

Ius Naturale, Lex Naturalis

Where there are people, there is law, politics and interactions between individuals. Aristotle defined men (and women) as ‘rational, social animals’. This implies that the ability of reasoning brings people to associate with others. Living with other people brings safety, comfort, support and relief. In that context, from the formation of society, politics originates and accordingly law is born.

Is law necessary in our society?

Even in the simplest forms of society, such as hunting and gathering, pastoral, society, industrial society and modern society, or even school, family and friends there are certain ‘rules’ that dictate how we act around others. Those laws can be written, like constitution for countries, or unwritten, like social standards that people tend to follow.

To begin with, natural law is a theory in ethics and philosophy which states that human beings possess intrinsic values that govern our reasoning and behavior. Natural law maintains that these rules of right and wrong are inherent in people and are not created by society or court judges. Therefore, natural law is independent from the positive legislation.

Many philosophers have dealt with this topic: pre-Socratics in ancient Greece, Cicero in ancient Rome and Christian philosophers in the Middle Ages. Later on, during the 17th and 18th century, thinkers during the British Empiricism, Age of Reason and Age of Enlightenment all focused their studies on the real roots of modern society, ergo human rights. The conclusions they have drawn have all contributed to a better understanding on the relationship between people and the power the government holds, which is significantly linked to jurisprudence and its practice.

The meaning of natural law is to state different natural, human rights. Those rights can be considered as the most important and fundamental rights on which every interaction between human beings is established. Natural rights, understood as those that are not dependent on the laws, customs, or beliefs of any particular culture or government (and, therefore, universal and inalienable), were central to the debates during the Enlightenment on the relationship between individuals, the government and legislations. The most famous natural right formulation comes from John Locke, an English philosopher and political theorist who is regarded as the founder of British Empiricism. In Locke’s opinion, all humans are equal because they are born with the same natural rights given by God, and those can never be taken away. These inalienable natural rights include life, liberty and property. Another important philosopher, contemporary of Locke, was Thomas Hobbes, who focused his studies on natural law and natural rights. Locke and Hobbes are regarded as the most influential social-contract theorist of the 17th and 18th centuries, along with Jean-Jacques Rousseau. The aim of these philosopher was to study human nature, political authority and society. In order to achieve that, they examined the concept of the state of nature, (in political theory, the real or hypothetical condition of human beings before or without political association).

Despite the fact that their vision of the state of nature was slightly different in some aspects, they all concluded that even if humans lived in the form of a society, similar to the prehistoric one, where life is very simple and there is no idea of state or nation, hence no kind of rules and organisation would make people follow those rules, we would still want to leave that condition, this is because we wouldn’t feel as protected and safe as we do in a ‘normal’ society. That is because *lex naturalis*, in any state of nature, is not enough for people. Locke said ‘*homo homini lupus*’ this means ‘men are a danger to other men’. So, people living in a state of nature would be afraid of a violent death, people would be able to take justice into their own hands, and there

would be no rules to limit human's actions. People fear life without laws since its purpose is to create a condition where everybody feels secured and out of danger. However, in our society it is not always like that. There are people who still take justice into their own hands; an example of that is the second amendment to the United States Constitution, which was formulated in a period where the U.S. was not too different from a state of nature, but is still valid today, centuries later. The second amendment states that every citizen has the right to carry weapons with them, keeping them in their homes, allowing everyone to take law into their own hands. Weapons like guns have been so easy to buy in the U.S.A. that gun violence, school shootings and assaults are sadly far too frequently on the news.

Not only in the United States but also in many other countries, violence is an urging problem. People are still afraid of other people, like in the state of nature. South Africa is one of the countries in the world with the highest sexual violence crime rates. The rate is so high that a survey conducted by the South African Medical Research Council reports that one man out of four admitted being guilty of committing rape. In addition, in Italy, in September 2020 a twenty-year-old boy was beaten to death because his skin was not white, while trying to rescue his friend outside of a club who had been attacked. This is one of many cases of violence against black people. In May 2020, following the murder of George Floyd by the police officer Derek Chauvin, protests for the Black Lives Matter movement started alongside with protests against police brutality. Another case of police misconduct was the kidnapping and murder of Sarah Everard, a thirty-three-year-old woman, in the United Kingdom. While walking home from a friend's house, she went missing. Only days later, her body was found and a police officer, Wayne Couzens, was found guilty and charged for her murder. These examples clearly show how, nowadays, episodes of racism, sexual violence, police brutality and hate still happen all around the world.

If even in a modern society with a constitution and various legislations there is still chaos, is law really working? Is it even essential in the first place?

To answer the question, I do believe it is necessary. One thing that didn't exist in the state of nature was punishment, which in this context just means a consequence of your actions. In my opinion, in order to live in a world where peace is an actual reality, the right application of law is the key. Its purpose should be to put boundaries to what could possibly progress to turn out to be danger, fault and injustice. Not in a state of nature, but in an ideal state which shouldn't be considered utopic, people are not afraid of law, police, government and other citizens. However, there should be a condition of order, security and trust. In my opinion violence originates from unhappiness, hurt, adversity and other violence in a never-ending circle. What could stop the breakout of violence is welfare. To help establish a condition of wellbeing law is essential. Law has to be impartial, equal to all, clear, and most importantly educational.

An important contribution to modern legislation was given by Cesare Beccaria, an Italian jurist and philosopher who is regarded as one of the greatest thinkers of the Age of Enlightenment. On top of that, thanks to his most famous work, *On Crimes and Punishment*, he is considered the father of modern criminal law and the father of criminal justice. He believed that law, in order to work, should not make people afraid of the consequences but convince them that what it states is right.

To sum up, as Locke said all humans are equal because they are born with the same rights. The concept of equality is crucial in challenging times like the ones we are currently all facing.

A pandemic made us remember that no matter where we live, who we are or what we like, every human is equal and deserves equality before the law. From my point of view, the best way in which law can be effective is by showing its own rightness and interest in people's

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welfare. To that end, the presence of law is necessary to achieve peace at any level: with ourselves, with others, between governments and countries. 'Imagine all the people living life in peace, and the world will live as one'. – John Lennon.