

DIFFERENCES BETWEEN NATURALISM, POSITIVISM AND NORMATIVE POSITIVISM

DIFFERENCES BETWEEN NATURAL LAW, LEGAL POSITIVISM, AND NORMATIVE POSITIVISM

Karol Stephanie Matos da Silva – Santa Teresa College

Orleane Rodrigues da Silva – Santa Teresa College

SUMMARY: This study aims to discuss, in an introductory manner, the distinctions between natural law, positivism and normative positivism, correlating these concepts with the works "Antigone", by Sophocles, and "The Merchant of Venice", by William Shakespeare. The analysis follows the chronological evolution of legal thought and includes criticisms of authors who address the subject. "Antigone" represents natural law, as it reflects the values and morals prevalent in the period, while "The Merchant of Venice" examines the applicability and reversibility of norms in society, according to the prevailing values. This article examines how moral values influence the validity of norms and their perceptions by different societies and social groups.

Keywords: NATURALISM, POSITIVISM AND VALUES

ABSTRACT: ABSTRACT: This study aims to discuss, in an introductory manner, the distinctions between natural law, positivism, and normative positivism, correlating these concepts with the works Antigone by Sophocles and The Merchant of Venice by William Shakespeare. The analysis follows the chronological evolution of legal thought and includes critiques from authors who address the topic. Antigone represents natural law, as it reflects the prevailing values and morality of the time, while The Merchant of Venice examines the applicability and reversibility of norms in society according to prevailing values. This article examines how moral values influence the validity of norms and their perceptions by different societies and social groups.

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1. INTRODUCTION

The aim of this article is to explore the contrasts between Natural Law, Positivism and Normative Positivism, three significant doctrines in the philosophy of law. Each of these schools of thought proposes different forms of social organization, contributing to the debate on how to promote a harmonious society based on prevailing social values.

These doctrines differ in their views on the basis and application of law, whether as a reflection of a universal morality or as a system imposed by the state. This work uses *Antigone*, by Sophocles, and *The Merchant of Venice*, by Shakespeare, to explore the interaction between law and moral values, offering a historical and cultural reflection on the nature and application of laws.

2. THEORETICAL FRAMEWORK

2.1 Natural Law and Positivism

Natural Law or Natural Law is a school of legal-philosophical thought that predisposes a standard that exists in accordance with the intersubjectivity of universal society, and is based on nature, that is, on the natural order of things. It has rules that are immutable and invariable, suggesting natural perfection.

The first thoughts related to Natural Law are found in Classical Greece, also known for betting on immortal nature, which, through ancient cosmology, explained the superiority or relevance between society and that which was imposed, always considering the logic of nature. Also found in ancient and medieval Christianity, Medieval or Theological Natural Law was based on the will of God and divine justice that functioned according to Christian values.

Finally, rational or modern natural law, which used human reason as a source of development for the modern world, seeks to distance itself from theocratic thought in order to replace the dogmatic methods of the time.

Its founder was Hugo Grotius, who considered it inappropriate to resort to sources other than reason itself. He postulated that reason is universal because it is common to all men and the only possible source, constituting natural law. It introduces the idea of secular natural law, with pacts that followed the model of respecting property and the obligation to keep promises.

Therefore, it can be stated that natural law is in accordance with universal morality in human nature, which is independent of religion or culture. It receives criticism related to its applicability as law, due to its inconsistency. According to Silvio de Salvo Venosa,

Perhaps the most difficult criticism to counter regarding natural law lies precisely in the assertion that positive law is truly a law, a set of norms,

while natural law is a set of ideals of justice that cannot be applied as law.
(VENOSA, 2007, p. 49).

Then, Legal Positivism brought a different line of thought that sought to codify based on the philosophy of natural law of Hugo Grotius, Thomas Hobbes and others.

This doctrine created codes as a way of organizing current legislation, considering the existence of a law to free the citizen, adhering to a form of order in society through submission to the judge, even if the law is superior to him, maintaining the universality and rationality of law.

With the emergence of ideas focused on the separation of powers and a more rationalized law, the power of the legislator was considerably altered to become broader and more systematic in formulating a social order.

Resulting from these ideals of Natural Law, moving towards the systematization of legislation, placing it as the only ideal source of law, legal Positivism was established in society. The author Maria Helena Diniz links the two forms of thought,

Natural law, inherent to human nature, is independent of human legislators. Other rules, established by legislators, are applications of the first natural principles to the contingencies of life, but are not natural, although they derive from natural law. For example, from the natural law principle that “man must preserve himself” it follows that “killing is not permitted”, “euthanasia and abortion are prohibited”, etc. (DINIZ, 2006, p. 43)

Positivist theory is generally considered an analytical, descriptive and explanatory approach to Law, as it seeks to portray the various connections between law and society, explaining its norms and how they relate to social and legal reality.

Legal positivism defines law as a set of norms or commands that have the coercive power of the State, being fundamental for the maintenance of order and justice in society.

According to this perspective, the State must exercise the function of imposing legal norms, that is, its obligation is to ensure that these norms are complied with objectively and without taking into account considerations about the content or morality of these norms.

This means that, for positivists, law is valid not because of its ethical or moral content, but because of its origin and the power of the State to guarantee its application.

Another crucial point of positivist theory is the centrality of law as the primary source of law. In positivism, law plays an extremely important role, as it is the first and fundamental source

of legal norms. This is largely due to the role of codification in the positivist legal system, which aims to create a uniform and systematic legal structure.

The central idea here is to provide legal security for society as a whole, ensuring that all individuals clearly know their rights and duties, without ambiguity.

The predictability that the law provides to the legal system is reflected in the certainty that the rules will be applied in the same way to everyone, regardless of other external influences, such as ethical or moral considerations.

Further on, we find Hans Kelsen's contribution to positivist theory, particularly through his conception of Normative Positivism. Kelsen formulated the idea that law should be considered a single normative system, applicable and enforced by a single legitimate authority, with a common origin and structure.

This view is based on the idea that law is essentially a system of interrelated norms, based on a basic norm or fundamental norm (Grundnorm). The fundamental norm, according to Kelsen, is the basis of the entire legal system, and its existence presupposes that the normative system as a whole is valid.

Kelsen also established an important distinction between Being and Ought to Be, that is, between the social and historical reality of norms and the norm itself.

For him, legal norms should be analyzed based on their formal autonomy, without social or historical reality influencing their interpretation. In other words, law, for Kelsen, should be thought of and applied independently of morality, politics or psychology.

Kelsen's normative positivism sought to completely dissociate law from any ethical or moral principle that was not formally expressed in legal norms, defending the idea that norms are valid exclusively because of their logical and formal structure, and not because of their connection with external values.

In short, the positivist theory of Kelsen and other theorists of legal positivism argues that law is a set of norms that are imposed by the authority of the State, and that these norms must be understood and applied without the interference of external factors, such as morality or politics.

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The idea of a law free from ethics, politics, psychology and natural law is a distinctive feature of legal positivism, which seeks a strictly normative legal system. The norms

Legal institutions, then, must be recognized and respected for their coercive power, and their power of punishment or sanction must be explicit and effective to guarantee social order.

This theory considers the State as the primary source of law, holding the power to create, modify and apply legal norms. The legal system, therefore, is a direct reflection of the structure of state power, and its legitimacy comes from the exercise of authority and social control.

Thus, in positivist thought, law is a system of objective rules, whose validity does not depend on their adequacy to moral norms or transcendent values, but rather on their conformity with the authority that establishes them.

2.2 Relationship with Antigone and the Merchant of Venice

By reading the works *Antigone*, by Sophocles, and *The Merchant of Venice*, by William Shakespeare, it is possible to see that, from the beginning, there is an interference of moral values in society, directly affecting the application of the Law.

Values are understood as the ways in which certain societies attribute positive or negative meanings to behaviors and conduct in specific situations.

These values, in many cases, are not immutable; on the contrary, they are dynamic and can be recursive, that is, repeatedly transmitted, reconfigured and applied, gaining normative contours as they become part of culture and social behavior.

When internalized, values generate more evaluative practices, that is, decisions, actions and norms that reflect these fundamental principles and that are often established in a normative manner.

In antiquity, these values were often intertwined with religious moralities and influenced the way laws were applied and understood, a characteristic that is also reflected in the aforementioned literary works, which are imbued with these moral and religious considerations.

In *Antigone*, the main characters base their choices and actions on absolute values, particularly in the case of Antigone, who relies on religious and sacred morality, as opposed to the civic duty represented by Creon.

This confrontation between the two is not exactly a conflict between natural law and positive law, but rather a dramatization of human choices in the face of two absolute certainties.

For Antigone, duty to the gods and religious rituals is unquestionable and must prevail over any human law, while Creon defends the rigid application of positive law, in the name of the stability and security of the city of Thebes. Both, in their absolute convictions, ignore the possibility of an intermediate solution or a flexibility in the rules, which leads to inevitable tragedies.

Antigone's choice to bury her brother, against Creon's express order, exposes the tension between moral duty and obedience to the law, making clear the idea that, in extreme situations, moral values can override legal norms, generating a clash between two forms of justice.

On the other hand, *The Merchant of Venice* presents a more complex discussion of relative values, especially as it relates to contractual relationships and the use of law to resolve disputes.

The work explores the mechanisms of Law and morality within the dynamics of contracts and agreements, questioning the legal norms applicable to each situation, which, unlike Sophocles' play, are not based on absolute principles.

Instead, the characters, like Shylock and Portia themselves, argue strategically, seeking a way out that is in accordance with legal requirements, but also with each person's personal interests and values.

The play, in this sense, reveals a type of legal reasoning that oscillates between different forms of interpreting the law and morality, reflecting the complexities of the application of Law in society.

Within this context, the behavior of jurists in relation to legislation can be analyzed from two main approaches: deductive and inductive. Deduction, as a more rigid and structured approach, uses the values already established by society, applying them directly to the specific case.

In this sense, it does not bring anything new, but merely reaffirms current principles. On the other hand, induction involves the search for more flexible and adaptable solutions, based on the observation and analysis of similar cases or the extrapolation of general principles to new situations.

This inductive approach is particularly important in law, as there are often no exact rules for all circumstances, and the interpretation of a judge or lawyer can then be crucial to the resolution of the case. Induction, therefore, proposes a more likely solution

to the problem, often resorting to analogies or broader interpretations, and is a common practice in the legal field.

The character Portia in *The Merchant of Venice* exemplifies the use of coercion and persuasion when, in her role as a disguised judge, she convinces the other judges to follow her conclusions, making them believe that her argument is based on a mere logical deduction of the law.

However, the way in which she manipulates legal interpretation and exerts her influence over judges makes it clear that the application of law can be profoundly relative. At a deeper level, the play suggests that justice, when applied according to the personal interests and values of those interpreting it, can move away from objective truth and become a contingent construct, dependent on the circumstances and points of view involved.

In this sense, the work not only questions the morality of the legal system, but also the very nature of Law, showing how it can be manipulated, reinterpreted and distorted according to the values and interests of those involved.

So, both in *Antigone* how much in *The Merchant of Venice*, the interaction between moral values and the Law is a central theme, revealing that the application of the law is never neutral and is often imbued with the ethical and cultural convictions of a society.

Both works expose the complexities and contradictions that arise when universal values and legal norms clash, whether through *Antigone's* religious and moral certainty or Portia's legal flexibility and strategies.

In the end, what we see is that, in many cases, Law is not just a set of objective norms, but a reflection of the social, moral and political dynamics that surround it.

2. MATERIAL AND METHOD

The study analyzes *Antigone* and *The Merchant of Venice* as primary sources that represent different conceptions of law. The methodology is based on a comparative literary and legal analysis, interpreting each piece in the context of its respective legal philosophy.

Firstly, the works *Antigone* and *The Merchant of Venice* are studied as reflections of legal philosophies and underlying moral values.

To this end, the literary elements of each work are examined in conjunction with specific legal concepts, aiming to reveal how each narrative incorporates and expresses principles of natural law, positivism or normative positivism.

In addition, a literature review is conducted, using secondary sources of legal philosophy that provide the necessary context for the theoretical foundations of each piece.

Through this review, we examine how each work reflects or criticizes the dominant legal ideologies of its time, highlighting the contributions and limitations of the theoretical perspectives analyzed.

3. RESULTS AND DISCUSSION

It is concluded that the different currents of law are fundamental and their differences lie in the way they are interpreted in society. Through the evolution of thought, there was a decentralization of moral values and the norms of that society. In Sophocles' work, *Antigone*, we see the defense of something that was part of life and that led to harmony in that society as a whole.

The application of the Law through Creon, who chose, without question, to rely solely on the applicability of the norm through the use of coercion, is evident. It can be said that the dichotomy between Natural Law and Positive Law occurs in a simple way. In Shakespeare's work, *The Merchant of Venice*, there is a comedy that relativizes the limits of interpretation of the norms, since, in the eyes of the reader, there can be several interpretations.

Natural law and legal positivism differ in their fundamental issues such as their source; for positivism, the first source is the law. In terms of foundations, the difference can be highlighted as the use of human reason in natural law and the systematization in positivism. Through the evolution of these currents, the separation of powers and the creation of codes in society were achieved, making coexistence harmonious and intensifying the search for ideals that make the population's life more organized.

The analysis of *Antigone* and *The Merchant of Venice* from the perspective of natural law, positivism and normative positivism, it reveals the complex relationship between law and morality. Natural law is presented as a universal moral foundation for human actions, while positivism and normative positivism emphasize the independence of law in relation to morality.

These legal philosophies continue to influence contemporary discussions about the purpose and structure of law.

By contrasting natural law's focus on intrinsic morality with positivism's emphasis on state authority and Kelsen's separation of law from external influences, this study highlights the enduring relevance of these doctrines.

Both pieces illustrate the inevitable interaction between law and social values, underlining how legal norms shape and are shaped by moral standards in society.

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