

## Liberalism and Natural Law

Glenn Peoples

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As you may or may not know, my particular area of research is religion in the public square, more specifically the arguments from within the circles of political liberalism that suggest religion has a limited or nonexistent proper place in public life, by which I mean that religious convictions should not serve as the basis of one's pursuit of political goals or policies. I call that position prohibitionism.

A number of people who make this claim, and in particular the man who has become something of a nemesis for me, Robert Audi, portray this approach to religious beliefs as though it is something inherent or important to the liberal tradition. As I have argued elsewhere, it does not require very much time or effort to show that this is just false. This is not to say that there are not liberals who think religion has no place in the public square. But historically, it is an indefensible claim to say that liberalism *entails* this approach to politics and public life. One need only read John Locke's works on freedom and civil government, for example, to see that for this man dubbed the father of classical liberalism, his political views were really a matter of applied theology. In fact, far from prohibitionism being inherent to liberalism, the argument has been made that liberalism so depends on certain values that have a theological basis that it really makes no sense without theological assumptions (a claim that I will explore elsewhere).<sup>1</sup>

Needless to say, there are a number of people who would call themselves liberals who – to put it mildly – would not be entirely happy with this diagnosis. A possible response to this proposed conundrum is what gives rise to this paper. I will not be offering such a response, I will be evaluating such a response. The response, basically, is that there are a number of different liberal traditions to draw on in the western political tradition –

<sup>1</sup> The best example of such an argument to my knowledge is Jeremy Waldron, *God, Locke and Equality: Christian Foundations of Locke's Political Thought* (Cambridge: Cambridge University Press, 2002).

one kind based on assumptions that have religious roots or necessary foundations, and another based on nothing with any religious roots or necessary foundations. There probably several ways to argue for this end, but I am talking in particular about an argument that turns on the understanding of natural law employed by many liberals. An article from New Zealand's "Institute for Liberal Values," for example, argues against the rejection of natural law theory in those liberals who espouse consequentialism, by appealing to Henry Veatch's distinction between religious and non-religious versions of natural law, and asserting that classical liberalism's proper view of natural law has no religious bearings at all.<sup>2</sup> And so, it may be urged, contemporary liberals have a tradition to draw on that is based on an irreligious concept of natural law and so they may march on without making any of the controversial religious assumptions that they want to see ousted from the public square. I am questioning this response. That is what this paper is about.

## The Historical Claim

### Two Natural Laws

Vernon Bourke, reflecting on Thomas Aquinas' use of Natural Law, claims that it provides evidence of "two radically different meanings for natural law."<sup>3</sup> Endorsing this analysis, Henry Veatch, writing later, has claimed that these two radically different models present one view where the meaning of natural law is "theological in origin," while the other concept is one where natural law is "based on the natural light of unaided human reason."<sup>4</sup> According to Veatch, and important for my purposes here, these two concepts of natural law gave rise to two kinds of political liberalism. In fact in the article I am drawing on, he distinguishes between two kinds of liberalism that he calls moralism and consequentialism, but it is a finer distinction of his that I am

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<sup>2</sup> Jim Peron, "Are There Two Libertarianisms?" On the internet at [http://www.liberalvalues.org.nz/index.php?action=view\\_article&article\\_id=131](http://www.liberalvalues.org.nz/index.php?action=view_article&article_id=131), accessed 3<sup>rd</sup> April 2005.

<sup>3</sup> Vernon Bourke, "Is Thomas Aquinas a Natural Law Ethicist?" *The Monist* 58:1 (1974), 52.

<sup>4</sup> Henry Veatch, "Natural Law: Dead or Alive?" On the internet at the Online Library of Liberty, <http://oll.libertyfund.org/Texts/LiteratureOfLiberty0352/BibliographicEssays/VeatchNaturalLaw.html> All subsequent quotations from Veatch are from this document.

interested in here, namely the distinction he draws between two different kinds of moralism based on two different kinds of natural law theory. If you like, I am talking here about two sub-kinds of liberalism in Veatch's analysis. I will discuss a consequentialist version of liberalism elsewhere in my research.

Says Veatch of these two conflicting views of natural law,

In the one sense, natural laws are to be understood as scarcely "natural" at all, in as much as they represent no more than certain absolute prescriptions and prohibitions, which, so far from being rationally discoverable by human reason in nature, are simply decreed by God. In the other sense, natural laws are thought of as being none other than such rules of intelligent conduct and behavior as any knowledgeable person ought to be able to see are demanded by the very nature of the case, when it comes to the living of our lives.

Natural law with a prescriptive theological grounding is far from being discoverable via human reason, but natural law without this type of grounding can be discerned via human reason as it engages the world. Thus Veatch's portrayal of two species of natural law.

Are Christian theists bound to belong to the first school of natural law? Not at all, acknowledges Bourke:

Theists who hold this second view of natural law also think that these observable relations ... flow ultimately from God's creation of the universe but they will also insist that it is not necessary to have a special communication from God to know that some kinds of actions are fitting and others unfitting.<sup>5</sup>

Once this clarification has been made, however, Bourke's analysis of the first kind of natural law becomes terribly confused. Earlier he claimed that in the first kind of natural law, natural laws are scarcely natural at all, since they are based on divine decrees or some sort of "infusion from above,"<sup>6</sup> which somehow makes them not natural. This view is "intuitive and voluntaristic,"<sup>7</sup> making it radically different from the second view, in which natural laws can be discerned by reason. But now when describing the view of theists who hold to the second view of natural law, Bourke appears to concede that even if natural laws were based on something theological

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<sup>5</sup> Bourke, "Thomas Aquinas," 53.

<sup>6</sup> Bourke, "Thomas Aquinas," 53.

<sup>7</sup> Bourke, "Thomas Aquinas," 53.

(which could conceivably include divine decrees of some sort), as long as they are *discoverable* by human reason, they are still genuinely natural laws and could belong in the second category.

This leads one to wonder just who Bourke has in mind when describing the first view of natural law, which he says is not really natural at all. The two examples he mentions (although without citation) are William of Ockham and Wittgenstein. We will choose one of these, namely Ockham. Is Bourke right? Did William of Ockham deny that people can discover the content of natural law without some sort of special divine revelation? Can they not know any of its requirements by simply using the mind with which they are naturally endowed? And of course, if he did say this, what has that particular stance to do with his contribution to liberalism?

## Ockham

When Ockham is speaking about the aspects of his thought that make him relevant for a consideration of the ideological origins of liberalism, there is little doubt that he saw the dignity, rights and liberties of human beings as inherent, and as a divine endowment.

As St Ambrose said, the Christian religion deprives no one of his rights. Wherefore, the pope can deprive no one of his rights for a person has such rights only from God, by nature, or from another man, and by the same reason the pope cannot deprive anyone of his liberty which is given by God and by nature.<sup>8</sup>

People do not need specific positive commands in order to know that the basic rights and liberties of citizens exist. On the contrary, as Coleman spells out,

All men, according to Ockham, come to know of their rights, liberties and powers simply by experiencing the world in which they live and drawing conclusions as how best to secure their needs in these fallen conditions. In his *Opus Nonaginta Dierum*, he says that he is following St Augustine, by distinguishing between right or *ius* as *ius fori* (right according to public law) on the one hand, and as *ius poli* (right according to heavenly or divine law) on the other. *Ius fori* is the kind of right that is recognized from contracts or human ordinances and established customs or

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<sup>8</sup> Ockham, *De imperatorum et pontificum potestate*, ed. C.K. Brampton (Oxford, 1927), 9-10, cited in J. Coleman, "Ockham's Right Reason and the Genesis of the Political as 'Absolutist'," *History of Political Thought* 20:1 (1999)

divine explanations of these (presumably such as render unto Caesar that which is his). The superior authority here in determining violations of the *ius fori* is civil. But *ius poli* is a knowledge of natural equity and it is consonant with right reason. This knowledge comes before a knowledge of human and divine positive laws.<sup>9</sup>

When it comes to knowledge of the grounding principles of what we would call classical liberalism, Ockham's view does not in any sense suggest that people cannot know these principles apart from special divine commands or revelation.

So that we do not go off on tangents, let us remind ourselves of something. We are pursuing Ockham because somebody has claimed that he represents a view that natural law is purely voluntaristic and, more importantly, unknowable by reason. While there are indications that this may be inaccurate, we should ask what would follow if it were true. The answer, as it turns out, is very little. If Ockham's views did not contribute to liberalism (and it is my view that he is not a leading historical figure in liberalism's hall of fame), then they are simply irrelevant to this discussion. If they did, and this characterisation of his views turned out to be correct, then all that we would have seen is that an important developer of liberal ideas drew on a particular religious view of morality rather than something rationalistic in any sense. And this would clearly not pose any problem for those who believe that liberalism has a religious foundation and rationale. All it would mean is that Occam was different from a lot of religious natural law theorists who championed classical liberalism.

[getting back to the subject]

Bourke appears to be saying that anyone who holds the second view of natural law, the view that in reality nearly all natural law theorists have held, is endorsing a "more secular" version of natural law, and there are degrees of secularity across the continuum among those who hold this view. In reply, I say that it is not good enough to simply point out that there are people who agree that we can *know* what natural law requires by using reason, and to hastily conclude that therefore there is a version of natural law that can survive without God. My point is this: acknowledging that people can, by *using* their reason, know what natural law requires, is

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<sup>9</sup> Coleman, "Ockham's Right Reason," 56.

a whole world away from saying, as Veatch said, that natural law is “based on” human reason. The real conceptual divide is *among* people who grant that natural law can to some extent be known through reason. On the one hand we have those who believe that this law has its origin in God, and on the other are those who, apparently with Veatch, believe this law exists and God has nothing to do with it, if He exists at all.

Notice also that for the “two natural laws” argument to be effective, we need to construe this as a historical claim about liberalism. The claim cannot be just that there may have been at some time a concept of natural law held by some people that did not depend on any theological postulates – although there are plenty of issues connected to that claim that need to be addressed in any comprehensive treatment of the issue here. Instead, this is an argument that the *political liberalism* we are familiar with in Western political philosophy has drawn on such concepts of natural law. As such, the claim is also not that *there are now* some liberals or libertarians (the two cannot be neatly equated) who are atheists, or who think that there is a defensible concept of natural law ethics that avoids theological assumptions and which would lend weight to liberalism. The question here concerns liberalism’s historical origins and development. Part of the task of assessing the claim then, is determining what material should be taken into account when assessing what liberal positions are relevant.

Given that the argument is that liberals today can draw on more than one model of liberalism because the historic basis for classical liberalism has involved different views of natural law, we are basically dealing with important historical developers of political liberalism who have appealed to or discussed natural law. By “historical” I mean to exclude contemporary proponents of liberalism who claim that liberalism does entail the exclusion of religious presuppositions from the public square, for essentially, they are the ones on trial. I am asking whether or not there is a strong tradition for them to draw on in the natural law theorists of political liberalism.

The first impression one gets as we browse classical liberalism's hall of fame is that such a tradition, if it exists, is highly elusive indeed.

Hooker

A. Woodhouse sums up Hooker's stance on natural and positive laws:

In the law of nature there can be, of course, nothing arbitrary. It owes its origin not simply to the divine will but to the divine nature. It is recognizable by human reason, and that part of natural law which applies peculiarly to man and demands his cooperation, Hooker significantly calls "the law of reason." As for positive law as distinguished from natural: the divine law positive can no more than natural law contradict the nature of its author; those positive laws, on the other hand, instituted by fallen and fallible man may indeed contradict man's rational nature and spring less from reason than from arbitrary will, but (though the opinion of their doing so does not release from the obligation of obedience) all such positive laws are subject to review by reason and in the light of the standard supplied by the law of nature, and may be, by legal and orderly process, revised or rescinded.<sup>10</sup>

In a nutshell then, man's laws may be subject to review in order to make them conform better to God's law, reflected in the law of nature. It is not difficult to confirm that this is an accurate summary of Hooker's view of natural law. On the one hand Hooker uses the term to refer to the natural behaviour of the universe, in the sense of its manifesting laws of science, regularity of properties and so forth. In speaking of the "law of nature," he says, "we sometimes mean that manner of working which God hath set for each created thing to keep," such as "the heavens and elements of the world, which can do no otherwise than they do."<sup>11</sup> He adds to this other examples by asking what it might be like if the law of nature in this sense were not kept:

Now if nature should intermit her course, and leave altogether though it were but for a while the observation of her own laws; if those principal and mother elements of the world, whereof all things in this lower world are made, should lose the qualities which now they have; if the frame of that heavenly arch erected over our heads should loosen and dissolve itself; if celestial spheres should forget their wonted motions, and by irregular volubility turn themselves any way as it might happen; if the prince of the lights of heaven, which now as a giant doth run his unwearied course, should as it were through a languishing faintness begin to stand and to rest himself; if the moon should wander from her beaten way, the times and seasons of the year blend themselves by

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<sup>10</sup> A. Woodhouse, "Religion and Some Foundations of English Democracy," *The Philosophical Review*, Vol. 61, No. 4 (Oct., 1952), 513.

<sup>11</sup> Richard Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, Ch. 3, par. 2, in *The Works of Mr. Richard Hooker*, ed. John Keble, rev. R. W. Church and F. Paget (Oxford: Clarendon, 1888), vol. 1.

disordered and confused mixture, the winds breathe out their last gasp, the clouds yield no rain, the earth be defeated of heavenly influence, the fruits of the earth pine away as children at the withered breasts of their mother no longer able to yield them relief: what would become of man him self, whom these things now do all serve? See we not plainly that obedience of creatures unto the law of nature is the stay of the whole world?<sup>12</sup>

Hooker says of this type of natural law, “those Laws are investigable by Reason, without the help of Revelation supernatural and divine.”<sup>13</sup> That is, revelation via Scripture and the church is not necessary in order to investigate and discover laws of science. But like other classical liberal writers, Hooker construes natural law to include more than simply the natural workings of the universe. He explains that this concept, which we could call proper function, applies also to human reason and morality. He cites what is evidently a widely cited phrase, drawing on Augustine and Aquinas to do so, that “whatsoever is done amiss, the Law of Nature and Reason thereby is transgressed,” and he affirms this claim,

because even those offences which are by their special qualities breaches of supernatural laws, do also, for that they are generally evil, violate in general that principle of Reason, which willetth universally to fly from evil: yet do we not therefore so far extend the Law of Reason, as to contain in it all manner laws whereunto reasonable creatures are bound, but (as hath been shewed) we restrain it to those only duties, which all men by force of natural wit either do or might understand to be such duties as concern all men.<sup>14</sup>

In the context of his discussion of Ecclesiastical polity, what this means is that even if a practice is condemned by the church as a violation of a specific commandment, it is wrong by virtue of the fact that it violates *natural* law, which teaches us all to abstain from evil. Interestingly, however, Hooker here says that while natural law tells us to flee from evil, the natural law does not tell us everything that *is* evil, but only the most basic moral principles, that all of us should know. He does make it clear, however, that the basics actually contain a considerable amount, saying of the law of reason, which is a subset of the law of nature, that “there are in it some things which stand as principles universally agreed upon; and that out of those principles, which are in themselves evident, the greatest moral duties we owe towards God or man may without any great difficulty be concluded.”<sup>15</sup>

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<sup>12</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, ch. 3, par. 3.

<sup>13</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, ch. 8, par. 9.

<sup>14</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, ch. 8, par. 10.

<sup>15</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, ch. 8, par. 10.



Hooker turns then to the question of why so many people have been ignorant of what counts as sin, if the law of nature and reason is so evident.

If then it be here demanded, by what means it should come to pass (the greatest part of the Law moral being so easy for all men to know) that so many thousands of men notwithstanding have been ignorant even of principal moral duties, not imagining the breach of them to be sin: I deny not but lewd and wicked custom, beginning perhaps at the first amongst few, afterwards spreading into greater multitudes, and so continuing from time to time, may be of force even in plain things to smother the light of natural understanding; because men will not bend their wits to examine whether things wherewith they have been accustomed be good or evil. For example's sake, that grosser kind of heathenish idolatry, whereby they worshipped the very works of their own hands, was an absurdity to reason so palpable, that the Prophet David comparing idols and idolaters together maketh almost no odds between them, but the one in a manner as much without wit and sense as the other; "They that make them are like unto them, and so are all that trust in them."<sup>16</sup>

For Hooker there was no question as to the origin of natural law or what it requires. In fact, he expressly endorses the biblical claim that even in the absence of the teaching of the written law – that is, the Bible – we may still know in a basic sense what God requires of us, because God makes it known to us all.

Men do both [accuse and approve themselves], as the Apostle teacheth; yea, those men which have no written law of God to shew what is good or evil, carry written in their hearts the universal law of mankind, the Law of Reason, whereby they judge as by **a rule which God hath given unto all men for that purpose**. The law of reason doth somewhat direct men how to honour God as their Creator ; but how to glorify God in such sort as is required, to the end he may be an everlasting Saviour, this we are taught by divine law, which law both ascertaineth the truth and supplieth unto us the want of that other law [emphasis added].<sup>17</sup>

Elsewhere Hooker again affirms that the Law of Nature reveals even to "natural men" (a biblical term to describe unbelievers) the Law of God:

Concerning the inability of reason to search out and to judge of things divine, if they be such as those properties of God and those duties of men towards him, which may be conceived by attentive consideration of heaven and earth; we know that of mere natural men the Apostle testifieth, how they knew both God, and the Law of God.<sup>18</sup>

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<sup>16</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, ch. 8, par. 11. Hooker is quoting here from Psalm 135:18.

<sup>17</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 1, ch. 16, par. 5.

<sup>18</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 3, ch. 8, par. 6.

While there are, admittedly, times when Hooker speaks of the law of nature on the one hand and the law of God on the other, it is clear enough that he does not mean by this that the law of nature is not the law of God, but rather he means to distinguish between positive commands in Scripture and unwritten law in nature. He refers to the law of nature as God's law in clear enough terms not to confuse the reader into thinking that he did not see natural law as God's law. He refers at one point to certain people "by whom both the natural law of God was disobeyed, and the mysteries of supernatural truth derided," as a way of saying that they violated natural law and Scripture.<sup>19</sup>

Woohouse's summary was correct. As far as Hooker was concerned, the law of nature constitutes natural revelation wherein God shows us what He requires of us, even if not to the fullest extent. In a way this view of natural moral law can be seen as a subset of scientific law if it is construed in terms of "the way things were meant by God to be."

### John Locke

Locke's understanding of the law of nature is unambiguous. It is not something generated by reason, nor is it something arrived at by consensus or co-operative deliberation. It is objective, that is, it is out there in the world of brute facts. Reason, when it is at its best, serves as the "candle of the Lord," the gift of God enabling us to illuminate those truths of the law of nature that are there to be seen.<sup>20</sup> The Law of nature is something that has its origin in the will of God, reflecting the teleological nature of creation, having been made for a purpose and with a proper function, which is constitutive of the basis of moral law.

[T]his law of nature can be described as being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature, and for this very reason commanding or prohibiting. It appears to me less correctly termed by some the dictate of reason, since reason does not so much establish and pronounce this law of nature as search for it and discover it as a law enacted by a superior power and implanted in our hearts.<sup>21</sup>

<sup>19</sup> Hooker, *Of the Laws of Ecclesiastical Polity*, Bk. 5, Appendix, par. 9.

<sup>20</sup> Locke, *An Essay Concerning Human understanding*, ch. 3 par. 20.

<sup>21</sup> Locke, *Essays on the Law of Nature*, ed. W. Von Leyden (Oxford: Clarendon, 1954), 111.

It is noteworthy that Locke cautions against the terminology that might be used in calling natural law the dictate of reason, since reason does not generate natural law but discovers it as part of the world we live in. This attitude of Locke to the relationship between reason and natural law is lost on many contemporary liberal admirers of Locke's legacy. Steven Forde says in passing as though it will be readily granted, "Morality, Locke says repeatedly, is grounded in 'natural law.' This law is the law of reason, or is reason itself."<sup>22</sup> After saying this Forde lists the following as evidence that this is how Locke saw the law of nature: "First Treatise, §101; Second Treatise, §56, 11, 181." While Locke does mention the law of nature in these paragraphs, he says nothing to conflict with his comments that natural law should *not* be called the dictate of reason (much less "reason itself!").

It would be careless to oversimplify and leave open the possibility of thinking that Locke's view of our knowledge of natural law was *no* different from his contemporaries in the world of theology. His understanding of what natural law *is* is unremarkable, and could easily have been affirmed by Calvin before him. But Locke's view of what we can *know* of natural law was different. Locke infamously held a doctrine of *tabula rasa*, which essentially amounted to a denial of the theological concept of depravity, that man has a natural tendency, due to the fall, towards sin and rebellion against God.

Marshall seems to go a bridge too far in explaining this divide between Locke and more mainstream Christian thinkers, when he describes the contrast with Calvinism by saying that Calvin "asserted the need for grace in order for man to properly know God as creator, let alone to know the content of his duties."<sup>23</sup> The suggestion in this brief reference seems to be that in Calvin's view, a man's first knowing God through saving grace is the hurdle that must be cleared before the even greater hurdle of a man knowing his duties according to natural law can be cleared, as opposed to the view of Locke where we can know the requirements of the law of nature

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<sup>22</sup> Steven Forde , "Natural Law, Theology, and Morality in Locke," *American Journal of Political Science* 45:2 (2001), 397.

<sup>23</sup> John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge: Cambridge University Press, 1994), 29.

by using our reasoning faculties. This contrast is not quite accurate. Granted, there are times when Calvin stressed our epistemological limitations with respect of natural law. For example, speaking of the Ten Commandments, Calvin said:

The Law was committed to writing, in order that it might teach more fully and perfectly that knowledge, both of God and of ourselves, which the law of nature teaches meagerly and obscurely. Proof of this, from an enumeration of the principal parts of the Moral Law; and also from the dictate of natural law, written on the hearts of all, and, in a manner, effaced by sin.<sup>24</sup>

On the face of it, this might be seen as a strong disagreement with Locke, who at times seems to suggest that the morality embedded in the law of nature is just there for the taking without hindrance.

Virtue is everywhere, that which is thought praiseworthy; and nothing else but that which has the allowance of public esteem is called virtue. Virtue and praise are so united, that they are called often by the same name. Sunt sua praemia laudi, says Virgil; and so Cicero, Nihil habet natura praestantius, quam honestatem, quam laudem, quam dignitatem, quam decus, which he tells you are all names for the same thing. This is the language of the heathen philosophers, who well understood wherein their notions of virtue and vice consisted. And though perhaps, by the different temper, education, fashion, maxims, or interest of different sorts of men, it fell out, that what was thought praiseworthy in one place, escaped not censure in another; and so in different societies, virtues and vices were changed: yet, as to the main, they for the most part kept the same everywhere. For, since nothing can be more natural than to encourage with esteem and reputation that wherein every one finds his advantage, and to blame and discountenance the contrary; it is no wonder that esteem and discredit, virtue and vice, should, in a great measure, everywhere correspond with the unchangeable rule of right and wrong, which the law of God hath established; there being nothing that so directly and visibly secures and advances the general good of mankind in this world, as obedience to the laws he has set them, and nothing that breeds such mischiefs and confusion, as the neglect of them. And therefore men, without renouncing all sense and reason, and their own interest, which they are so constantly true to, could not generally mistake, in placing their commendation and blame on that side that really deserved it not. Nay, even those men whose practice was otherwise, failed not to give their approbation right, few being depraved to that degree as not to condemn, at least in others, the faults they themselves were guilty of; whereby, even in the corruption of manners, the true boundaries of the law of nature, which ought to be the rule of virtue and vice, were pretty well preferred. So that even the exhortations of inspired teachers, have not feared to appeal to common repute: "Whatsoever is lovely, whatsoever is of good report, if there be any virtue, if there be any praise," &c. (Phil. 4. 8.)<sup>25</sup>

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<sup>24</sup> Calvin, *Inst*, Bk. 2, Ch 8, introduction.

<sup>25</sup> Locke, *Essay Concerning Human Understanding*, Bk 2, Ch 28, par 11.

However, while Locke did not appeal to our corrupted sinful nature as did Calvin, he does at times speak of the law of nature is obscure and difficult to interpret. While it is objective, that is, a brute fact about the world there for the learning, it is not innate in the sense of being something known and assented to independent of exposure to those facts (in fact the first section of *Locke's Essay Concerning Human Understanding* is entirely dedicated to this claim). And Calvin does not say, as Marshall suggests, that an unregenerate man does not know what his duties are. On the contrary, it is because a man *does* know what his duties are but neglects them anyway that a man is held all the more guilty. In fact, while a man's knowledge of God might not be pure and free of defect, leading to love and worship of God, the unbelieving man, says Calvin, has no excuse because God has revealed Himself in creation, including the creation of the human heart:

That there exists in the human minds and indeed by natural instinct, some sense of Deity, we hold to be beyond dispute, since God himself, to prevent any man from pretending ignorance, has endued all men with some idea of his Godhead, the memory of which he constantly renews and occasionally enlarges, that all to a man being aware that there is a God, and that he is their Maker, may be condemned by their own conscience when they neither worship him nor consecrate their lives to his service. Certainly, if there is any quarter where it may be supposed that God is unknown, the most likely for such an instance to exist is among the dullest tribes farthest removed from civilization. But, as a heathen tells us, there is no nation so barbarous, no race so brutish, as not to be imbued with the conviction that there is a God. Even those who, in other respects, seem to differ least from the lower animals, constantly retain some sense of religion; so thoroughly has this common conviction possessed the mind, so firmly is it stamped on the breasts of all men.<sup>26</sup>

This knowledge, argues Calvin, is not limited to an innate tendency from within.

Since the perfection of blessedness consists in the knowledge of God, he has been pleased, in order that none might be excluded from the means of obtaining felicity, not only to deposit in our minds that seed of religion of which we have already spoken, but so to manifest his perfections in the whole structure of the universe, and daily place himself in our view, that we cannot open our eyes without being compelled to behold him. His essence, indeed, is incomprehensible, utterly transcending all human thought; but on each of his works his glory is engraven in characters so bright, so distinct, and so illustrious, that none, however dull and illiterate, can plead ignorance as their excuse.<sup>27</sup>

In attestation of his wondrous wisdom, both the heavens and the earth present us with innumerable proofs not only those more recondite proofs which astronomy, medicine, and all the natural sciences, are designed to illustrate, but proofs which force themselves on the notice of the most illiterate peasant, who cannot open his eyes without beholding them. It is true, indeed, that

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<sup>26</sup> Calvin, *Inst*, Bk 1, Ch 3, par 1.

<sup>27</sup> Calvin, *Inst*, Bk 1, Ch 5, par 1.

those who are more or less intimately acquainted with those liberal studies are thereby assisted and enabled to obtain a deeper insight into the secret workings of divine wisdom. No man, however, though he be ignorant of these, is incapacitated for discerning such proofs of creative wisdom as may well cause him to break forth in admiration of the Creator.<sup>28</sup>

Calvin did not deny that the natural law imparts to us a knowledge of our duties. He says that it does, but that it does so very poorly when compared with the written law, namely Scripture. Speaking again of the Ten Commandments (referred to as the “two tables” of the law), he says:

Moreover, the very things contained in the two tables are, in a manner, dictated to us by that internal law, which, as has been already said, is in a manner written and stamped on every heart. For conscience, instead of allowing us to stifle our perceptions, and sleep on without interruption, acts as an inward witness and monitor, reminds us of what we owe to God, points out the distinction between good and evil, and thereby convicts us of departure from duty. But man, being immured in the darkness of error, is scarcely able, by means of that natural law, to form any tolerable idea of the worship which is acceptable to God. At all events, he is very far from forming any correct knowledge of it. In addition to this, he is so swollen with arrogance and ambition, and so blinded with self-love, that he is unable to survey, and, as it were, descend into himself, that he may so learn to humble and abase himself, and confess his misery. Therefore, as a necessary remedy, both for our dullness and our contumacy, the Lord has given us his written Law, which, by its sure attestations, removes the obscurity of the law of nature, and also, by shaking off our lethargy, makes a more lively and permanent impression on our minds.<sup>29</sup>

The problem, in Calvin’s view, is not so much the clarity of the law of nature in itself as our own sinfulness and inability to grasp it. But Locke too held for somewhat different reasons that a lot of people fail to grasp the law of nature. The difference between Locke and his more mainstream Protestant fellows then is not their view of natural law, or even in principle their view *that we have* the ability to grasp it, but Rather the reasons that people do not adhere to it. As such, Locke’s view of the law of nature makes no departure from that of his Protestant surroundings. Where he differs is in his view of human nature.

### Algernon Sidney

In Sidney’s master work *Discourses Concerning Government*, the phrase “law of God” almost never occurs without adding “and nature,” showing that for Sidney, the law of God is the “law of God and nature,” and there

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<sup>28</sup> Calvin, *Inst*, Bk 1, Ch 5, par 2.

<sup>29</sup> Calvin, Bk 2, Ch 8, par 1.

is no point where one ends and the other begins. Where he does refer to them separately, it is clear that he does not do so to suggest that their content is different or that the law of nature does not directly depend on God for its content, as in the case where he condemns certain actions as being “not according to the law of God, nor to the law of nature, which **cannot** differ from it” [emphasis added].<sup>30</sup>

## Montesquieu

Michael Zuckert claims that in Montesquieu, just as in Locke, the “ultimate standard of right” and the “bedrock of political morality” is not in the natural law at all, but rather in the fact of “self-ownership.”<sup>31</sup> In fact, he goes so far as to ‘partially’ endorse Hulliung’s claim that in the view of Montesquieu as well as – Zuckert seems to imply – of Locke, “both the Christian deity and the law of nature were expendable as methods of condemning evil.”<sup>32</sup> This is fairly obviously false in the case of Locke, for whom the Law of Nature was a reflection of the will of the Christian deity, and who saw the natural law as that which *identifies* right and wrong. How could evil be condemned, given such a view, if we jettison the very thing that is supposed to identify what is evil and what is not?

In support of his claim that Montesquieu viewed the law of nature as expendable, and that it did not provide the foundation for the kind of moral judgements upon which civil laws should rest, Zuckert says that according to Montesquieu, “the law of nature is not normative in its own terms, although it may have some normative implications,” and supports this not by quoting the claim in Montesquieu, but by listing a reference for the reader to investigate for herself, namely book 26, chapters three to five of Montesquieu’s major work.<sup>33</sup>

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<sup>30</sup> Sidney, *Discourses Concerning Government*, 73.

<sup>31</sup> Michael Zuckert, “Montesquieu’s Critique of Hobbes,” in Ellen Franjel Paul, Fred D. Miller and Jeffrey Paul (ed.), *Natural Law and Modern Moral Philosophy* (Cambridge: Cambridge University Press, 2001), 247.

<sup>32</sup> Mark Hulliung, *Montesquieu and the Old Regime* (Berkeley: University of California Press, 1976), 141, cited in Zuckert, “Montesquieu’s Critique of Hobbes,” 247, footnote 51.

<sup>33</sup> Zuckert, “Montesquieu’s Critique of Hobbes,” 246.

However, it is highly doubtful that this is what Montesquieu meant in those chapters. They are essentially chapters dealing with scenarios where there is or appears to be a conflict between what we would ordinarily take to be a duty according to the law of nature and the appropriate civil law to establish. In chapters 3 and 4 he lists a number of cases in which he judges that civil laws were passed that were contrary to the law of nature, and hence those civil laws were unjust. If this tells us anything about the relationship between civil and natural law in Montesquieu, it strongly suggests that he believes that natural law is the basis of civil law, contrary to what Zuckert claimed. In fact, at the end of chapter 4, after considering one case that he considered to be particularly unjust, Montesquieu declared: "How iniquitous the law, which, to preserve a purity of morals, overturns nature, the origin, the source of all morality!" How, then, could reasonably be claimed that for Montesquieu the law of nature is not morally normative? Zuckert's comment seems to be an interpretation of chapter 5, "Cases in which we may judge by the Principles of the Civil Law, in limiting the Principles of the Law of Nature." Based simply on the chapter's title, one might be forgiven for believing that had dealt with the practice of opposing the law of nature with civil law. However, given that it immediately follows Montesquieu's claim that any law that overturns a law of nature is "iniquitous," such an interpretation is highly dubious. In this chapter Montesquieu cites only one law, as follows:

AN Athenian law obliged children to provide for their fathers, when fallen into poverty; it excepted those who were born of a courtesan, those whose chastity had been infamously prostituted by their father, and those to whom he had not given any means of gaining a livelihood.

Montesquieu himself considered that a child had a duty according to nature to provide for his father if needed, and therefore he considered that this law provided an exception to this natural duty. But whether he thought that this was so because the law of nature was not binding in the three sets of circumstances outlined by this law is by no means clear. See how Montesquieu evaluated the above law:

The law considered, that, in the first case, the father being uncertain, he had rendered the natural obligation precarious; that in the second, he had sullied the life he had given, and done the greatest injury he could do to his children, in depriving them of their reputation; that in the third, he had rendered insupportable a life which had no means of subsistence. ***The law suspended the natural obligation of children, because the father had violated his***; it looked upon the father and the son as no more than two citizens, and determined, in respect to them, only from civil and political views; ever considering, that a good republic ought to have a particular regard to manners. I am apt to think, that Solon's law was a wise regulation in the first two cases, whether



that in which nature has left the son in ignorance with regard to his father, or that in which she even seems to ordain he should not own him; **but it cannot be approved with respect to the third, where the father had only violated a civil institution** [emphasis added].

Notice that Montesquieu accepts that there are cases where people need not meet what would *ordinarily* be their natural obligation, but this is only the case where others have failed to meet their natural obligations. While this could be construed to mean that the law of nature is not normative, this is certainly not the most obvious interpretation of this approach. For example, a believer in normative natural law would say that we have a natural obligation not to kill one another, yet it does not follow from this that we ought not to execute a murderer who has violated his natural duty. In other words, what would ordinarily be considered natural evils become required in response to natural evils.

Montesquieu's work does not deal much with what natural law is or whence it arises, but he does begin his work by spelling this out, laying the foundation for every reference he later makes to the law of nature. He appeals to the law of nature later as entailing moral requirements, but at the very outset he explains that all requirements of the law of nature come from the author of the law of nature, God:

LAWS, in their most general signification, are the necessary relations arising from the nature of things. In this sense, all beings have their laws; the Deity his laws, the material world its laws, the intelligence superior to man their laws, the beasts their laws, man his laws.

They who assert, that a *blind fatality produced the various effects we behold in this world*, talk very absurdly; for can any thing be more unreasonable than to pretend that a blind fatality could be productive of intelligent beings?

There is then a primitive reason; and laws are the relations subsisting between it and different beings, and the relations of these to one another.

God is related to the universe as creator and preserver: the laws by which he created all things are those by which he preserves them. He acts according to these rules, because he knows them; he knows them, because he made them; and he made them, because they are relative to his wisdom and power.

Since we observe that the world, though formed by the motion of matter, and void of understanding, subsists through so long a succession of ages, its motions must certainly be directed by invariable laws: and, could we imagine another world, it must also have constant rules, or it would inevitably perish.

Thus the creation, which seems an arbitrary act, supposeth laws as invariable as those of the fatality of the atheists. It would be absurd to say, that the Creator might govern the world without those rules, since without them it could not subsist.

These rules are a fixed and invariable relation. In bodies moved, the motion is received, increased, diminished, lost, according to the relations of the quantity of matter and velocity: each diversity is *uniformity*; each change is *constancy*.

Particular intelligent beings may have laws of their own making; but they have some likewise which they never made. Before there were intelligent beings, they were possible; they had therefore possible relations, and consequently possible laws. Before laws were made, there were relations of possible justice. To say that there is nothing just or unjust, but what is commanded or forbidden by positive laws, is the same as saying that, before the describing of a circle, all the radii were not equal.<sup>34</sup>

His last words here are worthy of note: To suppose that justice and injustice did not exist until men made laws determining what is just and what is unjust is as absurd, he says, that prior to geometrical principles being formulated, they were not binding, and a circle could have radii of different lengths. The clear implication of this is that human law making is not meant to create standards of justice, but rather to conform to them. Human beings have some laws that they create, but there are basic laws that no human or human society created. We see here a comment like that in Grotius, implying that God cannot change the law of nature. Montesquieu says that God cannot govern the natural world without the laws of nature that we now have, not because they never depended on God for their existence, but because without them the world that we know would not exist to be governed at all.

Montesquieu later speaks of natural law not just in terms of the laws of science, but more broadly as the laws of God governing everything in creation, including human conduct. Unlike Locke, he was more willing to speak of man's failing to live up to those laws not simply to a lack of intelligence or reason, but to a direct transgression of God's laws.

Man, as a physical being, is, like other bodies, governed by invariable laws. As an intelligent being, he incessantly transgresses the laws established by God, and changes those of his own instituting. He is left to his private direction, though a limited being, and subject, like all finite intelligences, to ignorance and error: even his imperfect knowledge he loseth; and, as a sensible creature, he is hurried away by a thousand impetuous passions. Such a being might every instant forget his Creator; God has therefore reminded him of his duty by the laws of religion. Such a

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<sup>34</sup> Montesquieu, *The Spirit of Laws*, Bk. 1, Ch. 1.

being is liable every moment to forget himself; philosophy has provided against this by the laws of morality. Formed to live in society, he might forget his fellow-creatures; legislators have, therefore, by political and civil laws, confined him to his duty.<sup>35</sup>

While Montesquieu ostensibly did not set out to write about theology but jurisprudence, and hence his comments about the metaphysics of natural law are sparse, on those rare occasions when he turned directly to the subject, we see very familiar themes appearing:

ANTECEDENT to the above-mentioned laws are those of nature; so called because they derive their force entirely from our frame and existence. In order to have a perfect knowledge of these laws, we must consider man before the establishment of society; the laws received in such a state would be those of nature. The law, which, impressing on our minds the idea of a Creator, inclines us toward him, is the first in importance, though not in order, of natural laws.<sup>36</sup>

The view expressed in Scripture, in Calvin, as well as in Locke, that the most important of natural laws is that which inclines us to God our creator. He created laws of nature which should be reflected in civil laws, and he also created religion to remind us explicitly of our duty to God. In Montesquieu then, there is no hope of finding a godless theory of natural law.

### **Grotius: A Secularist?**

At this point in what is a fairly quick survey, everything that we have seen suggests that Veatch is mistaken. In Classical Liberalism the view of natural law really *was* a religious one where natural law is divine law in some basic sense, and it is not generated by or based on reason. What becomes clear before very long at all when surveying the evidence is that the pattern of seeing the law of nature as a concept with theological underpinnings is virtually a uniform tendency. *Whence*, then, does the impression arise that this is not the case? Perhaps the most viable candidate for a thinker of historical importance to classical liberalism who purged religious beliefs from his understanding of natural law is Hugo Grotius. Like other natural law theorists of his time, he claimed that natural law is generally apprehended by human beings, and that it aligns with the dictates of right reason. But he also said some things which have lead many to say that he did not believe that

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<sup>35</sup> Montesquieu, *The Spirit of Laws*, Bk. 1, Ch. 1.

<sup>36</sup> Montesquieu, *The Spirit of Laws*, Bk. 1, Ch. 1.

natural law was in any sense dependent on God for its content. Steven Forde is representative of this understanding of Grotius, saying that in Grotius' view "natural law does not require a legislating will, or a divine enforcer, to be law."<sup>37</sup> Grotius rejected the view that moral law was a mere convention, because "the very nature of man," he said, "is the mother of the law of nature."<sup>38</sup> Far from being dependent on God, some might find in Grotius the view that God is literally powerless over the law of nature, when he says "Now the Law of Nature is so unalterable, that it cannot be changed even by God himself."<sup>39</sup> To further reassure many of his interpreters that this law of nature really is not rooted in God in some way, he says, "What we are saying would have a degree of validity even if we should concede... that there is no God."<sup>40</sup> How could it be clearer?

But this understanding of Grotius really does him an injustice, and betrays a hasty reading of what he said, a reading that, I daresay, is really an attempt to secularise a view that in its original form just does not accommodate to the secularist mould into which some might wish to force it.

In fact Grotius has been taken out of context. Observe that he clearly teaches that the law of nature *is* dependent on God for its content.

Herein, then, is another source of law besides the source in nature, that is, the free will of God, to which beyond all cavil our reason tells us we must render obedience. But the law of nature of which we have spoken, comprising alike that which relates to the social life of man and that which is so called in a larger sense, proceeding as it does from the essential traits implanted in man, can nevertheless rightly-be attributed to God. because of His having willed that such traits exist in us.<sup>41</sup>

In saying that we find another source of the law in the free will of God, Grotius footnotes Marcus Aurelius' saying that "he who commits injustice is guilty of impiety," indicating that a violation of standards of justice revealed in the law of nature constitutes a violation of the will of God. And:

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<sup>37</sup> Forde , "Natural Law, Theology, and Morality in Locke," 398.

<sup>38</sup> Grotius, *Prolegomena to the Law of War and Peace*, par. 16.

<sup>39</sup> Grotius, *Rights of War and Peace* Book 1, ch. 1, par. 10.

<sup>40</sup> Grotius, *Prolegomena* par. 11.

<sup>41</sup> Grotius, *Prolegomena* par. 12.

Natural right is the dictate of right reason, shewing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature.<sup>42</sup>

Notice the order in which Grotius places the reference to the rational nature and the command of God: If something is not in accordance with a rational nature, then consequently this shows that the act is forbidden by God and if something is required by a rational nature, then consequently this shows that it is commanded by God. The will of God then is causal for the way things are and whether or not an act accords with a rational nature. The brute fact that generates natural “laws” of morality is not just that things are the way they are, but that God *intended* them to be the way they are. To violate the natural law then is to violate God’s will.

And so for Grotius, it may well be the case that a person can deny the existence of God, while still agreeing that through the use of his mind he can discover what is right and wrong. That is an epistemological question. But Grotius’ answer to the question of *why it is* that nature is such that some things are right and others wrong is that God has willed for this to be so. In Grotius, God created the world in such a way that to do some thing is good, and then He commands that we do it. The fact that Grotius separates natural law from God’s positive commands does not mean His theory of natural law does not depend on theological assumptions, or even that natural law is not the moral decree of God. On the contrary, when he is distinguishing law in the sense of God’s direct *commands* from the law of nature, he says that “What volitional divine law is we may well understand from the meaning of the words. It is, of course, that law which has its origin in the divine will...” As law that arises from positive commands which express God’s will, Grotius says that this type of law “may be distinguished from the law of nature, which, also, as we have said, *may be called divine*.”<sup>43</sup>

To explain what he means by “as we have said,” Grotius includes a cross reference to his statements in Prolegomena 12 quoted earlier, where he says that the law of nature is attributable to God since the nature of

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<sup>42</sup> Grotius, *Rights of War and Peace* Book 1, ch. 1, par. 10.

<sup>43</sup> Grotius, *Rights of War and Peace* Book 1, ch. 1, par. 10.

things and people determining what is right and wrong is nonetheless willed by God in the first place.<sup>44</sup> The point is clear enough already against those who would claim Grotius as a supporter for a purely irreligious concept of natural law, but to further drive the nail in the coffin, he adds a footnote in the Prolegomena at this point to the fourth century Church Father St Chrysostom, someone Grotius frequently draws on, when he said that “when I say nature, I mean God, for He is the author of nature.” This explains fully why Grotius said that God cannot change the content of natural law, since natural law reflects the intent of God the creator when he made things as they are. Changing natural law would be tantamount to going back in time and creating a different universe. In other words, even granting that God *could* have acted in such a way so that natural law would have been different from what it is, given that God acted as He did, it cannot be. In other words:

- 1) If God intended to create the world in this way, then those actions would be right/wrong
- 2) God did create the world in this way
- 3) Therefore those things are right/wrong

Premise 1) needs to be worded this way. God is such that He wills certain things, and He chose to create the world in a certain way. Given that the world was created that way, there are certain things that, in the nature of the case, fulfil God’s will. Had God made the world differently, then perhaps the acts that would fulfil God’s will would be different, but given the way God did create the world, they are what they are and cannot be changed.

Reflecting on Hugo Grotius and William of Ockham, David Clark notes that “It is not insignificant nor [is it] superfluous to the Christian conscience that God requires conformity to Right Reason’s dictate when this obligation could be recognized without faith.”<sup>45</sup> In both cases what we have is a system of ethics with a theological grounding for its truth (however that grounding may or may not subtly differ in each case), but an

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<sup>44</sup> Edwards is surely on the mark when he reflects on these passages in Grotius on natural law, and says that “These statements can be overlooked only at the peril of misinterpreting the whole theory of Grotius,” in Charles Edwards, “The Law of Nature in the Thought of Hugo Grotius,” *The Journal of Politics* 32:4 (1970), 798. Edwards’ article is perhaps the best concise argument against the claim that Grotius was a rationalist who grounded his theory of natural law, unlike so many other religious thinkers of his time, in principles that involved no theological claims.

<sup>45</sup> David W. Clark, “William of Ockham on Right Reason,” *Speculum* 48:1 (1973), 19.

epistemology such that it can be apprehended to some degree by those who reject the truth of its theological grounding. Grotius simply did not say or suggest that even if there were no God, there would still be a natural law to appeal to for moral claims. Michael Crowe is certainly correct when he observes the attempts to secularise Grotius, and notes that “perhaps history has accorded more importance to Grotius’ hypothesis of God’s non-existence than he did himself.”<sup>46</sup>

At this point let me again emphasise how Veatch has it wrong. He speaks of genuine natural laws on the one hand, to be properly associated with the real natural law theory underlying liberal thought, and he bewails the fact that on the other hand “so-called natural laws were held to be associated with the law of God.” It seems that Veatch’s list of false natural law theories that undergird some kinds of liberalism would actually include the major proponents of classical liberalism. What he wants to do is change the language we use, abandon the way natural law has historically been spoken about in liberalism, and adopt his concept of natural law, all the while saying that we should be using the term properly, that is, non-religiously.

There is one example that should be mentioned before turning away from this brief historical survey. David Hume said that he believed in natural law which accorded with principles of justice, and he did not believe in God. The reason I have not mentioned him so far is that anyone who has seen what David Hume said about natural law will already know that just because he *called* it natural law does not mean it is the same thing that other philosophers meant by that term.

Hume considered that there are three basic so-called “Laws of nature”: “that of the stability of possession, of its transference by consent, and of the performance of promises. ’Tis on the strict observance of those three laws, that the peace and security of human society entirely depend;”<sup>47</sup> Such language might suggest a concept of natural law was present in Hume, albeit a highly truncated concept. But to draw this conclusion is hasty, and

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<sup>46</sup> Michael Bertram Crowe, *The Changing Profile of the Natural Law* (The Hague: Martinus Nijhoff, 1977), 229.

<sup>47</sup> David Hume, *A Treatise of Human Nature*, reprinted from the Original Edition in three volumes and edited, with an analytical index, by L.A. Selby-Bigge, M.A. (Oxford: Clarendon Press, 1896), online at the Online Library of Liberty, <http://oll.libertyfund.org/index.html> (accessed 23<sup>rd</sup> January 2005), Part 2, Section 6, 337.

any broader survey of how Hume talks about natural law will show that his natural law is not natural law as we know it.

'Tis reasonable for those philosophers, who assert justice to be a natural virtue, and antecedent to human conventions, to resolve all civil allegiance into the obligation of a promise, and assert that 'tis our own consent alone, which binds us to any submission to magistracy. For as all government is plainly an invention of men, and the origin of most governments is known in history, 'tis necessary to mount higher, in order to find the source of our political duties, if we wou'd assert them to have any *natural* obligation of morality. These philosophers, therefore, quickly observe, that society is as antient as the human species, and those three fundamental laws of nature as antient as society: So that taking advantage of the antiquity, and obscure origin of these laws, they first deny them to be artificial and voluntary inventions of men, and then seek to ingraft on them those other duties, which are more plainly artificial. But being once undeceiv'd in this particular, and having found that *natural*, as well as *civil* justice, derives its origin from human conventions, we shall quickly perceive, how fruitless it is to resolve the one into the other, and seek, in the laws of nature, a stronger foundation for our political duties than interest, and human conventions;<sup>48</sup>

The supposition of a basic natural law that *ought* to underlie the moral precepts at which we arrive is, Hume claims, a mere invention to make our own moral rules and systems of government seem more authoritative, since they are supposedly based on it. Hume says on countless occasions in one way or another that “the rules of justice are establish'd by the artifice of men.”<sup>49</sup> He claims as though it is a settled matter that “men *invented* the three fundamental laws of nature, when they observ'd the necessity of society to their mutual subsistence.”<sup>50</sup> At one point he decries a particular practice (the content of which is irrelevant for now), on the grounds that it “is a kind of superstitious practice in civil laws, and in the laws of nature,” suggesting that in fact laws of nature can, in principle, be wrong.<sup>51</sup>

The point could be pressed, but it is in my view so obvious that it does not need to be. Hume did not have a secular version of what we normally think of as natural law. He called his laws natural, and that is where the similarity between his view and the natural law of Locke, Grotius or Sidney ends.

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<sup>48</sup> Hume, *A Treatise of Human Nature*, Part 2, Section 8, 348.

<sup>49</sup> Hume, *A Treatise of Human Nature* Part 2, Section 2, 316.

<sup>50</sup> Hume, *A Treatise of Human Nature*, Part 2, Section 8, 348.

<sup>51</sup> Hume, *A Treatise of Human Nature*, Part 2, Section 4, 331.



## What we Cannot Demonstrate Historically

What has been presented here is mundane. The reality is that the more important matter could not just be settled by showing that a large number of historically “liberal” political philosophers have not believed in a concept of natural law that involved any kind of theological belief, even if that were so. Those who would revise Classical Liberalism to find therein a natural law theory purged of theological underpinnings have, I believe, succumbed to the temptation to see history, and the enlightenment in particular, as part of a progression that results in the understanding of moral and political theory that the reviser himself holds, as though *that* is the pinnacle to which enlightenment philosophy leads.

Given that some liberal theorists have made the argument that there is a liberal tradition involving natural law, a tradition that has no theological underpinnings, it is worth responding to such claims if they are inaccurate, and that is the only reason this response was made, to curtail an objection to my wider thesis that in reality is scarcely made. But to raise this historical claim as an argument for endorsing such a model of liberalism must surely fall flat, for it cannot be seen as anything more than either the *ad populum* fallacy or perhaps an appeal to authority. The claim of my objector may be an interesting question of history, although I think the historical claim is a dubious one, but it is not the fundamental question. The more fundamental question is that of Thomas Jefferson - “**Can** the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God?” That is to say - rather than ask how many people might have in fact conceived of liberal rights as being based on natural law in some non theological sense, we should have been asking if it makes any sense to do so. By “make any sense” I do not mean in the grammatical sense, I just mean to ask whether or not there is any way to argue that there is a natural law that generates moral obligations or rights – any way that is entirely consistent with, in a word, atheism. After all, historic liberalism entailed a rejection of the political status quo. It is not a view that is content to simply accept things as they are. Modern liberals might wish to reject the historic liberal view of

natural law as something with divine origins, and to press on into the future with a better more enlightened view. I don't think they would be correct to do so, but they should reject it *rather* than engage in revisionism.

Veatch does suggest another avenue here that is important, but is not the subject of either his essay or mine. He refers to objective or natural rights, which are traditionally said to be grounded in natural law or in some similar theological way, and offers the following teaser:

For on the modern scientific view of nature, as contrasted with the Aristotelian view to which both Aquinas and Hooker adhered, there just does not seem to be any way in which such things as rights can be said to be items in the natural world at all. And granted that we human beings may be naturally inclined to life, liberty, and the pursuit of happiness; that we do have a natural desire to acquire property, or that we naturally cherish certain freedoms; why suppose that our natural inclinations and desires in these regards can in any way constitute a natural right on our part to such things?

It is precisely for this reason, I think, some non-theistic philosophers who do love liberty and equality want to maintain adherence to natural law as a purely non-religious construct. Fascinating though this direction is, and although it is the more important question in regard to my own interest and research, it is one that will have to wait for another time.

What we can demonstrate historically however is that where classical liberalism embraces natural law, it does not offer us a godless natural law theory. Today's liberals, of course, need not be slaves of tradition. They may reject historic liberalism's view of natural law. But it needs to be forthrightly admitted when this is done, instead of seeking to import views of natural law into a tradition that simply did not hold such views in order to claim a stronger heritage than actually exists for them.