

# Notes for a Philosophy of Law in the Work of Roger Scruton

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This article aims to provide a series of notes on what constitutes the philosophy of law of Roger Scruton. Scruton's philosophy of law is harmoniously linked to his conservative worldview, which emphasizes the concepts of order, tradition, and custom in shaping the legal realm. I contend that Scruton's legal philosophy is a defense of English common law that can never be separated from a particular people, serving as both a tradition and a philosophical tenet that is necessary for conservatives to articulate their political beliefs. The article intends to lay the groundwork for future analysis of what I consider to be an underexplored aspect of Scruton's work.

## Introduction

The political philosophy of Roger Scruton is known for its defense of conservatism. Whether he was making an argument for fox hunting, the nation, or fine wines, Scruton dedicated much of his career to defining his political doctrine. Running through his works, however, lies a consistent emphasis on the importance that ought to be placed on English common law. Not only did Scruton view law as a distinguishing characteristic of the many traditions of the English-speaking world, which he held in reverence, but it was, in fact, the very tool he saw as necessary to understand power in its legitimate and illegitimate forms across reality. It was the answer to the ideas of intellectuals like Michel Foucault, which Scruton sought to debunk since the latter's conversion to conservatism during the events of May 1968 in France.

Though much has been said concerning his perspectives on the intellectual circles he opposed, little has been mentioned about the structure of Scruton's philosophy of law. This philosophy is a critical element within his conservative worldview and is justified by Scruton as part of the intellectual repertoire that British

conservatives ought to adhere to in order to give their beliefs meaning. In other words, Scruton defends a conservative philosophy of law directly tied to key concepts of order, society, customs, norms, and behavior.

This article aims to pinpoint some of the basic keynotes that constitute the meaning of Scruton's philosophy of law, bearing in mind the potential for further in-depth analysis. Importantly, Scruton's philosophy of law is shaped by the recognition of certain truths he adopts from a classical liberal perspective while acknowledging that much of this truth has since been negatively altered. In many respects, his philosophy of law remains rooted within a political framework, ultimately functioning as a complement to his conservative political thought.

## **Justice Discovered**

The reverence Scruton holds for English common law is tied to his belief that society cannot be referred to simply as a set of formalized rules and regulations predicated on force. Rather, society is an evolving network of shared practices, which emerge from the experiences and choices of members within a community marked by expectations and principles that form the basis for harmonious relationships. Our actions, as they relate to the law, develop through judgments connected to coexistence, intertwining rights and duties in an ongoing, time-tested process of discovery. Accordingly, Scruton finds that the exercise of common law should never be conceived as a top-down imposition, but rather as an organic system which arises from the free associations of a people. This reference to a seemingly spontaneous order fits into his broader view of society as a complex web of habits, customs, and informal norms that foster social cohesion.

This understanding of law directly reflects Scruton's debt to F. A. Hayek's contribution to the defense of common-law justice (Scruton 2018, 106). Despite Hayek's reservations about being labeled a conservative, Scruton views him as such and adopts much of his thought regarding the law as an example of spontaneous order. Scruton believes that common law grows from time-tested solutions to avoid or resolve conflicts, restoring society to equilibrium, unlike statute law, which tries to anticipate conflicts and often creates them (Scruton 2018, 107). For Scruton, law is essentially custom—the unwritten set of rules that has governed human societies since long before the idea of codified statutes emerged. Laws are not invented; they are implied by our conduct and emerge

naturally from the free transactions between individuals, much like the unwritten rules of courtesy that arose among drivers on public roads long before the advent of a formal “highway code.” As Scruton writes:

The common law summarizes what reasonable beings already assume, whether or not explicitly, when they engage in free transactions. The principle of tort, that the wrongdoer must compensate the victim; the principle of contract, that the one who breaks the contract must compensate the other for his loss; the principle of equity, that he who seeks equity should do equity—these principles are assumed in the very fact of free agreement. The common law arises from their application in particular cases, leading to remedies and rules through which we, free and accountable beings, can negotiate our position in a world of strangers. (Scruton 2014, 78)

Given this explanation, he sees Hayek as providing the best conservative defense for common law. For Scruton, common law is the heart of English society and a living proof that justice resides in the transactions between freely associating people, rather than in the plans of a sovereign power (Scruton 2018, 110). However, Scruton carefully distinguishes this perspective from that of legal positivists like H. L. A. Hart, who regards common law as “judge-made law”—that is, law created by judges after the facts of a case. Scruton critiques this view, arguing that common-law judgments would inherently involve injustice if they were based on laws that people could not have known at the time of their actions (Scruton 2018, 111). By contrast, Scruton views common law as “judge-discovered” law.

The application of the law to any particular case must base itself on principles which the parties involved were already relying on, regardless of explicit awareness of the principles themselves. In this vein, according to Scruton, judges never create new law but instead uncover and articulate the principles that are implicit in the actions of the parties affected in a particular circumstance. This constitutes a process of discovery which confines law to human behavior, rooting law in lived experience rather than in a set of arbitrarily imposed rules.

To corroborate this point, Scruton often refers to the example of a plaintiff that becomes ill after consuming an object found in a beverage bottle produced by a manufacturer. The manufacturer is held liable based on a principle that assumes that anyone who acquires goods in good faith should be protected from harm.

This principle, far from being the product of legislation, is discovered within the very transaction and reflects a shared understanding between the parties involved. As Scruton suggests:

Our law is not (or not yet) codified. It is based in a system of precedent, or common law, expanded, restricted, and amended by statute. The law has therefore evolved often through judicial, and not political, reflection. And when it may seem as though Parliament has advanced, simplified, or clarified matters—like in the formulation of the Property Acts, the Theft Act, or the exemplary Occupier's Liability Act of 1957—this may be because an order has been seen in, and extracted from, the judicial reasoning that already existed. The judicial mind has been applied directly to the facts of our native society, and in that process, it has incorporated into the law of the land a lasting image of the nation. (Scruton [1980] 2002, 61)

Scruton's appeal to Hayekian logic follows from an argument he refers to in the work of Adam Smith regarding his conception of justice as a negative virtue, characterized as the disposition to refrain from injuring others or taking what is rightfully theirs (Scruton 2018, 38). This foundational virtue underpins a well-ordered society but requires the support of law. On this point, Scruton's view is sympathetic with classical liberalism, though he never fully commits to liberal ideas given his insistence that freedom is not an unqualified good (Scruton 2014, 17). Instead, Scruton contends that freedom must be limited and submit to responsibility, because when it comes to law, liberty is grounded in the sentiments of sympathy that drive us to evaluate our own conduct as well as that of others from the perspective of an impartial judge.

The contrast Scruton draws with liberalism is fundamental to the way he conceptualizes the concept of law. Unlike liberals, Scruton argues that conservatives should never separate freedom from the institutions and values that nurture responsible citizens. While, like Hayek, he recognizes law as an example of spontaneous order, Scruton hesitates to view freedom and its protection as a goal in itself, as freedom is meaningless without proper accountability and responsibility (Scruton [1980] 2002, 19). While some might suggest that Hayek would agree with this point, Scruton's conservatism differs insofar as the preservation of the common good, good governance, and authority takes precedence over the protection of individual freedom for the pursuit of one's ends (Scruton 2014, 84). In other words, liberty is only valuable if it is rooted

in citizenship and a shared sense of belonging, where our responsibilities toward others and our actions are defined by the law and other institutions. Scruton even goes as far as to define freedom as that which the law does not forbid (Scruton [1980] 2002, 17).

For Scruton, law is an expression of the will of good authority for the purpose of maintaining order in accordance with a sociohistorical process that has granted the community social cohesion and well-being. The main concern of English civil law is to provide fair remedies to those harmed, rather than create abstract legal principles. When someone petitions a court for equity, they seek a specific solution—like compensation or an injunction—rather than the establishment of a legal decree. While he recognizes that courts may later establish general rules, their priority is to ensure justice through particular remedies. Scruton describes this by referring to everyday situations where fairness is more important than rigid adherence to rules. Once more, courts are not in the business of creating laws in common-law systems; they discover fair solutions, and thus the law evolves through these decisions over time.

Ultimately, Scruton's concept of the law relies on an implicit foundation of time-tested customs and shared practices within society. It is customs which serve as the basis for the legal framework that enables individuals to interact and navigate their lives, heavily relying on rules tested by experience that promote accountability and responsibility for the purpose of societal thriving. The authority of the law, for Scruton, evolves through the collective behavior and comprehension of the community, rather than being imposed from above. Legal decision-making is discoverable in the sense that judges uncover and articulate the underlying principles that guide people's actions, even if those principles have never been formally codified. Through legal cases, judges bring these shared assumptions to light, allowing the law to evolve in accordance with the community's existing expectations and values.

## **A Reflection of English-Speaking History**

Beyond a conceptual framework predicated on discovery, at the heart of Scruton's conservatism is a metaphysics of culture and history. While he broadly appeals to a conception of Western culture, he particularly emphasizes what he deems the traditions of the English-speaking world, among which he regards common law as the most exemplary. For Scruton, common law reflects the principles of order, inheritance, imitation, and learning. It embodies what he calls

a “narrative of home” (Scruton 2014, 6). Drawing from his own experiences, he sees common-law justice as the revelation of what truly belongs to the English people.

English law spoke to me of a community built from below, through the guarantee offered by the courts to all who came before them with clean hands. This vision stayed with me thereafter as a narrative of home. In the English law there are valid statutes and leading cases that date from the thirteenth century, and progressive people would regard this as an absurdity. For me, it was proof that the English law is the property of the English people, not the weapon of their rulers. (Scruton 2014, 13)

The historical argument Scruton makes for his philosophy of law traces back to the Anglo-Saxons and Celts. These traditions exemplify the emergence of law from a process of local conflict resolution rather than being imposed by a sovereign authority, such as a king, priest, people, or bureaucracy. While such legal history might be questioned when examining the rise of constitutionalism in America, Scruton deems this critique problematic. He argues that the American Constitution was not a unique creation, but a document that explicitly outlined an inherited spirit already embedded in Anglo-American common law. Claims for originality, he suggests, overlook the unique social position of the Founding Fathers—educated gentlemen who could advocate for a “new constitution” while enjoying the privileges of an already established order that shaped their roles (Scruton [1980] 2002, 46).

Although Scruton acknowledges the stability and legal efficiency of American constitutionalism, any mark of sufficient quality is owed to the inheritance from the English common law—a law which not only outlasts but also predates the figure of the Crown. As Ferenc Hörcher points out, the exceptional nature that Scruton finds in common law lies in its capacity to evolve organically, shaped by the collective wisdom of society rather than the dictates of a central authority.

Its special character derives from the fact that it was an early product of the Anglo-Saxon tribes, established by 1150, and that it was able to preserve its original nature over the centuries. It preserved its primary aim, to settle quarrels peacefully. Being a form of customary law, local judgements were preserved and recycled by later generations of judges. (Hörcher 2022, 328)

On this point, Scruton's view of American constitutionalism might be interpreted as an attempt to defend a tradition for its own sake, instead of recognizing the legitimacy and value of new ideas. However, such an interpretation of his philosophy of law is insufficient, as he believes that law is essential for critiquing any political system—a quality best exemplified by his understanding of the role of natural justice in the rule of law.

For Scruton, natural justice is the instinctive sense of fairness that naturally emerges in human relationships (Scruton [1980] 2002, 85). He argues that the inherent validity of law, especially when it aligns with natural justice, is central to the legitimacy of political authority. However, this does not constitute an appeal to raw tradition but instead a process of reflection and mutual respect among individuals that guides them in the spirit of friendship and a shared sense of justice that rejects what is unjust. Common law provides a moral and ethical framework that allows people to coexist, sharing a common understanding of right and wrong.

In this vein, Scruton's concept of natural justice or law is not derived from an external divine authority. By contrast, in his work, law creates the sovereign, and not the other way around. English law is neither God-given nor merely the order of the Queen-in-Parliament. However, Scruton also states, as Höcher puts it, that “this law has been implanted in human hearts by God” (Hörcher 2022, 49). In this sense, Scruton acknowledges the Christian heritage that shapes Western culture, yet the source of the law itself is tied to human life, and more specifically to a unique historical context, often assumed—albeit unconsciously—in our everyday interactions with one another.

Although Scruton's early work placed greater emphasis on the role of the state in establishing stability and order, he consistently acknowledged the existence of “natural rights”—rights that arise from the natural obligations individuals owe to one another through just dealings (Scruton [1980] 2002, 84). While these rights can never be meaningfully exercised without the state's protection, Scruton holds that they remain more intimately connected to the individual as opposed to a decree enacted by legal or political systems. In Scruton's philosophy of law, a natural sense of justice defined by the history of a particular people is what grants legitimacy to the state.

English common law is the embodiment of natural justice, a claim that Scruton attributes to his interpretation of William Blackstone (Scruton 2018, 24). Its longevity and deep entrenchment in the consciousness of the English people cultivate both a love of liberty and a natural resistance to tyranny (Scruton 2018, 24). For this reason, he maintains that political order has historically been grounded not in abstract social contracts but in the lived, inherited tradition of common law which entails a natural proclivity toward justice.

In this light, Scruton depicts common law as an effective guarantor of individual rights, because it has played a crucial historical role in establishing individual liberty as the foundation of political order, in contrast to Enlightenment values (Scruton 2018, 135). Drawing on the work of F. W. Maitland, he contends that limited government has been the norm in England rather than the exception. The rights championed by seventeenth- and eighteenth-century theorists, Scruton argues, were already embedded in the principles of common law and in the historical identity it helped shape. Political conciliation—rather than revolution—has served as the principal mechanism for constitutional change since the medieval period.

Scruton's appeal to natural law lacks systematic argumentation and full commitment, as it cannot be defined under the guise of a Thomistic account of natural law, modern iterations by Hugo Grotius and Thomas Hobbes, or the natural-law theory of John Finnis. Rather, it is only valid insofar as it is compatible with his own interpretation of English common law, within which he employs arguments associated with natural law as cogent justifications for identifying what is just and fair. The context for this lies, once again, in Scruton's rejection of positivist works like Hart's—specifically *The Concept of Law* (1961) which, for Scruton, is a symbol of the decline of Anglo-American jurisprudence into a framework incapable of conceiving justice beyond what is codified and determined by a judge. Despite not offering a formal refutation of the work, Scruton sees it as fundamentally opposed to the spirit of common law, given the push to separate law and morality—which, for him, defies the objective moral character that has defined a portion of the identity of the English-speaking world.

This is not to suggest that Scruton believed positivism was a creation of the twentieth century, as he saw Grotius and later Kant as attempting to combine positive law and natural law in the international realm. “For the positivist, law is law by virtue of its form; for the naturalist, by virtue of its content” (Scruton [1982] 1983, 259). For Scruton, Kant's account of the moral law as objectively

binding on all rational beings eliminated the recourse to theology in order to recommend it. “To invoke religion was to fall into the trap of the ‘heteronomy of the will’” (Scruton [1982] 1983, 247). This approach to natural law—as an instinct in human nature and independent of the command of God—is a modern development that Scruton deems valuable in both these authors (Scruton [1982] 1983, 247), as it shapes man’s relation to law as authority, which continues to rely on strict objectivity. However, Scruton does not agree entirely with Kant’s argument.

Scruton is skeptical of the Kantian notion of autonomous reason as the sole basis for law, and while he often refers to law as a universal source of authority in human nature—which can be neither disobeyed in good conscience nor overridden by contract—he grounds it in cultural identity. This is due in part to Scruton’s Hegelianism, viewing law as a reflection of cultural continuity that has historically appealed to metaphysical sources in the forms of natural law and natural right. Each of these sources extends far beyond what he considers to be positivist reductionism, and instead constitutes the roots of a tradition which makes the English-speaking world distinct:

We are heirs to the deep historical experience of England as a homeland and a territorial jurisdiction, a place of uninterrupted settlement under the rule of a common law. This law has long been recognised as possessing an authority higher than any individual or any government, and has shaped the character and the peculiar law-abidingness of British people, whether of Saxon or of Celtic descent. (Scruton 2004, 21)

This description of law’s authority, coupled with Scruton’s own reference to God, inevitably introduces a degree of ambiguity into his account of the source of the law. Consequently, any account of the divine in Scruton’s conception of law is grounded in a cultural construct he deems objective, rather than in the existence of a being whose will and character determine what is right or wrong. When Scruton invokes divine authority or metaphysical sources—suggesting a form of natural law—he does so in relation to the sacredness he attributes to the social and historical development of the common-law tradition and Western heritage. Within this framework lie both Scruton’s Burkean reverence for inherited legal and moral norms and his Hegelian interpretation of man’s dependence on communal bonds, to which he is bound while freely recognizing and adopting their standards.

While Scruton does not deny the existence of objective moral norms, as he suggests that law should embody morality (Scruton [1980] 2002, 78) and celebrates Enlightenment reason in the face of Rortian pragmatism (Scruton 2014, 96), he is often on the verge of defending cultural constructivism as opposed to a natural law discourse exemplified, for example, by Robert George. Scruton's justification of the law is not rooted in abstract moral norms that are defensible by reason, but rather in what is culturally refined. However, Scruton might view these as one and the same, given that the refinement of culture, as projected in the ideal English-speaking world, is itself objective, reasonable, and publicly acceptable. As mentioned previously, a systematic defense of his appeal to natural law remains elusive, given his Hegelian interpretation of culture. In other words, a staunch defender of natural law might question the objectivity of Scruton's philosophy of law in the same way Leo Strauss criticized Edmund Burke's account of truth.

Nevertheless, Scruton's own conservative understanding of law in relation to morality is distinct from a liberal approach, of which he is critical. While he compliments liberals for the role they once had in defending natural or human rights, he rejects the complete separation of law from morality as expressed in the private sphere, as argued by J. S. Mill based on the harm principle (Scruton [1982] 1983, 259). Scruton contrasts this with a view where the state and society are not separated from one another, and social order is therefore heavily dependent on the latter (Scruton [1982] 1983, 259). For Scruton, morality and law are connected through the social order provided by civil society and the home to which individuals belong.

Civil society precedes the individual, as it is here where the social and historical conditions he inherits take place. This includes the law, which reflects the values, customs, and expectations of his community. Law is an institution that embodies the values of civil society to which man belongs and which he eventually internalizes, and therefore grants him a sense of responsibility toward others.

Scruton cannot be classified within the neoscholastic tradition, and his appeal to culture and history might exclude him entirely from a natural law framework. Scruton is a Hegelian in this regard: Just as the ends of society cannot be derived from individual autonomy alone, neither are the entitlements the individual bears as an autonomous entity found solely in the forms of rights or the legislation within which he operates. The perception and substance of the individual can

only be understood in the context of the world to which he belongs; hence, the importance of identity in the sociohistorical process in which men in the English-speaking world ought to be raised.

The expression of self-consciousness and freedom relies on one's duties toward his fellow man. Common law is predicated on the mutual recognition of each other, which in turn overcomes potential conflict and builds a sense of personal and collective value. In this sense, Scruton's philosophy of law is one of heritage and custom, with justifications that sometimes mirror natural law claims, which he reveres as significant contributions within the Western legal canon.

For this reason, the rule of law cannot be separated from its historical context. Scruton emphasizes that the foundation of Western civilization—particularly the Roman conception of law—was, in the words of Gergely Egedy, “the most important force in the emergence of European forms of sovereignty” (Egedy 2022). The same holds true for the modern notion of human rights. In his view, the demand for human rights derives its power not from the idea itself, but from the particular circumstances in which it is made (Scruton 2018, 16). Such a demand, he argues, is not an abstract appeal to universal justice but a call for the restoration of legitimacy and the rule of law. Scruton contends that if we are to speak meaningfully of natural rights, then the right to adjudication is certainly one of them (see Egedy 2022). Yet rights cannot be understood in isolation from the duties they entail. A call for more “rights of man” without a corresponding acceptance of responsibilities, he warns, leads to tyranny, not justice (Scruton 2018, 52).

For Scruton, the British people are heirs to a national identity that has proven more resilient to shocks and aggression than any other in Europe. This identity, centered on England, is rooted in a territorial and legal inheritance (Scruton 2006, viii). Conservatives in the British tradition inherit an island culture in which custom prevails over reason as the final court of appeal, and common law functions as an institution where norms emerge from the conflicts it resolves, rather than from the decisions of a sovereign power (Scruton 2006, 17). The political process is governed by an unwritten constitution, based on custom rather than explicit rules. As Scruton suggests, the good of the nation can only be protected through common law:

To put the matter simply: nations are defined not by kinship or religion but by a homeland. National loyalty is founded in the love of place, of the customs and traditions that have been inscribed in the landscape and of the desire to protect these good things through a common law and a common loyalty. (Scruton 2004, 16)

Although Scruton acknowledges the contributions of various cultures to the strength of Western civilization—ranging from Roman to Christian and Islamic traditions—he advocates for the moral and political predominance of the Anglosphere given its unique relationship with common law. Only through an anglophone tradition does Scruton believe that the most significant institutions defending freedom emerged organically (see Hörcher 2022, 77). For him, law is most effective in a culture that has internalized and habituated its principles and norms, shaping them into implicit codes of conduct and methods of conflict resolution. This creates a distinctive relationship between the government and the governed—one that has evolved through a historical process in which law is taught, tested, inherited, appropriated, and ultimately taken for granted as common sense in social interactions.

## **The Justification of Law**

Scruton's justification for the law is to conserve the institutions that offer collective procedures to deal with recurring societal problems by means of the knowledge accumulated over generations. The reason to appeal to the law's conservation is not preservation for its own sake, but an appeal to it as an arbiter in disputes, guided by equity, justice, and impartiality. This differs from a conception of law focused primarily on altering behavior, such as the forms of social control exercised by mafias or gangs. The key distinction is that, unlike the state, these groups lack parliamentary legitimacy or institutional backing, even though both may seek to regulate conduct.

Laws are typically best respected when they are part of a shared moral consensus, as most people do not see law as tyrannical when it prohibits actions deemed universally impermissible. Scruton refers to the examples of self-defense and burglary to illustrate this point. In each of these circumstances, it is moral consensus that allows for the use of force in self-defense to protect oneself, one's property, or loved ones, though excessive force is usually discouraged. In this

sense, if the law punishes someone for using force in self-defense, it undermines this consensus, seemingly imposing the views of a liberal minority—such as judges—on broader society.

As a conservative philosopher of law, Scruton places significant trust in the old law of equity, which he believes offers real solutions to the challenges posed by rapid, unforeseen social change. Unlike Parliament, which he views as incompetent at addressing these challenges through statute, common law provides a more flexible and responsive approach. However, Scruton notes that this trust is eroding, as practices once absorbed into custom must now be explicitly codified as statutory rights (Scruton 2006, 78). He argues that law should be seen as a counterexample to the simplifying prejudice that old-fashioned institutions are inherently opposed to freedom (see Hörcher 2022, 327). In fact, these institutions are what give freedom its meaning.

Law is best justified when contrasted with legislative will, a force Scruton refers to as a dangerous temptation geared toward totalitarianism. Legislative will is often cloaked in the language of social justice, which he sees as the unnatural enemy of natural justice (Scruton [1980] 2002, 86). The worst legal decisions do not usually arise from revolutions; rather they are shaped by a combination of legislation, committees, and government commissions that tend to unfold into authoritarianism. Social justice, in this context, spreads resentment, which Scruton likens to pain in the body politic (Scruton 2006, 155).

By contrast, societies grounded in the common-law tradition aim to diffuse resentment through mutual aid and shared joy, emphasizing cooperation in modest victories rather than the pursuit of uniform mediocrity. In such cultures, natural channels like custom, gift, and hospitality allow social tensions to ease. But once totalitarian forces gain power, these channels are quickly obstructed.

Scruton traces the arguments in favor of state planning to Enlightenment thinking, which he believes failed to recognize that genuine social discourse arises from everyday human interactions and the pursuit of mutual understanding. Unlike the rigid, top-down nature of centrally planned systems, genuine dialogue avoids irreversible decisions, treats arrangements as adaptable, and depends on the consent of those involved. This constitutes an organic process that paves the way for the functioning of English common law and a parliamentary tradition, which embodies the sovereignty of the British people. For this reason, Scruton views British resistance to the “Euro-plan” as more than mere political

skepticism; it is a reflection of a deeper instinct to defend not only legislative autonomy but the very language and traditions through which law and governance have historically been expressed.

Scruton's criticism of continental legislation is that it attempts to use law as a creative tool for the elaboration of a new Europe, while restricting freedoms under the vague "precautionary principle." To anyone accustomed to common-law justice, these proposals will appear disconnected from humanity. Their language is like that of Orwellian Newspeak, framed in a way that makes it unchallengeable and unamendable. "How can one prove that a proposal fails to meet the standards of proportionality or subsidiarity when a court, uninterested in upholding these standards, claims the authority to define them? How can one argue that proposals violate the 'precautionary principle' when no one has explained what it actually means?" (Scruton 2006, 175). Scruton depicts common law as superior to civilian jurisdictions on the continent:

If we compare the history of modern Britain under the common law with that of Europe under the civilian and Napoleonic jurisdictions that have prevailed there, we will surely be impressed by the fact that the jurisdiction which has so persistently refused to define our rights has also been the most assiduous in upholding them. (Scruton 2004, 27–28)

This bureaucratic language, which Scruton dubs "Eurospeak," undermines the catalactic sovereignty that arises from proximity and mutual agreement (Scruton 2006, 175). It redefines the social world as a dynamic process controlled by a vanguard class of bureaucrats, relentlessly driving toward a singular goal. However, history shows that interventionism will not change the world in the way intended. Governments planning on such a scale can only succeed through a series of unforeseen accidents.

Scruton asserts that law is not merely a human construct; it possesses its own independent reality. As mentioned before, courts do not operate through invention, but through discovery. While the legal system may, in a broad sense, be a product of human imagination, this only shows that imagination is sometimes necessary to understand the world as it truly is. Historian Gergely Egedy illustrates this idea using property rights as an example. He notes that Scruton believes these rights gain significance because they relate to self-realization, with ownership being the primary way through which humans engage

with nature (Egedy 2022; see Scruton [1980] 2002, 92). English law, therefore, seeks to understand the human world and uphold impartial justice by which the English people order their lives (Scruton [1980] 2002, 131). Common law sets the procedures to secure rights:

Rights are not secured by declaring them. They are secured by the procedures that protect them. And these procedures must be rescued from the state, and from all who would bend them to their own oppressive purposes. That is exactly what our common law jurisdiction has always tried to do. (Scruton 2004, 27)

As Mark Dooley notes, Scruton demonstrates that by measuring the world against an ideal, law reveals the world as it truly is. For this reason, common law cannot be transformed by legislative will. Referring specifically to the laws passed in the UK against hunting, Scruton claimed:

The Common Law hates that! And the reason why there is no definition of hunting in the Act is that those who made the law knew nothing about it. They didn't know, for example, that the people on horseback are not part of the action: they are following the hounds, and they don't particularly care what the hounds are doing so long as they can see them and enjoy the chase. And the huntsman is not himself hunting the fox: he is "hunting hounds," as it is called. So then we must ask: who is hunting what? Until you define that, the law is empty. Moreover, you cannot outlaw an activity on which a community depends without inviting that community to find ways round the law. Imagine what would happen if there were a law passed against football! (Dooley and Scruton 2016, 123)

The importance of the rule of law lies in the fact that it is a source of knowledge that offers crucial insights for the maintenance of social order and the achievement of specific goals. In this view, law provides essential information about conflicts, their resolution, the application of justice, and human expectations—insights embedded in the legal record that can never be concentrated into a single legislative authority. It is irrational to attempt to reshape the legal order through a legislative code that seeks to prescribe every possible solution. A code of this sort would undermine the very source of legal knowledge: the impartial judgment of a judge confronting the unpredictable nature of human conflict.

Scruton's justification for law is rooted in its ability to avoid coercion and establish societal agreement. Social knowledge, for him, emerges from the ongoing search for consensus over time. While common law inherently involves some degree of coercion, its aim is to find solutions that are socially agreed on. Law, custom, convention, ceremony, moral norms, and the market all represent ways in which humans strive to live by mutual agreement.

While the social order that arises from this process will inevitably be marked by inequalities and constraints (Dooley 2011, 72), common law principles ensure that, wherever English law prevails, it is the law, not executive power, that has the final say in any conflict (Dooley 2011, 92). Moreover, the notion that law arises from decisions made in specific cases, rather than from the imposition of sovereign authority, gives it added legitimacy as the "law of the land."

## Conclusion

Scruton's philosophy of law rests on four conceptual pillars: a natural sense of justice, the customary and spontaneous acquisition of norms, communal bonds, and a historical sense of organic nationhood.

The composition of the law is that of a system of inherited principles that individuals assume as they engage with one another through transaction and association. Law is applied in accordance with the expectations of a particular case, making it possible for individuals to navigate their relationships in a world of strangers who share values expressed by the law itself, thus enabling a court to discern a rule if a potential remedy is needed.

The execution of the law is inductive, essentially functioning as a process of discovery and comparison between cases. The role of the judge is to interpret past decisions and build upon them in future cases to create a body of law that matches foundational principles. The historical structure of the law is the identity of the English-speaking people, adopted by its many constituents so as to reflect this shared history. The ruling on any decision sets precedents that guide the resolution of similar cases, constituting a body of law that evolves over time without needing a central code of conduct.

Law unfolds according to customs adopted by individuals within society for the enactment of a greater purpose with which they identify. Law not only resolves individual disputes, but also remedies harm through implicit principles that promote coexistence and flourishing. It preserves and promotes social order

through the mutual recognition of rights and duties that foster collective value and shapes the identity of those who abide by it. The principles of tort, contract, and equity that arise in lawful transactions allow people to overcome conflicts and live harmoniously, ensuring societal flourishing. For Scruton, implicit in common law is the idea that rights grant freedom, rather than freedom granting rights.

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