NATURAL LAW IN JUDAISM REVISITED

Una revisión sobre el Derecho Natural en el Judaísmo

Santiago Legarre[1]

Recibido: 29 de abril de 2016
Aprobado: 30 de abril de 2016

Resumen: El autor analiza la conexión entre el Derecho Natural y el Derecho Positivo en las fuentes del Judaísmo de acuerdo al estudio del Rabí Novak. Al mismo tiempo, realiza una comparación con la tradición clásica en este tema, especialmente con el pensamiento de Tomás de Aquino y las ideas sobre el Derecho Natural en el pensador australiano John Finnis.

Palabras claves: Derecho Natural - Judaísmo - Novak - Antiguo Testamento - Finnis.

Abstract: The author analyzes the connection between Natural Law and Positive Law in the sources of Judaism according to the study of Rabbi Novak. At the same time it makes a comparison with the Classical Tradition in this area, especially with the thought of Thomas Aquinas and the ideas on Natural Law in the Australian philosopher John Finnis.

Keywords: Natural Law - Judaism - Novak - Ancien Testament – Finnis.

1 Professor of Law, Pontificia Universidad Católica Argentina; Investigador Independiente, CONICET. Visiting Professor, University of Notre Dame Law School (USA) and Strathmore Law School (Kenya). LL.B. (UCA), M.St. (Oxford), Ph.D. (Universidad de Buenos Aires). This article was the basis for a presentation at the "Judaism, Christianity, and the West". Conference, in whose proceedings it is due to be included. It was held by the Acton Institute in Jerusalem, 9 September 2015. Thanks much to Samuel Gregg, Gregory Mitchel and Christophe Rico for insightful comments. Correo electrónico: santiagolegarre@uca.edu.ar.

In his book, *Natural Law in Judaism*, published in 1998 by Oxford University Press, David Novak successfully uncovered the presence of natural law in the Old Testament. I am not an expert on Jewish contributions to natural law theory; consequently, I will rely heavily on Rabbi Novak's learned account with regard to the Jewish sources discussed in this paper. For my part, I will explore instead the classical natural law tradition going from Aristotle (before Christ) to Aquinas (in the Middle Ages) to John Finnis (in the twentieth century).

Abiding by the motto *non multa sed multum*, rather than trying to cover a myriad of topics that are relevant for the ways in which natural law theory can contribute to the understanding of freedom, I will focus on one: the relevance of the connection between Natural Law and the Positive Laws –what is known in the classical tradition as "derivation of positive from Natural Law". I will use in this paper Rabbi Novak's argument as my starting point and I will try to develop it further by applying a crucial distinction in the thought of Thomas Aquinas –that between two modes of derivation of human, Positive Law from Natural Law– to the two ways in which Natural Law is present in the Positive Law of God.

I. Natural Law Before the Covenant

I always wonder where some now-famous expressions come from. Was nothing "taken seriously" until Ronald Dworkin published his first book, *Taking Rights Seriously*? Did Evelyn Waugh patent revisits when he wrote his novel *Brideshead Revisited*? Whatever the answer, I find myself, now and then –like many others– using expressions such as these. I have borrowed from Waugh before[2] and I shall do so again here as I choose to title this contribution "Natural Law in Judaism Revisited".

Novak's pioneer visit to natural law in Judaism makes, in my view, three crucial moves. First, Novak defines Natural Law. Second, he insists that a Natural Law perspective may be present even if it is not referred to by name. Third, with the former in mind he identifies instances of Natural Law in the early part of what we Christians call the Old Testament.

What is meant by "Natural Law" or "law of nature"? In order to define Natural Law it is important to understand that this notion predates Christianity. It is well known that the idea of Natural Law was present in the pre-Christian Greek philosophers, most notably Plato and Aristotle. Novak

2 I borrowed Waugh's expression in my article "Derivation of Positive from Natural Law Revisited" 57 *American Journal of Jurisprudence* 103 (2012), on which I rely partly in section II below. To avoid the reiteration of references I point the reader to it here *passim*.

defines natural law as "those norms of human conduct that are universally valid and discernible by all rational persons" (*Natural Law in Judaism*, 1). This definition is not far removed from one given by Sophocles in *Antigone*. We surely recall her famous words about the unwritten laws of Hades, which apply mutatis mutandis to Natural Law: "[…] their life is not of to-day or yesterday, but from all time, and no man knows when they were first put forth"[3].

At the dawn of the Christian era, at a time when it was only just becoming possible to speak of Christianity and about the Catholic Church, one significant Christian (who, incidentally, at some point lingered in the city of Jerusalem where our conference took place) –a man who had been a Jew for the majority of his life[4]– preached and affirmed Natural Law. I mean of course Paul of Tarsus –Rabbi Saul, for the Jewish people, later known too as Saint Paul. In Chapter 2 of his Letter to the Romans he famously states:

"So, when gentiles, not having the [Jewish] Law, still through their own innate sense [i.e. Natural Law] behave as the Law commands, then, even though they have no [Jewish] Law, they are a [Natural] Law for themselves. They can demonstrate the effect of the [Natural] Law engraved on their hearts, to which their own conscience bears witness; since they are aware of various considerations, some of which accuse them, while others provide them with a defense […]"[5].

We find in Paul's description all the various elements of Natural Law, as I have attempted to indicate with my bracketed insertions.

Returning to Novak: his definition is also compatible, and in line, with Thomas Aquinas, who famously stated that "Natural Law is nothing else than the rational creature's participation of the eternal law"[6].

It is worth noting that, as explained by Cristóbal Orrego (a Christian thinker from Chile), "Natural" in "Natural Law" "does not mean something related to the physical world, but rather to the rational world of human morality. Hence the distinction between merely conventional morality and critical morality also captures the basic idea that some things may be morally good, and just, regardless of social conventions to the contrary"[7]. Although

3 Sophocles, Antigone line 500 (E. H. Plumptre trans., Vol. VIII, Part 6, The Harvard Classics, New York: P.F. Collier & Son 1909-14). On Natural Law's universality, see Finnis, J. (2011). *Natural Law and Natural Rights*. 2nd ed. Oxford. Oxford University Press, 1st ed., 1980, § III-V.

4 As Paul says in the New Testament, "I am a Jew, from Tarsus in Cilicia". *Acts* 21, 39.

5 *Romans* 2, 14-15.

6 Aquinas' famous definition –Natural Law is nothing else than the rational creature's participation of the eternal law– is in *Summa theologiae* (*S.T.*), 1-2, q. 91, a. 2c.

7 Orrego, C. (2012). "The Relevance of the Central Natural Law Tradition for Cross-Cultural Comparison: Philosophical and Systematic Considerations". In *Natural Law and Comparative Law.* Eds. Russell Wilcox and Anthony Carty. London. Wildy Simmonds and Hill Publishing, 42.

not without its own ambiguities, the term "objective critical morality" can therefore substitute "Natural Law" in some contexts.

Note that my classical conception of Natural Law commits to moral cognitivism. Furthermore it is perfectible compatible with (and indeed requires) the respect of the positivity of man-made, written laws. More on this later, when we revisit the derivation thesis.

Second, Novak stresses that the question of Natural Law –as well as the related question of whether natural law is present in the Old Testament– is not a question of names. One of the strengths of Novak's approach to Natural Law is indeed that he realizes that one can talk about Natural Law under "whatever name" (*Natural Law in Judaism*, 1). The "Natural Law under whatever name" idea has been successfully applied in different contexts[8]. It is important too when it comes to trace the presence of Natural Law in Judaism. Let me share with you what happened to me during breakfast the day I arrived to Jerusalem for the conference. I had breakfast with a Christian scholar, a student of the Jewish Bible who had resided in Israel for the last twenty years. When I told him I had come to Jerusalem to speak about Natural Law in Judaism he looked at me perplexed: "It seems rather obvious that there is no such thing as Natural Law in the Old Testament", he exclaimed. Indeed there is no such thing *called* Natural Law in the Old Testament but the relevant question is: Is there *such thing* in the Old Testament, regardless of its label? My answer, like Novak's, is in the affirmative.

Professor John Finnis gave a piece of methodological advice to research students at the University of Oxford which sheds light on this crucial distinction between the thing and its name(s): "The tools of our trade are propositions and meanings, statements and words. Get clear about these"[9]. Different words can call the same meaning (or concept or, ultimately, "thing")[10]; two statements can convey the same proposition (ultimately, "the same thing"). I think all this is implicitly in place when Rabbi Novak embarks in his formidable enterprise of tracing the presence of Natural Law in the Old Testament. Novak argues that the Jewish theologians who endorse the

8 Orrego, for example, has applied it to the presence of Natural Law (under whatever name) in analytical positivism. See generally Orrego, C. (2007). "Natural Law Under Other Names: 'De Nominibus Non Est Disputandum'". In 52 *American Journal of Jurisprudence* 77-92. I have applied it to the presence of Natural Law (under whatever name) in comparative constitutional analysis. Legarre, S. (2015). "Towards a New Justificatory Theory of Comparative Constitutional Law". In 1 *Strathmore Law Journal* 90, 107-112.

9 Finnis, J. (2004). "Research Methodology in Jurisprudence". In *Handout*. Hilary Term, *pro manuscrito*, 1.

10 I have played with this methodological tool, distinguishing the term from the concept of police in my "The Historical Background of the Police Power". In 9 *University of Pennsylvania Journal of Constitutional Law* 745 (2007).

concept of Natural Law in Judaism "think that without this concept (*by whatever name it happens to be called* at different times in Jewish history), Judaism would have no place for human reason" (*Natural Law in Judaism*, 27, emphasis added)[11]. "Concept" here –the equivalent of "meaning" in Finnis's rendition of the same– is rightly distinguished from "word" (or "name").

Another instance of the smart use of the distinction between concepts and words in Novak's work is when he asserts that the fifteenth-century Spanish Jewish theologian Joseph Albo introduced *the term* (i.e. the "word" or "name") "Natural Law" into Jewish theology "*but not the concept*" (*Natural Law in Judaism*, 124, emphasis added).

Third, Novak traces the presence of (the concept of) Natural Law –regardless of the name Natural Law– in the Old Testament. He puts forward a general argument and subsequently illustrates the argument with several textual examples. The gist of the general argument is that even before a law –*the* Law (the Torah)– was given by God to Moses (i.e. promulgated[12]) some actions were already wrong (and, by implication, others were right). Furthermore, this wrongfulness (and rightfulness) could be known by the human being, a manifestation of which was the guilt experienced by the performer of that action, held by God to be a sinner, someone who had trespassed some kind of norm. This norm, however, could not be the Positive Law of God because, by definition, in the period of time examined by Novak (the pre-Torah time) such Positive Law did not exist. Therefore, he concludes, there must be some other law that was being infringed: that is Natural Law, regardless of names or absence thereof.

Novak offers a number of examples, in chronological order, starting with perhaps the clearest one of Cain and Abel. "The act [of murder]", argues Novak, "is one for which God holds him [Cain] guilty irrespective of why he actually did it. For it is the nature of the object or victim of the act that is morally determinative, not whatever subjective rationalization the perpetrator of the act might have come up with" (*Natural Law in Judaism*, 33). Cain is held guilty of breaching a commandment –Novak frames the commandment as "Do no harm to one another" (*Natural Law in Judaism*, 35)– that had not been explicitly enacted by God. The commandment could have been discerned by Cain regardless of that enactment for it had been written in his heart (metaphorically speaking). He is held guilty of the trespass "for an act God expects [him] to already know to be a crime" (*Natural Law in Judaism*, 37).

11 He further notes that "[t]he absence of this concept [of Natural Law] would make human reason superfluous" (*Natural Law in Judaism*, 27).

12 See Thomas Aquinas. *Summa theologiae* (*S.T.*), 1-2, q. 90, a. 4c.

The same is true of the other insightful Old Testament examples of wrongful conduct that follow in *Natural Law in Judaism*. They deal, among other topics, with sex and violence (during the "generation of the flood" and later with the rape of Dinah, Jacob's daughter); sodomy (the famous story of Sodom and Gomorrah); and lying (Abraham and Abimelech). As Novak points out these are all "incidences that took place before the giving of the Torah at Mount Sinai […]. What they indicate […] is that the normative *content* of the Sinai covenant need not be regarded as originally instituted at the event of the Sinai revelation" (*Natural Law in Judaism*, 60, emphasis added). In other words, the moral substance of what was later revealed (as opposed to or, rather, distinguished from the cultic aspects of that revelation) was already accessible by human beings before the covenant. That content was… Natural Law!

II. Ratification and Determination of Natural Law in the Covenant

Now let us move –as if in a chronology within the Old Testament– to the post-covenant period. I will suggest in this section that within the covenant it is important to distinguish between different degrees of presence of Natural Law. If it is true, as Novak says, that "the normative *content* of the Sinai covenant need not be regarded as originally instituted at the event of the Sinai revelation" (*Natural Law in Judaism*, 60, emphasis added) it is indeed true only about some aspects of that normative content. While the commandments to which these aspects refer –or rather the content of those commandments– preexisted the covenant, some other commandments –let us call them "cultic" for the sake of simplification– were, on the other hand, actually instituted at the event of the Sinai revelation. It is in order to understand this distinction that I suggest that Thomas Aquinas' theory of derivation of positive from Natural Law will be helpful. First, let us refresh ourselves on Aquinas' view.

Aquinas' account of the relationship of Natural Law to Positive Law has a general theory: every just human law is derived from the law of nature. Or in the words of the sixteenth century English lawyer Christopher St. German, famously quoted by John Finnis: "[i]n every law positive well made is somewhat of the law of reason"[13]. The general theory has two subordinate theorems[14]: *derivation* is always either *per modum*

13 See John Finnis, J. (2011). *Natural Law and Natural Rights*. 2nd ed. Oxford. Oxford University Press, 1st ed., 1980, 281.

14 The idea of a general theory and a subordinate theorem I borrow from Finnis, J. *Natural Law and Natural Rights*, 285.

conclusionis or *per modum determinationis*[15]. *I will refer to these as sub-theorems.*

According to the first sub-theorem "something may be derived from the Natural Law […] as a conclusion from premises"[16]. An example by Aquinas in the thirteenth century: "[…] that *one must not kill* may be derived as a conclusion from the principle that *one must do harm to no one*"[17]. This first sub-theorem is called "derivation by way of conclusion".

The other sub-theorem is "derivation by way of determination" and, says Aquinas, "it is likened to that whereby, in the arts, general forms are particularized as to details: thus the craftsman needs to determine the general form of a house to some particular shape"[18]. Samuel Gregg gives an example in the twenty-first century: "Legislators will understand […] that […] responsibility to protect human life requires them to implement a traffic system that protects motorists' lives. But a uniquely correct traffic system *cannot* be derived from the Natural Law. A number of arrangements, each of which has incommensurable advantages and weaknesses, may be consistent with the Natural Law. Hence, governments and courts must move here, *not by deduction*"[19].

Aquinas' division of the whole ("human law") into two different parts ("conclusions" and "determinations") has logical appeal. For the theory claims that *all* human law is derived either *per modum conclusionis* or *per modum determinationis*[20]. The starting point of practical reasoning (derivation) is always an already existing positive legal enactment –in both types of derivation. So in the homicide example (an example of derivation by way of conclusion) the starting point of the reasoning is a preexisting criminal-

15 Both the theory and the two sub-theorems are compressed in *Summa theologiae* (*S.T.*), 1-2, q. 95, a. 2c, conventionally titled "Whether every human law is derived from the Natural Law?" See also 1-2, q. 95, a. 4c.

16 *S.T.,* 1-2, 95 a. 2c.

17 *S.T.,* 1-2, 95 a. 2c.

18 *S.T.,* 1-2, 95 a. 2c. This sub-theorem has been the object of more intense study. See for example Finnis, J. *Natural Law and Natural Rights*, 281-90. (1996). "The Truth in Legal Positivism". In *The Autonomy of Law*. Ed. Robert P. George. Oxford. Clarendon Press, 201-203, 212-214 [now in *Collected Essays of John Finnis*. Vol. IV. *Philosophy of Law.* Oxford. Oxford University Press, 2011, essay 7, pp. 174-88]. (1998). *Aquinas: Moral, Political, and Legal Theory*. Oxford. Oxford University Press, 266-270.

19 Gregg, S. (2001). *Morality, Law, and Public Policy*, *The St. Thomas More Society*. Sydney, 34, second emphasis added. Aquinas' own example is: "[…] the law of nature has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature". *S.T.,* 1-2, 95 a. 2c.

20 In Finnis's words: "[a]ny proper example (central case) of legal systems will be *Positive Law* in its entirety and all its parts". Finnis, J. (2012). "Natural Law Theory: its Past and its Present". In 57 *American Journal of Jurisprudence* 81, 94.

law enactment: the law of murder, a Positive Law[21]. The derivation of this Positive Law of murder from Natural Law by way of conclusion flows easily if one follows Aquinas' train of thought. The law of murder is a conclusion ("deduction") from the moral precept "one must not kill" which is itself a conclusion from the more general principle of morality "one must do harm to no one"[22]. Despite the potential for ambiguity, I use the word "conclusion" (as Gregg similarly uses "deduction", quoted above) as shorthand for the more proper expression "derivation by way of conclusion"[23].

One of Aquinas' main tenets is that some rules of human law (*conclusions*) derive their moral import and binding force from natural law (even if they need, as they do, positivization) while others (*determinations*) derive that moral import and force only remotely from Natural Law, so much so that in the absence of a human rule there would be no obligation whatsoever[24]: neither legal nor moral.

To reiterate: *conclusions* "owe their moral import partly to the fact that they pertain to the Natural Law"[25]. Or, in Aquinas' old-fashioned, translated words: "[…] *those things* which are derived in the first way [*conclusions*], are contained in human law not as emanating therefrom exclusively, but have some force from the Natural Law also"[26]. In modern words: the moral

21 Finnis has recently held that that part of the state's Positive Law consisting of *conclusiones* can be called Natural Law or *jus gentium* (law common to all peoples). Finnis, J. (2012). "Natural Law Theory: its Past and its Present". In 57 *American Journal of Jurisprudence* 81, 94. This is somewhat confusing. See Legarre, S. "Derivation of Positive from Natural Law Revisited", section II.

22 In the above example (and in countless similar ones) there are two types of "derivation by way of conclusion" at work. First, a natural-moral precept is derived from a more general natural-moral principle (the moral prohibition of killing from the principle "one must do harm to no one"); second, a Positive Law is derived from the said natural-moral precept (the law of murder from the moral prohibition of killing). In this example, the first type of derivation by way of conclusion is thus "intra-moral"; the second one, instead, moves from the realm of morality into that of positive (or, as Aquinas more commonly says, human) law. Both types of "derivation by way of conclusion" are useful and readily used in moral, political, and legal theory.

23 I hasten to clarify that the nouns "conclusion" (or "deduction") might suggest something false, aptly pointed out by Finnis: that the (broadly speaking legislative) act of positing is equivalent to deducing or announcing the conclusion of a deduction. See Finnis, J. (2012). "Coexisting Normative Orders? Yes, but no". In 57 *American Journal of Jurisprudence* 111, 112.

24 Thomas Aquinas put it thus: "[…] those things which are derived in the second way have no other force than that of human law [*ex sola lege humana vigorem habent*]". *S.T.,* 1-2, q. 95, a. 2c. Finnis tuned in to Aquinas' dramatic intensity: "This last statement really goes further than the analysis itself warrants". Finnis, J. *Aquinas*, 267 (where the justification for this observation is provided).

25 Finnis, J. "The Truth in Legal Positivism", 202.

26 *S.T.,* 1-2, q. 95, a. 2c, emphasis added.

import of *conclusions* is not (only) a consequence of their positivity but also of their independent (one could even say prior) moral content. Or, in Finnis's words: "[s]ome Positive Laws [i.e., *conclusions*] are also norms of the natural moral law"[27]. With *determinations* it is not so: their moral import would not exist in the absence of their positivization: they have no independent, prior moral import. This is true, by the way, of the greater part of Positive Law, which consists of derivation by way of determination.

In the Positive Law of God one can also find *conclusions et determinations*. It is true of the Torah, as it is true too of any just human, positive enactment, that it includes both commandments with an independent, prior moral import –once more the example of the divine law of murder (what we Christians call the fifth commandment of the Old Testament) is fitting– *and* cultic concretizations (of which examples abound) whose moral import would not exist in the absence of their positivization by God. We can already observe here the two ways in which Natural Law is present in the Positive Law of God and how they are not altogether different from those in which Natural Law is present in any just human law. With our human way of seeing things we can trace the first way to the wisdom of God and the second to the will of God. This takes us to another useful distinction recalled by Rabbi Novak.

III. Universal and Domestic Contents of the Law of God in Light of Derivation Theory

The distinction between *conclusions* and *determinations* is very much in line with a famous distinction recalled by Novak: the one between *mala in se* and *mala quia prohibita*. Novak links this latter distinction with the one between God's wisdom and God's will (*Natural Law in Judaism*, 16 ff) –and rightly so. By coupling here both distinctions I will continue to keep my initial promise of applying the thought of Thomas Aquinas on the two modes of derivation of Positive Law from Natural Law to the two ways in which Natural Law is present in the Positive Law of God.

In *determination* "whatever wisdom we perceive in [a Divine] commandment [or human enactment] is phenomenologically subsequent to our obedience of it" (*Natural Law in Judaism*, 17). Instead, in *conclusion* with a commandment such as "you shall not murder we can appreciate the wisdom of the commandment […] before we eventually understand that its pres-

27 Finnis, J. "The Truth in Legal Positivism", 202: "Some Positive Laws are also norms of the natural moral law –that is, are requirements of practical reasonableness".

cription is part of God's wisdom" (*id*.). Novak concludes about Judaism that this distinction explains why "Jews can speak persuasively in secular public space about the prohibition of murder in a way we cannot (and should not) speak of the prohibition of eating pork there" (*Natural Law in Judaism*, 18). The case of murder is an example of the presence of derivation by way of conclusion in the law of God; the case of pork is an example of the presence of derivation by way of determination[28]. The same would be true, let me remark about the latter, for Catholics with the law of fasting: we cannot justify it in the secular public space in the same way we can speak of our religious laws of murder. Novak goes on: "[…] that is why the prohibition of murder is taken to be immediately universal, that is, rationally perceivable by all normal human persons capable of hearing it through nature. The prohibition of eating pork [or, for Catholics, the prohibition of eating meat during Lent, let me remark in passing], conversely, is not immediately universal and requires, therefore, special revelation to a singular community in history" (*id*.).

The distinction between *mala in se* and *mala quia prohibita* –and between *conclusions* and *determinations*– is also linked with the contrast between the universal, on the one hand, and the local and the domestic, on the other hand. So in the Old Testament, Laban retorts Jacob that "to give the younger one before the older one in marriage is something not done *in our place*" (*Natural Law in Judaism*, 50, emphasis added). In other words, "what you want, is contrary to our local ordinance". It is "*mala quia prohibita*", as opposed to the rape of Dinah (Jacob's daughter, by a prince) which is something "not to be done" (*mala in se*) (*Natural Law in Judaism*, 51). Novak stresses the distinction between what is not to be done *simpliciter* and what is not to be done *in our place*. For example, when it comes to the commandment regarding rape as embodied, later, in Divine enacted law the contrast between rape and certain marriages –analyzed by Novak in the light of the distinction between *mala in se* and *mala quia prohibita*– can be focused as well through the lens of derivation theory. So the divine law prohibiting rape is (so to speak) derived by way of conclusion from Natural Law. Rape was wrong even before divine law promulgated its wrongfulness through a positive enactment –in this sense it was universally wrong– in a way analogous to that in which rape was wrong in a given community whose human laws prohibit it even before they decided to do so.

28 At one of the conference dinners, one of the Jewish participants said to a group of us, as she was trying to explain the rules for kosher food: "It is capital that you don't try to find a rationale because there isn't one". To put in Novak's terms, God's will all over the place.

We can observe here a certain coexistence of two normative orders, one moral and one legal –the latter being human or divine depending on whether we focus on human Positive Law or divine Positive Law. But in the theory of derivation, coexistence is never understood as in rationalistic accounts of Natural Law, where two *separate* legal orders coexist, one natural, one positive[29]. Rather, for derivation theory coexistence of normative orders means pretty much what Finnis explained in *Natural Law and Natural Rights*: that the law of murder –to stick to our example– "corresponds rather closely to the requirement of practical reason, which would be such a requirement *whether or not repeated or supported by the law of the land* [or by the Positive Law of God, I would add]: that one is not to deliberately kill the innocent"[30].

In his later work Finnis reiterated this idea: "[s]ome Positive Laws are also norms of the natural moral law –that is, are requirements of practical reasonableness. But to say that is not to detract in the least from the positivity of those laws –that is from the fact (where it is the fact) that they have been posited humanly"[31].

In sum: if by a coexistence of two normative orders one understands two separate, complete codes that exist entirely separate from each other, then such a notion is useless. But the relationship of Natural Law to the Positive Law of a particular state *and*, analogously, to the Positive Law of God, is indeed one of interrelated coexistence. Insofar as Natural Law exists by way of conclusion and by way of determination in the Positive Law of a state *and*, analogously, in the Positive Law of God, it also continues to exist as a normative order independent of those legal orders, both in the practical reasoning of the addressees of the Positive Law and in the intelligence of the creator of that Natural Law[32] –which, in the case of divine Positive Law, is of course the same creative intelligence!

29 Kelly, J. M. (1992). *A Short History of Western Legal Theory*. Oxford. Oxford University Press, 260: "Particularly in Germany, Natural Law was taken –of course in the secular sense which Grotius had given it– to be a material from which whole systems of municipal law could be fashioned" (commenting on the work of Pufendorf, Wolff, Vattel, and others).

30 Finnis, J. *Natural Law and Natural Rights*, 281, emphasis added.

31 Finnis, J. "The Truth in Legal Positivism", 202-203.

32 *S.T.*, 1-2, q. 90, a. 1 ad1.