Natural Law

An Introduction

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Natural law theory represents a particular view about the nature of law, legal system, and legal obligation, which says that there is a necessary moral basis for law. There appears to be a factual and intuitive basis for this view. Anyone who examines the laws of states will notice that they include such moral rules that forbid killing, stealing, and dishonesty, as well as prescribing good actions such as being just and fair. This leads some people to think this cannot be an accidental occurrence that laws usually include a number of moral principles. As such, people think that the very concept of law, legal system, and legal obligation, as well as their existence, must involve some elements of morality. Natural law theory is broadly construed to be saying that human and societal laws must be a reflection of natural law. Natural law, in relation to humans, is usually distinguished from physical laws of nature. Natural law represents how humans ought to behave naturally, which includes their natural aim to be happy, to survive and flourish. Human beings also realize that achieving these goods and aims requires that society be organized in a way that reflects morally good principles such as justice and fairness.

Some natural law theorists consider happiness and survival (life) as basic human goods that constitute a set of natural rights that laws must establish, sustain, and defend. These goods are the basis for natural human principles of action, which are sometimes couched in terms of moral principles and law. The idea seems to be that law is way of creating social order and it must represent the best way to determine which social order can best help humans to achieve their common goals. What we can legitimately call law must satisfy certain standards, among which are meeting human needs and goals and creating a just society. So, any human law that violates the natural aims, goals, and principles of human behavior cannot then be a law. The suggestion is that it is against human nature to want do evil things. So, when it happens or it is manifested in positive law, it is reasonable to argue that it is
truly not what people want, and it is not the intent of the person who made
the law for it to be evil. If a law does not reflect its maker’s real intent, it is
truly not what was wanted, hence it is not a valid law. This is because a valid
law ought to reflect what people want and intend the law to do for them.

One way of stating the view of natural law theory is that there is indeed
a necessary or conceptual connection between law and morality; as such, one
cannot account for the nature of law without reference to normative moral
principles. Exponents of this view argue that law must represent the moral
standards by which we evaluate people’s actions. This implies that we can-
not account for the existence and validity of laws without reference to their
moral evaluation regarding how people ought to behave. This idea is usually
expressed in the principles that an unjust law is not a law, which is to say that
an immoral law cannot be considered to be truly valid. Because an evil law
cannot be truly valid, people cannot have a legal obligation to obey it. There
are two mutually supporting explanations regarding why and how human
laws must reflect natural law. The first view, which has theological underpin-
nings says that God is the source of rationality and that positive human laws
derive remotely from God, who created humans beings with a natural rational
ability and inclination, which must reflect the will of God and his
ordained rational order. The second view is secular and it makes no direct
reference to God: it argues that positive laws represent human rational
attempt to achieve certain common and social goods. Living a good life is a
natural human inclination; it is what humans will rationally want in society,
and since law is a practical means to achieve such goal, law must reflect
human rationality, which is a natural dictate or natural law regarding how
humans should lead their lives.

According to St. Thomas Aquinas, natural law derives from God, and
God created humans beings in His own image with certain characteristics,

hence some of these characteristics mirror these of God. Fundamental among
these characteristics are rationality and the ability of humans to use reason to
guide their conduct and achieve certain goals that reflect God’s rational pur-
pose for humans. One such rational purpose is for humans to do good things.
Hence human beings have a natural inclination to do good things, including
the creation of human laws, which reflect the eternal reason of God. If human
beings use their rational faculties and rely on their natural inclination, they
will produce laws that will be morally good, and reflect God’s reasoning
about how humans should natural act and behave. But Aquinas agrees that
human beings may make defective positive laws that do not reflect the proper
goals and good of humans because they have not relied on their natural inclination and reason. The law which derives from human reason and mirrors God’s purpose for humans is a real law; otherwise, we have a defective law, in that it fails to meet the requirements of natural law, reason, and natural inclination. Real laws must meet the requirement of right reason; they constitute a reasonable set of standards for regulating conduct in a way that achieves the common good and purpose of humans. The view of natural law with theological underpinnings has been criticized, in that if one does not believe in God, the view is difficult to accept, and perhaps to understand.

So many contemporary natural law theorists do not couch the idea of natural law as a dictate or creation of God. They argue that natural law is simply the dictate of practical reason or human rationality, that is, what people will rationally do in the natural circumstances in which they have found themselves in society. Some of these conditions describe the nature of humans beings as vulnerable, selfish, and for the most part greedy; and that resources which human beings need in society are in short supply, and people need society and the help of others to offset their natural vulnerability and to help them achieve what they cannot on their own in order to survive. This particular view is sometimes considered to be a minimum stance of natural law: such human situation is contingent and not a necessary aspect of the concept of law. This stance has been rejected by some natural law theorists. Those who reject this view argue that these conditions are not contingent or external to law, but rather are internal to the concept of law. This is because if law is supposed to deal with the natural conditions of human beings, these conditions must dictate some procedures to ensure that law is able to achieve the function or purpose it is supposed to achieve. In other words, the very concept of law must have internal constraints that are moral in nature to make sure that law performs its function in order to achieve the requisite purpose of creating order for the common good.

This natural law stance sees law as a purposive and functional concept, in that it performs the social function of maintaining social order for the purpose of creating a good environment for people to achieve their life goals. The function and purpose of law necessarily require that the concept of law includes the notion of morality, in that only the notion of morality can conceptually give meaning to law as a purposive and functional concept. This functionalist and purposive account of law by natural law stance seems to provide a basis for legal obligation as implying moral obligation. An important aspect of law is that it has a special binding force in society and it is a
special way of creating social order. This is what distinguishes law from other techniques of creating social order. But the question is, what is the basis for its binding force? We can understand natural law stance on this issue better if the view is contrasted with legal positivism. Natural law rejects the stance of legal positivism: that the fact that a precept has threat and force behind it implies that it is law, and this force is what makes it have a binding force. Hence for legal positivism, an unjust law still has a legally binding force and imposes legal obligation. Natural law stance argues otherwise, that you cannot account for legal obligation without reference to moral obligation. It argues that legal obligation implies moral obligation; the fact that a law is binding implies that it involves how people ought to act.

According to natural law theory, if a law does not meet some standards regarding how people ought to act, then the law cannot impose legal obligation. In this regard, if a law is morally bad, unjust, or evil, natural law theory argues that people do not have a legal obligation to obey. This natural law stance has sometimes being construed to imply that it is impossible for a legal system to make morally fallible laws since every law in a legal system must be morally good in order for the law to be valid and impose legal obligation. This construal presents natural law as implausible because it seems to factually and theoretically deny moral fallibilism. But this stance has been rejected as an implausible construal of the natural law stance. It is argued that what natural law is saying is that because human beings are fallible, there should substantial efforts in the procedures and processes of a legal system to avoid evil laws. Two views of natural law theory are distinguished. One view says that each and every law in a legal system must be morally good in order for the system to exist as a legal system and for its laws to be valid. This view is considered implausible. The other view denies the first and argues that only the procedures and processes of a legal system need to be morally good. The goodness of the process does not necessarily imply the goodness of each and every individual law that derives from it; if the procedure is good, the law is valid and minimally good by implication and imposes obligation.

The latter natural law stance says only that law must necessarily have internal moral constraints to vitiate the likelihood of evil laws; it does not deny moral fallibilism. If a law meets the standards set forth by the moral procedures, then the law is morally valid in procedure. As such it imposes legal obligation. However, the particular law may turn out to be morally bad due to human fallibility, but at least there are built in moral procedures to
remedy any evil law. This raises the question of whether civil disobedience can be regarded as one of the internal moral procedures in a legal system for bringing moral sensitivity to bear on morally bad laws. Some have used this argument to justify the idea of civil disobedience, which denies that morally bad laws are legally binding. As such, natural law theory has been criticized for blurring the question of what humans ought to do and the question of what laws ought to be enforced. What ought to be enforced as law may be totally different from what people ought to do. In other words, the first question raises a normative issue regarding the standard for evaluating human actions, while the second question is a descriptive conceptual issue regarding what exists as law and the basis on which such law exists.

Some philosophers argue that the confusion derives from the fact that the two fundamental issues that confront legal philosophers are not separated. These are the issues of what the law is and how to apply the law. The first issue, regarding what the law is, is a descriptive issue, and this is usually called the issue of validity. This is different from how to apply the law, which is called the issue of adjudication: how to justify the way that judges and other officials apply the law to particular situations. However, some people argue that an account of the first issue does not imply the second, in that the first issue does not raise any normative question. The second raises the normative issue of whether judges and officials have an obligation to apply morally bad laws in a way that will perpetuate the immorality of the law and inflict harm on people. Some argue that natural law theory seems to provide a good answer regarding the second question which is that judges and officials have a moral obligation not to apply or enforce morally bad laws in ways that will perpetuate their immorality, which will involve inflicting undue harm on people. This raises the question of whether the obligation that judges and officials have is legal or moral. If it is legal, then they must apply the law as it is. If it is moral, then there is the question of the legal basis for such moral obligation, since the function or power is legal and not moral. The idea is that law does not imply moral obligation: judges and officials cannot claim to have legal power and obligation that imply their moral obligation not to apply morally bad laws.

It is in this respect that the legal positivist account of law as consisting of validity is said to involve an implausible position regarding the obligation of the judge in adjudication. Legal positivists claim that legal obligation derives solely from legal validity, in that the validity of laws also specify the legal duty and powers of judges and officials. If the judge and officials have
obligations over and above legal validity—beyond the legal scope of their power—then it appears that whenever they act beyond that scope, they are acting illegally. It is along this line that some legal theorists argue that legal principles derived from the political morality of a society are a constituent part of a legal system, and that these principles do not have legal validity or bind the way other legal precepts do, yet justify the judge’s discretion not to apply bad laws. It is claimed that the fact that there are legal principles which cannot be adequately accounted for by the criterion of validity indicates that natural law theory provides a better account of law. Natural law can provide a basis for these principles in that it can explain them as a necessary part of law. They account for these principles as representing the internal morality in the legal system that helps the system to perform its functions for the purpose of helping people to achieve their goals.

**Suggested Further Reading**


