

## ***Natural Law and Natural Rights***

**PHIL 420**

**Philosophy of Law**

**Distance Delivery**

**Lectures Six & Seven**

## **The Authors**

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## **Natural Law and the Separation of Law from Morals**

- **Seperability thesis**
- **Legal positivism**
- **“Unjust laws are necessarily non-laws”**
- **Mischaracterized insight that goes back at least to Aquinas**
- **Defective laws**
  - Unjust laws
  - Legal authority
  - Defective in some other way

## **The Essential Moral Aspiration of Law-giving**

- **Books, art, parenting, law**
- **Value laden concepts**
- **Pragmatic inconsistency of announcing the creation of an unjust law**
- **Inconsistent in some deeper way?**
- **Values embedded in legal punishment**
- **Score one for Finnis**
- **What does this buy?**
- **Virtue in compromise**

## Practical Reason

- **Practice**
  - Reasoning about practice
  - Moral reasoning
  - Legal reasoning
  - Necessary overlap
- **Norms of reasoning**
- **Coordination problems**
- **Basic goods**

## Essential Formal Features of Law

- **Lon Fuller**
- **Rule of Law**
  - (P1) the rules must be expressed in general terms;
  - (P2) the rules must be publicly promulgated;
  - (P3) the rules must be prospective in effect;
  - (P4) the rules must be expressed in understandable terms;
  - (P5) the rules must be consistent with one another;
  - (P6) the rules must not require conduct beyond the powers of the affected parties;
  - (P7) the rules must not be changed so frequently that the subject cannot rely on them; and
  - (P8) the rules must be administered in a manner consistent with their wording.
- **Higher law?**

## The Good and the Right

- Utilitarianism
- Contemporary deontology
- Finnis and the priority of the good
- Basic goods
  - Life
  - Knowledge
  - Play
  - Aesthetic experience
  - Sociability (friendship)
  - Practical reasonableness
  - ‘Religion’
- Incommensurability

## Finnis vs Mackie

- Relativity of values
  - Basic goods are very general, different cultures will apply them differently
- Metaphysical queerness
  - Nothing queer about asserting the intrinsic value in the basic goods
- Epistemological queerness
  - We know life, play, etc, are good in the same way we know sugar is sweet

## **Finnis vs Hart**

- **Law and morality are completely different realms of investigation**
- **Law and morality are both concerned with practical reason**
- **Law has intrinsic moral aspirations**
- **One cannot always decide what the law is without engaging in moral evaluations**