

NATURAL LAW SCHOOL OF JURISPRUDENCE

Natural Law - According to this School there are certain laws which are immutable and eternal. These laws are a constant body of permanent truths, unaffected by human beliefs and attitudes. (Also called moral/divine law, law of reason, law of god)

Natural law is based on an a priori proposition.

a priori knowledge, knowledge that is acquired independently of any particular experience.

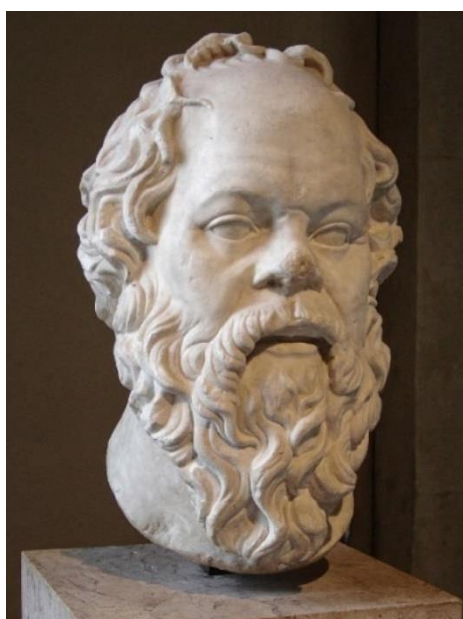
a posteriori knowledge, also called empirical knowledge, is derived from experience.

Development of Natural Law theories can be divided into 4 time periods

1. Ancient Period (Socrates, Plato, Aristotle, Zeno Cicero)
2. Medieval Period (Thomas Aquinas)
3. Renaissance Period (Hobbes, Locke, Rousseau)
4. Modern Period (Stammler, Rawls, Hall)

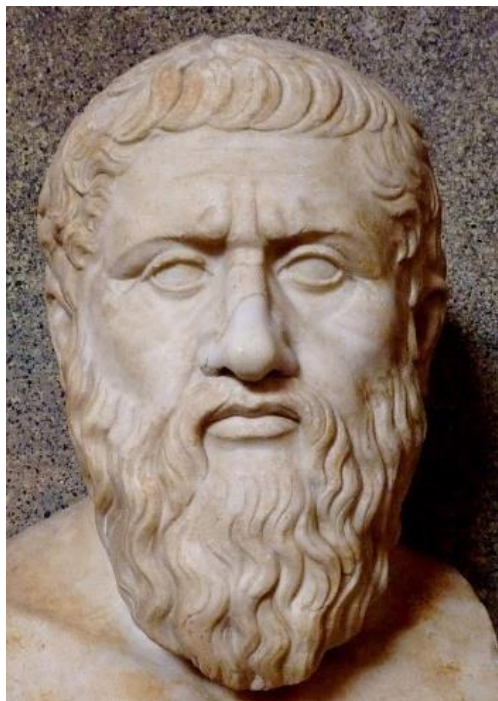
Ancient Period (2000-2500 years ago)

GREECE



Socrates – Defined ‘Virtue’ which basically was the concept of good. According to him every man possessed virtue according to which he can critically evaluate the positive law. Socrates developed an alternative method of teaching, known as the Socratic Method. The principle underlying the Socratic method is that students learn through the use of critical thinking, reasoning, and logic. This technique involves finding holes in their own theories and then patching them up. Our current “scientific method” is inspired by the ‘Socratic method’,

in 399 BC, Socrates was put on trial and executed for “corrupting the young and believing in strange gods.”



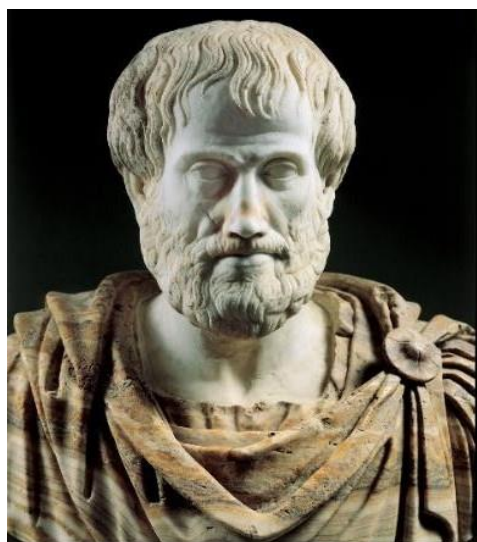
Famous Works

- The Trial and death of Socrates
- The Republic
- Apology
- The Symposium

Plato – Student of Socrates

The world knows about Socrates through Plato's writings. Plato gave the **'Doctrine of Forms'**, according to him 'forms' are transcended archetypes that exist

independently of physical world, independently of human mind, independently of space and time. This concept is known as 'Idealism' (believing in or pursuing some perfect vision or belief). For Plato the forms of 'goodness', 'virtue', 'honesty' were eternal and immutable because they are given to all men in equal measure so that men can have a sense of justice.



Famous Works

- The Politics
- Ethics

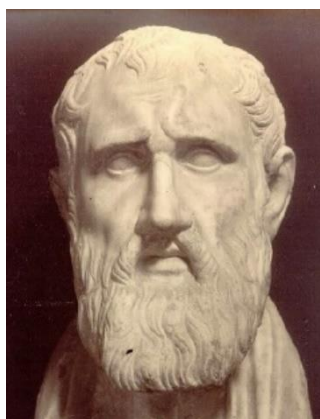
Aristotle – Student of Plato

Believed in Teleology(finality)

(Everything that exists has a pre-determined end.) Aristotle rejected

Plato's theory of Forms but not the notion of form itself. For Aristotle, forms do not exist independently of things—every form is the form of something. A “substantial” form is a kind that is attributed to a thing, without which that thing would be of a different kind or would cease to exist altogether.

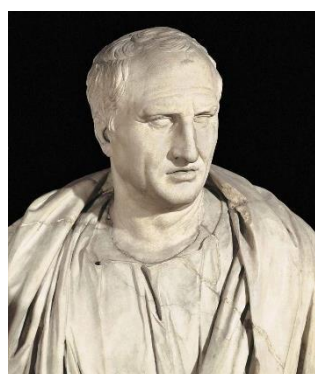
Rome



Zeno – Was once a wealthy merchant but lost everything, was reading Socrates and became interested in philosophy. He then founded Stoicism (word originated from ‘Stoa Poikile’ a building where zeno studied with his students), his followers were known as stoics. Roman Empire was influenced by stoicism and thus paid high tribute to ‘Natural law’ because stoicism was basically a branch of natural law theory.

Romans made three divisions in law.

- **jus civile** (civil law for roman citizens only)
- **jus naturalis** (principles of natural law)
- **jus gentium** (rules applied to foreigners made by magistrates on basis of principles of natural law, also one of the first forms of international law)



Cicero – Roman Philosopher, stated that law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite

Medieval Period (10th-12 Century)

Catholic philosophers and theologians of the Middle Ages gave a new theory of 'Natural Law'. Though they too gave it theological basis, they departed from the orthodoxy of early Christian Fathers. Their views are more logical and systematic.



Saint Thomas Aquinas

Famous Works

Summa Theologica

He divided the law into four stages.

1. Law of God
2. Natural law (Revealed through 'reason')
3. Divine law (Law of Scriptures)
4. Human laws (Positive Law)

Natural law is that part which reveals itself in natural reason. This is applied by human beings to govern their affairs and relations.

For Divine Law church is the authority to interpret it. He basically strengthened the church's position by giving reasoning to what was earlier just faith. Strengthened the supremacy of church by giving a rational argument in favour of religion and church.

According to Aquinas positive law must conform to natural law, positive law is valid only to the extent to which it is compatible with natural law.

Renaissance Period (14th – 17th Century)

The period of renaissance in the history of development of Natural Law may also be called the modern classical era which is marked by rationalism and emergence of new ideas in different fields of knowledge.

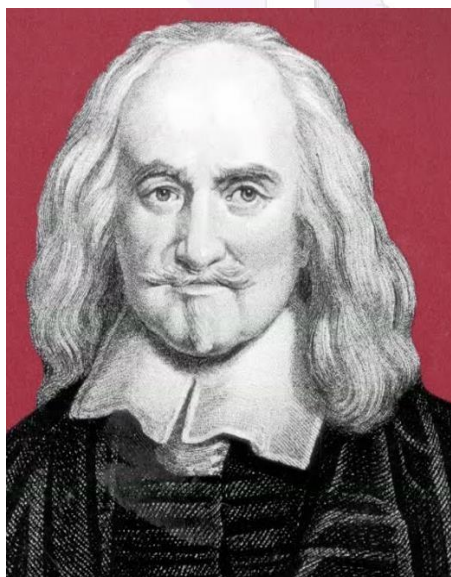
A very important theory which emerged in this time period was the **‘Social Contract Theory’**

According to this theory there is a ‘state of nature’ in which there are no rights and no duties on anyone, then humans came together and formed a ‘Social contract’ that is basically a contract that everyone has certain rights and those rights are enforced by putting certain duties on everyone. A simple example is that everyone has right to life, so every person has duty to not kill.

Different Philosophers made their own version of ‘Social Contract Theory’

We will read about 3 philosophers in Social Contract Theory which are Hobbes, Locke and Rousseau:

Thomas Hobbes



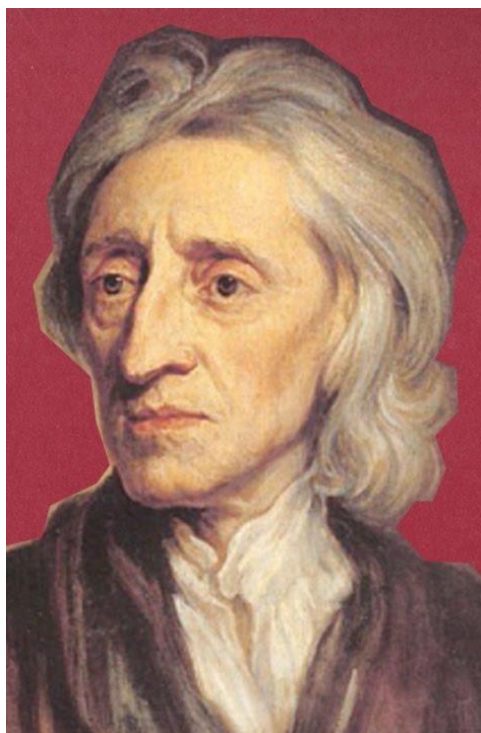
Famous Works

- Leviathan
- Behemoth

In his state of nature man always had a fear of instant death, it was a horrible place to live in.

So, people formed a Social

Contract and gave all the power to a ‘State’ which becomes the sovereign and is responsible for providing security for everyone’s right to life and an order among all in the society. His book ‘Leviathan’ argues for a social contract and rule by an absolute sovereign. Hobbes wrote that civil war and the brute situation of a state of nature ("the war of all against all") could only be avoided by strong, undivided government, so the strong invincible creature ‘leviathan’ is the government here. Hobbes theory of natural law supports the idea of absolute authority of the sovereign i.e. a super stable and secure government.

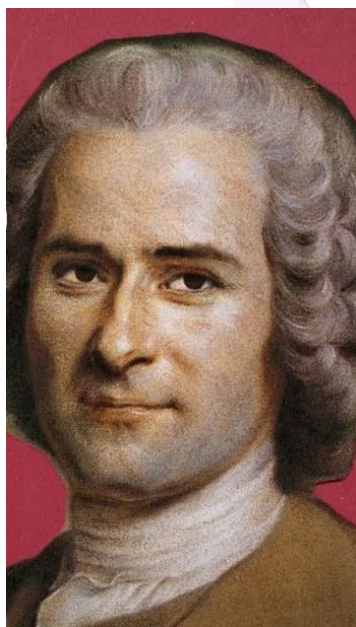
**Famous Work**

Two Treatise of Government

John Locke

Locke focused more on individualism, in his social contract, people don't give all their rights to the 'sovereign' but only a part of their rights, Locke supported Individual liberty and focused on right to property and liberty with the right to life in his state of nature.

Unlike Hobbes, Locke was of the opinion that the sovereigns should not be unlimited. The individual should be able to protest against the government and overthrow it, if the government is not able to protect the individual's rights.

**Famous Works**

- The Social Contract
- Confessions
- Discourse on Equality

Jean-Jacques Rousseau

According to Rousseau man entered into a contract in order to preserve the rights of equality and freedom, they surrendered their rights not to a single individual but to the community

as a whole which Rousseau calls it as the general will.

Theory of General Will- The general will is of all people, so you should obey it because it is in a way your will too. The government and laws both should be adhering to the general will, interest of community is more important than interest of individual according to Rousseau.

Modern Period (19th – 21st Century)

The advent of Analytical school which propagated positivism over natural law destroyed the theoretical basis of natural law.

Many famous 19th century philosophers didn't buy the concept of a priori knowledge, i.e. there are certain immutable truths.

David Hume said that natural laws says that values are inherent in nature, which is not true, the values and also the concept of justice varies a lot from place to place, if there would have been a perfect, complete system which can be discovered by man then won't be so many divergent interpretations of law throughout the world.

Bentham described natural law as "Simple nonsense; natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts."

Austin didn't believe in any natural rights, according to him all rights are created by state and enforced by state. Didn't acknowledged the social contract theory, he said the people did not consented to obey the state, the state forces them to obey the commands of the state and commands of state are the law.

In 20th century there were certain attempts to Revive Natural Law.

Because it was felt that there is need for some basic values and standards for society, it was realized that society would always need an ideal of justice.

Stammler (1856-1938) – was an exponent of 'Natural law with a variable content' which is hybrid theory between analytical and natural law school

According to him there is technical legal science and theoretical legal science.

First one relates with the content of law, second one relates with the ultimate principles of law.

So basically, laws can be different for different societies which will be based on **a posteriori knowledge**, but the ends to be achieved by those laws are ascertainable by the **a priori method**.

John Rawls (1921-2002) – in his book 'A theory of justice' also tries to find a middle ground between utilitarianism and natural law theories by using hypothetical concepts of 'Original Position' and 'Veil of ignorance' to determine the structure of society.

Jerome Hall (1901-1992) – He was of the view that it is time to reunite all disciplines. Jurisprudence should be 'adequate' in the sense that it will combine Positivist, Naturalist and Socialist study of law he termed this 'integrative jurisprudence'
