

Natural law and positivism

Law



NATURAL LAW AND POSITIVISM Debbie Whitmore Academia-Research, Inc.

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Natural law and positivism, as they are related to fundamental rights and democracy, sparks debates on many levels. Before exploring the various viewpoints of these two rules or theories, it may be worth exploring the relationship between the two. Natural law is by definition a set of ethical rules that people use to govern themselves. Natural laws are not necessarily written and they are considered superior to positive law. Positive laws are those laws that have been enacted by the proper authorities for the government of a society (1998). Positivism actually looks at what positive law is. A segment of positivism purports that law and morality must operate separately. 'Natural law examines what the law should be' (Eglinton 2005). Eglinton states in his essay entitled Natural Law that 'Natural law overstates the relationship between law and morality, but positivism underestimates the importance of the relationship' (Eglinton 2005).

Professor Jeremy Waldron has his own views on rights and democracy and the way the government attempts to mandate them by the use of laws. Professor Waldron believes that rights of a society are first and foremost in everyone's mind. He believes that Majoritism has its place in society. Unlike his opponents, Professor Waldron believes that the fact that the government allows the majority of the population to make decisions regarding laws and policies does not impede on the minority. His view is that the minority population is also considered because they too have been given the opportunity to choose or elect the officials that institute laws and policies. Waldron believes that although there are instances when democratic societies will implement laws that will infringe on the rights of the minority

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that the democratic process itself does not allow for the majority to be 'tyrants' to the minority. This is the case because given the fact that all have the chance to participate in the democratic process at all levels on an equal basis that simply because in one instance that the opinion of one or a few is not acted upon by a community in which one is a member of (Waldron 2005). Professor Waldron also believes that judicial review of legislation is inappropriate in a democratic society. Legislature is an important factor in society as it is the way that people can trust and feel secure that their rights are being upheld. 'Legislative supremacy is often associated with popular self-government, and democratic ideals are bound to stand in an uneasy relation to any practice that says elected legislatures are to operate only on the sufferance of unelected judges'(Waldron 2005).

Sir John Laws also has definite views on how Natural laws affect the fundamental rights and democracies of individuals and a society as a whole. Sir John Laws believes that the separation of powers is a necessity in order to ensure true democracy. As with democracy, the abuse of power is always a potential usurper of rights. Sir John Laws insists that any legislative body that operates for the public operates on the only with the amount of fairness that the character of the legislative body itself holds. Democracy, fairness and rationality only occur when governmental bodies are required to give reasons for it legislation. Decision makers should always be accountable to the public that they represent by giving reasons for their legislation. Based on Sir John Laws views he believes more in the power of the positive laws with the influence of positivism. This allows some type of rationality to the legal system and its powers.

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