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The Consequence of Final Causality: Competing Views of Legal Teleology

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Introduction

Legal philosophy in the United States is far from monolithic. The characteristic metaphorical melting-pot of American history and culture is an appropriate image with which to start. Within every judge across every bench rests a worldview. As the American public has transformed, the nation's jurisprudential thinking has diversified in kind. Whether this diversity is a strength or weakness of the American experiment has no bearing on the truth of these interpretive paradigms. Though it may be impossible to properly survey to which philosophical camp each judge across the nation ascribes, it is necessary that each judge – if not the government as a whole – possess and be able to express a clear philosophy of law. This need is self-evident from the truth that ideas have consequences.

The politically consequential changes to the Supreme Court bench made in the short span of 2017-2022 have resurrected the importance of understanding the perspectives that shape the creation and interpretation of the law. In her recent confirmation hearings, now Associate Justice Ketanji Brown Jackson was directly questioned multiple times on her judicial philosophy. Jackson lacked a categorical answer, claiming that her judicial "methodology" ensures she begins from a position of neutrality, receives the facts of the case, and interprets and applies the law to the case with a special understanding of the constraints of her judicial authority.[1] Jackson's answer is problematic and belies a more concerning view of law in society: the myth of neutrality. The question of judicial philosophy is an attempt to determine how Jackson interprets the law, not simply that she does. Law professor at Ohio Northern University and associated scholar at Brown University's Political Theory Project, Scott Douglas Gerber, explains that cases, laws, and the U.S. Constitution are not self-interpreting.[2] Jackson may have been attempting to give proper nuance to her views and avoid political labeling, but her avoidance is at best a dodge to an important question, and at worst a lack of self-awareness regarding the inherent philosophical lenses that accompany judges.

An excerpt from the description for Harvard Law School's basic Jurisprudence course reads, "A judge, a lawyer, a citizen, a law student cannot answer any legal question without a sufficiently clear sense of what law is … and what it is that constitutes legal reasoning and argument."[3] These basic questions guide legal interpretation, and they are, at heart, the first principles of philosophy in any field. Despite America's multiplicity in perspectives, only a small number of prominent philosophies have been influential in the United States. All attempt to provide an answer to the question of what law is. These perspectives include Natural Law theory, positivism, and most recently critical legal studies (CLS). A comparative analysis of the answers these theories offer is critical for ascertaining which perspective ought to be adopted. This paper takes a particular interest in the aspect of jurisprudence known as legal teleology, referring to the purpose or, in Aristotelean terms, the final cause of law. This thesis proposes that Aquinas'

[1] U.S. Senate, Committee on the Judiciary, *The Nomination of Ketanji Brown Jackson to Be an Associate Justice of the Supreme Court of the United States*, day 2, 117th Cong., 2d sess. March 22, 2022. https://www.judiciary.senate.gov/meetings/03/14/2022/the-nomination-of-ketanji-brown-jackson-to-be-an-associate-justice-of-the-supreme-court-of-the-united-states-day-2.

[2] Scott Douglas Gerber, "The Constitution Won't Interpret Itself. Ketanji Brown Jackson Owes Us an Answer on Her Judicial Philosophy," *USA TODAY*, last modified March 25, 2022, https://www.usatoday.com/story/opinion/columnist/2022/03/25/ketanji-brown-jackson-judicial-philosophy/7152062001/.

[3] "Course Catalog: Jurisprudence," *Harvard Law School*, accessed April 20, 2022, https://hls.harvard.edu/academics/curriculum/catalog/default.aspx?o=78640.

conception of Natural Law as the basis for legal teleology provides a superior grounding for American jurisprudence to the theories of legal positivism and critical legal theory.

Thomistic View of Law

The concept of Natural Law is one of the oldest and most influential ideas in the history of philosophy, with proponents stemming back to the Pre-Socratics.[4] Particularly prevalent in the Western Christian tradition, the first full and consistent exposition of both Natural Law ethics and jurisprudence was laid by St. Thomas Aquinas in his magnum opus, the *Summa Theologiae*. Natural Law theory has undergone numerous developments through the works of the Spanish Scholastics, Hobbes, Locke, Kant, and Blackstone, among others, before America's founding, but they are all rooted in *Summa Theologiae*'s "Treatise on Law." Aquinas' treatment is the quintessential understanding of the basic contour of Natural Law jurisprudence in the Western tradition, although one need not adopt everything that he postulates in order to ascribe to the general theory.

A full account of Thomistic thought on the subject is beyond the scope of this paper. However, it is useful to outline some of its central tenets. First, in a well-known passage of the *Summa*, Aquinas defines law in general as "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."[5] The first two criteria address the content of law. Essentially, they mean to show that law is rational, derived from reason, and directed toward the common good of the community in which the law has an effect. Aquinas follows Aristotle in claiming that it is the proper nature of man to be rational. Citing Aristotle's *Physics*, Aquinas argues that reason is the first principle of human acts, making it the "rule and measure" of human acts; since law in general, also, is "a rule and measure of acts, whereby man is induced to act or is restrained from acting," true law must pertain to reason.[6] Also following Aristotle's rational ethics, Aquinas asserts that moral behavior is also rational behavior—a point that will be further discussed later in this paper. The latter two criteria of law speak to the legitimacy of law independent of its content; law must be made by the proper authorities, in the proper ways, with the proper means. Aquinas makes generous use of Aristotelean concepts and categories in the *Summa*, specifically his use of Aristotle's four causes for categorizing something's essence: the formal cause, material cause, efficient cause, and final cause.

Second, all law is derivative. All human laws derive their source, authority, and legitimacy in their relation to the Natural Law, which is similarly derived from God's eternal law.[7] The general idea is that, due to the nature of God, His inherent rationality, His ordering of the universe, and the rational nature of man, there exist inherent moral principles that are binding on human agents simply by virtue of man's existence. Of the relation between Natural Law and human law, Aquinas says, "…it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters.

[4] "If Pythagoras may be credited with being the first to have thought of equality as the principle of justice, which is so important in the concept of natural law, Heraclitus is the first philosopher to have shown the relation between the divine law and the human laws." Maurice Le Bel, "Natural Law in the Greek Period," *Natural Law Institute Proceedings* 2 (1949): 19-20.

[5] Thomas Aquinas, *Summa Theologiae*, trans. Fathers of the English Dominican Province (New York, NY: Benziger Bros., 1947), I-II, q. 90, a. 4., resp., https://aquinas101.thomisticinstitute.org/st-index.

[6] Ibid., I-II, q. 90, a. 1, resp.

[7] Ibid., I-II, q. 91, arts 1-5.

These particular determinations, devised by human reason, are called human laws."[8] Human law is a contextualization of the principles found in Natural Law. Therefore, for Aquinas, law of all types is intrinsically tied to morality and human law is thus inseparable from the moral quality of Natural Law. Human law is only binding insofar as it imitates or participates in Natural Law. Accordingly, Aquinas explains that "A tyrannical law, through not being according to reason, is not a law, absolutely speaking, but rather a perversion of law."[9] William Blackstone provides a more precise summary of this essential point in his renowned *Commentaries on the Laws of England*: "This law of nature, being co-eval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."[10] Blackstone is considered by many to be the quintessential Natural Law theorist in the modern era of philosophy and one of the most influential jurisprudential thinkers of the English-speaking world.

Final Causes

Legal teleology is best explained under the Aristotelean and Thomistic understanding of the final cause. While Aristotle identified four causes—formal, material, efficient, and final—philosophers throughout history have focused on explaining the occurrence or existence of something with the dichotomy of final causation (teleological) and efficient causation (simply causal).[11] The final cause, or end, of anything is the sake for which something happens or exists—its purpose. Hence, to discuss final causes is to assume purposiveness in some regard. Ultimate final causes assume an ultimate, objective purpose to something, such as the purpose of man's existence, but final causes can be limited just to the purposes of a single agent or object. In either case, to claim something has a final cause entails purpose, and in most cases implies an agent or force capable of acting or creating purposively. Something's purpose is the reason for which it exists or occurs, so this reason must either somehow be intrinsic to the order of the universe or supplied by an agent.

While proponents of materialism and scientist assert that the universe can be explained and understood exclusively by efficient causation, common experience testifies that people behave to the contrary. People believe and act as if their lives and actions have objective purpose or value. When people inquire into the meaning of life, the reason for suffering, or the point of trying to be happy, they are searching for a final cause. British philosopher Timothy L. S. Sprigge explains, "In short, to ask what a thing exists for the sake of is here the same as to ask what it is good for."[12] Purpose and final causes, then, entail the good of something, though not necessarily the objective good. In this fashion, Aquinas explains that the effect of law is always to "make those to whom it is given, good, either simply or in some particular respect. … In this way good is found even in things that are bad of themselves: thus a man is called a good robber, because he works in a way that is adapted to his end."[13] Therefore, final causes and the good of something may be discussed in both an objective and relative sense.

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[8] Aquinas, *Summa Theologiae*, I-II, q. 91, a. 3, resp.

[9] Ibid., I-II, q. 92, a. 1, ad. 4.

[10] William Blackstone, *Commentaries on the Laws of England, Volume 1: A Facsimile of the First Edition of 1765-1769* (Chicago, IL: University of Chicago Press, 1979), 41, ProQuest Ebook Central.

[11] Timothy L. S. Sprigge, "Final Causes," Proceedings of the Aristotelian Society, Supplementary Volumes 45 (1971): 149.

[12] Ibid., 170.

[13] Aquinas, *ST*, I-II, q. 92, a. 1, resp.

Development of Final Causes in Western Philosophy

The competing legal philosophies in America have all developed from specific, successive worldviews. The paradigms that gave birth to these legal theories are all laden with philosophical presuppositions. Specific categorical characteristics of competing theories, such as the concept at hand, often cannot be fully understood or determined at all without understanding the wider philosophical stream in which a theory is situated and by which it is nourished. Therefore, to properly understand the legal teleology of the various legal philosophies considered, a review of how Western philosophies have developed in regard to successive worldviews' treatment, view, and use of the notion of final causes will be beneficial.

In the current age, most people understand causality only in the simple, efficient sense, but this has only been the case for the last few centuries. Aristotle's scientific method, including the use of the four causes, remained the predominant philosophy of science in the Western world for almost two millennia, until the close of the sixteenth century. The same could be said of his ideas concerning many subjects, including logic, ethics, and politics. The shift was and is a result of changing worldviews.

Legendary philosopher of science Francis Bacon fathered the skeptical, inductive, and empiricist view of science and scientific knowledge that would become the modern scientific method. Bacon's revolutionary ideas meant rejecting the Aristotelian formal and final causes from scientific consideration. In *The Advancement of Learning*, Bacon writes, "The one part, which is physic [natural science], inquireth and handleth the material and efficient causes; and the other, which is metaphysic, handleth the formal and final causes."[14] Bacon thought that deductive reasoning introduced too many philosophical biases into the study of nature, and that universals were not necessary to explain nature's particulars. While it is possible this distinction could hold true for natural science *per se*, if its conclusions and epistemic claims were limited, Bacon's work laid the foundation for the Enlightenment belief in value-free scientific knowledge, scientism, and the infamous fact-value split.

Aristotle actually anticipated and addressed Bacon's very position in his *Physics*. In the study of nature, material and efficient causes may be able to explain the physical process by which events take place, but without final causality, they cannot explain the characteristic regularity and uniformity of natural processes.[15] A purely basic causal science could not explain why teeth regularly grow in various shapes that are suited to the consumption of different types of food; this must be left up to coincidence. However, as the *Stanford Encyclopedia of Philosophy* notes, Aristotle does not offer a formal proof for the validity of final causes: "Final causality is here introduced as the best explanation for an aspect of nature which otherwise would remain unexplained."[16] The argument is from the coherence criteria of truth, but it does not establish the validity of final causality on independent grounds.

Within the new skeptic and empiricist epistemology of the Enlightenment, such an explanation would not suffice. This led to the radical skepticism of David Hume who formalized the fateful Is/Ought fallacy and the problem of induction. The former claims that one can never

[14] Francis Bacon, *The Advancement of Learning* (Auckland, NZ: Floating Press, 1973), 151, ProQuest Ebook Central.

[15] Andrea Falcon, "Aristotle on Causality," ed. Edward N. Zalta, *The Stanford Encyclopedia of Philosophy* (Metaphysics Research Lab, Stanford University, 2022), https://plato.stanford.edu/archives/spr2022/entries/aristotle-causality/.

[16] Ibid.

derive a normative principle from descriptive knowledge; it is impossible to claim something *ought* to be a certain way simply because it *is* that way. Hume turned the fact-value split into a chasm. The problem of induction claims that any conclusions drawn from a collection of observations whose knowledge claims go beyond what is contained in those observations are ultimately unjustified. This includes the principle of the uniformity of nature—the notion that things will continue to behave in the future as they have in the past, including such principles as the laws of physics. Just because the sun has risen every day of your life does not necessarily mean it will rise tomorrow. Ultimately, sequences of events are not linked by *a priori* reasoning, so causality itself is an inductive inference. For Hume, all that man can be sure of concerning the physical world is his sense observations.

The Enlightenment ideals of the power of reason, science, and man's senses soon spread to each sphere of life. Final causes, religious beliefs, transcendent values, and metaphysics were all subjugated to the professed "objective" and "value-neutral" knowledge that came from science and rationalism. In her book, *Total Truth: Liberating Christianity from its Cultural Captivity*, Nancy Pearcey explains how the methodology of Baconian science and the fact-value split of the Enlightenment crept into all other disciplines beyond science under the guise of neutrality; these other fields unknowingly also embraced the naturalist, empiricist, and materialist philosophical assumptions that were behind the methodology.[17] After Kant established the limits of human reason, the West began to awaken to the myth of value-neutral knowledge, the unreliability of the senses, and the inherent influence that each subjective mind has on its interpretation of the world. Without a structure to bridge the gap, the West moved into the postmodern period with its relativism, nihilism, and historicism. In the modern period, ultimate final causes might exist, but could not be known with certainty, and thus were excluded from the professional disciplines. Postmodernism, on the other hand, denies the existence of any ultimate or absolute final causes, yet has resurrected the importance of immediate final causes by asserting consequentialist moral imperatives into the essence of its philosophy.

Legal Teleology: Three Views

Most legal theories deal heavily with the fundamental basis of law, but the modern world is less concerned with the final cause of law. Leo Strauss, the renowned twentieth-century German-American political philosopher and historian of philosophy, wrote momentous works contrasting the philosophies of what he called the Ancients and the Moderns. Strauss argues that the modern approach to philosophy, beginning with Machiavelli, abandoned the idea that moral excellence was the end of philosophy, politics, and law. Liberalism became about complete freedom and rejected the purposeful nature of law and politics, denying a transcendent or religious teleology to life itself. Such an abandonment eventually led to relativism, scientism, historicism, and nihilism in the twentieth century.[18] Teleology is an important and overlooked evaluative criterion for theories of jurisprudence and it is on this basis that the following theories will be considered.

[17] Nancy Pearcey, "Evangelicals' Two-Story Truth" in *Total Truth: Liberating Christianity from Its Cultural Captivity (Study Guide Edition)*, (Wheaton, IL: Crossway, 2008), 299-303, ProQuest Ebook Central.

[18] Thomas L. Pangle, "Epilogue: Leo Strauss and the History of Political Philosophy" in *History of Political Philosophy*, ed. Leo Strauss and Joseph Cropsey, 3rd. ed. (Chicago, IL: University of Chicago Press, 1987), 907–908.

Natural Law

The legal teleology of Thomistic jurisprudence can be regarded as two-fold. As discussed above, the purpose of law to Aquinas is the common good. The end of human law is the common good of the community. However, the common good is entirely conceived of as rational to pursue, as in the rational interest of man and the community. Man, being a social creature and an integral member of the community, has many of his own private goods intertwined with the common good.[19] Responsibilities and duties arise from this inherent relationship, and the perfect community has both perfectly functioning individuals and perfect functioning between individuals. There is a common analogy made to the human body: a body needs healthy members and proper cooperation between the members for the health of the whole body. The effect of law is to make men good and virtuous, but this is because virtue is needed for the common good of society.

The instrumental end of human law is to conform to the law of nature—its purpose is to echo, contextualize, and apply the rational principles of Natural Law to the realities of human communities. The moral nature of Natural Law and the eternal law provide grounding for ethical claims of whether a law is objectively right or wrong, good or bad. It is this claimed objective foundation that allows Natural Law theory to stand and assert its criteria for law's legitimacy, against and by which judges may rule. Such a groundwork is missing from Justice Jackson's explication of her legal philosophy.

Human law is supposed to derive from Natural Law, and Natural Law is the dictate of reason. In light of the challenges to discerning transcendent, objective, normative truths, or to their very existence, provided by modernism and postmodernism, Aquinas' defense of how man can determine the principles of Natural Law is worth considering. Indeed, belief in the inability to definitively know such objective, subject-independent truths that resulted from skepticism and Kant's transcendental realism led to the rejection of that premise, though Kant himself would have disagreed with responding to his philosophy in such a manner. Furthermore, the desire to separate morality and reason from revelation is also at fault. Aquinas certainly believed that revelation was necessary for the knowledge of reality and useful for the understanding of the moral order, especially to counteract the ignorance into which man is born. However, he also understood the dilemma of moral accountability for those who had never heard of the Holy Scriptures.

To solve this dilemma, Aquinas once again draws his answer from both biblical principles and Greek philosophy. Romans 2 notes that the law is written on the hearts of the Gentiles, such that they act according to the law even though they did not receive it directly from God as Israel had. Aquinas makes sense of this natural understanding not with inherent intuitive knowledge or a faculty, but once again with man's rational nature. He writes, "the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason; because both are self-evident principles."[20] Speculative reason is pure theoretical reason, dealing with absolute necessity, e.g., logic. Practical reason deals with how one ought to act, taking into account human particulars, but still logically reasoning from premises to a desired outcome. Once again, following Aristotelean logic, Aquinas claims that the first self-evident principle of speculative reason is the laws of logic, specifically the law of non-contradiction. It arises simply by virtue of *a priori* analytic reasoning of the notions of being and non-being. Similarly, Aquinas explains the analogy to the first principle of practical reason:

[19] Aquinas, *ST*, I-II, q. 90, a. 2, resp.
[20] Ibid., q. 94, a. 2, resp.

> Now as "being" is the first thing that falls under the apprehension simply, so "good" is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good. Consequently the first principle of practical reason is one founded on the notion of good, viz. that "good is that which all things seek after." Hence this is the first precept of law, that "good is to be done and pursued, and evil is to be avoided." All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.[21]

Since man is rational by nature, the rational is the good, and good has the nature of an end (a final cause), man has a natural inclination to a number of goods that are also supposedly self-evident from the conditions described above. These are known as the basic goods, including an inclination to live, to know truth, and to know God, among others.

These principles have been disputed by every competing theory since, submitting alternative conceptions of man's basic goods. However, due to due to postmodernism's outright denial of truth, the existence of self-evident principles of any kind is now—more than ever—clouded by doubt. One now can, apparently, deny the existence of truth. In such a scenario, the first principles of speculative logic would not be self-evident; they are only self-evident under the presupposition of truth's existence. Similarly, Aquinas' principles are not self-evident if one denies purpose, ultimate final causes, or goodness, but with the acceptance of the assumption of morality and goodness, Aquinas' first principle of practical reason does appear self-evident by virtue of the meaning of good and evil. Kant also based his philosophical system upon the distinction between speculative and practical reason, which is why he claims, in the *Grounding for the Metaphysics of Morals*, that the existence of a rational Natural Law follows necessarily from the axiom of the existence of morality: "Everyone must admit that if a law is to be morally valid, i.e., is to be valid as a ground of obligation, then it must carry with it absolute necessity."[22] However, he does not claim morality is necessarily self-evident, but rather the justification for developing a metaphysics of morals "is evident from the common idea of duty and of moral laws."[23] From a biblical perspective, there are certainly things that are absolutely true, but one's presuppositions dictate what is considered self-evident. Therefore, philosophical and worldview claims must be assessed on the coherence criteria of truth; the most belief-worthy system is that which can explain and make sense of all the evidence and its entailments.

Legal Positivism

Legal positivism holds that law is simply what the sovereign declares it to be; what the sovereign posits. Morality and Natural Law are not considered criteria for the law's legitimacy. Legal positivism was largely developed during the eighteenth and nineteenth centuries. Thomas Hobbes is often considered the father of modern legal positivism since he argued that law was entirely at the discretion of the sovereign.[24] Law is valid only if it has been created by the correct authority

[21] Ibid.

[22] Immanuel Kant, *Grounding for the Metaphysics of Morals: with On a Supposed Right to Lie Because of Philanthropic Concerns*, trans. James W. Ellington, 3rd ed., (Indianapolis, IN: Hackett Publishing Company, Inc., 1993), 2.

[23] Ibid.

[24] "To the care of the Soveraign, belongeth the making of Good Lawes. But what is a good Law? By a Good Law, I mean not a Just Law: for no Law can be Unjust. The Law is made by the Soveraign Power, and all that

and if that authority followed the appropriate procedures. Law, in this case, still has a nature, and follows traditional legal theory in retaining objective meaning of law—that law can be applied fairly and correctly according to its meaning. Hobbesian legal positivism actually contained apparent inconsistencies in the morality of law in light of Hobbes' social contract theory and view of covenants. In the last few centuries, legal positivism has been characterized by three main principles.[25] First, law exists and is valid as a function of certain social facts, irrespective of its merits. Second, the validity of the social facts is authoritative, for the legitimacy of law is by virtue of social conventions. Finally, there is no necessary relation between the concepts of law and morality.

In legal positivism, one can see the modernist fact-value split's influence on legal studies. The existence of law must be posited on what it *is*, not what it *ought* to be. Emerging from the Enlightenment, law is still meant to be rational and applied rationally, but this rationality is not linked to morality or goodness. Thus, legal positivism fails to explain exactly how the sovereign decides which law to pass and does not help in determining whether a law is good or bad, only whether it is valid or invalid. Furthermore, it does not explain how to discern whether the process is valid. The democratic absolutizing of liberalism and individual freedom that emerged from Enlightenment principles is evident; the validity of the process is, supposedly, based upon social conventions, effectively leaving the ultimate principles and legitimacy of law to be validated and determined by the masses, by mobocracy with no objective external basis.

Critical Legal Theory

The epitaph on Karl Marx's grave is adapted from the eleventh thesis of his posthumously published *Theses on Feuerbach*. The original reads, "The philosophers have only interpreted the world, in various ways; the point is to change it."[26] Despite the widespread and amorphous shape of critical theory and critical legal studies (CLS), Marx's eleventh thesis provides one of the few commonalities between all of them: a belief in the transformative and revolutionary purpose of theory and scholars.

Building upon the other commonality, that the basic structure of society and life is built on power dynamics in a system of oppressors and oppressed, CLS generally sees law as functioning to serve and institutionalize the oppressive interests of those in power in society. CLS was heavily influenced by, if not spawned by, legal realism—the view that judges do not decide cases based on rational principles of objective interpretation pulling from legal precedent, but entirely based on their personality, background, desires, and mood.[27] It was a full determinist, Freudian, social Darwinist view of law. Legal realism claimed that legal decisions are illogical, indeterminate, and often contradictory. However, it could not descriptively explain why judges used precedent and legal guides to inform their decisions. Critical legal studies picked up where legal realism left off

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is done by such Power, is warranted, and owned by every one of the people; and that which every man will have so, no man can say is unjust. … A good Law is that, which is Needfull, for the Good Of The People, and withall Perspicuous." Thomas Hobbes, *Leviathan* (Minneapolis, MN: Lerner Publishing Group, 2018), 333, ProQuest Ebook Central.

[25] Kenneth Einar Himma, "Philosophy of Law," *The Internet Encyclopedia of Philosophy*, n.d., accessed April 20, 2022, https://iep.utm.edu/law-phil/.

[26] Karl Marx, "Theses on Feuerbach," in *Karl Marx and Frederick Engels: Selected Works*, trans. W. Lough (Moscow, USSR: Progress Publishers, 1969), 15, https://www.marxists.org/archive/marx/works/1845/theses/theses.htm.

[27] Himma, "Philosophy of Law."

and solved this query by positing that all institutions served to protect the privileged in society. CLS proponents argued that judges utilized whichever past legal decisions advanced their interests, meaning that the principle of *stare decisis* was simply a way that the oppressive majority groups gave off the façade of objectivity.

In his book, *The Death of Truth*, Dennis McCallum expounds on many of the central tenets of critical legal studies. Central to postmodernism and critical legal studies are the ideas of absolute relativity, moral relativism, social construction, and the value equality of perspectives. McCallum summarizes the foundational beliefs of CLS:

> …we do not *grasp* reality, we *construct* reality. All knowledge depends on social convention, especially language, which provides the building blocks of law. Since we have no foundation for objective knowledge of any kind, law has no foundation but power. Because it has no foundation in truth or reality, law does not deserve our allegiance. … Principles of law never reflect universal truths, they argue, only the distribution of power among social groups. According to these scholars, it is senseless to talk about whether a law is right or wrong, moral or amoral. Law is whatever a society's most powerful cultural group makes it.[28]

Law and politics are the same, for postmodern legal theorists. The questions are of power, not right. Revealingly, McCallum goes on to list four principles of CLS: first, law seeks wrongful legitimation; second, the law is plagued by contradictions; third, there are no foundational principles; and fourth, law is not neutral.[29] These descriptive theories provide the foundation for CLS' revolutionary advocacy of using law and politics to remake society in a postmodern image.

Analysis

The Natural Law theory of jurisprudence is superior to both legal positivism and critical legal studies on its basis of legal teleology. All three theories claim to function as both descriptive theories and normative theories. Both descriptive and normative theories can be evaluated for logical consistency as well as explanatory scope and power. There is more widespread agreement regarding the consistency or falsifiability of descriptive theories, due to the abstract nature and numerous positions on ethical principles, but, contrary to modernist belief, both require interpretation. The validity of both will rest to some degree on the interpreter's worldview.

The aforementioned distinction between the objective and relative senses of final causes is significant for understanding and assessing the legal teleology of different philosophies of law. Legal positivism does not have a single unified final cause in a relative or absolute sense. Since it denies an essential connection between law and morality, law does not serve an ultimate final cause at all. Legal positivism does not inherently deny ultimate final causes, but relegates them from the sphere of the problem of law. This leads to an obvious problem of political obligation. If law is independent of morality and final causes, there is no true obligation to obey the law since true obligation belong to the realm of duty and ethics. There may be a legal duty, but there is no ultimate purpose or moral responsibility. Ultimately, on moral grounds, positivism and CLS agree that there is no objective duty to obey the law. A lack of such an obligation provides troubling grounds for a society, to say the least.

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[28] Dennis McCallum, *The Death of Truth* (Minneapolis, MN: Bethany House Publishers, 1996), 165.
[29] Ibid., 168-170.

There exists a stimulating difference between the amoral propositions put forth by positivists and the inherent moral claims in critical legal theories. Positivism yet held on to the notion of essentialism being relevant to law—that law had a nature—though it still trended to relativism and dispensed with moral qualities. CLS, on the other hand, denies any transcendent, purposeful essence of law, but retains its moral characteristics. It is only possible to claim that oppression is wrong if one holds to an ethical system. Herein lies an inconsistency with CLS as well as its appeal. CLS at least feigns a moral imperative, as Marxist theories, in general, have an internally consistent teleology aimed toward ultimate equality. While solving some of the problems of the positivists, CLS also denies the objective nature of law since truth is subjective. CLS attempt to toe this line between objective moral imperatives and subjective realities.

The greatest issue here is a lack of grounding for either theory. Positivism attempts to be amoral in law, but CLS ultimately cannot justify itself. It denies objective moral values, yet uses objective moral language, such as "social justice," "structural injustice," "wrongful legitimation," "should use their power," etc. There is a subjective final cause in CLS, which seeks social justice and equality. However, by denying absolute truth, postmodern theorists have no grounding for why these should ultimately be followed. Those moral claims are truth claims, and in postmodern thought they cannot extend beyond the subject. To do so would be intolerant, since any truth claim, even a negative one, is exclusive. The terms justice and right cannot have real meaning in CLS. As McCallum says, "When we accept what postmodernism preaches, we lose all basis for calling the system to fairness. We instead challenge minority populations to pursue power so they can take their turn."[30]

Furthermore, in Thomistic Natural Law, the law is only valid insofar as it promotes the common good. Aquinas writes, "Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save in so far as it regards the common good."[31] In this regard, the teleology of Natural Law provides a prohibition against the use of law for purely private gain that serves only special interests. This was a fundamental principle of the founding era of the United States, and one that is not found in the teleological principles, in so far as they exist, of legal positivism or CLS. If law can be whatever the sovereign wants or whatever the group in power wishes it to be, there can be no protection for minority groups or against legislation that completely serves private, corporate, or totalitarian interests. Even CLS' focus on equalizing societal conditions often results in trampling on the rights of majority groups, something protected by Natural Law theory since natural rights are necessary for the exercise and development of virtue.

Writing of philosophical positivism with its fact-value split, German-American political philosopher Eric Voegelin shows how any theory which denies value judgment fails to justify its own existence or belief-worthiness. In claiming that the past doctrinal view of truth was just a phase of human consciousness and that its objectivity was an illusion—very similar to the historicism of Marxian analysis—Voegelin notes two issues: "First, it obscures the fallacy of misplaced concreteness which its background premise has taken over from doctrinal truth; and second, it hides the implied ideology which carves history into a series of blocklike segments, each governed by a state of consciousness."[32] Positivism and critical theory both fall victim to this critique.

[30] McCallum, *Death of Truth*, 175.

[31] Aquinas, *ST*, I-II, q. 90, a. 2, resp.

[32] Leo Strauss et al., *Faith and Political Philosophy: The Correspondence Between Leo Strauss and Eric Voegelin, 1934-1964* (University Park, PA: Pennsylvania State University Press, 1993), 193.

Leo Strauss characterized the modern Western philosophers as having a specific purpose: "the construction of a universal society of free and equal nations of free and equal men and women enjoying universal affluence, and therefore universal justice and happiness, through science understood as the conquest of nature in the service of human power."[33] On the other hand, the ancient philosophers understood the plurality and natural inequalities present in political societies, saw science as the contemplation of nature, and pursued virtue, so much so that luxury was avoided due to "the corruption it engenders." [34] Strauss rightfully distinguishes the two views by the final cause. The Modern philosophers could never bring about just societies since their desired ends (complete equality of outcome, libertarian freedom, and humanistic luxury) were not ends-in-themselves—not the true, ultimate final causes. Western politics and legal theories will need to reintroduce the final cause in the twenty-first century as an essential criterion for the understanding of nature, truth, and philosophy in order to right the course of its horrid twentieth-century ideological past.

Conclusion

The war of ideas continues in every discipline and the legal system is no exception. American jurisprudential thought has been off course for decades—skewing toward theories with arguably no grounding in reality. Understanding the philosophies of the West's past is necessary to understand the present, but each perspective must be confronted and critically assessed if the courts are to be a trustworthy institution. Thomistic Natural Law theory provides the most belief-worthy legal theory by the criteria of legal teleology in comparison to legal positivism and critical legal studies, largely because it is the only theory herein considered that has a true, objective final cause of law. The latter two perspectives fail to provide a sustainable foundation for jurisprudence and cannot justify their own existence. The American people would be wise to follow the path of Aquinas and Leo Strauss. For America to honor its founding principles and align its historic ideals with its current system, the nation must reestablish final causes in the assessment of legal, political, and philosophical pursuits.

[33] Pangle, *History*, 908.
[34] Ibid.

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