

Natural Law and Natural Rights

PHIL 420

Philosophy of Law

Distance Delivery

Lectures Six & Seven

The Authors

- **H. L. A. Hart**
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- **John Finnis**

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**