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A NORMATIVE POSITIVISM: LINKING STRUCTURAL AND PROCEDURAL PRINCIPLES TO CONCEPTIONS OF AUTHORITY USING HART'S RULE OF RECOGNITION

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Natural and Positive Law

Of all the different legal theories that exist under the umbrella of jurisprudence, the divide between legal positivism and natural law theory is perhaps the most fundamental. Indeed, this disagreement regards the very nature of how systems of rule and order gain the authority of law. At least, this is the common belief regarding this division. Lon L. Fuller and Jeremy Waldron, founders of two very prominent positivist theories, justify their principles in a circular manner, but they can be externally justified using Hart's secondary rules and normative conceptions of authority. In this paper, I will attempt to show that there is no such thing as a purely positivist conception of law by linking Fuller and Waldron's formal and procedural principles with Hart's secondary rule of recognition through such normative conceptions of authority. By doing so, I will show that any seemingly positivist principles of validity are rooted in some sort of normative conception of authority.

The central idea of natural law is that there is some set of rules that are

inherent in nature, from which all man-made systems of law must, in some way, be derived. Because of this, there is a true justice, and any rule or system of rules that does not support this conception of justice is not valid law. Unsurprisingly, many natural law thinkers are theological, and their conception of law is strongly tied to their religious ideas. For example, Saint Thomas Aquinas wrote that there was a difference between the law that man made and the natural law that is created by God. The latter is inherent in the world itself, and thus is limited in how it may be changed. According to Aquinas, "by way of addition….nothing hinders the natural law from being changed, since many things, for the benefit of human life, have been added over and above the natural law both by the divine law and by human laws."[1] However, the natural law may not be subverted by man-made law. All laws must be derived from natural law, and if the two conflict then man-made law is invalid. Furthermore, just law must always be directed to the public good by definition. The ultimate end of human life is happiness, and therefore "the law must needs [sic] regard principally the relationship to happiness. Moreover, since every part is ordained to the whole as imperfect to perfect, and since a single man is part of the perfect community, the law must needs regard properly the relationship to perfect happiness."[2] According to Aquinas, any rule without the chief aim of happiness loses the authority to command as law. For natural law proponents, law has requirements beyond that of form and function that include the purpose and effect of said law. Put simply, a law is a rule that promotes justice and acts to secure the common good.

This is in stark contrast to the ideas of the positivist law theorists. This branch maintains that laws and morals are completely separated, which means a law is not defined by any end it seeks (like the common good, or human happiness, as Aquinas said). Furthermore, there is no concrete conception of justice or natural order to which a system of laws must adhere to be valid. On this difference between natural law and legal positivism, Hart explains:

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[1] Thomas Aquinas. "Selections from *On Law, Morality, and Politics*," in *Philosophy of Law*, edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 52-57. Boston: Wadsworth, 2014. Pg. 56.
[2] Thomas Aquinas. "Selections from *On Law, Morality, and Politics*," in *Philosophy of Law*, edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 52-57. Boston: Wadsworth, 2014. Pg. 54.

> it cannot seriously be disputed that the development of law…
> has in fact been profoundly influenced both by the conventional
> morality and ideals of particular social groups….[B]ut it is possible
> to take this truth illicitly, as a warrant for a different position:
> namely that a legal system must exhibit some specific conformity
> with morality or justice….[T]hough this proposition may, in some
> sense, be true, it does not follow from it that the criteria of legal
> validity of…a legal system must include, tacitly if not explicitly,
> a reference to morality or justice.[3]

In other words, although most laws are often influenced by the morality of those who established them, a law or system of laws does not need to adhere to any specific conception of morality to be legitimate. Indeed, Hart says that "theories that make this close assimilation of law to morality seem…to confuse one kind of obligation for another, and to leave insufficient room for differences in kind between legal and moral rules and for divergences in their requirements."[4] We will return to Hart's distinction between these types of obligations later.

Instead of a specific norm or ideal, the legitimacy of a legal system is defined only by some set of objective characteristics that separate it from a lesser set of rules. This does not mean that every positivist is in agreement about which characteristics are the right ones, but that only certain kinds of characteristics can be the basis of a positivist theory. Lon L. Fuller, for example, has a set of requirements that distinguishes a system of rules from a legal system based on certain formal principles. According to Fuller, a system of rules is only a system of laws when those rules have certain characteristics. Fuller has eight rules for legal systems, and if a system fails one of the tests, it cannot rightly be called a system of laws; in other words, there are eight ways to fail to make a law. According to Fuller:

> [t]he first and most obvious lies in a failure to achieve rules at
> all, so that every issue must be decided on an ad hoc basis. The
> other routes are: (2) a failure to publicize, or at least to make
> available to the affected party the rules he is expected to observe;
> (3) the abuse of retroactive legislation, which not only cannot

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[3] H.L. A. Hart. *The Concept of Law*. Oxford: Clarendon Press, 1975. Pg. 181.
[4] H.L.A. Hart. *The Concept of Law*. Oxford: Clarendon Press, 1975. Pg. 7-8.

itself guide action, but undercuts the integrity of rules prospective in effect[;] (4) a failure to make rules understandable; (5) the enactment of contradictory rules; (6) the enactment of rules that require conduct beyond the powers of the affected party; (7) introducing such frequent changes in the rules that the subject cannot orient his action by them; and finally (8) a failure of congruence between the rules as announced and their actual administration.[5]

Fuller writes that these failures are fatal to a rule's status as a law. Listed positively, these failures can be called the principles of generality, publicity, prospectivity, intelligibility, consistency, practicability, stability, and congruence. These are the eight structural principles that Fuller says define a legal system.

Jeremy Waldron has a stricter set of rules for defining a valid legal system. He agrees with Fuller's structural principles and adds a series of procedural requirements to which a system must comply to rightly be called a legal system. For Waldron, the way in which the law is applied is an important part of the definition of a legal system. He states that no one can have legal action taken upon them except through procedures that include a hearing by an impartial tribunal, a legally trained judicial officer, a right to representation by counsel and the time necessary to prepare a case, a right to be present at all critical stages of the proceeding, a right to confront witnesses, the right to the assurance that all evidence was obtained legally, the right to present one's own evidence, the right to make an argument on one's behalf, a right to hear reasons from the tribunal for their decision, and some right of appeal.[6] According to Waldron a legal system complies with these rules to dictate how the members of a society are treated by the system itself. These requirements essentially form the single requirement that there exists some institution that might be called a court. For Waldron, the necessity of these procedural rules is based on the agency of each of its citizens, and all of Fuller's structural principles are meaningless if the system does not administer its rules in ways that treat its citizens with dignity.

All these principles, as seemingly objectively verifiable as they are, beg the

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[5] Lon L. Fuller. "Eight Ways to Fail to Make a Law." in *Philosophy of Law*, edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 8-12Boston: Wadsworth, 2014. Pg. 11.

[6] Jeremy Waldron. "The Rule of Law and the Importance of Procedure." *Philosophy of Law*. Edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 12-27 Boston: Wadsworth, 2014. Pg. 14.

question of external justification. The justification provided by Fuller and Waldron is essentially that a legal system must treat its citizens with the respect due to them as a result of their agency because such a nature is intrinsic in law. The positivists fail to provide a reason for this, most likely because they are afraid of slipping into the territory of natural law. The answer to this problem of external justification is found in conceptions of legitimate political authority. First, however, it is necessary to understand a different brand of positivism.

Hart's Rules of Obligation

Hart, a world-renowned legal philosopher, submits that a society has rules of obligation, which can be divided into two groups: primary and secondary. A primary rule of obligation is any norm or rule that a society has and which creates a sense of legal obligation as defined above. A set of primary rules of obligation by itself does not constitute a legal system because of three specific defects that keep it from having the strength of law. The first defect is the uncertainty bred of such a system. If a doubt arises as to the nature or scope of a rule, there is no method to settle a dispute arising from this confusion. Secondly, the rules have a static character, because "the only mode of change in the rules known to such a society will be the slow process of growth" whereby actions once thought optional slowly become obligatory or vice versa.[7] The third defect is its inefficiency, as "punishments for violations of the rules…are not administered by a special agency but are left to the individuals affected or to the group at large."[8]

These defects are solved in a system of law by the incorporation of what Hart calls secondary rules of obligation. According to Hart, a legal system is the union of any set of primary rules of obligation and this set of secondary rules of obligation. The first of these, and the only one that concerns this discussion, is the rule of recognition, a solution to the first defect of uncertainty. This rule

specifies "some feature or features possession of which by a suggested rule is

[7] Jeremy Waldron. "The Rule of Law and the Importance of Procedure." *Philosophy of Law*. Edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 12-27 Boston: Wadsworth, 2014. Pg. 90.

[8] Jeremy Waldron. "The Rule of Law and the Importance of Procedure." *Philosophy of Law*. Edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 12-27 Boston: Wadsworth, 2014. Pg. 91.

taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts."[9] This rule can take any number of forms, ranging from the very simple to the very complex. In an autocratic regime, for example, the rule of recognition is simply that the sovereign is the one who established the rule. In the U.S. though, there is a very complex rule of recognition laid out in the Constitution. Hart posits that a set of primary rules connected with a secondary rule of recognition is a necessary and sufficient condition for the existence of law. In this way, the authority of any particular law is determined by whatever a society's rule of recognition is. If a conception of legitimate authority is synonymous with the rule of recognition, then it may be possible to derive some structural and procedural principles of valid legal systems, such as the lists composed by Fuller and Waldron, from various conceptions of authority.

Authority

Authority is the root of all political power, and there are countless different views as to where authority to rule comes from. The first conception of authority is anarchism, which is belief that there is no legitimate authority, or that there is no way by which a person may justly be made to obey the command of another person or institution. A popular and simple conception of anarchism is laid out by Robert Wolff in his book, *In Defense of Anarchism*.[10] Wolff asserts that there is no such thing as legitimate authority because the primary personal good is autonomy, and no man may be forced to act against his own autonomy. In short, autonomy is one's ability to decide for oneself what is right and wrong. Authority is the right of he who has authority to command, and the complementary duty of the subject to obey. It is important to note that obeying a command means doing what is commanded because it was commanded, not for reasons pertaining to what was commanded. According to Wolff it is impossible to obey a command and maintain one's autonomy because obeying a command is to perform an action for a content-independent reason, and this is mutually exclusive with deciding one's own morals. Wolff maintains that autonomy is the

[9] Jeremy Waldron. "The Rule of Law and the Importance of Procedure." *Philosophy of Law*. Edited by Joel Feinberg, Jules Coleman, Christopher Kurtz, 12-27 Boston: Wadsworth, 2014. Pg. 92.

[10]   Robert Paul Wolff. *In Defense of Anarchism*. University of California Press. 1970.

highest priority in justice, as it is a uniquely human characteristic, and there is no conception of authority that does not violate the autonomy of its subjects. Therefore there is no such thing as legitimate authority.

In the language of Hart's definition of law, this means there is no characteristic that satisfies any just rule of recognition; there is no possible characteristic a rule could possess that would give it the weight of law. Or rather, there is no such rule that is true for every member of a society. Every individual has his or her own rule of recognition—whatever rules I decide to govern my own life by carry the weight of law and may be enforced by myself upon myself. However, a set of "laws" that a person exerts over himself can hardly be considered an actual legal system. Under this conception of authority, all of Fuller's structural principles technically apply, but they are superfluous, because other principles such as "laws may not be enforced upon people who did not establish said law" also apply. Likewise, all of Waldron's procedural principles apply, but they are similarly unnecessary because the principle "no person can be tried and punished for breaking a law they did not voluntarily submit to on an individual basis" also applies. In a sense, every possible principle that could conceivably limit the nature of what makes a valid law applies, because there is no possible valid law. This is an extreme, and somewhat absurd, example of applying a conception of authority through a rule of recognition to establish structural and procedural principles of a legal system, because it is more accurately described as a conception of no-authority. Still, it serves to demonstrate the connection between normative ideas of authority and positivist definitions of a legal system, albeit through the most null form of the idea.

To truly explore the connection between these two ideas, we move to a more substantive but still very limited conception of authority. Scott Shapiro explains this theory, which he calls the constraint conception of authority, in his article, "Authority." Shapiro approaches the idea of the state's right to rule from the anarchistic point of view and through this angle aims to truly justify his model of legitimate authority. Instead of the basis for authority being rooted in what power the state ought to have, for indeed the state can claim any power, it now lies with what duty a citizen has to obey the rule of the state. Shapiro argues that democracy based on a model of arbitration holds legitimate authority in that it satisfies the paradoxes of authority.

The anarchist philosophy Shapiro uses consists of the idea that authority is flawed because of two paradoxes inherent within the idea. These are the

paradoxes of autonomy and rationality. The former is essentially Wolff's argument that legitimate authority and moral autonomy are not morally compatible. This is also different from power, which is simply the ability to command. This includes coercion, whereas authority extends beyond the power to enforce to the right to rule.

The conflict between authority and autonomy lies in the nature of authority as a reason to act. Authoritative directives are both peremptory—they exclude deliberation—and content-independent reasons to act. They are peremptory because once a command has been given, the subject is intended to stop considering the merits of the action being commanded. Furthermore, as Shapiro explains: "one who obeys a command treats the command as a content-independent reason, because he complies for the reason he was commanded, not because he has reasons to act on the content of that command."[11] The paradox of authority and autonomy asserts that legitimate authority is impossible because no one has the natural right to usurp a person's moral autonomy.

The paradox of authority and rationality states that authoritative directives can never be reasons for action. The reason for this lies in the assertion that directives are dubious when incorrect and still troubling when they are correct. If the balance of reasons supports the action of a command, then the subject of the command should perform the action, not because it was commanded, but because one should act in ways supported by reasons. If the action commanded is not supported by reason then the subject should not perform it because one should not act against reason. If obeying authority is following a command because it was commanded, with no consideration of the nature of said command, it becomes clear that rational agents can never obey authority.

Shapiro's response to these paradoxes of authority is the constraint model of government authority. This model is the key to solving the paradoxes in a way that ties legitimacy to authoritative directives. This model states that an authoritative directive is a preemptive reason not to act on the reasons to act in the opposite manner. In other words, an agent submits to authority to prevent his future self from acting in ways contrary to what his present self wants. This model works in the following way: an agent decides he wants to perform a

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[11]   Scott J. Shapiro. "Authority." in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by Jules Coleman and Scott J. Shapiro, 384-439. New York: Oxford University Press, 2002. Pg. 389.

certain act, but knows that in the future he may fail to perform the act because of less important, perhaps compulsive, reasons. He then gives an authority the power to enforce a command to perform the action. His future self will submit to this command, and perform the action. This model provides an answer to both paradoxes of authority.

For the model to satisfy the paradox of authority and rationality, it must be shown that it is rational for an agent to follow both directives supported and not supported by the balance of reasons. For the former, assume an agent is committed to an authority to benefit from its directives, and this authority gives a directive that in the agent's mind is not supported by the balance of reasons. According to the constraint model, once an agent has successfully submitted to an authority, she has no choice but to apply the directive when it is applicable. Compliance is the only available choice and is thus the optimal choice. Shapiro demonstrates that the constraint model also satisfies the paradox of rationality when the subject of the directive is supported by the agent's own reasoning. For this to work, the directive must still factor into her reasoning. In the constraint model, directives work not by changing an agent's beliefs or preferences about the options for action, but by transforming the set of feasible options entirely. Shapiro explains: "hence, even if the agent preferred to conform prior to the issuance of the directive, once the directive is issued, it will leave its practical mark – what was once feasible is no longer feasible."[12] No matter the case, the directive plays a role in the decision of the rational agent.

Shapiro's constraint model also constitutes an effective response to the paradox of authority and autonomy. According to this view, the will of another possesses normative power over the autonomous agent because of its causal power. By altering the realm of feasible options the directive constitutes a content-dependent reason to obey, and makes compliance the best option by default. The constraint model does not suggest that it is morally permissible to abdicate control over one's actions unless one has a good moral reason to do so. In other words, "one cannot absolve oneself of responsibility simply by claiming one had no choice but to follow orders when one made the choice not

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[12]   Scott J. Shapiro. "Authority." in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, edited by Jules Coleman and Scott J. Shapiro, 384-439. New York: Oxford University Press, 2002. Pg. 419.

to have a choice."[13] It is this relationship between the past and future self that allows the agent to maintain her autonomy by obeying an authoritative directive.

After establishing a model for authority that solves both of the paradoxes of authority, Shapiro moves on to explain how one can possess this authority through what is called the arbitration model, which states that the function of authority is to arbitrate between rival parties. Shapiro explains that his arbitration model and the mediation model differ in several ways, most importantly in the relationship between the authority and legitimacy. In a mediation model, the relationship is direct: authorities are legitimate to a subject if and only if they serve their mediating purpose for that subject. In an arbitration model the relationship is more indirect. The arbitration process gives agents a reason to accept the outcome of the process, and such acceptance provides the process with legitimacy. They also differ in the ultimate grounds of legitimization. In a mediation model, authorities gain legitimacy from dependent reasons. In an arbitration model, subjects might do worse in terms of the dependent reasons; what binds them is the acceptance of the process. These differences can be summed up in a simple contrast. In a mediation model, obedience is instrumentally valuable, while in an arbitration model the parties do not benefit through obedience. Rather, obedience is the price they must pay in order to secure the compliance of others.[14] In fact, disobedience to the will of the arbitrator amounts to a claiming of unreasonable power, while obeying authority in a democratic society actually shows a great respect for autonomy.

This conception of authority seems entirely removed from any sort of rule of recognition at first glance, but it is deceptively simple to translate Shapiro's language into Hart's terms. The feature that the rule of recognition identifies is that the rule is being established by whatever entity society chose to constrain its future actions through promulgating laws and establishing and carrying out punishments. The task of extrapolating structural principles from this conception is more complicated than with pure anarchism, for now laws can have some characteristics but not others. First, we examine the principles Fuller lays out and see which can be externally justified by a rule of recognition based on

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13   *Ibid.*

14   Scott J. Shapiro. "Authority." in *The Oxford Handbook of Jurisprudence and Philosophy of Law, edited by Jules Coleman and Scott J. Shapiro*, 384-439. New York: Oxford University Press, 2002. Pg. 433.

the constraint principle. The most obvious affirmative is the second principle, publicity. A person cannot constrain his future self through an authority to act in ways of which he is not informed. This is a breach of the sovereign's authority under the constraint conception. Fuller's first principle, generality, is less obvious. At first it seems plausible that a subject could give an authority the right to decide how to constrain the subject in any specific case relevant to the authority given by the subject. However, when this happens, the subject is no longer acting for content-dependent reasons, and is now taking an action because he was commanded to by the authority.

It follows from this that the constraint model justifies the principle of generality, as a person cannot give an authority the right to decide how the person is to be constrained at the future time of constraint, but at the time the authority is given the right to command. The third principle, prospectivity, is also intuitively affirmed; a person cannot be punished for failing to act in the way he constrains his future self to act before the act of constraint. Similarly, the principles of intelligibility, consistency, practicability, stability and congruence are all affirmed by definition by the constraint model. A person cannot logically constrain his future self to act in ways that are beyond his future self's ability, and the authority exercising power in ways not congruent with the power given it by the act of constraint exceeds the power given by the constraint conception.

So, all of Fuller's structural principles are affirmed by the constraint conception, but what of Waldron's procedural principles? These are more troublesome, as many of them are not as intuitive as the structural principles. The link between the constraint model and any sort of procedural requirements is not obvious as it is for the structural requirements, but the arbitration model provides the connection. If the state acts as ultimate arbiter between rival parties in solving disputes, then it does so in cases where the state or Authority is one of the parties. If it is necessary to treat the subject with autonomy and agency in this case, then almost all of Waldron's principles are affirmed. The only ones that do not seem to be affirmed prima facia are the right to an appeal and the right to counsel. A subject can still be treated as an autonomous agent in a case of arbitration against the state without an appeal if he has all of the other rights laid out by Waldron's principles in the original arbitration. Similarly, it does not seem evident on its face that one cannot act as an agent if one must represent oneself at said arbitration. These rights might add to one's ability to do so, but it does not seem that the ability to act autonomously is absent without them.

Finally, we must look at a slightly more extensive conception of authority to see if a more extensive rule of recognition leads to different structural and procedural principles. One such conception is John Locke's social contract theory, as explained in The *Second Treatise of Government*. Locke's argument centers on the assertion that there is a god that created the entire world, including all of the people in it. Locke also asserts that God created all the people in the world to be equal and refutes the claim that certain people have an inherent right to political power because they are descended from Adam, to whom God originally gave political authority. Locke asserts that political power and paternal power are completely separated. No one person has political authority over the rest, or is appointed by God to be greater than anyone else. This of course, begs the question: where does power come from?

Locke argues that political authority comes from the people, and he justifies this with a lengthy explanation of what he believes to be the natural state of man. In the state that God created men, they are equal, and have an equal right to the entire world. Because God created men, they are all his property, and it is against natural law to destroy God's property. Therefore, the only rules in the state of nature are that one is not allowed to kill another person or oneself, and that one is not allowed to allow someone to kill someone. Furthermore, people are to be punished for breaking these rules in a manner equivalent to the crime they committed. The only punishment appropriate for murder or attempted murder is death as this is the only way to fully protect mankind from further breaches of the law of nature. Locke then argues that a person who tries to take another man's liberty may as well be trying to kill him, because once a man loses his freedom, there is nothing stopping his oppressor from killing him. Because of this, a man may kill someone who tries to enslave him. Furthermore, a man may not voluntarily enter slavery. A person cannot give someone else authority that they do not possess themselves, and a man does not have the authority to kill himself under the law of nature. Because one has the authority to kill a man for trying to kill him, one also has the right to enact lesser punishments for lesser crimes, such as stealing. All these principles regarding property lead to Locke's argument about what happens when there are no longer enough resources left for a person to sustain their own life.

According to the law of nature, Locke argues that all men have an obligation to keep their fellow men alive. Because of this, when there is not enough

land for anyone else to make any their own, someone must give them some of their property in exchange for labor. This system of employment causes men to join into communities. No man can be forced into joining a community; he must do it by choice. Once a community is formed, according to Locke, men will naturally form a government. A government provides for men in a community three important things that do not exist in nature: "An established, settled, known law;" "a known and indifferent judge;" and "the power to back and support the sentence."[15] Men join a state by choice alone, as forcing them into the authority of one would be an act of enslavement, which violates the law of nature. Consequently, all of the people in a state must agree to join it, and must agree on the rules that govern it.

The rule of recognition based on Locke's conception of authority is more complicated than that for the constraint conception. In addition to a law being required to come from whatever government the people created, it must adhere to certain qualities. For example, if a rule does not treat subjects equally, then it is not valid law. Similarly, if it infringes on certain God-given rights, then it is not law. These two aspects of the rule of recognition translate to two more structural principles that were not present in Fuller's list. We can call these the principles of equality and of adherence to rights. If the rules of a society based on this conception of authority do not meet these principles then those rules cannot rightfully be called laws. Furthermore, it is possible that at least one structural principle Fuller proposes is not affirmed by this conception. It seems allowable that laws can be contradictory so long as those laws are also not congruent in regards to their wording and actual administration. Consider two laws compelling subjects to act in mutually exclusive ways, but one of those laws is administered in a particularly incongruent way, so that the laws do not place subjects in an impossible position practically speaking. As long as the practice of these laws meets all the other structural requirements, including the two new principles, it is not clear this creates a problem. This being so, Locke's version of the social contract theory as a rule of recognition does not strictly affirm those two structural principles.

Conclusion

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15   John Locke. *Second Treatise of Government*. Edited by C.B. Macphearson. Indianapolis: Hacket, 1980. Pg. 66.

This discussion yields two important ideas. The first is the external justification of structural and procedural principles of law by normative conceptions of authority as rules of recognition. The second is the realization that as different conceptions of authority are used as rules of recognition, they result in different sets of such principles. These results suggest a strong link between natural law theory and positivist principles of law. Not only are these principles justified by natural law ideas, but different natural law justifications yield different principles. Therefore, any set of principles, including the ones submitted by Fuller and Waldron, is based on some particular natural law justification. This suggests that any limitation on what constitutes a legal system, even limitations that seem positivist in nature, are connected in some way to normative values regarding legitimate authority. Hart writes that law is influenced by morality but is not beholden to any particular set of morals. It seems that when one tries to establish any concrete set of principles to define law, they cross the bridge to normative theory. Meanwhile Hart stays rooted strongly in positivism, because his theory of primary and secondary rules prescribes no particular set of rules. Indeed, as we saw in this discussion, a secondary rule of recognition can take many forms, and no particular one is more correct in Hart's eyes. However, different rules do each yield very different systems with different structural and procedural requirements. In other words, even so-called positivist definitions of law come from and are shaped by, on some level, a normative theory of the source of authority.