

**Contemporary Issues
in**

Islamic Law

Abdul Haseeb Ansari



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Command Theory of Legal Positivism And *Hukum Shar'i*: A Comparison

Abdul Haseeb Ansari & Saad Abu Elgasim

Introduction

The crux of the natural law school is that all the theorists do not dissociate moral rules from legal rules, rather, they generally relied on 'Is' and "Ought" relationship. According to them, 'Is' comprises rules based on either divine wisdom or human reason, and 'Ought' encompass as man-made law. For their validity, man-made laws, existing or to be made in future, have to be in conformity with divine commands or reasons. Since both are based on absolute wisdom, they are just and good rules, i.e. they are moral laws. They have three characteristics: universality, immutability and eternity. Once any man made law proves to be in conformity with the original law, it becomes part of that law, and then falls within the ambit of natural law. For this reason, natural law thinkers subscribe to the idea: morality is the basis of the law.

Although legal positivists have not totally negated the importance of moral reasons as part of the content of law - for example, Austin's 'law properly so called' includes law made by God; he says that disobedience to evil laws is legitimate if it would promote change for good. HLA Hart expounds that ...legal positivism...is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often