



NATURAL LAW IN JURISPRUDENCE AND POLITICS

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Natural law theory includes theories about political philosophy and jurisprudence. However, it is also the name of the theories of morality or practical rationality. In this book, Murphy defends the natural law theory on political philosophy and jurisprudence, which makes claims about the connection of law and reasons and the common good as distinguished from the claim of practical rationality about specific character of those reasons or the common good.

In this book, Murphy posits that the central thesis that law is backed by reasons for adherence sets the agenda for natural law political philosophy and that this demonstrates how law gains its binding force – by way of the common good of the political community. The author attempts to answer the questions that a defender of natural law theory in jurisprudence and politics would have to answer, such as: Why there exists such a connection between law and decisive reasons for action? What is the nature of the common good, its character and normative force and how the law inherits its normative force from the common good thus conceived? What should such advocate say about enactments labeled as law but which seems not to be backed by ample nor significant reason for compliance?

Murphy posits that there are three readings or three ways to go about the natural law theory—the strong reading, the weak reading and the moral reading. The strong reading of the natural law thesis is that a norm’s legal validity is in part constituted by its being backed by decisive reasons for compliance. The weak reading provides that a norm’s legal non-defectiveness is in part constituted by its being backed by decisive reasons for compliance, while the moral reading provides that a norm’s moral authoritativeness is in part

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constituted by its being backed by decisive reasons for compliance. Murphy outrightly rejects the moral reading of the natural law thesis and claims that the weak reading is the strongest argument for the natural law thesis.

In claiming that the weak reading of the natural law thesis should be affirmed by a natural law legal theorist, Murphy believes that its truth is established by arguments from the function of law and arguments from the status of legal norms as illocutionary acts or those that assert or demand. The function argument or the functional analysis of law as Murphy believes should not be balked at since it appeals to certain sorts of reason for compliance. He further argues that natural law thesis is sustained if the characteristic activities of law are to provide the standards for conduct and as a means to social order. As to being an illocutionary act, law is treated as a speaker, which asserts or demands and, as a speaker, it is susceptible to a certain range of belief and desires which are spoken through officials who perform institutional roles. Therefore, the law has the power to speak because its officials have the casual power for speaking.

A natural law philosopher's central political concept is the common good. The common good is supposed to be to be the reason for the law's force so that a law that is non-defective with respect to its reason-giving force has that virtue through its connection to the common good. Murphy believes that the natural law view should appeal to the aggregate conception of common good. The aggregate conception of common good consists in the state of affairs in which every individual in that community is fully flourishing. He rejects the instrumentalist conception of the common good and the distinctive good conception of common good where the common good is what is good for the whole community as distinguished from each and every individual's good in the aggregate conception.

Most natural law theorist reject the concept of consent since the fall of natural theory coincided with the rise of consent. However, Murphy believes that in order to have a proper defense of the natural law theories elements of consent theories, they must be used though not necessarily in the order used by consent theory defenders. In their ordinary sense, consent theory and natural law theory will clash as in for example, a person gives his consent to obey the authorities and the laws which the latter enact, but he chooses to obey not because of the common good but because of the consent he has given. Murphy, however, argues that these theories can stand together since citizens may flout by failing to obey the law, which is a common good principle and satisfies the natural law thesis. It is also a consent account because it is

only due to the consent of the citizenry or their acceptance of the law that is determinative of the common good principle.

Natural law is concerned with authoritativeness of law, while punishment which involves the wielding force against the unwilling to bring about certain desirable actions and is, therefore, coercive. These two concepts are polar opposites on its face. Murphy, however, posits that there are punishments which are not coercive in nature and therefore, the natural law thesis and the concept of punishment can go together. Murphy affirms the retributivist punishment since the reason for a legal punishment under this concept is that there is a past failure with respect to the common good that merits some response, which is for the criminal to lose some or his entire portion of such common good.

Finally, Murphy tackles the challenges to the common good principle which is central to the natural law thesis. These are challenges by subpolitical and superpolitical concerns. Subpolitical concerns refer to those within the bigger political community, such as the family or a group of friends. Murphy believes that a person may be faced with the challenge of acting for the common good in such subpolitical unit when faced with a choice between the latter and the common good of the whole political community since the good realized within such subpolitical unit is easier seen and felt by a person. With regard to the superpolitical concerns, Murphy defines these as those outside the political community or outside a state to which a person owes allegiance to. Resources may be diverted from a political community for the common good of the superpolitical community. Since the world is no longer defined by borders and communication and travel to and fro other countries, these concerns have merit. It is accepted that one country's problems will affect the whole community of nations. Murphy believes these challenges are difficult to meet since they are not independent of each other but is happening simultaneously on both fronts. He posits that the Aristotlean reply is the best way to answer these challenges but also admits that it is not entirely convincing.

This book is definitely not for leisure reading. It challenges you to think beyond the provisions and look at the reason for which laws are made. It may be more of a book on philosophy rather than a law book since what is being dealt with by the author is a philosophical concept of the natural law thesis. Nevertheless, it is a material worth reading for it can aid one to better understand the law by examining the spirit animating it.