Natural Law

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Structure

- An overview
- Classical and modern natural law
- Natural law and political community

Typical questions natural law asked and would ask:

- How does one act morally?
- What laws should we have? And should we have law at all?
- What are one's moral obligations *as* a citizen within a state, or as a state official?
- What are the limits of legitimate (or, morally permissive) governmental action?
- ……

overview

- Natural law theories are reflective critical accounts of the constitutive aspects of the well-being and fulfillment of **human persons** and the **communities** they form.

- central concepts: good, practical reason, political community (law)

overview

- Basic good and evil is irreducible. And right is derived from good.
- Natural law theories propose to identify principles of right action—moral principles—specifying the first and most general principle of morality, namely, that one should choose and act in ways that are compatible with a will towards integral human fulfillment.

What is Good?

- Aristotle & Aquinas: What makes it true that something is good is *perfective* or *completing* of a being, where what is perfective or completing of a being depends on that being's nature.

Classical: Thomas Aquinas

- God as giver of natural law: divine providence;
- Humans as recipients of natural law: practical rationality.
- Law (positive) is needed for the coordination problems of communal life.

1. Lex aeterna (eternal law)

Divine reason—known only to God. God's plan for the Universe.

2. Lex naturalis (natural law)

Participation of the eternal law in rational creatures. Discoverable by reason.

3. Lex divina (divine law)

Revealed in the scriptures (God's positive law for mankind).

4. Lex humana (humanly posited law)

Supported by reason. Enacted for the common good. Necessary because the lex naturalis cannot solve many day-to-day problems. Also, people are selfish; compulsion is required to force them to act reasonably.

Neo classical natural law: John Finnis's practical reasonableness

- What constitutes a worthwhile, valuable, desirable life?

- There are certain common goods that are best obtained through the specific kind of social coordination that law offers, and participation in the community and in the common good of building a (political) community is an integral part of living a good life.

Finnis Predicates Goodness on:

- knowledge; life; play; aesthetic experience; friendship; religion.

- practical reasonableness: Employing one's intelligence to solve problems of deciding what to do, how to live, and shaping one's character.

Finnis's Principles of Natural Law (9 basic requirements of practical reasonableness)

- 1. The good of practical reasonableness structures the pursuit of goods.
- 2. A coherent plan of life.
- 3. No arbitrary preference among values.
- 4. No arbitrary preference among persons.
- 5. Detachment and commitment.
- 6. The (limited) relevance of consequences: efficiency within reason.
- 7. Respect for every basic value in every act.
- 8. The requirements of the common good.
- 9. Following one's conscience.

Natural Law and Political Community

- Law-making and, law enforcement are central functions and responsibilities of legitimate political authority.
- The justifying point of law is to serve the common good by protecting the goods of persons and the communities of which they are members.

Natural Law and Political Community

- self-preservation

- social cooperation

- For Finnis, political community set on conditions for realization of human goods more efficiently.

Law and Morality

- What's legal positivists' view on the relationship between law and morality?
- What's natural law proponents' view on that?
- What's Dworkin's view on that?
- What distinguishes natural law tradition and positivism tradition?

Last reflection:

- "Natural law theorists through the ages have taken note of the distinction between the systemic validity of a proposition of law–the property of belonging to a legal system and –the law's moral validity and bindingness as a matter of conscience. They have had no difficulty accepting the central thesis of what we today call legal positivism, viz. that the existence and content of the positive law depends on social facts and not on its moral merits."

"However, that accepting this thesis is independent of denying other connections between morality and the law. In particular, it is unlikely that we would be able to understand significant aspects of the law if we were unable to grasp moral reasons. This is so because the reasons that people have for establishing and maintaining legal systems are often moral reasons that issue from normative practical deliberation that is aimed at the common good. A particularly fundamental connection in this vein is the way in which the normativity of practical reasoning and its directiveness towards human well-being and fulfillment explains the normativity and the action-guiding character of law's authority."