

2008

Natural Law Theory and its Relatives

Max L. Stackhouse

Follow this and additional works at: http://digitalcommons.liberty.edu/lu_law_review

Recommended Citation

Stackhouse, Max L. (2008) "Natural Law Theory and its Relatives," *Liberty University Law Review*: Vol. 2: Iss. 3, Article 13.
Available at: http://digitalcommons.liberty.edu/lu_law_review/vol2/iss3/13

This Article is brought to you for free and open access by the Liberty University School of Law at DigitalCommons@Liberty University. It has been accepted for inclusion in Liberty University Law Review by an authorized administrator of DigitalCommons@Liberty University. For more information, please contact scholarlycommunication@liberty.edu.

NATURAL LAW THEORY AND ITS RELATIVES

Max L. Stackhouse[†]

I. INTRODUCTION

Early church fathers and jurists who sought an ethical standard that could guide positive law in the polis or empire adopted and modified the moral theories of the ancient Greek and Roman philosophers to develop doctrines of natural law in the West. These doctrines later were developed more fully in Roman Catholic and Reformation traditions as a way of accounting for the moral virtue, insight, behavior, and wisdom of non-Christians and of the believer's awareness of moral principles or legal norms apart from the scriptures.¹ The embrace is already suggested in the Old Testament Wisdom tradition which includes aphorisms that seem to point to the natural knowledge of ethical ways of life and, in Paul's words, that if the gentiles "do by nature" what the law requires, it can be taken as evidence that ". . . the law is written on their hearts, while their conscience also bears witness."²

Some Pre-Socratics already had a worldview that involved ideas of nature as a cosmic moral order, a *νομος φυσεος* (*nomos physeos*) or sometimes *φυσικς δικαιοιν* (*physis dikaion*), "natural justice"³—the former being an odd construction, since the root *φυσικς* ordinarily meant the universal structures and dynamics of the bio-physical universe, and *νομος* usually referred to those moral or legal norms developed in a specific ethos. Still, the combination of root terms implied the idea of an ontologically real order of laws, the principles, rules, or purposes of which were not constructed by humans. Indeed, they could be reasonably known, and all knew that evil would attend persons or societies if they were violated by individual behavior, social practice, or judicial edict.

[†] Dr. Stackhouse is the de Vries Professor of Reformed Theology and Public Life Emeritus, Princeton Theological Seminary, and is presently the President of the American Theological Society. His most recent book is 4 MAX L. STACKHOUSE, *GLOBALIZATION AND GRACE* (2007) of the series *God And Globalization* (2000-04).

1. A brief, useful summary of classical sources can be found in GUENTHER HASS, *THE CONCEPT OF EQUITY IN CALVIN'S ETHIC* (1997), especially Part I on the historic roots of "natural justice." For a recent attempt to generate an ecumenical dialogue on the issues, see *A PRESERVING GRACE: PROTESTANTS, CATHOLICS, AND NATURAL LAW* (Michael Cromartie ed., 1997).

2. *Romans* 2:14-15.

3. Suggested, for example, in Anaximander and more clearly in Pythagoras, as treated in I W.K.C. GUTHRIE, *A HISTORY OF GREEK PHILOSOPHY* (1962).

Plato criticized the Pre-Socratics for being too “materialist,” and offered an influential account of those presumptions when he wrote of heavenly “Forms,” patterns of right order known in mathematics, music, and morals. The Forms are reflected in the natural world and in the minds of humans, even if the human perceptions of them are obscured by the disordered state of the material world or the unruly passions of persons. Still, they existed in the transcendent realm from which all existence proceeded, and could be understood by the virtuous wise and thus used to guide the ordering of the city and the soul.⁴

Plato’s student, Aristotle, dismissed the idea of the Forms, but believed that there were purposes in all beings that naturally tended toward the good.⁵ These could be understood by the philosopher and the well-instructed gentleman and actualized by the proper habitual formation of virtue in persons, as nurtured by good politics.⁶ The proper pursuit of these tendencies would lead to a general human flourishing.

The Roman Stoics, especially Cicero, criticized some of Aristotle’s ideas, but employed concepts of the *jus naturae* or the *lex naturalis*—the *jus* having to do with a pre-existing guide to justifiable actions and the *lex* or *legibus* with what is legislated in a viable republic that accords with natural justice.⁷ The English words “nature” or “natural” are in fact derived from the Latin root, which appears in “native,” “nativity,” “nation,” “nascent,” and “innate,” all having to do with being born, and thus signal a conviction that an awareness of such matters is intrinsic to human nature. These Stoics, like some of the Greeks, also had an idea of the *logos*, the “logical word” which presumed the possibility of reasonable discourse, which stood behind the basic order of the world, and which could be correctly known because it was also present in the human mind. Cicero and others thought that this order accorded with the way the gods ruled the world as it was in its pristine form in the Golden Age, from which humanity has departed. Still, traces of it remain in the *jus gentium*, the perceptions of timeless justice on which all peoples tend to agree without argument, such as the conviction that murder, theft, and child abuse are

4. Extended treatments of the “Forms” can be found in the *Republic*, the *Symposium*, and the *Timaeus*. See PLATO, *REPUBLIC* (G.M.A. Grube & C.D.C. Reeve trans., 1992); PLATO, *SYMPOSIUM* (Benjamin Jowett trans., 1956); PLATO, *TIMAEUS, CRITIAS, CLEITOPHON, MENEXENUS, EPISTLES* (R.G. Bury trans., 1929).

5. This is a pervasive theme in the *Nichomachean Ethics*. See ARISTOTLE, *NICHOMACHEAN ETHICS* (Roger Crisp trans., 2000).

6. See his *Politics*, to which the *Ethics* is intrinsically related. *THE POLITICS OF ARISTOTLE*, (Benjamin Jowett trans. 1900).

7. The Loeb Classical Library publishes his *De Re Publica* and his *De Legibus* in the same volume with both Latin and English translations. See MARCUS TULLIUS CICERO, *ON THE REPUBLIC, ON THE LAWS* (Clinton W. Keyes trans., 1928)

wrong.

It is useful to be briefly reminded of these ancient classical sources, for in them four matters of importance and debate with regard to subsequent natural law theory can be seen. First are the possible ambiguities in the basic concept of natural law that have vexed moral reflection over the centuries in spite of some general consensus. The classical philosophers neither agreed as to the content of that natural law, nor as to whether it existed primarily in the cosmic order, the human mind, the functional requirement of good social relationships given the possibilities of human nature, or as some combination of these.

Second, several of the ethical presumptions that Christianity encountered when it entered the Mediterranean world are clearly articulated. These were selectively adopted and adapted into Christian convictions as this growing movement began to influence the formation of what is now identified as Western civilization.⁸ Third, there are parallels to some of the ideas that can also be found in the world's classic non-Western philosophies, religions, and systems of law.

And fourth, some of the issues that must be faced again due to the multicultural, globalization focus of the world today are evident. Through missions and cross-cultural political, economic, technological, and informational interactions, universal standards such as human rights, as well as the vast expansion of international law, are developed under the influence of Christian, secular, and other religions' thought.⁹

In one sense, of course, it is not at all odd that the peoples of the world have developed something like these natural law theories, and some traditions have seen parallels between them and the Ten Commandments.¹⁰ People know that something precious has been wrongly violated when their deepest convictions about what is holy are slandered, or their sacred rituals, texts, holidays, or spaces are defiled. Similarly, most people know that a due respect for someone else's religious beliefs and practices is a mark of decency, even if they seem absurd to someone who may intend to persuade them to an alternative. Moreover, the destruction of the art and architecture of civilizations, often

8. See YVES R. SIMON, *THE TRADITION OF NATURAL LAW* (1965). Various contemporary interpretations of how these were adopted and should be adapted can be found in *NATURAL LAW, LIBERALISM AND MORALITY* (Robert George ed., 1996); *JEAN PORTER, NATURAL LAW AND DIVINE LAW* (1996); *THE ETHICS OF AQUINAS* (Stephen J. Pope ed., 2002).

9. See 2 *RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS AND LEGAL PERSPECTIVES* (John Witte, Jr., & Johan van der Vyver eds., 1996).

10. See WALTER HARRELSON, *THE TEN COMMANDMENTS AND HUMAN RIGHTS* (1997). Most treatments of the Decalogue treat only the "second table" as corresponding to natural law theory; but there are ways of understanding the first table that may also correspond in part, as this paragraph is intended to signal.

inspired by religious convictions that outsiders consider idolatrous, may be considered an offence against their humanity.

Further, people know that wrong has been done when they are abused, lied to, exploited, cheated, assaulted, stolen from, raped, or tortured, and that something right has been done if they are helped, told the truth, treated fairly, aided when in need, or defended from assault, theft, rape, or torture. When a person intentionally wrongs or fails to help another in these ways, the tendency is to hide the fact or to develop obscure arguments as to why it was justified. Indeed, while children are yet uncivilized, they can recognize the injustice if a piece of cake that they both want is unfairly divided. Such tendencies reveal what the early Church Fathers called the awareness of an "original justice," a *justitia originalis*, common to all.¹¹ A certain shared moral conviction among the world's great religions and moral philosophies is seen at this level. In these, as in the classical philosophies of the West, the sense of "ought" is founded on a conception of what ultimately "is" and a view of what can reliably be known. These all involve the interplay of ontology, ethics, and epistemology, although the results of the various combinations work out to imply different social values.

For instance, the Vedic idea of *Rita*, historically the antecedent of the concept of *Dharma* in Hinduism and Buddhism (*Dhamma*), refers to the complex of duty that orders the universe and to a pattern of right action that "pre-exists the gods themselves." It is the impersonal logic of moral cause and effect "upon which the ethical and physical worlds are based, through which they are inextricably united, and by which they are maintained . . . [as] the foundation for a proper social organization."¹² The god Varuna was thought to be the "administrator" of this moral and cosmic law and would punish any who violated it. This implied, of course, not only the subordination of deity to natural law, but a hierarchical conception of the universe and the right order of society that manifests itself in the Indian caste system—a view which has striking parallels to the Neo-Platonic views and stratified social order of the medieval West.¹³

11. A widely influential recovery of this notion is found in 1 REINHOLD NIEBUHR, *THE NATURE AND DESTINY OF MAN* 265-300 (1941).

12. William K. Mahony, *Rta*, in 12 *ENCYCLOPEDIA OF RELIGION* 480 (Mircea Eliade et al. eds., 1987); see also *Rig Veda*, in *SOURCES OF INDIAN TRADITION* 11, 217-235 (Wm. Theodore de Bary ed., 1958).

13. See especially the now almost classical treatment of this system by LOUIS DUMONT, *HOMO HIERARCHICUS: THE CASTE SYSTEM AND ITS IMPLICATIONS* (G. Weidenfeld trans., 1970). Dumont argues that such stratification is part of the natural order of all societies and we falsify the human condition if we, as moderns believing in equality, deny that fact. Cf. ARTHUR O. LOVEJOY, *THE GREAT CHAIN OF BEING: A STUDY OF THE HISTORY OF AN IDEA* (1976).

The Confucian and Taoist traditions of East Asia have somewhat similar concepts. “Li” was central to classical Confucian thought and signifies the correct rite or ritual which honors the “natural” order of governance in the family and empire (the “five relationships” of emperor to minister, father to son, husband to wife, elder to younger, and friend to friend).¹⁴ When these are rightly lived out, it leads to the naturally stratified harmony of heaven, society, and the earth. In times of chaos or conflict, these ethical relationships had to be restored by “the rectification of names,” which the emperor and his literati were to exemplify and, as necessary, enforce.

A later concept, written differently but pronounced the same, is “li” which was a central concept of Neo-Confucian thought, probably influenced by Buddhism, and signifies a principle or “form” that governs all things. This “principle,” somewhat like the Platonic concept mentioned above, is naturally found in *jen*, the inner heart, mind, conscience, or “humanity,” that is to be cultivated by personal discipline and is only indirectly related to anything heavenly (*tian*).¹⁵ Over time, the Confucian tradition was also influenced by Taoist ideas. The term *tao* is particularly important, for its meaning resembles the Stoic notion of *logos* and also the Greek word *hodos*, “the way,” in that it refers to an impersonal ordering principle that governs nature and its laws, the capacity of the human mind to conceive of this cosmic and rational order, and a way of life that is to be practiced. Indeed, the term has been used to translate into Chinese the first line of John’s gospel (“In the beginning was the *li*) and the passage about “the way, the truth, and the light.”¹⁶

When it comes to non-Christian “religions of revelation,” especially Judaism and Islam, there is a different set of attitudes toward natural law. The Eastern religions and ethical philosophies mentioned above, that are often religiously held, are essentially ontonomic in character, not unlike some of the Greek thinkers in the Western tradition. That is, they draw their principles, norms, and purposes from the natural cosmos, “the way things are,” or from the way “being” is thought to be (or become), even if they disagree about ontology, as do Plato, Aristotle, and Cicero, as noted. The religions of revelation draw their principles, norms, and purposes from a conception of the God who is the

14. JULIA CHING & HANS KÜNG, *CHRISTIANITY AND CHINESE RELIGIONS* 68-69 (1989).

15. I am indebted to Sze-Kar Wan of Southern Methodist University, a specialist in comparative hermeneutics of the sacred texts of Christianity and Confucianism, and Diane Obenchain of Calvin College, a specialist in the History of Asian Religions for their insights on these matters. See their essays in *CHRIST AND THE DOMINIONS OF CIVILIZATION* (2003), which I had the opportunity to edit.

16. Referring to *John* 14:8; see also *TAOISM AND THE ARTS OF CHINA* (Stephen Little et al. eds., 2001).

Creator of the universe and thus of nature. This God is also the giver of not only the gift of creation, but also of ethical guides as to how things ought to be and how humans ought to live in the dramas of history. This is a “theonomic,” not an impersonal “ontonomic,” basis for morality and law. The only norms worth following are those of the righteous and ethical God. This entails a focus on the author of creation, providence, and salvation; it is not a focus on an eternal natural order, existence, or essence that is prior to God, for these are held to be secondary and derivative.

Judaism is, of course, Christianity’s closest relative, as Islam is a late cousin, and they have differing ways of dealing with what has been thus far discussed under the title “natural law,” although both are deeply rooted in a high appreciation of law and jurisprudential learning. Indeed, it has been argued for centuries that the moral law given to the Hebrew peoples in covenant is a universally valid law, and that they were chosen by God to have a special vocation to be witnesses to the righteousness of the law before all the peoples of the world. Of course, there are also ceremonial laws that do not have the same force or universal application; but the theonomic moral laws are held to be understandable and applicable to all peoples, implying that they are not for a select group only, even if they were to be “published” and made visible in life by a selected community of witnesses. Distinctive ways of arguing for the universality of this part of the particular historical tradition can perhaps best be seen by noting the contributions of three outstanding contemporary scholars who variously argue for this classical tradition.

Jon Levenson argues that in the myth of creation, we can see God’s purpose of bringing order to the universe and overcoming the chaos and threatening emptiness of no-thing-ness. The world’s order then is a fragile victory of good over evil—fragile because evil’s chaotic threat is ever a possibility in human history, even if God calls all to struggle against it. Although everyone is tempted to learn the evil that destroys, each is called to follow the good that creates.¹⁷

The recently departed Jewish political theorist Daniel Elazar turns not to creation, but to the giving of the covenant. He sees in it a paradigm of a righteous way of life and a model of how societies should be constituted internally and linked to each other externally. The God-given order for societies is federated associations under a common set of first principles that establish constitutional governments and protect the pluralistic institutions of civil society. This is morally and practically preferable to either hierarchical domination or organic nationalism, although these options are frequent. The

17. JON D. LEVENSON, *CREATION AND THE PERSISTENCE OF EVIL* (1994).

God-given natural law is thus seen as the optimum way of organizing the common life and actualizing the *jus gentium*.¹⁸ In several other studies, he points out that all known languages have terms for “covenant” that, in principle, enable the establishing and preserving of peaceful and just societies.

David Novak represents a third tradition, drawing on both the themes of creation and covenant. He discerns in them the outlines of a vision of justice and right, in the sense of the deontological right thing to do. It is not based on seeking to bring about the teleological good, although the good flows from the right. The vision is not given to particular forms of social organization, although it takes responsibility for shaping a just social order seriously. Nor does it first of all turn to “rights” in the modern sense of the claims of individuals to secure their autonomy, although doing what is right will serve the actualization of human nature. Rather, the Creator and covenantal Law-Giver is, by revelation, guiding and confirming human rationality in a way that enables mankind to know what is right and just. The Torah contains fully rational norms for the life of all humanity. That feature makes it possible to find the basis for Jewish dialogue with non-Jews, and for believers in differing traditions to engage ethically with the wisdom of philosophy.¹⁹

Islam is more similar to Judaism than to Christianity in that it is more concerned with legal philosophy than with theology. Whereas orthodox Christianity first asks, “What ought I believe?,” Islam, like “orthodox” Judaism, first asks, “What ought I do?” One view is primarily concerned with faith, the other with practice, although these emphases are interwoven in all three traditions. Still, Islam has the more radical priority of submission to revealed law over the development of a philosophical-theological worldview that gives shape to faith. This point is important for the consideration of Islam’s relation to natural law, for it gives its Islamic legalism a distinctive role.

Early in Islam’s history, there was a strong tendency to equate faith with works, especially with political-legal works, as in the debates over the formation of the caliphate after the death of Mohammed.²⁰ Failure to submit was viewed by some as a case of infidelity as well as criminality. Moreover, by the early 800s, a school of thought called the Mutazila was influenced by Greek philosophy, and it refined a theological orientation that resisted the predominant

18. See DANIEL J. ELAZAR, *THE COVENANT TRADITION IN POLITICS* (1996); DANIEL J. ELAZAR, *COVENANT AND POLITY IN BIBLICAL ISRAEL* (1998); DANIEL J. ELAZAR, *COVENANT AND CONSTITUTIONALISM* (1998); DANIEL J. ELAZAR, *COVENANT AND CIVIL SOCIETY* (1998).

19. See DAVID NOVAK, *NATURAL LAW IN JUDAISM* (1998); see also DAVID NOVAK, *COVENANTAL RIGHTS: A STUDY IN JEWISH POLITICAL THEORY* (2000).

20. This brought about the fundamental split between the Sunni and Shi’a traditions of Islam.

literalist view of the *Qur'an* of Ahmad ibn Hanbal, a traditionalist legal scholar.

The Mutazila school accented the importance of reason, the study of the laws of nature, and rational deduction to interpret the *Qur'an* and the laws of the *Sharia* as well as social and natural phenomena: "Reason and revelation were regarded as complementary sources of guidance from a just and reasonable God."²¹ Islamic thought has seemed trapped for centuries between the legacy of ibn Hanbal's literalism and that of Mutazila's critical rationalism. A modified form of the latter generated a series of efforts over the centuries to develop a theology that was open to dialogue, science, and philosophy. These efforts were nobly represented by Ibn Sina of Bagdad (Avicenna, d. 1037) and Ibn Rushd of Alexandria (Averroes, d. 1198), both heirs of Spanish Islam and both of whom became celebrated among Christians and Jews for mediating Aristotle to European intellectuals after he had been lost to the West and for engaging in interfaith study and dialogue.²²

Yet, "despite the genius of Muslim philosophers (in this tradition), their impact on Islamic thought was marginal."²³ The weight of Islamic scholarship turned to literalist interpretations of law as guides to "the straight path" using the *Qur'an*, the *Sharia*, and the *Hadith* as casuistic, deductive guides to socio-religious behavior. Natural law theories, rational philosophy, and theology were suspect and played almost no role, except among reform-minded minorities.²⁴

The problems that confronted Judaism and Islam had certain parallels to key Christian developments, for they posed the issue of relating ordinary understandings of bio-physical and human nature to the grace of revealed truth. The relationships of faith and reason, orthodoxy and orthopraxy, and salvation and human flourishing were at stake. The Roman Catholic tradition, as mentioned above, adopted Greek and Roman philosophical views as the basis for its efforts to understand and morally guide the world in which humanity lived. It supplemented or complemented the worldviews of that base with a superior interpretation of revealed and spiritual life.²⁵ This developed into a

21. I am indebted here to JOHN L. ESPOSITO, *ISLAM: THE STRAIGHT PATH*, especially chapter 2 (1991) [hereinafter ESPOSITO, *STRAIGHT PATH*], and JOHN L. ESPOSITO, *THE OXFORD DICTIONARY OF ISLAM* (2003).

22. For an artful telling of the story of how differing wings of the Muslim, Jewish, and Christian scholars treated the arts, humanities, and natural philosophy in regard to science and ethics, see MARIA ROSA, *MENOCAL THE ORNAMENT OF THE WORLD* (2003).

23. ESPOSITO, *STRAIGHT PATH*, *supra* note 21, at 75.

24. For contemporary examples, see SOHAIL H. HASHMI, *ISLAMIC POLITICAL ETHICS* (2002); ABDULLAI AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS AND INTERNATIONAL LAW* (1990).

25. Similar tensions can be found in Abelard's *Sic Et Non*, in Thomas' *Summa*, in the

distinctive, two-tiered understanding of “nature and grace” and a system of learning that shaped dominant views of ethics and law in much of the West’s intellectual debates today about the relationship of secular science to theology.

For centuries, the first level of Catholic-sponsored education involved natural philosophy, natural law, and the natural virtues which could make the common life flourish. Then, a second, higher level of learning was undertaken to deal with the scriptures, theology, revealed law, and the supernatural virtues of the Gospel, which were important for the salvation of people’s souls and their place in the life to come. Under the influence of Thomas, this view of nature and grace characteristically combined Aristotle and the Stoics at the former level with the Bible and Augustine at the latter. The priests and theologians, thus, not only held to a parallel sense of authorities, with philosophy and science on one side, and theology and dogma on the other; they claimed the ability of the latter to trump, guide, and discipline the former. This implied much for church and state, canon law and civil law, and moral philosophy and political theory.²⁶

This dominant state of affairs was resisted by two notable groups, the Renaissance Humanists and the Protestant Reformers of early modernity. Their relationship to each other and to the earlier Catholic traditions are disputed. Still, both tended to reject the two-level way of relating nature and grace and the consequent efforts of the church to control all areas of scholarship, science, political policy, and ethical guidance by controlling the sacramental means of grace. They felt that the synthesis as it was worked out had imprisoned the human spirit in a legalistic system of religion rather than opening up the possibilities of scientific knowledge and fellowship with Christ. Thus, the Humanists argued for the existence of the natural tendency in each to seek the good, and thus they were able to demand the “natural rights” to be free to interpret both the ancient philosophers and the “Book of Nature” independently of the church’s dogma.

The Reformers, on the other hand, appealed to the image of God in each person that God gave in creation.²⁷ However much this image was disturbed by

Reformer’s partial repudiation of these approaches and in Barth’s more contemporary rejection of Brunner.

26. Contrasting contemporary Catholic views of this basic Thomistic pattern of thought can be found in Johannell Gruendel, *Natural Law*, in *ENCYCLOPEDIA OF THEOLOGY* 1017-23 (Karl Rahner ed., 1989); JOHN FINNIS, *AQUINAS: MORAL, POLITICAL, AND LEGAL THEORY* (1996); CHARLES CURRAN, *CATHOLIC SOCIAL TEACHING* (2002).

27. This was only ambiguously stated by the 16th century reformers, and they drew from earlier theories of “natural rights.” For the earlier Catholic views, see BRIAN TIERNEY, *THE IDEA OF NATURAL RIGHTS* (1997); for the ways in which the Protestants modified these views and how they led to modern convictions, see JOHN WITTE, JR., *THE REFORMATION OF RIGHTS* (2008).

original sin, it still left residual abilities that enabled humans to study both the "Book of Nature" and the "Book of Scripture" and to hear and judge the preached Word of God directly. Inspired by the Holy Spirit, this could touch the hearts and minds of people, bring people into a relationship with Christ, and generate a justified and redeemed human nature, without the mediation of the priesthood. This also enabled the laity to appreciate secular learning and to engage in the pious study of both the evidence of divine laws and purpose in creation and the evidence in redeeming purpose in scripture. Although the Humanists and the Reformers were soon to part ways, as can be seen in Luther's sharp critique of Erasmus and Calvin's condemnation of Servetus, they both sought freedom from legalistic religion, spiritual obscurantism, and an ecclesiastical servitude that reinforced feudal and imperial authority.²⁸

It is not that the Reformers denied that there was a realm of existence that is commonly called nature and another realm of grace. Luther taught and Calvin embraced a theory of "two kingdoms."²⁹ One was the "secular" realm of culture and state governed by natural and positive law, and the other was the "sacred" realm of church, Christian family, and diaconal service organizations governed by a faith in Christ and a hope for the heavenly Kingdom. The relationship was, however, less to be seen as a higher and lower set of parallel realities than as a central and peripheral whole. Later traditions, such as the Puritan, Episcopalian, Wesleyan, or Baptist, adopted one or another modification or combination of these views, although they weighted them differently.³⁰ They all sought a different relationship of the two than the Thomists had advanced, and they sought it on theological grounds—which often led to practical cooperation but meta-ethical splits with the Humanists.

Many Humanists claimed that there is an autonomy to the realm of nature that did not need to be informed by the realm of grace and was distorted if those claiming to speak for revelation or grace attempted to address philosophical or scientific matters. That impulse gave rise to later Enlightenment, Romantic, and some contemporary modes of thought that saw no evidence of any innate ethical content in the bio-physical world except those values that humans constructed out of their own needs, imaginations, or feelings and imposed on a morally neutral and spiritually empty world. Deistic humanists said that natural reason could show that there was a creator and an immortal soul, but denied that there is a "ghost in the machine," or some intervening, miracle-inducing

28. See ANDRÉ BIELIÉR, *THE SOCIAL HUMANISM OF CALVIN* (Paul T. Fuhrmann trans., 1964).

29. DAVID VANDRUNEN, *NATURAL LAW AND THE TWO KINGDOMS: A STUDY IN THE DEVELOPMENT OF REFORMED SOCIAL THOUGHT* (forthcoming).

30. See generally WITTE, *supra* note 27.

“supernatural being.” But both viewpoints tended to agree that natural law could best be understood as “natural rights,” which secured the dignity of human potentialities, and as the “laws of nature,” the complexity and power of which were to be studied and controlled scientifically or experienced and expressed aesthetically, but not to be taken as a source for normative personal discipline or social order.³¹ This tendency eventually led to views that nature was value-neutral and religion and ethics were, at best, taken to be a kind of poetry made up to deal with what could not yet be understood rationally, or, at worst, paranormal passions that could possess artists or fanatics.

The Reformers, and a number of Protestant social theorists who combined theological motifs with humanist-influenced scholarship,³² on the other hand, did not deny that life is to be seen under the aspect of grace. Indeed, they denied that it was possible to discern the right and the good for the common life without reference to the biblical principle that all humans are created in the “image of God,” and thus have certain capabilities to reason, choose, and love. On that ground, the Reformers began to support the emerging notions of basic “human rights,”³³ and thus they were largely in continuity with that interpretation of the Thomistic tradition that saw “nature” and “natural law” more as the God-given sources of ethics for ordering the common life and less as two separate levels of nature and grace. Further, the “natural virtues” are treated in this part of the tradition as ordered by and subject to the “supernatural virtues.”³⁴ In fact, the Reformers tended also to believe the more radical doctrine of the sovereignty of God and the authority of scripture obtained to guide reason, will, and affection, and the correct reading of the ethics of natural law in a fallen world in which both human capacities and nature itself were corrupted. It was on this last point that the Reformers broke with the Thomistic legacy—the radical sense of sin. Not only were the “supernatural graces” lost in the Fall, as the Roman tradition had it, but also the “natural graces” were distorted. In brief, they followed Thomas’ Augustinianism rather than his

31. These developments are often held to be the source of secularization in the academic world, often identified as the Enlightenment Project, as can be seen in the influence of Feuerbach, Marx, Darwin, Nietzsche, and the more recent “Positivists” and “Crits” in legal theory who deny the existence of normative arguments from either natural law or divine law.

32. It is not possible, within the confines of this paper, to trace these developments from the Spanish Jesuit, Francis Suárez, to Grotius, Puffendorf, Althusius, Locke, etc., and the authors of the American Constitution. This tradition preserved more, if sometimes ambiguous continuity between theology, humanism, and natural law theory than the line just traced.

33. See Max L. Stackhouse & Deirdre Hainsworth, *Deciding For God: The Right to Convert in Protestant Perspective*, in *SHARING THE BOOK, RELIGION AND HUMAN RIGHTS SERIES* 2011-2230 (John Witte, Jr. et al. eds., 1998).

34. See RUSSELL HITTENGER, *A CRITIQUE OF THE NEW NATURAL LAW THEORY* (1987).

Aristotelianism.

This tendency in the Protestant Reformation led to unintended consequences in some cases, and could have led radical Protestant thinkers into the temptations that besieged some views of “chosen people” Judaism as well as some branches of Anabaptism.³⁵ In these views, only a select remnant, the truly righteous or redeemed people, those who would abstract themselves from the corrupting influences of civilizational developments, is recognized as God’s people. This is sometimes called the “Qumran strategy.” The tendency mentioned above also led other Protestants to a view not unlike that of militant Islam, to a theocratic Fundamentalism—that is, to a monolithic, sacred text literalism and legalism that had little place for an orthodoxy that disputed orthopraxy in politics and worship, and doubted the role of reason, philosophy, natural law theory, or historical development in shaping faith. This could be called the Zealot strategy.

However, as David VanDrunen argues, quite convincingly, the main lines of the Reformed traditions developed a combination of the concepts of natural law and two kingdoms. That synthesis provided an alternative to the stratified view of the Catholic tradition, and it rejected both the withdrawing sectarian option and a theocratic, legalistic, and militant political theology. At the same time, it kept a major distinction between that which can be the source of guides for all humanity and the social life in the world and that which is the decisive guide for Christians and keeps its focus on the duties of the church in nurturing faith and the eschatological promises which surpass every effort to cultivate human flourishing on its own terms.³⁶

These developments lead to the discussion of phrases that have been in intermittent use as the Protestant traditions developed, but have not always been seen as close relatives of the natural law tradition. These phrases are “common sense,” “common grace,” and “general revelation,” in juxtaposition with “unsupportable by reason and experience,” “special grace,” and “particular revelation.” Indeed, one might add “providence” as “sustaining grace,” as well as “the wisdom of divine commands” to this list, as it appears in the work of Emil Brunner, whom we shall mention later. These all have to do with those moral insights or guiding principles, rules, or purposes that are given by a loving and just God for all people but do not lead to salvation.

The philosopher Thomas Reid (1710-1796) was a major figure in the Scottish Enlightenment, one of the great cultural and scholarly movements that

35. The classic treatment of the social theology and natural law theory of the Reformation theologians, in comparison and contrast with the more extreme “radical reformers” is ERNST TROELTSCH, *THE SOCIAL TEACHING OF THE CHRISTIAN CHURCHES AND SECTS* (1931).

36. See VANDRUNEN, *supra* note 29.

was largely carried by Protestant clergy, in contrast to the Enlightenment of the continent which was deeply skeptical about theological-ethical principles. Reid wrote widely on metaphysics, epistemology, and free will, although he is especially known for his arguments against the religious and moral skepticism of Hume, who saw judgments of true or false or of right and wrong as matters of subjective approval or disapproval. Reid argued that there are objective first principles and that they can be known simply by noting how people make judgments about disputed matters and what can be counted as for or against these judgments when people are informed about the issues and are not driven by interests or passions. These judgments are guided by a series of first principles that are exposed in discussion and debate, and are quite coherent even if they are variously applicable according to the particular problem or issue under consideration.

Common sense judgments are informed by both reason and experience, but are neither strictly rationalistic nor exclusively experimental. Further, they reflect a modesty of conscience of all who trust in the self-evident existence, perfections, and providence of God, to whom veneration and submission is due. Thus, a “matter-of-fact” theological acknowledgment modulates reason’s pride and experience’s misperceptions and allows a practical human-wide common sense to make judgments in moral matters that effected the common life. One can see in these theories a proto-democratizing impulse, one which also shows up in the confidence placed in juries, councils, and parliaments. Reid’s views influenced not only the Scottish traditions of theology and science, but also the English-speaking intellectual world at large and the wider Evangelical traditions as much in some ways as Kant, also reacting to Hume, did the German-speaking world and the world of secular academia.³⁷

“Common grace” is a second major concept that belongs to the family of basic concepts related to natural law theory as it developed after the Humanist Enlightenment. Abraham Kuyper (1873-1920), the Dutch pastor, journalist, founder of the Free University in Amsterdam, and Prime Minister of the Netherlands, was especially important in this discussion. Kuyper was disturbed by the ways in which the militantly secularizing ideology of the French Revolution had invaded academia, culture, and the established church, but he also was impressed by the ways in which the simple believers in his church had kept a profound faith. He longed to give that faith a new articulation in the church, education, and politics and save his beloved Holland from sliding into normlessness and his people from cultural alienation and irrelevance.

37. See THOMAS REID, *PRACTICAL ETHICS* (Knud Haakonssen ed., 1990); see also KNUD HAAKONSSSEN, *NATURAL LAW AND MORAL PHILOSOPHY: FROM GROTIUS TO THE SCOTTISH ENLIGHTENMENT* (1996).

His study of the Reformational sources convinced him that Calvinism, at least, had an implicit sense of a grace manifest in creation and providence. This grace sustained the various social spheres of the common life, gave shape to a morality characterized by “principled pluralism,” and gave new life to the “cultural mandate” of *Genesis* to be fruitful and multiply, subdue the earth, have dominion over it, name the beasts, and to live as children of light in the world.³⁸ Also, as *Ephesians* says, for the “fruit of the light is found in all that is good and right and true.”³⁹ This all is possible only because of God’s grace. This grace, through the mediation of Christ, and through the power of the Holy Spirit in providence and Kingdom building, extends to all creation and is distinct from that special and particular grace that applies only to the saved.⁴⁰ Still, the redeemed are to participate in both realms and not to separate themselves from worldly issues, although they are not to take them as of ultimate importance.

In his famous *Lectures on Calvinism*, Kuyper speaks of the mandate to participate in business, politics, the arts, and science as spheres of the common life.⁴¹ These spheres are all necessary for the common life to flourish, and each one has its own moral logic. But it is not “nature” or “natural law” that is to give the guidance in these areas of life, but God’s grace that has shaped and is present in them, even in a world of sin. Of course, when an unredeemed person looks at nature and society and sees all the vicious elements and wanton destruction in, for example, “the bloody law of tooth and claw,” he takes that to be “normal.” Yet the redeemed person sees all the vicious and destructive dimensions of the natural world, recognizes these as “abnormal,” and sees also the grace in and behind them bearing the preserving and sustaining possibilities of life. It is through involvement by committed people in an open society, for all these ambiguities, that special, saving grace can be found; theological themes may be openly employed in intellectual, social, and political life; and dialogue with, critique of, and evangelization among the other religious traditions of the world may be pursued.⁴²

In America today, many Evangelicals who feel the mandate to be socially and politically engaged are studying Kuyper again to find deeper and wider theological bases for cultural responsibility. He is also being studied by those

38. *Genesis* 1:28.

39. *Ephesians* 5:9.

40. See ABRAHAM KUYPER, PARTICULAR GRACE (Marvin Kamps trans., 2002).

41. ABRAHAM KUYPER, LECTURES ON CALVINISM (1931) (1898); see also S.U. ZUIDEMA, COMMUNICATION AND CONFRONTATION 52-101 (1972).

42. I have argued this point in Kuyperian terms in 4 MAX L. STACKHOUSE, GOD AND GLOBALIZATION: GLOBALIZATION AND GRACE (2007).

more Ecumenical Protestants who cannot find an adequate public theology in Barthianism, the new sectarian Communitarianism, Liberation Theology, or the “Radical Orthodoxy” of today.⁴³

The final close relative of Christian natural law theory that is to be examined here is found in the concept of “general revelation,” a concept that is close to “common sense” and “common grace” in some respects. The concept has deep, overt rootage in the Reformation and was widely debated in the twentieth century, especially in view of Karl Barth’s attack on Emil Brunner and all sorts of “natural theology” and “natural law theory” implied by the notion of general revelation.⁴⁴ More recently, Bruce Demarist has argued that general revelation is a term historically used to indicate the knowledge of God and God’s character through the observation of the structure and dynamics of the bio-physical universe or the ways that human reason and conscience operate. It is thus related to the traditional *sensus divinitatis* present in all persons as well as to the classic term “natural theology,” even if, since Barth, the term implies to many a suspicion of any reliance on nature’s capacity to reveal much of theological significance at all, since “nature” is a word often applied to “fallen” creation. It is a concept that is also related to, but distinct from, providence. Here, “natural theology” implies a kind of discernment whereby history, conceived as a revealing source of knowledge about God’s purposes and justice, enables persons to become agents in fulfilling these, at least in part, in time. The concept stands in contrast to “special revelation,” that distinct revelation in Christ that is redemptive, and in contrast to “direct revelation,” those communications of God’s will given to persons, as in the Old Testament prophets.⁴⁵

Louis Berkhof has also written extensively on this concept and has pointed out a possible pantheistic use of the term, as among Deists who denied the possibility of special (or direct) revelation. In that case, revelation becomes an alternative term for a natural theology that is merely a kind of mystical insight. However, Berkhof argues, the use of the term need not go in those directions. It can be properly used to overcome the confusion caused by speaking

43. See, e.g., VINCENT E. BACOTE, *THE SPIRIT IN PUBLIC THEOLOGY: APPROPRIATING THE LEGACY OF ABRAHAM KUYPER* (2005); JOHN BOLT, *A FREE CHURCH, A HOLY NATION: ABRAHAM KUYPER’S AMERICAN PUBLIC THEOLOGY* (2001); RICHARD J. MOUW, *HE SHINES IN ALL THAT’S FAIR: CULTURE AND COMMON GRACE* (2001); *RELIGION PLURALISM, AND PUBLIC LIFE: ABRAHAM KUYPER’S LEGACY FOR THE TWENTY-FIRST CENTURY* (Luis E. Lugo ed., 2000).

44. See *NATURAL THEOLOGY: COMPRISING NATURE AND GRACE BY EMIL BRUNNER & REPLY NO! BY KARL BARTH* (1956).

45. BRUCE DEMARIST, *GENERAL REVELATION: HISTORICAL VIEWS AND CONTEMPORARY ISSUES* (1982).

constantly of distinctions between “natural theology” and “supernatural theology” or “natural revelation” and “supernatural revelation” that in fact rest on the two-level view of the relationship of nature and grace (much as was discussed above as the Roman view).

The confusion obscures the fact that “all revelation is supernatural since it comes from God and reveals God.”⁴⁶ God is other than nature and, furthermore, nature is other than “creation,” a term that necessarily implies a Creator who is not natural and cannot be understood on purely natural grounds.⁴⁷ Moreover, the common distinction between general and special revelation obscures two major issues. One, long argued by the Federal and Puritan theologians, is that the covenant of works given before the fall was both supernatural and general.⁴⁸ The other is that New Testament scriptures seem to indicate that special revelation can also be general. For instance, the apostle John refers to the fact that when the Logos became flesh, “the true light that enlightens everyone was coming into the world,”⁴⁹ and the claim in Acts that when God made heaven and earth and allowed the nations to follow their own ways, he “did not leave himself without witnesses”⁵⁰

This survey has attempted to demonstrate that the idea of God-given “natural law” is pointing to something morally real and universally applicable to all humanity, but the natural law does not do so in a perfectly clear way. By exploring the Roman Catholic and Reformers’ adaptations of the idea, insight is gained into the common witness of the Christian tradition that is coherent and necessary if we are to develop a fuller Christian Ethics. Further, we can pray that as we encounter the world religions that have some ideas that seem similar, and do so sympathetically as well as critically, we can both refine our own understandings and find out whether they and we are pointing in the same direction. I suspect so. And finally, by exploring the ways in which parallel terms have been developed by faithful, thinking Christians since the Enlightenment, we may find more adequate ways of clarifying our view of that toward which these close and distant relatives seek to point—the source and norm of all that is right, true, good, and just.

46. LOUIS BERKHOF, *SYSTEMATIC THEOLOGY* 126 (Eerdmans 1996) (1959).

47. This is very close to my own argument on this point in STACKHOUSE, *supra* note 42, at ch. 3.

48. BERKHOF, *supra* note 46, at 128.

49. *John* 1:9.

50. *Acts* 14:17.