

Should Stormont / Westminster / Brussels legalise a commercial trade in organs?

How do we answer this question?

Moral view

Democratic view

Positivism

Killing should be illegal
- Unless defending yourself
- Or fulfilling the request of the terminally ill

Links between law and morality

Right / Wrong

Popular opinion

Legislature / Representatives

A norm has the status of law when a recognised human authority declares it to be law

Theft should be illegal
- Unless person is starving

If it conflicts, morality wins out

What matters is the authority underpinning it

Drug consumption should be illegal
- Unless alcohol, tobacco, aspirin, and marijuana

Whose morality?

Law is subordinate to morality

And compliance with the correct lawmaking procedures

Content is irrelevant

Sex should be legal
- Unless paid for
- Between a spouse and someone other than their spouse
- Between a 35 yr old man and a 12 yr old girl
- Between people of the same sex or different racial backgrounds

Religious

Rationality

Natural law theory

We cannot distinguish between good / bad laws

How does the sovereign decide which laws to pass?

Murder?
Theft?
Theft by a hungry person?
Marijuana consumption?

Private behaviours can also harm others

Which harm principle should we use as the basis of law:
- Harm to self
- Harm to others
- Harm to society
- Harm to public mores

Only between valid and invalid laws

Why are the procedures valid?

Morality is often linked to the harm theory

Laws are rules of behaviour that depend on context / culture

Difference between private / public behaviours

One position: law should regulate morality if the accompanying behaviour directly harms others

Balance between order / liberty