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THREE CONCEPTS OF NATURAL LAW

ABSTRACT

The concept of natural law is fundamental to political philosophy, ethics, and legal thought. The present article shows that as early as the ancient Greek philosophical tradition, three main ideas of natural law existed, which run in parallel through the philosophical works of many authors in the course of history. The first two approaches are based on the understanding that although equipped with reason, humans are nevertheless still essentially animals subject to biological instincts. The first approach defines natural law as the law of the strongest, which can be observed to hold among all members of the animal kingdom. The second conception presents natural law as the principle of self-preservation, inherent as an instinct in all living beings. The third approach, also developed in antiquity, shifts the focus to our rationality and develops the idea of natural law as the law of reason within us. Some Christian thinkers who consider the origin of reason in us to be divine, identify the law of reason inherent in us with God's will. This paper gives a brief exposition of the development of these three concepts of natural law in philosophy, with emphasis on the intertwining of these three concepts, which we, however, understand as primarily and essentially independent. The paper concludes with an overview of twentieth-century authors who exclusively focus on only one of the three concepts. The aim of this article is to argue against these one-sided interpretations and to uphold the independence and distinctness of the three historical conceptions of natural law.

KEYWORDS

natural law, right of the strongest, self-preservation

Introduction

It can be demonstrated that as early as the ancient Greek philosophical tradition, three main ideas of natural law existed, which run in parallel through philosophical thinking to the present day.¹ The first is the idea of natural law in the sense of the law of the animal world, of which we humans, as rational animals, are still members. This form of natural law is colloquially described as the law of the strongest or summarized in the expression, "might makes

1 This article extends my research published in Czech language in Vacura 2011.

right". The second approach is also based on our animal nature and draws on the omnipresent tendency to maintain one's own life; it defines natural law as the principle of self-preservation. This law is based on our most basic, innate, and instinctual biological inclinations, shared with every living being. The third concept already present in antiquity is the idea of natural law as the law of reason that we innately possess, which is at the same time identical with God's will.

In this article, we show that the above concepts of natural law can be understood as isolated, parallel, or opposing philosophical concepts and that in those forms, they can be identified in numerous historical works by prominent thinkers. Some of the thinkers treat these different concepts of natural law as opposites, and some of them present one of them as a foundation for another. Some of them put these concepts side by side, often not under the name "natural law" but under various other designations, which has led to frequent conceptual ambiguities and confusions among interpreters.

The aim of this article is therefore to argue against current one-sided interpretations of the concept of natural law that are mostly based on Thomistic tradition. The usual approach of historians of philosophical thought is to consider one of the concepts of natural law as the main one (usually the third one mentioned) and to focus only on the development of this concept and ignore the others (Adams 1945; Weinreb 1987). Some older philosophers even believed that the idea of natural law has a "perfectly continuous history" (Pollock 1900), and d'Entrèves (D'Entrèves 1951: 8) believed that "[t]his view was accepted and emphasized by almost all modern historians of political thought". Other contemporary authors mention other conceptions of natural law but understand them only as imperfect forms of what they regard as the main concept. For example, when Kainz (Kainz 2004: 3) mentions in his historical overview the concept of natural law as "the law of the strongest", he describes it as a mere "perversion" of real natural law as described by current natural law theory, which is based on the third concept of natural law mentioned above.

Similarly, when referring to Finnis (Finnis 2011) and Grisez (Grisez 1969), Westerman (Westerman 1998: 2) says that the "pure and fertile concept of natural law" can be regained from Aquinas (who developed mostly the third form of natural law) by removing the distorting influences of almost all philosophers who followed him. The primary problem of these contemporary interpretations is the uniformity of the neo-Thomistic readings and the scholars' exclusive focus on Aquinas' account of natural law.

In the following, we first provide a more detailed introduction to the three concepts of natural law introduced above. The second part of the paper therefore focuses on the first conception of natural law, i.e., the law of strongest; the third part deals with the natural law as the principle of self-preservation; and the fourth section deals with the concept of natural law as the law of reason. This section is followed by a brief fifth section that addresses contemporary conceptions of natural law, demonstrating that current discourse deals for the most part with the third concept of natural law. The concluding section makes case that these three concepts should be understood as primary

and essentially independent and offers closing remarks in defense of acknowledging their distinctness.

Natural Law as the Law of the Strongest

The first form of natural law is the “law of the strongest”. According to this conception, we humans, although equipped with reason, are still part of the animal world, and the basic natural law in the animal world is the right of the strongest to impose their will on the weaker ones. At the same time, this concept affirms the right of the strongest to identify their will with the terms law or justice.

One of the first works to formulate the law of the strongest is the *History of the Peloponnesian War* by the historian Thucydides, a contemporary of Socrates. This work vividly depicts the conflict between Athens and Sparta, which took place from 431 to 404 BC. One of the central themes for Thucydides, as well as for other ancient Greek playwrights and philosophers, is the conflict between *nomos* and *physis* (understood in this case as the conflict between ideal justice and political expediency). Of particular interest for us is the way this conflict manifests itself in the so-called *Melian dialogue* (Wassermann 1947: 28). The army of Athens, which has a significant numerical advantage, has besieged the inhabitants of the small neutral island of Melos. Against this backdrop, negotiations between the besiegers and the defenders are dramatically depicted, and the situation unfolds before the reader (see also Plutarch 1936: 347A). The people of Melos want to remain neutral and claim that if they do not take hostile action against any of the opposing parties, they have the right not to be drawn into the war. However, the generals of the besieging army demand unconditional surrender and submission to Athenian rule, offering this famous justification:

[...] since you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must. (Thucydides 1919: ch. XVII)

This is probably the first occurrence of the principle of the right of the strongest, sometimes colloquially summed up in the words, “might makes right”.

Another author who describes the concept of natural law as the “law of the strongest” is Plato. We find one discussion of natural law in his dialogue *Gorgias*. Here one of the discussants, Callicles, presents the concept of natural law in the spirit of Thucydides, namely as the “advantage of the stronger over the weaker”.²

2 “[...] but nature, in my opinion, herself proclaims the fact that it is right for the better to have advantage of the worse, and the abler of the feebler. It is obvious in many cases that this is so, not only in the animal world, but in the states and races, collectively, of men – that right has been decided to consist in the sway and advantage of the stronger over the weaker. [...] Why, surely these men follow nature – the nature of right – in acting thus; yes, on my soul, and follow the law of nature – though not that, I dare

In Callicles' view, this concept of the natural law, that is, the law of the strongest, is opposed by human "artificial" laws. These artificial laws claim that justice (*dikaion*) and beauty (*kalon*) lie in equality between people, but to Callicles, these laws are intended only as "incantations" to moderate the strongest individuals.

Another discussion of a similar question can be found in the dialogue *Republic* (Plato 1966c), where a similar opinion is presented in Book I by the sophist Thrasymachus.³ Klosko (Klosko 1984: 8) believes that Plato deliberately gives him only weak arguments to support his position; however, many other authors have tried to reconstruct this position in a more consistent form (e.g., Henderson 1970). In this dialogue, Thrasymachus (Klosko 1984: 5) describes his position in several speeches, the first of which says that justice is "the advantage of the stronger" (Plato 1966c: 338c). In the second, he specifies that the stronger in the political sphere is the one who rules, and the ruler also calls obedience to the laws he gives "justice" and disobedience "injustice" (Plato 1966c: 338d–339a).

Plato returns to this subject in one of his late texts, the dialogue *Laws* (Plato 1966b), where he explicitly mentions in a critical context the similar thesis that "the height of justice is to succeed by force" (Plato 1966b: 890a). Against this claim, he advances the idea of a divine law, which is independent of the written law and relates to justice; he says that those who follow this divine law are happy (Plato 1966b: 715e). This opposing concept of law may be linked to the third concept of natural law discussed in this paper—the concept that connects it with reason and God, which will be discussed in the fourth section.

We now turn to a more recent author, Nietzsche, who was also an enthusiastic admirer of Thucydides. In *Twilight of the Idols*, Nietzsche (Nietzsche 2021) [1889] describes Thucydides' work as his recreation and cure from Platonism (Zumbrunnen 2002: 237). Nietzsche also sided with Plato's Thrasymachus (Polansky 2015). Thucydides' text was probably also Nietzsche's inspiration for writing *On the Genealogy of Morality* (Nietzsche 2007) [1887], where he introduces the concept of Master-slave morality (*Herren- und Sklavenmoral*). Here master morality is understood as the morality of the strong-willed person. The strong-willed person identifies the "good" with the strong, powerful, and noble, while identifying the "bad" with the weak, cowardly, petty, and timid. In this book, Nietzsche (Nietzsche 2007: 6) also explicitly refers to Thucydides' definition of law: "In particular, compare what I say [...] on the descent of justice as a balance between two roughly equal powers". Similar references can be found in his other texts dealing with this topic (Nietzsche 1996; Nietzsche

say, which is made by us; we mold the best and strongest amongst us, taking them from their infancy like young lions, and utterly enthral them by our spells and witchcraft, telling them the while that they must have but their equal share, and that this is what is fair and just." (Plato 1966a: 483e, emphasis author).

³ Thrasymachus was probably a real person. Aristophanes mentions him in his lost work *Daitales*. See the fragment quoted by Galen, *Gloss. Hippokr.* 29, p. 66k, fragment 205 of Kassel, Austin 1984. See also Storey 1988.

1997). However, Nietzsche never identifies his perspective with “natural law” in so many words.

In the field of contemporary political philosophy, a similar definition can be found in Montague (Montague 1950: 108), who uses the term *kratocracy* or sometimes *kraterocracy*, from the Greek *krateros*, meaning “strong”, to describe a government by the stronger or a government based purely on military or police force. However, he does not analyze in detail the kind of government denoted by this term.⁴

Natural Law as the Law of Self-preservation

The concept of self-preservation first appears as an awareness of the innate tendency to preserve one’s own life, observed in both animals and humans. However, only in later historical philosophical thought has there emerged an understanding of this instinctive tendency as a certain form of natural law.

The notion of self-preservation appears as early as ancient Greek philosophy. For example, Aristotle regards self-preservation as an elementary good and a precondition for other goods. Although the formulations in the surviving Aristotelian texts – e.g., the *Nicomachean Ethics* (Aristotle 1926a) – refer only indirectly to self-preservation,⁵ Cicero unequivocally attributes this position to Aristotle.

When Cicero recapitulates the views of previous philosophers in *De finibus* (Cicero 2001) [45 BC], he attributes this position not only to Aristotle but also and especially to Xenocrates. According to Xenocrates, the goal of every organism is its own preservation along with the preservation of its species. This applies not only to animals, but also to humans, who, however, also use their intellectual abilities and their ability to create artificial products for this purpose.⁶ Again in *De finibus*, Cicero both asserts the innateness of self-preservation as his own position⁷ and has Cato the Younger explain that the innate impulse to preserve oneself is present immediately upon birth,⁸ although he

4 Algernon Charles Swinburne’s (1837–1909) poem, “Word for The Country”, captures a similar impression: “Where might is, the right is: Long purses make strong swords. Let weakness learn meekness: God save the House of Lords.”

5 “[...] he desires his own life and security, and especially that of his rational part. For existence is good for the virtuous man; and everyone wishes his own good [...]” (Aristotle, *Eth. Nic.*: 1166a10–20). We use edition Aristotle 1926a.

6 “Every natural organism aims at being its own preserver, so as to secure its safety and also its preservation true to its specific type. With this object, they declare, man has called in the aid of the arts also to assist nature” (Cicero 2001: 4.16).

7 “Every living creature loves itself, and from the moment of birth strives to secure its own preservation; because the earliest impulse bestowed on it by nature for its life-long protection is the instinct for self-preservation and for the maintenance of itself in the best condition possible to it in accordance with its nature” (Cicero 2001: 5.24).

8 “It is the view of those whose system I adopt, that immediately upon birth (for that is the proper point to start from) a living creature feels an attachment for itself, and an impulse to preserve itself [...]” (Cicero 2001: 3.16).

does not mention the principle of self-preservation in his best-known passages about the natural law (which we will discuss in the next section). Further, Plutarch (Plutarch 1936) testifies that even earlier stoics, such as Chrysippus, emphasized the innateness of the principle of self-preservation.⁹

Many Christian thinkers also accept the principle of self-preservation, but as only one of the components of a differently conceived natural law. For example, Thomas Aquinas (Aquinas 1920: I-II. Q94, a2) says, “whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law”. For Aquinas, self-preservation is indeed part of the natural law, but natural law as a whole is understood differently, as we will see in the next section.

One of the first mentions of self-preservation in the works of later thinkers can be found in Hugo Grotius, who discusses natural law in his work *De iure belli ac pacis* (Grotius 1625). In this text, he aims at coherent integration of two opposing characteristics of human nature—firstly *prima naturæ*, which consists of human instincts, including the instinct for self-preservation, and secondly human reason and the linked concept of *honestum*, “the honorable”, which is understood as consistency with reason. Human reason is also the foundation he later chooses for further elaboration of the concept of natural law (which will be explored below in the section on natural law based on reason). Most interpreters focus on this second concept, and some, such as Kainz (Kainz 2004), do not mention *prima naturæ* at all.

Grotius’ discussion of *prima naturæ* follows the above-mentioned remarks by Greek and Roman thinkers. Grotius says there are certain principles common to all animals from birth, the most important of which is the principle of self-preservation.¹⁰

Like Grotius, his successor Pufendorf (Pufendorf 1934) [1688] incorporates the principle of self-preservation into a foundation for his conception of natural law. He says that human nature includes the need for self-preservation, basic sociability (associated with the knowledge that self-preservation is not possible outside of society), and the recognition of these characteristics as valid for others. However, like Grotius, he ultimately arrives at a concept of natural law as based on reason, while integrating the principle of self-preservation, as we will discuss in the next main section.

Hobbes’ conception historically follows Grotius’ *prima naturæ* but changes the focus of natural law and builds it explicitly on the principle of self-preservation. According to Hobbes, it is the natural right of every person to strive for self-preservation and to use all one’s strength and all the possibilities at

9 “As soon as they are born animals have an urge to preserve themselves, their parts, and their off-spring” (Plutarch, *Sto. rep.*, 1038b.). We use edition Plutarch 2000.

10 “The first Impressions of Nature, is that Instinct whereby every Animal seeks its own Preservation, and loves its Condition, and whatever tends to maintain it; but on the other Hand, avoids its Destruction, and every Thing that seems to threaten it [...]. And that ‘tis the first Duty of every one to preserve himself in his natural State, to seek after those Things which are agreeable to Nature, and to avert those which are repugnant” (Grotius 2005: 180).

one's disposal.¹¹ Natural law further forbids people to do anything that may harm their lives.¹²

In the natural state (i.e., in a state of society without a central government), the natural law is then the right and the duty (because omission may harm one's life) to use any means necessary, including harming other people, to ensure one's self-preservation. The consequences of direct application of this right are destructive to the quality of human life and the safety of one's livelihood in the natural state, which according to Hobbes is permeated with violence. Since this situation is contrary to the principle of self-preservation, certain rules are derived from this principle, effectively allowing the constitution of civilized political society (a state), which primarily serves as a guarantee of the safety of the lives of its members.

We can therefore say that for Hobbes, the natural law consists in the right and duty to use any means necessary to secure self-preservation. Reason in this case plays only an instrumental role; that is, it provides reasoning power and knowledge of the means by which one can most effectively secure self-preservation in the long run. While in the case of Grotius, Pufendorf, and their predecessors, self-preservation was ultimately subordinate to principles of reason, in the philosophy of Hobbes the relationship is reversed. Hobbes gives the concept of natural law as the law of self-preservation one of its clearest elaborations.

Mandeville, who is regarded as a popularizer of Hobbes (e.g., by Young 1959), although this may be disputed (Vacura 2020: 261), specifically calls the principle of self-preservation the "Law of Nature."¹³ The principle of self-preservation produces the fundamental passion of self-love,¹⁴ which serves as the foundation of all the other passions.¹⁵ These passions – fear, anger, pity, and

11 "The RIGHT OF NATURE, which Writers commonly call Jus Naturale, is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto" (Hobbes 1994: XIV.1).

12 "A LAW OF NATURE, (Lex Naturalis,) is a Precept, or generall Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved" (Hobbes 1994: XIV.3).

13 "There is nothing so universally sincere upon Earth, as the Love which all Creatures, that are capable of any, bear to themselves; and as there is no Love but what implies a Care to preserve the thing beloved, so there is nothing more sincere in any Creature than his Will, Wishes, and Endeavours to preserve himself. This is the Law of Nature, by which no Creature is endued with any Appetite or Passion but what either directly or indirectly tends to the Preservation either of himself or his Species" (Mandeville 1988: 1:200).

14 The concept of self-love and the associated, but not equivalent, concept of self-liking receive substantial analysis in contemporary Mandevillian research (Colman 1972). The clear differentiation between self-love and self-liking is the main component of Mandeville's move from the purely Hobbesian first part of the Fable, which relies heavily on the principle of self-preservation, to the more independent and developed second part (Tolonen 2013: 40).

15 "All Passions center in Self-Love" (Mandeville 1988: 1:75).

pride – are reactive in their nature, and they largely control human behavior; they also play a constitutive role in relation to political society. The most important in this regard is pride, which, manipulated by flattery, plays the premier role in the constitution of civilized community (Vacura 2020: 270).

If we turn to another English philosopher, Locke, in search of a discussion of natural law in the form of self-preservation, we must first look at his *Essay Concerning Human Understanding* (Locke 1979) [1689]. The existence of moral laws in this work is firmly linked to the existence of a legislator,¹⁶ who in the case of laws that transcend the conventional laws of society is God. In his *Second Treatise on Government*, Locke (Locke 2012: XI.134) [1689] first speaks of the natural state (i.e., the state before the emergence of a political society, in which there is no common political power or government), and says that in this state only the natural law is applied.¹⁷ Although in the definition of this law we find echoes of the Stoic concept of natural law (see below), specifically a reference to reason, this law is primarily associated with the requirement of self-preservation, and only secondarily with other requirements, such as the preservation of others.¹⁸

When Locke moves from describing the natural state to describing a political society that is constituted by a social contract, the emphasis on ensuring the self-preservation of individuals and society as a whole is even stronger, and this principle is called “the first and fundamental natural law”.¹⁹

The concept of self-preservation as a natural law also appears in works by contemporary authors. This concept provides a basis for the concept of value in, for example, the philosophy of Ayn Rand (Rand 1964). Her starting point is the belief that the basic set of alternatives for every living being is life or death (see Gotthelf 2000: 81). Life is defined as a process of self-preservation and self-creation; if an organism fails to perform this process properly, it will die. Rand thus bases the concept of value on the principle of self-preservation and claims that the concept of value is derived from the concept of life.²⁰

16 “[...] what duty is, cannot be understood without a law; nor a law be known, or supposed, without a lawmaker, or without reward and punishment” (Locke 1979: I.3.12).

17 “To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the *law of nature*, without asking leave, or depending upon the will of any other man.” (Locke 2012: II.4, emphasis author).

18 “Every one, as he is bound to preserve himself, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind [...]” (Locke 2012: II.6).

19 “[...] *the first and fundamental natural law*, which is to govern even the legislative itself, is the preservation of the society, and (as far as will consist with the public good) of every person in it” (Locke 2012: XI.134, emphasis author).

20 “An *ultimate* value is that final goal or end to which all lesser goals are the means—and it sets the standard by which all lesser goals are *evaluated*. An organism’s life is its *standard of value*: that which furthers its life is the *good*, that which threatens it is the *evil*” (Rand 1964: 17).

Thus, the normative standard determining all other values for any mortal being is self-preservation.²¹

Rand (Rand 1964: 16) believes that the concept of self-preservation and the concept of value are analytically connected. To prove this, she gives the example of an immortal, indestructible, and invulnerable robot that moves and acts but cannot be harmed in any way. She argues that it will have no values, being unable to gain or lose anything, and therefore will lack any interests or goals. Mortality is thus a condition for the meaningfulness of the principle of self-preservation. The law of self-preservation is then the basis of all other moral and political values for Rand.

Natural Law as the Law of Reason

In this section, we turn our attention to the concept of natural law that is the most widespread in the current literature – natural law as the law of reason. This conception of natural law is sometimes also associated with the conception of natural law as the law of God. In that case, however, it is not represented as a pure theological voluntarism, but usually as a law that is at the same time reasonable and divine in its origin; or as a law of reason, while reason itself is of divine provenance.

We have already mentioned Anaximander, the forerunner of this concept,²² who believed that nature itself not only includes a certain order of balance and justice (*diké*) but also actively tends to realize it (Kahn 1974). Jaeger (Jaeger 1939: I. 159) interprets Anaximander as contributing to the moralization of *physis*, which had earlier been considered neutral – see also Adams (Adams 1945: 99 f.).

Moving even further in this direction is Heraclitus, who speaks of the divine law from which all human laws are derived.²³ This idea is linked to his conception of the principle of the *logos*, which creates tension between opposites in nature. Also significant in this context are the works of the playwrights Aeschylus and Sophocles – see Barker (Barker 2011: 312).²⁴ In his play *Eumenides*, Aeschylus examines the correct punishments according to nature for murder, matricide, and adultery. Sophocles' play *King Oedipus* deals with

21 “An organism’s life depends on two factors: the material or fuel which it needs from the outside, from its physical background, and the action of its own body, the action of using that fuel properly. What standard determines what is proper in this context? The standard is the organism’s life, or: that which is required for the organism’s survival” (Rand 1964: 17).

22 “Out of those things whence is the generation of existing things, into them also does their destruction take place, as is right and due; for they make retribution and pay the penalty to one another for their injustice, according to the ordering of time”, quote referring to Anaximander by Simplicius, *Phys.*, 24.13.

23 “Those who speak with sense must rely on what is common to all, as a city must rely on its law, and with much greater reliance. For all the laws of men are nourished by one law, the divine law; for it has as much power as it wishes and is sufficient for all and is still left over” (Stobaeus, *Anth.* iii, i, 179, DK 114). We use edition Freeman 1983.

24 E.g., Aeschylus in *Eumenides* and Sophocles in *Oedipus the King* and *Antigone*.

incest and paternal murder, and his play *Antigone* contains the theme of obedience to divine laws regarding the family. These issues are then addressed in greater detail by the Stoics.

Empedocles, as reported by Aristotle, was a vegetarian and believed that universal law prohibits killing living beings.²⁵ However, we have no further detailed information on his teachings or his justification for this principle.

This brings us again to Aristotle, who speaks of natural law primarily in his *Rhetoric*. Here he speaks of a common (*koinon*) law that has its basis in nature (*physis*).²⁶

As Kainz (Kainz 2004: 7) points out, the problem with interpreting this as expressing his own view is that it must be understood in the context of its purpose. In the 15th chapter of the first book, where the quoted texts are found, Aristotle does not appear to be a staunch supporter of natural (common) law; instead, resorting to this law is understood here as a means for achieving victory in litigation. In the *Rhetoric*, Aristotle is advising prosecutors and advocates on how to proceed in legal disputes so that they can succeed (see *Rhetoric* 1374a26).

In the *Nicomachean Ethics*, Aristotle also speaks of natural law, and here he seems genuinely to express his own philosophical position. Here he argues that a distinction must be made between natural law and conventional law. Natural law is that which applies everywhere, regardless of cultural or political differences. Conventional law may be different in each place, but once established, it is also valid.²⁷ However, Aristotle does not give any examples in the *Ethics*. And the examples given for illustration in *Rhetoric* cannot be used because, as Kainz (Kainz 2004: 7) shows, it can be said with certainty that these did not express views held by Aristotle himself, who only used the arguments of other philosophers to illustrate the recommended procedure for argumentation.

Let us turn again to Stoic philosophy. A full elaboration of the concept of natural law as a law of reason, capturing all the essential characteristics that were later developed in the legal tradition, can be found in the Stoics, specifically in Cicero's text *On the commonwealth* (Cicero 1999) [54-51 BC].

Natural law is characterized there as follows: a) it is in accordance with reason (or it is even directly identified with reason); b) it is in accordance with

25 "Nay, but, an all-embracing law, through the realms of the sky; Unbroken it stretcheth, and over the earths immensity" (Aristotle, *Rhet.* 1373b). We use edition Aristotle 1926b.

26 "Now there are two kinds of laws, particular and general. By particular laws I mean those established by each people in reference to themselves, which again are divided into written and unwritten; by general laws I mean those based upon nature. In fact, there is a general idea of just and unjust in accordance with nature, as all men in a manner divine, even if there is neither communication nor agreement between them" (Aristotle, *Rhet.* 1373b).

27 "Political Justice is of two kinds, one natural, the other conventional. A rule of justice is natural that has the same validity everywhere, and does not depend on our accepting it or not. A rule is conventional that in the first instance may be settled in one way or the other indifferently, though having once been settled it is not indifferent" (Aristotle 1926a: 1134b).

nature (it is the law of nature); c) it is a morally relevant law (it is related to the distinction between virtue and sin), so that d) to act against it is morally wrong; e) it is subject neither to human legislation, nor to the will of individuals, nor to decision by voting; f) it is comprehensible to common sense (it does not need interpretation by a legal specialist); g) it is applicable regardless of the local customs of individual cultures (it applies everywhere); h) it has been and will be valid for all time (it is eternal); i) it is immutable; j) its violation in itself involves punishment (violation is beyond the pale of human nature); h) its originator is God.²⁸ Each of these points is, of course, a simplification and would require a more detailed interpretation. Cicero himself, however, does not provide any substantial justification for the characteristics that are listed above, creating a challenging research program for subsequent philosophers. These characteristics are provided as cornerstones of the philosophical position to which Cicero subscribes. Some see these statements as a summary of what Cicero received from earlier philosophers and suggest that he feels no need to argue for them because those previous philosophers supplied plenty of supporting arguments. Those previous works, however, have not been preserved for us. Over time, Cicero's list of profound characteristics has become a paradigmatic formulation of the theory of natural law as a law of reason for many subsequent thinkers.

The Stoics were soon followed by Christian philosophers, who integrated some Stoic ideas into early Christian thought. A particularly significant impetus for incorporating the concept of natural law into Christian philosophy was the text of Paul's letter to the Romans, which states that even nations unfamiliar with any positive law given by a legislator respect another kind of law, which is innate and inscribed in their hearts (the heart was considered by some the seat of the soul and of reason).²⁹

To what extent Paul of Tarsus really was influenced by Stoicism (or took over their ideas from other sources) is the subject of extensive discussions; however, the ancient authors already considered this connection to be a fact. There were even a few forged letters between Paul and Seneca, the purpose

28 "True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions...It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst punishment" (Cicero 1999: III.xxii.33).

29 "For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which shew the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another" (*Romans*, 2:14–15, KJB).

of which was to prove the opposite dependence, namely that Seneca took his best ideas from Christian authors (Grant 1915).

The full development of the Christian conception of the idea of natural law takes place in medieval scholastic philosophy, culminating in the conceptions of natural law of Aquinas and Suárez. Their philosophical approach defines the basic structure of all subsequent Christian-oriented philosophical theories of natural law (Lisska 2002).

At the heart of Aquinas' philosophy of natural law, described in his *Summa theologiae* (Aquinas 1920) [1265–1273] (henceforth quoted as *ST*), is the concept of *eternal law*, which is based on the concept of God as being independent or outside of time itself.³⁰ The eternal law defines what is proper for “all things” because “from its [the eternal law’s] being imprinted on them, they derive their respective inclinations to their proper acts and ends” (Aquinas 1920: Q91, a2).

The concept of *natural law*, which applies only to rational beings, is derived from the concept of eternal law. Aquinas says that the “[p]articipation of the eternal law in the rational creature is called the natural law” (Aquinas 1920: Q91, a2). In addition to the eternal and natural law, Aquinas also defines the *divine law* – that is, the law as proclaimed directly by God to humanity in Scripture – and *human law*, a provision determined by human reason, in some cases based on the application of natural law to specific conditions, in other cases a codification of principles that are useful for the functioning of the human community (Aquinas 1920: Q91, a3).

Aquinas then concretizes the natural law according to a list with several points. The first principle of natural law is that “good is to be done and pursued, and evil is to be avoided” (Aquinas 1920: Q94, a2). The good is understood as what the intellect recognizes as that toward which one is naturally inclined. Natural human inclinations have several levels; at the most basic level, shared with all substances, is the tendency to maintain one’s own being, the tendency to self-preservation, which we discussed in the previous section. Next, as inclinations declared by Aquinas to be common to all animals and therefore also to humans, are the attraction of man and woman, the tendency to raise children, and so on. Third, and this is specific to humans as beings endowed with reason, are the desires to increase knowledge and to live in an ordered society (Aquinas 1920: Q94, a2).

Thus, although Aquinas’ conception of natural law includes the principle of self-preservation as a starting point, it is dominated by the role of reason, implanted in humanity by the Creator.

Aquinas’s conception is followed by Suárez’s interpretation of natural law in his work *De legibus, ac Deo legislatore* (Suárez 1872) [1612], which offers a synthesis of previous positions and medieval disputations, especially among

30 “Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason’s conception of things is not subject to time but is eternal, [...], therefore it is that this kind of law must be called eternal” (Aquinas 1920: I-II. Q91, a1).

Dominicans and Jesuits. Like Aquinas, Suárez divides the law into eternal law, natural law, divine positive law and human positive law. Unlike Aquinas, however, Suárez places a much greater emphasis on the will of the legislator as a precondition for the obligatory nature of the law, thus paving the way for later legal positivism. The eternal law is thus a law only in a specific sense: as a law that is identified with divine nature (Suárez 1872: II.1.11), it is the law that God imposes on himself (Suárez 1872: II.2.8), and it is knowable only if it manifests itself in the form of one of the other three types of law (Suárez 1872: II.4.9). Therefore, strictly speaking, in the case of eternal law, the legislator and his will are absent. Since natural law is the way the eternal law inheres in human moral nature, the same is true of natural law.³¹

According to Suárez, it follows from the natural law and human nature that people must live in certain social groups (families and some higher structures), which are organized for the common good and include some form of sovereign authority and legislative power as well as a system of ownership relations. However, the specific nature of these arrangements may vary from community to community (Haakonssen 1996: 17).

Turning again to Grotius, we see him reformulate Aquinas' conception of natural law and integrate it into the context of Protestant thought. While the development from Aquinas' to Grotius' conception of natural law is currently regarded as essentially continuous, historically, for a relatively long time the Thomistic and Protestant schools of natural law were considered substantially different. As mentioned above, Grotius describes his theory of natural law in his seminal work *De iure belli ac pacis* [1625], which explains opposing characteristics of human nature: on the one hand, the above-mentioned *prima naturæ*, connected with self-preservation, and on the other hand, human reason, which makes social life with others possible (Haakonssen 1996: 27). Grotius' resulting theory is based primarily on human reason and serves to refute two main theoretical opponents – skepticism (Grotius here explicitly refers to the tradition beginning with Carneades) and theological voluntarism (Grotius 2005: prol. 5). Although Grotius uses Stoic concepts and quotes *De Finibus* 3.16 almost literally in his book, and therefore may seem a close follower of the Stoic conception of natural law,³² Brower (Brower 2008: 18) shows that

31 “[...] there is no proper and preceptive law without an act of will on the part of some lawgiver; but the natural law does not depend on the will of any lawgiver; therefore, it is not properly speaking a law. [...] So there is no doubt that God is the efficient cause and, as it were, the teacher of the natural law. But it does not follow from this that he is the lawgiver. For the natural law does not involve God as lawgiver, but rather indicates what is good or bad in itself, just as an act of vision directed at a given object indicates that it is white or black, and just as an effect of God's points to God as its author, though not as its lawgiver. This is the way, then, that one should think of the natural law” (Suárez 1872: II.6.1-2.).

32 Probably via Lipsius, a contemporary whom he personally met, author of summaries of Stoic teachings *Physiologiae stoicorum libri* and *Manuductio ad stoicam philosophiam* (Brower 2008: 10).

Grotius transforms the Stoic conception and follows what he calls an “Antiochian” interpretation of natural law, diverging from the Stoic conception in some details (which are, however, not important for our purposes).

After considering Grotius, it is appropriate to return to his contemporary Pufendorf. Pufendorf’s work constitutes a Lutheran reaction to Grotius’ philosophy. Pufendorf shares with Grotius the ambition of building a legal system based on natural law in the form of a deductive system modeled on Euclidean geometry. In his work *Elementa* (Pufendorf 2009) [1660], he presents an elaborate formal system composed of definitions, axioms, and observations. His most important work of legal philosophy, *De iure* (Pufendorf 1934) [1672], is based on this formal system and explains his theory of natural law, but without the burden of a complicated formal apparatus. According to Pufendorf, human nature is immutable, created by God. The moral world, which exists in parallel with the physical world, is constituted on the basis of human nature; both worlds are created by God.

As explained in the previous section, the starting point for Pufendorf is the principle of self-preservation, but Pufendorf understands this principle only as the basis for human sociability. Human beings are equipped by reason, which teaches us that self-preservation is not possible outside of society. As rational beings, we then understand that the same statements that are valid for us are valid for others. The basic medium of reason and sociability is human language, through which rules for common life and social institutions are created. This then implies the fundamental natural law that humans must “cultivate and maintain toward others a peaceable sociality that is consistent with the native character and end of humankind in general” (Pufendorf 1994).

From an epistemological point of view, Pufendorf’s conception is thus a precursor to Locke’s rejection of innate ideas. Although God forms the basis of our knowledge by constituting our nature in some concrete and immutable way, our active process of obtaining new knowledge then takes place independently, in a deductive way based purely on reason (Haakonssen 1996: 38).

Returning to Locke in this way, we recall that we saw above that he finds any law unthinkable without a legislator, so he also defines natural law with reference to the divine will.³³ However, similarly to previous thinkers, Locke is inspired by Stoic doctrine, so his natural law is at the same time the law of reason; or reason itself is considered to be the natural law.³⁴

33 Natural law is “the command of the divine will, knowable by the light of nature, indicating what is and is not consonant with a rational nature, and by that very fact commanding or prohibiting” (Locke 2008: 101).

34 “The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions [...]” (Locke 2012: II.6).

Contemporary Conceptions of Natural Law

Many contemporary philosophical conceptions of natural law are inspired primarily by the Christian reception of the Stoic conception of natural law as based on reason in accordance with God's will.

Jacques Maritain (1882–1973) and Etienne Gilson (1884–1978) represent probably the most important members of the 20th-century neo-Thomist tradition in legal philosophy. Their program is a return to early Christian philosophy, to the basic principle “*natura, id est Deus*”, building on the work of Aquinas, whom they consider one of the greatest Christian philosophers.

In Maritain's conception, the foundation and guarantor of natural law is God, and the Church has the privileged role of interpreting this law, which is open to rational examination but not to study by minds that are not properly educated and trained. The interpretation of the natural law (i.e., God's law) is thus to be entrusted to individuals with appropriate education, skill, abilities, and also spiritual training, who can then assess and critique proposed or existing state legislation with regard to its compliance with natural law (Nederman 2017: xiii).

The development of neo-Thomist legal philosophy was stimulated by the behavior of institutions and individuals during World War II, when there were many situations in France that were subsequently interpreted as collaborations, yet were in line with a literal reading of the law and therefore not prosecutable by positivist legal approaches. Neo-Thomistic legal philosophy was thus developed mainly in post-war French academic institutions, as well as in some parts of North America (Nederman 2017: xiv).

In the 1960s, interest in neo-Thomist approaches to natural law was further stimulated by Pope Paul VI's encyclical *Humanae Vitae*, which invoked the Thomistic conception of natural law in its opposition to artificial forms of contraception. Catholic philosophers Germain Grisez, John C. Ford, and John Finnis defended the pope's position. Grisez and Ford published an important article on the relationship between contraception and infallibility in the Catholic Church (Grisez, Ford 1978). In response to the also important article (Grisez 1969),³⁵ Finnis published the influential *Natural Law and Natural Rights* (Finnis 2011).

The approach Finnis proposed there is the basis for the direction in philosophy of law that is now called the “New Natural-Law Theory”. This position was later joined by Robert George (George 2001) and Joseph Boyle (Boyle 2020); in contrast, some authors who have espoused the Thomistic tradition and the theory of natural law have criticized this approach, including Henry Veatch (Veatch 1990), Ralph McInerny (McInerny 1997; McInerny 2012), and Russell Hittinger (Hittinger 2008).

35 Let us note that this article also contains an allusion to the *categorical imperative*, which is introduced by Kant as an a priori moral principle of practical reason. Kant, however, uses the term law of nature primarily in his moral theory, not in his political theory (Sensen 2013; Chotaš 2019).

Finnis (Finnis 2011) seeks to rehabilitate the theory of natural law based on the teachings of Aquinas, believing that its main problem lies not in the theory itself but in its misunderstanding (or misinterpretation) by later natural law theorists. At the same time, he pays great attention to the Humean distinction between “is” and “ought”, aware that this is widely considered the main argument against natural law theories.

Finnis’ work has also attracted criticism. For example, in her historical study *The Disintegration of the Theory of Natural Law: From Aquinas to Finnis*, Westerman (1998) makes the case that a thorough examination of the works of Suarez, Grotius, and Pufendorf demonstrates that these works do not misinterpret Aquinas’s theory but seek to resolve its incoherencies and internal contradictions. In her eyes, the retreat of natural law theories from a prominent place in the philosophy of law is the result of the failure of these attempts. She further argues that Finnis’ interpretation eventually encounters the same problems and internal contradictions as these earlier works and that, like his predecessors, Finnis fails to resolve them satisfactorily.³⁶

From this brief overview, it is clear why at present, especially in the field of philosophy of law, the topic of natural law is associated primarily with neo-Thomist Christian philosophy (see Kainz 2004: xiv). No one, or few people, nowadays seriously promote other conceptions of natural law.

Conclusion

We have seen that the distinctness of the three conceptions we have been disentangling is not universally or explicitly recognized in contemporary philosophy. The most authors favor the conception of natural law as law of reason or will of God and rarely seek to integrate more than one conception into their philosophy. Almost no philosopher today seriously discusses or promotes other theories of natural law. We have demonstrated that this omission is a serious flaw of current natural law debate and more heterogenous approach is needed. It is necessary to provide a more balanced account of the concept of natural law, which is far from monolithic view promoted by most contemporary scholars.

We have shown that in the past different authors favored different conceptions of natural law, and some authors sought to integrate more than one conception into their conception of natural law.

Among those who favor a single conception, Thucydides and Plato’s Thrasymachus acknowledge the law of the strongest as the only natural law. Likewise,

36 Some other current conceptions of natural law are responses to positivist approaches to the philosophy of law. For example, H. L. A. Hart’s positivist legal study *The Concept of Law* (1961) drew two important responses – Lon Fuller’s in *Morality of Law* (1964) (along with several articles) and Ronald Dworkin’s with *When Rights Are Taken Seriously* (1977). Both believe that it is necessary to go beyond Hart’s *minimum content* and defend the need for some form of natural law. Fuller offers the idea that natural law demands “maintaining communication” and specifies eight types of failures that should be addressed in the field of legislation. (Himma 1998; Kainz 2004: 45).

although Cicero mentions the principle of self-preservation, he does not integrate either of the two other concepts into his theory of natural law as the law of reason. Hobbes and Mandeville (and, with some reservations, Rand) consider the principle of self-preservation to be a basic natural law, and for them reason merely serves as a means of finding the most appropriate way to achieve self-preservation.

In contrast, Aquinas integrates the law of self-preservation into a broader concept of natural law, which as a whole is more influenced by the Stoic theory of natural law as the law of reason. Similarly, Grotius speaks of *prima naturæ*, which is associated with self-preservation, but his fully developed theory of natural law is again inspired by Stoic theory and based on human reason, which allows for social life with others. Pufendorf and Locke proceed in a similar way.

Some may argue that the basic conception of natural law should entail both self-preservation and reason, because many authors discuss natural law as of the law of self-preservation connected to natural law as the law of reason. However, there are important exceptions. E.g., for Mandeville reason has only instrumental function, law of nature is identified just with law of self-preservation and also Hobbes takes a similar position.

Acknowledgement of all three parallel traditions and the historical and conceptual relationships among them may generate better-rounded understanding of the concept of natural law. It may help us to consider also different traditions than Thomistic and to develop more comprehensive theory of natural law.

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Miroslav Vacura

Tri poimanja prirodnog prava

Apstrakt

Pojam prirodnog prava je od suštinskog značaja za političku filozofiju, etiku i pravnu misao. Ovaj rad protivi se reduksijskom pogledu na prirodno pravo i pokazuje da postoje tri glavne ideje prirodnog prava koje se mogu pronaći već u antičkoj grčkoj filozofskoj tradiciji i koje su se paralelno koristile u filozofskim delima mnogih autora u toku istorije. Prva dva pristupa zasnovana su na razumevanju da iako su opremljena razumom, ljudi su ipak u suštini životinje koje podležu biološkim instinktima. Prvi pristup definiše prirodno pravo kao zakon najjačeg kao što se može primetiti da je slučaj među svim članovima životinjskog carstva. Druga koncepcija predstavlja prirodno pravo kao princip samoodržavanja koji je svojstven svim živim bićima kao instinkt. Treći pristup, koji se takođe razvio u antičko doba, usredsređuje se na našu racionalnost i razvija ideju o prirodnom pravu kao pravu razuma u nama. Neki hrišćanski mislioci koji smatraju da je razum dat od boga, identifikuju pravo razuma kao znak božje volje. Ovaj rad ukratko predstavlja razvoj ova tri poimanja prirodnog prava u filozofskoj tradiciji sa naglaskom na njihovo isprepletano shvatanje, a koja mi razumemo kao nezavisna. Rad zaključuje sa pregledom autora iz 20. veka koji se isključivo fokusiraju na samo jedno od tri moguća poimanja. Cilj ovog rada je da se usprotivi jednostranim interpretacijama, koje su uglavnom zasnovane na tomističkoj tradiciji, te da podrži nezavisnost i izrazitost tri istorijska poimanja prirodnog prava.

Ključne reči: prirodno pravo, pravo najjačeg, samoodržanje