

1-1-1960

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## Recommended Citation

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# DEMOCRACY AND NATURAL LAW \*

*Robert L. Calhoun*

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THE THEME I WANT TO TALK ABOUT is Democracy and the law of nature. I shall be talking in bold terms, defending the thesis that rational defense of democracy appears to me to require as postulate some doctrine of natural law. Natural law is, of course, not a segment of positive law, nor a body of propositions from which positive law can be simply derived. It is to be conceived rather, I suggest, as context and presupposition for positive law. At the same time it is truly *law*, at once fact and norm, entailing both necessity and obligation. I shall conceive it as presupposition peculiarly for democratic political order as contrasted with all sorts of despotism and totalitarianism.

## I. THE UPS AND DOWNS OF POLITICAL DEMOCRACY

FIRST I WANT TO TALK ABOUT the ups and downs of political democracy, beginning with truisms so obvious that they will be dull, and moving on gradually toward more venturesome comments which may still be dull, but I hope will not be quite so obvious. First of all, my intent here is not historical narration, an account of the way democracies have come into being and have passed away, but rather an attempt at analysis of principles involved in the precarious existence of democracy, with some historical illustrations by the way. And I shall take it for granted that democracy has a peculiar sort of dynamic that is characteristic of a mode of life that is neither simply fact nor simply ideal, but rather an open-ended actuality, a state of affairs that is real, imbedded in the world of existence, but that perpetually looks toward the achievement of good that has not yet anywhere been achieved, and that, presumably, will never be completely achieved. This combination of actuality with openness into the realm of what might be, what ought to be, may well be responsible in substantial measure for the strange fascination of democracy to plain people. Dictators are well aware of that fascination and try to curb it. It is a commonplace that the newly freed peoples of Asia and of Africa reach first after this as their preferred mode of political organization; and if they find it impracticable to continue

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\* This paper is based on a series of lectures delivered at the Notre Dame Law School on October 2 and 3, 1959.

on the line of their first preference, the preference has nevertheless made itself manifest. Likewise, the curious habits of dictators who seek to maintain barriers to communication between their own people and folk in other parts of the world, where democracy is both preached and in some imperfect way practiced, is further testimony to the same kind of fascination.

I suggest that we begin — and here come some of the truisms — by seeing whether or not we are agreed concerning the nature of social institutions by and large. To begin with, I shall mean by *community* a society which is more or less unified by internal as well as by external factors. A society may be given *de facto* unity by geographical limits, by ethnic kinship, or by other relatively external controls. But if society is to be community its centripetal tendencies must arise in part from the sharing of systems of communication, the sharing of common memories and of common objectives, the possession of common presuppositions, capacities for working and thinking in a common universe that includes not simply things and events open to physical inspection, but also the intangible meanings and values among which a very large share of our significant living must go on. Community is society, then, which is held together in important part by such internal, dynamic factors. An extensive community will presumably be made up not of isolated individuals, but of component groups, each of which itself may be a kind of subcommunity — the family, the school, the business world, the church. Each of these is in its own fashion internally unified, and each lives with its neighbors in a pattern of overlapping subgroups.

Now I suggest that *institutions* are, in some fashion, understandable as structures of social behavior which cut across these various component members of an extensive community life. One may think of them perhaps — and here I display my layman's naïveté — as comparable to habit systems in the life of an individual person, acquired behavior patterns that have a kind of massive stability, that make for greater facility and precision and continuity of behavior, and that resist change, as habit structures tend to do. If we speak of the family as an institution, we are speaking, I suggest, of an agreed and toughly resilient way of organizing and maintaining domestic life. If we speak of the school as an institution, we are speaking of a habitual way of bringing younger members of the community into full participation. If we speak of the church as an institution, we are speaking of a massive, orderly way of organizing our corporate acts of worship, our corporate interpretation of the life of the spirit, our ministry to members of the community and the world outside. If this notion of institutions be somewhere nearly right, they are then to be thought of as cutting across all the identifiable components in the life of the community as a whole.

Among these cross-sectional structures is the State as institution defining order by political initiative and control. In a complex society, with its diversity of interest groups, there is need that somewhere there shall be centered power to make and to enforce decisions respecting the common life. There is need, moreover, if the use of that power is to be orderly and responsible rather than capricious, that there be provided organized ways of making, revising, and interpreting rules aimed at the common good. In a word, there is need that the authority of the State shall be embodied in ordered government.

Now, if we try to specify the character of a democratic political order, it is important to distinguish at the outset between democracy as regulative idea and democracy as operating system. Regulative idea (a term here borrowed from Kant<sup>1</sup>) means not an abstraction floating somewhere in the vague distance, but an intellectually and emotionally effective goal toward which, and partly under the guidance of which, actual life is carried on. I suggest that to identify political democracy as regulative idea, one may specify in the first place a distinctive correlation and balance of plurality and unity with respect to initiative, and with respect to control. When we use the term initiative with reference to government, we are using, perhaps unwittingly, a Greek concept that has long been ingrained in certain of our most familiar terms for different sorts of government. When we speak of monarchy we are speaking of a government in which initiative, *arché*, the right to propose policy, to make the first move in seeking to guide social behavior, rests with one man. If we speak of oligarchy we are saying that initiative rests with a few. Among the Greek clans of Homeric times, as I understand the matter, *arché* was regarded as the prerogative of the chieftain.<sup>2</sup> It was he who proposed a course of action. The clansmen could discuss it, but eventually the chieftain made the decision. To speak of initiative in this sense is to speak, therefore, of what from a very early time has been regarded as of the essence of political activity. Now in a political democracy, I suggest, initiative in this sense is not embodied in one person, nor in a few, but rather plurality of initiative is encouraged, so that suggestions for policy may come from any of the component groups. Ideally, these will be weighed, and a decision reached, not in accordance with the status or prestige of the one who first made the proposal, but in such fashion as to take account of the diversities of interests involved.

Similarly control, without which plural initiative would, of course, be anarchic, can rest in one ruler, or in a small group. But once again, in a

1. CRITIQUE OF PURE REASON B384; cf. B222; B536 ff.; B671 ff.

2. Cf. J. L. MYRES, THE POLITICAL IDEAS OF THE GREEKS 80-97 (1927).

democratic political order it is not so centered. Instead of leaving in the hands of a single leader the right to determine the life of the entire group, whether by coercive pressure or by appeal to personal loyalty, a democratic political order centers control, at least theoretically and in large measure in fact, in a growing system of law in which are accumulated the wisdom and the unwisdom, the effort and aspiration, the hope and the insight of a long-continuing series of generations of community life. The control that is exerted, therefore, like the initiative that is encouraged, is in some sense representative of the entire body, which is at once governing and being governed. Here, I would suggest, is a first differentia of political democracy: derivation of both initiative and control from the whole body politic.

A second is like it: reciprocity as between rulers and ruled. You remember the passages in which Aristotle is speaking of the true *polis* as compared with the household, the citizen as distinguished from master or slave, the "polity" of a middle-class society as distinct from monarchy, aristocracy, or democracy.<sup>3</sup> In a true *polis* each of the citizens will rule and be ruled by turns, so that each member of the group must learn both to command and to obey; and, while he is subject to the rulers then in power, he will know himself as one who is eligible to take the responsibilities now borne by one of his neighbors. Such give-and-take, too familiar to need extended comment, is a second essential feature of the democratic idea as regulative of political life.

A third is seeking both appropriate distinction and adjustment of equality and inequality: equality in respect of basic personal existence; inequality in the obvious factors of endowment and capacity and power. Democracy needs adjustment and balance of such a sort that the ideal of equality will not be permitted to turn into either a meaningless abstraction or an excuse for the breakdown of social control. The caricature which Plato writes into *The Republic* of a democratic society in which the servant maids claim equality with their mistresses, in which the horses and donkeys elbow their owners off the sidewalks because they profess to be equal in "freedom" to all the rest<sup>4</sup> — this is, of course, not what is normally meant by democratic society. The equality that seems to us indispensable is the common status of persons as persons. To suppose that they are equal in respect of physical strength or swiftness, wealth or wisdom, range of experience and resourcefulness is to think in a way that is obviously contrary to fact. But somehow, in the democratic order, the basic sameness of human existence and the obvious diversity of human conditions are so adjusted that both equality and

3. POLITICS II. 1261 a-b; III. 1277 a-b; IV. 1295 b, 1296 a; etc.

4. REPUBLIC VIII. 562d-563d.

diverse inequality may contribute to a common life more satisfying than a life in which these factors were either ignored or permitted to be permanently out of balance.

Next there is need to maintain flexibility and stability together: flexibility which will leave the way open for continuing change in the existing patterns of political and social order; stability sufficient to insure that such change is well considered and pertinent. A Third Reich, set up with the boast that it would last unaltered for a thousand years, is the antithesis to the democratic understanding that society is, by its very nature, perpetually in flux, needing to be guided but never frozen.

Finally, democracy views authority as (I shrink a little from using a word which sounds sentimental) creative control. Sometimes we think of authority primarily in terms of coercion. Often we think of it primarily in terms of prestige and emotional persuasion. But the initial meaning of the word suggests something very different. It comes, of course, from a root that means to enhance the one that is controlled. *Augere* means to make greater, and *auctor* is one who exercises that sort of productive, beneficent, stimulative control. *Auctoritas*, so understood, is concerned to prompt into fuller life the folk over whom authority is being exercised — another hallmark of the democratic idea.

Now if we turn from democracy as regulative idea to democracy as operating reality, we can recognize at least approximation to many of these essential concerns. In the first place, in existing democratic societies the rules for public behavior and for political control are established and modified in the light of open discussion, and by decision that seeks to reflect majority will, with concern alike for the common good and for voluntary assent.

Sometimes democracy seems to me to be defined a little too exclusively in terms of majority rule.<sup>5</sup> That is surely one of the indispensable, recognizable features of democracy in action, but it seems to me, only one. A second, not a whit less important, is the provision of safeguards for dissenting minorities. At this point I find myself differing a bit from Professor d'Entrèves's choice of Rousseau as "the supreme prophet and theorist of modern democracy," because I concur so heartily in his rejection of Rousseau's assignment of final authority to an allegedly inerrant "general will," in his preference for a doctrine of natural law that insists on "recognition of certain supreme values" having other grounds than social approval, and in his summation: "Only when the rights of man are secured can democracy be a true democ-

5. Aristotle shrewdly remarks that this is not really distinctive of democracy alone. *POLITICS* IV. iv. Sec. 1, 1290<sup>a</sup>; cf. V. ix. Sec. 14-15, 1310<sup>a</sup>.

racy."<sup>6</sup> Rousseau leaves out an essential ingredient: protection for the dissenter, whether it be a subcommunity, an interest group that feels aggrieved by the decision of the majority, or a single, lonely individual who insists that the decision taken publicly is a harmful decision. That a dissenting minority or individual can properly claim the right to make decisions for the whole society, or to disregard the decisions lawfully made on behalf of the majority is, on the face of it, incompatible with the democratic way of doing business. But to assure that the dissenter shall have security and freedom to urge what appear to him to be valid objections, and seek by persuasion to get political decisions altered is one vital function of public law, to which government as well as private citizens is subject. The Constitution, the Bill of Rights, provision for judicial interpretation of both private and public law and for decisions that involve principles of equity, as well as freedom for political opposition and for campaigning and secret balloting, provide various safeguards for the dissenter.

Thirdly, working democracy embodies an explicit and effective distinction between State and community. One of the earmarks of the totalitarian understanding of society is that it seeks to make all subcommunities — family, school, business, press, church — completely subject to control by the State.<sup>7</sup> The State then is not one vital institution among others: a policeman, a referee, and a source of initiative for the common good. Instead, it seeks to be coextensive with family and school, press, business community, and the Church, so that all of these component interest groups are, in principle, reduced to organs and agencies of the State. In a democratic political order, this megatherian concept is expressly rejected as out of accord with the democratic understanding of social good, and with the actual make-up of the human community. That the State is able to exercise total control over all human interests is almost obviously contrary to fact. Whenever a government has attempted that sort of control, whether it be the hard-pressed ancient government of Diocletian or a modern totalitarian regime, the effort has been patently unsuccessful. By contrast, political democracy frankly recognizes and welcomes a basic distinction between State and community. The State must, of course, be strong enough to prevent dominance by any private group. But on the other hand the democratic government recognizes

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6. 1 NATURAL LAW FORUM 25; 26 (1956); cf. ROUSSEAU, *DU CONTRAT SOCIAL* I. vii; II. iii-iv; IV. i (1762). Locke seems to me to fill better the role of "prophet and theorist of modern democracy," not only through priority in time but through clearer recognition of what is "true democracy." Cf. *OF CIVIL GOVERNMENT* II. iv. 21-22; xiii. 149; xiv. 168.

7. Cf. R. M. MACIVER, *LEVIATHAN AND THE PEOPLE* (1939).

that its proper task is to ensure a home for many subgroups in which each may be able and encouraged to work at its own peculiar concerns so long as it does not encroach on similar freedom for its neighbors.

Finally, there is a recognizable preference in democratic political life for continual subordination of coercive to noncoercive modes of control. That there must be somewhere an ultimate center from which coercion can be applied as a last resort seems to be quite inescapable when we are dealing with extensive and complex modern society. But conscious effort to avoid — as far as the need for public order may permit — resort to overt coercion or to the habitual threat embodied in Gestapo or MVD, marks the democratic understanding and practice of political life.

One alternative mode of control is persuasion, the effort to present alternative modes of action in such wise that one will appear emotionally more attractive than another. The possibility of misusing persuasion through conscienceless propaganda is obvious, but persuasion can be honest and salutary. A Marshall Plan, a costly program of aid to underdeveloped countries, a mandate for desegregation in public schools call for persuasive advocacy to overcome every shortsightedness and misguided self-interest.

Even better than persuasion is instruction, spelling out not simply the emotional attractiveness but the fundamental rightness of a course of action which the government believes to be right. The need for popular understanding is the primary reason that democratic government must have an educated constituency, accustomed to genuine instruction and able to profit by it. However imperfectly that demand is being fulfilled in practice, the principle is clear. Citizens of a democratic state should be enabled in substantial measure to understand, and so to become participants in, the debates and decisions of their government. This is precisely to put into effect in one crucial area the conception of authority as stimulative and creative rather than as simply restrictive or compulsory — as control which enhances the life of those who are controlled. That is an ideal which in sizable measure our democratic societies do in fact practice.

But now what are we to say about the survival value of society of this kind, the vitality of democracy in the actual world? This is a problem over which many a wise inquirer has found himself puzzled to the point of near-pessimism. The reasons for doubting the resilience of democracy in the world we actually live in are, I presume, so familiar that they scarcely need more than mention.

There is a general reason: Democracy in point of fact has occurred rarely in the history of men — almost always in the Western world, and seldom there. We think of the early years of the Hebrew people, perhaps, at a time



when the autonomy of the clan and the fierce individualism of the tribesmen bore some of the marks of democratic society. That judgment is sound enough, but such tribal life was scarcely political democracy in any sophisticated sense. We think of Athens in the age of Pericles as a democracy — but how short a life it had, and at the end how disappointing and self-destructive a life. We think of Rome before the Republic had given place to the Empire as in some sense a democratic society. But it gave place to the Empire, and the Empire went down. And in the modern world how often has democracy appeared and made good its claim? For a time we thought the record was not only good, but steadily improving. Between 1640 and 1917 it looked very much as if democracy had approved itself the wave of the future. It was a new kind of democracy now — parliamentary democracy, if you will, with a rising bourgeoisie as its main constituent. In Britain, in the newly nascent United States, and in France, this way of life appeared to be the way of progress. Then came World War I and its aftermath, and the closing in of new sorts of repression on various peoples that had voluntarily chosen this way. What are we to say? That democracy is a hothouse plant? That it requires for its flourishing a set of conditions that are, at best, local and transitory? Perhaps that is, on the face of it, a plausible conclusion.

Perhaps we can even specify some of those conditions. We can say democracy is a luxurious way of life that depends, among other things, on an expanding economy, and perhaps an expanding territory, a widening frontier. That was true when Britain established herself as a democracy. She had broken the power of Spain; she was soon to break the power of the Netherlands; and she was to find an open horizon for her own life in a widening territorial range. In this situation the democratic pattern of life, for all its loose play and relative inefficiency, could flourish. But when the frontier is closed, when the economy is no longer moving into wider and wider living spaces, what then? Our own democracy had the West into which it could grow, a safety valve for accumulated social tension. Was that open geographic frontier, perhaps, an indispensable condition for the health and vitality of American democratic political life?

One can specify another condition: an optimistic ideology, especially about man. The Eighteenth Century was a confident time. The Enlightenment regarded man as primarily a rational person confronting a world in which rational order is basic, to which man has a kind of congruence and kinship. The early flush of Romanticism regarded man as fundamentally noble in his emotional responses, and therefore to be trusted with freedom. When the shadows of skepticism and of pessimism have supplanted that bright-eyed appraisal of man, his nature and his destiny, what about democ-

racy then? Must not a realist say the requisite climate has changed, and democracy is left without a permanent home?

I suggest that another reading of the familiar facts is at least feasible and perhaps acceptable. Democracy does indeed require conditions that are neither simple nor automatically supplied, but these conditions need not be regarded as either transitory or to be achieved only in a single way.

First of all, it seems plain that democracy depends for its primary dynamic not upon environing circumstances, but rather upon an impulse in man that is deep-rooted, tough, and resilient. This impulse brought modern democratic political order into being in the teeth of an entrenched feudalism that was dead set against the insurgence of the rising middle class. The dynamic was supplied, not by the environment, but by the insistent effort of a vigorous lot of men to get free for the achievement of values that appeared to them worth living for, and when necessary, dying for. The primary impulse was internal, not external.

But there was and is need for at least certain negative favoring conditions. Two of the most obvious are freedom from want, of the personally destructive kinds, and safeguards against fear. Freedom from want means relief, in the first instance and most obviously, from economic privation. In time of grinding scarcity democracy always will have hard going. Once upon a time relief from this kind of economic pressure depended upon increasingly generous exploitation of readily accessible natural resources, moving into new territory and milking it dry. But this is not the only way that sort of economic security can be supplied. It can be supplied also, as we now know, by increasing technical ingenuity and by improved social organization for measurably equitable distribution of the products of technological achievement. It seems increasingly clear that the necessary minimum of tolerable economic life can be supplied not simply by conquering new territory, but by conquering new problems, technical and social.

Ignorance is another form of want that can be deadly to democratic development and continuance. It calls for the accumulation, the systematization, the dissemination of knowledge through increasingly effective schemes of popular education. We take that for granted as one of the primary functions of our democratic society. The supposition that democratic society can afford to economize at this point has been, for a time, far too widespread and readily accepted, but in principle it is intolerable. The conquest of ignorance, then, and the removal of its taboos are vital to democratic living. It can be argued, indeed, that this enterprise is indispensable not merely to democratic society, but to any advanced, technologically based form of social organization; and this may well be one of our best sources of hope with

respect to societies in which despotic rule is still being tried. For knowledge has a way of refusing to stay within artificially prescribed bounds. If one is to train engineers who can operate a highly complex industrial system, one is training men who are taught ways of testing evidence. And one cannot guarantee that they will refuse to apply these modes of testing to public announcements and to patterns of thought and of life outside the fields of their special concerns.

Democracy requires safeguards against forced idleness, not merely to avoid economic privation but to avoid that peculiarly poisonous demoralization that comes to people who are made to feel that they are not needed. In a situation in which men who want to work cannot find work to do, the possession that is most surely going to suffer is self-respect and human dignity. For the continuance of democratic society, want in any of these forms, material or spiritual, must be kept under control.

Similarly, there must be effective antidotes to fear. There must be political stability and integrity: neither rigidity nor too abrupt major change of pattern. There must be avoidance of big war, which by its very nature requires the suspension of democratic procedure, either for a brief interval or for a very long time. There must be the sort of government that plain folk can regard with at least a sufficient measure of trust, a government with integrity as well as stability. And there must be emotional assurance, assurance with respect to the tenacity and meaningfulness of human existence itself. Man must be confident (but not overconfident) of the significance of his own make-up and capacity. He must be persuaded that he lives in a world with the sort of stable and meaningful structure that makes exploratory effort, the acquisition of fresh insights, the perpetual quest for improvement, significant and worthwhile.

Such emotional reassurance involves somewhat directly a way of understanding man and his world. It involves a conception of the intrinsic make-up of human nature, the primary patterns of human behavior, and the way in which all of these gear into the surrounding reality that has brought man to birth, that sustains him, and that must be, in the long run, the base on which his confidence can rest.

## II. THE NATURE AND BEHAVIOR OF MAN AS "POLITICAL ANIMAL"

OUR CONCERN NOW is with the nature of man as political animal. The mere mention of an attempt to talk about the nature of man flies warning flags. It suggests, at the outset, that human nature is something precise and sufficiently

static so that one can circumscribe it and define it in somewhat complete fashion. But the truth, of course, is notoriously contrary to such a premise. Human existence is a complete kind of transition, transition in time, of such sort that to understand a person as he stands before us it is necessary to know something about whence he is come and whither he is bound. It is quite impossible to cut a segment out of a personal life, describe what one finds within the limits of that segment, and say, "This is the man as he is." It is characteristic of human nature to be perpetually directed beyond itself, in time.

There is perpetual transition also in the curious way in which man is related to his contemporary environment. The inside and the outside of his life are continually tending to intermingle and interchange. If we try to draw a neat line around man's skin and to say everything inside this line is a man and everything outside it is his environment, the effort breaks down. The very nature of human existence is to be maintaining a perpetual tension and transition between inside and outside, between center and circumference.

Similarly, and even more puzzling in its implications, it is characteristic of human existence to be continually in tension between what is and what might be or ought to be. Man is living constantly in a complex region in which *is* and *ought*, what is actual and what possible, can be distinguished but can nowhere be satisfactorily split apart, so that we can say, "This is the actual man, this particular complex fact within this environing set of facts." The "actual man" is continually reaching beyond any set of facts, in such wise that he takes into his own being possibilities which he envisages and evaluates, and claims that he acknowledges. These are aspects of human existence so familiar that they are scarcely debatable, but their implications are very far-reaching. They add up, perhaps we can say, to a judgment that man is a baffling compound of determination and freedom. He is here — now; but he is also yonder. He is perpetually not quite; he is an always unfinished self.

Acknowledging such difficulties at the outset, it seems possible, nevertheless, to say something about man's nature in the context of factual and value dimensions in which we find him; then something about familiar patterns of man's behavior within these varying contexts; and then, at length, something about the peculiarly democratic temper which illustrates these complexities in a distinctive way.

First of all, then, what can we say about the nature of man as member of the complex universe in which we find him carrying on his affairs? One way to begin is to use the traditional declaration that man is created according to the image of God — not *in imagine Dei* but *ad imaginem Dei* — to-

ward the image of God.<sup>8</sup> I find this a highly illuminating formula, but I shall not use it here save by way of note. We shall be concerned, however, with at least a part of what I think that formula means. It means, on the one hand, that man as creature is not self-existent, not self-sufficient. His very being is dependent upon what is other than himself. Yet among created beings it can be said of him that he is responsive and responsible in a distinctive way. He is at once bound and free. Without theological commitment, we can take these secular-sounding terms and go on with them.

If we talk about man at all we must talk about him in a very diverse environment. Man in isolation is a quite unreal abstraction. If, then, we talk about man first in his physical environment, I suggest that we find determination and freedom indicated in varying ways and at varying levels. First of all, man is a living organism. As such we can say of him, perhaps, that he is immersed in his physical environment so that it is perpetually entering into him and he, in turn, is perpetually outgoing into it. It is a truism that by eating food and breathing air we take into ourselves what only a short time before was a part of the surrounding world, and that we give back water vapor and carbon dioxide which were a moment before a part of ourselves. The most brilliant, succinct comment on this situation that I chance to know is by a French biologist whom I can no longer identify. He speaks of a living organism as *un tourbillon*, a complex whirlpool in the ongoing stream of physical events, having persistent structure, but with content that is perpetually changing. Man is something like that, a living disturbance in the midst of an environment in which he is immersed. At the same time he is the sort of organism that displays inventive ways, variations, and individuality.

If we speak of man's physical status in some such fashion as this, I suggest that even at this level we must recognize value dimensions as well. It is true whether man has come to recognize it or not that there are certain environmental conditions that are favorable, others that are unfavorable to his continuance in life, to his health, and to his growth. John Laird in a treatise on the nature of value suggested a phrase which he applies to this kind of consideration. There is, said he, a kind of "natural election"<sup>9</sup> that exists between physical agencies. It exists in the very nature of the physical situation, whether or not it has been discovered. Vitamins were requisite for health before men knew there are such things as vitamins. In a word, the immersion of the living organism in its surroundings involves a network of

8. This is to follow the main current of Christian theology in starting from the Greek and Latin versions of Genesis 1: 26, 27.

9. JOHN LAIRD, *THE IDEA OF VALUE* ch. iii (1929).

favoring and disfavoring circumstances which constitute together, with reference to the continuance, growth, and health of this organism, a kind of primitive value structure. All this is true of man as physical entity.

But secondly man is related to his physical world as conscious subject. Not only does he live in the midst of it, but he can observe it and judge it. Once again we must say, that there is limitation on the one hand, and freedom on the other. Man as knower is limited, first, by the fact that his sense organs respond to a restricted spectrum of stimuli. The normal person can hear as sound the results of stimuli which range, let us say, between 16 cycle vibrations in each second, and 16,000 cycles; or if his hearing is very acute, maybe 20,000. Dogs and bats respond to frequencies much higher. But man's hearing opens to him a quite limited range of possible sounds. So it is too with respect to color-vision, and to all of his responding sense organs. He is pent within a set of limits which he never made. But not merely that. His response as conscious subject is restricted by the tendency, common to learning organisms, to see what he has become accustomed to see rather than what may be clearly and simply before his eyes. One can learn only by establishing habit patterns, but the habit patterns tend to become lenses through which new and fresh experiences are refracted. One is limited in respect of understanding because of the impossibility of translating immediate sensory awareness without loss into conceptual generalization, and of re-translating concepts without ambiguity into words or other symbols.

At the same time man is free in a way that is crucial to the very possibility of knowing at all; he is able to transcend, in cognitive behavior, the limits of any physical basis. One is able to compare what is here now with what has been but is no longer, or with what may yet come to be but is not. He can even compare what is now with what possibly might be, but never has been and perhaps never will be. He can compare what is with what ought to be, but is not yet. In this familiar but astonishing capacity for comparative judgment and for criticism, man displays the peculiar sort of autonomy (radically different from mere indeterminacy) that distinguishes knowing subjects from known objects, persons from things.

Not only is man capable thus of judgment, he is capable of appreciation and enjoyment, of laughter and tears. It has been said that man is the only animal who laughs and weeps, because he is the only animal who recognizes the discrepancy between what is and what might be. He is capable of aspiration and worship; that is to say, he is capable of seeking his good well beyond the reach of his present being, and acknowledging ultimate dependence on Being immeasurably beyond his own existence.

Besides transcending his environment in these very diverse ways, slip-

ping through its meshes and confronting it from dimensions other than its own, man also transcends himself. He can, so to say, back off and watch himself engaged in judging, then back off another step and take note of the fact that he is observing himself engaged in the act of judging. He is able to carry that process a considerable number of stages back, without ever reaching a point which, in principle, is the last stage. Self-transcendence in this fashion — being able to make oneself an object of observation and judgment — makes possible self-criticism and some measure of self-direction. I can say I am less resourceful in meeting a problem than I might be and ought to be, and I can deliberately train myself to do better.

For man as conscious subject, even more obviously than for man as physical organism, value dimensions are inescapable. He needs opportunity for learning the distinction between true and false, coherent and incoherent, relevant and irrelevant. He is amenable to claims of a kind that the simpler animals apparently do not recognize at all: the demand for truth as against falsehood or error, the demand for beauty as against ugliness or banality, the demand for rightness as against inequity, and so on. Man is a conscious subject, *responsible* in the sense that he is able to respond to stimuli of a kind other than those supplied by the simple physical facts among which he lives.

Man confronts his physical world, thirdly, as purposeful worker: tool-maker and tool-user. This is so distinctive of human life that social anthropologists regard any artifact, even a bit of stone chipped for a cutting edge, as clear evidence that a human being has been at work. Man as tool-maker and tool-user is of course limited in all sorts of ways: in respect of strength, range of temporal and spatial activity, and dependence upon materials that can be found or somehow fabricated. But he is, at the same time, free to remake in the most amazing ways the physical world into which he has been born. He makes for himself an artificial environment in the midst of the natural environment — caves more commodious and pathways more level than those which nature has provided. Man as purposeful worker is capable, thus, of exercising an impressive measure of mastery over the physical world. If we ask what are the values involved in this sort of ability and its exercise, we are constrained to say they are highly ambiguous. On the one hand, the reshaping of earth and of atoms can be conducive to well-being for the worker and for others. But on the other hand the results can bring both want and disaster in ways he had not been able to foresee.

In relation to his physical environment, then, at all these levels, man displays the combination of limitedness and freedom, of constraint and spontaneity, that befits the notion of human existence as perpetual structured transition.

But next, man lives in a cultural environment which is as distinctive for human existence as the artificial buildings and highways that he has laid out by his own effort. Culture is a peculiarly human achievement which bears some likeness to physical artifacts, but which is perhaps more dissimilar than similar to these works of men's hands. Various components in culture — works of art, systems of trade, codes of law — are largely planned; but myth, language, custom grow, for the most part, like living things rather than artifacts. Yet by comparison with highly organized animal societies, human culture is distinctive in at least these two major ways.<sup>10</sup> On the one hand the division of labor in a human society is not dependent, as in an ant hill, or a colony of termites, or a beehive, upon simple physical and physiological differences among the individual members. On the other hand — and this is more important for our purposes — in a human culture the individual member is susceptible of modification by his membership in the community, in a way in which the individual bee or ant or termite apparently is not. In human society every individual is, in large measure, shaped as regards both his external behavior and his ways of feeling, of understanding, of evaluating. He internalizes in his own fashion the life of the group around him, and becomes an individual in so doing. As member of a human society he is immersed in an invisible environment which, like his physical environment, interflows with him, which colors his thoughts and impulses, and enables him to be the person he is. To draw a line around him and say, "Inside is John Doe and outside is the social setting," is quite impossible. The social setting is inside John Doe too. It is not the whole of him. He sees the world through his own eyes, in a perspective that no one else can have. His decisions are his own; at bottom, no one else can make them. Individual purpose and achievement mark human culture at various important points. We build halls of government, and structures of law. We build market places, and credit systems. In some measure our cultures are amenable to purposeful intent and activity on our part. But on the other hand, to a very considerable extent our cultures grow, not by reason of our intent but almost, as it were, in spite of it. We grow in the midst of them, and we affect their growth. And again, the effort to split the one pole from the other becomes quite futile.

What shall we say of man now as social unit in a community of this sort? We can talk first about his factual status therein and the contributory role which, as member of the community, he must perform. He must engage in meaningful communication with his fellows. This is the very hallmark of human society and personal intercourse. And he must engage in competitive

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10. Cf. GEORGE HERBERT MEAD, *MIND, SELF AND SOCIETY* (1934).



cooperation with his neighbors. He must take his part in getting the work of the community done. He must be a member of the working force. As such, to an extent he is culturally conditioned; to an extent he is radically individual. Even though he would not be the person that he is save for the shaping to which he is continuously subjected, he never is completely a cell in a social body. Always his capacity for transcendence, for recognizing that which is not but might be, perhaps that which is not but ought to be, colors his relationship to his community, as well as his relationship to his physical enviroing world.

With respect to this normative aspect of man's role in society, Josiah Royce has used a phrase which I have long found immensely illuminating.<sup>11</sup> He speaks of "the moral burden of the individual," who can become the person that he must become only if he is at once loyal to his community and on occasion sets himself in resistance against its demands. Think of the growing child. The child who never reaches the point of setting his will against the parents' will, against the family pattern, or what not, will never become an adult. On the other hand a child who is from the beginning a lone wolf, who never learns what it is to give loyalty, will hardly become a wholesome adult. Only the person who displays both devotion and critical dissent will grow to full stature as human person. This is "the moral burden" that each of us bears.

In somewhat more abstract terms, each of us is constructed to become a responsible self. That means, first, responsible in the primitive sense that we have already noted: able and ready to respond to value claims. It means also responsible in another sense: ready to affirm as my own the claim that I recognize justly lays hold upon me, to identify my will with demands that originate beyond my own desires. It means acknowledging that obligation is intrinsic to personal existence. A responsible person is one who in confronting a fellow human being forthwith recognizes that the existence of the other lays him under obligation. It is not simply that the respective purposes of the two involve reciprocal claims. The very existence of the two involves such reciprocal claims. To come upon a *thing* is to come upon what I may suitably use as an instrument for carrying out an end of my own. To confront a person is to confront one whom I must regard as a center of purposes, with whom I enter into communication and cooperation, but whom I am not free to treat as a thing.

The central principle here can be put into familiar Kantian terms.<sup>12</sup> A

11. 1 THE PROBLEM OF CHRISTIANITY ch. iii.

12. KANT, GROUNDWORK OF THE METAPHYSIC OF MORALS, transl. in H. J. PATON, THE MORAL LAW 82-104 (1950).

growing person is subject, as active self, to imperatives of two kinds. Some are technical, conditional, "hypothetical," "empirical" demands defined and imposed by some goal of natural desire and the empirical conditions for achieving it. To attain wealth I must practice industry and thrift. To achieve skill as a violinist I must practice scales and exercises. Such imperatives can be nullified by simply abjuring the goal that requires them. Not everyone is obliged to seek wealth or musical skill. Very different is the one universal, unconditional, "categorical" imperative, defined and imposed not by some desired goal but by the intrinsic nature of personal existence. Every person, whatever his individual desires and under all circumstances, is obligated to behave as rational, responsible self, not as carefree egoist or child of nature. This obligation I cannot avoid, since it is integral to my own being. For that very reason it is less easy to formulate than if it were a function of a particular goal. Kant's proposed statements are probably as good as any: Act always as you would will that anyone in your place should act, "as if the motive from which you act were to become through your will a universal law of nature." "Act so as to treat humanity, whether in your own person or in the person of another, always as an end, never as merely a means." "Act so that the will may regard itself as in its maxims laying down universal laws."<sup>13</sup> These are three ways of saying what it means to behave as a responsible person.

The person thus understood, I suggest finally, is a kind of growing point in the community. In giving to the community his loyalty but guarding the duty of individual judgment and decision, he will make what contribution he can to widening horizons of insight, sharpening the sensitivity of evaluation, and extending the area of common understanding. He will be in the community a self who belongs to it, but who is not absorbed by it.

Now if such a person be considered in a political environment, we can say as a citizen he is a meeting point of private and public interest and need. He has his own personal concerns, but he must learn to seek the fulfillment of those concerns within a fabric of reciprocal social behavior. To be a good citizen, he needs an imaginative sense of the community as inclusive and growing whole, a real and rightful claimant upon him, but subject to critical judgment. As official his task is more complex, for now he is at once bearer of his own personal concerns and aspirations, and representative of his constituents, and he must try to be the voice for their concerns. Some of them pretty obviously are restricted and selfish concerns. Some of them are genuinely conducive or possibly conducive to the well-being of the community

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13. KANT, *op. cit.* *supra* note 12, at 269, 277, 282.

as a whole. As official he must be alert to such differences. His job is to represent both those who have elected him to office and others who are no less truly his constituents, whose interest he is bound by proper oath to respect and try to serve. He too needs the same kind of sense for *res publica*, the well-being of the people.

Let us turn now from the intrinsic nature of man in his several intermeshing environments to some familiar aspects of his social-political behavior. First of all, man operates in this context as at once competitor and learner. He is inevitably a competitor of his fellow man, with a strong primary urge to get satisfactions and to overcome frustrations. If I am an alert competitor in a social situation to which I am sensitive, I am likely to find that over a period of time the methods that get satisfaction or relief from pain will undergo significant change. At first my tendency is to apply crude force, engage in combat and get what I want by disposing of my adversary. Later I resort to a complex and ingenious mode of exploitation, so that instead of destroying him I somewhat enlist him as an instrument for my satisfaction. Perhaps I will pass beyond that point, and find myself resorting to collaborative rather than exploitative tactics, still by way of getting the satisfaction on which I have been intent all along.<sup>14</sup>

It may be that the very character of the satisfaction I want will also change. At first I want a simple pleasure, and I want it now. Later perhaps I want an anticipated pleasure, still simple but not yet readily at hand, and I lay plans and subject myself to discipline in hope of that pleasure in time to come. Perhaps I find myself getting pleasure not so much out of simple stimuli which I can possess, but rather out of the very process of achievement, the putting forth of effort and gaining skill. I get satisfaction now on a much more complex basis and in much subtler forms. In due course I may find satisfaction not simply in what I am able to do; I get satisfaction out of the achievement or the well-being of others. Both the method by which I seek fulfillment and the kind of fulfillment I seek are thus susceptible of social education.

Man is not merely competitor, then. He is practically a perpetual learner face to face with his fellow men and with the world they have in common. He seeks knowledge, partly as an instrument which he can turn to his own advantage, the knowledge that is power if one knows how to put it to work. But knowledge can be not merely a tool. It can be an immediate source of a very special kind of satisfaction and fulfillment. Somewhat surprisingly that can be true whether the knowledge be favorable or unfavorable to the private ends upon which I thought I was set. Even to learn for dead sure

14. Cf. W. E. HOCKING, *HUMAN NATURE, AND ITS REMAKING* ch. XXIV (1918).

an unpleasant fact brings its own peculiar tang of excitement and exhilaration. The thrill is to make contact with what I am persuaded is really there. I didn't see it before; now I see it. Even if it is something that threatens me with harm, nevertheless I face it now not blindly, but with my eyes open. This delight in knowledge as immediate achievement and source of enhancement of oneself as person is perhaps less common than the more hardheaded gratification of one who has acquired a modicum of truth he can exploit. But the sheer satisfaction of gaining new insight is a powerful lure for some of the most laborious questing in which men engage. Knowledge thus gained is cumulative, self-corrective, expansive, and contagious. Trying to keep it within preconceived bounds almost always proves futile. Once we expose ourselves to the fascination of new insight, it frequently takes over, imposes itself and its rules, its demands and its resources upon us, makes us different persons, and changes the mode of our living in unexpected ways.

Man as competitor and learner, man in his more aggressive mood, striving for his own satisfaction, is, then, amenable to a curious kind of discipline, noncoercive and intrinsic in the process of becoming a mature, knowledgeable person. This same process has another side. Social-political man is not only competitor and seeker. He is inescapably cooperator, participant, sharer.

Whether there is a phylogenetic base for this impulse to share is debatable. I strongly suspect that there is. At any rate the discussion that went on years ago between Piotr Kropotkin and Robert Briffault, spokesmen for zoology and social anthropology, left the balance tilted toward an affirmative conclusion. Kropotkin urged in broad terms that mutual aid is a vital factor in evolution, insisting that among gregarious forms of life reciprocal support among members of a group contributes directly to biological survival.<sup>15</sup> Briffault poked fun at Kropotkin's conviction that gregarious herds display a kind of tribal altruism, but stressed the biological importance of the readiness of animal mothers to seek the safety of their offspring, even at the cost of their own lives.<sup>16</sup> It seems to me that, though they differ in detail, both men point to the same fundamental fact: our mode of animal life is such that without "mutual aid" in some form, we should not be here at all.

However that may be, the cultural necessity for balancing competition with cooperation at all social levels is scarcely disputable. It is simply impossible to operate a large-scale social enterprise, even of a competitive kind, without a requisite measure of cooperation among those who are engaged in attempting to push the enterprise through. That men can work together, often

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15. P. KROPOTKIN, *MUTUAL AID AS A FACTOR OF EVOLUTION*. Cf. AUGUSTINE, *DE CIVITATE DEI XIX*, xii.

16. R. BRIFFAULT, *THE MOTHERS* (1927).

with much sympathy and understanding, is so obvious that we take it for granted. But familiarity should not blind us to the surprising character and the theoretic significance of the everyday fact. It virtually rules out, as social theory, the atomistic individualism once fashionable. It rules out no less emphatically, as psychological or as ethical theory, any one-sided view of man as impervious competitive egoist. In this respect, as in so many others, human nature is strongly ambivalent.

Let us turn, finally, to a specific manifestation or disposition of this complex, many-sided nature: what may be called the democratic temper. Four sentiments especially characterize it.

One is robust liking and respect for people as people. The core of such liking and respect goes very deep, rooted in the primitive recognition and appreciation of another human being as truly another center of personal existence. It is not easy to keep such a statement from sounding merely tautological. Perhaps we can start from what is called reverence for another, whether it be an adult or a child, in which primary stress is laid upon his otherness from myself. The child whom I treat as a means to my pride, or a source of irritation to my convenience, is a child whom I regard with something other than reverence. But if I recognize in my child one who cannot be reduced to an aspect of myself, one who confronts me as an independent center, a growing center of experience not my own, one who in certain specifiable ways lays claims upon me and may even be regarded as superior to me — he will outlive me if things go well, and surely will experience much that I shall never be able to experience — if I view him thus as a truly other self, I find a quite induplicable sort of satisfaction in just having him here in his own right. This fundamental liking for persons as persons witnesses in important measure the satisfaction of getting beyond the *persona* which is one's public mask, to a core of real personal existence. There is a sort of warmth and excitement that one can get in no other way, when one finds oneself assured that here, face to face with oneself, is an unexplorable other center of human experience. Without that kind of delight in other people as people it is hard to conceive why discriminating folk should find special satisfaction in a democratic ordering of affairs, rather than in suitably hedged aristocracy. But if there is exuberant liking for people, then the differences — of manner, of gifts, of capacity — which otherwise can become so troublesome fall into their appropriate perspectives. Granted that want and fear are absent, one can welcome these individual differences as sources of enrichment for oneself and for the life of the group. If fear and want interfere, then the differences become signals for hostile reaction, and the satisfaction that one should be finding in the otherness of his neighbors becomes distorted.

Equality and inequality seem to me bound up in this same sort of pattern. Basic equality is equality of existence as person, and this must be steadily maintained. It precedes and justifies "equality before the law," which presupposes equality of status as human beings. Granted that, all sorts of inequalities can be taken for granted and overarched. It would be silly to think I can find satisfaction only in talking with those who know as much as I know. I enjoy talking with an inquisitive child — without any need to "talk down." I enjoy talking with students. Their range of information is not identical with mine, but I can learn from every one of them, and I hope that each of them comes to know it and to know that I know it. The inequalities that make so much trouble are not to be wished away. In a suitable context, they can be welcomed, as contributory to a fabric of personal relations in which our basic satisfaction lies in authentic confrontation with one another.

The democratic temper is marked, secondly, by appreciation of and satisfaction in contributive work. This will mean, in the first instance, some sense of individual vocation. There is a job that I can do. It probably could not be done in the same fashion by anyone else, and my loyalty is given to it. It becomes for me a source of many sorts of satisfaction, among which perhaps the most important is self-respect. It enables me to feel that I am making a contribution of significance to others as well as to myself, and in working thus as a member of the group, I become a more fully valid individual person.

But it will mean also recognition of sound work done by others, and satisfaction also in that. It must be the sort of satisfaction in solid achievement that can rise above personal likes and dislikes, and the very real stresses and risks of group rivalries. A discerning Catholic priest at the time that Sputnik first went up voiced in my hearing an expression of gratification that the human race had shared in this achievement. That struck me as the right kind of response. It was not our doing, but it has been done, and we can take sober satisfaction in the sort of resourcefulness, discipline, and large-scale promise that such achievement involves. This is not to recommend closing our eyes to the peril to us and to values that we cherish. It is to say the genuinely democratic person will react with excitement to genuinely good work, whether it be his own or someone else's.

Thirdly, such a person must display a strongly developed sense of proportion and robust humor. He must be quick to make a sagacious distinction between appearance and reality. This capacity may come out of his experience as worker, especially if a part of his work is manual work. One who works at matching boards, working metal, or pouring concrete learns to

respect bench marks and measurements. The distinction between what he would like and what is so is a distinction the manual worker cannot bypass. The needed realism must include the habit of sizing up oneself, and one's own achievement, with as much objectivity as one can muster. It should include an adult sense of humor, which belongs properly to this sort of readiness to recognize reality for what it is, and to see its discrepancy from what sometimes pretends to be the real. A quick and sure awareness of the comic has strong cleansing power, especially if it be turned on oneself, one's own showier efforts to maximize one's ego, to maintain publicly a *persona* to which one is not entitled. The same bracing restorative can be good for one's neighbor as well. Humor, I suggest, rather than wit, for humor can exercise criticism warmed and edged with sympathy. Wit is very likely to display competitive spirit rather than companionship. Humor is the sense of reality at work among companions who can laugh at one another, and each at himself, and find a kind of relief and catharsis in so doing.

It goes without saying that democrats must recognize what on the surface is comic but actually is dangerous and tragic: the brown shirts and big boots, the pagan ceremonials, the man on horseback. Our healthy human instinct is to laugh them off forthwith, and laughter they surely deserve. But laughter must be nicely distributed as between those situations in which nothing more than laughter is called for, and those in which there is need for a tougher kind of resistance as well. Demagoguery is funny to an adult onlooker; but demagoguery is a sort of poison that did its part in the killing of Athenian democracy, and is perpetually attempting to do the same job for more recent efforts at democratic living.

Last of all, the democratic temper displays a tough kind of intellectual inquisitiveness, together with a basic confidence in the trustworthiness of genuinely ordered reality to be explored. Such inquisitiveness persistently seeks more light, preferring the verdict of what is experienceable to the *ipse dixit* even of the acknowledged expert. It insists upon asking pertinent questions, and getting, if possible, pertinent answers to them. It welcomes correction of mistakes — including one's own mistakes — as a matter of course. It encourages clash of opinions, since nobody has the whole truth; and debate is one way of making it likely that more of us will get access to more of the truth than we should if we tried to maintain imposed conformity.

As counterpart to such inquisitiveness, the democratic temper has confidence that we live in the midst of an ordered, explorable, and dependable reality that can be, in part, really known. That reality includes meaningful patterns to be sought, recognized, and used as a basis for prediction and for further inquiry; and beyond those discoverable patterns, whatever it is

that holds a patterned world-order together in being. There is confidence also that the order of reality is such as to offer guidance not only to man's understanding but also to his capacities for appreciation and decision. As we have already urged, it is a world in which fact and value are intricately combined. If it were not so, there would be no room for a doctrine of natural law; and I think there would be no solid footing for democracy.

### III. THE SIGNIFICANCE OF NATURAL LAW FOR DEMOCRACY

WE COME NOW to the central thesis of these lectures. We have argued that political democracy derives its primary dynamic from a certain disposition deeply rooted in the nature of man: a distinctive democratic temper that finds satisfaction in diverse and relatively uncoerced human relationships and in manifestations of the fundamental personal existence that is common to all human beings. At the same time we have recognized that the successful practice of political democracy requires a number of favoring conditions, some internal, some environmental, some in various ways susceptible of human contrivance, some beyond our power to produce or to destroy. It is now to be urged that among these last conditions must be accounted some such intrinsic ordering of fact and value as the traditional doctrine of natural law has sought in varying terms to envisage.

Whether such ordering does exist is of course debatable and warmly debated. If it does not, no fervor of wishing or arguing can make it real. My concern here is not to attempt either proof or disproof. It is twofold: to re-examine the familiar course of development of natural law doctrine in Western thought, with some hope of distinguishing its essential, continuing concern in the midst of its varying forms; and to emphasize its especial significance for those who seek to vindicate the theory and practice of democracy as realistic and rational.

It may be noticed at once that the features of political democracy that most need such vindication are its most characteristic, distinctive ones: its predilection for encouraging plural initiative, reaching decisions through public debate, and safeguarding political opposition and social dissent. Respecting the primal functions of a government — maintaining public order, by coercion if need be, defining and executing public policies, maintaining common defense, engaging in various public relations with other governments — there is broad agreement between democrats and anti-democrats. Disagreement centers on the way these functions are to be carried out, and more fundamentally on the source and character of governmental authority, and the proper relation of government to human existence. With regard



to these more fundamental issues, democrats and anti-democrats stand on sharply different ground.

Defenders of despotism may of course appeal (as in fact they have done more than once) to some sort of natural sanction — divine right of kings, natural right of the stronger — but they need not do so. A kind of rationale for despotism can be worked out, up to a point, in positivistic or crassly pragmatic terms. Hobbes made that plain in theory, and in practice there is a kind of rough plausibility in a blunt assertion that trying to go back of the authority of a visible government to some invisible “higher law” makes for confusion, of a sort that cannot be tolerated in time of crisis and had better be avoided at any time. The soundest political practice is that which matter-of-factly accepts a duly established government as exercising final authority in fact, and determining by its decisions what is politically right. But to defenders of democracy no such apparently simple course is open. If the encouragement of political opposition and genuine public debate, and the protecting of dissenting minorities, can be justified as rational practice, it must be because majority preferences and governmental decisions, even constitutional provisions, are regarded as open to legitimate criticism and possible correction. Such criticism and correction require a norm, a frame of reference that ultimately must transcend the government, statutes, and constitution under debate. Such a norm the doctrine of natural law has affirmed, and tried in various ways to expound. To such a norm, expressly regarded as natural law, the opponents of Charles I and the signers of the Declaration of Independence appealed, and in so doing put forward their demands for democratic government as rationally grounded demands. In principle their way of vindicating a rationale for democracy seems to me the right way.

To get this view into suitable perspective, I find it simplest to look briefly at the traditional role of natural law in the development of Western thought, not for antiquarian ends but to make clear what I understand the doctrine to have meant in our culture, before seeking to apply it to our present problem.

Let us begin then with the ancient philosophic concept of Nature, from which the concept of natural law is one characteristic outgrowth. When philosophy as a systematic discipline emerged in the sixth century B.C. among the Greeks, trying to free itself from polytheistic mythology, the favorite title of philosophic treatises was “On Nature.” Φύσις<sup>17</sup> (Nature) as the pre-Socratic schools understood it means primarily a living body, self-existing, self-developing, self-ordering, at once factual and normative, imposing neces-

17. From φύω, φύομαι, a verb that can mean, among other things, to beget or produce, to be born, to become, and to be. Cf. the Latin *natura*, from *nascor*, to be born, to begin.

sary conditions on physical events, and obligations on rational beings. It is regularly called "divine," though not in the anthropomorphic sense that marks Homer's pantheon,<sup>18</sup> and the language of moral judgment is applied to Nature as a matter of course. Thus Anaximander, who thought of the plurality of things as arising from the emergence, conflict, and mutual encroachments of the cosmic "opposites" — the hot and the cold, the wet and the dry — regarded their eventual breakdown and reabsorption as a kind of moral retribution. "For they make amends and recompense to one another for the injustice (*ἀδικίας*, sc. of their prior encroachments), according to the order of time"<sup>19</sup> — the round of the seasons and the years. Even Heraclitus, who rejects his predecessor's notion that strife is "injustice," and affirms a deeper, subtler "harmony" in perpetual tension, a higher "justice" in strife in which opposites merge into the fluid unity of "ever-living Fire,"<sup>20</sup> insists that order is maintained. The Fire that is Nature moves according to "measures" (*μέτρα*, *λόγος*).<sup>21</sup> So "the sun will not transgress his measures, else the Avengers (*Ἐρίννες*), the helpers of Justice (*Δίκη*), will find him out."<sup>22</sup>

It is almost impossible not to agree with the main thesis of Professor Cornford at this point,<sup>23</sup> that the earliest pre-Socratic philosophers applied to Nature the language and the modes of thought that had long been applied to the towering figure of Destiny (*Μοῖρα*, *Εἰμαρμένη*, *Ἀνάγκη*). Older and more powerful than the Olympian gods, Destiny had long been venerated as the chief guardian of those boundaries and landmarks in the world of gods and men that serve as guides to right conduct. To live within one's proper station (as man and not god, as Lord of the sea but not of earth or sky) was to live in accordance with "right" (*δίκη*). To "transgress the measures" of one's allotted mode of life was *ἔβρις* — an untranslatable compound of arrogance, rebellion, sacrilege, and violation of duly established order. Punishment of *ἔβρις* was one function of Destiny, not a person like *Ἀθήνη* or *Ζεὺς* but an impersonal agency whose names suggest two sides of its nature. *Ἀνάγκη* means necessity, compulsion, coercion — the exertion of force as simple matter of fact. *Μοῖρα* and *Εἰμαρμένη*<sup>24</sup> both refer to apportionment, allotment, distribution, or dispensation — the assignment of posts to be filled,

18. For evidence see H. DIELS, *DIE FRAGMENTE DER VORSOKRATIKER* (3rd ed.), or a similar source book. Thus Anaximander "and most of the physiologers" — so Aristotle, in DIELS, *op. cit.*, I, 17, lines 35-6. On Anaximenes, *id.* at 23. 10-11; 24. 11-13, 16-17. On Xenophanes, *id.* at 50. 17-20; 62. fragments 23, 24.

19. DIELS, *op. cit. supra* note 18, at I. 15. 28-9.

20. *Id.* at I. 77 seq., frgg. 8, 51, 53, 54, 80, 30.

21. *Id.* at I. 84, frgg. 30, 31.

22. *Id.* at I. 96, frg. 94.

23. F. M. CORNFORD, *FROM RELIGION TO PHILOSOPHY* (1912).

24. Both derive from *μεῖραι*, to divide or apportion.

with a clear implication of duty, of right and wrong, and of appropriate sanctions. *Μοῖρα* is especially interesting for our present purpose, since it directly suggests our Latin-based terms *moral* and *merit*, and quite possibly is an early member of their family tree. When Nature, then, was invested (among other attributes) with the ambivalent character of Destiny, it assumed the double role of force and norm. It was held as philosophic truth that in the ongoing and self-sustaining process of Nature there is provision for restoration of balance, if either things or persons transgress their allotted guide-lines.

Another term for these allotments was *νόμος*, law, from *νέμω*, another verb meaning to deal out, dispense, distribute, and so plainly belonging in the group of ideas we have just examined. But there is an important difference. *Νόμος* is "dispensed" not by impersonal Destiny but by a personal lawgiver: Zeus in heaven, Solon or Lycurgus on earth.<sup>25</sup> It can therefore be contrasted with *μοῖρα* as fate-determined lot. *Νόμος* implies reason as its source. Before it could readily be combined with Nature into a concept of natural law, it was necessary that Nature should be decisively conjoined with Reason. Heraclitus in his ironic, paradoxical way sometimes spoke as if he thought of the world in such fashion,<sup>26</sup> and expressly spoke of "the one divine law" from which "all human laws (*νόμοι*) are nourished."<sup>27</sup> But in the light of other sayings that help define the context of his thought as a whole, it is evident that both *λόγος* in Nature and divine *νόμος* must be understood as antithetic to what men ordinarily call reason; since in reality all opposites merge into a fluid identity that resists all efforts at rational analysis and moral discrimination.<sup>28</sup> Anaxagoras's treatment of "Mind" (*Νοῦς*) as a corporeal force rather than a purposeful agent is well known.<sup>29</sup> Archelaos, his Athenian successor and Socrates's reputed teacher, is said to have held that "right and wrong are not by nature (*φύσει*) but by law (*νόμῳ*)"<sup>30</sup>—i.e., by convention. The Atomists denied to Nature any properties but geometric and mechanical ones; and Democritus used the term *νόμος* in the disparaging sense of convention as opposed to truth or reality.<sup>31</sup> Greek thought in fact was not ready to combine Nature and Law until another corner had been turned.

25. See CORNFORD, *op. cit. supra* note 23, at 26-31.

26. DIELS, *op. cit. supra* note 18, at I. 86. frg. 41; 85, 20 frg. 32. Cf. 94 frg. 83, and the ubiquitous references to *λόγος*, too easily understood as Reason by both ancient (Stoic) and modern interpreters.

27. *Id.* at I. 99-100. frg. 114. Cf. 86. frg. 44.

28. *Id.* at I. 98. frg. 102; 99. frg. 108; 90-91. frg. 67; 89. frgg. 58, 60; 88. frg. 52; etc.

29. *Id.* at I. 405-6. frg. 13; 404-5; frgg. 11, 12; cf. PLATO, PHAEDO 97b-98b, and Aristotle's similar comment.

30. DIOGENES LAERTIUS, LIVES II. 16.

31. Cf. DIELS, *op. cit. supra* note 18, at II. 60. frg. 9; 85. frg. 125; etc.

The men who prompted the turn were the cultured, traveled relativists, skeptics, and "realists" we know as the Sophists of Pericles's time. They were scornful of the whole philosophic enterprise that sought to understand Nature as ordered and intelligible. "Of all things man is the measure," wrote Protagoras. As things appear to each, so they are — to him. There is no objective, common "measure." And he brushed aside any attempt to think about the gods.<sup>32</sup> Gorgias, with his treatise, "On What Is Not, or On Nature," argued for thoroughgoing skepticism.<sup>33</sup> In moral and political theory, Protagoras at least was sober and conservative.<sup>34</sup> But the epistemological relativism and skepticism of these older Sophists opened the way to moral and political radicalism among some of their successors, who may well have been influenced also by Herodotus's picturesque traveler's tales of local customs so diverse that the same act could be obligatory in one place and sacrilegious in another. One recurrent feature in the political views of the later Sophists and their admirers was a sharp disjunction between φύσις and νόμος.<sup>35</sup> Some of them — the Sophist Antiphon, the politician Callicles — seem to have argued for the superiority of the "usages" (νόμιμα) of Nature that favor the strong and shrewd as against mere law (νόμος), a "convention" (θέσις) that curbs the strong and favors the weak. At least one, Thrasymachus of Chalcedon, scorned the whole notion of right as a fraudulent social disguise for *de facto* superiority in force.<sup>36</sup> To such men, for differing reasons and with differing consequences, Nature and Law were antithetic.

A turning point came in Athens with the vigorous questioning enterprise in which Socrates engaged as a god-appointed mission. He urged that if Sophists like Protagoras were entitled to their claim to "teach virtue," they were assuming after all what they professed to deny. If virtue (i.e., excellence) can be taught, it must be knowledge of a sort. But if it is knowledge, then it is something other than an opinion that can vary from person to person and from city to city. Against Callicles and Thrasymachus, champions of "injustice" if practiced by the strong, he resorted to *reductio ad absurdum*.<sup>37</sup> How far he may have followed up his early interest in the

32. *Id.* at II. 228. frg. 1; 229-230. frg. 4.

33. The argument seems to be summarized fully by Sextus Empiricus. See his text in DIELS, *op. cit. supra* note 18, at II. 243-246.

34. Cf. PLATO, PROTAGORAS 322.

35. Plato represents Hippias, ambassador from Elis and one of the earlier Sophists, as saying to an assembled company from various cities: "I consider you all to be kinsmen, neighbors, and citizens by nature (φύσει), not by law (νόμῳ) . . . the law (νόμος), a tyrant over men, forces many things contrary to nature." PROTAGORAS 337 c-d.

36. For a brief conspectus of Sophist doctrines of Nature and Law, cf. ERNEST BARKER, GREEK POLITICAL THEORY: PLATO AND HIS PREDECESSORS ch. iv (3rd ed., 1947).

37. Cf. PLATO, PROTAGORAS *passim*; THEAETETUS 161-179, esp. 172; GORGIAS 488-514; REPUBLIC Bk. I.

metaphysical insights of his predecessors it is hard to say. Most likely he was more concerned with finding a sound basis for human knowledge and conduct than for speculations about Nature; but his own chosen course of inquiry was rich in metaphysical implications.

Plato enthusiastically developed them in his own way. He reaffirmed vigorously, with elaborate argument, what the Sophists had denied: that existence and good belong together. He maintained that to understand the failure of Athenian democracy and to start with better hope of success, it is vital to see that stable government must rest on profounder insight into the nature of man. But if man is to be rightly understood, such insight must extend also to the world in which man has to live. And that world, so Plato urged, displays an ordered, graduated structure, polarized toward a sovereign principle he called "the Good," which can be glimpsed and recognized, in a kind of intellectual vision, but not classified as an instance of something more ultimate. Far from being a function of social custom, the Good is transcendent, he says, "beyond Being" and beyond thought, of which it is the indispensable source, as the sun is of sight.<sup>38</sup> In the Good all things real in their various ways "participate," in the sense that the whole realm of being is pervaded by an intricate network of interrelationships oriented under that supreme principle. This is not to say that the world is simply good. On the contrary, evils are many. It is to say that the world with all its faults is oriented toward the transcendent focal point, and everywhere bears witness to its presence.

If human conduct is to be rightly directed, then, it must be guided by increasingly clear and systematic understanding of the network of significant relationships that binds the existent universe. The Good remains beyond reach. This view Plato never abandoned. In one of his latest dialogues, he still maintained that it is impossible to say simply what the Good is. We can point to it; we can recognize a road toward its habitation; we can approach its home, even stand in the vestibule. We can say the true, the beautiful, and the fit bring us close to the Good in three of its aspects.<sup>39</sup> If we are engaged in intellectual inquiry, the Good manifests itself as truth over against error and falsehood. If we engage in esthetic enterprise, the Good manifests itself as beauty over against banality and ugliness. If we seek what is right, the Good manifests itself as fitness over against what is unfit. These manifestations are not to be identified with the Good or thought of as exhausting it. They display its presence in various areas of human activity, while it remains all the while more than they.

38. *REPUBLIC* 508e-509b; 517b-c; 532b-c.

39. *PHILEBUS* 61a-65a.

If we cannot say, then, what "the Good" is, what sort of use can we find in affirming its presence? It defines for us a polarity such that we can recognize direction toward and direction away from that transcendent goal, which neither we nor anyone else in concrete living will ever fully grasp. By its light we can know whether we are moving in the right or the wrong direction. For Plato this sort of polarity, hierarchical structure, directionality, intrinsic to the real world itself,<sup>40</sup> is the basis for such orientation of human living as may overcome the failure of self-control he had seen in his own beloved city. To help prevent such failure for the future, he had founded his own school for advanced studies and devoted to it the mature years of his long life.

For some twenty years the young Aristotle was a member of the Academy; and however else he differed in his reading of Plato's problems, he agreed on the hierarchical ordering of Nature and the need for orientation of human conduct within that scheme. For him the culminating principle is God, supremely active Mind — the one instance of pure reality, untainted with any unrealized potentiality or capacity. God is full self-realization (*ἐνέργεια*), beyond the mixed world of matter and form, possibility and actuality, that comprises all lesser beings. His aloof perfection is the model toward which all other beings strive, each within the bounds of its own specific nature.<sup>41</sup> It is the perfect tranquillity of God's pure activity that the stars in their courses seek to emulate. The celestial spheres, ranging from the constellations down to our small sphere inside the path of the moon, seek to be as nearly like God in His changelessness as imperfect beings can ever be. And we in our fashion must seek our fulfillment in essentially the same way: to be as fully as possible what in our own rank in the natural order we are and can be. For man it is reason that differentiates him from the other animals. Hence, the fulfillment of human nature and the fullest attainment of human good is, for Aristotle, to be found *par eminence* in the life of devoted reason: a life of undistracted *θεωρία*, vision, as nearly as possible like the vision that God has and is. But the practical life to which most men are inescapably committed can approximate this ideal by following always the way of moderation — neither too much nor too little — in all sorts of emotional response. There are many rungs on the ladder, and on each it is best to aim at the changeless activity of God.<sup>42</sup>

40. This is assumed throughout the later dialogues, and given detailed "mythical" but serious expression in the *Timaeus*. This world is purposefully ordered by an intelligent "Maker and Father," who is good. *TIMAEUS* 28a-30a; etc. Cf. *PHAEDO* 99.

41. See especially *METAPHYSICS* Book Lambda.

42. *NICOMACHEAN ETHICS passim*.

When the Stoics picked up this theme, they made of it something in certain respects radically different from what Plato and Aristotle had taught. For both these men the ultimate goal is beyond Nature, but its lines of influence, so to say, percolate down through Nature to us men. For the Stoics, on the other hand, the supreme principle is wholly immanent in Nature. It is pervasive Law which is at the same time living Mind, the Steersman of the universe. It can be called Destiny (*Εἰμαρμένη*), as in ancient thought. Most characteristically it is called *Λόγος*, the Word, Thought, Mind, permeating the whole of Nature, and making the universe rational through its whole expanse. Although in many respects the Stoic world-view recalls pre-Socratic naturalism, it differs in affirming supremacy for a genuinely rational power. This universal Logos is the source of reason in each human being. Each of us as rational person is akin to the Mind that rules the universe, and to every fellow man. Each person lives rightly if he lives "according to nature" (*κατὰ φύσιν*). This means first according to his own proper nature, so that his rational power of self-direction stays uppermost, keeping in control those passivities that sensation, emotion, and desire comprise. Life according to nature is life according to *my* basic nature. But that is itself determined by my kinship to Nature in the large. Hence the moral principle is: Live so that you manifest in your behavior the true character of your being, and the true order of the universe.

The Stoics called this "wise" life, moreover, life "according to law" (*κατὰ νόμον*); and its opposite, the life of folly, is "lawlessness" (*ἀνομία*). Here at length, in explicit and endlessly reiterated expression, is direct contradiction of the Sophistic thesis that *νόμος* and *φύσις* are incompatible. In effect the Stoics say: If you rightly understand what law is, you must see that it derives from Reason in Nature; and if you rightly understand your own being, you will see that it can achieve fulfillment only as it lives in accordance with that natural ground.<sup>43</sup>

I suppose the Stoics are, as nearly as anyone in pre-Christian antiquity, the immediate source of the phrase *lex naturae*. They were followed by successors of three sorts: Roman jurists, Hellenistic Jewish thinkers, and Christian theologians. The Roman jurists are variously described as practical men for whom *lex naturae* meant a method of interpreting positive law, and as genuinely philosophical theorists, for whom the term had essentially its Stoic meaning. My knowledge is too meager for a confident choice between such views. Cicero, at all events, was both philosophically alert and

43. A convenient compendium of Stoic writings, mostly late, is in W. J. OATES ed., *THE STOIC AND EPICUREAN PHILOSOPHERS*. The fragments of early Stoic writings have been edited by H. von Arnim, and those of middle Stoicism by A. Schmekel. See also DIOGENES LAERTIUS, *LIVES VIII* and E. ZELLER, *DIE PHILOSOPHIE DER GRIECHEN III*.

juridically daring in his view that human law is truly law only if it accords with natural law as superior norm.

Among the first in a long line of Jewish thinkers influenced by Stoic and Platonic thought is the author of the Greek *Wisdom of Solomon* in the Old Testament Apocrypha. Like his predecessor, Joshua ben Sirach, author of the Hebrew *Ecclesiasticus*, the author of *Wisdom* centers his thought on the Wisdom of God, first among created beings, by whom the order of the created world is established and maintained. The earlier book identifies God's Wisdom with the Torah (i.e., instruction), the Mosaic Law,<sup>44</sup> and both authors regard her as an ordering principle inwoven throughout the world, which she helps God to produce.<sup>45</sup> The order thus effected should be a source for right knowledge of God and a guide to right behavior. The worst wrongdoing is that which idolatrously violates the order of nature.<sup>46</sup> This basic mode of thought is embraced and greatly elaborated by Philo of Alexandria, who relabels this Wisdom-theology with the Stoic term *Λόγος*, and makes it the central motif in his major effort to show the chief insights of Greek philosophy in the Hebrew Scriptures. For him the true, essential Law is not the Mosaic code taken literally, but the inner meaning of that code discoverable by allegorical exegesis, and recognizable as the ethical content of the world-order maintained by the Logos, as "divider," harmonizer, and sustainer.<sup>47</sup> The continuance of this philosophic tradition in Judaism, and the impressive stature of such mediaeval Jewish thinkers as Saadia-Gaon, Maimonides, and Crescas has become a familiar story. A distinctive sort of natural law doctrine is one of the characteristic features of this tradition.

When Christian thinkers took over the theme from sources both Hellenistic and Jewish, they not unnaturally set it into their own theological framework. Like Philo they declared that the law of nature is ordained by the Creator of heaven and earth, and related it in various ways to the Mosaic code and to the *Λόγος* of God whom they held to have become incarnate in Jesus Christ. Whether St. Paul meant to affirm the traditional doctrine of natural law in Romans 1 and 2 is debated. I think he did, in the way already indicated in Wisdom 12 - 14, which he almost certainly used.<sup>48</sup> Stress on the "peace and harmony" of the physical world as a model for human conduct, along with the examples of righteous men, appears in the first century letter ascribed to

44. *Ecclesiasticus* 24:1-34, esp. 24; cf. 1:1-27; *Wisdom* 6:17-22.

45. Cf. *Wisdom* 1:1-8; 7:15-8:1; 9:1-11, 17-18.

46. *Wisdom* 11:21-12:2; 12:23-13:9; 14:22-31; cf. *Romans* 1:18-2:16.

47. Philo, *de opificio mundi*; *Leges alleg.*, I-III; etc. For general accounts, E. R. GOODENOUGH, *AN INTRODUCTION TO PHILO JUDAËUS*; E. BREHIER, *LA PHILOSOPHIE DE PHILON D'ALEXANDRIE*; H. A. WOLFSON, *PHILO* 2 vv.

48. Cf. *supra*, note 46; and notice especially *Romans* 2:14-15: "When Gentiles who have not the law do by nature (*φύσει*) what the law requires, &c."



Bishop Clement of Rome.<sup>49</sup> In the second century, Justin Martyr distinguishes within the Mosaic code "that which is universally, naturally (*φύσει*), and eternally good" from what is enjoined temporarily for the Jews alone; and elsewhere he identifies "the eternal law" (*αἰώνιος νόμος* = *lex aeterna*) with the incarnate *Λόγος*.<sup>50</sup> Tertullian likewise knows a "righteousness of natural law" (*naturalis legis iustitia*), by which Adam, Noah, and Abraham were judged, before Moses's day.<sup>51</sup> Most interesting is Irenaeus, who thought of the "natural commandments" (*naturalia praecepta*) of love to God and to neighbor as "from the beginning . . . implanted in mankind."<sup>52</sup> These *naturalia legis*, initially within man's created existence, define the condition of his becoming a mature person, eligible for the gift of immortality, which is not his by birth. At the same time, by comparison with the burdensome ceremonial code, this original Law, renewed in the "new covenant" in Jesus Christ, is a universal code of freedom, to give all men knowledge of God, and so to enable them to reach their own proper stature.<sup>53</sup>

Augustine in like manner uses this conception of the intrinsic and superior order to which human life and human law must conform if it is to be what it ought to be. Near the end of *On the City of God* he examines for the second time a definition in Cicero's (now lost) *De Republica*. Cicero had represented Scipio as equating *res publica* with *res populi*. The republic, the commonweal as we should say, is nothing other than the welfare of the people. But if we ask what he means by *populus*, the people whose welfare is in question, he answers: "an assemblage bound together by common concern for right (*iuris consensu*) and by a common interest (*utilitatis communione*)."<sup>54</sup> Augustine's somewhat sardonic comment is: If this were indeed the correct definition, we should probably have to judge that there has been no *populus* and no *res publica* in the pagan world. It seems to him more realistic to redefine *populus* in terms of common interest simply, and to agree that the welfare of a people thus defined would indeed be a commonweal (*res publica*).<sup>55</sup> At the same time he really agrees all the while with Cicero's principle that right (*ius*) is indispensable to a people's welfare. Some of his blunt

49. 1 *Clement* xix, xx, xxxiii.

50. *DIALOGUE WITH TRYPHO* xlv-xlvi; xi; xliii; cf. xxx; etc.

51. *ADV. JUDAeos* ii. This is a law *quae naturaliter intelligebatur*, a law "general and primordial." *Ibid.*

52. *ADV. HAERESes* IV. xv. 1; cf. III. xi. 8; IV. xiii. 1, 4. This primordial Law, the two great commandments, is equivalent to the Decalogue in substance, though not external in form.

53. *Id.* at IV. xvi. 5: "*naturalia, et liberalia, et communia omnium.*"

54. *DE CIVITATE DEI* XIX. xxi. In II. xxi Cicero and Scipio had already been quoted as maintaining that a republic "cannot be governed without the highest degree of justice (*sine summa iustitia*)."

55. *Id.* at XIX. xxiii.

words on this score have been quoted repeatedly: "If justice be absent, what are kingdoms but large-scale banditries?"<sup>56</sup> Amoral rule is brigandage. If it be not concerned for maintenance of justice and peace, government (*regnum*) is not properly government at all. But who determines what is justice? God, who is the Ground of all truth and of all right.<sup>57</sup> *Lex naturae* is the moral order of created being, ordained by the Creator.

So it was also for the Schoolmen, who follow in the main the lines that the Fathers had marked out. Among the Scholastic doctors, it seems to me that St. Thomas Aquinas is the one who gives the clearest, most succinct, and in many ways the most suggestive account.<sup>58</sup> He specifies four primary modes of law. The first is eternal law (*lex aeterna*), which is nothing less than God's plan for the world, according to which His providential government is carried out. Every created being is subject to this sovereign Law. The second is natural law (*lex naturalis*), which is peculiar to the mind of man. Whereas all creatures are subject to the providential rule of God, man is able to recognize this fact, and so to become in a special way participant in it. To the extent that he recognizes and affirms for himself the order which God determines, man becomes a voluntary sharer in the fulfilment of God's will for the world. *Lex naturalis*, therefore, is man's rational participation in *lex aeterna*.

Thirdly, there is *lex humana*, the laws that men make in their efforts to spell out what natural law demands in specific circumstances. Human law may be the enactments of a particular government (*jus civile*), or it may be a body of precepts more directly deducible from natural law and the nature of man as social being, and, so, customary among many peoples (*jus gentium*). In either case, *lex humana* is the product of man's empirical effort to discern and to articulate an order which he sees but partially and translates but imperfectly. Finally, there is divine law (*lex divina*), which for St. Thomas means the regulations revealed in the Old and the New Testament as guides and helps to man's fumbling endeavors. In part this revealed law is an explicit formulation of the natural law in some of its aspects, and as such has universal and permanent validity for human conduct. In part it consists of temporary and local injunctions for a particular people at a particular time. In content, then, *lex divina* overlaps *lex naturalis*, and of course *lex aeterna*. In form, *lex divina* as well as *lex humana* is positive law, in the sense that it has the form of decrees promulgated at particular times,

56. *Id.* at IV. iv.

57. *Id.* at XIX. xiii-xiv; iv; XIV. iv. DE NATURA BONI i-xxiii. CONFSSIONES VII. xvii; etc.

58. SUMMA THEOLOGICA IaIIac. qq.xc-cviii, esp. xc-xcvii, c, civ-cv.

whereas *lex aeterna* and *lex naturalis* are intrinsic to the being of the world and of man.<sup>59</sup>

A distinctive feature of St. Thomas's doctrine is his view of the relation between human insight and behavior and the natural law. Most generally man is aware, as no other animal presumably is aware, that he stands in the presence of good and evil, and that he is obligated to seek the one and shun the other. This is an innate disposition (*habitus*) which distinguishes man as responsible person.<sup>60</sup> But further than that, he is aware of some of the specific injunctions involved. As substantial being he is required to persist in his own mode of existence. That is true of all creatures, but man knows it to be true of him. As animal he is subject to the law of reproduction according to kind, and the duty of training his young. This duty he shares with other living beings, but he knows it and can affirm it as his own. They cannot. As rational being he is subject to the further requirement that he live in society, and practice equity toward his fellow men.<sup>61</sup>

Here are specific injunctions, indeed, but still injunctions so capacious that any attempt to derive a precise legal code from any or from all of them must be a baffling task. In principle, it seems to me St. Thomas was content to interpret in clearly Christian terms, with increased sharpness of definition, and with admirable sobriety of temper, a doctrine of human obligation which in broad outline he shares with both classical and patristic predecessors.

From this calm balanced Christian doctrine of natural law, diverse and mostly familiar lines of development and of reaction have followed. Within the stream of ecclesiastical thought, it seems possible to distinguish three main tendencies. One began with Ockham and strongly influenced his successors d'Ailli and Biel, and then Luther and a considerable body of Protestant thought: first to identify *lex naturalis* with *lex divina* (the text of the Scriptures), and then in effect to replace natural law as a persisting system with particular divine decrees.<sup>62</sup> Another tendency, closer to the habit of St. Thomas, and characteristic of Calvin and of much Reformed and Anglican thought, clearly affirms the reality of natural law, and presupposes it as a general frame of reference for ethics, not identical with Scripture, without

59. There is a fifth mode of law, neither intrinsic nor positive but privative: a "law of lust (*lex fomitis*)," characteristic of fallen man. St. Paul spoke in Romans 7:23 of "another law (*νόμος*) in my members that wars against the law of mind," "the law of sin." This "law of the tinder-box," of concupiscence, can be called law only in a diminished sense: it exerts control, but it does not embody right.

60. *SUMMA THEOLOGICA* I. q.lxxix. art. 12.

61. *Id.* at IaIIae. q.xciv. art. 2.

62. There is vigorous disagreement among Lutheran scholars concerning Luther's affirmation or rejection of natural law. Cf., for a moderately affirmative view, E. TROELTSCH, *DIE SOZIALLEHREN DER CHRISTLICHEN KIRCHEN UND GRUPPEN* 494-7, n. 225; 532-541; etc. (1919); and in strong dissent, K. HOLL, *GESAMMELTE AUFSÄTZE ZUR KIRCHENGESCHICHTE* I. 43-252, 266, 281-7 (1932).

attempting to specify its content in detail, or to deduce from it particular rules for conduct.<sup>63</sup> A third major tendency has been to develop detailed ethical theorems from a natural law conceived in terms more specific than those that St. Thomas used, or to make special applications of such a law, as Vittoria and Grotius did in seeking a common base for international law.

Somewhat similar tendencies among secular thinkers, some defending and some rejecting the doctrine, are sufficiently familiar to be taken here for granted.

My own habit, as indicated more than once, is to affirm something like the traditional doctrine in its more moderate form: a form that appears, with important variations, in classical, patristic, Scholastic, and Calvinist thought. It is time to define somewhat more closely the version I find persuasive, and its function (well known to the eighteenth century) as a bulwark of democratic theory.

First of all, what is in question here is genuinely *law*. It is not simply an ideal, not an abstract value. It is fact, real structure rooted in existence, an actual network of relationships entailing values and obligations. Neither bare fact nor inactive ideal, then, but something like what Professor Fuller and other participants in earlier symposia here have talked about: an order of fact with dimensions in the order of value.<sup>64</sup> I should urge further that it has polar or directional or directive character, that it can serve to guide rational, appreciative, purposeful personal existence and behavior, even though we cannot spell out in detail what this guide-structure is and involves. In a complex situation with many values and disvalues, polarity or directionality is itself a highly important character, supposing one can develop the kind of sensitivity that will enable him to tell in which direction his actions and his neighbors' are proceeding.

This presupposes, too, a relational structure that is not inaccessible to men but progressively discernible through an inclusive sort of learning — intellectual, esthetic, and so on — even though it is not completely comprehensible. It may be expected to present itself differently in different situations, now in one guise, now in another — as demand for integrity, endurance, equity, or generosity; as promise or threat; as source of insight, of embarrassment, or of reassurance. To think of it as a fixed rule of thumb is to misconceive both its character and its value. In the *Politicus*, Plato's Eleatic spokesman has been urging the need to recognize as vital to all sorts

63. Cf. CALVIN, *INSTITUTIO* (4th ed.) IV. xx. 14-16; RICHARD HOOKER, *LAWS OF ECCLESIASTICAL POLITY* intro. and Book I.

64. Cf. Lon L. Fuller, *Human Purpose and Natural Law* and *A Rejoinder to Professor Nagel*, in 3 *NATURAL LAW FORUM* 68-76, 83-104 (1958); Joseph P. Witherspoon, *The Relation of Philosophy to Jurisprudence*, *id.* at 105-134.

of skilled work the reality of true norms — “the just adequate” (τὸ μέτριον), by virtue of which the workman can avoid excess and defect. The question arises: How can we distinguish a man who has requisite understanding of the problem-situation from a man who does not? Shall we say the man who invariably follows a standard course of action is the expert? No; we say the expert pilot is the man who brings his cargoes in safely time after time, even though he follows now one course, now another. With one combination of wind and tide he can sail over this sandbar. At ebb tide or with the wind in another quarter he must go around it — and he knows this. He displays his understanding of what the situation intrinsically demands not by doing the same thing every time, but by doing what, under varying conditions, will get him where he wants to go. Do we recognize a skilled physician by the uniformity of his treatments? Not at all. He will vary his treatments, and he will cure his patients. Such a man has the kind of insight we are looking for.<sup>65</sup> If someone like Protagoras should object: But really what you mean is that an expert is just a man guided by his own opinion, and his opinion is really no truer than that of another, Plato’s answer seems to me conclusive: Surely some men’s opinions are better than others’ in the sense that they work. If this be granted (as it is), and if we ask on what grounds this fact is to be understood, it seems perverse not to say the man whose opinion is successful time after time is the man who sees more clearly what the actual situations successively demand of him.<sup>66</sup>

When the issue is not simply technical but moral, we can paraphrase that last clause and say one man sees more clearly than another what natural law demands of him — natural law having the character of guide-line and bench mark rather than detailed code or precept and being discernible as demanding of us one mode of conduct in one situation, another mode in a different one. But in every situation the basic demand is that we seek to see clearly and to follow faithfully the ordering of being as it really is.

Plainly enough, that is a highly ambiguous sort of statement: What being? What is the locus of this supposed superior law?

First and most obviously it is located in human existence itself. Here I should venture a bit beyond what earlier contributors to the discussions have urged: that if there be a guide-principle of this sort, it is to be recognized especially in purposive action.<sup>67</sup> I would urge that it has its roots deeper, in the very make-up of the human person. To be a person involves behaving

65. POLITICUS 283c-285c, 295b-297a; cf. 293a-c.

66. THEAETETUS 161c-e; 167b-d; 170a-171a.

67. E.g., Professor Fuller in 3 NATURAL LAW FORUM 73, 74 (1958): “the collaborative articulation of shared purposes.” This is of course to be affirmed by one who defends

as one subject to certain built-in requirements. In the second lecture I tried to indicate, without attempting too fine detail, what some of these requirements seem to me to be. By my very nature I am obligated to seek my own fulfillment as inseparable from that of my neighbor, performing my duties in society with a view to the well-being of the whole community, seeking always to know more clearly and accurately, ready to accept correction and to offer it in the light of what I learn to see. In this perspective the purposeful actions of men are rightly directed if, and as far as, they make toward the fulfillment of man's essential being. The locus of natural law is in the first instance within ourselves. The classical and Christian dictum that life "according to nature" is life according to the real nature of human persons is thus far, I think, on the right line.

Secondly, natural law is to be sought in the environing world, since man cannot be separated out from his surroundings as an isolated entity. Indeed, the requirements that emerge in man's own being must have got there through his emergence in the larger whole, and throw some light on the character of that whole. I should myself, of course, affirm the theological understanding of the world and man in it. St. Thomas and his patristic predecessors, and their unforeseen legatees in the American colonies, seem to me right in seeing the intrinsic norms for human life as "the Laws of Nature, and of Nature's God." But whatever one's view of theology, the higher law is to be sought in both man and the world that gives him birth and life. It is to be recognized, indeed, through both purposive action and positive legal enactments that participate in it or exemplify it. Its proper being is to be sought, once again, in what underlies purposive action and legal decision. At the same time we must, of course, hope to find it manifested, both positively and negatively, directly and by contrast, in what men do and in the rules they promulgate for themselves and their neighbors.

Finally, what are some of the ways in which this superior law can be discovered and recognized? I suggest three, and there may be many more. In the first place, following again St. Thomas's lead,<sup>68</sup> trial and error. We find out what is demanded of us by making an attempt and discovering whether the result is enhancement or damage. Secondly, systematic inquiry. Detailed, tested, and cumulative knowledge of the make-up of man and the world cannot be acquired without using the approved procedures of the

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a doctrine of natural law, not as the primary locus of such law but as a manifestation of its efficacy. Professor Fuller himself in another paragraph suggests something of this sort: "The means-end problem is simply an outcropping of the deeper mystery of life itself." *Id.* at 72.

68. *SUMMA THEOLOGICA* IaIIae. q.xci. art. 3, ad 1 et 3.

biological, psychological, and social sciences; and the results of such inquiries need philosophic as well as scientific interpretation. Thirdly, a more controversial thesis, it seems to me that certain striking instances in the history of mankind (what theologians call historical revelatory events) may throw light on the character of the basic structure we are calling natural law.

Consider two instances of social order, each revealing vividly an aspect of human existence. The Athenian democracy had a brilliant, brief, and tragic career. Why? Thucydides and Xenophon leave little doubt of the answer.<sup>69</sup> Individualism and popular caprice were rampant, in disregard of both the Constitution and the common good, not to mention plain human decency. Pericles himself, though moderate and generally wise, had turned from the path of confederation with respected allies to imperialistic aggrandizement of Athens at the expense of allies successively reduced to resentful vassals. After his death a populace frightened and hard pressed in a losing power struggle fell willing victims to Cleon's demagogy and cynical immorality,<sup>70</sup> curiously and injuriously commingled with blundering efforts to keep Alcibiades's wayward brilliance in check.<sup>71</sup> The would-be oligarchs were no better,<sup>72</sup> and even the moderate leaders of the middle-class restoration after the terror of the Thirty were unable to see the need for drastic revision of political morality. Whatever one may think of Plato's hypothetical Republic, it is hard to challenge his recognition that without a sense of the overriding claim of the common good, no democratic society can last.

Consider by contrast the extraordinary persistence of the Jewish community, through centuries and under the most trying sorts of destructive pressure. What the brilliant Athenians did not achieve, this people, likewise brilliant, assertive, and venturesome, has achieved — too often under diabolical torture: a cohesiveness and vitality that serves as one kind of revelation for one trying to understand the meaning of human life.

There can be revelation also in individual lives. Consider Socrates, for one. When the Stoics wanted to make plain what they meant by "the wise man," they set out some specifications and then said: Look at Socrates. If you want to know the sort of life we have in mind, there it is. One can say the same with respect to the greater prophets in Israel, religious pioneers who put rectitude above taboo. One can say the same about Jesus of Nazareth, who in his devotion to "the reign of God, and His righteousness" makes plain the meaning of fulfillment through losing one's life to find it.

69. E.g., THUCYDIDES, PELOPONNESIAN WAR I.cxvii seq.; cxiv-cxviii; II.xxvii; liii; III.lxxxii sq.; V.lxxxiv-cxvi. XENOPHON, HELLENICA I.vii.1-35.

70. THUCYDIDES, *id.* at II. lxxv; III. xxxvi-xl; IV. xxi-xxii, xxvii-xxviii.

71. *Id.* at VI. xxviii-xxix, liii, lx-lxi; VII. xviii; etc.

72. XENOPHON, HELLENICA II. iii. ll - iv. l.

In these several ways — trial and error, systematic inquiry, response to revelation — one can glimpse something of the character and the demands of an intrinsic law deeper than human law. Democracy that has not acknowledged it has fared badly hitherto, and it seems to me requisite for democratic health.