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"Nature as a Source of Law"

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ABSTRACT

The natural law tradition of ethics and jurisprudence has its origins in Ancient Greek and Roman literature, was expanded and systematised by scholastic thinkers, especially Thomas Aquinas, and is still prominent today. This article examines the central tradition of natural law thought, highlighting its key characteristics and discussing their political and legal ramifications, as well as its relationship to the social and behavioural sciences.

INTRODUCTION

The word "sources of law" has several meanings depending on the observer. The phrase is used by empiricists to refer to the legislature or state that creates and enforces laws. The phrase is used by the historical school to allude to the beginnings of law. Some use it to denote the causes of law or the law's subject matter. A judge interprets and uses certain rules to decide a case, according to Professor Fuller's "Anatomy of the Law." These regulations can be found in a variety of places, which are referred to as "sources."[1] He specifically mentions written laws, court rulings, customs, doctrinal works, expert consensus, ethics, and equity as some of prevalent sources of law. The phrase was coined by Holland to refer to the sources of legal knowledge. The sources of law do not have a definite classification. Various scholars and jurists have assigned their own classes based on their interpretations of the phrase.

By virtue of our basic humanity, the natural law approach proposes an ethical theory that its proponents believe should apply to, and in principle be at least partially accessible to all humankind. Even while notions of human nature range across ethical explanations and are not grasped in an extremely definitive and normative manner, there is a common human nature.[2] This ethical method may be traced back to the work of pre-Christian Greek and Roman thinkers, and it has long been popular in Protestantism, particularly in Roman Catholic theological ethics, which still places a premium on the natural law approach.

What is the natural law approach to ethics, precisely? In the literature, there are few clues of what distinguishes the natural law approach from non-natural law alternatives. Even authoritative statements in defence of the natural law approach against other ethical approaches, such as the encyclical *Veritatis Splendor* (1993) of Pope John Paul II and the document dedicated to the natural law approach from the International Theological Commission (ITC) of the Roman Catholic Church, *In Search of a Universal Ethic: A New*

[1] Grisez, Germain 1970, "*Toward a Consistent Natural Law Ethics of Killing*," 64, AMERICAN JOURNAL OF JURISPRUDENCE, 64-96.
[2] *Ibid.*

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Look at the Natural Law (2009), fail to give lists of features that are necessary and/or sufficient for what constitutes the natural law approach, and, perhaps more importantly, what might be at odds with it.[3] This may have the advantage of allowing for a true diversity of viewpoints. It could also reflect the belief that detailed clarification is unnecessary in practise: the natural law framework, when comprehended as, for instance, a household of moral accounts with intertwining resemblances that are carried to apply to, and in essence be at least partly attainable to, all human species, and which generally elicit primarily, explicitly or implicitly, from the work of classical thinkers in the natural law lineage (e.g. Aristotle, Cicero, and Aquinas), could be useful.

THE NATURAL LAW APPROACH

The typical common sense concepts of morality as interpreted and implemented by the common man and woman are referred to as natural law or moral law. All sorts of righteous behaviour are referred to as justice. There are two sorts of justice: positive and natural. Positive justice is when human authority is used to uphold the law. Natural justice, also known as attributive justice, is the ideal justice or right that should prevail in the world, despite the fact that in many circumstances, the practical judicial process falls short of the divine perfect justice objective. Natural law is highly regarded by several early jurists. They referred to it as divine law, or God's order to men. It was regarded the law of Universal Reason by Greek and Stoic thinkers because it was established by the Reason that governs the cosmos, as well as being addressed to and recognised by man's reasoning nature. The ultimate reason was seen by the Stoics as the controlling soul in the empirical world. Natural law was the unified reason's code of action.[4] It is considered to be the written law, inscribed not on brass tablets or stone pillars, but alone in the hearts of men by the finger of nature. It is also known as the uncreated and unchanging everlasting law. It is now known as the moral law, as it is the manifestation of moral ideals. At one time, this form of divine natural law was held in such high regard that any created rules that were incompatible with it were deemed void. Courts, as interpreters of natural law, found it to be a useful tool for changing and developing the law. Judges were able to establish new legal norms in accordance with the principles of natural injustice and inequality. Third, foreign attorneys grounded their arguments on natural law principles. However, it was soon seen that these hazy concepts of natural law could not serve as a solid foundation for a science of law. Beginning of the 19th century, it was acknowledged in England that an Act of Parliament is not void because it is in violation of natural justice or morality. In western democracies, politicians in Parliament make lais. It was once again recognised that judges might write new rules of law based on their moral convictions rather than relying on hazy notions of natural law. Natural justice ideas have produced some good notions in international law that are acceptable to sovereign

[3] Boyle, Joseph 2001, "*Fairness in Holdings: A Natural Law Account of Property and Welfare* Rights", 206**,** SOCIAL PHILOSOPHY AND POLICY, 206-226.
[4] Fried, Charles. "*Natural Law and the Concept of Justice.*" *Ethics*, UNIVERSITY OF CHICAGO PRESS, vol. 74, no. 4, 237–54 (1964).

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States, although it is debatable whether these sources of ideas may be called laws in the strict sense.

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Belina and Dzudzek provided a modern articulation of the concept of natural laws:[142]
"By constant repetition, those practices develop into structures in the form of discourses which can become so natural that we abstract from their societal origins, that the latter are forgotten and seem to be natural laws."
Natural law can refer to many doctrines in jurisprudence:

- that just laws are intrinsic in nature; that is, they can be "identified" or "reported" but not "invented" by things like a bill of rights;
- that they can arise from the innate method of fixing dispute, as personified by the emergence of the common law; or
- that the definition of law is such that its substance cannot be ascertained unless by reference to ethical beliefs.
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These interpretations can either contradict or support one another, but they all possess the attribute of relying on inherence rather than design to find just laws.[5]

Whereas legal positivism would argue that a law can be unjust while still being a law, natural law jurisprudence would argue that an unfair principle is legally inadequate. Aside from utilitarianism and Kantianism, natural law jurisprudence shares the trait of being a viable alternative for this first principles ethics theory in analytic philosophy with virtue ethics. [6]

Natural law played a significant role in the creation of English common law. The Fundamental Laws of England, which were thought to reflect natural law foundations since antiquity and placed restrictions on the crown's powers, were frequently invoked by Parliament in its battles with the monarch.[7] Natural law, on the other hand, according to William Blackstone, may be valuable in identifying the substance of the common law and in judging equity matters, but it was not the same as English law. Jeremy Bentham, for example, was a fierce critic of the common law because of the connotation of natural law in the common law system.

The field of natural law jurisprudence is currently developing modification (as is legal positivism). Australian John Finnis, the most notable modern natural law jurist, is based in

[5] HART, H.L.A., THE CONCEPT OF NATURAL LAW, (3rd ed. 2012)
[6] Gavison, Ruth. "*Natural Law, Positivism, and the Limits of Jurisprudence: A Modern Round.*" THE YALE LAW JOURNAL, vol. 91, no. 6, pp. 1250–85 (1982).
[7] *Ibid.*

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Oxford, although there are also Americans Germain Grisez and Robert P. George, Canadian Joseph Boyle, and Brazilian Emdio Brasileiro.[8] All of them have attempted to create a new form of natural law. Lysander Spooner, a 19th-century anarchist and legal theorist, was a key figure in the development of contemporary natural law.

Grisez is credited with coining the term "New Natural Law." It concentrates on self-evidently and innately valuable "fundamental human goods," such as human life, learning, as well as aesthetic experience, and claims that these products are incommensurable among each other. The contradictions between natural law and positive law have played an important role in the evolution of international law, and they continue to do so.

CONCLUSION

Undoubtedly, the natural law tradition's criticism of legal positivism is based on the claim that, by attempting to deny any important correlation between law and morality (between positive law and natural law), legal positivists make it visually indistinguishable law from brute force, or civil disobedience from mere anarchism. Furthermore, any comprehensive sociological theory of law, as Hart points out, must be able to account for the fact that individuals who govern and are subject to laws regard them as basically distinct from simple mandates backed by violence or threats of violence. Natural law theorists claim to provide a more detailed account of law as social fact, as well as wider ethical code whereby the justice of any specific law or legal system can be insightfully assessed, by conceiving of law as essentially intended at the public good and as having normative force accurately in so far as as it accomplishes this goal. Natural law rationale has indeed been applied to a variety of subject matters, including termination of pregnancy, euthanasia, and embryonic stem cell research, marital legislation, death penalty, brutality, nuclear arsenal, and real estate and public assistance rights.

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