Custom, Enactment and Legal Order: A Natural Law Account

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Dear Sir/Madam,

*Custom, Enactment and Legal Order: A Natural Law Account*

Essay or Short Article

I hereby submit an essay or short article (15,495 words including table of contents and references) for possible publication in your law review.

Entitled ‘Custom, Enactment and Legal Order: A Natural Law Account’, this essay argues, from a natural law perspective, that customary law (including the common law) is a mechanism for securing a just and stable legal ordering that is usually superior to that which can be provided by a predominantly legislation-based legal system.

There has been, especially since the Second World War, a massive increase in the volume of enacted legislation in virtually all developed jurisdictions. This phenomenon is usually accounted for by a need to keep abreast of the requirements of the common good in increasingly complex societies. Paradoxically, however, this perpetually increasing mass of legislation adds to legal uncertainty and tends to subvert the rule of law. Customary law (including the common law) is usually a more suitable instrument for dealing with the requirements of the common good in complex and dynamic societies. We need to (re-)discover customary law and restore it to a more central position in juridical thought.

Natural law theory has, so far, had little to say on this question. Indeed, most natural law theorists postulate or presume a highly active role for legislators in defending or advancing the common good. This essay takes a very different line from most natural law scholarship and calls for greater humility on the part of legislators in responding to social and economic problems.

I look forward to your consideration and possible publication.

Best regards,

Stephen Hall