

## 5. Value and Authority

### A. Hard Positivism II: Authority

#### Essential

- Raz, 'Authority, Law and Morality', in *EPD [Ethics in the Public Domain]*
- Raz, 'The Autonomy of Legal Reasoning' in *EPD*
- Dworkin, 'Thirty Years On', *Harvard Law Review* 115 (2002), 1665 – 1676

#### Further

- Waldron, *Law and Disagreement*, Ch6

### B. Natural Law

#### Essential

- Finnis, *NLNR* Chs. 2, 9, 12 and pp. 281-90
- Finnis, *Aquinas*, Chs. 2 and 8, esp. 8.3

#### Further

- Finnis, 'The Truth in Legal Positivism', in George (ed.), *The Autonomy of Law*
- Finnis, 'Natural Law and Legal Reasoning', in George (ed.), *Natural Law Theory*
- Raz, *PRN* 162-70
- George, 'Natural Law and Positive Law', in George (ed.), *The Autonomy of Law*

#### *Essay*

Compare the views of natural law theorists and positivists on 1. law's authority and 2. the grounds of law.

#### *Discussion Questions*

What makes someone an authority?

Does the law merely claim authority, or does it also have it?

Does law claim authority? Do we have to think of law as someone's view on how others must behave?

Does it defeat the purpose of authority if subjects must rely on moral reasoning in order to identify the existence a

What is natural about natural law?

How does natural law theory differ from law as integrity?

What is the role of considerations of justice and the good in natural law theory? Are they defining characteristics of the law? Are they materials relevant to interpreting and applying the law?

Are natural law theorists saying that unjust laws are not laws?

Does natural law theory depend upon there being objective moral truths?

What is incommensurability? How does it figure in Finnis' version of natural law theory? Is natural law theory committed to the incommensurability of human goods?

What is 'determinatio'? How constrained are legislators exercising it? What is the basis of validity of laws created by an exercise of 'determinatio'?

Are unjust laws valid? Are they binding? Distinguish ways in which laws can be unjust.