

Jurisprudence Lecture
2008 September 26

NATURAL LAW

Three schools of jurisprudence:

- Natural Theory
- Legal Positivism
- Legal Realism

What answers does each give about the question of the nature of law?

Classical Theorist → Aquinas

Modern Theorist → Finnis

This course is concerned with natural law theory of law and the positivist theory of law.
What light has NL cast on our understanding of law?

What is the nature of law? How do we understand it in a conceptual sense?

- A good theory must give an adequate understanding of the subject it addresses.
- What does each theory tell us about law in a general sense?

AQUINAS

- *Summa Theologiae*, c. 12th century
- Begins with the nature of law in general.
- Law is a rule or measure of action in virtue of which one is lead to perform certain actions and is restrained from the performance of others.
 - o This is so because the very term which law is derived from comes from a Latin word meaning 'to bind'
- **The rule and measure of human action is reason.**
- It is reason that directs human action to its appropriate end
 - o All forms of human action are guided by reason
- *What is the relationship between law and reason?*
 - o Law is a form of human action – law has resulted from human action. It is either legislated or created judicially.
 - o If Reason is the rule and measure of human action, it is therefore the rule and measure of law.
 - o Reason directs law to its appropriate end.

Jurisprudence Lecture Notes

Henry Bromfield Cabot



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