

Natural Law and John Austin

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Nature of Law

What is a law?

CODE CIVIL DES FRANÇAIS.

TITRE PRÉLIMINAIRE.

DE LA PUBLICATION, DES EFFETS ET DE L'APPLICATION DES LOIS EN GÉNÉRAL.

Décidé le 14 Ven-
sêles an XI.
Promulgué le 24 du
même mois.

ARTICLE 1.^{er}

LES lois sont exécutoires dans tout le territoire français, en vertu de la promulgation qui en est faite par le PREMIER CONSUL.

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Napoleonic Code

Which of these behaviors are illegal?

- Cold blooded murder
- Violating a contract
- Lying in order to sell someone something
- Gambling
- Adultery
- Disrupting a class
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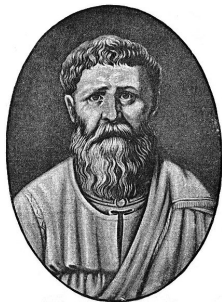
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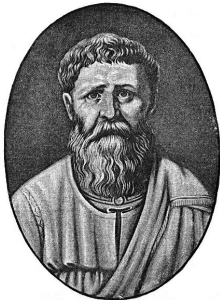
Natural Law Theory



St. Augustine

- What is the relationship between morality and law?
- Many think they are different.
- Natural law theory equates the two (or at least requires that law be moral).

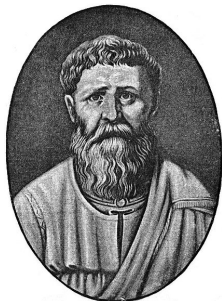
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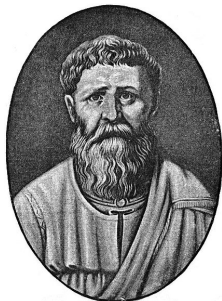
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Lex iniusta non est lex
Unjust Law is not law

William Blackstone



William Blackstone

- Human created “law” derives its authority from God (or morality).
- Human created “law” that contradicts God’s law (or the moral law) has no authority.
- A “law” without any authority is no law at all.

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Separating Law and Morality

John Austin

The existence of law is one thing; its merit or demerit another...A law which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation.

Two questions

Two Separate Questions:

- Is some behavior illegal?
 - This is a factual question.
 - Given a proper understanding of "law", we investigate it like any other fact.
- Is that behavior immoral?
 - This is a moral question.
 - This is a question about the rightness or wrongness of the behavior.
- This is called the *separability thesis*.

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Answering the first...

- How then do we decide what is a law?
- We need a definition of “law” so that we can answer this question.
- Say I move to a new state, and I want to know if my home poker game is legal. How do I figure this out?
- Now answer this more generally, what counts as a law regardless of the country, state, or time?

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Distinctions

We want to be able to distinguish law from other similar social institutions:

- Custom/Conventions
- Rules of organizations
- Rules of morality
- Religious commands
- Anything else

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Austin's Definition

"Law" for Austin

Something is a law if and only if it is a general command of a sovereign backed by a threat if it is not followed.



©Scott Sandars

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Something is a law if and only if it is a general **command** of a sovereign backed by a threat if it is not followed.

- A command is an expression of a desire directed at another person.
- Commands most come from someone (or some group).
- This means laws must have a source.

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- One must distinguish between:
 - "Gee, I would really like you to...," and
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- Austin says the difference is the threat of some negative consequence.

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 - Particular: "go to the store".
 - General: "be nice to your TAs".
- Only general commands count as laws

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