

Jurisprudence Lecture Notes

Monday 27th September 2021

Lecture 1

Introduction

- Relates to the nature of law and legislation
- Moral and political philosophy, history, sociology, 'black-letter' law

What is law

- o Set of regulations that govern behavior – too quick
- o Serving the law for good, but who's good?

Law and Morality

- o What obligation do we have to obey the law – can the law be so morally corrupt that it stops being a law at all?
- o 1st approach – there is a standard to which law must adhere to count as a law
 - This claim is made by natural law
 - On this basis, a law may be invalid if it doesn't meet these external requirements
 - Goes back to Cicero "Law means drawing a distinction between just and unjust, formulated in accordance with the most ancient and most important of all things – nature [Marcus Tullius Cicero: Laws, II:3]"
- o 2nd approach – there is no external standard or moral criteria
 - Law is whatever is passed, independent from the moral desirability, coherence, whatever
 - Called a **positivist claim**
 - Positivism is the idea that law must be posited to be law
 - What authority says it is
 - Whatever the lawmaker posits is the law
 - Implies no necessary connection between law and morality – they might have moral content (preferred) but they are not any more lawlike for that
 - Laws can be passed for any reason
 - Example of this: **John Austin 1790-1859** -- 3 elements; (1) a system of commands, (2) backed by threat, (3) issued by a sovereign habitually obeyed
 - **Sources thesis** – where law must come from to count as law
 - **Separation thesis** is that the contents of law is separate from its validity
- o Practicality of naturalism/positivism distinction – helps decide on the legitimacy of laws (EX: Egypt 2011-2013)

Content of the course

Lecture Notes On Jurisprudence Lecture Notes Series

Patrick Vollmar



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