

# "Natural Law"

## PRINCIPLES OF BUSINESS LAW

### CHAPTER 1: LAW AND ITS SOURCES

#### 3. Schools of Legal Thought

Throughout history, legal scholars have written about the nature and origin of law, its purposes, and the factors that influence its development. Legal philosophers have generally acknowledged that logic, history, custom, religion, and social utility are among the major influences and forces that shape and direct the law. But there has been disagreement as to the relative importance of these forces, and the influence of each has varied throughout history. Legal philosophers and the theories they have expounded may be grouped into five general categories or schools of legal thought—the historical, the analytical, the natural, the sociological, and the realist.

c. **Natural Law** is "a rule of conduct arising out of the natural relations of human beings established by the Creator, existing prior to any positive precept, discovered by right, reason and the rational intelligence of man." (Kent)

This definition gives significance to the idea that man by nature seeks an ideal of absolute right and justice as a higher law by which to measure all other rules of conduct.

Law, when set against a background of divine principles, becomes a rule of reason, pronounced by reasonable men for the benefit of mankind and the establishment of the good community. Man as a reasonable being is able to distinguish between good and evil. Above him there exists law resting on reason and divine authority, which validates man-made law. Thus, when the state by legislation or by judicial process lays down rules of conduct that are unfair, unreasonable, or inimicable to the common good, they are in violation of natural and divine law.

Blackstone, notwithstanding his definition of law in terms of a command from a sovereign, in his *Commentaries*, says, "This law of nature being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding all over the globe in all countries and at all times; no human laws are of any validity if contrary to this. . . ."

Natural law, nurtured by the church, softened the rigid common law of England; became the basis of equity; and, finding its way to America is expressed in the Declaration of Independence in the words "certain unalienable Rights, . . . Life, Liberty and the pursuit of Happiness." Professor Friedman, in *Legal Theory*, observed:

Natural law thinking in the United States undoubtedly inspired the fathers of the Constitution and it has dominated the Supreme Court more than any other law court in the world. Such thinking has not prevented the court from vacillating from the unconditional condemnation of legislative regulation of social and economic conditions to its almost unrestricted recognition, from the recognition of almost unrestricted freedom of speech and assembly to virtual outlawing of a political party, and, on the other hand, from the toleration of the most blatant discrimination against Negroes to the strong protection given in recent judgments. Yet the American Constitution gives as near an approach to the unconditional embodiment of natural rights as can be imagined.

PRENTICE-HALL, INC., Englewood Cliffs, New Jersey

WILLIAM J. ROBERT  
Professor of Business Law  
University of Oregon

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ROBERT N. CORLEY  
Professor of Business Law  
and Business Administration  
University of Illinois