

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 = 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. - 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	- 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 4. 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						
- 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 Gods - 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 Gods - 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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Marco Cascella



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