

The Foundation of Neil Gorsuch's Judicial Philosophy

Listening to Diane Feinstein's grilling of Neil Gorsuch during the recent Senate judicial nomination hearings, you might have noticed a [question about the Supreme Court nominee's opposition to euthanasia](#) or mercy killing. Gorsuch confesses that he wrote a dissertation, turned into a book ([The Future of Assisted Suicide and Euthanasia](#)), arguing in favor of existing laws that ban euthanasia and assisted suicide. But he denies that such "academic" writings will have any bearing on his decisions if appointed to the Supreme Court.

While we might take the judge at his word, Gorsuch's argument against euthanasia, initially deployed in his doctoral dissertation (to complete his DPhil at Oxford University), suggests that his judicial philosophy is based on an esoteric theory of natural law. Gorsuch studied under the eminent professor of jurisprudence at Oxford University [John Finnis](#), also a natural law theorist.

While I was a visiting student at Oxford during Trinity term 1999, I saw Finnis lecture and I can assure you that he's no intellectual lightweight. Steeped in the ideas of [Thomas Aquinas \(1224-1274 A.D.\)](#) and [Aristotle \(384-322 B.C.\)](#), his legal philosophy resonates with theists in the Judeo-Christian tradition, especially devout Catholics. He believes in the value of faith-based communities and the protection of basic goods grounded in shared traditions.

Unlike many of his fellow legal philosophers at Oxford, Finnis is not a legal positivist who believes that all authoritative law is man-made. (For a sample of an Oxford positivist's jurisprudential views, see the [works of H.L.A. Hart](#).) For both Finnis and Gorsuch, God-given or divine law has a special place in the legal order. According to natural law theory,

when positive or man-made law conflicts with divine law, divine law always wins out. It's the basic idea at the heart of our [Declaration of Independence](#).

Although Finnis and Gorsuch finesse the matter, their jurisprudential theories boil down to the same idea: natural law is supreme. But it's difficult to persuade members of today's diverse polities that your God's laws transcend all legislation created by puny humans. So most contemporary natural law theorists hedge their bets. They theorize that natural law is not transcendent, but immanent within the norms and shared practices of our tradition-bound human communities.

As a natural lawyer, Judge Gorsuch's guiding rule is the Inviolability of Life Principle (sometimes called '[Sanctity of Life](#)'): Life is an end-in-itself and should therefore *never* be treated as a means to satisfy others' ends. (Physician-assisted suicide meant to free up hospital beds, for instance, would clearly violate this principle.) In Gorsuch's own words, life is "intrinsically worthwhile, an end that is reason, sufficient in and of itself, for action and choice and decision ... It is not something whose value must be (or can be) deduced by some prior premises or contingent on other facts or arguments."

Gorsuch's position on euthanasia has its critics. The legal philosopher [Gerald Dworkin's review](#) of *The Future of Assisted Suicide and Euthanasia* is scathing. Dylan [Matthews' article at Vox](#), which extends Gorsuch's reasoning about euthanasia to abortion and then rejects this speculative position, is uncharitable. Indeed, it's a good example of a [straw-man fallacy](#).

So Gorsuch's judicial philosophy is based on natural law theory. One of those natural laws is the Inviolability of Life Principle: Human life is foundational, God-given and a basic good that human communities traditionally value. End of story.

Should we speculate further? Does Gorsuch's refusal to say how he'll rule on future issues before the court, such as abortion, make him a poor candidate to become a Supreme Court Justice? Does valuing human life above all else mean that he's a principled jurist or simply an ideologue?

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