

# Natural Law

The term "natural law" is ambiguous. It refers to a type of moral theory, as well as to a type of legal theory, but the core claims of the two kinds of theory are logically independent. It does not refer to the laws of nature, the laws that science aims to describe. According to natural law moral theory, the moral standards that govern human behavior are, in some sense, objectively derived from the nature of human beings and the nature of the world. While being logically independent of natural law legal theory, the two theories intersect. However, the majority of the article will focus on natural law legal theory.

According to natural law legal theory, the authority of legal standards necessarily derives, at least in part, from considerations having to do with the moral merit of those standards. There are a number of different kinds of natural law legal theories, differing from each other with respect to the role that morality plays in determining the authority of legal norms. The conceptual jurisprudence of John Austin provides a set of necessary and sufficient conditions for the existence of law that distinguishes law from non-law in every possible world. Classical natural law theory such as the theory of Thomas Aquinas focuses on the overlap between natural law moral and legal theories. Similarly, the neo-naturalism of John Finnis is a development of classical natural law theory. In contrast, the procedural naturalism of Lon L. Fuller is a rejection of the conceptual naturalist idea that there are necessary *substantive* moral constraints on the content of law. Lastly, Ronald Dworkin's theory is a response and critique of legal positivism. All of these theories subscribe to one or more basic tenets of natural law legal theory and are important to its development and influence.

## Table of Contents

1. Two Kinds of Natural Law Theory
2. Conceptual Naturalism
  - a. The Project of Conceptual Jurisprudence
  - b. Classical Natural Law Theory
3. The Substantive Neo-Naturalism of John Finnis
4. The Procedural Naturalism of Lon L. Fuller

5. Ronald Dworkin's "Third Theory"

6. References and Further Reading

## 1. Two Kinds of Natural Law Theory

At the outset, it is important to distinguish two kinds of theory that go by the name of natural law. The first is a theory of morality that is roughly characterized by the following theses. First, moral propositions have what is sometimes called objective standing in the sense that such propositions are the bearers of objective truth-value; that is, moral propositions can be objectively true or false. Though moral objectivism is sometimes equated with moral realism (see, e.g., Moore 1992, 190: "the truth of any moral proposition lies in its correspondence with a mind- and convention-independent moral reality"), the relationship between the two theories is controversial. Geoffrey Sayre-McCord (1988), for example, views moral objectivism as one species of moral realism, but not the only form; on Sayre-McCord's view, moral subjectivism and moral intersubjectivism are also forms of moral realism. Strictly speaking, then, natural law moral theory is committed only to the objectivity of moral norms.

The second thesis constituting the core of natural law moral theory is the claim that standards of morality are in some sense derived from, or entailed by, the nature of the world and the nature of human beings. St. Thomas Aquinas, for example, identifies the rational nature of human beings as that which defines moral law: "the rule and measure of human acts is the reason, which is the first principle of human acts" (Aquinas, ST I-II, Q.90, A.I). On this common view, since human beings are by nature rational beings, it is morally appropriate that they should behave in a way that conforms to their rational nature. Thus, Aquinas derives the moral law from the nature of human beings (thus, "natural law").

But there is another kind of natural law theory having to do with the relationship of morality to law. According to natural law theory of law, there is no clean division between the notion of law and the notion of morality. Though there are different versions of natural law theory, all subscribe to the thesis that there are at least some laws that depend for their "authority" not on some pre-existing human convention, but on the logical relationship in which they stand to moral standards. Otherwise put, some norms are authoritative in virtue of their moral content, even when there is no convention that makes moral merit a criterion of legal validity. The idea that the concepts of law and morality intersect in some way is called the Overlap Thesis.

As an empirical matter, many natural law moral theorists are also natural law legal theorists, but the two theories, strictly speaking, are logically independent. One can deny natural law theory of law but hold a natural law theory of morality. John Austin, the most influential of the

