

Natural Law Liberalism: A Framework for Promoting the Sanctity of Human Life

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ABSTRACT: This essay analyzes the conflict between two major public philosophies that compete to be the public philosophy of the United States: contemporary “antiperfectionist” liberalism and natural law liberalism. After describing contemporary liberal public philosophy, especially by reference to the thought of its most influential figure, John Rawls, the essay comments on some of the inadequacies of Rawlsian public philosophy, particularly with respect to abortion. It then gives an account of the core principles and tendencies of liberalism and shows why natural law theory can and should embrace these core principles and tendencies, even while directing and elevating them. Finally, it applies this “natural law liberalism” to contemporary life issues.

EVERY SOCIETY HAS an implicit “public philosophy”—a set of views about human life and the universe that help to explain its actions in history. The public philosophies of actual historical societies—perhaps especially modern democracies—are inevitably, to a significant extent, mixed-up and incoherent, not only because individual human beings themselves so often hold incoherent views but also because public policies are typically compromises that emerge from conflict among the very divergent views of different individuals and groups. And yet, over time, societies resolve particular issues and add to (or subtract from) the core of agreement about important aspects of the human good that constitutes a public philosophy. The battle to determine the content of the public philosophy will therefore shape many lives.

In this essay I want to describe the conflict between two major public philosophies that compete to be the public philosophy of the United States: contemporary “antiperfectionist” liberalism and natural law liberalism.

There are five parts to my presentation: first, I will describe contemporary liberal public philosophy, especially by reference to the thought of its most influential figure, John Rawls. Second, I will briefly comment on some of the inadequacies of Rawlsian public philosophy, particularly with respect to abortion. Third, I will describe the core principles and tendencies of liberalism. Fourth, I will try to show why natural law theory can and should embrace these core principles and tendencies, while also directing and elevating them. Finally, I will apply this “natural law liberalism” briefly to contemporary life issues.

CONTEMPORARY LIBERAL PUBLIC PHILOSOPHY: THE RAWLS PROJECT

The most influential Anglo-American social philosopher of the second half of the twentieth century was John Rawls, and his influence extended well beyond academia, especially through various public intellectuals who applied his philosophy to current issues. Rawls’s political philosophy was by no means the only version of liberal political philosophy but his was clearly the most important one.

Rawls

The key feature of Rawls’s political philosophy of interest to us is its commitment to “neutrality” among competing conceptions of the human good and the requirements of “public reason.” Like the originators of the liberal tradition, Rawls begins with the problem of differences that portend political conflict. We see this in Hobbes and Locke, with their description of a state of nature in which isolated individuals desire self-preservation above all, but are faced with potential conflicts that threaten it—in Hobbes, this is the famous “war of all against all.” Men create civil society and transfer their executive

power to enforce their desire for self-preservation to government, but (especially in Locke) on the condition that government confine itself to the duty of protecting life, liberty, and property.

That Rawls shares this starting point is clear from the introduction to the paperback edition of his second major book, *Political Liberalism*.¹ In that introduction he asks the question: “How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines?” Why *this* question? Rawls starts from a view of medieval Christianity and the Reformation. The ancient world never knew “the clash between salvationist, creedal, and expansionist religions” that arose only with the Reformation. The Catholic Church and the Reformers were both dogmatic and intolerant, having no doubts about the nature of the highest good or the basis of moral obligation in divine law. Their problem was this:

How is society even possible between those of different faiths? ... For many, [toleration was] acquiescence in heresy about first things and [in] the calamity of religious disunity. Even the earlier proponents of toleration saw the division of Christendom as a disaster, though a disaster that had to be accepted in view of the alternative of unending religious civil war.... What is new about this clash is that it introduces into people’s conceptions of their good a transcendent element not admitting of compromise. This element forces either mortal conflict moderated only by circumstance and exhaustion, or equal liberty of conscience and freedom of thought.²

Modern political liberalism, in contrast to earlier political thought inspired by Christianity, assumes the fact of a pluralism of comprehensive doctrines (religious and nonreligious) and sees this not

¹ *Political Liberalism* (New York NY: Columbia Univ. Press, 1993). This article draws on material from my *Natural Law Liberalism* (Cambridge UK: Cambridge Univ, Press, 2006), and more detailed citations can be found there.

² *Political Liberalism*, pp. xxiv-xxvi.

as a disaster but as the natural outcome of the activities of human reason under enduring free institutions. Only with the success of liberal constitutionalism did it become clear that social unity and concord was possible without agreement on a general comprehensive doctrine (religious, philosophical, or moral).

Thus, the historical origin of political liberalism (and of liberalism more generally) is the Reformation and its aftermath. For with it the problem of the essential conditions of a viable and just society, among people who are divided by profound doctrinal conflict, moved to (and continues to occupy) center stage.

The liberal response to this problem has generally been to “bracket” fundamental questions that might lead to deadly conflict such as the Reformation Wars. That is, questions like ultimate religious truth are taken off the political stage and are left for individuals to pursue privately. They are placed, in principle, outside the scope of politics. Civil society must be “neutral” with respect to the competing comprehensive views about the human good, tolerating all different religious and philosophical views, at least up to the point where people’s comprehensive views compel them to interfere with the freedom of others. If people go beyond that point, then society need not tolerate their actions. This requirement of neutrality must extend beyond religion to all “comprehensive” views, including moral and philosophical views as well as religious views. Political life, in Rawls’s view, must be based on principles that are acceptable to people of fundamentally different comprehensive views.

Rawls develops a concept of “public reason” in order to facilitate this goal. According to Rawls, “our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. Therefore, the ideal of citizenship imposes a moral duty of civility. Citizens violate the conditions of a peaceful democratic society if they ground their political speech and

action on their own comprehensive views rather than on views that they can reasonably expect people of different comprehensive views to understand and accept. (In response to certain obvious criticisms of this approach—one thinks immediately of Martin Luther King, Jr.’s appeal to religious ideals in the fight for racial equality—Rawls qualified his position to allow people to appeal to comprehensive views if and only if they also make arguments consistent with public reason.³)

Rawlsians and the Sanctity of Human Life: Abortion and Slavery

What are the implications of a “neutralist” contemporary liberalism that employs a Rawlsian notion of “public reason” for key issues regarding the sanctity of human life? Rawls himself did not speak much about practical political issues, but in *Political Liberalism* he explicitly (albeit in a footnote) adopted a “pro-choice” position on the issue of abortion. He began by stating that, in the case of mature adult women, there are three important political values involved: “the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens.” He then argued that “any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required to give it substance and force.” He also suggested that the abortion right might be broader, at least in certain circumstances, apparently arguing for an extension of the abortion right into later stages of pregnancy.⁴

In the face of some trenchant critiques, Rawls backed off this view in the introduction to the paperback edition of *Political Liberalism*,

³ *Political Liberalism*, pp. 247ff.

⁴ *Political Liberalism*, pp. 243-44.

admitting the possibility of anti-abortion arguments compatible with public reason.⁵ But I think it is fair to say that most Rawlsians would still defend a right to abortion.

This is not surprising, in light of the similarity between Rawls's general goal of putting controversial moral views off-limits to politics and the general political strategy of those who favor abortion rights, which is to argue not for the morality or goodness of abortion but for "bracketing" the issue and leaving it to private choice.

But this attempt to bracket the morality of abortion just will not work. Opponents of abortion rights—defenders of the right to life of the unborn—have frequently responded to the idea of "choice" employed by defenders of abortion rights by drawing a parallel between abortion and slavery. The pro-life argument is that there is no principled distinction, as to the general kind of argument being made, between abortion and slavery. In particular, the issue of the morality of abortion cannot be "bracketed"—put to the side and left to private choice—any more than the issue of the humanity of the black slave can be bracketed. (The latter strategy was the one adopted by Stephen Douglas in his debates with Lincoln, in which he argued that slavery should be a matter for the people of a state to decide in whatever way they pleased.)

Princeton professor Stephen Macedo claims to be following Rawlsian principles in his contention that pro-abortion arguments meet the test of public reason while pro-slavery arguments did not. Macedo's position is that abortion "comes down to a fairly close call between two well-reasoned sets of arguments" and therefore "the best thing for reasonable people to do might be to acknowledge the difficulty of the argument and the burdens of reason, to respect their opponents, and to compromise with them, to find some middle ground that gives something to each side while the argument goes forward." Macedo explicitly rejects arguments by John Finnis and Robert George that abortion is not usually even a close call. He specifically denies

⁵ *Political Liberalism* (2005 expanded paperback edition), Introduction, pp. liv-lv.

George's argument that the development from zygote to adulthood occurs without "substantial change." He more or less simply asserts that it is "unreasonable to deny that there are reasonable grounds for ascribing substantial moral weight to the development of basic neural or brain functions—the development of some sort of sensory capacity, consciousness, or sentience—and perhaps viability."⁶

Macedo misunderstands George's argument in at least one important respect and fails to come to grips with it in another. First, he seems to understand George's argument about "substantial change" to mean "a lot of change," when in fact George's key argument is that there is no *essential* change; that is, the "something" that the zygote is never at any point becomes, in the course of developing into a mature human being, some other kind of thing (some other substance) than it was as a zygote. It changes in many ways—as in the example of developing basic neural or brain functions or becoming viable outside the womb—but those changes never at any time involve a change from its being one thing to another, different thing, as occurs, for example, when the sperm and the egg unite and those two things become one new essentially or substantially different thing. The ball is still in Macedo's court: what is the substantial or essential change that occurs after conception, such that before that point, the thing was not the same human being it is after that point, and possessed of the same fundamental rights? The fact of the matter is, as George and Patrick Lee have argued, that each of us once *was* a zygote, while none of us ever was a sperm or an egg.⁷

Macedo does not *argue* that it is "unreasonable to deny that there

⁶ For citations here, and throughout this section, see Robert P. George and Christopher Wolfe, "Natural Law and Public Reason" in *Natural Law and Public Reason*, ed. Christopher Wolfe and Robert P. George (Washington, D.C.: Georgetown Univ. Press, 2000).

⁷ Robert George and Patrick Lee, "Acorns and Embryos," *The New Atlantis* (Fall 2004/Winter 2005). Available at: <http://www.thenewatlantis.com/publications/acorns-and-embryos>.

are reasonable grounds for ascribing substantial moral weight” to certain developments (neural or brain functions, viability)—he just asserts it. George’s principle is simple and straightforward: the “thing” in the womb is a human being, from conception onward. As a human being, it shares with other human beings certain fundamental rights, including a right not to be killed. If there are reasonable grounds for saying that more developed human beings should not be killed, but less developed human beings can be killed, then Macedo ought to give them. But, frankly, I doubt that any argument about the moral quality of a human life that turns, for example, on lung capacity—as the viability argument does—will meet the most minimal standards of reason, or even Rawlsian public reason (however much that specious distinction may appeal to certain persons).

This is not to say, of course, that the proponents of the abortion rights position have no legitimate concerns on their side. And therefore, as Macedo argues, “the best thing may be to try and give something to both sides,” to find some middle ground. But *Planned Parenthood v. Casey* (contrary to his suggestion) is not the middle ground since it gives virtually no weight to the innocence and right to life of the unborn child. A proper middle ground would be something more like this: public policy should (1) prohibit abortion, in order to give fair weight to the unborn child’s right to life; (2) provide assistance (financial, medical, emotional) to women with difficult pregnancies, in order to minimize the costs of carrying through such pregnancies; (3) promote easier adoption laws, to provide for children whose biological parents are not able or willing to care for them (and to minimize the long-term costs of carrying an unborn child to full term); (4) educate people (especially young people) to the enormous costs (especially human costs) of irresponsible sexual activity and also to the equal responsibility of men for the children whom they help to conceive; and (5) focus penalties for abortion not on pregnant women but on those who provide them with (and profit from) abortions.

Now, some people (including most academics) will probably find

this “middle position” frankly outrageous on the grounds that it simply represents the position embraced by the pro-life movement in this country—and on that point they would be right. This experience of outrage may be useful, however, if it gives them some inkling of how their opponents feel when *Casey*, and a variety of other purported “compromises,” are described as “middle ground” in this debate.

But let me return to the question of public reason. We have seen Macedo’s position on abortion. What is his position on slavery? The question arises, of course, because of some of the striking similarities between the two issues. Macedo says—without explaining why—that “there is something a little slick in drawing quick analogies between slavery and abortion in order to impugn public reason.” But there is nothing slick about that analogy at all—it is quite solid. If anti-abortion arguments fail to meet the test of public reason today, would anti-slavery arguments have met the test of public reason in the 1850s? I think the answer is clearly “no.”

Macedo’s argument is that “projecting myself back to, say, 1857, it seems quite doubtful to me that the merits of the arguments for slavery would have appeared in as reasonable a light as do both sides in today’s abortion debate.... I suppose there were some whose defense of slavery, coupled perhaps with opposition to ‘wage slavery’ in the North, amounted to a reasoned public case, worthy of some sort of respect.” He then goes on to deny that this is grounds for principled compromise, citing George’s argument that “respect may sometimes be owed to persons who in general exhibit reasonableness and good will, but not to some position they have adopted, which one regards as so deeply misguided and wrong as to be unworthy of respect.”

The difference between abortion and slavery, then, is simple. Macedo thinks that both sides of the abortion debate really have reasons, so a “principled compromise” is appropriate, along the lines of *Casey*—which Macedo considers a compromise, though, by its own terms, it reaffirms “the central holding” of *Roe v. Wade*. On the other hand, even decent people who supported the slavery position had no

reasons but were merely the victims of circumstances and traditions that were indeed morally perverse, so that public reason would not have required some sort of principled compromise—such as Stephen Douglas’s position of leaving slavery to the states, perhaps.

The problem, of course, is that there were lots of Americans—and, yes, even decent ones—who believed strongly that slavery was just and good for everyone concerned, and there are lots of people today who believe that the pro-abortion rights position that Macedo finds reasonable is “so deeply misguided and wrong as to be unworthy of respect,” even though people of general reasonableness who happen to hold that position should be respected. Macedo has given us no persuasive reason to believe that there is any morally significant difference between the two cases.

If liberals want to provide a plausible defense of abortion, they cannot reasonably do it on the basis of “choice” (whatever rhetorical success they may have with that approach). They must defend the morality of abortion itself. And that argument will require either (1) a showing that there is some plausible point after conception in which there is a substantial change from something pre- and non-human to something human—which, as I have argued, cannot be shown, or (2) a concession that innocent human beings may sometimes be directly and deliberately killed—an argument that liberals are understandably loath to rely on in public discourse.

NATURAL LAW LIBERAL PUBLIC PHILOSOPHY

If contemporary liberalism does not provide an adequate public philosophy, then what would be an alternative public philosophy on which we could rely? In my book *Natural Law Liberalism*, I have argued that the best understanding of liberal public philosophy is one that is rooted in the natural law tradition. I want to give a brief description of liberalism, as I understand it, and then give an explanation for why those committed to natural law should find liberalism attractive, and also an explanation of why liberalism needs

to be rooted in the natural law.

Natural Law Liberalism

What is “liberalism”? Liberalism is not a single, seamless political philosophy, but rather a tradition with considerable variation. Still, to call it a tradition, we must be able to identify a solid core. What is that core of liberalism? I will try to describe it as five principles and six “tendencies.”⁸

Liberal Principles

The first principle of liberalism is the foundation of human dignity rooted in equality. If human beings are not born equal in all regards, they are at least equal in certain fundamental natural rights, among which are “life, liberty, and the pursuit of happiness.” No just political order can simply discount or ignore the well-being of certain members of the political community, reducing them to mere means to the well-being of others. This rules out slavery, serfdom, social castes, and other structural forms of inequality.

Second, political rule requires consent. No one group or class of people is born with a right to rule others. Autocracy, aristocracy, and theocracy are forms of despotism that deprive people of their requisite opportunity to participate in government. How broad that participation should be is controversial, even within the liberal tradition, but the consistent liberal impulse has certainly been to expand it. Consent in liberal theory began as consent to the form of government, which (in principle) might not be democratic. But in general—and increasingly over time—liberals have called for increasing, actual popular participation within the form of government. This rules out any form of absolute government and at least points in the direction of representative democracy.

⁸ For a more extended discussion, see *Natural Law Liberalism*, chapter 7.

Third, the purpose of government is the protection of rights. These rights begin with certain fundamental natural rights (life, liberty, pursuit of happiness), but then they are elaborated as a series of legal rights. Among these rights, five categories stand out: (1) political rights (especially voting), (2) religious freedom and toleration, (3) freedom of thought and discussion, (4) property rights, and (5) impartial legal procedures and equality before the law. These rights are not absolute—they can and must be limited in certain ways—but, appropriately limited, their protection is the primary purpose of political life.

Fourth, to accomplish its purpose, government must be both strong and limited. As Madison argued, we must establish a government that can control the governed (so that rights will be secure) and that can itself be controlled (so that it will not threaten rights). The government must have adequate powers to defend itself, at home and abroad, and it must have adequate power to enforce its laws, for the achievement of legitimate public purposes. The most effective ways to limit government, without depriving it of its necessary powers, are principles such as representative democracy (especially accountability of rulers through elections), separation of powers, and an independent judiciary.

Fifth, men should be governed by law. The rule of law—government according to general standards that apply to all citizens—is the best way to approximate the aspect of justice that demands that those in like circumstances should be treated alike, and the best guarantee that no undue partiality will be shown some people or classes at the expense of the legitimate concerns of others.

To these five principles—equal human dignity, consent of the governed, individual rights, effective limited government, and the rule of law—might be added other “tendencies” that are perhaps too vague to be called principles but that tend strongly to inform or animate liberal thought.

First, the liberal tradition tends to be a rationalist tradition, a tradition of reason and “enlightenment.” Inherited truths are submitted to critical analysis, and freedom of inquiry vis-à-vis political and

ecclesiastical authorities is highly valued. Modern science assumes a central place in intellectual life and often becomes a model for philosophy. The emphasis on reason and human equality makes education, as the foundation for equality of opportunity, a prominent liberal ideal.

Second, the liberal tradition tends to be reformist, examining the past and present with a critical eye, proposing changes to improve the condition of men, and experimenting with new social forms and policies. Traditional hierarchies (typically based on blood and inheritance) and inequalities based on the chance of birth, and legally and socially enforced limits on individual efforts, are subject to criticism and revision. The traditions of reason and reform unite in a strong tendency of liberalism to pursue what Francis Bacon called “the relief of man’s estate,” the general cultivation of human health, material well-being, and comfort.

Third, the liberal tradition tends toward individualism. It is concerned that an improper focus on the glory and well-being of the “community as a whole” will redound primarily to the benefit of the few, the powerful and the well-off, at the expense of the many, the weak, and the poor. It is rooted in equality and therefore tends to exalt the individual, whose choices should be curtailed only to the extent that they interfere with others’ rights or with requirements essential to maintain the community necessary to protect the rights of all.

Fourth, liberalism tends to promote either rationalist religion (emphasizing the more limited truths of natural theology rather than the wider range of beliefs characteristic of revealed religions) or secularism. It tends to be skeptical of claims of revelation, or at least of their relevance to political life. This was due historically, in no small measure, to an accidental but nearly universal (and therefore not *obviously* accidental) feature of early modern Europe: the social and political intermingling and alliance of State and Church hierarchies.

Fifth, the liberal tradition tends to be universalistic. Appealing to rational principles that apply to all men, it tends to be cosmopolitan and

anti-imperialist, though it has its interventionist and non-interventionist strands.

I also want to add a sixth tendency that I neglected to include in *Natural Law Liberalism*, namely, the spirit of commerce. Early liberalism, especially in its Lockean form, saw the threats to self-preservation coming not only from other men but also from the scarcity of nature. Commerce provided help with both these threats. The scarcity of nature could be overcome—indeed, nature itself could be made to yield more fruits—by expanding the possibilities for accumulating property through division of labor and by removing artificial barriers to commerce (such as mercantilist government regulations and an aristocratic contempt for commercial activity). And the accumulation of property made for stronger governments that could protect against foreign and domestic threats to peace and stability.

Disputes among liberals will often concern exactly how far these principles and tendencies are to be pushed. Liberals generally allow for the fact that they are not always absolute. Most obviously, in some cases rights may conflict with each other, or they may be incompatible with certain fundamental requirements of political and social life. Therefore, religious, property, and speech rights are all essential, but they can be limited in certain ways for the public good. This common-sense recognition makes it more difficult to determine what the “true” liberal position is since there will be significant differences among liberals themselves on the scope of liberal principles.

Nonetheless, there is a solid, identifiable core of liberalism that is seen most easily by comparing it with very different forms of government, e.g., Roman republicanism, medieval feudalism, seventeenth-century French monarchy, Ottoman despotism, traditional Latin American feudal oligarchy, twentieth century totalitarianism (Nazi, Communist, Chinese), or contemporary Islamic fundamentalism. In the sometimes bitter disputes of politics (disputes that may admittedly concern absolutely fundamental principles), people in the United States (and in the West generally) can sometimes forget how

much they have in common.

That is one reason why it is worthwhile fighting the tendency to identify “liberalism,” despite its rich and varied tradition, simply with certain strands of liberalism that are dominant in the Anglo-American academy today, whether it be the political liberalism of John Rawls, or the avowed comprehensive liberalism of many of his critics. In doing so, we would lose sight of the deeper underlying commonalities among the various forms of contemporary political thought solidly rooted in the liberal tradition that extend far beyond the leading forms of contemporary liberalism. Those other forms include, I want to argue, not only communitarianism, with its obvious affinities for liberalism (obvious, because major communitarians, such as Michael Sandel, are readily identified as moderate political liberals) but also forms of thought usually not at all identified with liberalism—above all, natural law theory.

Now let me turn to the question of how proponents of natural law theory will respond to these core principles and tendencies of liberalism.

Natural Law and The Core Principles of Liberalism

How might a natural law theorist evaluate the core principles of liberalism? I think that they would find themselves in general agreement with what I have described as the core principles of liberalism, and that they can even accept the tendencies of liberalism, properly circumscribed.⁹

Let’s look first at the core principles. First, natural law theory is strongly committed to the notion of human dignity, rooted in human equality. This dignity involves a high respect or recognition of worth, some form of inviolability, and the inherent possession of rights. That is, this respect is not based on the accomplishments of the particular

⁹ For a more extended discussion, see *Natural Law Liberalism*, chapter 9.

person but on the simple fact of being human.

What is the source of human dignity? Each human being possesses dignity due to the distinctive human capacities he or she has, especially reason and free will. In its traditional form, this was also expressed by saying that each person had an immaterial and immortal soul that accounted for these capacities. Human dignity is, therefore, not a human “construct,” devised by men to make life go better. It is a reflection of the distinctive features of man’s very being that set him apart from other, lower beings. In the final analysis, then, natural law theory will concur with liberals who argue that every human being deserves “equal concern and respect.”

Second, natural law theorists can readily accept a certain notion of consent. There are serious reasons to hesitate about fully embracing a theory of consent. Nonetheless, as Yves Simon showed in his classic discussion,¹⁰ consent makes good sense, if it is understood as popular participation in the transmission of political power to those who hold political authority (and this can include the general power to determine the form of government as well as the more specific power to determine the persons who will hold office). In this respect Simon is only harkening back to a tradition at least as old as Aristotle, who notes that collecting the opinions of those who experience the effects of rule (asking the person who is wearing the shoe how it feels) is quite sensible. The idea of requiring consent also draws support from its tendency to contribute to political stability (a notion supported by Tocqueville’s discussion of the advantages of democracy¹¹). Finally, it has a very strong grounding in the severe objections that can be lodged against any theory that makes political power hereditary or limits the choice of rulers to a particular social class since no such class is particularly trustworthy to hold such power, unchecked by others.

¹⁰ Yves Simon, *The Philosophy of Democratic Government* (Chicago IL: Univ. of Chicago Press, 1951), chapter 3.

¹¹ Alexis de Tocqueville *Democracy in America*, Vol. One, Chapter XIV.

(Classes defined by wealth, education, and or any other criteria cannot be trusted to be better rulers, unconstrained by the requirement of consent.) In this sense, then, natural law theorists see consent as a legitimate and valuable aspect of good government.

Third, rights are central to liberalism but barely appear in classical natural law, which focuses on what is right by nature rather than on the rights we have by nature. Yet modern representatives of the natural law tradition have strongly embraced rights in the twentieth century. This embrace is neither a merely tactical one nor a mistake.

As some scholars have argued, there are some dangers in the adoption of rights-language.¹² But the key question is this: is it *true* that people have “rights”? I think the answer that any proponent of classical natural law has to give is clearly “yes.” If it is *wrong* for A to hit B, then B can be said to have a *right* not to be hit by A. If it is a principle of justice that A *ought to* give x to B, then B can be said to have a *right* to x from A.

There are, of course, many questions about the nature and scope of rights and about their precise place in the overall teaching of political morality. But that does not preclude natural law thinkers from embracing rights in their proper perspective, properly related to duties and understood as essential conditions for human beings to seek the good and the true. This discussion of the proper framework for understanding rights is one that can be carried on *within* the contexts of both liberalism and natural law.

Fourth, natural law theorists would embrace the liberal principle of strong, but limited, government. Natural law theory recognizes the essential role that government plays in human life. The purpose of government is to promote, to ensure as far as possible, the common good, understood in a rich and comprehensive way, including man’s physical, moral, and intellectual well-being.

¹² See, for example, certain works of Ernest Fortin and Robert Kraynak. For citation of their views and a more detailed response, see *Natural Law Liberalism*, chapter 9.

Few people complain that natural law theorists hold too narrow a view of government power. More commonly, the concern is that natural law—because it does not limit the common good to “life, liberty, and property”—does not acknowledge sufficient limits on the power of government. But it does. Natural law theorists do not believe in an all-encompassing government or State. They affirm a clear distinction between the public and private spheres of life, and clear limits on government. The distinction between the private and the public is one to which Christianity, in fact, made a significant contribution. It is not central to classical political philosophy. Moreover, natural law theory has articulated the principle of subsidiarity, according to which higher or more general associations should intervene in the life of lower or more particular associations only when the latter are incapable of performing a task adequately. One implication of this is that public authorities ought not to insert their authority into the private worlds of families or of many voluntary associations, except when this is necessary for the common good.

With respect to institutional arrangements to keep the power of government in check, natural law theory has no trouble accepting liberalism’s “characteristic set of political institutions,” namely, representative democracy, separation of governmental powers, and an independent judiciary. It looks with favor on political arrangements (such as representative democracy) that promote the participation and therefore the capacities of as many citizens as reasonably possible, because this development of capacities is an important part of the common good, and it looks with favor on arrangements that provide checks on political power (such as separation of powers and a limited form of judicial review), because of its recognition of the potential power of evil as well as good in all human beings.

Moreover, natural law theory insists that government is generally bound by ordinary moral norms, such as those against murder, theft, and lying. Natural law theory thus provides a solid foundation for strong but effectively limited government. Many liberals will take issue

with particular ways in which natural law theory does not restrict government—perhaps most importantly, its rejection of John Stuart Mills’ “harm principle”—but that will be a discussion that takes place *within* the broad family of liberal political theories.

Fifth, the rule of law has deep roots in the natural right and natural law tradition, going back to Aristotle, who argued that law is free from the passion that is innate in man. Although law cannot be perfect (since it makes universal rules that may not apply in some instances), it is superior to rule by decree.

Natural law theory, then, embraces all five of the core principles of liberalism. Like other liberals, various natural law theorists will have differences of opinion (among themselves and with others) as to the best understanding and application of these principles. Those differences, however, are not an external critique of liberalism, but an internal discussion within liberalism as to the best way to understand and realize liberal principles.

Natural Law and the Tendencies of Liberalism

I think that, for the most part, natural law is compatible with what I have described as the tendencies of liberalism, though—even more than is the case with liberalism’s core principles—this depends on a having a certain understanding of and giving a certain direction to those tendencies. For the sake of conserving a bit of time, I will focus here on only four of the tendencies—reason, individualism, rational religion, and commerce.

First, the liberal tradition tends to be a rationalist tradition, a tradition of reason and “enlightenment.” Natural law concurs in attributing profound importance to reason. Law is defined as an “ordinance of reason” and natural law is said to be “the rational creature’s share of the Eternal Reason.” Practical reasoning is what the natural law is all about. At the same time, natural law theorists are prudently sensitive to the actual limitations of reason, both in individual human beings and in societies.

In a certain way, ironically, natural law theorists have more faith in reason than do modern liberals. Modern liberalism has tended to exalt the knowledge arrived at by the empirical methods of what we call “science,” i.e., the natural sciences, and it has tended to limit reason to “instrumental rationality,” reason as a means to achieve ends that are themselves beyond the scope of reason, ends that are simply posited or the objects of desires or passions.

Natural law theorists resist the truncation of reason, maintaining that “science” comprehends knowledge achieved through different methods, and, in particular, should be understood to include metaphysics and ethics as much as physics and chemistry. They hold that human ends as well as means are discernible by reason. Moreover, they are open, in principle, to the possibility of other sources of knowledge than reason itself, especially divine revelation and rational reflection thereon (in the form of theology).

One of the important things that natural law provides is a foundation for liberalism that rests on a confidence that human beings can and do know the truth about the human good (in its great variety of forms) rather than a scepticism about such knowledge or a despair that human beings can ever agree on it. It grounds liberalism positively in the truth about the human person rather than negatively in various forms of agnosticism—agnosticism about man as much as about God.

Natural law, then, is very much a tradition of reason, and, in fact, helps to protect a fuller understanding of reason and its capacities.

Second, one oft-noted, and frequently criticized, aspect of liberalism is its promotion of individualism. On the positive side, this tendency flows from a recognition of the equal worth of each person. Liberals were rightly critical of the subordination of the individual to the glory and greatness of “the nation” (or, perhaps, more accurately, the rulers) in pre-liberal societies. The general recognition of the equality of each person in society, and the equal concern and respect owed him or her, is one of the great achievements of liberalism.

Natural law has always shared this recognition of the importance

of the individual, as a free, self-directing person. Its notion of a common good has never been that the good of the greater number outweighs the good of the lesser number. The common good is not a sum of individual goods, but a good which includes the good of each person in the community.

Moreover, the commitment of natural law to equal regard for each person is also reflected powerfully in the contemporary work of its proponents on behalf of the right to life of each person from conception to natural death. In this regard, it carries on the general trend of liberalism in expanding the protection of rights, extending them to a wider range of human beings.

At the same time, natural law prevents this respect for the individual from sinking into an absolutized version of personal autonomy, which is only one, extreme version of respect for the individual. Liberal democracies like the United States have historically rested on strong families. Tocqueville notes that in America the spirit of political liberty has been strengthened by the spirit of religion and the existence of a strong moral framework. Many of the examples he cites involve sexual morality—the morality that channels the sexual impulse into family life.

Third, liberalism has tended to promote either rationalist religion (emphasizing the more limited truths of natural theology rather than the wider range of beliefs characteristic of revealed religions) or secularism. What is unclear is how much the latter tendency, especially, has reflected certain historical circumstances and how much it is intrinsic to liberalism. Alexis de Tocqueville makes a compelling argument, I think, that the opposition between revealed religion and liberalism is due especially to accidental historical factors. In fact, he says, religion and a healthy polity—especially a healthy liberal democracy—are mutually reinforcing. I would by no means deny that Tocqueville himself is aware of certain tensions between liberal democracy and religion, but at least this much can be said: (1) Tocqueville shows that there are considerable resources in the liberal

tradition for a respectful relationship between church and state—that relationship need not be one of hostility, and (2) we should not forget that there will be important tensions between revealed religion and *any* political theory and/or practice.¹³

Natural law is more consistent with the liberal emphasis on rational religion than many think, because it promotes the view that there is a fundamental harmony between faith and reason. Revelation is not viewed as something that simply trumps or displaces reason. The lawgiver-God of classical natural law theory is the source of both reason and revelation, and so there can be no real conflict between the two, but only apparent conflict that arises from either the defects of reason (as when natural scientists go beyond the limits of their method and assert that there is no God—a question on which, as natural scientists, they have no competence) or the misapprehension of revelation (as when believers erroneously attribute a literal reading to certain biblical passages that has led to conflict with truths discovered by the natural sciences, such as heliocentrism).

What natural law theory would object to is any assertion that unaided human reason is, in principle, the only source of knowledge, that divine revelation is somehow intrinsically impossible. Natural law would object to the unreasonableness of such an assertion, and nothing in liberalism itself demands a commitment to it. Moreover, classical natural law recognizes that, while faith is something that transcends reason, the credibility of those who claim to be agents of divine revelation is reasonably subjected to rational examination. If reason cannot “prove” revelation, those who embrace a particular claim of divine revelation still ought to be willing and able to show why it is not unreasonable to do so.

Fourth, natural law can have a deep respect for a proper spirit of commerce, since man’s productive activity in the world is a great

¹³ For a fuller discussion, see Christopher Wolfe, “Tocqueville and the Religious Revival,” *This World* 1 (Winter/Spring 1982): 85-96.

occasion for the development of a wide range of human capacities and virtues. Tocqueville describes one of liberal democracy's advantages as the abundant activity, energy, and vitality that it makes possible and stimulates. Michael Novak has shown that work and commercial activity involve a wide range of important human virtues and cannot be reduced to mere self-interest and avarice.¹⁴

At the same time, natural law will regulate this spirit of commerce in important ways. First, it will prevent what both Montesquieu and Tocqueville noted as a tendency to move from a spirit of commerce (the industry, frugality, and personal discipline needed to build up enterprises and wealth) to a spirit of luxury (absorption in consumeristic indulgence in the fruits of commerce) that undermines the springs of commerce and industry. Second, it will preserve a balance in individuals and society by recognizing and encouraging the pursuit of other human goods than prosperity and comfort, including the arts, literature, education, and charitable works.

This examination of the tendencies of liberalism recognizes that there will be points of tension between natural law and liberal tendencies. At the same time, it suggests that there is also a good deal of similarity, and no outright incompatibility. Natural law proponents will find many liberal tendencies congenial. Other tendencies they will feel the need to cabin and direct in certain ways, in order to make them reasonable and beneficial. In this they are not fundamentally different from other liberals, who have the same experience of willingness to accept some principles quite readily, while accepting other principles only if they are understood in certain ways (as, for example, contemporary egalitarian liberals will feel the need to constrain economic liberties, or communitarian liberals will feel the need to constrain individualism).

In evaluating these tendencies, we have to approach them, I think,

¹⁴ Michael Novak *The Spirit of Democratic Capitalism* (New York NY: Simon and Schuster, 1982).

in the same way that Tocqueville approached liberal democracy. He recognized that liberal democracy could take a variety of forms, some of them admirable, some of them base, and that what we must do is work to ensure that the form democracy takes is a good one. Following him, we too must work to ensure that the various tendencies of liberalism take forms that will elevate and ennoble human life rather than debase it.

Another way to say this is that liberalism must be moderated so that when it shapes its citizens—as it inevitably will, even in its milder way—it does so in ways that are more fully compatible with important intellectual and moral goods: with reason and faith, and with the moral virtues that regulate the passions and promote individual and social well-being.

At the same time, natural law, without disturbing its convictions that there is a truth, that human beings can know it, and that their well-being lies in finding and living in accord with it, has to be so formulated as to recognize, in ways that its historical representatives have sometimes failed to do, the intrinsic importance—the necessity—of human freedom and the limits of coercion and law. Many of what traditionalists rightly see as evils in liberal societies are not the evils of liberalism as such, but the failures of human beings with free will. When men are free, they can work for good or for ill. Freedom has its glories and its ignominy. We—individually and in our various levels of community life—need to help people live up to their potential for living good lives, and we can do this, to some extent, by curtailing opportunities for acting badly. But, like God Himself, we must take the risk of respecting human freedom.

CONCLUSION:

NATURAL LAW LIBERALISM AND THE SANCTITY OF HUMAN LIFE

What are the implications of natural law liberal public philosophy and questions of the sanctity of human life, especially abortion and euthanasia? I want to emphasize two points.

First, natural law liberalism is rooted in a profound respect for the dignity of the human person. This dignity is not the result of any “achievements” of individuals but is rooted in their very nature as rational creatures with free will. Nor is the stage of development or actualization of those capacities to know and choose the ground for human dignity—it is the very capacity itself. Natural law theory will not sacrifice individuals to a cost-benefit analysis, as utilitarianism can, nor will it confine dignity to individuals who have and can exercise actualized rational capacities, as Kantian and Rawlsian analysis is likely to. Natural law liberalism takes the dignity and equality of all human beings seriously in a way that contemporary liberalism does not.

Second, natural law liberalism’s commitment to a broad view of reason—one that is not truncated and reduced to empirical knowledge—provides a moral framework within which scientific advances can be pursued, without rationalizing away the undeniable presence of human life, and without allowing some human beings to be reduced to means for the benefit of others.

Natural law liberalism is often viewed by contemporary liberals as being rooted in—and not much more than camouflage for—revealed religion. Yet, ironically, the battle between liberals and conservatives on life issues today reverses what has seemed to be the ordinary structure of debate between modernists and traditionalists. In the past, it was not uncommon to find religiously-oriented moralists deeply suspicious of modernity and all its works (including modern science) pitted against modern progressives for whom modern science was a comprehensive worldview, something close to a religion. (The Scopes trial is often viewed as the classic instance of such forces squaring off.) On the issue of abortion, however, it is the “moral traditionalists”—the natural law liberals—who have been able to invoke the wonders of neonatal technology and who rely on the relatively straightforward scientific facts about the beginning of an individual human life at the point of conception. The “progressives” find themselves in the position of using scientifically awkward circumlocutions for the incipient

human being, such as “blob of tissue” or “products of conception.” And it is the moral traditionalists who are insisting on expanding the scope of protection of the weak and the vulnerable, such as the unborn, the deformed, and the very elderly and sick—classic liberal ideals. They resist rationalist and utilitarian arguments that minimize the dignity of human life at certain stages (that is, relatively incipient or “un-actualized” human life, or relatively declining or “de-actualized” human life) by subordinating them to other factors such as the personal, economic, and sexual freedom for women, the importance of scientific experimentation for the benefit of others, and the negative value accorded human lives under conditions said to be “inconsistent with” human dignity.

Natural law liberalism provides a sound public philosophy that puts issues of human life where they should be: not on the margins of political life, as “secondary” issues that “distract” us from the “important” issues of economics and foreign affairs, but rather front and center, as questions that go to the heart of the most fundamental principles of public morality and the common good. And natural law liberalism—far more than economic or military power, important as they are—provides the answers to those fundamental questions that will make our nation worthy of respect and emulation.