

ORIGINS OF NATURAL LAW

The earliest civilizations drew little distinction between the forces responsible for the physical properties of the natural world and the forces regulating human behaviour. In ancient Babylonian and Egyptian civilizations, mysticism and supernatural spirits were believed to be directly accountable for everything in the universe, including human activity manipulated “by divine will.” To the gods, the earth was a puppet theatre; its human inhabitants, the puppets. Just as these gods were thought to control the rising and setting of the sun, they were also believed capable of toying with the outcomes of battles and, if provoked, of venting their divine vengeance upon rulers and their empires. In the same manner, these gods directed the formation of laws. Therefore, law and physical nature were inseparable. All human decisions were judged by the gods. If the decision pleased the gods, one could expect a reward. If, however, the decision displeased the gods, one could expect dire consequences. Although conceptions associated with natural law have varied throughout history, a common core of natural law theory can be identified. Natural law supporters assume that it is human nature to be good, that all people strive to be good, and that goodness is essential to our well-being. Natural law is assumed to be universal, in that it applies to all humankind. It also imposes a moral responsibility on a society to give each person his or her due, regardless of the laws in place.

PLATO & THE IDEAS OF LAW & JUSTICE

One of the earliest Greek philosophers, Plato (427 – 347 BC) embraced the idea that human law should strive to reflect certain universal and eternal truths or values. Plato rejected the view of other Greek philosophers that law was nothing more than the result of arbitrary, human conventions. The Platonic idea of law was premised on nature, which was inherently reasonable and good. Law, Plato believed, should provide inner harmony and justice in the state, in the same way that reason produces inner harmony and justice in an individual’s soul. The ultimate purpose of the law for Plato, and for virtually all natural law theorists, is a moral one. Its role is to act as a guide for society, a means of measuring justness and of reforming evil practices. Hence, we in Plato’s philosophy the idea that natural law (or, as he called it, “natural justice”) contains enduring moral values by which one may assess the laws of the state.

The idea of law as a moral educator has another important dimension. Plato believed that humans act in conformity to the law, at first, out of a simple fear of punishment, but eventually, out of habit, and finally, out of commitment to the values reflected in the law. It is thus critical to natural law theorist that the law’s moral content be worthy of human respect and obedience. The Platonic notion that it is just to disobey an unjust law is starkly opposed to the

stance of positive law theorists who argue that, in return for the state's protection, individuals are bound to obey the state's laws. Indeed, even Socrates, Plato's great mentor, promoted obedience to the laws of the state. While Socrates believed one had a duty to convince state authorities through rational argument of the injustice of the law, if the attempts failed, he believed one's ultimate duty was to obey the law.

People often consider natural law to be a simplistic list of certain virtues. While Plato believed that natural law comprised universal truths and virtues, such as speaking the truth and doing no harm to other humans, his philosophy did not promote rigid moral rules to be applied identically under all circumstances. His approach was more situational, as is well illustrated in the following extract from his most famous work, *The Republic*. Speaking through the voice of Socrates, Plato demonstrates to Cephalus that justice is not a simple matter of telling the truth and paying one's debts:

...but as concerning justice, what is it? To speak the truth and to pay your debts, no more than this? And even for this are there not exceptions? Suppose that a friend when in his right mind has deposited arms with me and he asks for them when he is not in his right mind, ought I to give them back to him? No one would say that I ought or that I should be right in doing so, any more than they would say that I ought always to speak the truth to one who is in his condition.

You are quite right, he replied. But then, I said, speaking the truth and paying your debts is not a correct definition of justice.

Hence, for Plato, law, or justice, represented an ideal – a natural, moral order that human laws should attempt to achieve as far as possible. Human law makers are the servants of laws that aim for the true happiness of citizens. Conversely, laws are never to be the servants of government. Plato's notion of law is clearly stated in his treatise, *The Laws*:

For I consider that the true lawgiver, like an archer, aims only at that on which some eternal beauty is always attending, and dismisses everything else, whether wealth or any other benefit, when separated from virtue

1. What is the ultimate purpose of Natural law for Plato?
2. What is the significance of justice and morality in Plato's concept of law?
3. Does Plato justify disobeying the laws of the state?

ARISTOTLE – RATIONALISM & JUSTICE

The Greek philosopher, Aristotle (384 to 322 BC), is credited with being the founder of contemporary thinking about natural law. In his theory, the origin of law is found in nature, not in the gods. Nature, Aristotle proposed, is inherent in all things, and animate and inanimate, for example, animals raise their young and hunt for food according to Natural Instinct. Unlike Plato, who believed that humans are incapable of finding real Justice, Aristotle believe that Justice is within their grasp. Since humans are endowed with the ability to think and reason, they must recognize their own nature and make laws suitable to that nature. Therefore, the true meaning of law as an ideal or

perfect standard is revealed through the exercise of human reason, guided by observation. This process of human analysis came to be known as **Rationalism**, the principle upon which modern scientific thinking is structured.

Aristotle believed that humans can, through rationalism, understand the fundamental, necessary, and unchanging rules of nature that are beyond human control. This understanding helps direct daily human action. The application of reason to the study of nature in order to reveal natural laws for governing human behaviour dominated jurisprudential thinking for centuries to follow.

Like Plato, Aristotle believed that Justice and law produce human happiness - the sort of happiness one gains from being virtuous. Thus, in *Ethics*, Aristotle wrote that the intention of law is to lead people to virtue and that just actions or laws are those that “tend to produce and preserve happiness and its components for the political society.” The effect of law, wrote Aristotle, is to make people good by habituating them to good works.

While Plato's ideal Society (as described in the *Republic*) has no laws and is governed by philosopher-kings enlightened by natural law, Aristotle makes more of a place for human laws and lawmakers. However, the rule of law in Aristotelian philosophy is the rule of the Gods and reason, and it avoids human passion, or the character of the “Beast” as Aristotle termed it. Laws are rules proceeding from moral prudence and understanding and can be defined as “reason unaffected by desire”.

Aristotle's concept of justice is twofold, comprising *General Justice* and

Particular Justice. General Justice concerns the whole notion of goodness and its exercise by humans. Particular Justice deals specifically with behaving fairly in both state - citizen and citizen - citizen relationships. The latter type of relationships, such as contracts between citizens, is governed by *Rectificatory Justice*, while the former is governed by *Distributive Justice*, one of Aristotle's most enduring Legacies.

Distributive justice comprises those principles to be taken into account by the state and distributing benefits, such as offices, honours, or money. The principles are highly meritocratic; people receive unequal awards of benefits exactly in proportion to the inequality of their merit. Incorporated into modern equality theory as treating things or people in accordance with their similarities or differences, Aristotle's theory of distributive justice still strongly affects how the law deals with equality issues.

Aristotle recognized another form of Justice, *political Justice*, which concerns how the law deals with people as political beings exercising right and responsibilities in a political State. Political justice comprises *natural justice*, those broad, enduring principles that are in force everywhere and not brought into existence by human thought, and legal justice, the rules and enactments that humans rationally devise to cover certain situations. Aristotle recognized that human conceptions of justice change, but he refused to acknowledge the absence of an overarching natural law. His view of the relationship between legal justice and natural justice is summarized in the following extract from *Ethics*:

... *The elements of justice which exist by human institution, and not by nature,*

are not the same everywhere - the reason being that constitutions too (upon which laws depend) are not the same everywhere. And yet there is but one constitution which is naturally the best everywhere.

Finally, Aristotle viewed natural law as something to turn to to plead one's case when recourse to "written law" has failed. This is clear in the following passage from *Rhetoric*:

It is evident that, if the written law tells against his case, he must take the ground of 'universal law' and 'equity', and plead that they are more consonant with justice ... he must plead that Equity is always constant, and never changes, and that universal law, in virtue of being the law of nature, is equally unchanging; while written laws often change ... He must plead that the just is something real and of actual utility, and not merely a matter of what seems good to the authorities; and that it cannot, therefore, be simply identified with written law - the more as written law may fail to fulfill the true purpose of law ... He must plead that, the better a man is, the more he must use and stand fast by unwritten laws, in preference to the written.

1. What is the source of Natural Law, according to Aristotle? How is this law knowable by humans?
2. What do Plato and Aristotle mean when they say that justice and law serve to produce 'human happiness'?

CICERO & THE LIMITS OF CIVIL LAW

The Romans saw the theory of natural law as a means of justifying and consolidating their Authority in their

expanding Empire. Cicero (106- 43 BC), a leading Roman politician, lawyer, and legal philosopher, did much to advance the notion that natural laws are universal and unchanging. This notion gave the Romans a higher law, a standard by which the positive law might be measured. "Law", Cicero wrote, "is the mind and reason of intelligent man, the standard by which justice and injustice are measured."

These higher laws presumed both a moral and a legal superiority. Cicero advocated that civil or human laws should be set aside or disobeyed if, in the minds of the "wise and intelligent", the laws were deemed to be in conflict with those of nature. In this respect, Cicero reinforced Plato's notion that civil disobedience could be used to compel lawmakers and government leaders to reform laws that failed to conform to the laws of nature. Nature, itself, was best represented by those activities that were for the common good and had some general degree of application to all citizens.

Like the early Greek philosophers, the Romans believed that the ideal law was rooted in a divine source. For the Romans, natural law existed in wise people, so long as it was in common with the will of the supreme god, Jupiter.

1. Would you agree that support for civil disobedience is a central part of the concept of natural law?
2. By condoning the practice of civil disobedience, does Cicero not also justify a lawless society that exists in a state of political disorder and confusion?

ST. THOMAS AQUINAS

Medieval Christian theologians took natural law in a new direction. Legal philosophy became heavily influenced by the teachings and doctrines of the Roman Catholic Church. Medieval thinkers believed in the unity of the spiritual and earthly worlds, where natural science and rationalism were consistent with Christian truth. This unity supported a theory of law in which church made, or canon, law was to rule over all civil, or human-made, laws.

St. Thomas Aquinas (AD 1225 - 1274), a Dominican monk, was a gifted scholar and a defender of Roman Catholicism against the spread of Islam and Greek philosophy in Europe. Aquinas believed that law mirrored a natural world order made known to humans by their own process of reasoning and by the divine revelation of Christian prophets.

The influence of Plato, and especially Aristotle, on Aquinas is obvious in his major work *Summa Theologica*. Like Aristotle, Aquinas firmly believed in the necessary connection between law and reason; indeed, reason invested law with its very legitimacy. Aquinas proposed that practical reason tells one what ought to be done and that the first principle of practical reasoning directs humans to do good and avoid evil.

Aquinas drew distinctions among *eternal law*, *natural law*, and *human law*. Put simply, Eternal law is the eternal government of the universe according to the divine will of God. Natural law is the “imprinting” of eternal law on humans.

Following both Plato and Aristotle, Aquinas viewed the purpose of human laws as training and habituating their

subjects to become virtuous. But just what was the relationship between natural law and human law? Aquinas’s answer was clear:

... Every human law has just so much of the character of law as it is derived from the law of nature. But if in any point it differs from the law of nature, it is no longer a law about the corruption of law.

Thus, Aquinas reinforced the belief of natural law theorists that the validity of a law is dependent upon its moral content, or justness.

Aquinas was more straightforward than Plato or Aristotle in lending meaning to the notion of “good” and, hence, in giving content to the basic rules of conduct of natural law. After confirming that doing good and avoiding evil is the overarching first rule from which all others derived, Aquinas explained that the order of the rules of natural law accords with natural human inclinations to preserve human life, to reproduce, to educate offspring, to know the truth about God, to live in society, to shun ignorance, and to avoid offending others.

Aquinas gave a qualified answer to the question, “Can natural law be altered?” If the change is *adding* of laws that would benefit human life, such changes should be made. However, if the change is the *subtraction* from natural law, Aquinas argued that natural law’s first principles should not be altered; but he acknowledged that its secondary principles - conclusions about how to act derived from the first principles - are subject to change. Undoubtedly influenced by Plato, Aquinas provided the example of refusing to restore Goods held in trust to an owner who intended to use them in a revolt against the state.

Because of his belief that justice and rights spring from natural law rather than human law, Aquinas is credited with having a major influence on modern human rights theories and laws.

1. To what extent did Aquinas incorporate the philosophies of Plato and Aristotle into his version of Natural Law?
2. Distinguish between eternal, natural and human law.

R. M. DWORKIN - A MODERN NATURAL LAW THEORY

Ronald Dworkin, a late twentieth-century American turned British political and legal philosopher, believes in the moral content of law. His views represent a reconstruction of traditional natural law theory. For Dworkin, legal reasoning is an interpretive exercise to make political and moral sense out of a difficult situation or case. Hence, law must be viewed as a political concept and, more particularly, as representing political integrity. In Dworkin's words:

... political integrity is simply the idea that a community that is morally, as well as in other ways, a divided community can nevertheless commit itself to the general principle that any set of political decisions must be set beside other political decisions to see whether the whole is coherent.

Thus, Dworkin feels law is (or should be), the union of widely-held, coherent political decisions or judgments. This concept is infused with political morality, since it requires consistency in the moral choices it represents.

Finally, Dworkin's model visualizes a community governed by a shared vision of social justice, rather than by efficiency or the realization of individual wants and desires:

... We will struggle in politics, but we will march forward towards a finer sense of fairness, towards the realization of the conditions for the flourishing of individual lives ... We will struggle and compete, but as we go, we will be bound together by the principle that we are in the same boat, that we march together, and whatever we decide for one we decide for all, that we leave no wounded behind in our march towards Justice.

Accordingly, judges under Dworkin's model should "implicate these grand questions of political vision" in the laws that they make in deciding cases.

1. Why does Dworkin favour social justice over individual justice in his political integrity model?
2. Do you think the early natural law theorist we have looked at would support or reject Dworkin's reconstructed concept of natural law theory? Explain.

- Where does Natural law originate from? How?
- How is it applied, or interpreted or enforced?
- How would you explain and illustrate the idea of Natural Law to someone? (What is natural law? Provide two examples to illustrate the concept)