

# Legal positivism and morality | an analysis

Experience, Human Nature



**ASSIGN  
BUSTER**

There is no necessary connection between law and morality; and (2) legal validity is determined ultimately by reference to certain basic social facts and the main line of natural law theories that no sharp distinction can be drawn between law and morality

The connection between morality and law is one of the biggest questions of jurisprudence. It has become the dispute between natural law and legal positivism and has created many ways how to think about the scope of legal enforcement. Here we meet with two philosophical directions which are standing on opposite border against each other.

“ Morality” is very flexible, changing by generation. If there is any idea of changing a law, it takes hundred years to do it. Law and morality is every so often being connected. Right now, the countries base its laws on morals. Morality deals with question of correctness where on the other side laws are based on question of ethics. Law is characterized by specific people or by a society whereas morals are universal. The basic idea from which morals come is the concept of human rights. Laws are supposed to guarantee human rights but many fail to do so and restrict them. In my opinion I more tend to legal positivism. There are two basic values or reasons for that decision. First, all law are required to be written, where positivism make sure that the government will follow stated rules and apprise the members of society of their rights and obligations. In a legal system run according with positivist tenets, litigants would never be unfairly surprised by the government imposition of an unwritten legal obligation that was previously unknown. Second, positivism control judicial discretion. In some cases judges are not satisfied with the outcome of a case that would be decided by narrow

law. For example, some judges may not want to allow a landlord to move out old and sick woman in the middle of winter, even if the law allows such action when rent is overdue. However, positivism requires judges to decide cases in accordance with the law. One of known philosopher Thomas Aquinas distinguishes four types of law-human, divine, eternal, and natural-as follows:

A, Human law-“ an ordinance of reason for the common good promulgated by him who has the care of the community.”

B, Eternal law-God’s plan for all of creation.

C, Natural law-The part of eternal law that applies to human beings; it is God’s plan for us. Natural law can be differenced by human reason, and it concludes in the correct moral principles. E. g. “ it is never permissible intentionally to kill an innocent human being,” and “ one must never intend what is evil, even as a means to achieving a good or avoiding a bad result” are natural laws, in Aquinas’s view.

D, Divine law-the part of eternal law that God uncovers to us human beings *via* Scripture. If something is against natural law, then it’s against divine law as well. But some concepts, primarily of a religious nature, are oppositely to divine law but not natural law. For example, natural reason and natural law tell us that the God exists. But it is only through divine revelation that we can know that baptism, membership in the Christian church, etc. are necessary for our salvation.

Aquinas insists that human laws are genuine laws only if they do not contradict either natural or divine law.

Other Philosopher John Austin has definition of law as followed: a “ rule laid down for the guidance of an intelligent being by an intelligent being having power over him.” There are two kinds of law: positive law (rules commanded by political superiors to their inferiors) and divine law (rules that God commands all human beings to follow). Law is commands, which Austin see as an expression of a wish by someone who has the willingness and ability to enforce compliance. (“ If you cannot or will not harm me in case I comply not with your wish, the expression of your wish is not a command.”)

Unlike Thomas Aquinas, John Austin does not make any differences between divine and natural law. Austin thinks that God’s commands to us are the true morality. Austin distinguishes divine law/the true morality from “ positive morality,” or the beliefs about what’s right/wrong, just/unjust that are held by the majority of people in some society. The positive morality of our society is right as it agree with divine law and incorrect insofar as it deviates from it. It does not have any value that Austin had an unorthodox view of the content of divine law. Austin believed that God commands us to be utility maximizes, making utilitarianism the true morality.

Positive laws are driven by “ political superiors.” John Austin calls these superiors the “ sovereign,” and he defines “ sovereign” as the person or persons who are not in the habit of obeying anyone else, and who everyone else is in the habit of obeying. Positive laws are general commands by people who themselves are not bound by them, and who can enforce

obedience from everyone else. I don't really match with either of these philosophers ideas but if I should tend to one of their views it would be the one of John Austin's for a reason of his division of laws.