

This country has been the firm heir of two traditions (natural law and the common law).

The two traditions are the Natural Law tradition and the Common Law tradition.

Natural Law emphasizes what is universal and eternal. Common law emphasizes what is particular and changing.

I think that demonstrating the natural law tradition might be easier than giving abstract definition. Many people find that they have always believed in natural law, even if they have not delved into it or even heard of it. If you believe that killing people in concentration camps is always wrong then you might believe in natural law. If you think that slavery is wrong then you might be a believer in natural law. If you think that children deserve our protection you may be a believer in natural law. If you think Martin Luther King is a great man then you may be a believer in natural law.

Natural Law is the belief that is embedded in the universe. There is a set of eternal and universal moral laws.

Let me give a few examples of people who might believe that this is so.

Martin Luther King: What makes him special? He created a movement that led to a righteous, massive, traumatic social upheaval – with (by historic measures) little violence.

That this was possible – I think – was due to the fact that he, and we, believe in our bones that there is embedded in the universe a set of moral laws. And when someone like MLK comes along and points out that we are not aligned with these eternal rules (which says that everyone deserves to be treated according to their character and not a secondary aspect of being a human being, such as skin color) we may mumble, but many of us would say, all right, let us do what is right.

The term basically used to describe views that started with the Greeks.

The fifth Century Greece was also a period of wild direct democracy, of domestic violence mainly between the rich and the poor of demagoguery, and of imperialism that resulted in the destruction of Greece. It was also the time of the Sophists, a school of thought that taught young people how to win arguments regardless of right and wrong, and they taught that individuals are not responsible to any transcendent moral authority.

Against these views arose several philosophers including Socrates, Plato, and Aristotle.

Plato and Aristotle taught ideas that helped form the backbone of one of the two stands of thought that have provided the foundation for our own government. There are two great strands of thought that contributed to our philosophical foundation of government. They are the natural law foundation and the common law foundation. At first they seem to be

at odds with one another. The theory of natural law teaches the importance of the common law teaches the importance of what is particular and subject to change.

It is all a question of balance. This morning we are going over the part that claims to be universal and eternal. His is the natural law theory.

Both taught one. There is a proper order in a person's soul and there is a proper order in the universe. This order is universal and eternal. This order/truth can be discerned by careful critical thought. Both individuals and the state can and should, according to the proponent of natural law, follow those truths. Aristotle starts with the idea that man is not a beast of a God. If man were a beast then he could only be governed by force. If he were a God he would not need government. Remember this, for you will hear it said by our founding fathers. A monarchy had a righteous King who worked for the general welfare; an aristocracy had a large minority that worked for the general welfare. And a commonwealth had a majority that worked for the general welfare. Domination by selfish rich people or envious poor people would result in violence and chaos. Notice that all three right forms depend on virtue.

Since every creature had a given potentiality he asked what was special about man, and answered that it was the capacity for rationality. A right state, then, is a state that creates the greatest opportunity for individual reason to flourish. The government's job was to set the guidelines so that people developed right, without defect and excess.

Excess would mean chaos. Defect would thwart a person's growth as a rational creature.

Note: The rightness of the soul and the rightness of the government are a given. They are eternal and they are universal.

Aristotle was not a cultural relativist on these big matters. There would be any number of different customs of small things as dress and food and dancing, etc. etc., but rightness of the individual soul and cosmos soul were unchangeable.

Aristotle spoke of rule by the many he called it a mixed rule. This is a state where the most important class is the middle class. This was where the majority of the people ruled but always controlled by law and with respect for all. Here a healthy state is a just state. In Plato and Aristotle there is a rough idea of checks and balances and separation of powers for the same reason as the founding fathers thought there should be such an arrangement: If men were beasts then only a dictatorship would work. If men were angels there would be no need for government. Since men were neither the government is not allowed to thwart freedom but there is no need to control it.

He called mob rule democracy. We have changed the meaning, but we do have a government that we call a constitutional democracy. This means that the majority rules, but everyone, including the majority, must abide by the law?

The idea is that the proper norms for both public and private conduct can be discovered rationally, as they remain forever everywhere comes to be called “natural law.”

How do we know these rules? The only path lies through exercising our intellect and questioning, examining our views and sifting the relevant evidence.

1. We discover these rules. We do not create them.
2. A society should be built on rational principles in accordance with the natural needs of man, a society where someone like Plato’s mentor and hero, Socrates, is at ease.
3. They believed that human beings can gain the truth through Socratic questioning and critical analysis.
4. Freedom, under this way of thinking, is not just freedom from restraint. An abandoned child is not free.

Freedom, in this view, also means acting the right way.

The Greeks created the idea of rule by the people. Demos = the people. They came up with the idea of direct democracy.

Since that time we have added several ideas – which may be why our democracy has lasted longer than any other in the history of the world.

To make our democracy work we have added on some ideas and practices.

- A. A distrust of any kind of unchecked political power, i.e. by the people or any other particular group. Thus, e.g. we have a separation of powers.
- B. From the Judeo-Christian tradition we have derived the idea of the dignity and worth of human life, the universal brotherhood of mankind, and the fundamental equality of all under God. You do not have to believe in God to go along with this idea and people who do not believe in God can and do believe this.

Together these ideas have resulted in a faith in the common man and the hope for a positive amelioration of human problems.

- C. Natural Law, natural rights, and natural Duties.

Here is the definition of human goodness as the realization of a nature shared by all men. Here are the universal rights and duties that are binding on all men and on all communities.

The idea of natural law is the opposite of one modern idea: that norms, morality, right and wrong, are a man-made construction. Lately there has been a philosophy or outlook

that says that our moral beliefs are nothing more than a historical artifact, an outgrowth of our time and place. Many who believe this also add that our race, class and gender powerfully affect our moral views – some going so far as to say that our race class and gender are the causes of our moral beliefs. Natural law is at the opposite end of this spectrum of belief. Natural law does not deny that there are many different particular beliefs, customs, and practices. Nor does it deny that these affect our beliefs and actions. But natural law is the idea that , regardless of those particular beliefs and practices, natural law still applies.

Natural law is behind the most important progressive movements that have influenced life in the West and elsewhere. E.g. the Universal Declaration of Human Rights that is supported by the United Nations, The Declaration of Independence, and the Constitution of the United States.

Men's rights have a natural right to be fulfilled. This includes derivative rights. E.g. Man is rational and thus he possesses a natural right to property and security. He possesses a faculty of choice for the voluntary direction of his life. He possesses a right to liberty and resistance to tyranny.

Human tendencies do not work in an automatic way. In a sense we can choose to comply or not to comply. They are subject to rational control, which many distort or obstruct the natural rules that best develop our given nature.

After the Greeks, the group that continued the Natural Law tradition is the Romans, in particular. –Cicero

If the Greeks were the philosophers and scientists of ancient times, the Romans were the more practical writers of laws, engineers, and administrators. To be a Roman citizen meant that you enjoyed immunities against arbitrary power and the protection of your property. This was Rome at its best. Eventually the Romans began to turn on one another, class against class, slaves against masters, general against general, Senate against the people and allies against Rome.

Rome started out as a Republic and ended as an authoritarian empire. Certainly it was one of the most important empires the world has ever seen. This was a world that stressed manly virtue, rule of law, checks and balances with separation of powers at times, mixed with dictatorships, mob rule, and brutality at other times.

Into this mix, at a time when the Roman world was shifting from being a republic to rule by an emperor, came a pious man called Cicero.

He is considered to be the proponent of the law of nature or natural law during the Roman time. He said that "True law is right reason in agreement with nature." Another way to it is that natural law is the interpretation of customary or positive law (passed by a legislator) in the light of general ethical principals. It is a means of doing justice by referring to the general norms for mankind.

Law is knowledge of the ethical norms for the human beings.

Cicero propounded the idea of natural law, and passed it on as a compound made of Greek Theory and Roman practice.

Saint Thomas Aquinas

Eventually natural law theory was incorporated into the Catholic religion. It reached its height in the 13th century under Saint Thomas Aquinas, who was the greatest of the philosophers called the schoolman, and the most important person in the movement which was known as scholasticism.

Aquinas's problem was to relate the two (revelation and reason). Basically he said that the life of reason is good. The life of reason is needed to understand the natural tendencies of things. He said that reason needs completion by the grace that lies beyond reason and whose administration lies with the church.

He wove revelation and reason together by saying that once the Revelation is given, mankind should relate the Gospel's message to the human understanding.

Everyone has a natural aptitude for loving God and for thought. These aptitudes should be made a habit to be made effective.

Men can obtain certain self-evident propositions or moral axioms which provide norms for human conduct. These rules can be understood as coming from natural law.

Moral propositions are ideas such as 1. The good is to be followed once discovered. 2. Evil is to be avoided. 3. Self-preservation is a good. 4. It is good to know God. 5. It is good to pursue truth.

Aquinas thought that while man's reason can discover the principles of natural law, it often, because of sin, become confused as to what would be done in specific instances.

Here the church's interpretation of divine law will help. For example, in the old testament there is a great deal of ceremonial law. These are examples of the universal need felt by people for a system of regular ceremony which will determine the difference between piety and impiety, i.e. what is sacred and what is not. After Christ, he says, many of these ceremonies are no longer needed.

The most important point is that Aquinas thinks positive law (law passed by a state) must be derived from natural law – for natural law is the divine law as it can be seen by mankind. Positive law may require diverse positive laws in order to give expression to its objective under widely varying social and economic conditions. A rule is unjust if he commands things that go against the natural laws.

Saint Thomas Aquinas is also known for the first systematic theory regarding a just war.

1. It must be declared by a sovereign
2. It must have a just cause
3. The intentions must be righteous. If the intention is bloodlust or power then the war is not a just war.

England

Natural law is reinforced during a period known as the English Reformation in the 16th century. And here we can see the English talent for compromise, for avoiding extremes, and for reconciling opposing factions – most of which we seemed has inherited from the English. It was in the 16th century that the King of England separated from the Church of Rome. Afterwards a man named Richard Hooker created a philosophy which helped establish the Church of England. His was a voice of moderation. Hooker's arguments were known to educated men of the 18th century America.

At the time of Hooker there were Christians who thought that the only law that was needed to guide men was found in the scriptures. They wanted to set up authoritarian states to enforce these rules for the scriptures.

Hooker said that the Scriptures do not furnish a complete set of rules by which men may govern themselves in all circumstances and all times.

Hooker said that in addition to the Scripture there Law Rational (natural law) accessible to natural reason.

There is also Law Positive, law enforced by the commonwealth. Hooker holds that mind is rational but man is also prone to be rebellious and depraved. His evil impulses cannot be controlled by the natural law alone. This must be combined with government written laws and customs.

Hooker also stressed the importance of keeping faith with those who have gone before us. Once men have entered into a social compact, they are not at liberty to disobey the Law Positive. We must consult not just the people who are alive when we are alive, but the conclusions of all the generation that have preceded us in time – “a kind of wisdom in the human species.” This idea is now called following precedent and is a pillar of our legal system.

LOCKE

Just before the last philosophical influence from natural law let us consider Hobbes. Hobbes was a man whose main point was to emphasize the role of fear in determining what type of government we should have. He had no belief in natural law. His basic idea

is that the aim of political life is not to help a person to live by a higher purpose. He said that society is little more than a collection of selfish individuals, kept from one another's throat by a powerful government, which he thought of as a leviathan, a great beast that would prevent one man from injuring another man by holding all the power to itself.

The main reason for government was that without it the life of a man was "solitary, poor, nasty, brutish, and short." Instead of viewing man as a mixture of good and evil tendencies he viewed man as overwhelmed by evil impulses that could only be kept in check by an absolutely powerful government.

He held that the main desire of men was power. Material success and safety are the only motives that matter.

Hobbes was an atheist who denied that there was any higher law than the law of survival. He did not believe in natural law. I only mention Hobbes so that we might see what type of government you might end up with if you had people who did not believe in natural law. I want to contrast Hobbes with the last major influence on natural law we will cover – John Locke.

Locke was a philosopher of moderation. He wrote his main book as an attack on Hobbes Leviathan. In Hobbes' book there is no hope for liberty or the rights of Englishmen since the dominant need was for physical safety and little else. His arguments for the "natural rights of man of life, liberty, and property" are the arguments the founders of the United States adopted wholesale, wrote into the Declaration of Independence. Later we created the constitution to act as a fence around these rights.

Locke summarizes a great many ideas that were in the air in the 17th century. One idea is that of a compact between the people and the government. Another idea is that of the state of nature (i.e. without government). Apparently Locke believed that once upon a time there was no government. Life wasn't too bad. People had a certain amount of natural sympathy for one another and everything needed for life existed in relative abundance. But life wasn't perfect. There was the problem of the usual bad actors that could come along and steal or hurt you. IN addition there was the problem of not having a neutral third party to judge conflicts. The quest for Locke was how to justify a government strong enough to provide safety for all and protect one's property, without creating a government that would turn into a Leviathan and crush the people's rights.

Since people were acting pretty well toward each other in a state of nature, it follows according to Locke that government only needed to be strong enough to control the few bad actors and to provide the most basic of services like a neutral judge to take care of conflicts. People enter into the contract with the government voluntarily in order to secure those rights which are theirs by nature, life, liberty, and property. The emphasis on property was very popular in America, where such a large percentage of people did own at least some property. Also it was thought that freedom was closely linked to the security of private property. All of the other believers in the law of nature tended to have a strong sense that private property helped secure liberty.

Locke was different than other supporters of the idea of the law of nature. Locke's society has a strong emphasis on individuals being isolated. There is no love of the kind envisioned by people like Aquinas or that found in Genesis, where God makes a living covenant with humans. The founders of America, while they found much to admire in Locke, placed a far higher premium on the idea of a society as a society of friends, not isolated individuals. They also placed a much higher premium on the need for civic virtue if a free society is to last.

I have traced one of the strings of thought that produced a government like ours, going, it seems, between the rocks of anarchy of freedom on one side and dictatorship on the other.

When we study the foundations of this country I think you will see that it was founded with a belief in the universal and eternal idea of natural law – as well as the belief in the particular and changing rights of Englishmen (which soon became the rights of Americans).