

The Breakfast Club

Constitutional Minute for 16 November 2021

The Constitution and Natural Law, Which is Supreme?

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

Our Constitution claims itself to be the “Supreme Law of the Land.” Is it really? If so, what are we to make of this:

“When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which **the Laws of Nature and of Nature's God** entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.”

Jefferson, writing eleven years prior to the Constitution, claims the authority of the colonies to declare their independence comes from the “Laws of Nature.” Where do these “Laws of Nature stand in relation to a constitution? Which really is supreme?

Many, perhaps most on the political Left will claim today that there is no such thing as Natural Law, or if it exists, it is irrelevant, that the only law we need concern ourselves with is “positive law,” i.e., law written by humans. Such a claim would be shocking news to America’s founders -- all of whom would insist that Natural Law was real and binding upon all human activity – as well as the political philosophers America’s founders looked to for wisdom: Locke, Blackstone, Montesquieu, Sydney, Vattel, Pufendorf, Grotius, Cicero, even Aristotle.

James Wilson, a signer of the Declaration and a delegate at the Constitutional Convention, later a Supreme Court justice, made many natural-law-based assumptions in his [celebrated law lectures](#) given at the College of Philadelphia (1790–91). Note: a few years ago, I wrote a more extensive essay on the Founders and Natural Law, found [here](#).

Saint Augustine (354 –430 A.D.) wrote: *“Natural law is the light of understanding placed in us by God through which we know what we must do and what we must avoid.”*¹ Thomas Aquinas (1225 – 1274 A.D.) wrote: *“The natural law is promulgated by the very fact that God instilled it into men's minds so as to be known by them naturally.”*²

The great English Jurist Sir William Blackstone explained the “the laws of nature” this way: *“This will of [our] maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the...direction of that motion; so, when he created*

¹ http://www.catholicity.com/catechism/the_moral_law.html

² <http://www.aquinasonline.com/Topics/natlaw.html>

man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws....Such among others are these principles: that we should live honestly, should hurt nobody, and should render to every one his due.."

Natural Law encompasses both physical laws as well as moral laws. But a significant problem lies in the fact that Natural Law is not written down, these laws, at least some of them, must be discovered or discerned, as Blackstone states, through reason and reflection. But God the Creator, had a problem: mankind became flawed by sin. Not only that, mankind soon began operating outside the moral laws God had made a part of Natural Law. Murder and other moral turpitude ensued.

God's response was to ensure at least some of natural law, the most important bits if you will, did not remain hidden. He inscribed ten of these laws on two stone tablets. Further revelations followed.

Blackstone's view of this was that *"[D]ivine providence... in compassion to the frailty, the imperfection, and the blindness of human reason, hath been pleased, at sundry times and in diverse manners, to discover and enforce its laws **by an immediate and direct revelation**. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures."*

Back to the question of which is supreme: natural law or the Constitution. Hypothetically, what if a constitution was somehow ratified containing a provision that parents were limited to two children and that any additional conceptions must be aborted. Preposterous! you say, and certainly this example is. But *if* this were to somehow happen (China?), which law should be obeyed; which law would be supreme? Natural law of course would characterize forced abortions as murder. The Constitution would thus conflict with Natural Law. If a suit were brought over this Constitutional provision, how should the courts decide the issue? Should they decide that the Supremacy Clause of the Constitution makes it supreme or that Natural Law should prevail?

Courts are reluctant to admit Natural Law even exists, let alone that it can be admitted in court. Kim Davis, the Kentucky county clerk who was fired for declining to provide a marriage license to a homosexual couple, sued over her termination. At trial she tried to introduce natural law in support of her actions. Judge David Bunning interrupted her statement to say: *"The idea of natural law superseding this court's authority would be a dangerous precedent indeed."*

Only a handful of law schools even teach natural law today³ so most lawyers know next to nothing of the subject.

Edmund Burke, the colonies' greatest champion in Parliament will get the last word here: *"There is but one law for all, namely, that law **which governs all law**, the law of our Creator, the law of humanity, justice, equity -- the law of nature, and of nations."*⁴

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³ The exceptions being Regent Law School, Liberty University Law School, Notre Dame Law School, and perhaps one or two others.

⁴ Speeches on the Impeachment of Warren Hastings, found at <http://www.ourcivilisation.com/smartboard/shop/burke/extracts/chap12.htm> (emphasis added)