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Research Article

NATURAL LAW AS AXIOLOGICAL ASPIRATION AND ETHICAL REFINER OF LAW

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Summary: 1. The Distinction of Natural Law and Positive Law – 2. On Theories of Natural Law as Theories of Justice. – 3. Conclusions.

Keywords: natural law, positive law, justice, law, state

ABSTRACT

It is not uncommon for us to see or give speeches on the subject of law. By qualifying it as right or wrong, good or bad, etc., we not only talk about its quality but in fact abstract from a simple legal reality whose subject is the state and aspire to meta-legal, mainly ethical, values. Moreover, these values must be a measuring criterion but also must be inherent in the legal act itself that has force and effect and that, as such, derives from the will of the competent state authority through certain procedures. Consequently, there are some rights that are not the product of the state but belong to man through the mere fact of being human. As such, the state has an obligation to recognise them and to ensure that man enjoys them. They are known as natural rights. This paper aims to clarify the relationship of these rights with the positive law, commonalities, and dividing points, as well as some different variations of natural law.

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1 THE DISTINCTION OF NATURAL LAW AND POSITIVE LAW

The claim to the definition of justice but also of law, especially if the definition is a claim derived from a contemplative outline and philosophical consideration, is accompanied by systematic subtleties, as is the definition of philosophy or ethics. However, to make the study and understanding of justice and law easier, we can orient ourselves based on the etymology of the word. The word justice is derived from Roman mythology, but in another instance, it is also related to ancient Greek. The word *justice* is derived from *Justitia* or *Iustitia*. Justitia, in Roman mythology, is the goddess of justice.

> Justitia (Iustitia; Justice) *Roman*: The goddess of justice; some say a mere personification of the legal concept of fairness. Justitia was often portrayed as blindfolded so that she was not swayed by what she saw, and carrying scales in her hands to weigh each side of a disagreement.[1]

In the ancient Greek world, we find many words related to mythology and depicting gods of justice, law, or even their effects, but the closest seems to be the goddess Dike.

> DIKE (DICE; JUSTICE) Gr: The personification of justice, particularly under the law. Dike was a daughter of Zeus and Themis. As one of the three Horae, guardians of the seasons, Dike was the sister of Eirene (Peace) and Eunomia (Order). She was the mother of Hesychia (Quiet, Tranquility).[2]

So, from the mythological manifestation of justice through the gods, we see how justice is differentiated from positive law,[3] possesses a system of values, and has a cohesive and inseparable relationship with other values such as peace, tranquillity, etc.

However, the delicacy in the definition of justice has continued throughout the course of time since these social values emerged as an object of the study of philosophy through the philosophy of law, political philosophy, the philosophy of morality, etc.

During the development of discourse and reflection on these issues, different philosophers and theorists have given various views on them. In principle, there is a differentiation from the general position of the legal sciences on the definition of law, as well as an abstraction from simplicity and empiricism from such definitions. Due to the nature of their work,

1 KN Daly, Greek and Roman Mythology A to Z (3rd edn revised by M Rengel, Chelsea Hause Publishers 2009) 81.

2 Ibid 45.

3 Positive law is the law of which the subject is the state. As such, this law does not have any inherent necessity to have ethics within it nor as a measuring criterion, but it is enough to have passed the empowerment procedures through the competent institutional instances. Consequently, the term 'positivism' has the meaning of a right or law which is as it is, issued and empowered by the state and without being prejudiced, suspending any moral evaluation of it. The concept of 'positivism', as Raymond Wacks puts it in his book Philosophy of Law, is derived from the Latin positum, which refers to law as defined or laid out. In general, the essence of legal positivism is the view that the validity of any law can be traced to a verified source. Simply put, legal positivism, like scientific positivism, rejects the view held by natural defenders [VL. The natural theory of rights] – the law exists regardless of human approval.
A clear differentiation between natural law and positive law was also made by the famous Austrian philosopher Friedrich Hayek in his work "LAW, LEGISLATION AND LIBERTY". Hayek considers that it is necessary to take into account the fact that laws are also related to the past, to the cultural level as well as to other social and traditional rules; consequently, even in cases where the legislative power wants to issue new laws, it must take into account these circumstances and the need to issue a new law. It is crucial for liberal democracies and for social cohesion that the Parliament issues laws that are necessary and does not express any arbitrariness in issuing laws, invoking its own right to issue laws, because this would lead to a government arbitrary. See: Friedrich Hayek, Law, Legislation and Liberty, (Volume 3 The Political Order of a Free People, The University of Chicago Press, 1979) 102.

lawyers and professional legal practitioners, such as judges, prosecutors, lawyers, notaries, mediators, etc., generally define law as a whole or as a unification of legal norms or acts within a given constitutional organisation, which have taken their legal force from a certain legal procedure.

However, very often, human society and individuals are faced with the fact that many legal norms that have had legal force and consequently legal effect have not been worthy and have not had the proper effect based on the purpose of their creation, articulated and empowered in principle in order to guarantee and provide security to the parties that their rights will be recognised and guaranteed. In such cases, it is evidenced that legal norms are not good norms and have not fulfilled the purpose of their existence.

On this basis, it is considered that a legal norm or law is that norm or that law that in itself conveys the teleology of its existence in the best possible way. Moreover, these legal norms should be good norms. This gives rise to a series of very important questions.

What is law? Where does the law come from? Does law emanate from any transcendental and omnipotent being, from nature, from human nature, from any other human authority?

Then, if the law originates from human authority, the question arises as to who gave this authority the right to give the human authority the right to issue laws.

Questions also arise as to what the relationship of the law is with other norms that affect the maintenance of social unity but also recognise and give rights as well as obligations. On what metric indicators can we call something law?

Depending on the answers to these questions, philosophers and theorists are categorised into two discourses that represent two different philosophical theories on law: the theory of natural law and the theory of positivist law.

Within these theories, there are sub-theories and many differences, even within sub-theories. As an example, there is a difference between how Aristotle, Hobbes, Locke, Rousseau, etc. define rights and how Bentham, Austin, Hart, Rawls, Kelsen, etc. also differ in their attitudes and treatments of law. Moreover, these differences are so pronounced that there are philosophers of law who identify any of the sub-theories as independent theories of law. In this way, the philosopher of law Andrei Marmor identifies three schools of thought on what he calls the conditions of legal validity, or what actually makes a law valid, and on what conditions a norm should be built for it to have legal validity and effect.

In addition to legal positivism and natural law related to the theory of natural rights, Marmor differentiates as an independent school that considers morality and qualifies it as sufficient value but not necessary. And this definition, according to Marmor, differentiates this school from the school on natural law because it sees no inseparable and necessary connection between law and morality.

> According to one school of thought—called *legal positivism*, which emerged during the early nineteenth century and has retained considerable influence ever since—the conditions of legal validity are constituted by social facts. Legality is constituted by a complex set of facts relating to people's actions, beliefs, and attitudes, and those social facts basically exhaust the conditions of legal validity.[4]

The other school of thought on legal validity, according to Marmor, is

> Another school of thought, originating in a much older tradition, called *natural law*, maintains that the conditions of legal validity—though necessarily tied to actions and

4 A Marmor, Philosophy of Law (Princeton University Press 2011) 4.

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> events that take place—are not exhausted by those law creating acts/events. The content of the putative norm, mostly its moral content, also bears on its legal validity. Normative content that does not meet a certain minimal threshold of moral acceptability cannot be *legally* valid. As the famous dictum of St. Augustine has it: *lex iniusta non est lex* (unjust law is not law).[5]

And as the third school of thought on the validity of legal norms, Marmor finds that

> which has drawn some inspiration from the Natural Law tradition but differs from it in essential details, maintains that moral content is not a necessary condition of legality, but it may be a sufficient one.[6]

Based on the great *Collins Dictionary of Law* on the question of what law is, depending on the answer, we have the differentiations of the so-called schools of thought, which are divided into three: natural law, positivism, and realism.

> Jurisprudence 1. The study of law in the philosophical sense, given questions such as "what is law?" There are many schools of thought, the leading ones being NATURAL LAW, POSITIVISM and REALISM.[7]

This is more or less what one of the greatest philosophers of all time, Immanuel Kant, states:

> The System of Rights, viewed as a scientific System of Doctrines, is divided into natural right and positive right. Natural Right rests upon pure rational principles *a priori*; A positive or Statutory Right is what procedures from the Will of a Legislator.[8]

Consequently, according to Kant, natural law stands on those principles which derive from the *a priori* elements of reason and, as such, stand in relation to morality, while positive law derives from the state. Moreover, claims have been made by various theorists, and opinions have been articulated to give natural law a scientific character in the sense that, as such, it can be justified by scientific arguments. One such theorist is Ota Weinberger, who, while arguing for the natural theory of law and shunning the religious concept, says:

> I will not deal with such a presentation of natural law and will confine myself to examining those arguments which can be presented as purely scientific arguments for the concepts of natural law.[9]

With all these questions and answers and more, which extend to the wide range of these two theories, is a special discipline of philosophy called the philosophy of law. This discipline treats law philosophically, using the methodology of how philosophy is done in general, but in the concrete case of the law. To treat law as lucidly and correctly as possible, the philosophy of law has a close relationship with other disciplines of philosophy, mainly political philosophy and the philosophy of morality. But since this discipline of philosophy examines the law, the concept of *philosophy of law* has not been used by all scholars because, in most cases, legal scholars are jurists and have used the concept of jurisprudence or legal theory. However, in the literature, these concepts are very often encountered as synonyms, as is the case with the *Collins Dictionary of Law*. However, these concepts also have differences between them and consequently are not identical.

5 Ibid.

6 Ibid 5.

7 WJ Stewart, Collins Dictionary of Law (2nd edn 2001) 223.

8 I Kant, The philosophy of law, an exposition of the fundamental principles of jurisprudence as the science of right (translated from German by H Hastie, T & T Clark, 1887) 55.

9 N MacCormick, O Weinberger, An Institutional Theory of Law - New Approaches to Legal Positivism (D. Reidel Publishing Company 1986) 139.

The philosophy of law, influenced by the connection with other philosophical disciplines, such as political philosophy and moral philosophy, focuses mainly, but not only, on the relationship of law with political authority and the effects of the expression of this authority on the rights of the individual as well as in the freedoms of the individual and society. Thus Raymond Wacks states from the beginning of his work *Philosophy of Law*, where he says that:

> The "philosophy of law", as its name implies, normally proceeds from the standpoint of the discipline of philosophy (e.g. it attempts to unravel the sort of problems that might vex moral or political philosophers, such as the concepts of freedom or authority).[10]
>
> "jurisprudence" concerns the theoretical analysis of law at the highest level of abstraction (e.g. questions about the nature of a right or a duty, judicial reasoning, etc, and are frequently implied within substantive legal disciplines).[11]
>
> "Legal theory" is often used to denote theoretical enquiries about law "as such" that extend beyond the boundaries of law as understood by professional lawyers (e.g. Marxist approaches to legal domination).[12]

However, regardless of the concepts and professional affiliation of different theorists on law, depending on whether these theorists belonged to and defended ideas that were the same as theories on natural law or even positivist theories on law, we have two different approaches to the definition of law as such. The approach of natural theories on law is the approach of affirming an inseparable relationship between law and morality, while the approach of positivist theories on law differentiates law from any inseparable connection with any norm. Consequently, theories on natural rights deal with the study of law or good law, or law *as it should be*, while positivist theories on law deal with the study of applicable law as *it is*. In this way, we are dealing with what Wacks calls descriptive and normative theories. Descriptive theories seek to explain what *the law is*, why, and its consequences.

> Normative legal theories, on the other hand, are concerned with what the law ought to be.[13]

What Wacks calls descriptive theory, in various literature and dictionaries of law, we also find as analytical jurisprudence. Thus, for example, we find it in *Oran's Dictionary of Law*, according to which analytical jurisprudence is:

> A method of studying legal systems by analyzing and comparing legal principles in the abstract without considering their ethical backgrounds or practical applications.[14]

So, on the one hand, we are dealing with *the law as it is*, as a legal act, which, after going through a certain legal procedure, has entered into force and consequently causes a legal effect. On the other hand, we are dealing with the moral evaluation of a legal norm in order to ascertain whether that norm is the right norm and a good norm. If it is not, it should have no legal effect and not exist at all.

2 ON THEORIES OF NATURAL LAW AS THEORIES OF JUSTICE

In dealing with the differentiation of *law as it should be* and *law as it is,* it was noted that the theories of natural law, despite eventual differences between the views and worldviews of

10 R Wacks, Philosophy of Law - A very short introduction (Oxford University Press 2006) XIII.
11 Ibid.
12 Ibid.
13 Ibid.
14 D Oran, M Tosti, Oran's Dictionary of Law (3rd edn, West Legal Studies 2000) 29.

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different philosophers, affirm the idea that law should be inseparably and necessarily related with morality. Consequently, these views and worldviews focus on the analysis of the law as a whole, the drafting standards, as well as the content, but also some goals that the law must carry in itself. In this way, these theories make a moral evaluation of the legislation, alluding to different conclusions on whether the law is a good law or not a law at all because the existence of the law also depends on the goodness of which it consists and which it carries in itself. Otherwise, it does not exist at all, or we can not qualify it as a law, and consequently, we have no obligation to respect it as such.

> But unjust law is not genuine law. And thus it deserves no respect.[15]

From what has been said above, we see that several aspects emerge that constitute the various theories on natural law. Initially, just like the philosophy of law in general, the theories on natural law deal with the study of law and justice in their entirety and do not extend to the practical empirical plane to deal only with the national legislation of a certain country, nor with any concrete law. But, even if the philosophy of law or these theories on natural law fall at the level of study on a certain law, or eventually on a certain legislation or legal system, they do so for the purpose of studying law and comparison and differentiation with higher principles that the law must respect.

> Natural law is a higher law against which human laws can be measured.[16]

Consequently, the aspect of equality or commensurability of law with justice as such is studied. In this way, the purpose of studying theories on natural rights is for law to be equal to justice and not only equal. By studying law in its entirety, as well as finding the points where law converges with morality or even the divergences between them, these theories on natural law claim to build a moral, good, and orderly legal system to fulfil its existential teleology.

> A theory of natural law claims to be able to identify conditions and principles of practical right-mindedness, of good and proper order among persons, and in individual conduct.[17]

Or, as Ota Weinberger puts it:

> Objectively, the following three bases seem to me to be crucial motives for adopting a theory of natural law:
>
> (A) The desire to justify criteria of fair law
>
> (B) The desire to conceive of law as something more than the outcome of power
>
> (C) The aim of offering help in resolving hard cases.[18]

On this basis, it is noted that morality in relation to law is not only important in measuring the compatibility of law with morality, in which case, morality would be considered a standard or measurement indicator by which we measure whether a positive legal norm is a good norm, but moreover, morality should be an integral part of all legal norms that present legal effect, and generally, these are the two main planes that build the relationship between ethics and law.

> Perhaps the most distinctive tenet of natural law theory is that morality—or some sector of morality, notably, justice—is not simply a useful criterion for evaluating any given system

15 D Lyons, Moral Aspects of Legal Theory - Essays on law, justice, and political responsibility (Cambridge University Press 1993) 1.

16 Stewart, op cit 265.

17 J Finnis, Natural Law and Natural Rights (2nd edn, Oxford University Press 2011) 18.

18 MacCormick, Weinberger, op cit 119.

> of human law nor simply a desirable feature to import into law. In natural law theory, morality is an essential part of law as it is.[19]

However, there are theorists who give ethics a very important and significant role in the influences it has in the political field. In fact, James Otteson considers that:

> Actual Ethics offers a moral defense of the "classical liberal" political tradition and applies it to several of today's vexing moral and political issues. James Otteson argues that a Kantian conception of personhood and an Aristotelian conception of judgment are compatible and even complementary. He shows why they are morally attractive, and perhaps most controversially, when combined, they imply a limited, classical liberal political state. Otteson then addresses several contemporary problems—wealth and poverty, public education, animal welfare, and affirmative action—and shows how each can be plausibly addressed within the Kantian, Aristotelian, and classical liberal framework.[20]

Since the so-called 'natural law' is a law that does not derive from any human authority in the sense that man by his authority does not issue and does not enforce such a law, then in principle, it means that such a law and the rule that emerges as the consequence of that law must have universal validity and the object of this law must be all human beings. This is the substrate of the theory of human rights as universal rights. The fact that it is called natural law shows that some rights belong to man because of his human nature or being a human being and not because of any residential affiliation to a certain political-legal organisation. In fact, the universality of the validity of these laws does not extend only within the geographical connotation but, as much as it extends to the geographical, transboundary, and meta-state plane, it also extends to the historical plane, where these rights are such that they cannot apply only in a certain historical circumstance and then lose the effect, but are valid at all times. Indeed, such a nature of law is given by the so-called cosmopolitan theory of justice, which is related to distributive justice, a mechanism of social justice. Simon Caney identifies three different types of contemporary cosmopolitanism, one of which is the so-called legal cosmopolitanism.

> Focusing entirely on contemporary cosmopolitanism, it is important to draw attention to three distinct types of cosmopolitanism, what I would call legal cosmopolitanism, ethical cosmopolitanism, and political cosmopolitanism.[21]

This theory is directly related to the etymology and semantics of the word cosmopolitanism, where cosmopolitanists thought they were citizens of the world and were not associated with any state or national identity. The practical personification of this theory and this discourse is Diogenes of Sinope. This theory presupposes that justice, specifically distributive justice as developed by Caney, is based on universal principles that prevail over any differentiating theory and practice concerning the people of the world because people are inhabitants of the same world, have the same moral status, live under the same sky, and are warmed by the same sun. Consequently, no man should be differentiated, stigmatised, or marginalised, but all should be equally considered deserving of justice and benefits.

> Juridical cosmopolitanism is a claim about the scope and nature of distributive justice. It maintains that there are global principles of distributive justice that include all persons in their scope. Put slightly differently, what I have termed juridical cosmopolitanism (and what others like Samuel Scheffler call "cosmopolitanism about justice" (Scheffler 2001:

19 J Feinberg, Problems at the Roots of Law - Essays in Legal and Political Theory (Oxford University Press 2003) 3.

20 JR Otteson, Actual Ethics (Cambridge University Press 2006) 2.

21 S Caney, 'Cosmopolitanism and Justice' in T Christiano, J Christman (eds), Contemporary Debates in Political Philosophy (Wiley & Sons, Ltd. 2009) 388.

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> esp. 111)) avers that the scope of some principles of distributive justice should include all persons within their remit. We are all citizens of the world in the sense that we should all be included within a common scheme of distributive justice. This view stands opposed to those who maintain that distributive justice applies only among members of the same nation or state. This kind of cosmopolitanism is affirmed by a variety of different thinkers. In Political Theory and International Relations (1999) Charles Beitz draws on Rawls's theory of justice and argues that there should be a global difference principle. Furthermore, Henry Shue argues in Basic Rights (1996) that there is a human right to subsistence which entails negative duties on others not to deprive them and positive duties to provide such subsistence if it be necessary. To give a third example, Thomas Pogge's more recent World Poverty and Human Rights (2008) provides an argument for the existence of global principles of distributive justice.[22]

In this line of thought stand the theorists Andrew Altman and Christopher Heath Wellman, who, in the discourse on international distributive justice, treat as equal cosmopolitanism, which rejects the approach of the influence of geography, whether as a birthplace or place where one lives, while affirming that this kind of cosmopolitanism threatens and discredits the concept of self-determination of nations or states that would result in inequality of people anytime, anywhere.

As such, there are five basic claims:

> (1) Every human has a right to equal consideration.
>
> (2) Existing boundaries separating political states have been drawn in a morally arbitrary fashion.
>
> (3) Political communities owe their membership neither to consent nor to any other voluntary transaction.
>
> (4) There is such great disparity in international wealth that many people's life prospects are profoundly affected by the country in which they are born.
>
> (5) One's country of birth is a matter of brute luck.[23]

On this basis, these rights are undeniable and, in most cases, also *inalienable*. They can be alienated only in cases clearly defined by the legislation in force, always realising a principle of proportionality. For example, in cases where there is a public interest in expropriating an immovable property, that property can be *alienated* in the sense that the ownership belongs to another owner, in this case, a public institution or the state itself, while the owner must be compensated with the real value of the *alienated property*.

The observance of these rights does not remain only the will of the state, but it is an obligation for it to recognise them as such and to guarantee their observance through various mechanisms of monitoring the observance of the positive rights deriving from these natural rights. These natural rights enjoy independence from state authority because their source lies elsewhere or in the existence of the human being. But this is the theoretical concept of natural rights as human rights because, practically, even these rights are not universal. Consequently, the concept of natural rights as human rights is a concept of the western discourse and is applied within this discourse and by no means globally. The universal validity of natural rights as human rights often lies in incompatibility with ethical relativism. This is because the great differences that are found within varying cultural contexts, often antagonistic, also affect moral and legal judgments, where the same human deeds are judged in different or

22 Ibid 388-389.

23 A Altman, CH Wellman, A Liberal Theory of International Justice (Oxford University Press 2009) 123.

even opposite ways and consequently do not respect one of the basic principles of law, which is affirmed by the natural theory of rights that *the same cases should be tried in the same way.* In this case, we notice that natural rights are identified as human rights because human rights have their source in these rights, or as Hegel calls them, abstract rights.

> Our main focus will be on rights that are universal, universally claimed or universally ascribed, rights of the form that, if anyone has them, everyone does. These will be what the French declared to be the Rights of Man; often they have been described as natural rights. Hegel… called them abstract rights.[24]

There are two reasons why natural rights are known as human rights, and the term 'human rights' is better. First, it relates to the language of the above-mentioned founding acts, declarations, and conventions which describe rights as a principle of international law. For better or worse, it is *the human rights* to which these documents refer, and so it is the human right of citizens to complain against their governments.

> The older term, natural rights, carries with it a distinct provenance. Natural rights, to simplify, were deemed natural because they were the product of natural law.[25]

As for this issue, George W. Rainbolt, in the ongoing tendency to treat moral rights as such given the possibility of their existence, calls natural rights or human rights moral rights. These rights, according to Rainbolt, often coincide with legal rights, although different authors have articulated different concepts about them.

> We have been assuming that there are moral rights. It is now time to examine that assumption. Before we can discuss whether or not there are moral rights, we must consider what moral rights are. A moral right is a right implied by the moral rule system. A legal right is a right implied by a legal rule system. A legal right and a moral right can have the same subject, object, and content. If one holds that people have the *legal* right to be given what they have paid for and that people have the *moral* right to be given what they have paid for, then one holds that these two rights have the same subjects, objects, and contents. This usage of "moral rights" is far from universal. Some authors use "human" or "natural" to refer to what I call "moral" rights. Some, such as Feinberg, use "human" and "natural" to refer to subclasses of moral rights. In other cases, the term "human" is reserved for a subclass of legal rights established by international law. In still other cases, "human" rights are those moral rights that all humans have…[26]

As an example, we can consider adultery, which is judged differently in different countries and is indicative of the universality of these rights on the theoretical plane while being relative on the practical plane. So, the same act is judged differently. In the vast majority of countries where liberal democracy is installed, it is not sanctioned by legislation at all, and in some countries, there are minimal sanctions, such as in some states in the United States. In the Eastern world, whether in some countries in the Middle East or even the Far East, there are brutal and inhumane punishments for such acts. These punishments range from beatings in various forms to murder in inhumane ways.

Of course, the norms that regulate such judgments are in complete contradiction with the concept of natural rights and human rights because liberal democracy, which offers the most appropriate conditions for the application of human rights, considers man as the god of enabling himself to decide for himself how he wants to live within a given political, constitutional and legal system, always keeping on the pedestal the rights and freedoms of the individual.

24 D Knowles, Political Philosophy (Routledge 2001) 135.

25 Ibid 135.

26 GW Rainbolt, The concept of rights (Georgia State University 2006) 77-78.

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This and many other examples are factual arguments of how the concept of natural rights and human rights, in theory, can have universal validity. This is fully justifiable and justified, but, in practical terms, this concept is relative. Yet many authors, when referring to the conception of natural rights, refer to the theoretical plane as universal rights, and they consider these rights either as a paradigm or as a source of positive law, which then takes on a positive character. For example, Gerald J. Postema, referring to Horwitz and Feldman, thinks that:

> Immediately after the American Revolution, most states [VL. of the US] decided to keep common English law, despite anti-British sentiments. The reason was simple. According to the jurisprudence of the time, the common law doctrine was derived from the principles of natural law. Due to the universal nature of these principles, legal decision makers thought that common-law doctrines for the most part were equally applicable in England and the United States.[27]

In general, natural law is considered a very abstract law. An example is the universal right to life, which is also identified by John Locke as one of the three basic human rights, which is very abstract. From this right, Locke derived many legal provisions used in various state mechanisms for the observance of this right, but also for monitoring in order to guarantee this observance.

> First, there wants an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them: for though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.[28]

The abstract character of ethics, which is inseparable from natural law, is also observed by other thinkers, as is the case with Simon Glendinning, who, referring to Paul Ricoeur, thinks that it cannot regulate interpersonal relationships sufficiently. Therefore, these relationships are supported and enabled by positive legal provisions empowered by the state.

> Ethics cease to be abstract when the mediation between individuals is facilitated by the establishment of concrete institutions which ensure justice.[29]

However, paradoxically, natural law is considered very concrete, easily understood, and applicable because such a law is a morally correct law and morality is a form of organisation of good human activity, which is part of the personality of individuals and transmitted to us across generations. Thus, morality and human activity in harmony with this morality are known in advance and easily understood. This is also because each norm, in addition to defining a certain behaviour by determining how we should behave at this time, also determines the way we should behave in the future. Consequently, as a result of the norm, we have in advance knowledge of how we will behave in a given situation. In this case, as an example, a researcher knows in advance how to conduct research in a particular library or even how to follow certain rules of writing, including respecting the rights of an author to whom he/she refers. Morality is known and easily applicable because it is rooted in the human personality, and therefore there is great belief in its observance, and natural law is inextricably linked to morality or even identified with it. Thus, natural law is considered to be easily understood and applicable.

27 GJ Postema, Philosophy and the Law of Torts (Cambridge University Press 2002) 254.

28 J Locke, Second Treatise of Government (Chapter IX, eBook #7370, Relese date 2005) 127-128.

29 S Glendinning, The Edinburgh Encyclopedia of Continental Philosophy (Edinburgh University Press 1999) 192.

For example, every rational being knows in advance that we must respect the human right to life, and we must not violate this right by taking life. Moreover, every rational being knows that if he/she violates this right unjustly, then he/she is in contradiction with the law and consequently will be penalised, or at least should be penalised. So, we are talking about rights and obligations that apply to rational beings because natural law is understood by them, as is morality. While moral activity is obligatory for rational beings and rules are dedicated to these beings because the moral judgment of irrational beings is unjustified and unjustifiable, then even activity in accordance with natural law is thought of in relation to these beings. But this does not mean that the rights arising from natural law again apply only to rational beings but apply to human beings in general, regardless of time and space.

On this basis, respect for rights deriving from a norm or rule should apply to all human beings, but not all these human beings are expected to respect these rights. When they do not respect them, according to Socrates, they act irrationally, and as such, we can consider these to be abnormal acts. At this moment, we fall into the philosophical background of Socrates's ethical rationalism, according to which good is identified with the mind and doing good comes from wisdom, while doing bad results from a lack of knowledge. However, the connection of morality with reason is also affirmed by many other philosophers, such as Plato, Aristotle, Kant, etc.

In the first case, when the difficulty of respecting natural law as a very abstract norm is ascertained, positivists generally side with this, while in the second case, there are theorists who affirm and defend the theory of natural rights. In fact, it is normal for positive laws to differ because each country and each time has its own circumstances, and legislation is drafted depending on these circumstances.

Moreover, legislation that is not adapted to the circumstances and that cannot be enforced cannot be called good legislation. But it is imperative that all these legal differences or different laws be different only to the extent that they do not go beyond the boundaries that limit natural law. Since natural law is a right dedicated to the well-being of people in the sense of a good life, where certain rights and obligations are applied that are identified with being human beings, then it is an obligation but also a logical conclusion that positive law should be drafted and enforced in harmony with natural law. For example, the right to life, which we took as an example above, in different temporal and spatial circumstances, can be regulated in different ways by positive legislation. But this way of regulating differently can be extended only to the recognition of this right, for what period of time[30] it should be recognised, or even how and when one can take one's own life[31] without this being considered a violation of natural law, which gives the right to life.

30 The period of time here means only when an unborn being is recognised as having the right to life by prohibiting abortion. By this logic, different countries have regulated the right to abortion in different ways by setting different time limits than how much time can pass before one can have an abortion. These rights are defined in order to respect the right to life from the development of the foetus, and this right can be violated only when provided by law, mainly to protect the right to life of the woman who is expected to give birth. In the Republic of Kosovo, elective termination of pregnancy can be done until the end of the tenth (10) week of pregnancy, counting from the first day of the last menstrual cycle. For this see: Law No 03 / L-110 on termination of pregnancy <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2624> Official Gazette of the Republic of Kosova / Pristina: Year Iv / No. 48 / 06 February 2009.

31 This is about the death penalty. The death penalty is allowed and regulated by law in many liberal states to this day, including in the United States. This type of punishment is mainly justified as a form of punishment or sanction that has a legal basis and is applied in proportion to the crime committed by the convict and for which no other measure can be considered proportionate. The death penalty, and also abortion, remain one of the most debated issues among human rights theorists, lawyers, religious preachers, etc. In the Republic of Kosovo, the death penalty is not allowed, and the Constitution, in Art. 25, which defines the right to life, after para. 1, where it says: Every individual enjoys the right to life, also says in para. 2: The death penalty is prohibited.

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Depending on the chronological aspect of the construction of worldview and the articulation of thought on law, we also have the division of natural theories of law into the *classical theory* and *modern theory* of natural law. The natural theory of law is a very old theory of law. "In legal theory, most of the approaches dubbed "natural law" can be placed into one of two broad groups, which I call "traditional" and "modern" natural law theory…'[32]

While theories on natural law affirm the necessary and inherent connection with morality, or as a more advanced stage often even their identification, various religious theorists on ethics and law think that the source of ethics, as well as the source of law, is god, or even religion, which is actually the source of the whole world in its variety and complexity. Consequently, a division of the theories of natural law can be found: *The secular theory of natural law* and *The theological theory of natural law*.

3 CONCLUSIONS

The issue of preserving the functionality of the state and social cohesion is not entirely simple. To achieve this goal, legal norms are a necessary condition but are not sufficient by themselves. This insufficiency of legal norms consists in the fact that they are often unfair. Legal norms must also be good and fair. To be such, legal norms must contain ethical elements within them and always be compatible with these elements. Only when legal norms are good, fair, and carry the spirit of the purpose of drafting and empowering them will people as rational and emotional beings voluntarily obey the constitutional, legal, and political system of a country.

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