

# A critique of natural law essay sample

Law



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BUSTER**

Natural Law is a concept that has caused ambiguity throughout the history of Western thought. There is a multitude of incompatible ideas of natural law that have caused even those who are in basic agreement on natural law theory to have opposing notions on the particulars. In spite of this confusion, there have been enough advocates among natural law thinking in Western society to make it possible to identify its major criticisms:

1. Natural law is immutable and is rooted in nature. This defines for man what is right, just, and good, and which ought to govern its actions.

(Einwechter, 1999, p. 1)

2. The universe is governed by reason, or rational principle which provides a basis for determining justice of man made laws. (Einwechter, p. 1)

3. Natural law is the same for all human beings and at all times. (Cragg, unit 13, part 2) In this paper, I will summarize the philosophical and historical roots of natural law theory as they relate to the three major criticisms, and challenge these major criticisms using theories such as utilitarianism and legal positivism. Plato and Aristotle proved to be of great importance in natural-law thinking from 5th century Greece until the present day.

Plato had an idealist view of justice as a kind of absolute which can be understood only by the philosopher and fully realized in an ideal state.

Aristotle regarded natural justice as universal, yet ideal. Stoic philosophy, which evolved after Aristotle, plays a great role in the history of natural law.

Its emphasis was on reason as the key element of humanity. (Course Kit, 2005, p. 77)

Subsequently, Stoicism became associated with the spread of Roman power over the Mediterranean world, and the Roman legal conception, *ius gentium* – the common law that was administered to those countries restricted to the Roman world. Although the Romans adopted an abstract conception of a universal law, they applied little or none of the essential features of natural law. (Lloyd, p. 79) However, the writings of Roman orator, Cicero perpetuated the evolution of early natural law speculation to later ages. He claimed that natural law governs the entire universe by divine reason. Thus, it is eternal, and is not established by people, but by reason.

In concurrence with Stoic natural law and *ius gentium*, Christian theology had a superior impact than that of the older Stoic natural law. The Catholic Church and its representatives had the authority to expound and comprehend and enforce the law of God. St. Thomas Aquinas, a proponent of Catholic philosophy, asserted that natural law is common to all people – Christians and non-Christians and is eternal. Hugo Grotius, a 17th century jurist, claimed that man's reason and rationality, which was rooted in human nature and based on divine law, governed all human affairs.

(course kit, pgs. 78-81) By the middle of the 19th century, modern natural law tradition was attacked by criticisms of Bentham with his principles of utilitarianism and John Austin's influence of legal positivism. The principle of utility augmented the greatest happiness of the greatest number of people, and legal positivism identified the existence of legal systems and defines what is legal in a particular society, not what is lawful among human beings. (Stanford Encyclopedia of Philosophy, 2003, p. 1)

Marcus Tullius Cicero's (106-43 B. C.), a Roman orator and stoic philosopher, description of natural law derives from the ideas of Greek philosophers and the views of many non-Christian and Christian natural law theorists. He asserted that natural law is in accordance with nature, applies to all men and is unchangeable and eternal. Thus, he described law as the " highest reason, implanted in nature, which commands what ought to be done, and forbids the opposite. (Cicero, 1928, p. 45) While Stoicism maintained that the world itself is rational and divine.

" There is in fact a true law ? ' - namely, right reason ' - which is in accordance with nature, applies to all men, and is unchangeable and eternal. " (Cicero)

Cicero successfully argued before a Roman court that a particular Roman law was unjust, because it conflicted with natural law. Thomas Aquinas (1225-1274), the medieval Catholic Scholar, sought to reconcile the Greek concept of natural law with Christian theology. Aquinas began by speculating that God governs the universe and that humans are equipped with divine reason and by it derives the natural inclination to proper acts and ends. (Einwechter, 1999, p. 2)

Aquinas believed that revelation through scripture which came through mediation of the church, was suitable for church/religious matters, while with natural revelation man is predisposed to rely on his reason which becomes the true source of law. If one introduces Scripture, then he is appealing to a source outside of himself, and is giving up natural law and reason. According to the Scripture, God reveals himself to man through natural revelation, which includes the knowledge of God's existence and power, and man's

responsibility to worship God and live according to His moral law. (Ps. 19: 1-6)

Thus, it condemns man if they fail to worship God (Rom. 1: 18, 20, 25) His preservation of the essence of naturalistic reasoning, contained in Aristotle's works, lead to the revitalization of reason over dogma which contributed greatly to the achievement of scientific inquiry generated in the subsequent Renaissance and Enlightenment eras. (Merriman, 2000, p. 6) The curse of sin that has been bestowed on us has made it impossible for natural law to be the paradigm for the moral law. Because of sin, man's reason and conscience have been harmed, therefore, man's knowledge of right and wrong, justice and injustice is tainted.

(Einwechter, p. 6) As a result of the fallen man, God administered His ten commandments in addition to reason and conscience to obey His will. The 17th century Dutch jurist Hugo Grotius believed that humans by nature are not only reasonable but social. Although his thinking adhered to the doctrines of St. Thomas Aquinas, Grotius argued that natural law is a part of divine law and is based on human nature, in which people are naturally inclined for peaceful association with others and to follow general conduct. (MSN Encarta, no date, p. 1)

We see in the work of Grotius, a fundamental shift in the form of rationalism assumed by natural law from Aristotle to the modern scientific. He pointed out that even if there was no God, or if God was unreasonable or evil, natural law would still exist. This was because man relied on his reason and this rational element was shared by all mankind. Thus, reason and rationality

governed all matters of humankind. A system of law could therefore be rationally generated and universally applicable. (course kit, 2005, p. 82)

Early in the 17th century, Thomas Hobbes (1588-1679), the English philosopher asserted that the law of nature was a “ dictate of reason. ” He argued that the state is entitled to unlimited power, and right or wrong is whatever the state, through its laws says is right or wrong. Thus, he stated that in a state of nature, life is “ poor, solitary, nasty, brutish, and short”. (Donald, no date, p. 9) Thus, he also argued that even if man knows what is just, they will not always do what is just and this often leads to war. (Donald, p. 10)

Until the 18th century, no real distinction was made between the physical laws of nature, which could be rejected by empirical evidence showing their lack of accountability in laying down the rules as normative standards of human behaviours. The theological influence of natural law contested that both physical and moral laws are relative to God’s will. Thus, there is no distinction between physical and moral laws. (course kit, p. 89) During the 19th century natural law theory lost its influence as utilitarianism and positivism became dominant.

Natural law concepts were first overshadowed by the principle of Utility of Jeremy Bentham. Bentham explained the principle of utility as a means of enhancing the happiness of the community. He believed that all human behaviours are motivated by a desire to acquire pleasure and avoid pain and the function of the legal system is “ the greatest happiness of the greatest number”. All laws are to be measured by their utility, which is the ability to

promote happiness and be universally desirable. For this purpose numerical standards were adopted, each man's happiness being equal in value to the happiness of another man.

Thus, all actions are to be judged by their consequences. If a course of action generates more pain than happiness, then it is immoral. (Cragg, unit 16) He claimed that law could only be properly understood if it was treated as an independent topic of study free from all moral issues. Thus, he maintained that whether a law is just or unjust, good or bad, it is irrelevant. Law and morals are unrelated and that an unjust law deserves to be obeyed, just as a good law. (course kit, p. 99) Utilitarianism provided the necessary tool for the transition to Legal Positivism.

Two aspects are important here: first, the distinction between what law is and what it ought to be, and second, to treat law as a science and to categorize it with other sciences in its practices. (course kit, p. 101) The basic realization of the Legal Positivist movement was that what the law is and what it ought to be are separate. The champion of this perspective was John Austin. Most of the pre-Positivist writing on law prior to Austin had treated law as though it was linked to morality or reason. Thus, the conditions under which one must obey the law were considered.

Austin's Legal Positivism took on a scientific approach to law which gained popularity in the late 19th century among lawyers and law students.

(Wischik, 2002, p. 1) Legal Positivism asserted that it is both possible and valuable to have a system of law that is morally neutral. It is important to note that Legal Positivism does not deny the importance of moral and

political criticism of legal systems. It claims, however, that whether something is or is not law depends on observable action rather than morality. (Wischik, p. 2) Natural law has been widely debated over a stretch of time attracting diverse and dynamic minds.

Both the advocates and opponents of Natural Law theory can learn from one another. In the classical Greek philosophy, Plato refers to Natural Law as “justice” and applies it to the human core and human behaviour. The problem of justice was addressed by Plato, Aristotle, and the Greek and Roman Stoics. Many supporters of Natural Law view it as an application to physical realms which cannot be altered. But it is the notion that the structure of the universe is governed by God’s moral law. The human mind perceives God’s moral law from reason, and thus, by virtue of his consciousness, he is inclined to understand basic divine truth.

(Einwechter, p. 1) It is not necessary for man to have knowledge of the Scriptures or any sensory experiences, but is intuitively grasped to be true by reason and conscience. (Einwechter, p. 1) In Western society, especially from the Roman jurists and theologians of the Middle Ages onward, Natural Law is the source of moral standards, moral judgments, and the measure of justice in civil laws of the state. If the laws of the state are in conflict with the laws of nature, it is unjust. Cicero’s description of natural law applies to all men and is unchangeable and eternal. This law restrains, by its commands, from doing wrong.

Thus, no human law can overthrow its function. During the dark ages, Natural Law thinking was kept alive by the church. The church proclaimed



that Natural Law dominated over human law. Christian thinker, Aquinas, asserted that natural law is of divine origin. According to Aquinas, man grasps God's law by looking into his own nature. Hugo Grotius maintained that even if there was no God, or if God was unreasonable or evil, natural law would still exist. He held that natural law was supreme, universal and unchangeable. Thus, reason and rationality governed all matters of humankind.

Hobbes argued that the state is entitled to have supreme power, and that right or wrong is whatever the state, through its laws, says is right or wrong. Thus, in a state of nature, life is "solitary, poor, nasty, brutish, and short". Thus, he also argued that even if man knows what is just, they will not always do what is just and this often leads to war. But it is easy to argue that one needs to know what the absolute definition of justice is before knowing what is just. During the nineteenth century, the advocates of state power domination were replicated by Utilitarianism and Legal Positivism.

The principle of utility argued the idea of the greatest good for the greatest number, which implies that any person's property, freedom, and life, be sacrificed for the greater good. This principle would be appealing to those in power, for they decide who and what will be given up for the sake of the greater good. Who would actually give up their own rights for the sake of someone else's ends? Austin, on the other hand, believed that law be morally neutral and scientifically based. Legal Positivism insists that law have an empirical approach and be categorized with all other sciences, in its goals and methods.

To sum up, according to Natural Law thinkers, Natural Law is unchanging, universal, not man made, eternal, has a divine origin, is acquired by reason, and guided by rationality. On the other hand, opponents of Natural Law believe that laws and morals are unrelated, and whether something is or not depends on some empirical action, not reason. Thus, laws of the state are more superior to any other law, and whether a law is perceived to be unjust or just, it deserves to be obeyed. The state, but its laws says what is right and and what is wrong.

### Bibliography

1. American Bible Society. The Good News Bible. United States of America.
2. Cragg, W. AK Phil 1002 6. 0Q Lectures, winter 2005.
3. Course Kit. Introduction to Law and Justice. The Idea of Law by Dennis Lloyd, 1991, York University, Toronto, Winter 2005.
4. Dolhenty, Jonathan. An Overview of Natural Law.  
<http://radicalacademy.com/philnaturallaw.htm> 2005.
5. Donald, James. Natural Law and Natural Rights. <http://jim.com/rights.html> 2005.
6. Einwechter, William. Natural Law: A Summary and Critique.  
<http://www.natrformassn.or/statesman/99/natlawcrit.html> 2005.
7. Merriman, William G. History of Natural Ethics.  
<https://assignbuster.com/a-critique-of-natural-law-essay-sample/>

<http://www.htdconnect.com/~merriman/natrhist.htm> 2000.

8. Wischik, Marcus. The Existence of Law is One Thing; Its Merit or Demerit is Another.