THE EVOLUTION OF NATURAL LAW THEORY IN MODERN LEGAL SYSTEMS

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ABSTRACT

Nowadays, we think a great deal about positive law that designs many of our contemporary legal systems. But more often than not, we forget or push back on the baselines and basics of natural law. Although natural law can be somewhat esoteric and so understandably escape the notice of many, it is the ultimate standard that determines whether a positive regulation is fair or just (or alternatively unjust and immoral). On the one hand, positive law operates through rules that human institutions establish, whereas natural law (Nuredin, A.,2016), on the other hand is based on universally accepted principles that extends beyond time and context (Finnis, 1980). In that sense, it serves as the ultimate standard by which all human-made laws will be judged.

Contrary to the belief that natural law is an outdated or antiquated concept, I maintain that it is not "old" but rather "timeless." Its enduring relevance persists, and it remains a valid framework for assessing and challenging any positive law that seeks to curtail or undermine natural rights. Politicians and lawmakers, throughout history, have frequently imposed exceptional, urgent, or even abusive regulations that suppress fundamental freedoms under the guise of necessity or public order. In such instances, natural law provides a crucial counterbalance by affirming the inherent dignity and rights of individuals that no positive law, regardless of circumstance, has the authority to infringe upon (Aquinas, 1988).

In this article, we aim to accomplish four key objectives. First, we will present a clear and precise definition of natural law, outlining its essential characteristics and how it functions as a moral foundation for legal systems. Second, we will explore its historical and philosophical development, drawing on classical thinkers like Aristotle, Aquinas, and Grotius, as well as modern interpretations. Third, we will examine the distinctions between positive law and natural law, emphasizing their complementary yet often conflicting roles in shaping legal structures (Finnis, 1980). Finally, we will argue for the continued relevance of natural law in contemporary legal discourse, particularly in resisting the erosion of natural rights by arbitrary or unjust legislation. Through this exploration, we will demonstrate that natural law remains not only a theoretical construct but a practical tool for ensuring justice and fairness in legal systems around the world.

Keywords: Natural Law Theory, Contemporary

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Declaration of interest: The authors reported no conflict of interest related to this article.

1. The Definition of Natural Law

Natural law, in its broadest sense, refers to a system of inherent principles and moral truths that govern human conduct, which are understood to be universal and applicable to all individuals. These principles are believed to be derived from nature itself, making them eternal and unchanging, unlike the written or codified laws created by human societies. One of the earliest and most famous descriptions of natural law comes from the Roman jurist Ulpianus, who defined it as follows:

"Natural law is that which nature has counseled all animals because this law is not specific to humankind but is common to all animals born on earth, water, even to birds. Therefrom comes the binding of man and woman we call marriage, therefrom procreation of children, therefrom their education" (Ulpianus, Digesta 1.1.1.3).

According to this classical view, natural law is not limited to human beings but extends to all creatures, encompassing behaviors such as mating, reproduction, and the care of offspring (Grossi, 2010). This definition suggests that natural law reflects the instinctual behaviors shared by all living beings, not just humans. It connects human activities like marriage, procreation, and the upbringing of children to a broader, universal order that governs all life forms.

1.1. Criticism and Refinement of Ulpianus' Definition

While Ulpianus' definition has historical significance, modern perspectives on natural law often refine or challenge his conception. One important critique is that animals, unlike humans, do not possess the faculties of freedom, reason, or moral responsibility (Aquinas, 1988). While animals act according to instinct, humans are capable of making deliberate choices based on rational thinking and moral discernment. Thus, the concept of natural law as it applies to humans cannot be solely equated with instinctual behavior common to all animals.

1.2. Ius vs. Lex: The Distinction Between Natural and Positive Law

To clarify further, it is crucial to distinguish between the Latin terms ius and lex. While both terms refer to law, they are conceptually distinct in ways that are important for understanding natural law (Finnis, 1980). Ius refers to the broader, objective body of law that encompasses the principles of justice and fairness that transcend specific written codes.

Lex, on the other hand, refers to a particular written or enacted law—in iust ist lex (the law is just).

2. Some Historical and Philosophical References

Throughout history, the concept of natural law has played a central role in philosophical and legal thought, asserting the existence of moral principles and laws that are inherent in nature and independent of human institutions (Tuck, 1979).

The roots of natural law theory can be traced back to ancient Greece, where philosophers like Aristotle argued for the existence of laws that were superior to those created by human societies (Nuredin A, & Nuredin M., 2023). In his Nicomachean Ethics, Aristotle distinguishes between two types of justice: natural justice and juridical justice. Natural justice, according to Aristotle, is universally valid and does not depend on human acceptance or recognition. It reflects the inherent order of the world and applies equally to all human beings.

Sophocles' play Antigone also illustrates the supremacy of natural law (Sophocles, 441 B.C.E.). Antigone defies the king's order by burying her brother, asserting that the laws of the gods, which have existed since the beginning of time, cannot be overruled by human mandates. This conflict between human-made law and divine natural law serves as a powerful illustration of the tension between positive law and the immutable laws of nature.

2.1. Roman Contributions: Cicero's Perspective

The Roman philosopher and statesman Cicero was a significant figure in the development of natural law theory. In De re publica, Cicero famously asserted, "Natura iuris ab hominis repetenda est natura," meaning that law is derived from human nature, not from the whims or desires of rulers (Cicero, 54-51 B.C.E./2008). According to Cicero, natural law is a reflection of the cosmic order and is not a product of human creation. He argued that natural law exists within the reason of every individual and does not require the wisdom of philosophers or lawmakers to be recognized. It is universal and applies equally to all human beings, regardless of their status or position in society.

Cicero's conception of natural law included several key principles:

a) Natural law reflects the cosmic order: It is not created by humans but rather exists as a fundamental part of the universe's structure.

b) It is accessible to all people: Natural law is inscribed in human reason and can be understood by anyone, regardless of their level of education or wisdom.

c) Natural law is a moral law: It cannot be changed, modified, or abolished by human authorities. Even if a state passes laws that contravene natural law, those laws are morally invalid.

d) Protection of rights: Natural law protects the rights of individuals, and these rights cannot be violated by the state or any other human institution.

e) Consequences of immoral actions: Even if state law excuses immoral behavior, individuals who violate natural law will suffer the degradation of their moral nature (Cicero, 54-51 B.C.E./2008).

f) Cicero's work laid the groundwork for later thinkers who expanded on the idea that natural law is the foundation of all just laws. For Cicero, any positive law that contradicted the principles of natural law was inherently unjust and invalid, regardless of whether it was formally enacted by a government (Finnis, 1980).

2.2. Medieval Contributions: Thomas Aquinas and Christian Theology

The medieval philosopher and theologian Thomas Aquinas made significant contributions to the understanding of natural law, incorporating it into Christian theology. In Aquinas's view, natural law was part of a broader system of laws that governed the universe, which he divided into three categories (Aquinas, 1988):

1. Lex divina (Divine law): Refers to the law of God, which guides human beings toward their ultimate purpose.

2. Lex naturalis (Natural law): Represents the moral order inherent in human nature. It is accessible through human reason and directs individuals to act in accordance with their true nature.

3. Lex humana (Human law): Refers to the rules and regulations established by societies to govern themselves. While these laws are necessary for maintaining order, they must align with natural law to be considered just.

For Aquinas, natural law was part of the divine plan, as it reflected God's intention for human beings. However, he emphasized that human reason

played a crucial role in discerning natural law. By using reason, individuals could understand their purpose and moral obligations, thereby aligning their actions with both natural and divine law (Aquinas, 1988).

Aquinas's integration of natural law into Christian theology had a profound influence on later thinkers, particularly during the Enlightenment. His framework helped establish the idea that natural law was not only a moral guide but also a basis for political and legal systems. Aquinas's work on natural law provided a foundation for later debates on human rights, justice, and the role of government (Finnis, 1980).

2.3. The Enlightenment: John Locke and the Rise of Modern Natural Law

The Enlightenment period marked a significant shift in the understanding of natural law, with thinkers such as John Locke further developing the concept in a way that would influence modern political thought. Locke continued the medieval tradition of viewing natural law as reflective of a divine plan but placed greater emphasis on human reason (Locke, 1689/1980). For Locke, natural rights—including the right to life, liberty, and property—were inherent and inalienable. These rights could not be granted or taken away by any human authority, except through the collective agreement of individuals in a society.

Locke's natural law theory was revolutionary in that it challenged the absolute authority of the state (or Leviathan, as described by Hobbes). Locke argued that the state's authority was not unlimited; it was bound by the natural rights of individuals. If a government violated these natural rights, it was acting unjustly and could be overthrown. Locke's emphasis on the protection of individual rights laid the groundwork for modern democratic and constitutional governments, where the role of the state is to protect the natural rights of its citizens rather than infringe upon them (Locke, 1689/1980).

Locke's ideas became particularly influential during the development of modern liberal democracies, where the protection of individual rights is seen as the primary purpose of government. His conception of natural law continues to resonate in contemporary discussions of human rights, justice, and the limits of government authority (Finnis, 1980).

3. Positive and Natural Law

Natural law has long been understood in opposition to the legal frameworks established by human societies. This theoretical contrast between natural and positive law is crucial for understanding the evolution

of legal philosophy. Natural law, which posits the existence of universal moral principles inherent in human nature and reason, has historically served as the ultimate yardstick for judging the validity and fairness of man-made laws, or positive law. However, this relationship between natural and positive law was fundamentally challenged in the 20th century by legal positivists, particularly Hans Kelsen.

Kelsen, in his Pure Theory of Law (1960), sought to establish a framework for understanding legal systems that did not rely on natural law. His approach, known as legal positivism, asserted that law should be understood purely as a set of existing norms, without recourse to moral or metaphysical principles like natural law. According to Kelsen, the science of law must be based on observable, objective facts, rather than the abstract, invisible principles of natural law. In doing so, Kelsen argued that law is a system of valid norms that derive their legitimacy from being enacted through established legal procedures (Kelsen, 1960).

Positivism, therefore, focuses exclusively on lex—the written laws or statutes that are enacted and enforced by the state. It reduces the broader concept of ius—which encompasses the full scope of moral and legal principles governing human conduct—to lex, the specific, codified rules that a society recognizes as binding. In Kelsen's view, law is valid because it exists and is enforced by the state, not because it conforms to any higher moral standard.

3.1. The Contrast Between Natural and Positive Law

Despite Kelsen's efforts to separate law from morality, the distinction between natural and positive law remains a key issue in legal theory. Natural law is often seen as the unwritten law of nature, grounded in human reason and morality. It represents universal principles that apply to all individuals, regardless of time, place, or culture. Positive law, by contrast, refers to the body of written laws and statutes that are specific to a particular society and period. These laws are contingent, meaning they can change over time as societies evolve and as new political or social priorities emerge.

To better understand the distinction between natural and positive law, it is useful to draw an analogy with the separation of powers in a state:

Legislative	Executive	Judicial
Natural Law: Nature and Universal Reason	Natural Law: Nature and Individual Reason	Positive Law: Formal, written law that reflects societal norms

In this analogy, natural law represents the fundamental, objective principles that are "legislated" by nature and universal reason. These principles are not created by human societies but are discovered through human reason. They form the foundation upon which positive laws should be built. Human reason plays a key role in "executing" these principles, making individuals aware of the moral laws that govern their behavior. Finally, the "judicial" aspect refers to the process by which these natural principles are applied in real-life situations, where individuals make judgments based on their understanding of natural law (Finnis, 1980).

3.2. The Role of Positive Law

While natural law provides the moral foundation for legal systems, positive law plays a crucial role in bringing these abstract principles into concrete existence. Positive law must be written, publicized, and recognized by society in order to be enforceable. Its formal, codified nature allows it to be applied consistently and uniformly, ensuring that legal disputes can be resolved and justice administered.

However, even though positive law operates at the level of the concrete and particular, it remains subordinate to natural law in terms of moral authority. Positive laws are valid only to the extent that they align with the fundamental principles of natural law. When positive laws violate natural rights, they lose their moral legitimacy, even if they retain their legal validity. For example, laws that promote discrimination or injustice may be enforced by the state, but they are unjust according to natural law principles and should be challenged on those grounds (Locke, 1689/1980).

The relationship between natural and positive law can be summarized in the following comparison:

Natural Law	**Positive Law**
Reason - Universal	History - Particular
Natural Law	**Positive Law**
Abstract	Concrete
Moral System	Legal System
Absolute Given	Relative Given

This comparison illustrates the fundamental differences between the two forms of law. Natural law, grounded in reason and morality, is universal and timeless. It applies to all human beings equally and is not subject to change. Positive law, on the other hand, is historically contingent. It reflects the values, needs, and circumstances of specific societies at specific points in time. While positive law is necessary for the functioning of legal systems, it must always be measured against the higher standard of natural law.

3.3. Example

One of the clearest examples of the relationship between natural and positive law is the prohibition against killing. This principle is present in virtually every moral and legal system, whether it is codified in law or expressed through religious or ethical teachings. From a natural law perspective, the interdiction against killing is a fundamental moral principle that arises from the value of human life. It is not something that requires justification or debate; it is self-evident to human reason.

From a positive law perspective, however, this principle must be formally codified in order to be enforceable. The state enacts laws prohibiting murder, manslaughter, and other forms of unlawful killing, and these laws are enforced through the legal system. While the moral principle behind these laws is derived from natural law, the legal system translates this principle into specific statutes that can be applied in court cases (Kant, 1785/1996).

The philosopher Immanuel Kant offers a useful framework for understanding why certain principles, like the prohibition against killing, are universally valid. Kant argued that no rational person would accept a law that permitted killing, because it would violate the basic moral principle of respecting others as ends in themselves. In other words, a society that allowed killing would be unjust, and such a law would be rejected by any rational, moral agent (Kant, 1785/1996). Thus, while positive laws prohibiting killing are necessary for maintaining order, they are ultimately grounded in the universal principles of natural law.

4. The Current Relevance of Natural Law

The principles of natural law continue to hold immense relevance in contemporary legal and political systems. One of the most significant ways in which natural law remains present is through its incorporation into modern constitutions and declarations of rights. Many of the

foundational legal documents that guide democratic societies today are based on principles derived from natural law. For instance, the concepts of human dignity, equality, and inherent rights, which form the bedrock of many modern constitutions, are directly tied to natural law principles (Finnis, 1980).

Positive law, the body of written statutes and regulations enacted by governments, has often been justified through the framework of natural law. This connection shows that natural law has been transposed into positive law to ensure that legal systems align with universal moral standards. The incorporation of natural law into positive law serves to maintain its relevance, particularly in cases where written laws are required to conform to human reason and dignity. In essence, the presence of natural law in the positive legal framework helps to ensure that contemporary legal systems are just, ethical, and aligned with fundamental human rights (Bix, 2004).

4.1. Natural Law's Presence in Modern Legal Systems

The incorporation of natural law into positive law can be seen in many aspects of contemporary legal systems. For example, modern constitutions often enshrine the protection of fundamental rights such as the right to life, freedom of speech, and the right to equality before the law. These rights are not mere legal constructs; they are grounded in the moral understanding that all individuals possess certain inalienable rights by virtue of their human nature. Thus, natural law underpins the legitimacy of these constitutional provisions, ensuring that they are not arbitrary but rather based on universal principles of justice (Pound, 1921).

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, is a prime example of how natural law has been formalized into a global legal document. The UDHR proclaims that all human beings are born free and equal in dignity and rights. It further asserts that these rights are inherent and cannot be taken away, as they stem from the very nature of being human (United Nations, 1948). This emphasis on inalienable rights echoes the natural law tradition, which asserts that certain rights are universal and predate any form of government or legal system.

Moreover, the continuing relevance of natural law is evident in international human rights law, where the principles of human dignity and equality are upheld as paramount. These natural law principles provide

the moral and legal foundation for international agreements and conventions that protect individuals from abuses such as genocide, slavery, and discrimination. The universality of these protections, derived from natural law, serves to guide nations in creating laws that uphold the dignity of every human being, regardless of their background or nationality (Kirkpatrick, 1983).

4.2. Natural Law's Relevance in Times of Injustice

While natural law is often incorporated into positive law, its relevance becomes especially pronounced when governments enact laws that violate fundamental rights. Throughout history, there have been numerous instances where positive law has been used as a tool of oppression, often violating the very principles of natural law. Under such circumstances, natural law provides a moral framework for resisting unjust legal systems and reclaiming fundamental rights (Tuck, 1979).

One of the most striking examples of positive law violating natural law occurred under the Nazi regime in Germany. During this time, the legal system was manipulated to justify the persecution and extermination of millions of people, including Jews, political dissidents, and other marginalized groups. These actions were codified in law, yet they were fundamentally unjust, violating the inherent rights to life, liberty, and dignity that natural law protects. The atrocities committed under Nazi rule starkly illustrate the dangers of relying solely on positive law without grounding it in natural law principles (Arendt, 1951).

Communist regimes also provide a historical example of how positive law can be used to suppress natural rights. In various communist states, individual freedoms were severely restricted, and laws were enacted that subordinated the rights of individuals to the will of the state. Under these systems, dissent was punished, private property was confiscated, and citizens were often denied the basic rights to free speech, assembly, and movement. These governments justified their actions by pointing to the positive laws they had created, but these laws were clearly in violation of the natural rights of individuals. In such contexts, the enduring relevance of natural law becomes evident, as it serves as a moral benchmark for assessing the legitimacy of legal systems (Gray, 2005).

4.3. Critique of Legal Positivism: "Science Without Conscience"

The contrast between natural law and legal positivism is starkly apparent when considering these historical injustices. Hans Kelsen's legal

positivism, which seeks to divorce law from morality, has been criticized as "science without conscience." Kelsen argued that the validity of law is derived solely from its enactment through legal procedures, rather than from any moral or ethical considerations. While this approach may provide clarity in understanding how legal systems function, it also opens the door to the justification of unjust laws, as seen in totalitarian regimes (Kelsen, 1960).

The famous Latin phrase, Quid leges sine moribus, quid mores sine legibus? ("What are laws without morals, and what are morals without laws?"), captures the essential critique of positivism. Law, when divorced from morality, becomes a mere tool of power, capable of being wielded for oppressive purposes. Conversely, morality without the structure and enforceability of law may lack the practical mechanisms necessary to ensure justice. The two must be intertwined to create a just legal system that respects the dignity and rights of individuals (Berman, 1983).

This argument is echoed in Thomas Jefferson's Declaration of Independence, where he asserts that individuals are endowed with "certain unalienable Rights," and that these rights are "self-evident" truths (Jefferson, 1776). Jefferson's invocation of natural law principles highlights the belief that certain rights exist independently of government and that these rights must be protected by the state. The Declaration, like many other modern legal documents, draws its moral authority from natural law, underscoring the continued relevance of these principles in contemporary society (Zuckert, 1994).

Conclusion

In conclusion, natural law continues to play a vital role in shaping modern legal and moral frameworks, providing a universal standard against which positive law is measured. The integration of natural law into contemporary constitutions and declarations of rights demonstrates its enduring relevance. Natural law, rooted in universal principles of justice, equality, and human dignity, serves as a moral foundation for evaluating and justifying the legitimacy of man-made laws. While legal positivism, as promoted by thinkers like Hans Kelsen, seeks to separate law from morality, history has shown that when positive law deviates from the principles of natural law, it often results in injustice, as witnessed under totalitarian regimes like Nazi Germany and Communist states.

The critique of positivism, captured in the phrase quid leges sine moribus ("what are laws without morals?"), emphasizes the necessity of

intertwining law with moral considerations to prevent the abuse of legal power. Natural law provides the moral compass that guides societies toward justice, ensuring that positive law aligns with fundamental human rights (Nuredin, A., 2023). As modern legal systems continue to evolve, the principles of natural law remain a timeless and essential part of ensuring that laws are not only legally valid but also just and ethical.(Nuredin, A., 2023)

The relevance of natural law is especially significant in times of crisis, when governments may enact laws that infringe upon fundamental rights under the guise of necessity or public order. In such cases, natural law offers a means of resistance, affirming that certain rights, such as life, liberty, and the pursuit of happiness, are inalienable and cannot be suppressed by any human authority. In this way, natural law serves as both a moral guide and a tool for challenging unjust legislation, safeguarding the dignity and freedom of individuals across different legal systems and cultural contexts.

Ultimately, natural law's ability to transcend specific legal frameworks and historical moments underscores its timeless value. Its principles continue to inform contemporary debates about human rights, justice, and the role of government,(Nuredin, 2022) ensuring that the laws we live by remain grounded in ethical considerations that protect the intrinsic worth of every individual.

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