

RELATIONSHIP BETWEEN LAW AND MORALITY

NATURAL LAW	LEGAL POSITIVISM						
<ul style="list-style-type: none">• The idea that there is a real, pre-political set of rules that provide the paradigm against which human laws can be measured• Natural law is a metaphysical concept (not something physical)• Cannot be touched, seen or measured• Really has 2 parts<ul style="list-style-type: none">◦ Metaphysical = Eternal, unchanging, universal = ideal/rational Customs◦ Temporal, changing, local = positive (human) law• All positive law must meet the requirements of natural law• Aristotle, Distributive justice = those who are equal, should be treated equally.<ul style="list-style-type: none">◦ Corrective justice = correcting an imbalance = utilitarian• Quine: "In this sense, natural law is congruent" = laws are just if they correspond to natural law• English law Blackstone = Natural law is morally. Legal rules = based on moral rules	<ul style="list-style-type: none">• Rejection of metaphysics / Rejection of natural law• Ideas based on given, factual, positive reality1. Facts + values must be separated from each other<ul style="list-style-type: none">• Law must be based on facts, not morality• Rights + Rules have different meanings in law and morality• Validity of law cannot depend on its moral content2. Law is based on social agreement/convention = social product = can be criticised<ul style="list-style-type: none">• Liberal system of institutions = form of social control3. Command Theory: Command by a sovereign to those who are in a habit of obeying = criticised by later legal positivists• Hart: Law consists of primary rule-imposing rules + secondary power-conferring rules. These must be generally accepted as common public standards• Accepts that laws can be "bad", but it does not make the law invalid• There is a problem with morally evil laws-cannot be opposed on basis of morality, must be opposed on other legal grounds						
WHAT IS THE MEANING OF NATURAL ORDER?	3 BASIC POSITIVIST IDEAS APPLIED TO LEGAL POSITIVISM						
<ul style="list-style-type: none">• There is a natural order or natural harmony that applies to social life and the law• In legal thinking, the hierarchical structure of these societies were never questioned and were justified (Hobbes, Aquinas)• This meant that laws were often regarded as being beyond criticism• If your laws are from natural order and your order comes from God, then criticism of laws is indirect criticism of God	<table><tr><th>EMPIRIOLOGICAL THESES</th><th>SOCIAL THESES</th><th>COMMAND THESES</th></tr><tr><td><ul style="list-style-type: none">• is based on the positivist idea that knowledge of facts and knowledge of values are learnt in different ways• Rejects metaphysical assumptions• That is because rules can be physically observed while values cannot be so observed• Therefore rules are relevant to science and values are not</td><td><ul style="list-style-type: none">• is about the idea that law does not depend on a natural order, but on social and scientific facts• Rejects the idea of a natural order• Legal rules come from humans, not from Gods• Therefore legal rules can be criticised</td><td><ul style="list-style-type: none">• 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• Rejects the idea of the common good• Rules deal with individual rights• Therefore law manages the conflict between society and the individual</td></tr></table>	EMPIRIOLOGICAL THESES	SOCIAL THESES	COMMAND THESES	<ul style="list-style-type: none">• is based on the positivist idea that knowledge of facts and knowledge of values are learnt in different ways• Rejects metaphysical assumptions• That is because rules can be physically observed while values cannot be so observed• Therefore rules are relevant to science and values are not	<ul style="list-style-type: none">• is about the idea that law does not depend on a natural order, but on social and scientific facts• Rejects the idea of a natural order• Legal rules come from humans, not from Gods• Therefore legal rules can be criticised	<ul style="list-style-type: none">• 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• Rejects the idea of the common good• Rules deal with individual rights• Therefore law manages the conflict between society and the individual
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