

## Natural Law vs. Positive Law:

**Natural law** or the **law of nature** ([Latin](#): *lex naturalis*) has been described as a law whose content is set by [nature](#) and that therefore has validity everywhere.<sup>[1]</sup> As classically used, natural law refers to the use of reason to analyze human nature and deduce binding rules of moral behavior.

The phrase *natural law* is opposed to the [positive law](#) (meaning "man-made law", **not** "good law"; cf. [posit](#)) of a given political community, [society](#), or [nation-state](#), and thus can function as a standard by which to criticize that law.<sup>[2]</sup> In natural law [jurisprudence](#), on the other hand, the content of positive law cannot be known without some reference to the natural law (or something like it). Used in this way, natural law can be invoked to criticize decisions about the statutes, but less so to criticize the law itself. Some use natural law synonymously with [natural justice](#) or natural right ([Latin](#) *ius naturale*), although most contemporary political and legal theorists separate the two.

Although natural law is often conflated with [common law](#), the two are distinct in that natural law is a view that certain rights or values are inherent in or universally cognizable by virtue of human reason or human nature, while common law is the legal tradition whereby certain rights or values are legally cognizable by virtue of judicial recognition or articulation.<sup>[3]</sup>

Natural law theories have, however, exercised a profound influence on the development of [English](#) common law,<sup>[4]</sup> and have featured greatly in the [philosophies](#) of [Thomas Aquinas](#), [Francisco Suárez](#), [Richard Hooker](#), [Thomas Hobbes](#), [Hugo Grotius](#), [Samuel von Pufendorf](#), [John Locke](#), [Francis Hutcheson](#), [Jean Jacques Burlamaqui](#), and [Emmerich de Vattel](#).

Because of the intersection between natural law and [natural rights](#), it has been cited as a component in [United States Declaration of Independence](#) and the [Constitution of the United States](#). The essence of [Declarationism](#) is that the founding of the United States is based on Natural law.

[Paul of Tarsus](#) wrote in his [Epistle to the Romans](#): "For when Gentiles, who do not have the law, by nature do the things contained in the law, these, although not having the law, are a law unto themselves, their conscience also bearing witness."<sup>[33]</sup>

The intellectual historian A.J. Carlyle has commented on this passage as follows: "There can be little doubt that St Paul's words imply some conception analogous to the 'natural law' in Cicero, a law written in men's hearts, recognized by man's reason, a law distinct from the positive law of any State, or from what St Paul recognized as the revealed law of God. It is in this sense that St Paul's words are taken by the Fathers of

the fourth and fifth centuries like [St Hilary of Poitiers](#), [St Ambrose](#), and [St Augustine](#), and there seems no reason to doubt the correctness of their interpretation."<sup>[34]</sup>

Some early [Church Fathers](#), especially those in the [West](#), sought to incorporate natural law into [Christianity](#). The most notable among these was [Augustine of Hippo](#), who equated natural law with man's [prelapsarian](#) state; as such, a life according to nature was no longer possible and men needed instead to seek salvation through the [divine law](#) and [grace](#) of [Jesus Christ](#).

### **Positive Law:**

**Positive law** is the term generally used to describe *man-made laws which allege to bestow or remove specific privileges upon an individual or group*. Contrast this with [natural law](#) which embodies inherent rights, not conferred by act of legislation.

It is also described as the law that applies at a certain time (present or past) at a certain place, consisting of statutory law, and case law as far as it is binding. Unlike e.g. natural law, positive law has nothing to do with justice. Positive law in dictatorships often actually represents strong injustice.

In the strictest sense, it is law made by human beings—**note that the term *positive* as in “positive law”, does not mean “good” in this context, but “man-made” or “posited” (cf. [posit](#))**. More specifically, positive law may be characterized as “[l]aw actually and specifically enacted or adopted by proper authority for the government of an organized jural society”.<sup>[1]</sup>

This term is also sometimes used to refer to the legal philosophy, [legal positivism](#), as distinct from the schools of [natural law](#) and [legal realism](#). In this sense, the term is often used in relation to the [United States Code](#), portions of which restate [acts of Congress](#) (i.e., positive law), while other portions have themselves been enacted and are thus positive law.

With respect to the broader sense, various philosophers have put forward theories contrasting the value of positive law relative to [natural law](#). The [normative theory of law](#) put forth by the [Brno school](#) gave pre-eminence to positive law because of its rational nature. [Classical liberal](#) and [libertarian](#) philosophers usually favor natural law over legal positivism. Positive law, to [Rousseau](#), was freedom from internal obstacles.

**Noun**      **posit** (*plural [posits](#)*)  
Something that is posited; a [postulate](#).      (Something [assumed](#) without [proof](#) as being self-evident or generally [accepted](#).)

**Verb**      **to posit** (*third-person sing. present [posits](#), present participle [positing](#), simple past participle [posited](#)*)  
[Assume](#) the existence of; to [postulate](#).