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## The Parameters of Social Justice and Natural Law Theory

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Jewish activists clamored against the secular leadership in Israel, eventually resulting in the death of Israeli Prime Minister Yitzhak Rabin on November 4, 1995.<sup>1</sup> On March 20, 1995, the Aum Shinryko group in Japan released deadly nerve gas in a Tokyo subway, killing twelve and injuring thousands.<sup>2</sup> Timothy McVeigh and Terry Nichols destroyed the Murrah Federal Building in downtown Oklahoma City and have been associated with Christian militia movements.<sup>3</sup> What does each of these groups have in common? According to Mark Juergensmeyer, each of these groups may be categorized as religious nationalists. By definition, religious nationalists are those groups that have fundamentalist convictions regarding their religious beliefs and that seek to mold societal values to those beliefs. Juergensmeyer notes a worldwide increase of these groups because they find a lack of societal stability in modern liberal democracies.<sup>4</sup> Religious nationalists perceive the structural pillars of society as being near collapse. They believe that religion, as the formative base of societal values, offers strength, security, and substance that will

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<sup>1</sup> Mark Juergensmeyer, “The Worldwide Rise of Religious Nationalism,” *Journal of International Affairs*, 50/1 (Summer, 1996): 1.

<sup>2</sup> Ibid., 3.

<sup>3</sup> Ibid., 2. “Christian militia movement” is the terminology used by Juergensmeyer; those who would prefer the term Christian Identity Movement may wish to suggest this to him.

<sup>4</sup> While one may argue that religious groups are not motivated out of concern for societal collapse, and rather seek to mold society to religious norms for the virtue of the act alone, Juergensmeyer’s statistical data upon which he bases these conclusions indicate otherwise.

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endure for succeeding generations.<sup>5</sup> Such an increase in religious nationalism can be noted in our global community.

Such an increase in religious nationalism can be noted in our nation as well. Juergensmeyer classifies powerful, politically active religious groups, like those led by Jerry Falwell and (formerly) Ralph Reed, as religious nationalists, since they seek to order American society according to biblical values.<sup>6</sup> An increase in religious nationalism in America has led to an increasing resistance among those in secularist groups. The conflict between religious groups and secularists could correctly be given the title, “The Secular-Sacred War of the 21<sup>st</sup> Century.”<sup>7</sup> An example of this escalating tension can be noted in a talk delivered earlier this year by Melvin Lipman, President of the American Humanist Association, in which he uses language of conflict and warfare between Christians and secularists:

Timothy LaHaye . . . The author of the Christian fundamentalist Left Behind series, was on the Jerry Falwell show about six months ago, and he said, “We’re in a religious war and we need to aggressively oppose secular humanism; these people are as religiously motivated as we are and they are filled with the devil.”<sup>8</sup>

Karl Rove, Bush’s chief political strategist, at a meeting of the theocratic<sup>9</sup> Family Research Council in March of this year, spoke about the “war on secular society,” and he said, “We need to find ways to win the war.” And so, [Lipman says] it’s a war against us, and we need to fight back in this war.

Another Bush administration adviser, Paul Weyrich, said, “The real enemy is the secular humanist mindset, which seeks to destroy everything that is good in this society . . .”

In 2003, speaking to the Christian Coalition, Alabama Governor Bob Riley spoke about a “more important war than the war in Iraq.” He said the war against secular humanists is “a war for the absolute

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<sup>5</sup> Ibid., 19-20.

<sup>6</sup> Mark Juergensmeyer, “The New Religious State,” *Comparative Politics*, 27/4 (July 1995): 382.

<sup>7</sup> I draw this title from societal commentary in America.

<sup>8</sup> This comment is a direct quote from Timothy LaHaye and is reminiscent of the attitude shared by Jesus’ disciples toward the Samaritans when they rejected Jesus, as recorded in Luke 9:51-56.

<sup>9</sup> While the term “theocracy” was originally coined by the Jewish historian Josephus when he referred to the Hebrew nation under the direct rule of God based on a covenant relationship, there have been religious groups, such as the Roman Catholic Church and the Puritans, who have adopted the same covenantal theology reflected by their belief in Christianity dominating and controlling government for its own ends.

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soul of this country". He called for a "crusade" to restore the Christian character of America.

Well, friends, I think we should be prepared for a crusade. It's creeping up slowly . . . Changes are not made all at once. We're not going to have a government that takes away our rights not to believe all at once.<sup>10</sup> But we've got to see the signs. We've got to see what is happening, and we have to be prepared to defend ourselves.

Last year, after a close Senate vote to approve her nomination to the Federal Court of Appeals, and she was approved, California Justice Janice Rogers Brown said that people of faith were in a war—they keep using that term **war**. She said they're in a war against secular humanists, who threaten to divorce America from its religious roots. Brown complained that America has moved away from the religious tradition on which it is founded, and to which we need to get back.<sup>11</sup>

Such rhetoric, on both secular and religious sides, can hardly be salutary to societal cohesion, and much less does it facilitate meaningful dialogue that seeks for common ground. Indeed, such rhetoric has challenged politicians to seek for common ground among the diverse groups in American society. During a speech delivered at the Sojourners-sponsored, "Call to Renewal" Pentecost conference, Senator Barack Obama suggested a way to find common ground for both groups: "Democracy demands that religious Americans translate their concerns into universal values—and that secularists make room for faith and morality."<sup>12</sup>

Finding common ground on moral issues between secularist and religious groups is a formidable task.<sup>13</sup> It is to this task that this paper is

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<sup>10</sup> Reference here is made to the position taken by Thomas Jefferson regarding freedom of conscience and atheists when he stated, "The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have no authority over such natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg." *The Writings of Thomas Jefferson*, "Query XVII: The different religions received into that State?" 2:219-221.

<sup>11</sup> Blog from e Pluribus Media Community.htm, "The War on Secular Humanism," July 30, 2006 (retrieved July 30, 2006).

<sup>12</sup> Barack Obama, "One Nation Under God?" *Sojourners* (November 2006), 8. The entire transcript can be found at [www.soj.net/obama](http://www.soj.net/obama).

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aimed. Finding common ground—the necessity of the times requires it. The unity of our nation demands it. The peace and well-being of each citizen depends upon it.

This paper seeks to demonstrate the integral nature of Social Justice and Natural Law theory. It is necessary at this point to clarify that concepts of Natural Law theory are as ancient as Greek society and that various views of Natural Law theory have existed from that time to the present. Most often, the Roman Catholic Church is identified as the proponent of Natural Law theory and its corollary of moral theology. *However*, some modern philosophers and ethicists are arguing for a concept of Natural Law that is *not* based on Catholic notions of moral theology while at the same time upholding a sense of justice that can harmonize with concepts of individual rights common to modern liberal democracies. As Anthony J. Lisska states,

One must not forget one crucial issue, however. Enlightenment philosophy has given Western liberal constitutional democracies its fundamental theory of individual rights.<sup>14</sup>

Recognizing this crucial point, he further proposes that to formulate a modern concept of natural law theory,

it is necessary that natural law theorists develop an adequate account of rights sufficient to be compatible with liberal democracy. The natural law theory [of Catholic tradition] is not based on themes of Enlightenment philosophy. . . . What must

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<sup>13</sup> Although finding consensus between religious and secular groups may seem impossible, in reality it is not so. The drafting process of the United Nations Universal Declaration of Human Rights (UDHR) consisted of groups who were from such diverse backgrounds as Roman Catholic, Protestant, Hindu, Confucian, and even atheists from Communist Russia. Due to the typical stance of the Roman Catholic Church on Natural Law theory, the last group firmly maintained that the epistemology of the UDHR would not be based on natural law theory, to which the other groups consented. This is why we use the term “human rights” instead of “natural rights” or “rights of nature.”

<sup>14</sup> Some scholars may claim that the Reformation produced the fundamental theory of individual rights that have formed the foundation of Western liberal constitutional democracies. However, such a view overlooks the historical reality that Lutheran jurists implemented variations of Roman Catholic canon law to serve as civil laws for the ordering of society. Canon law and its corresponding concepts of natural law, eternal law, and society as an organic entity did not allow for individual liberties. Rather, society was viewed as an organic unit, the *Corpus Christianum*, an idea that was still retained in the minds of the reformers as reflected by the establishment of Lutheranism in Germany and Calvinism in Geneva.

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be developed, therefore, is a substantive theory of human rights . . . [that] does not force the authoritarian repression of individuals in the name of—or under the guise of—ontological theories of the good.<sup>15</sup>

It is the purpose of this paper to demonstrate that a modern concept of Natural Law theory offers the most likely solution to “The Secular-Sacred War of the 21<sup>st</sup> Century.” It offers common ground for secular and religious groups. It offers stability to society and substance to moral values. It gives consideration to the convictions of believers as well as to unbelievers.

**Social Justice Defined**

To begin, a working definition of social justice must take into account the etymological foundation of the term. *Social* bears the obvious reference to *society*. *Justice* derives from the Latin term *Justitia*, which itself is a combination of two other Latin terms, *Jus* (also, *ius*), meaning *law*, and *itia*, translated as *-ice*. Thus, a fuller, composite definition is “a just ordering of society,” or “an ordering of society according to law,” including such concepts as law, politics, societal institutions (churches, synagogues, mosques, businesses), and the individuals who comprise them. It is upon consideration of such a definition that one finds the intersection of social justice and natural law theory. At this intersection lies the framework for societal governance.

Additionally, social justice conveys the concepts of fairness, equality, and righteousness—all of which find their roots in the over-arching concept of law. From a societal perspective, it includes a vast array of issues, such as abortion, euthanasia, bio-genetics, dignity of the human person, racial equality, labor rights, economic equality, and ecological concerns, among others. I will not here attempt to address all of these, although I will state that natural law, properly assessed, speaks to each of these issues. I will return to one socially sensitive issue of our day at the end of this discourse that falls squarely under the purview of natural law.

**Evolution of Natural Law Theory**

In its original formulation, natural law theory contained several strands, the primary one of which regarded it as “a higher ideal of justice

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<sup>15</sup> Anthony J. Lisska, *Aquinas's Theory of Natural Law: An Analytical Reconstruction* (Oxford: Clarendon, 1996), 255-257.

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to which appeal may be made,”<sup>16</sup> or even “an unwritten law . . . differing from and superior to the written and enacted law of the State.”<sup>17</sup> As formulated by the Stoics, it did include a divine, or transcendental, element and was also viewed as that part of man’s nature that governed moral action.<sup>18</sup> This view was later adapted by Cicero (106-43 B.C.), a Roman jurist influenced by Greek philosophy, who emphasized the notion of “one eternal and unchangeable law for all nations and for all times.”<sup>19</sup>

Ulpian (420 A.D.) differed from Cicero in that he identified three divisions of law: *lex civitas* (civil law, also known as *ius civil*), the *lex gentiles* (law of nations, also known as *ius gentium*), and the *lex naturae* (natural law, also known as *ius naturae*). While this tripartite form of law was known among Roman society, the more common practice identified only two laws: the *ius civil* and the *ius naturale*.<sup>20</sup>

In the *Institutes of Justinian* (533 A.D.), the two divisions of *ius civil* and *ius naturale* are used, with little reference to the *ius gentium*, which was viewed as subsisting under the *ius naturale*. Of importance to later developments of natural law theory by St. Thomas Aquinas, Isaac Husik points out:

though the Institutes were published in the sixth century and compiled under the auspices of a Christian emperor, there is no reference to the law of the Old Testament, and no attempt made to find a place for it in relation to the *ius civile*, *ius naturale*, or *ius gentium*.<sup>21</sup>

Essentially, Husik notes the absence of any Christian element in the legal corpus at the time of Justinian. Because of this lack, such traditional views of Greek thought regarding natural law theory collided with Christianity, primarily because of the latter’s emphasis upon morality grounded upon a knowledge of God’s will as revealed in Scripture.

In his *Summa Theologica*, Thomas Aquinas addressed this historic dissonance between Greek and Christian ideas regarding natural law.

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<sup>16</sup> Columba Ryan, “The Traditional Concept of Natural Law: An Interpretation,” in *Light on the Natural Law*, Illtud Evans, ed.. (London: Burnes and Oates, 1965): 15.

<sup>17</sup> Isaac Husik, “The Law of Nature, Hugo Grotius, and the Bible,” *Hebrew Union College Annual* (New York: KTAV, 1925), 2:381.

<sup>18</sup> A. P. d’Entreves, *Natural Law: An Introduction to Legal Philosophy* (London: Hutchinson U Library, 1970): 22-35.

<sup>19</sup> Ryan, 15.

<sup>20</sup> Husick, 386.

<sup>21</sup> Ibid., 387.

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Building upon the Aristotelian concept of man as a “rational and social being,” Aquinas established natural law upon reason shared with God, giving man access to transcendent moral values necessary for moral perfection.<sup>22</sup> From this perspective, natural law is directly associated with the divine sphere.<sup>23</sup>

Aquinas’ second point, of man as a “social being,” implies the condition of men in society with one another, or defined otherwise, a State. According to the Catholic Church, natural law theory is applicable to all citizens, irrespective of whether they are believers or not. Stanley Hauerwas noted this very point when addressing a group of Catholics during the tenth Paul Wattson Lecture at the University of San Francisco. He stated, “For natural law underwrote the assumption that Catholic moral theology could be written for anyone irrespective of his or her relation to the faith in Jesus of Nazareth.”<sup>24</sup> When one considers the legitimization necessary for a state composed of believers and non-believers, such a view of natural law implicitly imposes Catholic moral theology upon all citizens, whether believers or non-believers, since the Roman Catholic Church identifies itself as the final arbiter of natural law interpretation.<sup>25</sup>

Against such implications in the political and public sphere, early modern exponents of natural law theory among Protestants shifted the focal point of natural law theory from man’s moral perfection to that of social peace.<sup>26</sup> Such a shift allowed state legitimization without the consequent moral impositions of the Catholic Church. One of the more known Protestant natural law theorists who contributed to this development was Hugo Grotius (1583-1645).

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<sup>22</sup> Samuel Pufendorf, *The Whole Duty of Man, According to the Law of Nature* (Indianapolis: Liberty Fund, 2003) xii.

<sup>23</sup> Russel Hittinger presents Aquinas’ understanding of the source of natural law as being founded in God, which Hittinger refers to as “the order of priority,” meaning that natural law first existed with God and then man recognized it through reason and nature (Russell Hittinger, “Natural Law and Catholic Moral Theology,” in *A Preserving Grace: Protestants, Catholics, and Natural Law*, Michael Cromartie, ed. (Grand Rapids: Eerdmans and Ethics and Public Policy Center, 1997), 5-8).

<sup>24</sup> Stanley Hauerwas, “The Importance of Being Catholic: A Protestant View,” *First Things*, 1 (March 1990): 27.

<sup>25</sup> “[Natural law] points to God as the lawgiver, and it threatens to bring up for public discussion the claim of the Catholic Church that the Pope, as the Vicar of Christ, is the authoritative interpreter of the natural law” (Charles E. Rice, *50 Questions on the Natural Law: What It Is and Why We Need It* [San Francisco: Ignatius, 1999], 33).

<sup>26</sup> Pufendorf, 13.

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Grotius associated divine elements with natural law, but may have introduced the concept of natural law application apart from the divine sphere by his use of the phrase “*etiamsi daremus non esse Deum*” (“these principles would still be valid, even if we were to grant . . . that there is no God”).<sup>27</sup> While Grotius affirmed a theological rationale for grounding natural law theory and justice, he advocated views at the practical level that tended toward deism, such as “little recognition of either the need for illumination to counteract sin-induced blindness, the importance of wisdom, or the value of revelation in bringing clarity and certainty (as in Aquinas).”<sup>28</sup> Such deistic tendencies—a theological rationale for natural law theory and, thus, legitimization of the State apart from religious creedalism, and rationalistic concepts functioning as the certainty of foundational principles and man’s ability to use reason in constructing a systematic plan from them—contributed to the intellectual and political milieu of the 17<sup>th</sup> century.<sup>29</sup>

Thus, natural law theory as a basis for social policy and political theory, advocated from a Catholic perspective, orders the following: God, Church, State, and individual. Such an ordering places the individual’s conscience subject to the State as influenced by the moral theology of the Church. The same elements, from a Protestant tradition of natural law,

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<sup>27</sup> Commenting on this statement by Grotius, Ryan (20) states, “I believe it true to say that the concept of natural law is not dependent upon belief in God’s existence.” While Westberg does not adopt this position fully, he does concede that Grotius may have been denying “the contention that the moral law is connected purely to the arbitrary will of God” (“The Reformed Tradition and Natural Law,” in *A Preserving Grace*, 112). Brian Tierney does not argue against the idea of natural law apart from belief in God, but is dubious about the contention that Grotius was actually advocating a theory of natural law apart from the divine sphere, which would have been a return to a pre-Scholastic view of natural law theory (Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* [Atlanta: Scholar’s, 1997], 317-320). Significant to this discussion is the fact that natural law theory to the time of Justinian (533) did not include Christian elements and did not ground natural law in eternal law, as argued by Aquinas. Such recognition allows for the view possibly put forth by Grotius of natural law theory apart from the transcendental sphere. At the very least, historically, he is looked upon as having advocated a secular understanding of natural law theory that places him on a divergent path from mainstream thought in this area.

<sup>28</sup> Daniel Westberg, “The Reformed Tradition and Natural Law,” in *A Preserving Grace*, 112-113.

<sup>29</sup> Although Grotius was Arminian and not a Deist, one must also take into account that one of his great burdens was to resolve the religious wars that had plagued the 16<sup>th</sup> and 17<sup>th</sup> centuries. Viewed in this light, his religious principles listed above are conducive to a deistic or generic view of God that excludes any particular religious persuasion.

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are: God, *individual*, and then a bifurcation of allegiance between church and state. Thus, church and state remain in a state of constant tension. Such a view allows the rights of individual conscience to remain inviolable and stresses the individual in relationship to his God without the intermediary of the Church.<sup>30</sup>

**Modern Revival of Natural Law Theory**

A revival of natural law theory began in the 1940s<sup>31</sup> and has continued to influence theological, philosophical, political, and ethical disciplines to the present. During the Nuremberg War Trials, the World Court could find no basis for condemnation of Hitler and his regime's crimes of genocide based on the then existing laws in Germany. Through a legal theory referred to as legal positivism, human beings formulated and passed into law the mass execution of other human beings.

Faced with such a dilemma, the World Court recognized the need to appeal to a higher law, one outside of the legal theory that had justified the extermination of millions of Jews. Heeding the outcry of the world community and sensing their outrage of an offended conscience, the World Court's deliberations resulted in a revival of Natural Law theory.<sup>32</sup>

It is important to note, however, that in response to the atrocities of the Holocaust, the United Nations adopted *a secular concept of natural law theory* in the formulation of the Universal Declaration of Human Rights (UDHR). In its medieval conception, natural law emphasized the obligations of man in an objective moral order, much like that envisioned by Thomas Aquinas. Under this system, the state took on a paternalistic

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<sup>30</sup> In fairness, it is proper to mention that from a Reformed perspective, there is more authority and involvement of the church regarding its individual members. However, Grotius was an Arminian, which meant that he believed and stressed the free will of the individual much more than the Reformed position.

<sup>31</sup> This paper intentionally bypasses the American Founding Era and the ideas of the Founding Fathers regarding the law of nature precisely for the reason that their concept of *the law of nature* diverges from the common understanding of *natural law* traceable to Thomas Aquinas. The fundamental difference between both concepts is that the law of nature, derived from John Locke, an English philosopher of the Enlightenment, stressed individual rights, as opposed to natural law, which is constructed against the backdrop of an objective moral order that stressed as its corollary an organic concept of society that stifled individual rights, especially in the area of religious convictions, as reflected in the pre-Reformation condition of society dominated by the Roman Catholic Church.

<sup>32</sup> John Warwick Montgomery, "Law and Christian Theology: Some Foundational Principles," in *Christians in the Public Square: Law, Gospel, and Public Policy* (Calgary: Canadian Institute for Law, Theology, and Public Policy, 1996), 119-123.

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attitude toward its citizens, even to the point of concerning itself with their eternal welfare. However, Enlightenment thinkers of the eighteenth-century, such as John Locke,<sup>33</sup> altered the concept of natural law to one that stressed the rights of man and individual conscience. The state, through a social contract, then became merely an agent of its citizens.<sup>34</sup> Locke referred to this concept as “the law of nature” rather than the former natural law tradition. Under this system, the rights of the individual citizen were protected from an oppressive state on the one hand, and from the moral dogmatism of religion on the other.<sup>35</sup>

The formulation of the UDHR took Locke’s concept one step further.<sup>36</sup> Rather than employing the term “natural rights” as Locke did, they opted for the term “human rights.” Their rationale was based on the need to distance their concept from the deistic element that formed a subtle part of Enlightenment thought. In order to embrace the atheistic element of the world community, they grounded “human rights” in “the dignity of the human person.” Thus, the UNDHR may correctly be viewed as a secular document that seeks to neither endorse, nor deny the existence of God. It is a document that offers grounds for the protection of the individual who either adopts a theistic worldview, or a non-theistic worldview.<sup>37</sup>

A third example of an appeal to a “higher law” took place in America during the Civil Rights movement of the 1960s. Martin Luther King, Jr., in “Letter from a Birmingham Jail,” appealed to that law of justice that is even higher than rulings of the Supreme Court and to that law that called for racial equality. While King was definitely influenced by his Protestant upbringing, one should not overlook the influence of Mahatma Ghandi, a Hindu, upon the formulation of ideas and actions, such as passive resistance, undertaken by King to end racial discrimination.

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<sup>33</sup> Wilson Ober Clough, *Intellectual Origins of American National Thought: Pages from the Books Our Founding Fathers Read* (New York: Corinth, 1961), 148.

<sup>34</sup> John McLaren and Harold Coward, eds., *Religious Conscience, the State, and the Law: Historical Contexts and Contemporary Significance* (New York: State U of New York P, 1999), 46-47.

<sup>35</sup> Ernst Cassirer, *The Philosophy of the Enlightenment* (Boston: Beacon, 1962), 239.

<sup>36</sup> Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: U of Pennsylvania P, 1999), section 8.1, “A Bargain About God and Nature,” 283-290.

<sup>37</sup> Bahiyyih G. Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection* (The Hague, Netherlands: Martinus Nijhoff, 1996), 3.

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In each of the previous examples, the historical facts of each case have shown that appeal to a “higher law” can be made without reference to the Roman Catholic Church. In some cases, the appeal has its basis quite apart from any specific religious persuasion and therefore can have a much broader appeal and application to humanity in general.

**Benefits of and Objections to Thomistic Natural Law Theory**

The most obvious benefit of Thomistic Natural Law theory is that it is established upon a system of laws that give structure and order to society. Such a benefit is in contrast to classical natural law theory, which was devoid of specific content. John Warwick Montgomery points out that natural law theory, at least its classical formulation, was devoid of specific content, thus producing the need for legal realism which was developed to replace it.<sup>38</sup> Thus, Thomistic Natural Law theory avoids that pitfall since it is replete with specific content, as reflected in Roman Catholic moral theology.

There exist, however, some objections to Thomistic Natural Law theory. First, in the most extreme liberal state (theoretically), the concept of law is not even recognized. It is assumed that citizens have inherent virtue and can so order themselves as to maintain a just moral order. From this perspective, Aquinas’ version of state governance is irrelevant because it is founded upon a structure of laws.

Second, modern liberal states view themselves not as the product of theistic (as opposed to deistic) intervention; rather, they see themselves as the product of social compacts drawn up among citizenry. The state is viewed more as the product of men and not so much as a divine institution. As such, there is no “divine right of kings,” as upheld by the Aquinian synthesis. Rather, democratic government is “of the people, by the people, and for the people.” Such a stance rejects the fundamental purpose of the state under the Aquinian system, which is to persuade its citizenry toward the end of eternal law, namely, adoption of religion and its consequent practice in the life. In a moderate liberal state, such as America, the purpose of government is to protect its citizens in the free exercise of their religious preferences, *or lack thereof*, and not to guide them in the pursuit of religion. Kenneth R. Craycraft, Jr., formerly Assistant Professor of Theology at St. Mary’s University (Catholic) succinctly states:

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<sup>38</sup> Ibid., 118.

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From the political and theological left, to the political and theological right, the American idea of religious freedom is hailed as the universally valid theory, one which the Church ought to champion and all people ought to embrace. It is my contention that this is to embrace and celebrate a moral and political system that was designed to erode authentic commitment to revealed religion, especially as represented by the Roman Catholic Church. The extent to which we embrace this theory of religion is the extent to which we jeopardize the freedom of the Church to exercise its divine mandate to propagate the gospel as it sees fit.<sup>39</sup>

Third, all modern liberal states with a democratic political system provide for the rights of the individual. Contrariwise, in Aquinas' system, the citizenry is viewed as an organic body that needs guidance from an established monarchical head. It does not allow for individual rights. John Adams, well aware of the threats to liberty posed by such a system, exclaimed in a letter to Thomas Jefferson, May 19, 1821, "Can free government possibly exist with the Roman Catholic religion?" Jefferson considered a monarchical form of government as compounding the abuses suffered by its citizens, "If all the evils which can arise among us, from the republican form of government, from this day to the day of judgment, could be put into a scale against what this country suffers from its monarchical form in a week, or England in a month, the latter would preponderate."<sup>40</sup>

In summary, Aquinas intertwines concepts of eternal law with natural and human law to produce the epistemological foundation for a strongly theistic state. The political system best suited to such a system is the monarchical form. It enables the state to achieve the end for which it exists, namely to guide its citizenry toward what is for their best good – religion and their eternal welfare. Negatively, however, it is by its very nature opposed to freedom of religious convictions.

### **The Dilemma of Law and Liberty**

From a Christian perspective, both Roman Catholics and some Protestants argue that the Ten Commandments can serve as a basis for specific content of a natural law. In Romans 2:14, the issue of those without

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<sup>39</sup> Kenneth R. Craycraft, Jr., "Religion as Moral Duty and Civic Right," in *Catholicism, Liberalism, and Communitarianism*, Kenneth L. Grasso, Gerard V. Bradley, and Robert P. Hunt, eds. (London: Rowman and Littlefield, 1995), 72.

<sup>40</sup> Thomas Jefferson, *The Writings of Thomas Jefferson*, 6:232.

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*the* Law being “a law unto themselves” introduces the concept of natural law theory. This exegesis suggests *the* Law (eternal and God-given) and *a* law of nature to which all men have access. Based on the grammatical construction in verse 15, the idea of *the* Law in relation to “conscience” is introduced. This observation implies a standard, the Law,<sup>41</sup> to which the conscience is oriented.<sup>42</sup> Elaborating this point further, Douglas Stratton refers to the primary principles of conduct that are found “in all of the major cultures of mankind, Hindu, Buddhist, Confucian, Zoroastrian, Greek, Judeo-Christian, [and] Islamic.” He concludes by stating,

Finding the main content, then, of *the last five of Moses’ commandments*, the ethical “laws,” or close parallels to them, widely throughout human civilization, constitutes strong historical or empirical evidence *that basic qualities of conscience, or ideas of moral law, are similar or native to mature human life on a universal scale.*<sup>43</sup>

Roy B. Zuck succinctly argues, “Therefore, based on ethnology and New Testament usage, the conscience can be defined as ‘the inner knowledge or awareness of, and sensitivity to, some moral standard.’”<sup>44</sup> Zuck’s statement, “some moral standard,” combined with Stratton’s observation about the last five of Moses’ commandments, produce specific content of

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<sup>41</sup> Jeffrey Lamp argues that Paul here refers to the Law given to the Jews and which, according to Jewish tradition, had been disseminated among the nations. Thus, while not having the written commandment, Gentiles still had a knowledge of the just requirements of the Law through a quasi-specific revelation by means of oral transmission (Jeffrey S. Lamp, “Paul, the Law, Jews, and Gentiles: A Contextual and Exegetical Reading of Romans 2:12-16,” *Journal of the Evangelical Theological Society*, 42/1 (March 1999): 44-46.

<sup>42</sup> Roy B. Zuck, “The Doctrine of Conscience,” *Bibliotheca Sacra* 126/504 (October-December, 1969): 333; William E. May, “The Natural Law, Conscience, and Developmental Psychology,” *Communio* (Spring, 1975): 10; John Coulson cogently argues, “To disobey the moral law is to disobey our natures, since they are created by God, the author of that law, and this is perhaps how the metaphor of conscience as an inner voice or dialogue arises.” He further contends (157), “To admit the claims of conscience is to admit the existence of a law which has conditioned that conscience and of a law-giver, the author of that law” (John Coulson, “The Authority of Conscience,” *The Downside Review* 77/248 [Spring, 1959]: 151); Allen Verhey argues the same point in “The Person as a Moral Agent,” *Calvin Theological Journal* 13/1 (April, 1978): 5-6.

<sup>43</sup> Douglas Stratton, “The Meaning of Moral Law,” *Andover Newton Quarterly* (January, 1965): 31 (italics mine).

<sup>44</sup> Zuck, 331.

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Natural Law for civil society composed of believers as well as unbelievers.

For Lutherans, such a distinction regarding the first four commandments and the last six is wholly proper. Since the first four commandments deal with an individual's relationship to his God, then the civil sphere has no authority in coercing the conscience. Martin Luther clearly established a line of demarcation beyond which no earthly or ecclesial ruler could pass when he stated, "Secular government has laws that extend no further than the body, goods, and outward, earthly matters. But where the soul is concerned, God neither can nor will allow anyone but himself to rule."<sup>45</sup> Thus, Luther, as opposed to John Calvin, recognized the limits of civil jurisdiction as applying only to the last six commandments.<sup>46</sup> The last six deal with an individual's relationship toward his fellow man, and thus properly can fall under the category of civil jurisdiction.

Additionally, for those who argue for a Scriptural basis for natural law with specific reference to the Ten Commandments, it can be posited that it provides justification for God's judgments of unbelievers. Since everyone, according to Scripture, will be judged, it is a logical corollary that there must be some standard of judgment for all, even for those that are biblically illiterate and for unbelievers. Scripture declares that nature testifies of God's invisible qualities.<sup>47</sup> Even among non-biblical literature, V. A. Rodgers refers to the relationship between "the gods and men, and [divine] law and men's uneasiness when approaching death for not having kept it."<sup>48</sup> Thus, the Decalogue as the basis for natural law theory teaches that all men have some basic knowledge of God and His just requirements, whether obtained through special revelation (the Bible) or through general revelation (nature). Such an understanding by each person justifies God in His judgment of each one.

Finally, since Law, whether the Decalogue or Natural Law, cannot save a person, concepts of either view of natural law theory provide a further impetus for Gospel preaching. The Law, whether the Ten Commandments or natural law, only serves to inform man of its standard and

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<sup>45</sup> Martin Luther, *On Secular Authority*, appearing in *Luther and Calvin on Secular Authority*, ed. and trans. by Harro Hopfl (Cambridge: Cambridge UP, 2002), 21.

<sup>46</sup> William A. Mueller, *Church and State in Luther and Calvin* (Nashville: Broadman, 1952), 128.

<sup>47</sup> Ps 19:1-8; Rom 1:22-26.

<sup>48</sup> V. A. Rodgers, "Sunedesis and the Expression of Conscience," *Greek Roman and Byzantine Studies* 10/3 (Autumn, 1969): 248.

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to convict when it has been violated. Rendering condemnation, the only remedy and hope for humanity lies in a clear proclamation of the Gospel and of the salvation freely offered by Jesus Christ.

Perhaps the central issue, however, regarding the Ten Commandments as a source of specific content for natural law theory is that it produces a conflict between law and liberty, at least spiritual liberty, for the individual. Some may argue that the Ten Commandments should not be separated, or divided into the “two kingdoms” schema of Martin Luther. Instead, they should be kept intact. The dilemma posed by such a position is that it results in restrictions of individual freedom of conscience in spiritual matters contained in the first four commandments. Such a dilemma is avoided in the Lockean Law of Nature theory.

**Benefits of Lockean Law of Nature Theory**

The most notable benefit of Lockean Law of Nature theory, from a political perspective, is that it provides State legitimization without sectarian dogma. A Law implies a Law-Giver, or Deity. Under the Lockean Law of Nature formulation, Deity combined with national myths sufficiently answer the philosophical questions of national existence, such as, what justification do we have for existence as a nation? and, why do we exist? *Since Deity is a generic reference to a Divine Being, no particular religious creedal formula, doctrine, or dogma is enforced in the public square.*

Such a transcendental element is necessary, as well, to avoid self-justifying nationalism. Only that nation which regards a Being, or Power, higher than itself can pass critical scrutiny upon its actions and motives, recognizing that accountability is a central tenet to national prosperity. Only through such critical self-examination can a nation avoid viewing itself as its own end.

Recognition of accountability to a Divine Being contributes toward rejection of “positivism” or legal realism. Rather than formulating laws based on the judgments of men and lowly temporal considerations, accountability to a Divine Being prompts men to seek true justice with a view to reaching a transcendental standard.

**Benefits of a Modern Natural Law Theory**

A Modern Natural Law theory offers a bridge between believers and unbelievers regarding moral values. Since the foundation of natural law theory resides in the nature of the beings in question—in this case, humans—the principles of natural law have general applicability to all of

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humanity since all humans share defining characteristics of the human race.

A further benefit of Modern Natural Law theory is that it provides a concept of church-state separation from a natural philosophical perspective. Without any particular theological perspective as its foundation, the concept of Modern Natural Law theory offers a philosophical platform for state legitimization without any creedal formula imposed by any religious group. Viewed from this perspective, a natural separation between church and state occurs that allows each to fulfill its purposes without undue interference from the other.

Thus, there seems to be much that can be gained from the course followed by the delegates to the United Nations who in 1948 ratified the Universal Declaration on Human Rights. Accepting the views of a diverse group of religious and non-religious persons, the delegates formulated provisions for the security of basic human rights that allowed respect for each group represented and that received broad reception.

#### **Application of Modern Natural Law**

At the beginning of this paper, I stated that modern concepts of Natural Law theory have current application to a sensitive social issue of our day. To that, I now turn. The debate regarding the legal status and the correctness of homosexual marriages is hotly contested.

Most, if not all, Christian groups oppose same-sex marriages and their legal recognition. They base this objection upon a *biblical* definition of marriage. Liberal groups argue in favor of same-sex marriage based on *individual rights*.

Which position is correct? Where is the common ground? From the perspective of modern concepts of Natural Law, same-sex marriages are wrong and should not be allowed. Consider the rationale behind such a conclusion through the use of several basic propositions. First, the tendency of the human race is toward life. In other words, under normal conditions, any human being seeks self-preservation and life, not death. So, our basic nature, as human beings, is toward continuity of life, or existence, rather than death. Second, based on anatomical considerations, the laws of nature arguably support heterosexual relationships. Such relationships offer the possibility of life through procreation. Third, same-sex marriages, under natural conditions, do not allow for procreation. Such unions would cause the human race to cease to exist within a few generations because there would be no further offspring. In this respect, such unions are against nature. Fourth, such a conclusion, derived from

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an appeal to reason and natural law, has application to both Christians and non-Christians because every human being, by nature,<sup>49</sup> shares the same characteristics of humanity, with distinction being made for gender differences.

The central theme of this paper has been to focus on common ground in the public sphere between believers and unbelievers. In seeking to achieve this balance, this paper has suggested that modern concepts of Natural Law theory present the most viable solution for common moral issues, such as homosexual marriage, as well as providing a reasonable foundation for social justice.

By tracing the historical development of Natural Law theory, it has been shown that the Catholic Church *does not solitarily dominate* concepts of Natural Law. To the contrary, Greek society first captured something of its essence and, much later, Protestant theologians formulated their own understanding of it. In modern times, ethicists and philosophers have advanced ideas of Modern Natural Law theory that are compatible with individual rights and modern liberal democracies.

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<sup>49</sup> The arguments mentioned here in favor of heterosexual marriage relationships are based solely upon nature being defined with respect to anatomical considerations and not the emotional, psychosocial factors that lead some individuals into proclivity toward the same sex. To address such issues is simply beyond the scope and intent of this paper. Additionally, “by nature” as used here in reference to procreation is with the intent of “in a state of nature”, thereby ruling out modern scientific methods of fertilization.