Jurisprudence

Classical Natural Law Theory

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Background

• ‘Natural law’ dominated legal thinking from the times of the Greeks to the 17th century
• Classical Natural Law- Plato, Aristotle, Stoics, Christianity and Aquinas
• Advent of legal positivism
• Revival of Natural Law after WWII
• Modern Natural Law- Lon Fuller and John Finnis
What is Natural Law?

- ‘application of ethical or political theories to the question of how legal orders can acquire, or have legitimacy.’ (Nobles and Schiff, at p.37 in Penner, et al.)
- Natural law is primarily a theory on morality/ethics and not a theory of law. The ‘Law’ is only one aspect of society which natural law looks at.
- Natural Law grapples with the issue of how legal systems/laws acquire legitimacy/validity.

- Natural law accords primacy to morality and ethical considerations over and above other considerations such as whether the law was made by the proper authority, etc. (contrast with Legal Positivism)
- Principles of natural law are constant even if the values and attitudes of men change over time.
- Principles of natural law have universal applicability.
- The precepts of natural law are constant and have universal applicability because man’s natural ends are always the same for all of mankind irrespective of the time or the place.
There is no one theory of natural law. But they agree on the following:
Society should be ordered and structured in a way that will help man to fulfill his purpose in life. Anything that impedes the ability of man to achieve his purpose is against natural law.
  e.g. since violence/killing a human will interfere with the fulfillment of purpose, violence/killing is against natural law.

• Natural law theory does not reject man made positive law, in fact it recognizes the need for it. However, man-made positive law is inferior to natural law and when man-made law is in conflict with principles of natural law, they will be invalid.

• Question- Although natural law emphasizes on the nexus between morality and law, what really is morality? Is it really uniform across the globe?
How do we ascertain Principles of Natural Law? Discoverable by Reason?

• Hart described natural law thus: “...there are certain principles of human conduct, awaiting discovery by human reason, with which man-made law must conform if it is to be valid.” (The Concept of Law, 2nd edn. ch. 9, p.186).

• What is meant by “…awaiting discovery by human reason...”?

• Although natural law is about constant and immutable principles that furthers man’s quest to fulfill his purpose, these principles are not laid down anywhere. The truths of natural law are not ‘revealed’ to man.
• These truths are ascertainable by the use of rational thinking/reason, an ability that man has been given by nature.
• Man discovers these truths by observations followed by reflection on ‘What are man’s natural ends? Purpose?. Man discovers the content of natural law (the relevant principles) by reference to the answers to these questions. The society that man lives in must be ordered in such a way to facilitate the realization of the content of natural law, thereby fulfilling man’s purpose.
Why is it called ‘natural’ law?

Man is part of nature. Within nature, man has a nature (characteristics, traits). Man’s nature inclines him to fulfill certain ends, or purposes. Such as procreation, protection of family, ensure his survival. Trying to fulfill these ends is ‘natural’ to man as that is his nature. As man is part of nature, achieving these ends that are man's nature, helps to achieve the purposes of nature.

Laws that further the achievement by man of his natural ends assist the achievement of the purposes of nature, Such laws, that are in conformity with the ultimate purposes of man, are called ‘Natural’ law. These are laws that furthers the fulfillment by men of the purposes that nature has made it man's nature to fulfill.

Hence, those things that impede man’s purposes (natural ends) are contrary to natural law. When man makes positive law that conflicts with the man’s nature, then such laws are contrary to natural law.

Evolution of Natural Law in Europe

• Early natural law philosophers were not looking to propound a theory on law.
• They were explaining how to have a well ordered society and in this larger discussion, law, was a part.
• But from their writings on ethics and government, we could gather a few strands of natural law as we know it today...
Plato (3-4th Century B.C)

‘Values’ have an eternal existence and eternal veracity. He said certain abstractions such as redness, roundness, beauty, honour, equality, etc. had an independent existence from various things in the physical world we associate with those qualities.

The things we come across in life reflect these abstractions that have an independent existence. This is known as Plato’s doctrine of ‘forms’. These ‘forms’ exist independent of the physical world, human mind and independent of space and time. Man knows these values such as beauty intuitively.

(e.g.- a painting could reflect the form of ‘beauty’ although the painting itself is not beauty.)

The school of thought that thinks this way, that is, that an idea has its own independent existence, is called ‘idealism.’ What man must do is to reproduce these forms. For instance, try to reproduce the forms of justice, equality, truth, etc. To be able to do this, he must first seek knowledge of the eternal truths.

Relevance of Plato’s theory of forms to Natural Law?

‘goodness’, ‘honesty’, ‘virtue’, ‘justice’, etc. all have an independent and eternal existence. They are constant and have universal application. These forms constitute moral principles and human actions must be judged in reference to these principles. These principles will never change even if human attitudes and beliefs did over time. Also, as these values are universal, they apply universally to all of humanity, an aspect of natural law as we know it today.
Aristotle (4th century B.C.)

Aristotle had a different view to what Plato said. Aristotle was a marine zoologist and not a natural lawyer and it is doubtful whether he gave much thought to law as such.

He observed the living organisms around him and how they changed. His theory has a direct relation to these observations...

• “…nature makes nothing without some end in view, nothing to no purpose..” (*Politics*, Book 1, Ch.8)

• He observed that a seed grew into a tree, an infant into an adult. Natural phenomena were in a perpetual state of flux, change. They were always becoming something.

• Pre-determined end to everything: The tree was what was in the nature of the seed to grow into. The ‘tree’ was the predetermined end of the seed.

• Things are constantly evolving towards their predetermined ends. He saw this even in relation to humans.

• This notion that everything has a predetermined end, is called ‘teleology’.
Aristotle applied his teleology to humans, and human development. He observed man to be a social animal. Hence, man could not flourish by himself, he needed social groups. Hence, he needed family.

To him, man was also a political animal. As man was a political animal, he needed politics to participate in.

“It follows that the state belongs to a class of objects which exist in nature, and that man is by nature a political animal” (*Politics*, Book 1, Ch.2)

- To Aristotle, politics was possible only in a fairly complex and organized social structure, in a *polis*. He equated the ideal *polis* to the Greek city state. The creation of a *polis* allowed man to fulfill a potential which remained unfulfilled if man only lived in small social groups such as family.
- Aristotle thought the *polis* was essential to man’s fulfillment of his purpose.
- In Aristotle’s eyes, the law had to be fashioned in a way to facilitate the smooth functioning of the aspects of the well organized and structured polis. It must be remembered, Aristotle was not particularly interested in natural law as such, one must make the next logical step from his teleology to connect Aristotle with natural law.
The Stoics (3rd century B.C – 5th century A.D)

For Aristotle, the culmination of man’s life was to be able to live in the Greek city state taking part in politics. This was a small world. However, Alexander the Great founded the Greek Empire, going way beyond the limited *polis* envisaged by Aristotle. Now it was so be a *cosmopolis*. This meant that the values of and attitudes of the Greek state had to transform to accommodate the citizens of the world, who were beyond the city state. It was necessary to have a more universal conception of the purposes, and morality of man.

- Stoics were a group of writers who came into prominence during the Greek Empire and they had to contemplate a system which went beyond the city state and its values, so that all citizens of the Empire could be accommodated. The Stoics and their writings reflect, in the western world, universal laws that goes beyond the boundaries of individual states.
• After the Greeks, the Roman Empire too adopted Stoicism until the advent of the Catholic Church. The Stoic philosophy is seen in the writings of many Roman philosophers such as Cicero, Aurelius, Seneca, etc.
• These writings reflect a moral and a universal approach towards other humans and emphasize the need for laws that reflect these values.
• It is from Cicero’s writings that we first see the notion that laws must conform with natural law to be valid
• Cicero- Natural Law is “right reason in agreement with nature”.

Cicero, *On Duties*:

“Besides, the Stoics’ ideal is to live consistently with nature. I suppose what they mean is this: throughout our lives we ought invariably to aim to morally right courses of action...”

“Indeed this idea- that one must not injure anybody else for one’s own profit- is not only natural law, an international valid principle: the same idea is also incorporated in the statutes which individual communities have framed for their national purposes. The whole point and intention of these statutes is that one citizen shall live safely with another...”
“so everyone ought to have the same purpose to identify the interest of each with the interest of all. Once men grab for themselves, human society will completely collapse. But if nature prescribes (as she does) that every human being must help every other human being, whoever he is, just precisely because they are all human beings, then—by the same authority—all men have identical interests. Having identical interests means that we are all subject to one and the same law of nature: and, that being so, the very least that such a law enjoins is that we must not wrong one another.”

“...neglect of the common interest is unnatural, because it is unjust... nature’s law promotes and coincides with the common interest.”

“Not that we possess any clear-cut, tangible images to show us what true, authentic law and justice really look like! We only have outline sketches. And the extent to which we allow ourselves to be guided even by these leaves a great deal to be desired. For at least they have the merit of derivation from the finest models—those which have been vouchsafed to us by nature and by truth.”

“For there is an ideal of human goodness: nature itself has stored and wrapped this up inside our minds. Unfold this ideal, and you with straightaway identify the good man as the person who helps everyone he can, and unless wrongfully provoked, harms none.”
Seneca has written:

“It is spirit, and the perfection of his reason in that spirit. For man is a rational animal. Man’s ideal state is realized when he has fulfilled the purpose for which he was born. And what is it that reason demands of him? Something very easy— that he live in accordance with his own nature. Yet this is turned into something difficult by the madness that is universal among men: we push one another into vices. And how can people be called back to spiritual well-being when no one is trying to hold them back and the crowd is urging them on?”

Aurelius in *Meditations*:

“If the power of thought is universal among mankind, so likewise is the possession of reason, making us rational creatures. It follows, therefore, that this reason speaks no less universally to us all with its “thou shalt” or “thou shalt not”. So then there is a world-law: which in turn means that we are all fellow-citizens and share a common citizenship, and that the world is a single city.”
Contribution of Stoicism to Natural Law:

• The Stoics added substance to natural law. They emphasized the importance of tolerance, forgiveness, compassion, fortitude, uprightness, honesty, equality, justice, etc. According to them, these were the qualities natural law required of men so that they would live in accordance with their nature.

• Stoics saw mankind as a single entity, a brotherhood (contrast with Aristotle to whom others were barbarians). There was a transcendental nature to natural law. Stoics added the value of ‘universality’ into natural law thinking.

Jus Gentium

At the time these writings were done and thereafter, the Roman Empire was very powerful and had many colonies and were in trade relationships with the world. Had the Empire insisted on their own laws on these colonies and disregarded their values, customs, it would have been difficult to govern the colonies and also engage in trade with the rest of the world. The growth of the Empire necessitated the development of laws that were universal.

The Romans developed the Jus Gentium (loosely translates as the ‘law of nations’). It must be noted that the Jus Gentium did not reflect Stoicism per se, what it took from Stoicism was the fact that there was one universal nature of humans and from that it is possible to derive a universal law to deal with the outside world.

Jus Gentium was applied throughout the Roman Empire as a higher law. Jus Gentium can be treated as an early version of international law, or as an international standard, by which local laws too had to adhere. It was kind of a ‘higher law’ that local laws had to strive to be in compliance with.
• Gaius defines Jus Gentium: “Every people (populus) that is governed by statutes and customs (leges et mores) observes partly its own peculiar law and partly the common law of all mankind. That law which a people established for itself is peculiar to it and is called ius civile (civil law) as being the special law of that civitas (state), while the law that natural reason establishes among all mankind is followed by all peoples alike, and is called ius gentium (law of nations, or law of the world) as being the law observed by all mankind. Thus the Roman people observes partly its own peculiar law and partly the common law of all mankind.”

Christianity and St. Thomas Aquinas

There are parallels between Stoicism and Christianity and this was no accident.

With the decline of the Pagan religion in the Roman Empire, Christianity rose. To maintain the support of the people it was necessary for the Roman state to adopt Christianity as the religion of the state. This meant a more organized structure for the Church and perhaps a theology which was acceptable to the people. Hence, it was only logical for Christian theology to be built on the foundations of Stoicism as it was a familiar philosophy to the writers of the early church who were taught in the traditions of the Greek and early Roman philosophies. They used Stoicism in the development of a philosophical foundation for Christianity.
• Note-
  • For the Stoic, death was the end.
  • But Christianity spoke of heaven for the moral man and hell for the evil man. Christianity also introduced God to figure centrally
  • This way, Christianity differs from Stoicism

St. Thomas Aquinas

Aquinas provides the most complete account of classical natural law theory as we know today.
Background to Aquinas’ writings- Aquinas wrote in the 13th century, at a time the political influence of the Catholic Church was waning among secular European States. It was imperative for Aquinas to come up with a philosophy that bridged the gap between the Church and the secular states, so that the Church’s authority in European politics would be restored.
Aquinas took Aristotle’s teleology and used it to put forward a Christianized doctrine so that the influence of the Church will grow among the States, especially the secular ones. He treated being Christian was part of man’s purpose. Although man was to live in a polis as fulfillment of his purpose (like Aristotle said before him), for Aquinas, it had to be a Christian polis where the Church had complete control over man’s moral upbringing, invariably leading to Church control over the state as well.

Aquinas’ chain of thinking goes like this: god is the creator and the world is his creation. Everything physical and intellectual stems from Him. When God created man, he gave man the power of reason so that man could reflect and find out for himself the truth. Because man possessed power of reason, he could participate in the moral order of nature designed by God.

There are several laws in this order:
• **Eternal Law**: The whole universe is governed by divine providence/reason. This is the ultimate order imposed by the creator.

• **Divine Law**: The Law revealed to man by God though the ten commandments, scripture or divinely inspired pronouncements of prophets, Pope, etc. It lays down how man must treat and view God, and regulates man’s relationship with God (requirement of taking part in religious rituals, baptism, etc.), also such areas that human laws do not regulate, such as evil thoughts, etc.

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**Natural Law**: Humans possess reasoning powers and free will. Hence, they have a special relationship to divine wisdom. Thus, they participate in the rational order ordained by God by using their reason.

**Human Law**: Human law consists of those particular rules and regulations that man, using his reason, deduces from the general precepts of natural law to deal with particular matters. E.g.- It is a natural law precept that crimes must be punished with suitable severity. However, human laws must specify the exact punishment (Death sentence/long imprisonment for committing murder). This is positive law. Positive law must be used to enforce natural law.

• Note- the relationship between natural law and human law is that human law exist to give effect to natural law.

• Note- what can be deduced by using reason from natural law (e.g. thieves must be punished) is ‘specificatio’ (means it is specified by natural law). However, what punishment to give is not specified. It is for human laws to determine compatibly with natural law, what punishment to give (two years imprisonment, fine, etc.) As this has to be determined by human law, Aquinas calls it ‘determinatio’.
• Important to note- Aquinas says a law ‘obliges in conscience’ only so far as it is compatible with natural law. However, (unlike St. Augustine) he does not say an unjust law is not a law. It is a corruption of law which has the form of a law. Man does not have free license to disobey laws that he considers are unjust. Because if it were so, all people for their own reasons will start disobeying the law and there will be chaos. As every man has a duty to support and foster the legal system in the interest of an ordered society, an unjust law for that reason alone does not give a justification to disobey the law.

• However, if the human law conflicts with divine law (the sole domain of the church), then citizens can disobey them.

Next Lecture...

1. Some Criticisms of Natural Law

2. Modern Natural Law...
   John Finnis
   Lon Fuller