

Religion, Pluralism, and Democracy

A Natural Law Approach

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Introduction

[1] Democracy has, in the modern world, become intimately bound up with secularism, or at least with secularity, and indeed with a broader agnosticism about fundamental questions of meaning and value. This is true of essentially all of the principal variants of modern democratic theory, albeit in rather different ways. Thus for natural rights theorists in the Lockean tradition, democracy is fundamentally a compact to protect God's law, however, to exclude from public debate the question of how these rights ought to be used, and thus protects decisions regarding resource allocation from substantive judgments of value. The social contract tradition is secular in a different sense, making everything subject to public debate and negotiation, something which presupposes that there are no transcendental principles to which people can or should make reference in moral and political decision making (Rousseau). And utilitarianism, in so far as it aims at maximizing pleasure, takes as its criterion something that is ultimately private and subjective (Mill).

[2] Those who reject secularism meanwhile, have, for the most part, also rejected pluralism and democracy. This is most apparent with the various fundamentalisms that have swept the planet over the course of the past three decades. If God reveals the principles that govern legislation, then there is, it would seem, little room for difference or deliberation.

[3] This essay will suggest a very different approach to the whole problem of religion, pluralism, and democracy. It is not really a new perspective, because it is deeply rooted in the natural law tradition that emerged from the Jewish, Christian, and Islamic Middle Ages, and which has important echoes in the religious traditions of China and India, but it has not really been adequately developed and mobilized as a solution to the crises of the present period. The essay will begin by establishing the existence and searching out the wisdom (philosophical and religious) traditions was also a period of radical democratization in the religious as much or even more so than in the political sphere. It will then show how this alternative democratic tradition experienced a period of particular flourishing in medieval Europe, before being suppressed by the development of capitalism and the modern sovereign state. The essay will then briefly review the basic principles of natural law theory and will draw out its implications for political life, and suggest just how a natural law democracy might differ from a modernist secular democracy at the constitutional or institutional level.

An Alternative Democratic Tradition

[4] The story which the modern world tells about itself is one of liberation: the liberation of labor from the bonds of feudal obligations and guild restrictions that stood in the way of the free development of human capacities, the liberation of the political community from kings and popes, and the liberation of the intellect from religious superstition. If this process of liberation is read back beyond the modern era it is always done so in a way which reads those early glimmerings of freedom as intimately bound up with an incipient process of secularization. Thus Greek democracy is understood as a liberation from the tutelage of divine kings; Socrates was the victim not of nihilistic sophists but of religious bigots; and the French Revolution was the worthy poster child, as David later made him, for the secularizing French Revolution. These early glimmerings of reason, freedom, and secularity were later covered over by the religious superstition of the dark ages and only shown bright again after the

Renaissance, the Reformation, and the Enlightenment finally broke the stranglehold of the Church and set our minds free. This is the history people learn in high school. Few ever study enough of the ancient world to learn that the elected chief magistrates of democratic Athens were first and foremost priests charged with organizing religious festivals, that Socrates understood himself as serving the god, or that he directed the main blow of his philosophical arguments against atheistic sophists and only secondarily at religious poets. Fewer still study enough of the Middle Ages to learn that fabled serfdom was actually very rare, that the guilds at once cultivated excellence and empowered workers and for a brief period, in some places helped create the medieval communes what amounted to an early workers democracy. They do not learn that kings had little or no real power until the early modern period, that the Church often served as a powerful advocate for social justice against the rapacity of warlords great and small, and that it was, perhaps, the medieval followers of Aristotle ±

Anderson; Ste. Croix). Small states prevailed in areas that China and the Fertile Crescent, had previously been dominated by large empires. Northern India was just undergoing what seems to have been a primary process of state formation, largely independent of the earlier Indus Valley or Sarasvati Civilization, in which any case did not extend east into the Gangetic Plain, north into the Himalayan foothills, or south into the Deccan or the peninsula. Some of these states were a sort of republic in which power was held by the senior lineages of what was in part a tribally organized pastoral society that had only partly adopted agriculture. Others were small kingdoms (Thapar 1979). Where larger tributary structures persisted they gradually altered their economic strategies, seeking trade rather than direct production and thus to capture for themselves a portion of what was becoming a very healthy commerce.

[8] The emergence of specialized agriculture and crafts production and of petty commodity production offered to humanity an extraordinary new opportunity. By using the principle of comparative advantage, it was possible for distant regions to profit from trade with each other, and thus grow rich without the systematic

The Islamic institution of the *zakaat*, a wealth tax of between 2.5 and 5% at once provided an incentive for almsgiving but also such critical civilizational investments as the Caliphate's *Bayt al-Hokmah*, where scientific, philosophical, and theological texts from around the world were translated into Arabic, catalyzing a period of philosophical flourishing on which the European Middle Ages were, in turn largely dependent.

[14] This same pattern is true in Europe as well. Monasteries provided relief for the poor and preserved and cultivated the arts and sciences, philosophy, and theology, gradually working a synthesis between the classical civilization of the Mediterranean Basin and the traditions of the Celtic, Germanic, and Slavic inhabitants of Northern Europe. While many prelates were little more than warlords or the vassals of warlords, the great reforming popes such as Gregory VII and Innocent III aspired to something more: a church that serv

for the common good, all stood in the way of the full development of capitalist relations of production. Monarchs, similarly, resented the exclusion of the clergy and the religious orders from civil jurisdiction, ancient rights such as sanctuary that limited the reach of royal justice, and most especially the notion that their authority derived from and was subject to that of the popes.

[18] The way in which this process played itself out varied considerably from one country to another. In Spain, and to a lesser extent in the Spanish Kingdom of the Two Sicilies, for example, where a modern state emerged as a result of the larger process of the Reconquista, the monarchy was too closely identified with the Church to give serious consideration to breaking with Rome. Instead the Spanish crown sought and obtained special rights, nominally in return for its service in the struggle against Muslims that included WKH RSHUDWLRQ RI LWV RZQ , QTXLVLWLRQ WKDWHOYDWLCE.DH PRUH EU special relationship with Rome passed from Spain through the Hapsburgs to Austria, which inherited, in the process, the now little more than honorific title to the Holy Roman Empire. The same was true at least initially in France where, since the time of Charlemagne, the monarchy had been the historic defender of the papacy, EXW ZKLFK QRZ VRXJKW VSHFLDO 3*DOOLFDQ)UHHGRP V´ WKDW PDG Eventually, however, the French monarchy faltered in its modernization and was swept away by the rising bourgeoisie. Where geopolitical factors set local monarchies and bourgeoisies in tension with these great 3 & DWKROLF SRZHUV ´ DV LQ (QJODQG WKH 1HWKHUODQGV DQG SDI break with Rome that we call the Reformation.

[19] In either case, however, the effect was the same: the secularization and capitalization of church lands, the suppression of monasteries, the gradual erosion of ecclesiastical immunities and exemptions of sanctuary, etc. (Chadwick). The suppression of the guilds followed closely.

[20] Closely aligned with these institutional changes was a global theological change that might best be described as an Augustinian Reaction. Beginning as early as 1276, Stephen Tempier, Bishop of Paris and a facto DJHQW RI WKH)UHFK .LQJ LVVXH FRQGHPQDWLRQV RI 35 DGLF number held by Thomas Aquinas. Over the course of the next several hundred years, even as the papacy struggled to uphold the vision of Thomas and the Order of Preachers, theologians at universities increasingly under the control of local monarchies and bourgeoisies turned to a pessimistic Augustinianism that stressed the sovereignty of God, the dependence of the world on God, the radical sinfulness and dependence of human nature, and a divine command ethics that made law the result of divine decree rather than of the internal dynamism of nature. This theology was the reflex, on the one hand, of the eschewal of the sovereignty of the king and, on the other hand, of the inscrutable operation of market forces. The emerging absolute monarchs provided a model for understanding God as divine sovereign. In a market economy, meanwhile, rewards are distributed based not on substantive judgments of value regarding the contribution of various activities to the common good or the talent or hard work of those who carry them out, but rather by the operation of supply and demand. The operation of these forces is opaque to individuals operating in the market and creates a sense of dependence on mysterious forces beyond their control. This is the basis in experience for the idea that God elects those who will be saved without reference to their merits. The Reformation was merely the radical expression of this theological trend. Oxford Franciscanism and such later movements as Gallicanism, Josephism, Jansenism, and ontologism all reflected, in one degree or another, the same emphases (Mansueto 1995, 2002a, 2002b; Chadwick). These movements represent the first step towards the fundamentalisms of the present period, which can be seen to be essentially a by-product and a reflex of, on the one hand, the alienating impact of the market order and, on the other hand, of the emergence of sovereign states.

[21] Enlightenment rationalism and empiricism represent a reassertion of reason only by comparison with these ideologies and not by comparison with medieval Aristotelianism or the other ideologies of the global Middle Ages. Indeed, many Enlightenment thinkers are very much in the Augustinian tradition and retain a divine command ethics. This is true especially of Descartes and his followers. Like Duns Scotus, Descartes argues that morality is ultimately dependent on the divine. God could have created a universe governed by moral norms different from those that govern ours. That God created a universe ordered to the virtue and happiness of human beings is a result of a free act of grace. This virtue and happiness is furthered by

knowledge of God, of the soul, and of the physical universe. Knowledge of God is knowledge of the principle that creates and governs all things. Knowledge of the soul is knowledge of our capacity to transcend the material world. Knowledge of the physical universe allows us to manipulate and control the world for our own benefit, while teaching us subordination to the divinely sanctioned laws by which it is governed. Similar reasoning can be found, somewhat radicalized, in Malebranche, and somewhat moderated, in Rosmini. It should not be surprising to discover that Descartes was favored over Thomas in seminaries that operated under the de facto control of the French absolutist state, which was anxious to protect its autonomy from Rome (Thibault). Much the same is true of the Lockean natural rights tradition. Locke grounds the natural rights of life, liberty, and property, which political society is to defend, on the fact that human beings are created by God and are thus His property. We cannot, therefore, steal or damage either ourselves or each other.

[22] What this does, of course, is to make moral judgment a matter of the will rather than the intellect. The more radically democratic Enlightenment thinkers simply substitute the will of the people for that of God. In either case, substantive judgments of value are excluded and the marketplace is left free to allocate resources in accord with the play of supply and demand. Secularism, far from being a liberation, in fact enslaves humanity to either the state or the market.

Natural Law and Democracy

[23] Having established that there was, in fact, an alternative process of democratization, very different from that of the modern era, at work during the Axial Era and Silk Road Era, but that the development of this democratic tradition was cut short by the emergence of capitalism and the modern state, we will now sketch out what a completed natural law democratic theory might look like.

[24] There is little doubt that many natural law theorists, both in the narrower, western sense of the term and in the broader sense suggested above, have been attracted to the idea of monarchy. This was certainly true of Plato, and is the usual reading of Aristotle (Nicomachean Ethics II.10). Islamic thinkers working in this tradition tended to rationalize the doctrine of the caliph or the imam as a kind of philosopher king. Theravada Buddhists legitimated the rule of their monarchs by teaching that they were Bodhisattvas, and thus already more developed spiritually than the monarch (Sweatman: 63-4), while Confucians cultivated the idea of the sage king (Mengzi 4A.9; Yao: 73).

[25] There are, furthermore, arguments for monarchy from a natural law perspective. Some people are more developed than the rest; the most developed are the wisest and most prudent and should rule. But the real reason most natural law theorists supported monarchy during the Silk Road Era is that they depended on kings for patronage and believed, with good reason, that they could have more impact by affecting the one man than by attempting to reach peasant masses who had little time for study.

[26] If we look at the underlying logic of natural law theory, however, the basis for political authority is something universally shared. It is the human intellect which allows us to understand the nature of things, the end to which they are ordered, and how to promote their growth and development. Already in Aristotle we see a recognition that at least an element of democratic participation is defensible (Politics III.6-13; IV.11-13; V.5; VI.1-5), and Thomas Aquinas argues that political authority is grounded in reason and that even if it is exercised by kings that exercise is delegated to them by the people (II, 3). It was not, however, until the work of Jacques Maritain in the 1950s that we see an attempt to make the latent democratic potential of natural law theory explicit. Maritain argues that because every human being possesses an intellect, every human being has both the right and the capacity to participate in public life. The Church acts as guardian of natural law first and foremost by forming its people from below, not by intervening from above.

[27] There is, however, a very fundamental difference between natural law political theory, whether democratic

above society and exercises complete authority over a people and its territory. Maritain argues that this ideal of sovereignty is both impossible and corrupt. On the one hand, sociologically, the state is just one institution among many, affected by and affecting the others. On the other, from a natural law perspective, what the political authorities do is not so much to make law as to interpret the natural law and apply it to concrete circumstances.

[28] Even Maritain, to be sure, envisions this process taking place in a religiously and culturally more or less unified environment that of a Europe whose commitment to Christianity will be renewed as the Church finds more productive ways to engage the modern world and as the people come once again to see it as a guarantor of justice and as offering authentic solutions to the problems of modernity. There is, however, no reason why this vision could not be articulated across a far more pluralistic ideological spectrum, one which engages the physical and religious as well as those who argue that there is no first principle or that it is unknowable and that politics must limit itself to adjudicating conflicting claims over resources. Such a public arena would be constituted by debate around fundamental questions of meaning and values, the real questions that lie behind debates around public policy and even social structure.

[29] Only such a polity allows true pluralism. Modern polities, because they are structured in such a way as to effectively exclude such debate, in effect guarantee the hegemony of a modernist, secular worldview. And of course a religious monopoly, especially one that has as its instrument a modern sovereignly, pluralistic.

[30] In such a polity religious leaders and other masters of wisdom play a critical leading role. It is they who set the tone of political discourse by creating an ongoing public debate around fundamental questions of meaning and value. Such debate must, of course, be civil, but it need not hold back from engaging fully the seriousness of the issues at hand, which are nothing more than what it means to be human.

Institutional Structures

[31] Creating such a polity is as much or more a question of cultural transformation as it is of institutional or legal change. There must be a public debate around fundamental questions of meaning and value, and the people must come to see the links between that debate and public policy debates. But political theory does point to a different sort of constitutional structure than that which currently characterizes most modern states, and there are institutional changes that could help to catalyze the sort of cultural transformation we are advocating.

[32] First, since from a natural law perspective political authorities do not make laws, but rather interpret and apply the natural law, no written law, even a fundamental constitution, can be treated as a final authority. Natural law arguments must have standing in both legislative and judicial bodies. This does not mean that there cannot or ought not be a written constitution, but only that it is not the final authority.

[33] Second, the line between judicial and legislative functions is significantly blurred. If legislatures interpret natural law, then what do higher courts do? The difference is no longer one of making versus interpreting law, but rather between drawing out broad policy conclusions and adjudicating specific claims.

[34] Third WKHUH DUH ZD\ V LQ ZKLFK ERWK 'XSSHU' DQG 'ORZHU' KRXV of dialogue advocated in this paper. There is considerable reason to believe that proportional representational structures, in which voters vote for parties rather than for individuals, tend to encourage a more ideologically driven political culture, since people are focused more on debating ideas than on scrutinizing individual character or (more likely) responding to individual charisma. Proportional representation, furthermore, allows better representation of minority viewpoints, and thus expands the spectrum of ideas that have weight in the polity. Natural law theorists thus have reason to favor using a party list proportional representation system for the election of lower houses.

[35] Even so, one would expect that the principal legislative body in a society (which is the function lower houses generally fill) would remain primarily focused on questions of public policy, and would attract people who excel in policy debates. How can we formally insert into the political process people who can lead a debate around fundamental questions of meaning and value? This should be the role of the upper house, which should be composed especially of those known for their wisdom, with the election process structured to insure representation of the full range of viewpoints present in a society. Just how one does this is something of a challenge. Election by proportional representation is the best way to ensure presence of a wide range of perspectives, but does little to ensure the wisdom of those elected. Election or nomination by religious or t() 7(l)cn by

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