

Hart fuller contrasting
points positivism and
natural law
philosophy essay



**ASSIGN
BUSTER**

In our daily life the law playing prominent roles. The law always prohibits, controls, regulates as how the society need to act and behave. In order to avoid from being charged from any penalty the society has to ought to follow the law or regulation by the government. Previously, the natural law which may come from morality, reason, God, or some other such source ruled the people. Whereby the natural law acts as positive law as there is existence of particular ideal principles or importance to which the positive law should be consistent if it is to be as genuine law.

Moral concerns invade the law at every aspect. The inflexibility of distinction between morality and the law- even it is continue to analytical clarity-is, to natural lawyers, highly difficult to believe. The legal positivist's search for a value free account of law is contradicts the claims by the natural lawyer which it is failed to do the very fundamental of law, its morality- that ' the act of positing law... can and should be guided by " moral" principles and rules; that those moral norms are a matter of objective reasonableness, not of whim, convention, or mere " decision"'.[1]It is simply means that the legislators need come up with law which needs to be comply with moral concerns and need with apply to all the situations rather than it is being a passing impulse, formal agreement between the people and government.

As far we concern as long we have good law does not mean we can produce a good society. The inner morality must be there in each individual so only we can develop a good society. Example, we have law shop lifting in all shops, where the shop lifters need be handed to police. The securities of the shop duties to keep on eye on shop lifters. As they catch any shop lifters they not able to touch them or scold them to put back the things as they

<https://assignbuster.com/hart-fuller-contrasting-points-positivism-and-natural-law-philosophy-essay/>

prohibits to do so by safety and health law. The shop lifters should know that is to not good ethics, which need to come from their mind. This cannot be forced by any law. The law just being guidance for our daily life, mainly our inner morality is important to our daily life. Each individuals need to think and rationalize things which is good or not.

Based on our selected perspective Hart and Fuller “ debate” demonstrated the contrasting points of positivism and natural law. Lon Fuller found for “ family resemblance” in different types of natural theories especially on ‘ principles of social order’[2]. “ I discern, and share, one central aim common to all schools of natural law, that of discovering those principles of social order which will enable men to attain a satisfactory life in common”. He also assumed that in all principles of natural law it was assumed that “ the process of moral discovery is a social one, and that there is something akin to a ‘ collaborative articulation of shared purposes’ by which men come to understand better their own end to discern more clearly the means for achieving them”. Fuller claiming that the basic belief of natural law is an ‘ affirmation of the role of reason in legal ordering’[3].

Fuller says that there is necessary for the relation between morality and law. As we can see he implies the law with practical value. Fuller’s initial argument that a legal system on purposive human “ enterprise of subjecting human conduct to the governance of rules”. He simply means that the legal system had other objectives as well. In order a system of law to be qualified, the certain procedural objectives needs to be acknowledged as goals rather than being imply arbitrary force. A statute law (and other made law) were involved needs that they be “ sufficiently general (there must be rules); <https://assignbuster.com/hart-fuller-contrasting-points-positivism-and-natural-law-philosophy-essay/>

publicly promulgated; sufficiently prospective; clear and intelligible; free of contradictions; sufficiently constant through time so that people can order their relation according; not require the impossible; and be administered in a way sufficiently congruent with their wording so that people can abide by them”[4]. These principles he described as an “ internal morality” of law as they implying the concept of law. It also can be called as “ morality” because they come up with standards for examining official conduct. If the legislators make rules which are not possible to obey by citizens it will lead to failure in making the law. In the event it will result in ‘ something bad law but not law at all’. We can say that the law not reflecting a system of rules which is completely incapable of guiding conduct of ‘ legal system’

In order the system to be acknowledge as law it must essentially follow standard with principles of legality, and since according to Fuller he supports for particular moral values. It follows that we “ cannot describe the nature of law without resource to moral concepts”. The concepts of legality are law’s “ inner morality” or ‘ resource to moral concepts’. In Fuller point of view the Nazi Germany law can distinct from the ideal legal morality as Nazi law is created based applying things that have happened in the past.

Fuller believes that if the legislators follow the procedural ideas which are create into the idea of law they more likely to provide good laws. He goes on to say that ‘ rest on the assertion of a belief that may seem naïve, namely that coherence and goodness have more affinity than coherence and evil’ (Fuller, 1958, p 636). For ‘ when men are compelled to explain and justify their decision towards goodness’ (Fuller, 1958, p 636)..... ask lohitha.

H. L. A Hart's Concept of Law (1961) is made research on connection between law, coercion, and morality. It is just a trial to answer the question whether all the law may be appropriately conceptualized as "coercive orders or as moral commands". There is no need of link between law and coercion or between the law and morality says by Hart. He explains that to categorize all law as "coercive orders or as moral commands" is to oversimplify the relation between law, coercion, and morality. He further expands that to 'conceptualize' all laws as coercive orders or as moral commands is to enforce a deceptive existence of uniformity on different types of laws and different types of social purposes which law may perform. He claims that "to describe that all law as coercive orders is to mischaracterize that purpose and function of some law and is to misunderstand their content, mode of origin, and range of application". Simply means that the law supposes to imply to all citizens according to purposes or objectives of law rather than being arbitrary force.

Hart says that "primary rules of obligation" which is the law enforces law or obligation towards individuals. For system of primary rules to work effectively, "secondary rules" may also be necessary in order to provide an authoritative statement of all the primary rules. If the primary rules seem to be incomplete or inadequate there is opportunity for the legislators to update the law in secondary rules. The secondary rules become very important when the courts utilize to resolve any issues that arise over interpretation and application of it. The secondary rules of a legal system may thus include 1) rules of recognition, 2) rules of change, and 3) rules of adjudication.

If the rules are clear, not ambiguous and understandable to all individuals then only the primary rules of legal system can be run effectively. If it not so it may create uncertainty on obligations which they imposed to individuals. In secondary rules of legal system may also leads to uncertainty where there vagueness and ambiguity as to whether courts have legal authority over disputes relating to interpretation and applications of laws.

Hart asserts that “ primary rules of obligation are not in themselves sufficient to establish of a system of law that can be formally recognized, changed, or adjudicated”. Where it means that primary rules solely not able to provide a good law which can useful for all individuals. The primary rules need to work together with secondary rules from the initial stage of legislation. The combination of primary and secondary rules can acknowledge a legal system (although Hart does not claim that this union is the only valid criterion of a legal system or that a legal system must be described in these terms in order to be properly defined).

Hart divided “ external” and “ internal” ideas on how the rules of a legal system may be explained or judged. The external idea can be said that where an “ observer” who does not need to follow the rules of legal system. They can able to judge the scope of the rules of the legal system cause something in usual form of conduct on the part of individuals to whom the rules apply. Contrast with internal point of view, where individual who are regulated by the rules of the legal system and who obey the rules as normal of conduct.

Hart's discussion can make conclusion in such way that we cannot understand law other than as a standard practice, as a practice which uses the standard vocabulary of 'ought to', 'entitled to' and only legal statement are practical.