none"><li>• One of the oldest ideas in legal theory is the idea that law is essentially a command by a sovereign to those who have a habit of obeying those commands</li><li>• Rejects the idea of the common good</li><li>• Rules deal with individual rights</li><li>• Therefore law manages the conflict between society and the individual</li></ul></td></tr></table>	EMPIRIOLOGICAL THESES	SOCIAL THESES	COMMAND THESES	<ul style="list-style-type: none"><li>• is based on the positivist idea that knowledge of facts and knowledge of values are learnt in different ways</li><li>• Rejects metaphysical assumptions</li><li>• That is because rules can be physically observed while values cannot be so observed</li><li>• Therefore rules are relevant to science and values are not</li></ul>	<ul style="list-style-type: none"><li>• is about the idea that law does not depend on a natural order, but on social and scientific facts</li><li>• Rejects the idea of a natural order</li><li>• Legal rules come from humans, not from Gods</li><li>• Therefore legal rules can be criticised</li></ul>	<ul style="list-style-type: none"><li>• One of the oldest ideas in legal theory is the idea that law is essentially a command by a sovereign to those who have a habit of obeying those commands</li><li>• Rejects the idea of the common good</li><li>• Rules deal with individual rights</li><li>• Therefore law manages the conflict between society and the individual</li></ul>
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