

Natural law

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Natural law, or the **law of nature** (Latin: *lex naturalis*; *ius naturale*), is a system of law that is determined by nature, thus is universal.^[1] Classically, natural law refers to the use of reason to analyze human nature — both social and personal — and deduce binding rules of moral behavior from it. Natural law is often contrasted with the positive law of a given political community, society, or state.^[2] In legal theory, on the other hand, the interpretation of positive law requires some reference to natural law. On this understanding of natural law, natural law can be invoked to criticize judicial decisions about what the law says but not to criticize the best interpretation of the law itself. Some scholars use natural law synonymously with natural justice or natural right (Latin *ius naturale*),^[3] while others distinguish between natural law and natural right.^[1]

Although natural law is often conflated with common law, the two are distinct in natural law being a recognition that certain rights or values are inherent in, or universally cognizable by, virtue of positive-logic and/or physiology, while common law is the legal tradition whereby certain rights or values are legally cognizable by virtue of judicial recognition or articulation.^[4] Natural law theories have, however, exercised a profound influence on the development of English common law,^[5] and have featured greatly in the philosophies of Thomas Aquinas, Francisco Suárez, Richard Hooker, Thomas Hobbes, Hugo Grotius, Samuel von Pufendorf, John Locke, Francis Hutcheson, Jean Jacques Burlamaqui, and Emmerich de Vattel. Because of the intersection between natural law and natural rights, it has been cited as a component in the United States Declaration of Independence and the Constitution of the United States, as well as in the Declaration of the Rights of Man and of the Citizen. Declarationism states that the founding of the United States is based on Natural law.

Natural Law and consent of the governed (John Locke) are the Foundation of the American Declaration of Independence, Constitution and Bill of Rights. (See "Laws of Nature" First Paragraph Declaration of Independence^[6]) Consent of the Governed, derived from the John Locke's Natural Law Social Contract, replaced the Old World Governance Doctrine of the Divine Right of Kings.

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History

The use of natural law, in its various incarnations, has varied widely through its history. There are a number of different theories of natural law, differing from each other with respect to the role that morality plays in determining the authority of legal norms. This article deals with its usages separately rather than attempt to unify them into a single theory.

Plato

Although Plato does not have an explicit theory of natural law (he rarely used the phrase 'natural law' except in *Gorgias* 484 and *Timaeus* 83e), his concept of nature, according to John Wild, contains some of the elements found in many natural law theories.^[7] According to Plato we live in an orderly universe.^[8] At the basis of this orderly universe or nature are the forms, most fundamentally the Form of the Good, which Plato describes as "the brightest region of Being".^[9] The Form of the Good is the cause of all things and when it is seen it leads a person to act wisely.^[10] In the *Symposium*, the Good is closely identified with the Beautiful.^[11] Also in the *Symposium*, Plato describes how the experience of the Beautiful by Socrates enables him to resist the temptations of wealth and sex.^[12] In the *Republic*, the ideal community is, "...a city which would be established in accordance with nature."^[13]

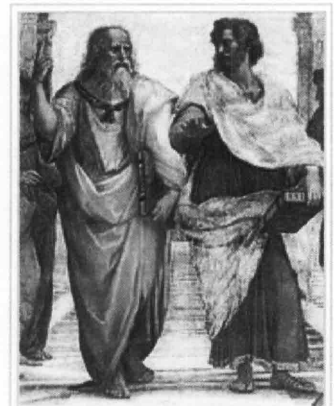
Aristotle

Greek philosophy emphasized the distinction between "nature" (*physis*, φύσις) on the one hand and "law", "custom", or "convention" (*nomos*, νόμος) on the other. What the law commanded varied from place to place, but what was "by nature" should be the same everywhere. A "law of nature" would therefore have had the flavor more of a paradox than something that obviously existed.^[1] Against the conventionalism that the distinction between nature and custom could engender, Socrates and his philosophic heirs, Plato and Aristotle, posited the existence of natural justice or natural right (*dikaion physikon*, δικαίον φυσικόν, Latin *ius naturale*). Of these, Aristotle is often said to be the father of natural law.^[3]

Aristotle's association with natural law may be due to the interpretation given to his works by Thomas Aquinas.^[14] But whether Aquinas correctly read Aristotle is a disputed question. According to some, Aquinas conflates the natural law and natural right, the latter of which Aristotle posits in Book V of the *Nicomachean Ethics* (Book IV of the *Eudemian Ethics*). According to this interpretation, Aquinas's influence was such as to affect a number of early translations of these passages in an unfortunate manner, though more recent translations render them more literally.^[15] Aristotle notes that natural justice is a species of political justice, viz. the scheme of distributive and corrective justice that would be established under the best political community; were this to take the form of law, this could be called a natural law, though Aristotle does not discuss this and suggests in the *Politics* that the best regime may not rule by law at all.^[16]

The best evidence of Aristotle's having thought there was a natural law comes from the *Rhetoric*, where Aristotle notes that, aside from the "particular" laws that each people has set up for itself, there is a "common" law that is according to nature.^[17] Specifically, he quotes Sophocles and Empedocles:

Universal law is the law of Nature. For there really is, as every one to some extent divines, a natural justice



Plato (left) and Aristotle (right), a detail of *The School of Athens*, a fresco by Raphael.

