

RELATIONSHIP BETWEEN LAW AND MORALITY

NATURAL LAW	LEGAL POSITIVISM						
• 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 ◦ Metaphysical + Eternal, unchanging, universal + identifiable 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. ◦ Corrective justice = correcting an imbalance = utilitarian • Quare: "ratio legis naturalis congruent?" = laws are just if they correspond to natural law • English law Blackstone = Natural law is morally. Legal rules = based on moral rules	• Rejection of metaphysics / Rejection of natural law • Ideas based on given, factual, positive reality 1. Facts + values must be separated from each other • Law must be based on facts, not morality • Rights + Duties have different meanings in law and morality • Validity of law cannot depend on its moral content 2. Law is based on social agreement/convention + social product + can be criticised • Liberal system of institutions + form of social control 3. Command Theory: Command by a sovereign to those who are in a habit of obeying + criticised by later legal positivists • Mark Latham: system of primary duty-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 applied on basis of morality, must be applied on other legal grounds						
WHAT IS THE MEANING OF NATURAL ORDER?	3 BASIC POSITIVIST IDEAS APPLIED TO LEGAL POSITIVISM						
• 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> • 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> • 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 God • Therefore legal rules can be criticised </td><td> • 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	• 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	• 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 God • Therefore legal rules can be criticised	• 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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