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.<1> 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-given rights to life, liberty, and property (Locke). The "God-givenness" of these basic rights serves, however, to exclude from public debate the question of how these rights – and especially how one's property – 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 essentially 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 finds 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 sources of this tradition, arguing that the "axial era" which saw the emergence of the world's principal 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 go on to 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 – a 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 full-fledged 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 in 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 – all of whom were, in some sense, "religious" and many of whom were sponsored by the Catholic Church – who, of all of the philosophical schools in human history (with the possible exception of the Hegelians) claimed the *most* for reason.

[5] There is, however, an entirely different way to read history, one for which there is considerable scholarly support. In order to tell this story it is necessary to remind readers of the extraordinary phenomenon of what Karl Jaspers called the Axial Era, the period between 800-200 BCE during which all of the principal world religions, or at least their parent religions, as well as the whole enterprise of philosophy, first emerged. The Axial Era was, first and foremost, a response to both the opportunities and the challenges of emerging petty commodity production. Afro-Eurasia as a whole seems to have undergone a rather protracted period of civilizational decline between 1000 and 800 BCE as tributary structures<2> went into crisis and gradually retrenched. By around 800 BCE, however, there were real signs of a civilizational revival. It is, specifically, just precisely around this period that we see the beginnings of specialized agriculture and crafts production. In the Mediterranean Basin this meant, above all, oil, wine, and the pottery in which to store and transport these agrarian products (Anderson; Ste. Croix), though there is some evidence that the Greeks also exported the occasional sophist for the amusement of Indian rulers (Thapar: 178). The West generally suffered a significant balance of trade deficit with both India and China, something that is reflected in the accumulation of vast hordes of Greek and Roman coins in both regions (Frank 1998; Thapar: 242). China exported silk (Frank 1998), India pepper and other spices, teak and ebony, and cotton textiles (Thapar). Southeast Asia entered the system later, largely as an exporter of spices and specialty woods. Peripheries such as the Horn of Africa and southern Arabia exported frankincense. Gold and textiles came from West Africa. Porcelain and tea entered the system later from India and China.

[6] Initially, the development of specialized agriculture seems to have taken place under the sponsorship of archaic or tributary structures. In Greece, for example, civilization seems to have revived around tribal and inter-tribal sanctuaries that, because they drew pilgrims for seasonal festivals, also became important market centers (Snodgrass). Elsewhere, where civilization had not collapsed altogether, tributary states sponsored investment in these new products (Thapar: 137-279). But in the long run specialized agriculture meant the emergence of markets – first local, then regional, and eventually "global" (i.e. Afro-Eurasian) in scope. Increasingly, investment decisions were dictated by the complex interplay of supply and demand. Thales of Miletus, for example, who is generally credited with taking the first steps towards the development of an abstract mathematics, also discovered the law of supply and demand. Foreseeing an unusually good crop of olives one year, he secured control of every olive press in his region, and then demanded monopoly prices for the their use – though at least one story suggests that having made his theoretical point he relented and lent the presses at their "fair" or "natural" price (Turnbull: 79-82). Archaic and tributary structures became subordinated to what eventually, with the completion of the Silk Road around 200 BCE, became a global petty commodity system in which resources were allocated, at least in large measure, by a global market in luxury goods.<3>

[7] Politically this was a period of fragmentation. The Hellenic *poleis* were, first and foremost, sanctuaries-become-market towns that extracted surplus from their hinterlands by religious means or later by means of exchange rather than by coercion. Debt servitude and chattel slavery were later developments, which depended in part, at least, on the absence of a state structure that could provide effective economic regulation (Snodgrass;

Anderson; Ste. Croix). Small states prevailed in areas that, like 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, which in 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 *gana-sanghas*, a sort of republic in which power was held by the senior lineages of what was still in part a tribally organized pastoral-raiding society that had only partly adopted agriculture. Others were small kingdoms (Thapar: 98-173). Where larger tributary structures persisted they gradually altered their economic strategies, seeking to tax 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 exploitation of either their own populations or their trade partners. Such an outcome, however, required conscious leadership and intervention into the marketplace. The spontaneous tendency was towards rapid economic differentiation, as those with better land and better access to markets grew rich and those less well endowed grew poor. Peasants, who in many places had just been emancipated from tributary exploitation, found themselves falling into debt peonage and losing access to their land altogether. *Nouveau riche* elements, who cared nothing for the traditional obligations between classes, challenged sacral monarchs and priestly elites for power, so that political structures lost their integrity altogether.

[9] Life in a market society, furthermore, is intrinsically alienating. This is because people experience the society as a system of only externally related atoms (individuals) without any obvious ordering to a common end. This in turn shapes their experience of the universe as a whole. The result was the emergence of radically skeptical and materialistic ideologies such as Hellenic atomism and sophism (Collins: 86-89, 145-48), the Indian Caravaka school (Chaterjee: 56-64), and Chinese Legalism (Collins: 148-55), all of which restricted the scope of human knowledge to objects of sense perception, denied the ultimate meaningfulness of the universe and the existence (or at least the actual supremacy) of the gods, and regarded morality as at best a set of conventions necessary for humans to live together and at worst as simply a way of legitimating particular social interests (Mansueto 2000, 2002b; Mansueto and Mansueto).

[10] This is the common social context of all the “axial age breakthroughs.” Where the great tributary empires of the Bronze Age had used religious meaning to legitimate exploitation, petty commodity production called meaning itself into question and made it a problem – *the* problem that *constituted* metaphysics. Humanity’s principal wisdom traditions, which all flow out of this period, are simply different ways of approaching this problem: different ways of answering the question of meaning. And these diverse answers to the question of meaning also became ways of grounding – or rather re-grounding – moral discourse. Indeed, this is the fundamental idea behind natural law ethics. One must first understand the nature of things and the end to which they are ordered. Right action is action that promotes growth and development – development towards the *telos*. But however different the answers that the various axial age traditions offered to the problem of meaning and value, they all relied in significant measure on a common method – that of rational dialectics – a method which made dialogue, debate, and cross-fertilization possible.

[11] Let us look briefly at how this worked. In the western philosophical tradition deriving from Socrates, Plato, and Aristotle, one rose rationally to a first principle by passing through the hierarchy of the sciences, arriving at last at knowledge of the Good, or the Unmoved Mover that, in later formulations of the tradition, became identified with the God of Judaism, Christianity, and Islam and was understood philosophically as what ibn Sina called the Necessary Existent and Thomas Aquinas *esse* as such: the very power of being. Everything participates in Being to the extent of its capacity and in accord with its nature. Ethics is fundamentally a matter of cultivating the capacities through which we participate in Being and of creating a social order that makes such cultivation possible. The emphasis is thus on cultivating human creativity. The Confucian tradition, in many ways, quite similar, understands the first principle as *T’ien* (Heaven) or *T’ai Chi,* (The Great Ultimate) which is, first and foremost a principle of order and creativity. Confucian ethics thus

stresses the cultivation of human creative capacities. The Taoists, on the other hand, with their understanding of the first principle as an ineffable *Tao* or *Wu Chi* (the Infinite), are much more reluctant to draw out specific moral norms and argue instead for a way of life in tune with the mysterious flow of the *Tao*. Buddhism understands the first principle as either *sunyata* (emptiness) or else as the *alayavijnana* (basis consciousness), which encourages an ethics focus on detachment, meditative absorption (*samadhi*), or both. In all cases, however, the basic *approach* is the same. One first tries to understand the nature of things and then draws out ethical conclusions regarding what will help things to realize their essential nature. And the effort to understand the nature of things, even if it often makes reference to myths or scriptures understood to be in some sense revealed, is fundamentally a rational process, fundamentally a dialectic. Indeed, during the Middle Ages, it was not at all unusual to see Jews, Christians, and Muslims engaged in disputations with each other, and for philosophers nominally from different religious traditions to find themselves closer to each other than with their co-religionists. The same was true of the golden age of Indian Buddhism where, at great monastic centers such as Nalanda, the various schools disputed with each other, with the Jaina, and with the emerging Hindu *darshanas*, and of China from the *Han* dynasty on, where there was a tremendous cross-fertilization of Taoist, Confucian, and Buddhist concepts.

[12] This is, however, only one side of the story. The axial age was also a period of radical *democratization*, though in a very different sense than that celebrated by Enlightenment partisans of Greek democracy. Much has been made of the Hellenic *poleis* and the Hindu *gana-sanghas*, both by those who regard them as the first steps in a protracted democratic revolution and by those who point out, quite correctly, that they were far from being *popular* democracies, but were, rather, more like warrior republics or merchant and landowner oligarchies. But the more important democratization took place at the *religious* level, a point first recognized by the French “left-traditionalist” Pierre Simon Ballenche, who developed a sophisticated argument showing that the class struggles of the ancient world were in fact struggles over the cult, marks of an attempt on the part of the lower classes to gain full access to religion and thus claim their full humanity (Millbank: 69). This is, once again, true across Eurasia. Thus in Greece, the mystery cults made accessible to initiates from all lineages and social classes secrets of immortality that had once been the property only of the priestly lineages. Elected religious leaders in many cities replaced these lineages in the critical offices of *basileus* and *epyomous archon,* the two chief magistrates responsible for organizing the traditional and new religious festivals respectively and thus in the aristocratic Areopagus that was henceforth composed of former magistrates. Greek drama carried this process further, allowing playwrights without any formal religious standing to present reinterpretations of traditional religious stories that spoke to the new struggle of life in an increasingly urban and mercantile society. And of course philosophy makes the fundamental questions of meaning and value a matter of public debates in which everyone can, to the extent of their ability, participate. Indeed, it is possible to read the democratic revolutions in Greece as first and foremost a struggle for full *religious* participation. Much the same was true in India. The Upanishads, Jainism, Buddhism, and the devotional cults of Puranic Hinduism opened up for the masses the possibility of full participation in a religious life that had previously been the preserve of a Brahmin elite. And in China, the Confucian and Taoist traditions redefined “nobility” in a way that stressed intellectual and moral development rather than birth (Confucius:IV.15; VIII.2, 7; XIII.20; XVI.8).

[13] This process of democratization did not, to be sure, reach its full potential during the Axial Era or the Silk Road Era that came after it. As Eurasia became linked up in the global network of trade in luxury consumption known as the Silk Road, large states re-emerged that attempted to capture as much as possible of this trade for themselves. While some of these states (Qi China and the Roman Empire) embraced an essentially nihilistic ideology or none at all, others sought legitimation from the increasingly powerful Axial Era philosophical and religious traditions, something these new elites provided even when the states in question were very far from cultivating philosopher kings or realizing the mandate of heaven. At the same time, there can be little question that they played an important role in tempering the rapacity of those same states, and in redirecting surplus towards activities that promoted the development of human capacities. This was, once again, true throughout Eurasia. The Confucian idea of the sage-king created an ideal that kings who were less than sages, in drawing on it for their legitimation, had at least to emulate. The result was periodic reform that made China the world’s leading economy. Buddhist monasteries in India, China, and Southeast Asia captured surplus that might otherwise have been squandered on luxuries and invested that surplus in the arts, sciences, and philosophy.

The Islamic institution of the *zakat*, a wealth tax of between 2.5 and 5% at once provided an incentive for economic activity (lest one's wealth all be taxed away) and a reliable source of surplus that supported not only almsgiving but also such critical civilizational investments as the Caliph al-Mamoun's *Baith Hokhmah*, 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 held 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 served as the guardian not only of revealed wisdom, but also of natural law, which would stand against the warlords when they were unjust. Specifically, they fought vigorously if not always successfully to wrest from the warlords and especially from the emerging monarchs the right to name bishops and thus to have in place local religious leaders who could challenge the warlords when they acted contrary to natural law.

[15] The European Middle Ages differed, however, from the same period in other parts of Eurasia precisely because of a gradual radicalization of the democratizing dynamic that was inherent in Axial Era religions, but which had to some extent been lost, even when those religions continued to play a progressive role in other respects. The most important manifestation of this was, of course, in the guild system. There is, to be sure, evidence for guild-like organizations in India (Thapar: 300, 463, 471) and in other parts of the world, but it was only in Europe that they gained effective control over crafts production, advanced, through the communes, to a significant degree of political power, and became the model for the re-organization of intellectual and religious life through the universities and the mendicant orders. Europe was, in other words, in the process of gradually realizing the democratic promise of the axial age.

Capitalism and Secularism

[16] It was, however, also developments in Europe that lead ultimately to the global defeat of the tradition of axial age philosophical democracy. After a long period of growth and development, Europe began running up against land shortages in the middle of the twelfth century. These land shortages affected the warlords in particular, since the laws of primogeniture meant that the younger sons of the nobility were left landless unless the lords for whom they fought as knights bachelor were able to conquer new lands to grant out to them as fiefs (Andersen). This created an expansionist dynamic that bore fruit in the Crusades, the *Reconquista*, and eventually in the conquest of Africa, the Americas, and Asia. These conquests at once strengthened the emerging monarchies, which claimed for the first time full sovereignty over entire territories and their peoples, and set in motion the process of capitalist development, first opening up to Europe trade routes once controlled by *Dar-al-Islam* and eventually flooding Europe with African gold and American silver, which allowed the relatively backward Europeans to buy into the Silk Road Trade and begin the primitive accumulation of capital that eventually made possible the Industrial Revolution (Frank 1967).

[17] The democratic rights and exemptions from royal and seigniorial authority of small communities such as guilds, communes, mendicant orders, monasteries, and universities – as well as the hegemonic natural law consensus – represented a real obstacle to the development of both capitalism and the modern nation state. The marketplace, after all, is agnostic regarding substantive questions of value and "knows" only supply and demand. The idea, integral to the natural law tradition, that resources had to be used in a way that served the common good would have made capitalist development impossible. And sovereignty –whether it is exercised by an absolute monarch or by an elected legislature controlled (as they generally have been in the modern world) by the bourgeoisie – means the ability to actually *make* laws. The vast lands held by the Church in mortmain, which the peasantry cultivated on relatively favorable terms, almsgiving that reduced pressure on the landless to seek work in the cities, restrictions on usury, and the limitations placed by the Church on private property, which was understood as a trust from the community – and ultimately from God – to be used

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 Crusades and *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 Islam – rights that included the operation of its own Inquisition that was far more brutal and repressive than Rome's own Holy Office. This 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, but which now sought special "Gallican Freedoms" that made the local Church subservient to the crown. Eventually, however, the French monarchy faltered in its modernizing mission and was swept away by the rising bourgeoisie. Where geopolitical factors set local monarchies and bourgeoisies in tension with these great "Catholic powers," as in England, the Netherlands, and parts of Germany, the result was the more complete 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 the right 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 1270, Stephen Tempier, Bishop of Paris and a *de facto* agent of the French King, issued condemnations of "Radical Aristotelian" propositions which included a 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 supposed 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 most 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 *modern* phenomenon 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 will. 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 means of

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 (*Metaphysics* XII.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 monks (Swearer: 63-94), 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 – the wisest and most prudent – 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 policy of 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 (I-II: 90.1, 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, aristocratic, or monarchic, and all forms of modern political theory, and it is one of Maritain's central contributions to point it out. The modern state is sovereign – it is, or at least claims to be, outside of and

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 hand, 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 full range of humanity's wisdom traditions, philosophical 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,<4> 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 sovereign state, is hardly 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 natural law 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, there are ways in which both "upper" and "lower" houses can be restructured to encourage the sort of dialogue advocated in this paper. There is considerable reason to believe that party-list 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 the presence of a wide range of perspectives, but does little to ensure the wisdom of those elected. Election or nomination by religious or ideological communities leaves unsettled the question of which communities get to elect or nominate. How big does a sect or ideological trend have to be before it can claim representation? Even so, such a body, even very imperfectly constituted, would add a missing element to our polity. While the lower house concerned itself with prudential questions – what policies constituted the best means to promoting the ends of human life – the upper house would examine policy proposals from a sapiential perspective: what ends do these policies serve and are they the ends we ought to be pursuing? Such a body, or panels nominated from it, might also serve as a sort of natural law Supreme Court.

[36] A natural law polity could be rendered either more democratic or more aristocratic (in the strict Aristotelian sense) by adjusting the relative authority of the two houses. The upper house could have the right to initiate legislation and to pass on each and every proposal that came before it (like the U.S. Senate), it could be given only the power to delay legislation (like some European upper houses), or be restricted to a purely advisory role. While the right of various communities to determine just who is qualified to represent them in the upper house must be respected, it is vitally important that at least some seats be open to those who demonstrate their wisdom outside of ordinary religious or academic institutions. Saints, *tzadiks*, and *bodhisattvas*, those who are actually the most wise, are more often found in the workshops of craftsmen or in poor villages than they are in *cathedra*, whether episcopal or professorial.

Conclusion

[37] A polity of the sort we have described is, of course, a long way off. Neither modern secularists nor religious fundamentalists have much to gain from it. But it offers the only real solution to the profound cultural conflicts that characterize the present period, and indeed the only way for our society to meet the challenge of what may well be a crisis not only of our principal social structures (capitalism, socialism) but of our whole civilization – of the whole modern drive to transcend finitude by means of scientific and technological progress. It allows us to rethink what we are about as a society and as a species, without requiring that we reject in advance who we are now. A natural law polity provides ample scope for both secularists and fundamentalists to participate fully and freely in the public arena on a par with other trends – it just requires that they make a case not only for their *conclusions* but also for their *principles*. And it opens up the possibility of participation to perspectives that are now fundamentally excluded while *ruling out in advance the possibility of ideological monopoly*. And above all it represents a far fuller realization of the democratic dream, which reaches back behind modernity to the Axial Era, by empowering everyone to participate in the debate not only about means, but also about ends. And that is what being human is all about.

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