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Joshua B. Stein  
*Roger Williams University*

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## Natural Law, Natural Philosophy, Natural Rights

Joshua B. Stein, Professor, Department of History

When in the summer of 1776 the Second Continental Congress commissioned an explanation and justification of its acts of defiance of the British Crown, the document produced, “The Declaration of Independence,” eloquently put the case. Amongst other things, it assumes that human beings are endowed by their creator with inalienable rights and that amongst these are life, liberty and the pursuit of happiness. Two things mentioned bear further attention and are, indeed, the focus of this investigation. Who and or what is the creator (and how is that we can presume to read his mind and know his intentions) and how do we know there are inalienable rights? As will become clear in the pages below, the idea of the creator is a powerful concept that permeates western thought from at least the period of the ancient Greeks to Jefferson’s day. In fact, it is the confluence of ancient pagan philosophy (here represented by Cicero) and seventeenth century science, with only a dollop of Christian thought, that combines to create the ideas so fundamental to the American civil experience.

### Cicero

The sources of Marcus Tullius Cicero’s (106-43 BCE) views on natural law are numerous but *De Legibus* [*On the Laws*] provides the most succinct statement. Cicero differentiates between “law” and “Law,” the former being what courts are concerned with and the latter being “the highest reason, implanted in Nature which commands what ought to be done and forbids the opposite” [*Laws* I, vi, 18]. Law is therefore a natural force and in it we can find the origin of Justice [*Laws* I, vi, 19]. This Law “had its origins ages before any written law existed.” The question then becomes “How do we know Law?” [*Laws* I, iv, 13].

Since reason exists in, and is a gift of God (thought of a perfect reason) “we must now conceive of this whole universe as one commonwealth of which both gods and men are members” [*Ibid.*]. But still the question remains, where to look? The answer is, seek Justice in Nature [*Laws* I, v, 11; viii, 25-26-ix, 27]. This has a double meaning. By “Nature” Cicero means both the qualities that are shared by all humans—which only vices, bad habits and false beliefs, serve to disguise, making it appear that we are different, when, in fact, we are all equal. Therefore by “look into Nature” Cicero is saying, look into ourselves, for the answer is already there—but we are blinded to it by ignorance, prejudice and superstition. The other meaning of Nature, no less important, is the outside world, that which we often refer to as the natural world (as opposed to man-made).

“Law is not a product of human thought, nor is it any enactment of peoples, but something eternal which rules the whole universe by its wisdom in command and prohibition. Thus...Law is the primal and ultimate mind of God whose reason directs all things... This Law is coeval with that God who guards and rules heaven and earth” [*Laws* II, iv, 9-10]. We know what is right and wrong. There was no law against rape in Rome when it was a monarchy, when one of the king’s sons raped the matron Lucretia, “but there was reason, derived from the Nature of the universe, urging men to right conduct.” This did not become law when it was written down: “it came into existence simultaneously with the divine mind” [*Laws* II, iv, 10].

### Seventeenth Century Contributions

Relations between Galileo Galilei (1564-1642) and the Roman church of his day were not always cordial. Essentially, the Church was opposed to the idea of the sun-centered universe Galileo championed because it seemed to fly in the face of apparent biblical teachings and definitely because they contradicted Aristotle who, since the twelfth century had been incorporated into church teachings on a par with the fathers, church councils, even with the bible. An attack on any of these institutions was seen as an attack on the Church. Galileo was warned and he fought back. In his *Letter to the Grand Duchess Christina* he made the near-fatal error of preaching as a layman to clergymen, telling them what the bible taught—and it was not science, but theology and morality. He spent the rest of his life under house arrest, a penalty much milder than it could have been. It is said that as he entered his confinement Galileo stamped his foot on the ground and muttered “*Eppur si muove*”—“And yet (despite the Church’s silencing me) it (the earth) still moves.”

Something important has happened here. When Cicero talked of nature he was speaking of what could be simply observed. The sun always rises in the east; the seasons are a regular and predictable result; the tides ebb and flow; the moon has its phases. The list of observable phenomena is unending. But now no longer do people simply observe nature; now they will study it mathematically and empirically. From nature observers (naturalists) in the seventeenth century we are beginning to become scientists. It will make all the difference in the use of nature to explain human behavior.

Isaac Newton (1642-1727) was so far ahead of his age that it was necessary for him to invent a new mathematical system to explore the possibilities he conjured. It all came together for him with his understanding that the laws of physics that operated on the earth were not an inferior form compared to the laws in the heavens. In fact, they were one and the same (*Philosophiae Naturalis Principia Mathematica*, 1687). The known world (what we call the universe) had been explained. It was all natural, it was all predictable, it was all invariable and unchangeable.

At this point our story begins to look like the tines in a five-pronged fork (granted, this is a very unusual piece of flatware). Thomas Hobbes and John Locke form two of the points, deists a third, reports from the South Pacific a fourth, and the teachings of Jean-Jacques Rousseau the fifth. We will take these one at a time, all culminating with the Declaration of Independence.

Hobbes and Locke were each products of the tumultuous period of English history that occupied the island for the eighty-five years from 1603. Ironically, when the struggles were over, each held a view of natural law diametrically opposed to the other, a classic example of how two equally brilliant people, observing exactly the same phenomena can find that in the end they share no common ground, but could still maintain a civil intellectual discourse.

To Thomas Hobbes (1567-1678) the idea that God created the institution of monarchy so as to rule his people indirectly was an absurdity hardly worthy of mention—yet monarchy is to him the *sine qua non* of political reality. He hypothesizes that in the state of nature all men are equal. This to Hobbes was a recipe for disaster. In such a world no one was safe. Since all were equal, each took whatever they could get away with. No one planted or manufactured because whenever his labor came to fruition, someone would inevitably steal it. Life in the state of nature was bloody in tooth and claw characterized as being “solitary, poor, nasty, brutish and short” [*Leviathan*]. The only way out of this diabolical existence was for all men to surrender rights to a central authority who, being now the only one to possess them, could control all of us, guaranteeing a life of relative security. Diminishing this power one iota would be to start a process resulting in the crumbling of the political fabric culminating in a return to the detestable state of nature. If proof be needed, just look at what had transpired in the England of Charles I and the interregnum. Opposition to his authority led to civil war, a breakdown of society and recognition that other ways simply did not work. Do we retain any natural rights? Only the two—the right to obey the sovereign (and in the process preserve our lives and property), the other to self-defense.

John Locke (1632-1704) was in agreement with his older contemporary on two significant points only. Life in a state of nature was a constant struggle for survival and we need government to channel and control the aggressive tendencies of mankind. But whereas Hobbes argued that to gain security it was absolutely essential to give up both power and rights to an absolutist governor, Locke maintained that we surrender only our power to punish those who injure us. In fact, government is instituted by the agreement of the people with the object of protecting our inalienable rights, of which he gives four examples—life, liberty, property, and resistance to oppression by a government we have entrusted with the duty of preventing oppression. To Locke, nothing, not even religion, is to be controlled by the state for the greater good [*Letter on Toleration*]. While to Hobbes absolutism is the only assurance against anarchy, to Locke it is even worse than life in a state of nature. In those primordial times, everybody had power; everybody was equal. With absolutism only the one man, the sovereign, has power and there is no check, no control no appeal on how he uses it. Under Hobbes, discourse is civil only because no one is allowed to dissent; under Locke discourse may be less civil, but civil life is more discursive.

### **The Eighteenth Century**

It is during the Enlightenment that the warp and weft of what has preceded comes together to form the tapestry of modern life within the framework of the idea of natural law. It was during this era that the science of the previous age was combined with the philosophy of the Romans within the framework of the English civil war and its aftermath to produce both a revolutionary way of viewing the world and revolutionary tendencies that would have their impact down to the present.

If it is true that the forces of nature are everywhere the same, eternal and immutable in the heavens and on earth (which, of course, was now seen to be in the heavens), there are at least two obvious conse-

quences to this discovery. The first is that someone or somebody must have created this perfection. Newton had demonstrated that every effect has a cause. If the world exists, something must have created it. There were two contenders for the honor. One was God, the other nature—that the universe had created itself. In either case, rules both physical and social had been established to guide it, rules that could be realized through the use of human reason.

Those who argued that God was the original creator might be said to be supportive of Christian ideology, but this would be a misstatement. Christianity teaches that God created the world with the intention of helping man to achieve salvation. This He does by interfering (participating) with man via direct oral communication (as with Moses), by assuming human shape (Jesus), by performing miracles (everything from splitting the sea so that the Hebrews could walk through dry shod to the daily miracle of the Eucharist). To this the Enlightenment generally said “No! It never happened.” If the world were created with perfect laws of physics, then any change in perfection would, by definition, be a diminution, it would be creating *imperfection*. Surely the God who created such a perfect world would not want to alter even an iota of it. The classic analogy is of the clock maker who designed the perfectly running clock, one that never needed winding and never gained or lost a second. Would he open up the back and turn a screw even a quarter of a degree? Of course not—by doing so he would be altering the perfection of the clock. This argument, of course, harkens back to Galileo’s sarcastic refutation of the idea that on command the sun could stand still in the sky.

The second lesson is that given the existence of a perfect law of physics governing the heavens and the earth, there must also be universal laws of society ascertainable by reason, applicable in all ages and in all countries. This last is an example of a greater theory, that all men are created equal and have natural rights neither diminished nor increased by their birth status or role in society. It is a return to, and an expansion of (when combined with the teachings of liberty of Locke and the world view of the deists), the ideas of the old Roman with whose ideas we began and whose writings served almost as a primer for the American revolutionaries and authors of the Constitution.

There remain two more tines on the fork. The first of these is a new way to view the state of nature discovered in the eighteenth century. In 1768 Louis Antoine de Bougainville of France, and the next year, James Cook of England, landed in Tahiti and began sending reports of the luxurious islands of plenty, inhabited by simple carefree sexually liberated people. Heaven on earth had been found. Nevertheless when their reports filtered back to Europe a new perspective on nature and life in the state of nature was suddenly envisioned, a life free of care and free of the constraints of Christianity, a life of Eden-like peace, not the solitary, nasty, poor, brutish and short existence assumed by the seventeenth century. The state of nature was not barbarous—it was lovely. It was society that corrupted purity. With this perception comes the idea of the noble savage and, indirectly, at least, the teachings of Jean-Jacques Rousseau.

Rousseau (1712-1778) was a product and creator of the Enlightenment generally at odds with his contemporaries, many of whom thought him mad. He was convinced that everywhere man is born free yet remains in chains [*The Social Contract*]. It is in an attempt to explain this dichotomy that he begins to write of natural law in yet another perspective. To Rousseau, in a state of nature we are all free but this freedom is frightening because it brings with it dangers from others. What we do, he argued in *The Social Contract* (1762), is agree to abide by the unwritten, unspoken but generally accepted General Will of the community. It is that which binds us, that which is known to our leader, who emerges from amongst us, and whom we follow. This General Will is not universal; it is particular to specific groups of people, each of which follows its own general will. The leader is not elected: he emerges from the people, knowing what it is they, the community, want. Adherence to the general will must be universal or the system will fail. Therefore, those who disobey the general will must be made to see the error of their ways or be punished by banishment or death. Clearly we have strayed here from the principles of democracy and reason. “Will” is an unreasoning desire to do that which is necessary to get one’s way—whether it be power, sex, or simply maintenance of life. One does what one has to. The general will is merely an extension of this personal will, what Sigmund Freud would later call libido. When combined with the perceived need for absolutism expounded by Hobbes, it mutates into the totalitarian forms in last century’s Fascist Italy, Nazi Germany, Stalinist Russia. But one does not have to go so far into Rousseau’s future to see the perversions of this doctrine. As he was condemning thousands to the guillotine Maximillian Robespierre, prime mover of the Reign of Terror, was quoting the doctrine of Jean-Jacques.

All of which brings us back to our starting point. The Declaration of Independence’s assertion that there was a creator who endowed man with inalienable rights can now be seen to fit like a jigsaw puzzle piece into the mosaic of thought developed over the previous twenty-two centuries. Who is the creator? That is left unspecified on purpose. Those who want to believe He is the Christian God may do so; those like Jefferson, Adams and Franklin, who were at most deists, could think of him as nature or, as Cicero might have had it, as

a divine intelligence. How do we presume to read His mind? He has given us nature to learn from and reason as the tool to study it. It is nature that teaches the doctrine of inalienable rights, of justice of law as the intention of the creator and whether we draw our conclusions from the armchair observation of rational thought or from the laborious exercise of science and mathematical reasoning the same conclusion is reached. There is such a thing as natural law: we are bound by it with the same intensity that binds us to the planet. Both the physical reality of gravity and the social reality of justice were created by the same clock maker, probably at the same time. Governments that wish to defy the laws of gravity are doomed to fail. Those that, like George III's England, try to ignore reality are doomed to fail, condemned to be opposed by the rational—just as they would oppose any government that decreed that gravity was henceforth inoperable, null and void. The planetary laws of Kepler and the physics of Galileo turned out to be one and the same, as demonstrated by Newton. The physical laws of Newton and the social laws of John Locke turned out to be one and the same as well. This convergence would have come as no surprise to Marcus Tullius Cicero to whom the universality of man, of nature, was recognized as the basis for all human social and intellectual intercourse, the basis of civil discourse.

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