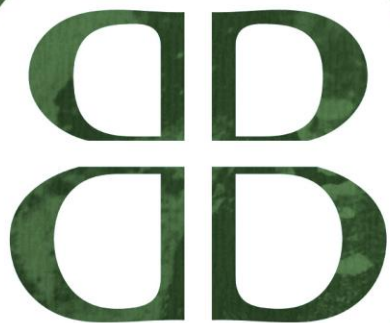


The Flaw of Natural Law

by PHILLIP KAYSER, Ph.D.



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THE FLAW OF NATURAL LAW

PHILLIP KAYSER, PH.D.

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INTRODUCTION

Recognizing the potential tyranny of legal positivism,¹ many conservative political thinkers, both Christian and non-Christian, are speaking of the need for a "higher law" to which the state itself is subject. These thinkers realize that if justice and ethics are defined merely in terms of fiat law there is no way of legitimately complaining, like the Psalmist did, about "wicked rulers...who frame mischief by statute" (Ps. 94:20). Such a statement is meaningless in terms of legal positivist theory. "For if there are wicked statutes, it must mean that there is a law above the statutes by which their wickedness is identified and judged. There is a transcendent principle, a higher law, "that relativizes all statutes and all sovereigns."²

However, while there is growing dissatisfaction with the legal positivism of today, there is a great deal of disagreement among its detractors as to exactly what that "higher law" is. Bahnsen,³ Rushdoony⁴ and Schlossberg⁵ are three among many writers who have

¹Defined by Herbert Schlossberg as an approach to law by which "the validity of the law is dependent entirely on the fact of enactment; it does not have any force prior to that, nor may its validity be questioned after it is enacted by the constituted powers." *Idols For Destruction*, (Nashville: Thomas Nelson Publishers, 1983), p. 206. Schlossberg points out how the atrocities that were performed under Hitler in Germany were perfectly just and legal in terms of a positivist philosophy of law (p. 207). Legal positivism is a perfect vehicle for statist tyranny.

The modern rise of Legal Positivism in the USA is due largely to the tremendous influence of the former chief justice of the Supreme Court, Oliver Wendell Holmes, Jr. He scorned the notion of either logic or a higher law being basic to law. He affirmed,

"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do with the syllogism in determining the rules by which men should be governed . . . The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past."

The Common Law 1881, as quoted by Rousas J. Rushdoony, *Law and Liberty*, (Fairfax: Thoburn Press, 1971), p. 22.

²Ibid., p. 207.

³Greg L. Bahnsen, *Theonomy in Christian Ethics* (Nutley: Craig Press, 1979). By This Standard (Tyler: Institute for Christian Economics, 1985).

⁴Rousas John Rushdoony has written many books dealing with Biblical law but the ones that I have found the most helpful in the area of interaction with Natural Law are *The*

eloquently argued for a return to Biblical law as the objective source of liberty and justice. Other theologians who are equally concerned over lack of accountability in government, and who see the dangers of fiat law, propose Natural Law⁶ as preferable to Biblical law since it is thought to be a common point of contact for working together with unbelievers. Though explicitly religious Natural Law theory has long been identified almost exclusively with Roman Catholics,⁷ many others are beginning to see it as the only hope for uniting diverse groups together in a defense against tyranny. Not only secular conservative political thinkers, but also religious New Agers,⁸ Jews,⁹ Muslims,¹⁰ Hindus,¹¹ Buddhists¹² and the Chinese¹³ have written in support of Natural Law theory. Even many Protestant Evangelicals are now explicitly rejecting Biblical civil law (or in some cases rejecting only Biblical penology¹⁴) in favor of some theory of Natural Law as a standard for the state.¹⁵ Indeed, a great deal of excitement and optimism

Institutes of Biblical Law [n.c.]: Presbyterian and Reformed Publishing Company, 1973). *Christianity and the State* (Vallecito: Ross House Books, 1986). *Law and Liberty* (Fairfax: Thoburn Press, 1977).

⁵Herbert Schlossberg, *Idols for Destruction* (Nashville: Thomas Nelson Publishers, 1983) especially chapters three and five.

⁶For convenience I will capitalize Natural Law when referring to philosophical systems of thought that go by that name (unless those I quote fail to do so), and I will leave natural law uncapitalized when referring to the Biblical doctrine which I will seek in sections II and III to distinguish from Natural Law.

⁷See e.g., J. Van Englen, "Natural Law," in *Dictionary of Theology*, p. 752 and Paul B. Henry, "Natural Law," *Dictionary of Ethics*, p. 449.

⁸See the discussion in Gary DeMar, "Building a Christian Civilization," *The Biblical Worldview* Volume 2/5 (July, 1986).

⁹Rabbi Solomon Freehof, "The Natural Law in the Jewish Tradition," in *Natural Law Institute Proceedings*, 1951, vol. V (Notre Dame: University of Notre Dame Press, 1953), pp. 15-28.

¹⁰Khalifa Abdul Hakim, "The Natural Law in the Moslem Tradition," in *Ibid.*, pp. 29-68.

¹¹M. S. Sundaram, "The Natural Law in the Hindu Tradition," in *Ibid.*, pp. 69-90.

¹²Daisetz T. Suzuki, "The Natural Law in the Buddhist Tradition," in *Ibid.*, pp. 91-119.

¹³Hu Shih, "The Natural Law in the Chinese Tradition," in *Ibid.*, pp. 119-156.

¹⁴A respected professor at a Reformed seminary favored this idea in a discussion with me and believed that the Puritans adopted this notion. For a different interpretation of the Puritans see discussion below.

¹⁵See for example Norman L. Geisler, "Natural Law vs. Theonomy," *Moody Monthly* (Nov. 1985). Allen Verhey, "Natural Law in Aquinas and Calvin," in Clifton Orlebeke and Lewis Smedes (eds.) *God and the Good* (Grand Rapids: Eerdmans, 1975). Arthur Holmes, "Human Variables and Natural Law," Orlebeke and Smedes, *Ibid.* Alan F. Johnson, "Is There A Biblical Warrant For Natural-Law Theories?" *JETS* 25/2 (June, 1982):185-199.

has developed over the re-emergence of Natural Law theory in the last forty years. John Cavanaugh, though Roman Catholic, expresses the belief of many evangelicals when he says,

“Man once again faces the concept of a State claiming unlimited power over the human personality and refusing recognition to rights and duties not created by itself. To meet the "Absolute" of the State, Man has desperate need of an "Absolute" of his own. Such an Absolute the thinkers of over twenty-two centuries found in the Natural Law.”¹⁶

Edward Barrett seeks to illustrate the need for Natural Law when he says,

“We prosecuted the Nazi leaders at Nuremberg. The defendants pleaded that no Positive Law at the time of the commission of the acts charged in the indictment had made these acts "crimes" indictable before the victor's court. The civilized world demurred to the plea. The demurrer could not be sustained without resort once more after decades of derision, to Natural Law doctrines which alone can show why there are wrongs against humanity which need no Positive Law to make them "crimes" and why there are rights of human beings which do not cease to be such even though all the man-made law on earth is, as to them, so strangely silent.”¹⁷

This booklet seeks to examine the various theories of Natural Law and determine if any of them can provide an adequate basis for justice and freedom in the face of government tyranny. It will also seek to explain the Biblical idea of natural law and show how this relates to Scriptural positive law.

¹⁶Reverend John J. Cavanaugh, "Introduction," *Natural Law Institute Proceedings*, 1949 vol. III, (Notre Dame: University of Notre Dame, 1950), p. 2.

¹⁷Edward F. Barrett, "Editor's Preface," *Natural Law Institute Proceedings*, 1951 vol. V, (Notre Dame: University of Notre Dame, 1953), p. 3.

A BRIEF HISTORICAL SURVEY OF NATURAL LAW THEORIES

Physical and Descriptive Natural Law

This is a materialistic view of Natural Law that attempts to develop a scientific analysis of and explanation for the physical laws of the universe and from these to extrapolate obligation or duty. Ethical theories as early as the Stoics Zeno and Chrysippus,¹⁸ as well as the more recent Utilitarianism, Marxism and Social Darwinism¹⁹ fall into this category. On this view the whole universe is governed by laws that show rationality. Inanimate things obey these laws out of necessity and animate creatures obey these laws out of instinct. Since man has the ability to choose, he can obey or disobey these laws of nature. Some, like the Marxists hold that history will inevitably go along a certain course, but man can speed the process by cooperating with the laws of history and bring us through the stage of class conflicts to freedom and justice more quickly. Natural Law in this sense is something that is rooted in the very order of the universe.

Rationalistic and Idealistic Natural Law

This is the more common form of Natural Law discussed in the literature and is generally associated with the term "Natural Law" rather than "laws of nature" or "physical laws." The Greeks divided the world up into matter and ideas and saw in the ideas universals which right reason could discover. To them Natural Law was the discovery of universals that related to ethics.

This tradition stems back as early as Pythagoras who deduced a kind of *lex talionis* principle from mathematics,²⁰ and to the Greek tragedians Aeschylus and Sophocles who first taught that the positive laws of government must be judged in terms of the ethical standards of Natural Law.²¹ Socrates, in his book *Apology*, later tackled the problem of

¹⁸"Natural Law," *Encyclopedia of Philosophy*, s.v.

¹⁹Paul B. Henry, "Natural Law," p. 448.

²⁰Maurice LeBel, "Natural Law in the Greek Period," *Natural Law Institute Proceedings*, 1948, vol. II (Notre Dame: University of Notre Dame, 1950), p. 18-19.

²¹Henry, p. 449.

whether civil disobedience is justifiable when positive law violates Natural Law. Plato suggested that knowledge was a recollection of the world of forms, and believing that virtue equaled knowledge taught that it was in the best interests of the state to have philosophers govern.²² Equity for Plato was "like a link between the absolute perfection of natural law and the relative imperfection of human laws."²³ Aristotle contributed syllogistic reasoning and the analytical method to ethical rationalism and in a sense "transformed [Plato's contribution to Natural Law] into an avowedly teleological framework arguing that since man was uniquely capable of rational self-direction, personal fulfillment rested in living in accord with the dictates of reason."²⁴ Aristotle urged orators to find equity and justice in natural law when positive law went against them.²⁵ Aristotle defined "equity" as "that natural justice which exists independently of human laws."²⁶ Many look to Plato and Aristotle for principles by which to oppose the tyranny of government, but as Dr. John Frame has shown, both philosophers supported total government control in principle.²⁷

Natural Law was "one of the most characteristic and significant features of the Stoic ethics,"²⁸ and became so influential that much of their thought was incorporated into the Emperor Justinian's codification of Roman law, which has in turn greatly influenced Western jurisprudence.²⁹ A passage often quoted from Cicero gives the gist of his Natural Law theory.

²²Frame, *Doctrine of the Christian Life*, pp. 19, 196.

²³LeBel, "Natural Law in the Greek Period," p. 25.

²⁴Henry, "Natural Law," p. 449. See also, "Natural Law," *Encyclopedia of Philosophy*, pp. 451-452.

²⁵He said, "If the written law tells against our case, clearly we must appeal to the universal law and insist on its greater equity and justice." *Rhetoric I*, 1375a as quoted in LeBel, "Natural Law in the Greek Period," p. 24.

²⁶Aristotle, *Rhetoric I*, 1374a as quoted in LeBel, "Natural Law in the Greek Period," p. 24.

²⁷John M. Frame, *Ethical Problems: Toward a Christian Politics*, tape 49. Plato favored no private property, eugenics, compulsory education and censorship of art and literature. For Aristotle, the "State is more important than the individual, since the whole is more important than any part. It is the partnership that includes all partnerships." Frame, *Doctrine of the Christian Life*, p. 197.

²⁸Albert C. Knudson, *The Principles of Christian Ethics* (New York/Nashville: Abingdon-Cokesbury Press, [n.d.], p. 69.

²⁹Henry, "Natural Law," 449.

There is in fact a true law - namely, right reason - which is in accordance with nature, applies to all men, and is unchangeable and eternal. By its commands this law summons men to the performance of their duties; by its prohibitions it restrains them from doing wrong . . . It will not lay down one rule at Rome and another at Athens, nor will it be one rule today and another tomorrow. But there will be one law, eternal and unchangeable, binding at all times upon all peoples; and there will be, as it were, one common master and ruler of men, namely God, who is the author of this law, its interpreter, and its sponsor.³⁰

Cicero outlined several general principles of Natural Law justice³¹ which could be summarized in "two fundamentals of justice: the negative that no harm be done to anyone and the affirmative that the common welfare be served."³²

While many early Latin Church fathers were influenced by the Stoic concepts of nature and reason,³³ there were notable exceptions like Tertullian and Augustine. Augustine made clear that all order in the universe, both physical and moral, was because of God's will. Because of his pessimistic views regarding the noetic effects of the fall, Augustine emphasized the need to see the "moral order in the light of faith and revelation rather than of reason and philosophy."³⁴ Though there was an attempt by many church fathers to show that the Greek and Roman classical writers anticipated their ethical principles, they did not compromise the content of that law. For instance, Gratian (c. A.D. 1148) said that "mankind is ruled in two ways: namely, by natural law and by customs. The law of nature is that contained in the law and the Gospels."³⁵ Natural law for him was not independent and autonomous.

While there was little debate during the Middle Ages over the ontological existence of some sort of natural law,³⁶ the differences

³⁰Cicero, *On the Commonwealth*, III:22 as quoted in Henry, "Natural Law," p. 449.

³¹See Ernst Levy, "Natural Law in the Roman Period," *Natural Law Institute Proceedings, 1948, vol. II* (Notre Dame: University of Notre Dame, 1950), pp. 46ff.

³²Levy, "Natural Law in the Roman Period," p. 46.

³³Henry, "Natural Law," p. 449.

³⁴Engen, "Natural Law," *Dictionary of Theology*, p. 751.

³⁵Decretum pt. 1, distinction 1 as quoted in Rousas J. Rushdoony, "Natural Law and Canon Law," *Position Paper* no. 55, *Chalcedon*.

³⁶Though it is by no means clear that all held to a view that made natural law something different than what was revealed in Scripture. For instance Rushdoony quotes Rufinus

between Augustine and Aquinas which centered on the epistemological basis for perceiving natural law and the content of that law persist to the present day.

Aquinas divided the world into two realms: the realm of natural reason and the realm of revelation. His teaching on Natural Law can be found in part in *Summa Theologica*, part one of the second part.³⁷ He insisted that one does not need Scripture to make proper judgments in the ethics of natural law (from which we derive prudence, justice, temperance, fortitude), but we do need Scripture to make proper judgments in supernatural ethics (from which we derive faith, hope and charity). He taught that the state, which functions in the realm of nature and the church, which functions in the realm of grace are each distinct and autonomous in their respective realms. In the event of a conflict between the two he thought that the church should prevail since it is of a higher sphere. Likewise, he taught that the church is best equipped to instruct the state concerning natural law since the church has a better understanding of nature in the post-fall world.³⁸

Aquinas was much more aggressive than previous writers in his synthesis with Greek Natural Law theories. His views of analogy made the creator/creature distinction somewhat fuzzy, for like the Greek idea of participation, Aquinas said that "all beings other than God are not their own being, but are beings by participation."³⁹ Like the Greek rational participation in the world of ideas, Aquinas said that a rational creature "shares in the eternal reason . . . and such participation of the rational creature in the eternal law is called natural law."⁴⁰

Thomas taught that the "eternal law" by which God established all things became, when impressed upon man and his nature, a "natural law" (*ius naturae*), through which man potentially participated in his divinely ordered true end, but which in his freedom he could also choose to

(1170 A.D.) as saying, "natural law, which, [was] all but lost in the first man, has been restored in the Mosaic law, perfected in the Gospel, and adorned in custom." Rousas J. Rushdoony, *Christianity and the State*, (Vallecito: Ross House Books, 1986), p. 102. This sounds more like Augustine and Calvin than Aquinas!

³⁷Thomas Aquinas, *Summa Theologica*, part one of the second part (New York: Benzinger Brothers).

³⁸Frame, *Doctrine of the Christian Life*, p. 197.

³⁹Aquinas, *Summa Theologica*, I, Q 44, A 1.

⁴⁰Aquinas, *Summa Theologica*, I, Q 91, A 2.

disobey. Because it was of the essence of things, man could perceive and logically deduce it through reason . . . ⁴¹

“The rationalistic temper of his view can be further seen in Part One of the Second Part, question 94 where Aquinas says, "natural law is not a habit, it is a work of reason." It is the "inclinations" of the reason toward good, truth and self-preservation which is "the same for all in the majority of cases; yet in some cases may fail since in some the reason is perverted by passion, or evil habit, or an evil disposition." (Article 4).

For Aquinas this Natural Law is foundational to supernatural law. As Knudson words it,

“The ethic of nature was intramundane, while the ethic of grace was supramundane; but the former was introductory and preparatory to the latter. Nature was infused with reason, and through the divinely implanted reason within him the natural man was enabled to receive the divine grace.”⁴²

In the ages that followed there was some resistance in the Roman Catholic Church to the views of Aquinas. There were some Roman Catholic scholars like Scotus and Ockham who later disagreed with Aquinas saying that they saw natural law as an expression of the will of God rather than being the very essence of things.⁴³ But the Spanish Jesuit Suarez related the beliefs of other Romanists that were even more Greek than Aquinas. He said,

“These authors seem therefore logically to admit that natural law does not proceed from God as a law-giver, for it is not dependent on God's will, nor does God manifest himself in it as a sovereign commanding or forbidding. . . [These authors teach that] even though God did not exist, or did not make use of his reason, or did not judge rightly of things, if there is in man such a dictate of right

⁴¹Engen, "Natural Law," p. 751. See also Aquinas' statement, "The light of natural reason, whereby we discern what is good and what is evil, which is the foundation of the natural law, is nothing else than an imprint on us of the divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law." Q. 91.2.

⁴²Knudson, *Ethics*, p. 71.

⁴³Engen, "Natural Law," p. 751.

reason to guide him, it would have had the same nature of law as it now has."⁴⁴

Paul Helm to the contrary,⁴⁵ Calvin was clearly a divine command theorist and therefore diametrically opposed to such views. God did not will the good according to what is "natural" for that would in some sense make creation the paradigm. Rather,

"His [God's] will is, and rightly ought to be, the cause of all things that are. For if it has any cause, something must precede it, to which it is as it were, bound; this is unlawful to imagine. For God's will is so much the highest rule of righteousness that whatever he wills, by the very fact that he wills it, must be considered righteous. When, therefore, one asks why God has so done, we must reply: because he has willed it."⁴⁶

Further, Calvin clearly saw natural law as the revelation of God's will in man's heart or conscience. As Marc Cheneviere pointed out (in the words of McNeill) "Calvin's emphasis upon conscience as the organ of natural law marks a sharp break from traditional expositions, in which reason holds this position."⁴⁷ In *Institutes*, II.ii.22 Calvin says, "This is not a bad definition: natural law is that apprehension of the conscience which distinguishes between just and unjust, and which deprives men of the excuses of ignorance, while it proves them guilty by their own testimony." He makes clear that natural law is not something "out there" that philosopher kings discover but is something that all men already possess since they "have been endowed with this knowledge of the law." In another passage Calvin clearly identifies this endowment with the law of God engraved on men's hearts. He says,

"It is a fact that the Law of God which we call the moral law is nothing less than a testimony of natural law and of that conscience which God has engraved upon the minds of men. Consequently, the

⁴⁴Franciscus Suares, *De Legibus ac Deo Legislatore*, 1619, bk. II, cap. vi as quoted by Robbins, "Some Problems With Natural Law," p. 16.

⁴⁵Paul Helm, "Calvin and Natural Law," *Scottish Bulletin of Evangelical Theology*, 2 (1984):7.

⁴⁶*Institutes*, Book III.xxiii.2.

⁴⁷M. E. Cheneviere, *La Pensee politique de Calvin* (Paris, 1937), p. 46 in J. T. McNeill, "Natural Law in the Teaching of the Reformers," *The Journal of Religion*, 26 (1946):180. See also A. D. Verhey, "Natural Law in Aquinas and Calvin," in *God and the Good* (c. J. Orlebeke and L. B. Smedes, eds.: Grand Rapids: Eerdmans, 1975).

entire scheme of this equity of which we are now speaking has been prescribed in it" (IV.xx.16).

Calvin further distinguishes his notion of natural law from Aquinas by indicating that fallen man is not "inclined toward the good" as Aquinas would have it but is averse to the good. His commentary on Romans 2:15 indicates that he believed man's knowledge of natural law did not consist in the power or the will to do good but only in the ability to distinguish "between what is proper and what is unjust, between what is honest and what is base." Calvin does not deprecate natural law, but he does deprecate the moral disposition of man's reason and will. Calvin's skepticism about the unregenerate's reliability in implementing natural law can be seen in his description of them as "not absolutely blind" to the law (II.ii.22). Thus though all nations do live in terms of the law of God to some extent (at least the second table of the law: See II.ii.22 and Commentary on Ephesians 6:1) even while without the witness of Scripture, Calvin would encourage magistrates to look to Scripture because the written law was given to "remove the obscurity of the law of nature" (II.viii.1). The primary function of natural law therefore was to restrain sin and to leave men without excuse. Calvin acknowledges that there is a similarity between the notions of justice and rectitude that the heathen have and what the Greeks spoke about, yet he in no way accepted their rationalistic theory of Natural Law.⁴⁸

A similar belief about the content and epistemological basis for natural law can be seen in the other Reformers. Though there are definitely some inconsistencies in the writings of Luther and Melancthon they both agreed that natural law was the Decalogue engraved on men's hearts, and both agreed that the Fall of man had rendered his judgment perverted in respect to this law.⁴⁹ Calvin was perhaps the most reluctant to give a positive role to natural law in civic affairs,⁵⁰ but even

⁴⁸The main purpose of comparing with the Greeks in his commentary on Romans 2:14 is to give a concrete example of the truth of Paul's statement that pagans know what is good and so are without excuse.

⁴⁹See many of the quotations on natural law from the various Reformers in Peter Alan Lillback, "Ursinus' Development of the Covenant of Creation: A debt to Melancthon or Calvin?" *WTJ*, XLIII/2 (Spring, 1981):247-288.

⁵⁰Lillback, "Ursinus' Development of the Covenant of Creation," p. 254. Calvin usually referred to natural law principles among the pagans to argue in an *ad hominum* way to show that none are free of guilt. Even if Scripture is rejected or unavailable, men still have the work of the law written on their consciences which renders them without excuse.

Melanchthon, who sought more than the other Reformers to make a rationalistic formulation of natural law, found it necessary to disagree with Aristotle about the source of natural law (i.e. the law of God written on man's conscience rather than something "out there" that is discovered)⁵¹ and to disagree with Aquinas about the effects of the fall on man's thinking (depraved rather than just weakened).⁵²

Unfortunately, Melanchthon is inconsistent on this last point. When "he proceeds to assert the continuing existence of much of this natural knowledge of God in fallen man, he does not do so in order to fulfill the purpose of the typical Reformation theologian who would allow such knowledge only to ensure the inexcusability of man's sinfulness. Instead Melanchthon presents the natural light struggling with errors."⁵³ Melanchthon was attacked by Bullinger for this concession to rationalism.⁵⁴ The net result in terms of the content of natural law was that Melanchthon was very general in his natural law formulations⁵⁵ (and as Rushdoony points out contradicted Scriptural law at points)⁵⁶ whereas

⁵¹"When I say that the laws of nature have been impressed on our minds by God, I mean that the knowledge of these laws consists of certain so-called 'concreated attitudes.' This knowledge is not the product of our own mental powers, but it has been implanted in us by God. I am not concerned to make this agree with the philosophy of Aristotle. *Loci* (ed. W. Pauck), p. 50 as quoted in Lillback, "Ursinus' Development of the Covenant of Creation," p. 264. Even Bucer who sometimes appears to have a Natural Law view brings Mosaic civil laws in through the back door of natural law. See Wilhelm Pauck, editor, *The Library of Christian Classics*, vol. XIX, *Melanchthon and Bucer* (Philadelphia: Westminster Press, 1969), p. 378. His writing is somewhat confusing and draws too many parallels with the Greek writers (pp. 344ff.), but is still closer to equating Scriptural law with natural law than it is to the classical formulations.

⁵²"For in general the judgment of human comprehension is fallacious because of our innate blindness, so that even if certain patterns of morals have been engraved on our minds, they can scarcely be apprehended." *Corpus Reformatorum*, as quoted in John Platt, *Reformed Thought and Scholasticism* (Leiden: E. J. Brill, 1982), p. 16

⁵³Platt, *Reformed Thought and Scholasticism*, p. 30.

⁵⁴*Ibid.*, p. 30 footnote 65.

⁵⁵See for example the nebulous formulation of Melanchthon's natural laws in Wilhelm Pauck, editor, *The Library of Christian Classics*, vol. XIX, *Melanchthon and Bucer* (Philadelphia: Westminster Press, 1969), pp. 50ff.

⁵⁶See the discussion in Rushdoony, *Institutes*, vol. I, pp. 679ff. Two of his four most basic summaries of law for instance are problematic:

1. Worship God!
2. Since we are born into a life that is social, a shared life, harm no one but help everyone in kindness.
3. If it is impossible that absolutely no one be harmed, see to it that the number harmed be reduced to a minimum. Let those who disturb the public peace be removed. For

Calvin was very specific and concrete in defining natural laws.⁵⁷ In fairness to Melanchthon it should be pointed out however that he rejected many of the Greek's Natural Law formulations "for many of their popular ideas express the depraved affections of our nature and not laws."⁵⁸

The Arminian writer Hugo Grotius wanted to free his thinking of even the little dependence that Melanchthon was willing to have on Scripture. He wanted a view that would be free from theological controversy (in an age of wars based on theology) so that all men could unite and agree on the principles of justice. He frees natural law from God to such an extent that he can say,

"Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend . . . Just as even God cannot cause that two times two should not make four, so He cannot cause that which is intrinsically evil be not evil."⁵⁹

As we will see shortly, evangelical Natural Law proponents in the twentieth century find much more in common with Grotius than they do with the Reformers.

During the time of the Enlightenment there was unbounded optimism in Natural Law as an "infallible source of authority."⁶⁰ Locke is a good

this purpose let magistracies and punishments for the guilt be set up.

4. Property shall be divided for the sake of public peace. For the rest, some shall alleviate the wants of others through contracts.

Pauck, Melanchthon and Bucer, p. 52.

⁵⁷Calvin said that God "has put the sword into the hands of magistrates to suppress crimes against the first as well as against the second table of the Commandments of God." *Confessio Fidei Gallicana*, chapter XXXIX as written in Philip Schaff, *Creeds of Christendom*, vol. III (Grand Rapids: Baker, 1977), p. 382. He includes capital punishment of adultery in "the universal law of the Gentiles." cf. Commentary on Deuteronomy 22:22. In his sermons on Deuteronomy Calvin says that "nature had taught them [the heathen]" concerning the justness of the death penalty for incorrigible children and "they possessed the instinct of nature, which they ought to have followed." If death is not administered "there would be no order or reason in nature." "if we do not receive this instruction, must it not follow that we are altogether destitute of sense?" All the above from Sermons on Deuteronomy in "Calvin Speaks," vol. 1/1 (August, 1980). Many more such examples of specific moral laws and the specific sanctions appended can be found in Calvin as natural law.

⁵⁸Pauck, *Melanchthon and Bucer*, p. 52.

⁵⁹Hugo Grotius, *De Jure Belli ac Pacis*, I.i.x as quoted by Robbins, "Some Problems With Natural Law," p. 17.

⁶⁰C. Gregg Singer, *From Rationalism to Irrationality* (Phillipsburg: Presbyterian and

example of the attitude that "it was now possible to use the laws of nature as they had been proclaimed by Newton for the purpose of determining those natural laws on which human society must be founded . . . Although the rejection of the biblical pattern for human society was implicit in these assumptions which Locke deduced from Newton, he never pushed them to their logical conclusions."⁶¹ Locke's Christianity kept him from throwing out the benefits of Biblical morality, but he wanted that Biblical morality to be expressed independently of the authority of Scripture.⁶² "His chief interest was the formulation of a natural theology, by which he meant a Christianity which would conform to the dictates of right reason."⁶³

In his *Of Civil Government* ⁶⁴ Locke sought to make Natural Law distinct from the will of man (paragraph 4) and above the legislature as an "Eternal Rule to all Men, Legislators as well as others" (paragraph 135). In order to impress upon his readers the transcendence of this Natural Law he called it "the Will of God" (paragraph 135). Locke does not however, succeed in taking Natural Law out of the hands of men, for the principles that he deduces from it are so general ("preservation of mankind," "seeking the public good," "May not destroy, enslave, or designedly to impoverish the Subjects," etc.) that a ruler can fill them with any content he desires.

Twentieth century Christian Natural Law thinkers try to make a division between Biblical law and Natural Law similar to that made by Grotius. For example Alan Johnson denies that Scripture contains all the moral principles that can be found in Natural Law.⁶⁵ Instead he says,

"Jesus is repeatedly appealing to a human consensus about what sort of acts are just and unjust, a consensus not derived logically from the written revelation but resting on ideas [note the similarity to Plato's realm of ideas. P.K.] about ethics formed by reflection on man's nature and social life - which one might conveniently refer to as

Reformed Publishing Company, 1979), 54.

⁶¹*Ibid*, pp. 70-71.

⁶²*Ibid*, pp. 346f.

⁶³*Ibid*, p. 71.

⁶⁴in Verna M. Hall, *The Christian History of the Constitution of the United States of America* (San Francisco: Foundation For American Christian Education, 1975), pp. 57-125.

⁶⁵Alan F. Johnson, *Is There a Biblical Warrant For Natural-Law Theories?* *JETS*, 25/2 (June, 1982):197.

some sort of NML [Natural Moral Law] thinking. . . His emphasis on the justice of God requires that his audience have some agreed-upon moral standards by which even God can be judged [NB that this can only happen if law is external to God. P.K.].”⁶⁶

J. Barton, another evangelical says in a similar vein,

“Abraham is appealing to some kind of moral norm by which even God can in principle be judged; though of course the point of the argument is that in fact God never does deviate from this norm. But the very possibility of asking the question does seem to indicate that men may obtain their moral norms, not just from what God chooses to reveal, but from the perception of some ethical principle inherent in the way things are.”⁶⁷

“. . . the prophets who use the notion of poetic justice are implicitly appealing to a human consensus about what sort of acts are just and unjust, which is not logically derived from the revelation of moral norms by God, but rests on ideas about ethics formed by reason - which one might conveniently refer to as natural law.”⁶⁸

Not all modern evangelical proponents of Natural Law (or even Roman Catholic writers for that matter) would want to make Natural Law something that is external to God's being and something that God Himself is subject to. Many would seek to have at least a formal identity with the Decalogue, and therefore God Himself. But when it comes to setting forth the duties of the civil magistrate, every Natural Law advocate that I have read or heard has had no problem in pitting civil penology derived from Natural Law against Scriptural penology.⁶⁹ This at least gives the appearance of setting God against Himself.

Moreover, as we will see in the second part of the paper, many of the Natural Law formulations of non-penological moral principles also contradict Scripture. Even the definition of "morals" in Natural Law theory becomes very fuzzy when some writers hold to a more classical

⁶⁶*Ibid*, p 194.

⁶⁷J. Barton, "Natural Law and Poetic Justice in the Old Testament," *JTS* New Series 30/1 (1979):5.

⁶⁸*Ibid*, pp. 12-13.

⁶⁹An acquaintance of mine who is a professor at a Reformed seminary seems to have no problem with overturning O.T. penology in favor of penology derived from Natural Law, though he is much more biblical than some in agreeing that the State is subject to the Decalogue.

view of eternal and unchangeable principles⁷⁰ (closer to Scripture) and others hold that the content of Natural Law can change as human nature changes.⁷¹

A charitable reading of evangelical Natural Law writers might give the impression that a source of morals independent of Scripture is sought because of apologetic concerns. But if apologetics were the only concern, there would be no need to go beyond what Calvin did, as we will seek to show in our third section of the paper. Instead we discover an unnecessary (unnecessary from a Van Tillian perspective) divorcing of Natural Law from religion in order to present "neutral morals" to the unregenerate. Evangelicals often quote William K. Frankena⁷² approvingly to show that morality is not logically dependent upon Religion. If this is apologetics, then it is an apologetics that has capitulated to the pagans and cannot show the moral bankruptcy of an ethics divorced from God.

During the time spanning the Renaissance to the modern period there were many critical voices raised against Natural Law theories of every kind. Machiavelli was a great enemy of Natural Law as was Hobbes a century later. Hume raised a devastating critique of Natural Law in his day. There is no lack of ammunition for a modern skeptic to throw

⁷⁰P. B. Henry, *Types of Protestant Theology and the Natural Law* (Ann Arbor: University Microfilms, 1970), p. 22 says, "Natural law is conceived of as principles of human conduct that are discoverable by "reason" from the basic inclinations of human nature, and that are absolute, immutable and of universal validity for all times and places." as quoted in Johnson, "Is There a Biblical Warrant For Natural-Law Theories?" p. 198.

⁷¹John Macquarrie, "Rethinking Natural Law," in *Three Issues in Ethics* (New York: Harper, 1970), p. 108 says, "Natural law changes, in the sense that the precepts we may derive from it change as human nature itself changes, and also in the sense that man's self-understanding changes as he sharpens his image of mature manhood. But through the changes there remains the constancy of direction." as quoted in Johnson, "Is There a Biblical Warrant For Natural-Law Theories?" p. 199.

⁷²William K. Frankena, "Is Morality Logically Dependent on Religion?" in Gene Outka and John P. Reeder, Jr., *Religion and Morality* (Garden City: Anchor Press/Doubleday, 1973). His conclusions can be summarized in the following selection:

And, indeed, if morality (and hence politics) is dependent on religion, then we must look to religion as a basis for any answer to any personal or social problem of any importance; but, if not, we may answer at least some of these problems on an "independent bottom," as people used to say; for example, on the basis of history, science, and practical experience. If morality is dependent on religion, then we cannot hope to solve our problems, or resolve our differences of opinion about them, unless and in so far as we can achieve agreement and certainty in religion (not a lively hope); (p. 295).

against Natural Law theories. However, it still remains true that Natural Law theory of one form or another has been the only intellectual force that unregenerate men have had to oppose the tyranny of legal positivism. As mentioned in the introduction to this paper, the judges at the Nuremberg trials had to dig into the discarded bag of Natural Law in order to be able to successfully argue that the Nazi war criminals were indeed criminals guilty of breaking a "law." The United Nations and other agencies have also from time to time appealed to Natural Law as a last resort.⁷³ Is Natural Law the answer to tyranny or is it just a substitution of one tyranny for another?⁷⁴ The rest of this paper will be devoted to answering that question.

⁷³See Robert N. Wilkin, "Natural Law in American Jurisprudence," *Natural Law Institute Proceedings, 1948* (Notre Dame: University of Notre Dame, 1949), pp. 125-149.

⁷⁴Interestingly, Wilkin, "Natural Law in American Jurisprudence," p. 132 argues that national sovereignty is immoral in terms of Natural Law. He argues that the only hope for justice and liberty is in terms of a one world government. Many conservatives would intuitively see this as a call for tyranny on a grander scale than has ever been known!

A CRITIQUE OF NATURAL LAW

The Pagan Tradition

Nature as normative

There are two false assumptions common to the pagan tradition of Natural Law that should invalidate these theories for any Biblically conscious Christian. The first is that nature is normative. These Natural Law theorists believe that the norms of life are grounded in "nature," something that transcends the practical needs of men whether expressed in convention and agreement or in custom.⁷⁵ Whether we see "nature" as being the physical laws and the laws of conduct (Zeno, Chrysippus, Marx), one's end (Aristotle, the Stoics also sometimes spoke of an "ideal nature"), law common to many legal codes (Stoics, cf. Cicero and Justinian's codification of law into *ius gentium* and *ius civile*), reasonableness (Samuel von Pufendorf, Jean-Jacques Burlamaqui) or the state of nature in a prehistoric or presocietal phase of human development (cf. discussions in Hobbes and Locke),⁷⁶ nature is not treated as abnormal but as normal and normative. However, Scripture speaks of nature on any of these definitions as being fallen and subject to the curse. The physical universe is cursed as a result of sin (Gen. 3) and consequently groans (abnormal) since it is out of sync with the way God made it (Rom. 8), is subject to the burning judgment of God along with man (2 Pet. 3:7-11) and must be redeemed along with man (Rom. 8; 2 Pet. 3:13). Man himself suppresses the truth (Rom. 1:18), misreading creation by making it normative rather than the Creator (Rom. 1:25) and pursuing what is against nature (i.e. the original order God had mandated Rom. 1:26-27). To make anything in man normative is ludicrous since man is depraved in his reasoning powers (Rom. 3:11; 8:7; 1Cor. 2:14; 2Cor. 4:4; John 12:37-40), his volitions (John 5:40; 6:44,65; 15:5; Rom. 5:6; 1 Cor. 2:14) and his affections (John 3:19; 8:44; Eph. 2:3). In short, Scripture portrays this "source" of Natural Law as "desperately wicked" (Jer. 17:9), being born in sin (Psa. 51:5) and a "transgressor from the

⁷⁵"Natural Law," *Encyclopedia of Philosophy*, p. 451.

⁷⁶See "Natural Law," *Encyclopedia of Philosophy* for a convenient breakdown of these various views of nature.

womb" (Isa. 48:8),⁷⁷ being unto every good work reprobate" (Titus 1:16), the best of his deeds being as filthy rags (Isa. 64:6) and having nothing in him that is good (Rom. 7:18). It is no wonder that Calvin characterized the light of God's law in man's conscience as being so darkened that it is charitable to say that man is "not absolutely blind."

But even apart from the contradictions with Scripture, philosophers have pointed out that "nature" itself appears to have inconsistencies that would make it impossible to extrapolate norms.

For it is idle to pretend that we can extract a uniform message from nature. Are we for instance, to model ourselves upon the peaceful habits of sheep or upon the internecine conflicts of ants? Is the egalitarianism of the beaver or the hierarchical life of the bee the proper exemplar for human society? Should we imitate the widespread polygamy of the animal kingdom, or is there some higher regularity of which this is no more than a misleading instance? In the light of these and similar questions, it becomes impossible to regard the maxim "Follow nature" as a substantive guide to conduct. Moreover, although these discrepancies in nature considerably reduce the value of natural-law doctrine from an epistemological point of view, the damage they do to it as a logical theory would seem fatal, for the nature in terms of which the norms of justice are defined turns out to be internally inconsistent.⁷⁸

The Marquis de Sade showed how making man the norm for ethical behavior leads to different conclusions than Natural Law men are usually willing to go to. He wrote, "Nature teaches us both vice and virtue in our constitution... we shall examine by the torch of reason, for it is by this light alone that we can conduct our inquiry."⁷⁹ Having accepted the premises of a normative nature with no fall or curse and that God is not needed for ethics,⁸⁰ de Sade concludes that "there is just as much harm in killing an animal as a man. or just as little, and the difference arises solely from the prejudices of our vanity."⁸¹

⁷⁷We will see later how this verse is very instructive for a proper view of natural law.

⁷⁸"Natural Law," *Encyclopedia of Philosophy*, p. 451.

⁷⁹Donatien Alphonse Francois, Comte de Sade, *La Philosophie dans le Boudoir*, reprinted in *French Utopias*, Manuel and Manuel, editors, pp. 219, 222 as quoted in John Robbins, "Some Problems With Natural Law, *Journal of Christian Reconstruction*, II/2 (Winter, 1975-76):17.

⁸⁰Robbins, "Some Problems With Natural Law," p. 17.

⁸¹De Sade, *French Utopias*, p. 236 as quoted in Robbins, "Some Problems With Natural

Man's Reasoning Powers Intact

The second false assumption that is made by pagan Natural Law theorists is that man's reasoning powers are intact and through them man is able to perceive and live by "self-evident truths" manifested in the natural order. There is an element of truth here since Scripture does indicate that man has great analytic powers and is able to know much from creation concerning God and His will. Though there has been a physical incapacitation of man's reasoning powers to some extent through the fall, the emphasis on Scripture is on the moral twisting of man's reasoning powers. They suppress the truth in unrighteousness (Rom. 1:18), consider spiritual things as foolish and unacceptable (1 Cor. 2:14), are blinded by the god of this world (2 Cor. 4:4), exchange the truth of God for a lie (Rom. 1:25) and go against right reason when they willingly approve of those things that are against natural law (Rom. 1:32).

Thus it is that Calvin points out at least one crime against natural law that the pagans have failed to admit is a part of their Natural Law theory.

“Therefore (as I said before), let children know that it is no light fault nor easy to be pardoned, when they are disobedient to their fathers and mothers. Why? Because they possessed the instinct of nature, which they ought to have followed. And therefore it is an unpardonable crime to disobey a man's father and mother, according to what is said in another place, 'He that smites his father or his mother shall die the death without favor' (Ex. 21:15). If one strikes another man, well he shall be punished for it; but if he beat his father or his mother, it is as much as if he had killed a man, else there would be no order or reason in nature.”⁸²

Likewise, Paul points out that pagans know that homosexuality is a crime "worthy of death" (Rom. 1:32; this is a technical phrase for capital punishment in the Old and New Testaments. cf. Acts 23:29; 25:11,25; 26:31; Luke 23:15) and yet we find that the two greatest pagan Natural Law theorists (Plato and Aristotle) were not only homosexuals but approved of those who practiced homosexuality. So much for "self-evident truths." Though according to Paul they were known to Plato and Aristotle, it did not affect their Natural Law formulations in the least.

Law," p. 17.

⁸²Calvin's sermon on Deuteronomy 21:18-21 in "Calvin Speaks" 1/2 (August, 1980).

This brings us to another epistemological problem. If there are ethical norms to be discovered "out there," how do we discover them? How can we derive the "ought" of morals from the "is" of facts. Hume's criticism has not been successfully answered by secular philosophers to this day. He said,

“In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.”⁸³

When men seek to argue from "is" to "ought" they are engaging in what Frame calls the "naturalistic fallacy of reasoning." Because it is fallacious reasoning, it is bound to lead to fallacious conclusions. Indeed, the ethical conclusions that Natural Law theorists derive from the "is" of nature are so diverse and contradictory that it is a wonder that more people do not abandon the theory simply from the problem of having no consensus (other than a handful of propositions that can also be shown to be problematic⁸⁴). The question always comes, "Who

⁸³David Hume, *A Treatise of Human Nature*, Bk. III, pt. 1, sec. 1.

⁸⁴For instance, murder and incest are held up as being universally accepted taboos in every culture. However, there are many cultures that not only allow murder but promote it. For many years, the Arrusi tribe in Ethiopia required a male to kill another male before he could be counted as a man. In the early years of my parents ministry it was extremely dangerous to travel through that area. Don Richardson relates in his book *Peace Child* how treachery and murder were admired to such an extent that when he told the story of Judas betraying Christ they thought that Judas was an exceptional hero. It is

determines what is "reasonable?" Plato considered it reasonable to have the state as the final arbiter of right and wrong, the state as the protector of common good, the state as the determiner of who would be bred with whom to produce children and who would be killed to rid the state of unnecessary elements, and the state as the controller of private property. Few modern Natural Law theorists would agree with Plato's analysis of "nature!" It is no wonder that theorists usually content themselves with offering natural laws that are so abstract, general and vague that they could mean many things to different people, or else advocate that a few philosopher elites (each one likely preferring himself as the leader of the pack!) direct government.

To sum up, pagan Natural Law does not have a basis for functioning properly, has no consensus on any more than a handful of principles⁸⁵ and lends itself rather well to a tyranny of philosopher kings that would be every bit as tyrannical as a totalitarian regime based on positive law. Gary North said it well,

“Cursed nature is not normative, any more than fallen man is. We cannot look to nature and discover absolute standards of thought, absolute standards of law, or absolute standards of judgment. Even if cursed nature were normative, perverse men would misinterpret nature. If Adam rebelled against the verbal revelation of God Himself, before he fell into sin, what should we expect from the sons of Adam, now that nature is cursed and no longer the same kind of revelation of God that it was in the garden? It still testifies of God, as we read in Romans 1:18; man holds back the truth in active unrighteousness. But cursed nature is not the same open revelation of God that it once was, and we dare not use nature as an ethical, political, or any other kind of guidepost for building human

simply not true that all cultures outlaw murder and incest, and even if they did, there is no consensus on what constitutes murder or incest. I am not arguing that they do not *know* that they are doing evil when they murder and commit incest, but I am saying that they suppress this knowledge so successfully that someone would be hard pressed to *demonstrate* to them that those things were wrong apart from a softening work of the Holy Spirit, and one would be hard pressed to find a universal moral ethic by means of anthropological studies (unless a mere majority would count!).

⁸⁵See for instance the pathetically small (and abstract!) handful of principles that Theodore M. Hesburgh was able to cull from the essays of Natural Law theorists from the Jewish, Muslim, Hindu, Buddhist and Chinese traditions - and these having in common at least that they believed in a God(s)! "Epilogue," *Natural Law Institute Proceedings, 1951*, pp. 162-179.

institutions. We have to abandon "natural law" as a source of reliable information. Nature is cursed, and we are ethical rebels, spoiling for a fight or a misinterpretation. That's why we need the revelation of God in His word, the Bible, and through His Word, Jesus Christ."⁸⁶

The Christian Tradition

The Christian tradition also has a faulty view of the effects of the fall on man and creation. Rather than repeat similar criticisms it would be helpful to look at this problem from the perspective of the antithesis that exists between the believer and the unbeliever in order to show that it is futile to try to seek common ground in Natural Law. The following assumptions are characteristic of most (if not all) in the Christian tradition of Natural Law.

Neutrality

The Bible indicates that unbelievers have presuppositions that are diametrically opposed to the believer's presuppositions and this situation must lead to totally different conclusions concerning God and His creation.⁸⁷ For us to dialogue with unbelievers in terms of "neutral" or

⁸⁶Gary North, *Unconditional Surrender* (Tyler: Geneva Divinity School Press, 1983), p. 38.

⁸⁷The New Testament word for "presuppositions" is στοιχεῖα. This word was used in classical Greek and by the Church fathers to mean the elementary or fundamental principles. In Geometry it was used for axioms, and in philosophy for elements of proof or the πρώτοι συλλογισμοῖ of general reasoning (Liddell and Scott, *A Greek-English Lexicon*, s.v.). Obviously both of these definitions are synonyms with "presuppositions." The New Testament teaches that the στοιχεῖα are the "foundation" upon which our faith and practice rests (Heb. 5:12-6:3). We find our στοιχεῖα in the Word of God (Heb. 5:12) and most specifically in the person of Jesus Christ (Col. 2:8-10; Heb. 6:1) revealed in them. The στοιχεῖα of the world are the foundation of the non-Christian "philosophy" (Col. 2:8) and are diametrically opposed to the στοιχεῖα of Christ the God-Man (Col 2:8-10). Our thoughts and actions are a logical outworking of these στοιχεῖα in everyday life (Col. 2:20ff). We must recognize that the superstructure of our world-and-life view is antithetical to the superstructure of the heathen's world-and-life view, not because the superstructures do not have any things in common, but because of the way in which these superstructures are completely committed to their foundation or presuppositions. Paul gives us an example of this concept when he vigorously opposed the Galatians' succumbing to pressure to be circumcised and observe "days and months and times and years" (Gal. 4:10). Though the physical act of circumcision was not wrong (cf. 1 Cor. 7:19; Acts 16:3), the *idea* that lay behind it was destructive and led to syncretism, a

non-religious principles of ethics would be to confirm the unbeliever in his God-hating autonomous stance and would make us to be liars concerning the meaning of natural law. Since God created all things by, for and through Christ (Col. 1:16) and since He sustains all things (Col. 1:17; Heb. 1:3) it would be "impossible to interpret any fact without a basic falsification unless it be regarded in its relation to God the Creator and to Christ the Redeemer."⁸⁸ If this is true with regard to botany, mathematics and history, how much more would that be true of ethics. It is only in God's light that we see light (Ps. 36:9) and thus we are told that the knowledge of the Holy One brings understanding (Prov. 9:10). Attempts at presuppositionless neutrality are not only epistemologically impossible, they are also morally disobedient. Paul said that we must bring every thought captive to Christ's lordship (2Cor. 10:5). This means fearing God which is the beginning of wisdom (Prov. 9:10) and using Scripture which is "the key of knowledge" (Luke 11:52). To deliberately reject God's means to knowledge and wisdom is morally reprehensible.

Man's Finitude

Since all men are finite we cannot know everything that there is to know. In order to understand anything properly we must use something as a key of interpretation. If we reject the Scripture as being the presuppositional starting point we must substitute something from creation (however we may disguise it as "the will of God" or "our participation in the mind of God"). Many Natural Law theorists begin by positing universals that help to make sense of the diversity of moral decisions among men. It must be recognized however, that whether the universal is seen as the "Forms" or "Ideas" of Plato, the ends of Aristotle or the categorical imperatives of Kant, these universals that form the basis of a rationalistic approach cannot be proven to exist and man becomes the ultimate judge of truth. On the other hand, if men seek to make sense out of the world by moving from the particulars to the universals (empirical approach) one falls into the trap of having to be omniscient before he can make sense out of anything, for until he sees the relations of all things to each other he cannot know certainly what

denial of their presuppositions and an unintentional reversion to weak and pathetic presuppositions (Gal. 4:9).

⁸⁸Cornelius Van Til, *Christian Theistic Evidence* (unpublished classroom syllabus), p. iii as quoted by Robert L. Reymond, *A Christian View of Modern Science* (Philadelphia: Presbyterian and Reformed Publishing Co., 1964), p. 16.

each part of the whole means. Furthermore, empiricism, which has serious difficulties in even describing the physical realm⁸⁹ cannot hope to deal with the non-physical realm of ethics which concerns "oughts" rather than descriptions of fact.⁹⁰ If we opt for an intuitional approach to moral law then we have no basis on which we can convincingly disagree with someone else's divergent intuitions⁹¹ (and Natural Law certainly has a multitude of divergent opinions as a cursory reading of various authors will quickly demonstrate!).

Insufficiency of Scripture for Ethics

This is another major area of discontinuity between the natural law view of Calvin and the Natural Law views being espoused by many today. Whereas Calvin saw natural law as being a subset of Scriptural law, Natural Law theorists say that Natural Law is a set that only overlaps with the moral principles of Scripture. In the words of Connaught Marshner, ". . . the Bible and other revealed documents do not answer explicitly all the ethical questions that arise . . ." ⁹² Johnson represents many evangelicals when he says,

“Therefore an evangelical ethic, which is a fully Christian ethic, though it will necessarily be a serious Biblical ethic will never be merely a Biblical ethic. Not all moral obligation is rooted in Scripture. Neither is all moral obligation rooted in NML [Natural Moral Law]. It is important to recognize that there are two chief sources of ethical knowledge that must be incorporated dialogically into any serious evangelical Christian ethic. While Scripture will always be primary and final, it will always stand beside NML knowledge. Evangelicals must come to grips with this more complete understanding of the Christian ethic, especially in the area of social ethics.”⁹³

This is as clear a denial of the sufficiency of Scripture for ethics as it is possible to get. This fact alone should disqualify Natural Law theories,

⁸⁹See Gordon H. Clark, *The Philosophy of Science and Belief in God* (Nutley: Craig Press, 1977) for an excellent expose of the pretensions of empiricism.

⁹⁰See discussion above under The Pagan Tradition, Reasoning Powers Intact.

⁹¹Except in the way suggested in the last section of this paper.

⁹²Connaught Marshner, "Right and Wrong and America's Survival," in *Future 21: Directions for America in the 21st-Century*, p. 129 as quoted by Gary DeMar, "Building a Christian Civilization: Part V," *The Biblical Worldview*, 2/5 (July, 1986), p.3.

⁹³Alan, F. Johnson, "Is There a Biblical Warrant For Natural-Law Theories?" p. 197.

for Paul declared to us (including the magistrates and judges in our midst) that God gave adequate Scriptural doctrine, reproof, correction and instruction in righteousness so "that the man of God may be complete, thoroughly equipped for every good work" (2 Tim. 3:16-17). If there is any "good work" that can only be found in Natural Law then Paul is simply a liar. Peter tells us (including the congressmen and city councilmen among us) that God's divine power (in terms of Scripture - cf. v. 4) "has given to us all things that pertain to life and godliness" (2 Pet. 1:3-4). There is nowhere in Scripture even a hint that natural law gives us more content than Scripture does (though Scripture gives us more content than natural law does cf. e.g., 1 Cor. 2:1-16; Rom. 10:14).

Evangelicals who argue the insufficiency of Scripture for ethics evidence a lack of depth in their interpretive abilities. For instance, Johnson mystifies me when he says,

"We should note that while many of these sins [i.e. enumerated by Jesus in Mark 7:20-23!!] are expressly forbidden in the OT legislation or the Decalogue, some, such as licentiousness and foolishness, are not to my knowledge explicitly condemned in the written Hebrew Bible."⁹⁴

If Johnson cannot extrapolate these rudimentary principles from the rich resources of Old Testament law we cannot place a very high hope that he will succeed in extrapolating similar principles from the less objective source of "Natural Law." But the problem is much more profound than the problem of ignorance. Such a denial of the sufficiency of Scripture is a serious charge against God's law. When the Pharisees made a similar charge and added their man-made traditions (of course they said as modern Natural Law theorists do that this oral law was also given by God!) Christ said that they made void the law of God by these additions. (Interestingly, one Jewish Natural Law proponent⁹⁵ says that the Talmud, Mishna and later Jewish codes, which flowed out of the Pharisaic traditions which Christ confronted, were all products of Natural Law - perhaps the most specific Natural Laws anywhere!) In opposition to the Pharisees and all other Natural Law advocates our attitude towards ethics should always be, "To the law and to the testimony! If they do not speak according to this word, it is because there is no light in them" (Isa. 8:20).

⁹⁴Johnson, "Is There Biblical Warrant For Natural-Law Theories?" p. 192.

⁹⁵Rabbi Solomon Freehof, "The Natural Law in the Jewish Tradition," pp. 15-28.

God does not have two moral standards and His moral standards certainly do not conflict. The best Natural Law theory I have heard (and it is not in print) says that all moral laws are found in Scripture, but the penology of the state is found in Natural Law. However, this is a contradiction. If penology can be found in Natural Law, it must be a law and therefore must deal with morals or ethics. Just because it is the moral requirement of rulers rather than the ruled does not take it out of the realm of ethics and does not excuse the advocate of denying the sufficiency of Scripture. Scripture is sufficient to instruct this "good work" of the state as well. (And that it is a good work to bear the sword is clearly declared in Romans 13.) Scripture is sufficient for all ethics!

Protection From Tyranny

It is often assumed that Natural Law alone will provide liberty and justice, whereas if Biblical law is instituted we will once again have religious persecution like that under the Roman Emperors from Constantine onward or like the Inquisition under the Roman Catholic Church.⁹⁶

It is ironic that this charge should be made because it is precisely Natural Law that was the dominant social ethic during the periods of these religious persecutions. Furthermore, if Biblical law had been followed there would not have been such religious persecution. Those who fear bloodshed and tyranny if Biblical law becomes the law of the land either do not understand the nature of Biblical law or have assumed that statism will always be a way of life. But Biblical law is diametrically opposed to statism. Government is a servant (Rom. 13) not a god. Nowhere in Scripture is the church given the right to bear the sword. Indeed, even in theocratic Israel God guaranteed a degree of religious liberty (or toleration). The Conquest and the herem⁹⁷ principle were not standing laws (and thus not normative for most of Israel's history) as a reading of Deuteronomy 20 will make clear. The laws of Israel forbade injustice to the pagan in their midst (Lev. 24:22; Ex. 12:49;

⁹⁶Unfortunately, many have a fear of religious persecution if Christians get in power (as if Christians are more to be feared than humanists!). Many examples could be multiplied of unscholarly diatribes such as those offered by Aiken Taylor in the *Presbyterian Journal*, but it is disconcerting when men like Laird Harris offer the same type of criticism. R. Laird Harris, "Theonomy in Christian Ethics: A Review of Greg L. Bahnsen's Book," *Presbyterian*, 5/1 (Spring, 1979), p. 14.

⁹⁷ herem: (n) accursed, under a ban. synonym: anathema.

Num. 9:14; Deut. 1:16; Jer. 22:3), forbade oppression of the pagan (Ex. 22:21; 23:9; Deut. 24:14,17; 27:19; Jer. 22:3), forbade an abhorrence of the pagan (Deut. 23:7) and commanded love (Deut. 10:18,19) and kindness (Lev. 25:35-38; 19:10,33,34) to the pagans in their midst. Israelites were not to discriminate against the pagans when it came to charity to the poor (Lev. 19:10) or when it came to justice in the courts (Lev. 24:22). There was to be one standard of law for all. "But the stranger who dwells among you shall be to you as one born among you, and you shall love him as yourself; for you were strangers in the land of Egypt." (Lev. 19:34) All of the above implies that pagans were allowed to live in Israel unmolested provided they did not blaspheme (Lev. 24:16) or seduce Israelites into false worship. If this degree of religious liberty was allowed during that period of redemptive history (and it was certainly more than was allowed to "infidels" in much of Europe's history under Natural Law) it is difficult to believe the charges of bloodshed and Inquisition that some would hurl at Theonomists.

But let us turn the tables around. In reality, it is Natural Law which is unable to give concrete protective laws to the citizens of a realm. Archie Jones said,

“Christian Natural Law theorists reduce God's law taught in nature to merely general ethical principles, omitting the case law applications of the Ten Commandments given in the Old Testament, "Natural Law" according to their reading loses the specificity, concreteness, and applicability of Biblical Law, and becomes vague, abstract, and uncertain, and hence increasingly removed from the ken of the common man and increasingly useless as a guide to or restraint on Government. When combined with natural men freed to proclaim their natural ungodly hearts' desires as law, this spells trouble. . . . A practical consequence of the abstraction of Christian Natural Law theories . . . is that an abstract and esoteric law known only to an elite cannot serve as an effective check on abuses of power by government, and thus cannot serve as an effective guide for either the rulers of the ruled.”⁹⁸

Only Biblical law can provide the concreteness and objectivity that is needed to ensure that both the ruled and the rulers know exactly what the boundaries of authority are. Even with this objective standard, we know

⁹⁸Archie P. Jones, "Natural Law and Christian Resistance to Tyranny," in *Christianity and Civilization*, vol. 2 (Tyler: Geneva Divinity School Press, 1983), pp. 111,112.

that apart from the grace of God, even Biblical law can be spurned by a tyrant and rejected for positive law (or positive law masquerading as Natural Law). How much more so can Natural Law be twisted as a wax nose to suit the whims of a tyrant.

In summary it may be said that Natural Law has not only been found wanting as a standard for liberty and justice, but it can prove to be positively harmful to the Christian cause since it confirms men in their rebellion against God, blinds the saints to the sufficiency (or better yet, the riches!) of Scripture for social ethics and places the liberty of the individual, the family, and the church in a perilous condition. Since there are no clear, public rules for rulers, there are also no limits on government, and no clear rules for the protection of the individual, the family, or the church, via civil disobedience or resistance to tyranny.⁹⁹

If a thief is caught in a Muslim state and is sentenced to have his hands cut off, he has no recourse to a lesser punishment from Natural Law (though Scripture would mandate a lesser punishment) since Natural Law theorists in Islam are convinced that the essence and core of Islam is a set of natural and universal principles which are so objective and rational that no advance in scientific rationalism or social reformation can ever shake them.¹⁰⁰

It is not enough to suggest that they have not interpreted Natural Law correctly since they know of Natural Law's rubber nose that can be misused by "saints as well as devils." They would say that "Natural Law stands in need of being interpreted and implemented by men of God who are not misguided by personal or class interests and mean desires. Islam teaches that every prophet was such an interpreter."¹⁰¹ Thus it is that "all basic principles of Islamic jurisprudence are corollaries primarily of its concept of God."¹⁰² Islam is bold enough to proclaim this, but as Rushdoony points out, every humanistic government is going to act in terms of this principle. As he says, "The source of law is also the location of the god of any system, and if law is located in the rationality of men, then man is the god of that philosophy."¹⁰³ Natural

⁹⁹Jones, "Natural Law and Christian Resistance to Tyranny," p. 121.

¹⁰⁰Khalifa Abdul Hakim, "The Natural Law in the Moslem Tradition," p. 63.

¹⁰¹*Ibid*, p. 47.

¹⁰²*Ibid*, p. 44.

¹⁰³Rushdoony, *Institutes*, p. 685.

Law is therefore nothing more than the law of man in the clever disguise of a transcendent law.

PROPER USE OF "NATURAL LAW"

If all the above is true, have we not thrown out the Biblical concept of natural law? Have we not denied that God has revealed His law to men so that it can be clearly known? No.

We have denied a rationalistic approach to deriving ethics from the creature rather than from the Creator.

We have denied the legitimacy of an autonomous approach to ethics that leaves God out of the picture and pretends to have a neutral common ground between the believer and the unbeliever.

We have denied that natural law has a content that is different than Scripture.

We have denied the sufficiency of natural law for fallen man and we have denied the insufficiency of Scripture for social ethics.

We have denied the legitimacy of separating special revelation from general (or "natural" revelation).

In short we have denied that Natural Law has anything but an informal similarity to the biblical doctrine of natural law.

Apologetics

Having said all this, it is important that we realize the great value of the Biblical doctrine of natural law for it is a useful presupposition in our apologetic method. The Puritans, while pouring the full content of Old Testament case law into their discussions of natural law, spoke of natural law in defense of their positions. Their main purpose in speaking of "the light of nature" was "to leave men inexcusable."¹⁰⁴ Every time the "light of nature" is mentioned in the Confession of Faith or the Catechism its insufficiency apart from Scripture is either explicitly declared (WCF I.i.; I.vi.; X.iv.; XXI.i; Catechism 2,60) or at least implied (WCF XXI.vii.). It is sufficient to make men without excuse (and therefore the clarity of this natural law is not a problem), but it is insufficient to enable men to do what they ought to do (something that only redemptive revelation can accomplish). The fullness and absolute sufficiency of Scripture for all

¹⁰⁴Westminster Confession of Faith, I.i.

norms in life (not just faith norms but also all life norms!) is clearly brought out in the Confession,

“The whole counsel of God, concerning all things necessary for his own glory, man's salvation, faith, and life, is either expressly set down in Scripture, or by good and necessary consequences may be deduced from Scripture: unto which nothing at any time is to be added, whether by new revelations of the Spirit, or traditions of men.”

Thus the Puritans, though holding to a doctrine of natural law, utilized detailed legislation from the Old Testament when formulating civil codes.¹⁰⁵ Though they may have used the language of natural law, it is clear that they did not hold to the rationalistic view of Natural Law that is often attributed to them. They did not see two standards of justice or two

¹⁰⁵Nor was this just true of the American Puritans (as James Dennison, Jr. has tried to maintain). While the American Puritans had the opportunity to implement law and thus were more preoccupied with it, the English Puritans held to the same views. (This makes sense since the American Puritans were once English!) One example is Samuel Bolton, a commissioner to the Westminster Assembly, who said that his view was the majority view, though he recognized some who held that the Mosaic civil laws no longer applied. The following quotation should make Bolton's position clear.

“But it may be objected: Is it lawful for a magistrate to impose actions upon men which concern their consciences? I answer: It is not lawful for a magistrate to impose anything upon a Christian which it would not be lawful in the eyes of God for him to obey; that is, to set up an authority against Christ's authority, the power of man against the power of God. But a magistrate may require those things at our hands which are clearly revealed to be the will of God. In this case we may say as the Samaritans said: "Now we believe, not because of thy sayings, but because we have heard him ourselves.”

. . . If we look into the Old Testament we find that it plainly sets forth the subordinate character of obedience in things spiritual. The people were bound to obey the magistrates when they commanded obedience to that which God had commanded, and to obey them, not as they were types of Christ, but as they were temporal magistrates and were set to defend the worship of God. Some have imagined that the power of magistrates, leading up to Christ, was to cease when Christ came, who is the great King of His Church, and in whom alone all authority over His people was to be confined, but I do not conceive it so. I conceive that a magistrate, without any trespassing on the authority of Christ, or infringement of the liberty of conscience of the Christian, may require those things to be obeyed which are clearly revealed to be the will and mind of Christ. Yet in this he is but a subordinate, and Christ is the supreme Master. The magistrate tells us what is God's will, not what is his will. He tells us it is his will, too, but only because it is God's will first.”

Samuel Bolton, *The True Bounds of Christian Freedom*, (Edinburgh: Banner of Truth Trust, 1978), pp. 208, 209.

logically diverse moral codes. Nor did they separate natural revelation from special revelation. Like Calvin, they saw God's law as one. As seen in the first part of the paper, Calvin's teaching concerning natural law was that it was the subjective counterpart in our hearts to the objective standard of God's truth. It was not something that could be discovered in creation or in a world of ideas or in participation in the mind of God. Rather it was the conscience or heart of man which had been imprinted by God with the sense (*sensus*) of God and of His will. Calvin's view of natural law can be distinguished from both the rationalist and the empiricist approaches to Natural Law since he held to a kind of intuitionism.

However, Calvin can avoid any charge of irrationalism since he never approached natural law independently of Scripture. Scripture always informed him on every aspect of natural law and therefore the intuitions of people's hearts were not the objective standards. Rather, Calvin appealed to intuitions that had not been totally hardened or effaced as the subjective response to his objective proclamation of Scripture. Sometimes he would use natural law in an *ad hominum* way to rebuke Christians who were not responding to his teaching of Scripture. The type of argument used was, "If even the pagans recognized the justice of God on this matter, how much more so should you who have the objective word of God."

This is the use that we should make of natural law. With the insights of Van Tillian apologetics we can hopefully utilize natural law in a much more effective way than Calvin did. The unbeliever both knows the truth of Biblical law and yet seeks to suppress that knowledge. While this fact makes him an unreliable guide as to what natural law is all about, this fact also makes him very vulnerable to the apologetic weapons that we use as we seek to win him captive to Christ. Just as the unbeliever assumes God in much of what he does (he assumes purpose, order, law, etc. which only God can give when he works as a scientist, drives his car, etc.) and yet denies the existence of God when called upon to trust and serve Him, so too the unbeliever assumes the ethical standards of God when it suits his purposes, but denies the God of ethics and is often pushed to deny the ethics themselves in order to protect his autonomy. The unbeliever is insecure without the ethics and he is insecure with the ethics. He wants autonomy from God and His law, but he does not like it when the autonomy of others grates against his God-given sense of

justice and liberty. If this dynamic is properly understood, then natural law can be a valuable tool in winning people to Christ.

Restraining Grace

Another positive role that natural law plays is that it is a restraint that God places in men's hearts. Even when the Scripture is not present to accuse men and call them to accountability, their consciences do that accusatory work (Rom. 2:15) and stimulate people to do outward good ("for when Gentiles, who do not have the law, by nature do the things contained in the law [N.B. that natural law here is doing what is contained in the Mosaic law.], these, although not having the law, are a law to themselves. Rom. 2:14). Likewise there is a social dimension to natural law since one person's conscience may also accuse or excuse another person (Rom. 2:15 "between themselves").

While consciences can become so seared that they are virtually ineffective (the stage when God gives them over to judgment Rom. 1:24ff), this two-fold aspect of natural law helps to keep society from degenerating as quickly and enables a great deal of justice to happen even in a pagan government like Rome (Rom. 13). A magistrate may provide justice because of his own conscience or if his conscience is so hardened that it is no longer an effective witness, the consciences of other people may help to restrain his depraved desires. The same holds true for those who are governed. Where a person's conscience is no longer effective in restraining his sin, the work of the law in the hearts of the magistrates and other citizens continues to restrain the sin to some extent. Society is fit for judgment when most of the society has seared consciences and natural law plays no part. Let us be thankful then for the biblical doctrine of natural law and not trade it for the mess of pottage offered by Natural Law theorists.

Resources Available from the Publisher

- Cummings, Tim. *Ministerial Training: The Bible's Normative Pattern*.
- Davis, Andrew. *Written on Your Heart: An Approach to Extended Memorization of Scripture*.
- Elliot, Michael (Ed.). *Bible Acrostic: An Aid to Memorizing the Content of Every Chapter of the Bible*.
- Kayser, Phillip. *Biblical Romance: What Does the Bible Say About Courtship & Betrothal?*
- Kayser, Phillip. *The Canon of Scripture, Volume 1: Biblical Presuppositions*.
- Kayser, Phillip. *Church Membership: Is It Biblical?*
- Kayser, Phillip. *December 25 Jewish Style: The Ancient Jewish Celebration Anticipating the Birth of Christ*.
- Kayser, Phillip. *Dressed Up for Church: A Contrarian Rag on Appropriate Clothing*.
- Kayser, Phillip. *Feed My Lambs: Biblical Guidelines for Parents to Determine if Their Children are Ready for Communion*.
- Kayser, Phillip. *The Flaw of Natural Law*.
- Kayser, Phillip. *Getting Christians Back Into Politics*.
- Kayser, Phillip. *Glory and Coverings: A Study of 1 Corinthians 11:1-16*.
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THE FLAW OF NATURAL LAW

PHILLIP KAYSER, PH.D.

Philosophers throughout the ages have sought to develop ethical systems apart from the Bible. Unfortunately, too often Christian theologians have done the same. But Scripture informs us in the area of ethics and law just as thoroughly as it does for personal salvation.

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