Natural Law and The United States Constitution

El Derecho Natural y la Constitución de los Estados Unidos[*]

Robert S. Barker[**]

ABSTRACT: In the Declaration of Independence of the United States, the Founders proclaimed their belief in God and in the Natural Law. Eleven years later, another group of Founders met to frame an instrument that would strengthen the union of the States. Their work – the Constitution of the United States – is a practical application of the principles of the Natural Law invoked in the Declaration of Independence.

The Natural Law of the Founders of the Constitution is the classical - traditional Natural Law of Greek – Roman - Christian civilization, based upon God, and not the *Natural law* of the Enlightenment, which was based only on human reason and will.

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[**] Master of Arts (in History) and Juris Doctor (in Law), Duquesne University. Professor at Duquesne University School of Law and Adjunct Professor at the University of Pittsburgh School of Law. <barker@duq.edu> .

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The influence of classical-traditional Natural Law is reflected in three fundamental aspects of the Constitution: limited government, subsidiarity, and the guaranteeing of rights only as against government.

KEY WORDS: Natural Law - The United States Constitution **-** limited government – subsidiarity – rights guarantee

RESUMEN: En la Declaración de Independencia de los Estados Unidos, los Fundadores proclamaron su fe en Dios y en el Derecho Natural. Once años después, otro grupo de Fundadores se reunieron para diseñar un instrumento que fortaleciera la unión entre los Estados. Su obra -la Constitución de los Estados Unidos- es una aplicación práctica de los principios del Derecho Natural invocados en la Declaración de Independencia.

El Derecho Natural de los Fundadores de la Constitución es el Derecho Natural clásico - tradicional de la civilización griega – romana - cristiana, basado en Dios, y no el *Derecho Natural* de la Iluminación, basada en la razón y voluntad humana.

La influencia del Derecho Natural clásico - tradicional se refleja en tres aspectos básicos de la Constitución: el principio de gobierno limitado, la subsidiariedad, y la práctica de garantizar derechos sólo frente al gobierno.

PALABRAS CLAVE: Derecho natural – Constitución de los Estados Unidos – gobierno limitado – subsidiariedad – garantía de los derechos

INTRODUCTION

The Constitution of the United States was written in Philadelphia between May and September, 1787, and it entered into effect in April, 1789. Today, more than two hundred twenty-two years later, it continues to be the fundamental law of the country. Over the years, much has been said in praise of the Constitution, its longevity and its various provisions; and thoughtful books and articles have been devoted to the ideals and deeds of the men who drafted this extraordinarily durable document. Frequent mention is made of the drafters' intellectual attachment to the *Natural Law*. However, what is frequently overlooked in that regard is that the Natural Law in which the Founding Fathers believed and to which they adhered, was the traditional Natural Law of classical Greece and Rome and the High Middle Ages, based on God, and not the deracinated, counterfeit *natural law* of the Enlightenment,

based on man. Despite the fact that they share the name *natural law*, those two philosophies are profoundly different. The essential features of the United States Constitution reflect and demonstrate that the Founding Fathers believed in God as the ultimate source of all law and, consequently, of all legal rights and obligations. To ignore the true Natural Law foundation of the United States Constitution is to invite abuse and degradation of that praiseworthy document.

The article that follows breaks no new ground in either law or philosophy; it attempts merely to re-emphasize certain basic characteristics of the Constitution that are all-too-often overlooked and underappreciated.

INDEPENDENCE AND THE CONSTITUTION

On July 4, 1776, the United States of America, in declaring their independence, invoked "*the Laws of Nature and of Nature's God*," proclaimed that men are "*endowed by their Creator*" with unalienable rights, appealed to "*the Supreme Judge of the world,*" and concluded by expressing their reliance on "*Divine Providence*."[1]

There can be no doubt that those delegates in Philadelphia who adopted that Declaration believed in, and, based our nation's independence on, the Natural Law; that is, that God, in creating the universe, implanted in the nature of man a body of Law to which all human beings are subject, which is superior to all manmade law, and which is knowable by human reason.[2]

Eleven years later, another group of delegates, representatives of the States, assembled in the same hall in Philadelphia, this time with the eminently practical task of creating a new structure of government for the United States, one that would establish "*a more perfect union*".[3] That document, written in 1787, was ratified by the people of the several States[4], and entered into effect in 1789 as the Constitution of the United States of America.

Since the Constitution was designed to be a practical - juridical document for the operation of a more effective government, one should not expect to find there the ringing statements of principle that characterize the

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1 *Declaration of Independence of the United States of America*, 1776.

2 For a detailed review of the Natural Law, see Rice (1999).

3 For the history of the Constitutional Convention, see Bowen (1966).

4 For the history of the ratification process, see Maier (2010).

Declaration of Independence[5], and, indeed, no such philosophical statements are present. But several important characteristics of the Constitution – indeed its *most important characteristics* – are clear and admirable applications of the Natural Law.

NATURAL LAW: TWO VERSIONS

Before examining those characteristics of the Constitution, it is important to emphasize that the Natural Law as understood by the Founding Fathers of the Constitution was the Natural Law that for two millennia had been a traditional and essential element of Western Civilization; that is, Natural law as understood and explained by, for example, Sophocles[6], Aristotle[7], Cicero[8], St.

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5 Henry Steele Commager, "Introduction" to Bowen (1966) n. 3, p. xxi: "*In the words of one historian, the delegates at the Constitutional Convention did not discuss abstractions like the nature of liberty….*" Morison *et al.* (1969) p. 246: *"The temper of the Convention, in marked contrast to that of the French Constituent Assembly of 1789, was realistic and objective, rather than idealistic and theoretical"*.

6 In Sophocles' play *Antigone*, the heroine (of that name) is condemned to death for having buried the body of her brother (who had been killed in battle), such burial having been prohibited by royal decree. Facing the king, Antigone justifies her disobedience by invoking a superior, natural law. She tells the king: *"I had to choose between your law and God's law, and no matter how much power you have to enforce your law, it is inconsequential next to God's. His laws are eternal, not merely for the moment. No mortal, not even you may annul the laws of God, for they are eternal"* (Sophocles, 1999, p. 209).

7 In his Rhetoric, Aristotle (1958) p. 369, asserts: *"The two sorts of law … are the particular and the universal. Particular law is the law defined and declared by each community for its own members…. Universal law is the law of nature….there really exists, as all of us in some measure divine, a natural form of the just and unjust which is common to all men, even when there is no community to bind them to one another"*.

8 Cicero (1941) p. 188: *"True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting…. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people…. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature…"*.

Thomas Aquinas[9], and Francisco de Vitoria.[10] It was the Founders' traditional understanding of Natural Law, rather than the various "*enlightenment*" versions, that were most influential in the thinking that characterizes the United States Constitution.

The fundamental difference between the classical - traditional understanding of the Natural Law and that of the Enlightenment is that the classical - traditional thinkers knew and declared that *God* is the author and source of the Natural Law, and that human reason is the faculty by which the Law established by God is made accessible to man, while the philosophers of the Enlightenment (who inspired the French Revolution) rejected God as the author of the Natural Law, or diminished His significance, and elevated human reason, or the general will, or a legislative majority to the position of supremacy. In the words of one historian, the Enlightenment philosophers "*deified nature and denatured God*".[11] These differences can produce, and in fact have produced dramatic differences in the activities of the governments of the nations of the world.[12]

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9 Aquinas (s.d.) pp. 32-33, 40-54. See also Copleston (1970) pp. 199 - 242.

10 Pagden and Lawrence (1991) p. 10, Vitoria affirmed that *"public power is founded upon natural law, and if natural law acknowledges God as its only author, then it is evident that public power is from God, and cannot be over-ridden by conditions imposed by men or by any positive law".*

11 Becker (1958) p. 51, says that for the Illuminati *"… Nature was now the new God …."*. See also, Herbert W. Schneider "Editor's Introduction" to Hobbes (1958) pp. vii- ix, Rudé (1975) pp. 142-144 (with respect to Rousseau and Robespierre), and Burke (1999) pp. 208 - 209.

12 The famous French observer and analyst Tocqueville, in his classic work, *Democracy in America* (1969) p. 295, wrote in 1835: "*The religious atmosphere of the country was the first thing that struck me on arrival in the United States. The longer I stayed in the country, the more conscious I became of the important political consequences resulting from this novel situation. / In France I had seen the spirits of religion and of freedom almost always marching in opposite directions. In America I found them intimately linked together in joint reign over the same land*".

The great Venezuelan constitutionalist of our own day, Dr. Allan R. Brewer-Carías (1992) p. 186, speaking of the French Revolution, says: "*One principle that arises from French revolutionary constitutionalism is that of national sovereignty. / …[I]n the absolutist regime, the sovereign was the Monarch, who exercised all powers, including the authorization of the State Constitution. With the Revolution, the King is deprived of his sovereignty…, ceases to be King of France, and becomes King of the French, sovereignty being transferred to the people. Thus the idea of the Nation arises, in order to deprive the King of his sovereignty, but as sovereignty existed only in the person who could exercise it, the idea of the 'Nation', as the personification of the people, was necessary to replace the King in its exercise. In*

THE NATURAL LAW OF THE FOUNDERS

The most influential Founders of the United States Constitution saw God as the source of the supreme rules of law and government, and applied the Natural Law in their work in the 1787 Constitutional Convention. Let us examine the thinking of the four most influential delegates at the Convention.

James Madison, of Virginia, considered the "*Father of the Constitution*" wrote, two years before the Philadelphia Convention, of the duty that man owes to God: "*This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe*".[13]

Alexander Hamilton, of New York, said that God: *"(...) has constituted an eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever. This is what is called the law of nature (...). Upon this law depend the natural rights of mankind. The sacred rights of mankind (…) are written, as with a sunbeam, in the whole volume of human nature, by the hand of Divinity itself, and can never be erased or obscured by mortal power (…). No tribunal, no codes, no systems, can repeal or impair this law of God, for by his eternal law, it is inherent in the nature of things*".[14]

James Wilson, of Pennsylvania, considered by everyone the second or third most influential delegate at the Constitutional Convention, not only affirmed the traditional, Divinely - based understanding of the Natural Law, but indeed, refuted and rejected the Enlightenment ideas that utilized that same name:

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the words of Barthélemy: 'There would be one sovereign person who was the King. Another person had to be found in opposition to him. The men of the Revolution found that sovereign person in a moral person: the Nation. They took the Crown from the King and placed it on the head of the Nation'".

The long-term consequences of these philosophical difference are noted by the Spanish jurist Ahumada (2005) p. 254: "*The liberal State of nineteenth century European law, by basing the safety and liberty of the individual upon the system of State norms, led inevitably to the conclusion that there is no genuinely fundamental right other than 'to be treated in accordance with the laws of the State*".

13 Madison (1987) p. 82.

14 Hamilton (2002) p. 132.

> "*That our Creator has a supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law, are truths established on the clearest and most solid principles (…). There is only one source of superiority and obligation. God is our creator: in him we live, and move, and have our being; from him we have received our intellectual and our moral powers: he, as master of his own work, can prescribe to it whatever rules to him shall seem meet. Hence our dependence on our Creator: hence his absolute power over us. This is the true source of all authority (…). The law of nature is universal. For it is true, not only that all men are equally subject to the command of their Maker; but it is true also, that the law of nature, having the foundation in the constitution and state of man, has an essential fitness for all mankind, and binds them without distinction.*
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> *This law, or right reason, as Cicero calls it (…) is, indeed (…) a true law, conformable to nature, diffused among all men, unchangeable, eternal*".[15]

George Washington, delegate from Virginia and President of the Constitutional Convention, and the most respected man in the country, said very little during the debates in Philadelphia, but did express himself on other occasions. In his first year as President of the United States, he issued a Thanksgiving Proclamation that began this way: "*Whereas, it is the duty of all Nations to acknowledge the providence of Almighty God, to be grateful for his benefits, and humbly to implore his protection and favor (…)*".[16]

Many other delegates at the Philadelphia Convention, such as John Dickinson[17] of Delaware and Daniel Carroll[18] of Maryland, also expressed their adherence to the traditional concept of Natural Law.

It should be remembered that a large number of the delegates to the Constitutional Convention were educated in the law, and most of those were practicing lawyers.[19] At that time the most widely - used lawbook, for students and practitioners in the United States as in England, was Blackstone's

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15 Hall and Hall (2007) pp. 500, 501, 523.

16 Washington (1997) p. 386.

17 Dickinson in Novak (2002) p. 75 said, *"Our liberties do not come from charters; for these are only the declarations of preexisting rights. They do not depend on parchment or seals; but come from the King of Kings and the Lord of all the earth".*

18 Carroll in Novak (2002) p. 140 - 142.

19 Of the thirty-nine signers of the Constitution, at least twenty were practicing lawyers. Saul K. Padover (1953) pp. 35 - 36.

Commentaries. Blackstone says the following: *"This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other. It is binding all over the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original"*.[20]

Many of the Founding Fathers were familiar with the writings of Enlightenment thinkers, particularly those of John Locke[21]; however, it is clear that the dominant philosophical and ethical influence was that of classical Natural Law. The philosophy of Locke was so tempered in the United States by its immersion in the older and larger classical tradition[22], that in the new nation it did not operate in opposition to traditional Natural Law.[23]

How, then, are the Natural Law understandings of the Founders reflected in the Constitution? Most importantly, in three interrelated ways:

First, in the establishment of limited government;

Second, in the establishment and recognition of subsidiarity; and

Third, in the guaranteeing of rights only as against the government.

TRADITIONAL NATURAL LAW AND LIMITED GOVERNMENT

First, the establishment of limited government. The Natural Law tradition, as enunciated by, for example, Aristotle, Cicero, St. Thomas Aquinas, and Francisco de Vitoria, and as affirmed by Hamilton, Wilson, Madison, Washington, and others, holds that the state , and human law, are by nature limited; that is to say, there are things that government may not do. The Constitution drafted in Philadelphia reflects this principle by establishing a national government of enumerated powers. The powers of each branch of the national government are specified, with the necessary implication that all powers not thereby granted, are denied. Article I begins by stating: *"All*

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20 Blackstone (1979) p. 41.

21 Locke (1955).

22 See, Russell Kirk, "Introduction" to Locke (1955) pp. iv-xiii.

23 In the words of the historian Ahlstrom, (1975) p. 435, in the United States *"the wines of the Enlightenment were sipped with cautious moderation"*. See also Copleston (1964) p. 176, Rossiter (1966) pp. 59 - 60, Marty (1985) pp. 154 – 156, Adams (1958) pp. 172 - 177.

legislative powers herein granted shall be vested in a Congress of the United States (…)".[24]

It does not say that "*all legislative powers shall be vested*" in the Congress, but only those powers granted by the Constitution shall be so vested.

Article II begins with the words, "*The executive Power shall be vested in a President of the United States of America*", but proceeds to specify the President's powers, thereby limiting the presidential authority.[25]

Article III, establishing the national judiciary, states that "*The Judicial Power shall extend to*" certain specified categories of "*cases and controversies*"[26], thereby limiting that branch of government as well.

Another manifestation of the principle of limited government is found in the separation of powers and system of checks and balances within the national government. Either Hamilton or Madison – it is not known for certain which of them – advocating the ratification of the Constitution, said:

> "*(…) the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others (…). Ambition must be made to counteract ambition (…) the constant aim is to divide and arrange the several offices in such a manner as that each may be a check on the other – that the private interest of every individual may be a sentinel over the public rights. These inventions of prudence cannot be less requisite in the distribution of the supreme powers of the State*".[27]

Thus, for example, the national government is divided into three branches: legislative, executive, and judicial[28]; the legislative branch is, in turn, divided into two chambers[29]; the President has a qualified veto of bills passed

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24 *Constitution of the United States of America* (hereinafter, *Constitution*), art. I, §1.

25 *Constitution*, art II, §§1-3.

26 *Constitution*, art. III, §2.

27 Alexander Hamilton or James Madison, The Federalist, No. LI, (February 8, 1788), in Hamilton et al. (1994) pp. 347, 348.

28 *Constitution*, arts. I, II, III.

29 *Constitution*, art. I, §§1-3.

by Congress[30]; and the President and the Senate both participate in the appointment of federal judges and the making of treaties.[31]

TRADITIONAL NATURAL LAW AND THE SUBSIDIARITY

The second Natural Law principle embedded in the Constitution is the principle of subsidiarity; that is, the principle that government should perform only those tasks not better performed by the family or by private associations[32]; and that, when it *is* appropriate for government to intervene, governmental authority should be exercised by the smallest, most local unit of government capable of effectively performing the task.[33] The United States Constitution had as its principal purpose the re-allocation of governmental power between

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30 *Constitution*, art. I, §7.

31 *Constitution*, art. II, §2.

32 In the words of Professor Rice (1999) p. 43: *"The jurisprudence of the Enlightenment is an individualist, utilitarian positivism. It leaves no room for mediating institutions, such as the family and social groups, between the individual and the state…. The natural law tradition, by contrast, includes the principle of subsidiarity, which emphasizes the role of intermediate family and voluntary groups…which stand between the individual and the state."* Professor Finnis (1998) pp. 242, 243, 247-248, treatise on the philosophy of St. Thomas Aquinas, explains the origin of subsidiarity this way: *"Prior to or independently of any politically organized community, there can exist individuals and families and indeed groups of neighbouring families… The family, essentially husband, wife, and children, is antecedent to, and more necessary than, political society… What is it that solitary individuals, families, and groups of families inevitably cannot do well? …. [I]ndividuals and families cannot well secure and maintain the elements which make up the public good of justice and peace…. And so their instantiation of basic goods is less secure and full than it can be if public justice and peace are maintained by law and other specifically political institutions and activities, in a way that no individual or private group can appropriately undertake or match".*

33 This "*governmental subsidiarity*" is an obvious corollary to the general principle of subsidiarity. Its importance in the constitutional system of the United States is recognized by Madison in *Federalist*, No. XIV, in Hamilton *et al*. (1994) p. 85: "*In the first place it is to be remembered that the general [i.e., national] government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments, which can extend their care to all those other objects which can be separately provided for, will retain their due authority and activity. Were it proposed by the plan of the convention to abolish the governments of the particular states, its adversaries would have some ground for their objections; though it would not be difficult to show that if they were abolished the general*

the national government and the various States.[34] The Constitution of the United States, by limiting the powers of the national government, and at the same time acknowledging that the States have retained governmental powers, establishes the principle of subsidiarity, a principle confirmed by the Tenth Amendment, which was adopted in 1791 as part of the Bill of Rights: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people*".[35]

TRADITIONAL NATURAL LAW AND GUARANTEES OF RIGHTS

This principle of subsidiarity is further demonstrated by the fact that the national Constitution does not regulate the internal governmental organization of the States, but rather leaves them free to apply the principle of subsidiarity in their respective state constitutions and statutes, which all of them have done.[36]

The traditional Natural Law has always recognized that "*the social nature of man is not completely fulfilled [by or] in the state, but is realized in and by various intermediary groups, beginning with the family and including economic, social, political, and cultural groups which stem from human nature itself and have their own autonomy*".[37] In other words, the state should not attempt to control all of society, try to meet all societal needs, or subordinate all other groups to governmental domination. The family, the Church, labor unions, political parties, and schools and universities have a right to exist and to operate, independent of the government.

The Founders of the Constitution recognized this, and that recognition is reflected in the way in which rights are guaranteed by the Constitution: rights are guaranteed by prohibiting government – the national government and the governments of the States from doing certain things. For example, the First

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government would be compelled, by the principle of self-preservation, to reinstate them in their proper jurisdiction."

34 As Rossiter (1966) p. 63, observed, in a slightly different context, the delegates at the Constitutional Convention believed that *"[g]overnment must be kept as near to the people as possible…."*.

35 *Constitution*, amendment X.

36 Each one of the States, then and now, has its own constitution, laws, and system of courts. Each State has divided itself into "*counties*" (which in Louisiana are called "*parishes*"), and each county is divided into municipalities. With respect to Pennsylvania, for example, see Trostle (2009) vol. 119.

37 See, Rice (1999) p. 277, citing Pope John Paul II's encyclical *Centesimus Annus*.

Amendment (adopted in 1791) states: "*Congress shall make no law respecting* (…)".

The Fourteenth Amendment, adopted just after the Civil War, provides that "*No State*…" shall deprive persons of due process of law or the equal protection of the laws. In other words, the Constitution does not purport to regulate all of society; neither does it attempt to "*guarantee*" everything that might be considered desirable. The classical and medieval exponents of the Natural Law understood that, given the limitations and imperfections of human nature, "*the law should not try to prescribe every virtue and forbid every vice*"[38], and the Founding Fathers and their Nineteenth Century successors understood it as well.[39] Thus, the Constitution, in protecting rights, does not seek to create an absolutist government or to deprive the family and private intermediate institutions of their legitimate freedom of action.

In drafting and promoting a Constitution of limited government, subsidiarity both in governmental and in larger societal matters, and restraint in the imposition of obligations, the Founders did not explicitly declare that they were applying classical Natural Law principles.[40] Such a declaration would have been both inappropriate and unnecessary.[41] But anyone who doubts the overwhelming influence of the Natural Law should read the best-known of the *Federalist Papers* – No. 10, written in 1787 by James Madison, "*the Father of the Constitution*", to urge the ratification of the Constitution by the State of New York.

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38 See, Aquinas (s.d.) pp. 70-71.

39 Madison, Federalist, No. XLI, in Hamilton *et al.* (1994) p. 268, recognized this principle when he wrote: *"(…) in every political institution, the power to advance the public happiness involves a discretion which may be misapplied and abused (…). Therefore, … in all cases where power is to be conferred, the point first to be decided is, whether such a power be necessary to the public good; as the next will be, in case of an affirmative decision, to guard as effectually as possible against a perversion of the power to the public detriment".*

In Rossiter's words (1966) p. 63, the consensus that dominated the Constitutional Convention included the principle that *"[g]overnment must be limited – in purpose, reach, methods, and duration".*

40 The historian R. R. Palmer (1964) p. 229 observes that, *"The men at Philadelphia in 1787 were too accomplished as politicians to be motivated by anything so impractical as ideology or mere self-interest …."*

41 Rossiter (1962) p. 103, calls the Constitution the permanent monument to the success of the delegates who declared independence.

THE DANGER TODAY

Federalist No. 10 reveals a classical Natural Law understanding of the nature of man and of government. Man is neither depraved nor angelic, but fallen – capable of good but subject to temptation. The state and government are natural institutions, not artificial creations. Government exists neither to perfect man [which it cannot do] nor to repress him [which it should not do], but rather to pursue the limited goal of promoting the common good by acting or refraining from acting, as the situation may require, always in accordance with its own nature and the nature of man.[42]

As we know, the Natural Law has been under attack for more than a century, not just in the United States, but throughout the Western World. Those attacks have made it easier for activist courts and weak or misguided legislators to reject or ignore the Natural Law foundation of Western Civilization and of the United States Constitution[43], and to adopt programs that deny the inherent dignity and essential equality of every human being, that weaken the family[44], that distort education[45], that seek to make all groups and organizations in society subservient to the state[46], and that even deny legal protection to the weakest and most innocent among us.[47]

With respect to many of these excesses, then-Justice Byron White of the United States Supreme Court, in an opinion written in 1986, observed: "*The Court is most vulnerable and comes closest to illegitimacy when it deals with*

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42 Madison, *Federalist,* No. X, Hamilton *et al*. (1994) pp. 54 - 62.

43 As Professor Berman (1985) p. 348: *"(…) in the past two generations (…) the public philosophy of America [has] shifted radically from a religious to a secular theory of law, from a moral to a political or instrumental theory, and from a historical to a pragmatic theory (…). The triumph of the positivist theory of law – that law is the will of the lawmaker – and the decline of rival theories (…) have contributed to the bewilderment of legal education".*

44 In some States, all adoption agencies – private as well as public – are required by law to place children with homosexual couples, and pharmacists are required to dispense contraceptive pills and devices, and even abortifacients.

45 Concerning governmental discrimination against religious education, see, for example, *Locke v. Davey* (2004).

46 In many States, government has limited the right of private voluntary groups to establish and maintain their own membership criteria. See, for example, *Roberts v. United States Jaycees* (1984).

47 In *Roe v. Wade* (1973), the United States Supreme Court created a *"constitutional right"* to abortion.

judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution"[48].

Justice White was correct. It should be added that a renewed awareness of the Natural Law and of its foundational role in making of the United States Constitution would be of enormous benefit to my country and to its role in the world.

CONCLUSION

The Natural Law tradition expounded by such classical writers and thinkers as Sophocles, Aristotle, and Cicero, and refined in the Christina era by, most significantly, St. Thomas Aquinas, was the principal juridical building block of Western Civilization. In 1776, when the United States of America declared their independence from Great Britain, their Declaration of Independence set forth certain principles that clearly demonstrated the Natural Law basis of that independence. Eleven years later, those same United States, desiring to form a more perfect union, established a Constitution. That Constitution, which endures to this day, does not proclaim philosophical principles, but rather establishes juridical norms, which, however, are practical applications of the traditional Natural Law. The basic principles of the United States Constitution: limited government, subsidiarity, and the careful delineation of rights, are rooted in the classical-Christian tradition of the Natural Law. The United States Constitution cannot properly be understood apart from that tradition. Indeed, ignoring the Natural Law origins of the Constitution has opened the door to today's "*constitutional jurisprudence*" that attacks human life through the judicial constitutionalization of abortion, that subverts the family through the judicial constitutionalization of (the oxymoronic) "*homosexual marriage*", and that is gradually destroying intermediary institutions and personal liberty through the imposition of governmental control over what had once been private activities, professions, and associations.

A renewed awareness of the Natural Law and of its formative influence on the United States Constitution will lead to a more accurate application of the Constitution itself, and to a healthier understanding of the role of law in human affairs.

48 *Bowers v. Hardwick* (1986).

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