The Basic Conflict within Natural Law Theory

The Classical-Medieval Synthesis

The classical Stoic and Roman view of natural law, along with its medieval Christian development and synthesis, made distinctions between the eternal, divine law and the natural, human law.

1. Laws are those rules regarding action made for the community by the one who has care for the community.
2. Divine providence, as the universal one who cares for the human community, gives eternal law.
3. Natural law's participation in the eternal law explains how it can be both diverse yet still have a consensus that is greater than any one culture.
4. Natural law is knowable by all humans and is placed in their hearts, their moral center, by God, though how this takes place is much debated—for some, there are practical and pedagogical elements in imparting it; one cultivates moral desires by being exposed to the natural law, and this cultivation can be imperfect and applied in imperfect codes.
5. Even if the sinfulness of humanity has weakened moral and ethical understanding, the rationality and ethical traditions of cultures have a place in understanding what is right and wrong. Human beings, as created by God, are rational beings. It is in our nature to think through and apply matters of principle.
6. Prudential rationality (i.e. practical reason) puts the natural law into practice. Laws can be considered right if they bring about some good. All humans incline, however imperfectly, to the good, and human actions that imperfectly carry out the good are, therefore, often defective.
7. Some things, then, are naturally good. These goods are not just subjective; they exist outside ourselves and help perfect our defects. Mere convention or custom, as well as simple community consensus, cannot be the basis for natural law.
8. The good to be done is justice concretely carried out in social life, and those positive, actual laws are needed in every polity to put the natural law into practice, as well as to restrain human wickedness.
9. In practice natural law can involve a catalogue of natural goods; a master rule; a prudential method, and/or a set of embodied virtues.
10. Even defective laws are often so because they perceive a picture of the good in question in a distorted manner.
11. The natural law, in this sense, acts as a guide to the positive law's practical attempts at pursuing the good and restricts itself to the general truths of social benevolence, familial life, and so forth.

The Enlightenment Shift and Modernist Rejection

In the sixteenth and seventeenth centuries, this understanding of natural law began to change.

1. At first, the natural law became more associated with divine and human commands, and the attempt was to create a perfect system that enshrined the natural law.
2. But quickly the need for divine law was jettisoned, and natural law became increasingly those systems that were purported to be based upon purely animal needs derived from "a state of nature," (either violent or paradisial) and in turn, these theories gave rise to the language of social contract and of political rights.
3. Rights accorded to individuals alone were defined as those actions guaranteed to be either free of harsh state-restriction or as possessing a minimum of government involvement. Social life became

redefined as assessing the needs of separate persons acting in voluntary association rather than within larger natural polities created by God.

4. The independent status of family, clan, community, or parish was discounted as having any real existence (i.e. subsidiarity), while human reason acts autonomously to satisfy basic self-interest and desires and to achieve human happiness.
5. Eventually modern positivism even set these aside for a variety of attempts to base law on social sentiment, utility, and simply strongly held emotions and opinions.
6. There can be no unified nomic ideal behind the infinitely diversity of human cultures and mores. There can only be temporary social constructions—the general will of a polity arising out of irrational convictions. There is no law that is not artificial and positive.
7. Human rights are nothing more than popular will afforded for certain common ends or even for the benefit of only certain classes or groups.
8. All law is coercive because power is what keeps any law workable, and laws are only as good as the willingness to abide by them and enforce them.