

The Breakfast Club

Constitutional Minute for 23 November 2021

The Constitution and Natural Law, which is Supreme? Part 2

To recap last week's essay:

- Natural law was created by God as He created the world.
- Natural law consists of both physical laws regulating the physical world (the movement of planets, the interactions of elements, etc.) as well as moral laws regulating the behavior of mankind. Following the moral laws leads to peace and harmony among men and women.
- Natural law was intended to be known intuitively or discovered by reason, but man's fallen nature clouded our reasoning ability. In response, God revealed certain of the moral laws through Scripture, aka the Revealed Law. We thus have "The Laws of Nature (the hidden or unwritten portion of Natural Law) and Nature's God (the revealed portion).
- All manmade law (positive law), including Constitutions, must conform to or at least not contradict Natural Law. Positive Law which contradicts Natural Law has no authority as law.

These precepts were understood by America's Founding Fathers, particularly those who studied law using Blackstone's Commentaries on the Law (which sold more copies in the Colonies than in England itself). Both Blackstone and John Locke made the preceding or similar points unequivocally.

"It should always be remembered, that this law, natural or revealed, made for men or for nations, flows from the same divine source: it is the law of God...What we do, indeed, must be founded on what he has done; and the deficiencies of our laws must be supplied by the perfections of his. Human law must rest its authority, ultimately, upon the authority of that law, which is Divine." Declaration Signer and future Supreme Court Justice James Wilson, 1791ⁱ

"[God], from the relations we stand in to himself and to each other, has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature ... Upon this law depend the natural rights of mankind." Alexander Hamilton, The Farmer Refuted, 1775ⁱⁱ

Before we go further, you should know there is branch of natural law theory which postulates a "natural" law not connected in any way to the God of the Bible, or any Supreme Being for that matter. This "natural" law is instead inherent in being human. As Wikipediaⁱⁱⁱ says, this natural law "is based on values intrinsic to human nature that can be deduced and applied independent of positive law (the enacted laws of a state or society)."

Popularly expounded by Englishman Thomas Hobbes in his 1651 book: *Leviathan*, natural law is how any rational human being, seeking to survive and prosper, would act. Natural law was discovered by considering humankind's natural rights. In the Christian view: natural rights are a product of natural law ("Thou shalt not murder" creates a right to one's life). In the atheistic view: natural law was discovered by considering man's natural, inherent rights. If you accept the atheist's view that man is simply a highly evolved (and still evolving) ape, then the natural law and natural rights must also be evolving.

John Adams' view of this relationship between natural law and natural rights was to write: "*I say*

RIGHTS, for such they have, undoubtedly, antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe.^{iv}

Notice that both Hamilton and Adams agree that natural rights are derived from natural law; in Adams telling our rights come from the “Great Legislator [i.e., Law-Giver] of the Universe.” This is why natural law is so important today: God-given natural law is immutable, unchanging, just as God is unchanging (Malachi 3:6). It establishes natural, immutable, unalienable rights. Without God-rooted natural law we have no unalienable natural rights; all rights then are either still evolving “inherent” natural rights, or they are government-given rights. What government gives today, government can take back tomorrow. See the importance?

All the ancient natural law philosophers (even Hobbes) agree that the First Law of Nature is the Law of Self-Preservation. The natural right of self-preservation becomes the foundation for the right to keep and bear arms.

John Dewey, the father of modern public education, thought that “[n]atural rights and natural liberties exist only in the kingdom of mythological social zoology.”^v

A few years ago, when interviewing controversial Judge Roy Moore, then Chief Justice of the Alabama Supreme Court, CNN commentator Chris Cuomo famously declared: “Our rights do not come from God, your Honor, and you know that, they come from man.”

See where this leaves us if God-sourced natural law is discarded?

“Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can. These are evident branches of, rather than deductions from, the duty of self-preservation, commonly called the first law of nature.” Samuel Adams, *The Rights of the Colonists*, 1772

The Judiciary “owns” positive, man-made law. Once a legislature creates a law, even a constitution, it then becomes the property of the courts, who have full authority and power to interpret that law anyway they wish. Not so with natural law. The idea of natural law being introduced into the courtroom today frightens judges. Why? They cannot control it. *“The specter of unknown laws of uncertain origin nullifying laws enacted by democratically elected legislatures gives natural law a negative connotation, making it sound “un-American.”*^{vi}

Bottomline: If you want to continue to enjoy natural, unalienable rights, study and become a champion of God-sourced natural law.

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club. Contact: gary@constitutionleadership.org; 757-817-1216

ⁱ Lectures on Law, 1791

ⁱⁱ The Farmer Refuted was a pamphlet reply to Samuel Seabury’s *View of the Controversy*, which in turn had been written in reply to Hamilton’s essay: *Full Vindication*.

ⁱⁱⁱ https://en.wikipedia.org/wiki/Natural_law

^{iv} A Dissertation on the Canon and Feudal Law, 1765

^v John Dewey, *Liberalism and Social Action*, 1935, page 17.

^{vi} John S. Baker, Jr., “Natural Law And Justice Thomas,” *Regent University Law Review*, Vol 12, 1999-2000, p. 472.

Recommended reading on Natural Law:

Natural Law for Lawyers, by J. Budziszewski

Written on the Heart: The Case for Natural Law by J. Budziszewski

What We Can't Not Know: A Guide by J. Budziszewski

Natural Law and Natural Rights by John Finnis

Constitutional Illusions & Anchoring Truths, The Touchstone of the Natural Law by Hadley Arkes

Retrieving the Natural Law, A Return to Moral First things by J. Daryl Charles

The "Higher Law" Background of American Constitutional Law by Edwin Corwin

For God or for Tyranny, When Nations Deny God's Natural Law by Walid Shoebat