CVL1024 PHILOSOPHY OF LAW

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LL.B Hons 1st Year - Philosophy of Law

Outline the main elements of H.L.A Hart's thesis on the separation between laws and morals and explain why and how legal theorists such as Fuller and Finnis have objected to it.

The prominent legal theorist H.L.A Hart is known to be an authoritative figure when it comes to Legal Positivism. This refers to the legal doctrine that regards positive law as the only source of law and believes that laws gain their validity by conforming to an existing system of law. Positive law is man-made law which obliges and specifies actions describing the establishment of specific rights and duties. In the aftermath of WWII in reference to the atrocities which occurred as a direct result of the actions of democratically elected Nazi Germany and the legislation they enacted, Legal Positivism, the established legal theory, was being cast under a bad light. This is because according to this theory, the laws enacted by this terrorist regime did not conflict with any superior laws nor with the legal system in itself meaning they had no intrinsic fault and thus were valid despite being unjust. As a response to the criticism being mounted against this theory, in 1958, H.L.A Hart published his work entitled 'Positivism and the Separation between Law and Morals' in the Harvard Law Review. Within it, Hart worked to reaffirm the position of Legal Positivism by establishing his thesis of separation calling for there to be a separation between law and morals. Considering his position in the legal world and his position as a champion for Legal Positivism, his work was highly anticipated and carried significant weight.

Historically, Legal Positivism presented itself as the theory which could best be linked and placed within a democratic system due to its regard solely for social facts - facts surrounding societies including cultural, social and political decisions societies make. This theory regards moral principles as elements falling outside the realm of the law. It is emphasized that the law should not reflect what society ought to look like, but should be a reflection of society as it currently is. This theory was seen to work well until legal positivists couldn't declare the discriminatory and divisive legislation enacted by Nazi Germany as invalid. The significance of this issue was made more influential through the drafting of the United Nations 'Declaration of Human Rights', a fundamental document which brought to the limelight elements constituting the Natural Law Theory, the theory of law opposing Legal Positivism which the latter had replaced as the preeminent theory of law. This is the theory which was followed by both Fuller and Finnis. This suggests that laws must follow some basic principles of morality regarding what is to be considered as right and wrong and claimed that law ought to refer to considerations beyond legal considerations.

In his publication, however, Hart argues against the rediscovery of the principles of Natural Law Theory by explaining why it is still the best theory despite the criticism being levelled against it and defending his position as a part of the history of the theory as a whole. The focal point of the

entire publication is his Separation Thesis. This refers to his belief that law and morals are separate entities which are not and should not be related to each other. Hart asserts that those who criticise Legal Positivism and the Separation Thesis read too much into this notion of separation. He states that simply because the theory's basis for determining law's validity is the law itself and not moral principles separate from the law, it doesn't mean that the legal system isn't influenced by moral opinion and ethical standards of conduct. Therefore, the theory doesn't call for a complete exclusion of morality in the creation of the law but maintains that the validity ought not to be based on these moral principles.

He argued that in the past it was easy to base law on morality as there was a single authority which determined it and all laws needed to be created following that definition. However, he noted that in the modern era they were living in, which included more diverse societies, it would not be possible to determine what morality was and this would ultimately make it impossible for the law to satisfy everyone's moral standards. When discussing morality, Hart argued that firstly, it is something every person should be able to rationally determine for themselves, secondly it is something which goes beyond religion and tradition and finally claimed that it should not be a code imposed on people. Yet, he was adamant that it is a subject that should not feature in discussions related to the validity of law and policy. Ultimately, through this work, Hart reaffirms the notion that the law in and of itself is a means to ensure the proper functioning of society. The legislator ought to aim at constructing a good society through legislation meaning that law cannot escape thinking about what good is and how it can be achieved. However, through the cornerstone of Legal Positivism, the Separation Thesis, he emphasises the idea that law ought to look at nothing other than itself, regarding social facts and putting aside normative facts as a source of legal validity.

Hart places this Separation Thesis as one of the two bases of Legal Positivism maintaining that for one to follow the doctrine of Legal Positivism, they needed to adhere to this thesis of separation as well as the analytic study of legal concepts. In formulating this, Hart discredits and makes unnecessary the Imperative/the Command theory of law as proposed by his predecessor Austin. Hart notes that this ought not to be synonymous with Legal Positivism and replaces it as a foundational element with his Separation Thesis.

Fuller and Finnis, two legal theorists who follow the Natural Law doctrine, oppose the ideas Hart promulgated in the Harvard Review. Fuller appeared in the same edition of the publication as his colleague arguing an opposing position. This later developed into Fuller's most famous work 'The Morality of Law' which posits that law has morality imbued within it, as the title suggests. What is to be considered striking about Fuller's response to Hart is the formal and elegant tone he makes use of, going so far as to acknowledge and praise his opponent's accomplishments while reasoning in a starkly different manner. Both Fuller and Finnis claim that law is influenced by a much larger context than solely itself and understand that law should shape how society ought to be and not be a reflection of how it is today, as Hart claimed. This notion of law shaping how society ought to be leads us to the fundamental understanding of morality. For Fuller, this is all related to purpose: if law is always directed towards a purpose then the result of what the law is trying to achieve is there from the beginning. Simply put, all laws have morality intrinsically pervaded within them. Morality is already present within the law itself as the law attempts to

perform its function outside the legal sphere by influencing and shaping the society it regulates. Fuller explains that for this to work, the law must abide by the rule of law: laws must act as a guide that regulates our lives while leaving people as free as possible. Thus, laws ought to be introduced if there is just cause for the introduction. This is expanded on further in Fuller's work 'The Morality of Law' where he identifies a legal system which must satisfy 8 criteria. Without these, the theorist claimed that the legal system cannot hope to function well as it is these principles which constitute and guarantee the morality of law imbued within individual laws and the legal system as a whole. This differentiates greatly from Hart who favours the separation of the two elements.

Regarding Finnis and his view of Hart's Separation Thesis, we note that like Fuller, he too follows the principles of Natural Law and does not advocate in favour of a separation between morality and law. Through his work 'Natural Law and Natural Rights', he provides a rational foundation for moral judgment so that one can achieve their aims and be morally safe in their actions. He notes that law is the ultimate custodian of society which acts in the interest of the common good, i.e. conditions which enable members of a community to achieve particular objectives. He discusses the importance of practical reasonableness as a requirement of the basic forms of human good which enable us to prosper as human beings. He cites this as a value of indispensable proportions and lists the product of the criteria of practical reasonableness to be morality. He claims that the purpose of the use of practical reasonableness is morality. He claims that one must make use of the various elements constituting morality when making judgments and decisions, even regarding the law. Finnis also objects to Hart's theory as he thinks that despite his attempt to separate law and morals he believes that through his work "legal obligation is treated as at least presumptively a moral obligation". He claims that by means of Hart's analysis, citizens are placed under a moral obligation to obey unjust laws so as to not weaken the legal system as a whole. While his theory is heavily criticised for being difficult to interpret and understand, we note that his view of morality and its position within the law contradicts f Hart's ideas of separation.

As one can note, while Fuller and Finnis compose two theories of law which differentiate from one another greatly, both fall under the umbrella of Natural Law Theory which emphasizes that law and morality ought not to be two separate elements but elements that are fundamentally linked to one another. Hart, on the other hand, who regards Legal Positivism as the ultimate theory of law, bases his analysis of law on the fundamental principle that law and morality are distinct and ought not to be regarded in correlation with one another when examining the validity of laws.

Fuller: Fuller puts forward a definition of law which he regards as being appropriate: "law is the enterprise of subjecting human conduct to the governance of rules". Through this definition, Fuller emphasizes the coercive function of law and claims that the law has the primary aim of subjecting human conduct to the governance of law citing that law is always purposeful. This immediately opposes Hart who positions himself in such a manner that he minimizes the centrality of the imperative function of law in favour of his Separation Thesis.

Finnis: Through the latter part of the 20th Century, Natural Law witnessed a revival. This was in part owed to the legal theorist Finnis and his works. Through his book 'Natural Law and Natural Rights', Professor Finnis contributed to this resurgence by producing an "authoritative restatement of the natural law doctrine" "expressed in fresh terms". Finnis exposes his outlook on Natural Law with his basic premise being that humanity is always pursuing some for of experience it perceives as good. According to Finnis, there are a set of basic values which are the only ones worthy of pursuing that can be achieved solely through "institutions of human law and the requirements of practical reasonableness that only these institutions can satisfy". For him, it is only through Natural Law, which ought to be regarded as the standard-setting criterion, and the medium of practical reasonableness that we can know what is good for human beings.

Finnis regards the law as an instrument that regulates human behaviour by offering a framework within which permissible conduct may regularly take place within its pre-established limits. It is to be seen as the ultimate custodian of a society that acts always and only in the interest of the common good. Natural Law, in particular, was regarded by Finnis as the undertaking of the distinction between practical reasonableness and practical unreasonableness.

In his aforementioned work 'Natural Law and Natural Rights', Finnis itemizes seven basic aspects of human well-being. He describes them as a set of basic principles which people ought to use to pursue and realise their legitimate aims as they aim to assist humanity's growth and help it prosper. Furthermore, he cites that these values are self-evident and that any human activity which is worth doing is done because it participates in one or more of these basic values. These are life, knowledge, play, aesthetic experience, sociability, practical reasonableness and religion. When regarding the basic value of 'life', Finnis identifies it as a good relating to the instinct of self-preservation which "puts a human being in good shape for self-determination". This includes a whole ensemble of structures and professions as they all contribute in their ways of helping humanity independently reach their legitimate ends. This is a value which manifests itself in other values and enables the proper functioning of society.

According to Finnis, we have an immeasurable number of forms of human flourishing yet he relents that these forms are all variants or combinations of the seven which he provided. Furthermore, he discourages the notion that these values are to be somehow ranked in order of importance as he regards their value to every individual to be circumstantial and thus, subjective. While he argues against the idea that these goods are principles of innate rationality, he maintains that they are knowable to every person as self-evident forms of good.

The relationship between the basic goods provided and the common good in Finnis' theories is not simple to identify and it often depends on how Finnis regards the common good, as being either instrumental or non-instrumental, as the versions and aim behind the various mentions of the notion within his writings are not always easily reconcilable and distinguishable. Finnis characterizes the common good as "a set of conditions which enables members of a community to attain for themselves reasonable objectives, or to realize reasonably for themselves the value(s), for the sake of which they have reason to collaborate (positively and/or negatively) in a community." As we can note, this definition contains within it both instrumental and non-instrumental nuances of the idea of the common good as it serves to xyz as well as promulgates the facilitation of a shared, common

objective which we identify as human flourishing. According to Finnis, this consists of the realisation of basic goods and which is facilitated by a polity driven by practical reasonableness. Thus, the basic goods can be understood as instrumental in achieving the common good. In making this point, Finnis does concede that there may be coordination issues that he maintains can only be resolved through the political authority that best reflects practical reasonableness as is embodied in the rule of law. For Finnis, "the authority of rulers derives from their opportunity to foster the common good" which is considered in terms of the legal resolution of coordination problems in a manner that most efficiently enables individuals to procure these basic goods.

In Finnis' eyes, it is the law, guided by principles of practical reasonableness, which is the most effective method of resolving issues about coordination and thus, the best method for achieving the common good. This is because it constitutes a framework of public rules which encompass the full range of human endeavours and brings predictability, stability and order into human affairs. This enables members of political society to achieve their legitimate aims in a plethora of different ways consistent with their realisation of their basic goods as well as the goods of their fellow citizens. Finnis conditions the seamless and effective functioning of law claiming that for it to operate as it should it obligates citizens to obey it. This relates to his position regarding the authoritative nature of law. As we have previously noted, through Finnis' description of the practical use of the Rule of Law, it dictates the reciprocal relationship citizens have with authoritative figures demanding this obligation. Our obligation, which is identified in his theories as a rational necessity, is justified upon the consideration of the goods at stake should the legally stipulating action not be complied with, yet the institution as a whole is protected by the Rule of Law. At the centre of Finnis' argument regarding the authoritativeness of law is the fact that law provides the most effective form of social order for the realisation of the common good when it operates within the principles of the Rule of Law.

Give an overview of the context leading to the rise of Legal Positivism and its subsequent crisis (especially in the aftermath of WWII), and discuss some key objections that have been raised against it.

One of the main questions that is discussed when regarding the philosophy of law is the fundamental question: What is law?' Through this study, we can understand what the law is and delve into various facets, functions and abilities which the law has. This question at the basis of this entire subject, allows us to identify two competing approaches that analyse the law. The first is the method of analysis known as Analytical Jurisprudence, and the second is referred to as Normative Jurisprudence. The former is based on analysis where one regards that which really 'is' as opposed to what 'ought to be' as the latter does. It encapsulates a scientific approach to law which examines the concepts of law and the structures and procedures that it entails. This manner of thinking operates on the principle of certainty which refers to an analysis of law based on known certainties. Through this, different interpretations of the law and conflicts in judgments of the law are made impossible. This method of thinking is the cornerstone of what later developed into the theory of Legal Positivism.

The debate regarding the Analytical approach ('is') and the Normative approach ('ought') was explored further through Hume's law or Hume's guillotine which gave rise to two distinct schools that each followed one of the above approaches. The Positive School following from Analytic Jurisprudence which evolved into Legal Positivism and the Scholastic School following Normative Jurisprudence which turned into the Natural Law Theory. The Positive approach, helps us understand what law is and take it as it is. They argue that whatever is considered to be law is binding and that as constituents that owe it obedience we are responsible and obliged to obey it. It is based on positive law which refers to man-made law based on social facts, a reflection of what currently is within society. Often, this school received criticism for the scientific manner in which it operated and due to the view that the separation between law and morals was taken to be wrong and superficial during that time owing to the popularity and established nature of the Natural Law Theory. However, it was defended by the great Utilitarians, Austin and Bentham in the 18th and 19th Centuries, who insisted that the distinction between the 'is' (law as it is) and 'ought' (law as it ought to be) about law was fundamental.

Austin is considered to be the creator of the approach to law known as Legal Positivism. He regarded law as the object of scientific study which was not to be dominated by prescription nor by moral evaluation. He proposed a morally neutral descriptive and conceptual theory of law which modifies our idea of law to remove moral criteria of legal validity to ensure that moral considerations are not used in judicial decision making. He doesn't suggest that laws ought not to be moral but points out there is much more to law than morality and that which makes something law isn't congruent with morality. Austin is also credited with the development of the Command Theory of Law which was highly influential and heavily criticised in later years. He put forward the idea that the nature of law is a command being issued by a sovereign that constituents are bound to obey. He understood rules and positive law as a whole as being a set of general commands one is obliged to follow. Through this, Austin succeeded in delimiting law and legal rules from institutions such as religion, morality, customs and jurisprudence.

Bentham was also an advocate in favour of Legal Positivism and like Austin insisted on the distinction between law and morality. Bentham generally argued that one was to obey the law punctually. Bentham dealt with the question of resistance and the confusion which had spread systemically in two directions: the 'ought' argument and the 'is' argument. He called for the importance of the distinction between the two as he believed it would aid in the navigation of the danger that law and its authority may be dissolved in a man's conceptions of what law ought to be as well as in the danger that existing law may supplant morality as the final test of validity. He was also of the opinion that the development of legal systems should be influenced by morals and moral standards but was adamant that simply because a rule is morally desirable it cannot become a rule of law and similarly, it could not follow that because a rule violated a moral principle it is no longer a rule of law.

Towards the end of the 19th century, an Austrian jurist and legal philosopher named Hans Kelsen came onto the scene and made a lasting impact on positive law greatly increasing its popularity and reach through his drafting of the Austrian constitution in 1920, the most advanced constitutions of the time. He devised a structure and claimed that if an entity is to be regarded as law it must by necessity fit the particular structure and stated that it would be immediately noticeable if this was the case. He argued that if the entity fit the structure, after going through the correct and legal channels to be passed and promulgated, then it is to be considered as law and must be obeyed to avoid punishment. Kelsen's work, 'Pure Theory of Law', boasts having discovered the very essence of law by developing a method of discovering the existence of law and reducing it to its essentials excluding all extraneous influences that serve only to confuse perceptions. This was done to objectivise the analysis of law removing all subjective interjections, indicating the importance of the scientific approach to the study of the subject. He once again emphasises the chasm between law and morality positing that laws owe their validity only to previously existing authoritative standards which validate or disprove them. This separation of law and morality was a major contributor to the rise of Legal Positivism as it became a solution to a problem which followed Natural Law Theory - in a more modern time where morality wasn't dedicated by one authority it was practically impossible to create laws and identify their validity in a manner that would satisfy everyone's' individual notions of morality. Following Kelsen, Hohfeld was introduced as an exponent of the Analytical School of Jurisprudence. He regarded law as a technical body of rules having a high degree of internal cohesion which are to be applied scientifically.

Steadily, this scientific manner of thinking overtook the previously established Normative Jurisprudence, known more commonly as the Natural Law Theory which calls for there being principles that exist before laws come into existence and which laws should reflect, or at least not transgress in terms of legislation and adjudication. They argued that specific laws can change over time but that the fundamental principles behind them ought to remain constant and universal. During the rise of the Utilitarian thinkers, Natural Law Theory was dominated by Thomas Hobbes, Immanuel Kant and G.W.F. Hegel. Slowly, their way of thinking began to fall out of fashion when Legal Positivism presented itself as the legal theory that could best be adapted and placed within a democratic system due to its lack of regard for moral principles when determining a law's validity as they fall outside the scope of the law. It was seen as the better option as Legal Positivism ignored normative facts instead emphasising the importance of social

facts. This refers to the understanding that the existence and content of laws are dependent on the facts surrounding societies including cultural, political and social decisions of society. It was not related to what society 'ought' to look like, as was previously the case when Normative Jurisprudence was the dominant legal theory, but a reflection of society as it currently is. This is evident even within the fact that the system allows for that which the majority wishes to be reflected within the law.

This system worked well and allowed for Legal Positivism to dominate the legal scene for years until the atrocities of WWII occurred which placed this theory under a negative light and harsh scrutiny. This was because Nazi Germany, which was democratically elected had the authority to push through legislation leading to discrimination and genocide. The laws which were enacted, though unjust and cruel, did not conflict with any superior laws nor with the legal system as a whole and thus, according to the Legal Positivism Theory, the laws in and of themselves had no intrinsic fault and were valid. This caused jurists and legal scholars to begin having serious doubts regarding the established theory. This doubt was made worse by the drafting of the UNs 'Declaration of Human Rights' which brought to light elements of the Natural Law Theory as these rights contained within them an intrinsic notion that no laws of any state could contradict and violate them and regardless of what laws could be passed after, these rights would remain valid. This reintroduced the suggestion that laws must follow some basic principles of right and wrong which are not relative and extend beyond legal considerations.

As outlined above, many professionals had serious objections to this theory, the main one being their continuous emphasis on the separation of law and morality which came to head in the drafting of the 'Declaration of Human Rights'. Another form of criticism plaguing Legal Positivism, the main reason as to why it began to fall out of favour following WWII, was the fact that despite some laws being morally outrageous, this theory claimed that they still ought to be followed. Moreover, the Command Theory received much criticism for how it viewed and described law as well as for the way it made the notion of individual rights inexplicable. Ultimately, however, this way of thinking was denounced by H.L.A Hart, who was an established authoritative figure of Legal Positivism. Furthermore, another form of criticism leveraged against Legal Positivism was the obsession with the distinction between the 'is' and 'ought' of law. Theorists such as Austin and Bentham obscured the relation between them to the point that they forgot that there exists a point of contact between them which is essential in the carrying out of one of the functions of law: to create a good society and ensure society functions well.

The history of Legal Positivism, including its displacement of Natural Law theory and subsequent rise to power as the dominant legal theory in the 19th and 20th Century, is notable and highly interesting. The impact that this theory has had on various aspects of life as we know it, extending beyond the realm of the law, is visible throughout history. This is not to say, as we have noted, that this journey occurred without its fair share of difficulties. Following the harsh criticism that was hurled against the theory in the aftermath of WWII, Hart needed to defend, reaffirm, reconfigure and revitalise the position of this theory for it to remain at the forefront of legal thought. In doing this he needed to address several of the many critiques the theory had received and did so using the history of the theory as a whole allowing for there to be a sense of continuity and reliability in Legal Positivism.

Kelsen: He developed the structural analysis of positive law citing that laws could be organised into a pyramidal structure with Primary Norms at the top and Secondary Norms below. This hierarchical structure is how laws derive their legitimacy. The former category refers to statements which establish the sanctions applicable in certain situations, while the latter category discusses rules specifying certain conduct. These are dependent on Primary Norms. Kelsen notes that the structure is positive because of an event which took place in the history of mankind that he figuratively places at the tip of the pyramid - the Grundnorm. This basic norm refers to the basic understanding of human beings regarding the importance of cooperation.

Hohfeld: He identified a framework of essential legal relationships that exist by focusing on a determinate set of words that were continuously used in a juridical context - a legal analysis based on semiotics known, therefore, as a linguistic approach. He held that there was no relationship between a word and its meaning and argued that the meaning of words is derived from its use in language and proved this by offering a theory of the arbitrary nature of words using the word ‘right’, i.e. a protected interest.

Finnis' work is concerned with the concept of the Rule of Law and with what is required of a legal system for it to be in "good shape". Discuss with reference to his formulation of the basic goods and the requirements of practical reasonableness.

We attribute much of the revival of Natural Law Theory in the 20th Century to the legal philosopher Finnis, who contributed greatly though his work 'Natural Law and Natural Rights'. He aided this resurgence by providing "an authoritative restatement of the Natural Law doctrine" "expressed in fresh terms". In this work, the concept of 'Rule of Law' is one which is sufficiently analysed as is described as being the state of affairs "when a legal system is in good shape" and is working well. It is a concept that Finnis regarded as a means to regulate authorities as well as a means to suggest new subject matter to authorities so that they would always be working towards the 'common good'.

In this argument proposed by Finnis, we note how he justifies the institution of law as a whole by identifying how it minimizes tangible forms of harm and secures clarity, predictability and certainty in human affairs. Therefore, he regarded it as necessary to be able to identify whether or not a legal system is working well. When outlining his perspective, he identifies the subjects of a legal system as having a generic and presumptive obligation to obey the law justified by appealing to the common good. The 'common good' is a Natural Law notion deriving from Aquinas and his definition of law as the "ordinance of reason for the common good, made by him who has the care of the community and promulgated". However, we understand common good according to Finnis to represent the obtaining of those conditions necessary for the flourishing of the citizens within a society. In his discussions, Finnis believed that Aquinas' understanding of Natural Law was antiquated and not adaptable to modern times and this is one factor which contributed to his attempts to revitalise Natural Law Theory.

When developing his ideas surrounding the Rule of Law, Finnis proposed eight desiderata which are exemplified within a legal system that is governed by the Rule of Law. These refer to the following: "(i) its rules are prospective, not retroactive and (ii) are not in any other way impossible to comply with, that (iii) its rules are promulgated (iv) clear, (v) coherent with one another, that (vi) its rules are sufficiently stable to allow people to be guided by their knowledge of the content of the rules; that (vii) the making of decrees and orders applicable to relatively limited situations is guided by rules that are promulgated, clear, stable and relatively general; and that (viii) those people who have the authority to make, administer and apply the rules in an official capacity (a) are accountable for their compliance with rules applicable to their performance and (b) do actually administer the law consistently and in accordance with its tenor." These are not to be understood simply as a set of characteristics or rules but must be recognised as requiring the involvement of institutions and processes to operate. These desiderata are systematically ensured and secured only through the institution of juridical authority and through the professionals and their specifically equipped exercises who are motivated to act according to the law.

Finnis regarded the Rule of Law to be of utmost importance and saw it as a virtue of human interaction and community which elicits a positive and good association between rulers and the

ruled. It holds rulers accountable to certain standards of reciprocity. This relates to the value of the Rule of Law. Finnis recognised that legal rulership governed by the Rule of Law allowed for the opportunity to affect, for good, the common life, i.e. Rule of Law enables good for the community. This is because of the nature of reciprocity the Rule of Law demands: laws promulgated by legitimate authority are respected and obeyed so long as the authority, in the process of promulgating and adjudicating said laws, respects and keeps in mind the common good. Practically speaking, the Rule of Law is a mechanism safe-guarding constituents as it ensures that no authority can direct the exercise of their power to achieve private or partisan aims. Therefore, according to Finnis, the Rule of Law and the eight desiderata are aimed towards steering members of society away from certain forms of manipulation and granting them the dignity of self-direction, making it a requirement of justice and fairness.

As previously observed, Finnis regards the concepts of law and society to be legitimate yet understands their employment to be subordinate to matters of principles dictated in the basic goods with relation to practical reasonableness. Finnis identifies seven basic goods, those being life, knowledge, play, aesthetic experience, sociability, practical reasonableness and religion. These are basic principles which people ought to use to pursue and realise their legitimate aims as they aim to assist humanity's growth and help it prosper. Furthermore, he cites that these values are self-evident and that any human activity which is worth doing is done because it participates in one or more of these basic values. Finnis convolutedly relates these to the achievement of the common good. He maintains that the Rule of Law doesn't guarantee every aspect of the common good, yet recognises that the realisation of basic goods, facilitated by a polity driven by practical reasonableness, is what is instrumental to achieving this common good. In making this point, Finnis does concede that there may be coordination issues that he admits can only be resolved through the political authority that best reflects practical reasonableness embodied in the Rule of Law.

It is essential to note that underlying all basic goods, he places the criteria of 'practical reasonableness', which is a basic good in itself, that brings into play one's intelligence in terms of "choosing one's actions and lifestyle shaping one's character". This implies that an individual is free to act willfully to bring "an intelligent and reasonable order into one's actions… habits and practical attitudes". Finnis regards it as a value of indispensable proportions that enables one to participate in all other basic values by "shaping one's participation in basic goods, guiding one's commitments and what one does carrying them out". Practical reasonableness comprises a comprehensive set of methodological requirements one of which being that the actions are taken must be for the benefit of the common good.

In Finnis' eyes, it is the law, guided by this notion of practical reasonableness which is the best method for achieving the common good. This is because it constitutes a framework of public rules which as previously mentioned, encompass the full range of human endeavours and brings predictability, stability and order into human affairs. This enables members of political society to achieve their legitimate aims in a plethora of different ways consistent with their realisation of their basic goods as well as the goods of their fellow citizens.

However, Finnis conditions the seamless and effective functioning of law claiming that for it to operate as it should it obligates citizens to obey it. This relates to his position regarding the authoritative nature of law. As we have previously noted, through Finnis' description of the practical use of the Rule of Law, it dictates and obliges a reciprocal relationship between citizens and authoritative figures. Our legal obligation to obey the law, which is identified in his theories as a rational necessity, is justified upon the consideration of the goods at stake should the legally stipulating action not be complied with, yet the institution as a whole is protected by the Rule of Law. At the centre of Finnis' argument regarding the authoritativeness of law is the fact that law provides the most effective form of social order for the realisation of the common good when it operates within the principles of the Rule of Law.

The Notion of 'Juridical Personality' has proved essential in determining who the subject of law is. Discuss the main aims underlying the establishment and development of this notion.

It is understood that rights are not simply abstractions but are specific facts that necessarily call for a 'vehicle' for a person to be the subject of them in our society of juridical relationships. Moreover, we are aware that the patrimonial rights of every individual are separate and distinct from the patrimonial rights of others. These same rights simultaneously evoke a corresponding correlation which refers to the obligations and duties related to them. These obligations also call for a parallel container through which they may be duly enforced. Our understanding of the notion of 'personality' is a legal device that helps humanity to acquire the tools needed to meet goals and flourish. 'Physical personality' is seen to satisfy the requirement of there being a vehicle through which rights may be claimed and may seek satisfaction, i.e. rights may be claimed against the obligations of others. It is the development of the notion of juridical personality which required the meticulous devotion of time and effort to bring to fruition. The emergence of juridical personality served to be a concept of divisive significance in the development of the juridical order as well as humanity's economic and administrative realities and the evolution of civilised interaction.

The individual being has traditionally been regarded as the natural and only subject of law. However, over time, it came to be understood that an individual acting on their own resources is severely limited by said resources and thus is limited in the legitimate aims which they aspire to and can achieve. The individual's inherent limitations allowed for the realisation that legitimate aims are more easily achieved when a person acts in unison with others as it allowed for the collective individuals to reach their aims more easily and satisfy bigger targets as well. Cooperation began to be seen as the most effective manner to reach one's potential. This notion is central to of the idea of juridical personality: the understanding that the notion of physical personality was not sufficient to satisfy the rapidly increasing economic and administrative needs of society, which over time grew to be more and more sophisticated. Thus, there was a need to expand the understood and established vehicles of rights outside the limitations of physical personhood.

While recognising the benefits of expanding legislation to recognise more than merely physical personality to cover the lacuna in the law, the notion of juridical personality brought with it many legal consequences and implications. The bringing together of the collective wills of individuals aimed towards a collective objective had to be seen as more than simply a net sum of various wills and regarded instead as an agreement that produces a new, independent entity capable of acting willfully, separate and distinct from those responsible for its creation. It would be qualified as a 'personality' equivalent to the physical personality behind its establishment. This realisation surged humanity forward in terms of developing, fortifying and improving economic and administrative realities and called for the implementation of new frameworks of law to enable this transition to occur in a manner that guaranteed the new entity's freedom of action and ensure that it remained within the limits of legally controlled and accepted behaviour. The main issue surrounding this development was the utter lack of an intellectual framework as well as linguistic mechanisms to express and understand in full these new emerging notions (, the

development and subsequent assimilation of which into legal jargon is owed in large part to the understandings fashioned through Greek theatre and their separation of characters on stage and the actors portraying them.)

When discussing the pivotal elements of juridical personality and its overall impact on the legal system as well as the economic and administrative realities we are familiar with, it is prudent to note the origins of the development of this concept. The understanding of personality was highly influenced by Greek theatre and playwrights such as Sophocles who aided in the emergence of the linguistic mechanisms and language needed to concretely bring this notion into existence and take any implications arising from it. Through time, thanks to the nature of theatre and the often utilitarian associations made with the realm of the stage, these linguistic instruments began to take on new roles and were assimilated into legal jargon and the judicial order. How this was achieved moreover, allowed for the creation of new judicial entities contributing heavily to the development of the notion of juridical personality.

As previously mentioned, the physical person was regarded as a sole entity that was the subject of rights and obligations. However, through new terminology, new principles and structures began to take shape and a new form of personality began to emerge whereby a human quality, yet distinct and outside the realm of the physical person, was projected onto an inanimate entity allowing for it to exist in a new distinct dimension, reflecting qualities we consider to be outside and distinct from the aforementioned human limitations. This is owed to Greek theatre as the language being used reflected an entity that while being portrayed and brought to life by a physical person, a character on stage, it is distinct and separate from the actor playing it. This idea of distinctness between the character and the actor was facilitated through the use of the 'mask' as a prop which indicated cementation of this differentiation and aided the transformation of the actor into the 'persona'. This term, expropriated from Greek theatre enabled the development of the notion of juridical personality (was, over time given) by giving it the same equivalent significance as the traditional concept of physical personality allowing for the recognition of non-physical beings to be the subject of rights and obligations. This reality helped to overcome the semantic deficiencies which occurred in the realm of economic activity as well as human interaction and allowed for the basis of this notion to be developed, attributing to it different coverage than simply a physical person to allow (providing) humanity (with) greater flexibility of action for its benefit.

The notion of juridical personality was first used in legal writing by the German legal philosopher Savigny in the 19th Century. He made use of the phrase 'juridical personality' to refer to those specific entities that were created artificially through a juridical order for juridical purposes. Both the Romans firstly through their attribution of juridical personality to their pagan temples and secondly via their inclusion of 'foundations' as a juridical entity, as well as the Anglo-Saxons with their contributions regarding 'trusts' and means of ensuring financial stability continued to influence the fundamentals of this notion. Juridical Personality (It was) was further synthesized through the (contributions of the Romans and Anglo-Saxons as well as through)definitions assigned to the notion during the Medieval period which contributed immensely to its proper philosophical understanding. One such contribution hailed from the Roman philosopher Boethius, who lived in the 5th and 6th Century AD. He defined the word person as an individual

substance of a rational nature, encapsulates both *substantia prima,* a concrete substance, and *substantia secunda* referring to an abstract conceptualisation of substance. Aquinas furthered this examination to give more insight into his predecessor's understanding. His ultimate conclusion is that a person is a subsistent substance, i.e. emerging from another, which is complete and exists in itself apart from others. Personhood, therefore, can be found within an entity that exists for themselves, that is completely distinct from others and is of a rational nature. This definition allows for personality to be regarded as a depository of rights and obligations manifested in a flexible legal device granting mankind to the necessary concrete essence in physical reality through which they may manoeuvre around difficulties raised by their physical limitations in terms of accomplishing legitimate aims.

Following the consolidation of the notion of juridical personality in space and time, the face of judicial relationships was altered entirely as a new person, distinct from a physical person, became a significant participant in the judicial order to enable mankind to reach higher legitimate aims. This conversation of juridical personality enabled the extension of who we regard as being a subject of law to include juridical persons: entities capable of possessing rights and their consequential obligations existing in a juridical capacity, independent from physical persons.

Within this newly established system, we recognise two forms of law: '*Universitas personarum'* which represents the unity of will of persons (not to be confused with the sum of the collective wills of the individual) and regulates the bringing together of physical persons to constitute another separate legal entity which is distinct and independent from them. Here, the new entity represents the material elements that were formed by the same physical persons. It defines a group of people who are legally considered an entity, such as a college or corporation. The second form of law refers to '*Universitas Rerum'* which regulates the bringing together of funds constituting a distinct entity that holds and determines how the funds are to be used. The material element involved in this case is represented by the mass of property or funds accumulated. Here, a single will is represented which is separate and distinct from the will of the founders and is dependent on the purpose endorsed by the entity. An example of this form of entity is a foundation.

Through-out its vast history, many attempts have been made to ascertain and rationalise the true nature of the notion of juridical personality. Several views have been posited which can be consolidated into two broadly distinct categories: the category of 'reality' and that of 'functionality' which can be expressed through four theories: the fiction theory, Hohfeld's theory, the realist theory and the purpose theory.

The first theory finds its inception in Roman law and was further developed by the previously mentioned German philosopher Savigny who posits through this theory that juridical personality doesn't exist in reality and is a fabrication. It describes this notion as an artificial but necessary contraption. They claim that this theory emerged as a result of legal manipulation and false pretences likening a juridical personality to a simulation of a person. They regard newly formed containers which allow for juridical persons to operate as well as juridical persons in themselves to have no existence outside the limits of the law. Additionally, it is argued that while the law attributes them rights, it does so by feigning that a natural or physical person exists as only they

can be attributed rights. The argument lies in the following: seeing as the law gratuitously assumes the existence of a natural person where none exists then these entities have no true independent personality and no autonomous will of their own. These are characteristics which can only be associated with a physical person. This theory takes into account the concept of '*ultra vires*' implying that these entities are incapable of doing anything not authorized by the constitutive documents enabling their formation. It is also the theory responsible for the thought that companies can commit no criminal offence. Hart's criticism faults the idea that a company cannot be criminally liable for an offence because it has no mind of its own. The United States of America agrees with Hart and in response has levied particular laws, such as anti-trust, to develop an effective system which enables companies to have the autonomy, independence and freedom of action.

Secondly, we have 'Hohfeld's Theory' which is often unfairly overlooked as his contributions, small as they may have been, which defined basic legal concepts through his semiotic approach. He attempted to unravel the proper meanings of the most essential legal relationships by seeking to understand their lowest common denominator. He held that only human beings can hold juristic relationships. When explaining the existence of companies, he regarded not particular entities but instead at their capacities: rights, powers and liabilities. That which his theory lacks is an explanation as to why the notion of a company is used, i.e. why mankind was inclined to devise an entity having a separate and distinct personality from one's physical nature. In direct opposition, we find the 'Realist Theory' which views the artificial person as a real person attributing to it a real mind, will and the corresponding powers of action as well as assigning independent capacity to it. These capacities, 'intendere' and 'volere', were previously deemed to be exclusive to the physical person. Many severely question whether a juridical entity is truly capable of acting independently of its members and officials. Another question that arises pertains to the inference that a juridical entity, seeing as it is to be considered no differently than a person, has an implied sense of individuality including consciousness, experience and inner unity. When tackling the subject of criminal responsibility of juridical persons, this theory faces a lot of criticism for their claims that a company is unable to accept criminal responsibility for their actions.

The final theory, developed by Brinz in the 19th Century, claims that only human beings are physical persons which are protected by law. The 'Purpose Theory' however does claim that the law does protect certain legitimate purposes which assist mankind in the realisation of their legitimate aims, such as through charitable organisations.

The notion of personality as a whole has presented numerous linguistic and legal challenges through-out our history and has truly developed as an elicited evolutionary response to tackle the seemingly ever-changing economic and administrative realities of our societies. The evolution which began by recognising only physical persons as the sole subjects of rights and obligations expanded to include other independent bodies capable of acquiring and conveying the same powers and liabilities, rights and their corresponding duties. This resulted in the two becoming equivalent subjects of rights. This ever-developing mechanism has altered these entities from inexistent abstractions to legally recognised units turning them into an essential and beneficial

part of modern-day society as entities which have far-reaching implications. This can be seen through Chapter 249 of the laws of Malta, the ‘Interpretation Act’, which recognises more than physical persons as having legal personality.

Discuss in detail at least one aspect of Ronald Dworkin's philosophy of law. Would you agree that Dworkin attempts to reconcile, at least in part, legal positivism and the natural law tradition?

Ronald Dworkin came onto the legal stage and established himself as a legal philosopher that wanted to move past the boundaries of Legal Positivism and the Natural Law Theory. He does so through his attempt to find a third option to the argument, rethinking a new theory of law postulated on the background of the previously accepted schools of thought that dominated 20th Century legal thinking. While his focus was not primarily to find a compromise between the two, it is undeniable that through his work Dworkin was able to reconcile elements of the two opposing legal arguments.

While Dworkin studied law in an environment dominated by Legal Positivism, he is considered to be one of its most formidable critics. This, however, does not make him an ally of the Natural Law Theory nor does it suppose that his theories fit comfortably in the category of Natural Law, despite there being similar elements. The fundamental concept surrounding Dworkin is that he proposes a third approach, a third way of understanding law that is separate from the previous theories. He does so by understanding law as both interpretation and integrity.

This is the preferred starting point when analysing Dworkin's complex theory with regards to legal validity. He questions the theoretical justification for the validity of laws questioning why a law is to be held as valid as well as where it derives its validity. He notes that a valid law implies several consequences: a valid law demands obedience as well as configures onto individuals rights and obligations due to its authoritative position. As a result of this, he regarded the examination of legal validity as being of the utmost importance. In his analysis, he acknowledges that the queries surrounding legal validity are in part related to the queries regarding the moral content of laws. He argues that validity is derived from the content of the law and whether that content is good. In this aspect, Dworkin is seen to align himself with the position of the Natural Law Theory, however, when it comes to the moral question of what is to be understood as a 'good law', he differs from the Natural Law tradition. He favours constructivism in his argument positing that 'good' is merely a 'construct'. He claims that what is good is a notion which develops over time as opposed to being a way of life dictated by universal moral principles which precede the law. According to Dworkin, these moral principles are constructed through time through the history of legislation and adjudication, especially and above all through the works of the court.

Dworkin maintained that we ought to interpret the law in accordance with the circumstances in which they are found for the best possible interpretations. We note that this manner of thinking reflected and analysing the law is grounded in the tradition of case law which is not to be considered simply as a methodology. The fundamental reason for this is that the interpretation of the law, and therefore, the political reflection and importance of legal reflection, is grounded in the history of the works of the court done over the last centuries. Through this, we can understand the principles behind the law and how they ought to be applied. In motivating their judgments, courts very often refer to previous cases and judgments, even in jurisdictions which do not follow the law of precedent. This occurs because judges have a vested interest in

demonstrating and ensuring that the judgments they pass fit in well with previous judgments to ensure the continuity of the work of the court. For Dworkin, this is the most important thing. He even notes that when writing judgments, judges do so on behalf of the courts indicating that the court is one entity over time. This adds gravitas, exemplifies the importance of the continuity of the works of the courts and adds to the institution's integrity. Despite fluctuations in circumstances, the courts through history have a continuous, fundamental characteristic of wholeness and integrity whereby individual judgements are not autonomous from the other works of the court.

Ultimately, with regards to Dworkin's postulation of law as legal interpretation, we understand it to refer to the interpretation of the law by judges which over time gives rise to an understanding of the law and impacts how society interprets, changes and reacts to its laws in a context of continuous integrity. Judgments of the court cannot rest on the personal opinions of judges but must reflect the continuation of the existing works of the court over time, ensuring its integrity. The work of a judge is simply that of an interpreter of the law itself against a backdrop of principles embodied and expressed in previous judgments. The compilation of judgments convey principles behind the law which are applied and interpreted in various circumstances enabling them to become part of the history of the court. Through the work of the courts, moral principles behind the law are made more explicit. Ultimately, for Dworkin, the questions arising in the philosophy of law about the validity of laws, rights and obligations, amongst others, are to be understood and worked upon in the context of the work of the courts, i.e. through case law. This gives the highest guarantee that any judgment passed conforms with the work of the courts as a whole, whereby every case is autonomous yet still forms part of a larger framework exemplifying the integrity of the courts.

In terms of his distinction of law as integrity, Dworkin suggests that judges are obliged to recognise and protect pre-existing rights of every individual. This developed into his thesis of law as integrity and is related to his notion of law as interpretation as follows: judgements must be consistent with the previous works of the courts to avoid the creation of a framework that allows for the rights of individuals not to be upheld due to differences in interpretation. This doesn't negate the discretion of judges in terms of having varying interpretations and means of applying laws but advocates in favour of discretion in moderation where there are limits.

As we can note, while Dworkin's theory has elements similar to both Legal Positivism and Natural Law Theory, his interpretation does differ from them extensively. Regarding Legal Positivism, Dworkin contradicts their understanding that law is reducible to simple convention and social facts as he believes legal validity requires something stronger to cement it. For him, the law is a construct that is built over time and thus, legal principles are not reducible to social fact. With regards to differentiation in terms of Natural Law Theory, Dworkin goes against the notion that moral principles presuppose the law but claims that these principles to which the law refer do not exist independently of the practice of law itself.

Despite the differing views, Dworkin has to both preceding theories, through his third approach, he can reconcile certain elements of Legal Positivism and Natural Law, even though this reconciliation is not to be considered the aim behind his work. Firstly we note how Dworkin

maintains the positive elements of law, subscribing to the belief that law is a man-made construct which obliges and specifies actions and goes against the idea that law is self-evident and immanent as it is understood by Natural Law theorists. However, in doing so, he claims that this process ought to be done through the practice of moral principles and thus rejects Hart's 'Separation Thesis'. He maintains that moral principles and law go hand-in-hand and can never be separated, opposing the view of Legal Positivists. He asserts that laws, legal rules, should measure up to legal standards, i.e. moral principles defined by the works of the court over time, and require more than the element of non-contradiction to be valid.

Through this understanding of various elements of both theories, Dworkin is able to partly reconcile the two competing traditions. As previously mentioned, this primary aim of his endeavour was not to facilitate a compromise between the two but to posit a new theory that rethinks the very foundations of law and validity, postulating that this is guaranteed by the history of the works of the court and the integrity associated with that, an approach which is not recognised by either of the previous theories.

The resurgence of Natural Law Theory in the 20th Century is owed in great part to the legal philosophers Fuller and Finnis who through their works once again brought to the forefront the principles behind Natural Law Theory which had been largely overshadowed as the dominant legal theory by Legal Positivism. Following WWII in reference to the criticism that was levelled against the notions at the foundation of Legal Positivism as well as following the increasing interest in the natural law doctrine thanks to drafting of the UN's 'Declaration of Human Rights', the efforts put forward by Fuller and Finnis enabled the legal field to be reintroduced to Natural Law framework. This was done in several ways, however, the main focus was concerning the fact that laws must follow some basic principles regarding what is right and wrong which aren't relative, i.e. morality, and not reducible to majority votes. Moreover, through their work, they reiterated the previously accepted notion that discussions surrounding the law ought to refer to considerations beyond legal considerations including the examination of morality.

We regard Fuller and his theories to be a direct competitor of Hart's, especially his Separation Thesis. The two appeared in the same 1958 edition of the Harvard Law Review in which Fuller criticises the idea the legal positivist puts forward elegantly, acknowledging the many achievements of his competitor. Within this work, Fuller considers a definition of law which he regards as being appropriate: "law is the enterprise of subjecting human conduct to the governance of rules". This authoritative position that Fuller subscribes to the law directly contrasts Hart's efforts to reduce the centrality of the imperative function of law in Legal Positivism by denouncing the importance of Austin's Command Theory which was once synonymous with the doctrine he is considered to be a champion of. Fuller emphasizes the coercive function of law and claims that the immediate purpose of the law is to subject human conduct to the governance of rules and in doing so cites that the law is always purposeful. He believes that the law is designed to affect society in a particular way by operating within a much broader context than simply itself. He argues that the law shapes how society ought to be. Law as a means of shaping how society ought to be is a fundamental concept of Natural Law Theory which is an integral part of Fuller's philosophy.

It is within this understanding of law as being influenced by more than itself and social facts as well as through the understanding that law has the power to shape society, that we are led to Fuller's discussion regarding the field of morality. He claims that morality ought not to be understood in a superficial sense but a fundamental one and links this discussion to his idea that the law is purposeful. He argues that since the law is always directed towards a purpose, then the result the law is trying to achieve can already be found within it from the beginning. This means that all laws have morality intrinsically within them. The morality of the law is then manifested when it attempts to act outside the legal sphere. Fuller notes that being knowledgable about the purpose of laws is extremely important as it affects the way the society it regulates exists as well as our idea of a good society. Law mirrors human activity in that it is goal-oriented.

While the focus in Legal Positivism when it comes to law creation and adjudication is on the meaning of the words used in law, the analytic focus, in the Natural Law Theory, exemplified by Fuller, the focus is on the purpose of law and while he doesn't deny the importance of the

analytic study of law, he claims it is not enough. This aspect as put forth by Fuller is derived from the works of Thomas Aquinas who is a significant figure in the history of Natural Law. In his definition of law, he highlights the fact that the law is for the "common good" which is indicative of the purpose of law. Therefore, we can identify how 20th Century theorists continue the tradition of Natural Law Theory as outlined by Aquinas in a more elaborated and modern manner, ensuring the sense of continuity and the knowledge that that which is being proposed is truly grounded in the principles of Natural Law Theory. However, in Finnis' discussions, he goes a step further than merely linking notions back to the origins of Natural Law Theory. He takes the concept of the common good as defined by Aquinas and reconstructed it to adapt it to modern times. This is one factor which contributed to his attempts to revitalise Natural Law Theory.

Finally, Fuller puts forward the idea that the essence of law is to guide human action. However, in his understanding of the Rule of Law, he maintains that while we all fall under the Rule of Law, people should be as free as possible and thus, there must always be justifications for laws that limit freedom. In his famous work, 'The Morality of Law', Fuller identifies the need for a legal system that satisfies eight criteria, amongst which are the notions that 'rules must be expressed clearly and in general terms' and 'rules must not demand or command conduct which goes beyond the powers of those subjected to them'. Without these, a legal system doesn't function well and law isn't what it is meant to be. They are eight principles internal to law and constitute the morality of law. This indicates, in line with the natural law doctrine, that morality is imbued within the legal system and the law.

In his famous work 'Natural Law and Natural Rights', Professor Finnis contributes to the resurgence by producing an "authoritative restate of the natural law doctrine" "expressed in fresh terms". Finnis exposes his outlook on Natural Law with his basic premise being that humanity is always pursuing some for of experience it perceives as good. According to Finnis, there are a set of basic values which are the only ones worthy of pursuing that can be achieved solely through "institutions of human law and the requirements of practical reasonableness that only these institutions can satisfy". For him, it is only through Natural Law, which ought to be regarded as the standard-setting criterion, and the medium of practical reasonableness that we can know what is good for human beings.

Finnis regards the law as an instrument that regulates human behaviour by offering a framework within which permissible conduct may regularly take place within its pre-established limits. It is to be seen as the ultimate custodian of a society that acts always and only in the interest of the common good. Natural Law, in particular, was regarded by Finnis as the undertaking of the distinction between practical reasonableness and practical unreasonableness.

In his aforementioned work 'Natural Law and Natural Rights', Finnis itemizes seven basic aspects of human well-being which he believes can only be achieved through the institutions of human law and practical reasonableness. He describes them as a set of basic principles which people ought to use to pursue and realise their legitimate aims as they aim to assist humanity's growth and help it prosper. Furthermore, he cites that these values are self-evident and that any human activity which is worth doing is done because it participates in one or more of these basic values.

These are life, knowledge, play, aesthetic experience, sociability, practical reasonableness and religion.

In Finnis' eyes, we have an immeasurable number of forms of human flourishing yet he relents that these forms are all variants or combinations of the seven which he provided, always emphasizing that to arrive at this form of flourishing we must make use of practical reasonableness to arrive at correct judgments and become proficient at thinking about how to live a fulfilled life. Furthermore, he discourages the notion that these values are to be somehow ranked in order of importance as he regards their value to every individual to be circumstantial and thus, subjective. While he argues against the idea that these goods are principles of innate rationality, he maintains that they are knowable to every person as self-evident forms of good but require skill and commitment to be applied into one's life.

As previously mentioned, out of the seven basic goods, it is the value of 'practical reasonableness' which is to be regarded as indispensable according to Finnis and is a good which enables a person to participate in all the other basic values by "shaping [thier] participation in basic goods, guiding [their] commitments and what [they] do when carrying them out." It is a value that brings into play one's intelligence in "choosing [thier] actions and lifestyle" thereby shaping their character. Through this value he implies that people can act freely to bring reasonable order into their actions - i.e. one is capable of using their intelligence and applying it to one's lifestyle to ultimately fashion their character. This requirement of practical reasoning comprises a comprehensive set of methodological conditions all of which are fundamental. Included within these we identify the 'product of these requirements: morality'. In Finnis' work, we confront the centrality of morality once again and note how he regards the requirements of practical reasonableness to be a moral obligation. He believes one ought to make use of varying elements constituting morality when making judgments. This showed how for Finnis, morality and its position within the legal system is integral to his work. His entire book aims to provide a rational foundation for moral judgment, a protocol one ought to follow to achieve their aims morally as well as to demonstrate that to achieve natural rights through the legal system, we must look to natural law as a source.

Both philosophers contribute inexplicably to the revival of this doctrine by introducing their outlooks as well as by solidifying previously established notions of Natural Law Theory within the modern society in which they were living.