Current contributions of the natural law tradition to international law

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How might natural law theories contribute to current international law and its alleged crises, - if at all? Several scholars have argued that advances of positive international law and (international) legal positivism over the last century has replaced some of the contributions of natural law and natural law theories, and rejected the rest. This essay offers a modest defense: Natural law theories may continue to contribute to important questions of international legal theory and the challenges facing international law today.

Section 1 identifies some defining features of some of the many theories of natural law. Section 2 lays out several of the historical roles and contributions of natural law theories for the theory and practice of international law. For each, we consider to what extent their premises and frames still contribute to present day theoretical debates, and to the perceived crises of international law.

Section 3 considers one particular perceived challenge in more detail: the relationship between international legal positivism and natural law theories. Even though positive international law and international legal positivism have taken on some of these tasks, other contributions of natural law theories remain - Waldron, Koskenniemi and other critics notwithstanding. So international legal positivism has not replaced natural law theories, rather: the latter largely address other issues that the former ignores. Indeed, natural law theories may supplement and challenge international legal positivism with answers to central questions both of legal theory in general, and concerning the international legal positivist account of interpretation in particular. Section 4 considers some criticisms and limitations of natural law theories. Section 5 considers how natural law theories may contribute to address - if not resolve - some of the alleged crises of international law. In particular, natural law may help assesses and respond to the turn toward renationalization due in part to wide spread fears that international law and international courts are at best irrelevant, and at worst sometimes part of domestic and global problems of distributive justice and domination.

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