Natural Law and John Austin

Kevin J.S. Zollman

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Nature of Law
What is a law?

Which are these behaviors are illegal?

- Cold blooded murder
- Violating a contract
- Lying in order to sell someone something
- Gambling
- Adultery
- Disrupting a class
- Lying to a friend for no reason
- Skipping class
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Many think they are different.

Natural law theory equates the two (or at least requires that law be moral).
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St. Augustine
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*Lex iniusta non est lex*

Unjust Law is not law
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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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 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 or religious question.
  - Some say it is investigated differently.
  - 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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Now answer this more generally, what counts as a law regardless of the country, state, or time?
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
Austin’s Definition

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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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- In order to be a command, it must have some force.
- One must distinguish between:
  - “Gee, I would really like you to...”, and
  - “Do...”
- Austin says the difference is the threat of some negative consequence.
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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.

- One can make two commands
  - Particular: “go to the store”.
  - General: “be nice to your TAs”.
- Only general commands count as laws
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- Not all commands are laws.
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  - In monarchies, this is easy. Other forms of government maybe it’s more difficult.
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- Also, the sovereign must obey no one else, otherwise they are just the sovereign’s agent.
- Any problems with this?
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