

Joseph raz on morality and nature of law philosophy essay

[Experience](#), [Human Nature](#)



\n[[toc title="Table of Contents"](#)]\n

\n \t

1. [Answer 3 - H. L. A. Hart, the Concept of Law](#) \n \t
2. [GROUP B :-](#) \n \t
3. [Answer 1 : The case of the Speluncean Explorers](#) \n

\n[/toc]\n \n

Joseph Raz conducted a litmus test by asking the question “ Is there a necessary connection between law and morality?” which he quickly dismissed as it created a huge amount of confusion and resulted in no proper conclusion. He said that the idea of asking this very question is not important as it creates a bigger divide between the Anarchists also referred as legal positivists and Thomists also referred as natural lawyers.

The anarchists like H. L. A. Hart believe that the law is evil, i. e. it enforces individuals to follow certain rules and regulations leaving no choice. The Thomists like Michael Moore and Thomas Aquinas are of the idea that the law is good in its very nature. But there are some anarchists who do agree that law can be regarded to be good if there is no coercion from the sovereign power to follow it and if individuals can exercise the law in the manner they like. Some Thomists also agree with the fact that law can be put to evil use by the hands of the government and higher authorities.

This huge divide between the legal positivists and the natural lawyers does not help conclude anything. It just draws a bigger line between the two hence leading us astray from the main connection that we are trying to

establish between law and morality. Raz also calls this whole test 'trivial' as he says that we all tend to believe that law is good and hence we make the legal positivists sound wrong as if their idea of law is completely baseless which is not the case therefore the necessary connection test fails.

Joseph does mention that there is an obvious connection between law and morality. Why would there be laws if every reasonable man was morally right? He gives some more ideas to explain the necessary connection which are as follows :

Human beings live together and they need protection for which we need a government or a higher power which we consent to obey by following their laws and in return we are protected from any physical harm from enemies and even live in less apprehension from insecurity.

Though animals can have sex but that does not mean that 'rape' can be considered a right way of involving in sex and is considered immoral by the legislation.

Pluralism is the idea of different people having different views and morals yet following law which is for the greater good.

Though Raz mentioned the above three examples he mainly focused on the first one as it is very important for each and every individual in a society to feel secured and have some ideas and viewpoints in common and to respect each other's ideas and values. This would further help fuel cooperation between the higher authorities like the government and the citizens.

Raz finds the connection of necessary obligation to obey and use of systemic law valid. He says that the necessary conditions of obligation to obey are -

In a law, it is necessarily the duty of the citizens to obey the law of the country.

In a law, there is a necessary reason to obey the law of the country.

In a law, it is necessary that if the law is just then the people follow it.

In a law, it is necessary that if there is democracy in the country the laws of the government are followed.

He talks about the systemic method which is law keeping in mind the moral values of a reasonable man but mainly concerned with the way the law is implemented and works in the society. He says that sometimes law ends up in creating some moral values which is usually good for the people. He finds the systemic method of all to be the most valid. He says that following a systemic law will cater to the need of majority of the people and provide justice at a higher level. The law is made keeping in mind the moral values which is a component of it making the law more strong and well established in the society.

Answer 3 – H. L. A. Hart, the Concept of Law

As per H. L. A. Hart when the idea of a society was established there were no laws as such existing in the society. But there were definitely some rules or laws which we would call 'customs'. Customs are simply the various ideas and traditions followed that have been transferred from generations to

generations. Hence the most fundamental rules existing in a society are called primary rules.

Such a society cannot exist without some rigid laws. Just having primary rules makes the society vulnerable to threat, violence and insecurity to an individual from all the surrounding people. For example murder in a society following primary rules will not have any just punishment for the criminal and if there is no higher authority questions like who has the right to punish and why does he have the right to punish come into light.

Firstly, a society having just primary rules has no set of written laws or texts which can be called authoritative laws as there is no clear definition of what the law is. Hence the issue of UNCERTAINTY arises. This shows that the people are uncertain of the right and the wrong and how to deal with the issue in a right manner.

Secondly, in a society having just the primary rules of obligation there is a need for some higher authority like a government or a sovereign power like a state which can establish some rules and regulations or laws based on which every unjust crime is punishable and there justice facilitated in the proper way.

Thirdly, the law can be STATIC in nature. A lot of time is taken for an idea or a law to exist and it is obvious that the whole process of it coming into existence, being followed by everyone for a long period of time and then due to a lot of disturbance and criticism it finally decays or stays in the society in a modified form. But for the law to be modified we need to have it well

written and someone to check over it, which does not take place in a primary law society.

Fourthly, the challenge of INEFFICIENCY comes into play. Since there is a lot of friction in the society amongst the people supporting different ideas hence the society and law become inefficient as they do not support the same cause then.

This is where the importance of secondary law comes into play. Secondary law is nothing but the second step to primary law. The secondary law derives its ideas from the primary law and helps implementing it by providing ideas like judiciary and legislation.

Firstly, the Uncertainty issue has the remedy called ‘ rules of recognition’. The recognition of a law as a proper written text helps set certain standards and makes it easier and more certain to what the law means and how it should be implemented in the society. This is done by the secondary laws which make sure that the law is converted into an authoritative text and just does not exist as a mere idea.

Secondly, the Static challenge is faced by introducing ‘ rules of change’ which is a secondary obligation as it recognizes the new law or the change that has come about in it so as to people are aware of it.

Thirdly, the Inefficiency challenge is dealt by ‘ rules of adjudication’ which helps to bring in legal institutions and judges who know the procedure of the law and hence once the judge makes the law clear it is again recognized by

the people and accepted in a right manner causing less hindrance and more cooperation.

Even the issue of more organizations being needed to check on crime is required and it is facilitated by secondary obligations. Existence of primary law without secondary law to support is baseless as both go hand in hand and one can't exist without the other. Hence it becomes important to acknowledge the facts given by H. L. A. Hart about the necessary coexistence of primary and secondary laws.

GROUP B :-

Answer 1 : The case of the Speluncean Explorers

Referring to the case of the Speluncean Explorers the judge whose approach I most agree with is J. Tatting. I admire the way he has interpreted the law without going astray as well as keeping in mind the various facts and his counter arguments against J. Foster.

The law of murder clearly states that ' any person who willfully takes the life of another person is charged for murder'. Here J. Tatting brings in the fact that Roger Whetmore's life was willfully taken by his three colleagues by stabbing him and using him as food.

He also brings into light the example of Commonwealth v. Valgier where a man steals bread as he is dying of starvation but is denied innocence by the court. A very important argument comes forward. If a man can be denied innocence in context of theft for hunger then how can someone be proved

innocent in context of murder for hunger? Whetmore was killed and brutally eaten by his fellow colleagues. How can such a crime be pardoned?

He also counters the theory of self-defense as put by J. Foster by skillfully coming up with a situation that if Roger Whetmore had a gun with him and he would have shot his three friends to save his own life then there would be no proof of innocence against him and he would be convicted of murder. I completely agree with his point. One person can be held guilty of murder for defending himself against three but even if there is proof that the three have killed him for their survival then they are not being charged of murder? What kind of justice is this?

He also brings in the point that though they were under different circumstances yet law would still apply to them. A person does not just forget their values even if they are in 'the state of nature'. He also states the facts that if the three colleagues of Whetmore would have known that they would be charged for murder or hanged they would have waited for a few more days or might have not carried out this act at all. I completely agree with this approach as it shows how this act could have been completely avoided.

J. Tatting also mentions while counter arguing J. Foster's point of killing one for greater good of the others larger in number. It is very important to keep in mind that a minority exists everywhere and one day we might be a part of it and just because others feel a danger doesn't mean they end up killing that one person or minority group. Is it right to kill one person for the best of

others? I don't think it is. If very human beings starts becoming so selfish and brutal then there is no need of anything as humanity for which all of us are peacefully existing.

In Keen's arguments he mentioned that J. Tatting was going extremely out of track by taking the example of self-defense. I don't agree with him at all. A judge is supposed to interpret the law and he did so in a right manner. We need to think of the various situations that could have taken place and what the judgement would have been then for a better understanding of the whole case. J. Keen also mentions that J. Tatting was being extremely emotional by resigning from the case which should not be taken into consideration as it is not relevant what J. Tatting does but that relevant is what his arguments are based on.

I completely agree with the approach by which J. Tatting put forward his arguments. Every time a person commits a crime he cannot be pardoned or else there would be criminals all over the place making the world a tougher place to live in. Hence it is very important to follow law keeping in mind the moral values.