

295 LPT

Published as “Natural Law in Europe and America,” in Constance M. Fuery, et al., eds., *The Encyclopedia of the Bible and its Reception 20* (Berlin: DeGruyter, 2022), s.v.

## Natural Law in Europe and America (1600- )

John Witte, Jr.

### Abstract

*This brief article summarizes Catholic, Protestant, and Liberal teachings on natural law from 1600 until today. While natural law theory is often criticized historically and today, it remains a foundational principle of the Western legal tradition.*

**Keywords:** natural law; Roman Catholicism; Protestantism; Enlightenment Liberalism.

Three main traditions of natural law theory emerged in Europe and America after 1600 – Catholic, Protestant, and Liberal. All three traditions repeated the Bible’s account of God creating humans as divine image-bearers with a natural “law written on their hearts,” “minds,” and “consciences” (Gen. 1:26; Rom. 2:15; Mt. 22:37). Catholic and Protestant scholars argued further that God had “rewritten” this natural law in the Ten Commandments (Ex. 20; Dt. 5); the Noahide Covenant (Gen. 9); the Golden Rule (Matt. 7:12); the love commands (Mk. 12:28-31; Lev. 19:18; Rom. 13:8-10); and the many moral injunctions in the Bible.

**Catholicism.** The Roman Catholic tradition expounded a wide variety of natural law theories, often combining biblical, classical, patristic, and medieval materials. Scores of early modern Spanish thinkers from Francisco Vitoria to Francisco Suarez laid strong new natural law foundations for the reforms of the Catholic church, state, and economy and for the development of international law, constitutional law, and natural rights. The *Corpus Iuris Canonici* of 1586 and the 1917, 1983, and 1990 codes of canon law set out detailed guides for Christian life and community, drawing on a complex canonical jurisprudence grounded in natural law thinking and inspired by medieval canon law sources newly excavated by Stefan Kuttner, Walter Ullmann, and Brian Tierney. Pope Leo XIII and his successors recast Thomas Aquinas’ natural law theories into sweeping new Catholic “social teachings” on many aspects of public and private life, inspiring scholars like Victor Cathrein and activists like Dorothy Day. The rise of legal formalism and its later brutal abuse by Fascists and Nazis triggered strong natural law rebukes from a range of Catholic jurists like François Geny, Johannes Messner, Alfred Verdross, and Ernst-Wolfgang Böckenförde.

The international human rights movement after World War II drew from the influential Catholic natural law theories of Jacques Maritain, Heinrich Rommen, and John Courtney Murray. The Second Vatican Council created a powerful theological and natural law platform to support human dignity, liberty, equality, and freedom; democracy, rule of law, and constitutional order; subsidiarity, fraternity, and solidarity and the corollary protections for families, charities, and schools, and for nature and the needs of future generations. Since Vatican II, Popes Paul VI, John Paul II, Benedict XVI, and Francis I as well as diverse scholars like Michel Villey, Robert Spaemann, Josef Fuchs, Sergio Cotta, John Finnis, Javier Hervada, and Mary Ann Glendon used rich biblical and natural law reasoning to expound the global church's moral teachings at the national and international levels.

**Protestantism.** Early English Protestants like Richard Hooker drew on classical and medieval natural laws to develop the Anglican church's "laws of ecclesiastical polity," which later English ecclesiastical lawyers greatly elaborated. Sir Edward Coke, Matthew Hale, William Blackstone, and other English common lawyers developed intricate theories of natural law and natural rights, emphasizing the 1215 Magna Carta as a pristine statement of "natural fundamental law" and an anchor text for the expansion of Anglo-American liberty. Seventeenth-century Anglican jurist John Selden developed a complex theory of natural law based on the Noahide covenant, a method recently revived by David Van Druenen and David Novak. Seventeenth-century American colonists imported Mosaic laws directly into their early legal collections, and American courts often cited biblical laws and natural law principles. The direct invocation of biblical law for catechesis, Christian ethics, and sometimes political advocacy remains common among some Protestants today in America and the Global South.

On the European Continent, early modern Anabaptist groups called for freedom of conscience, separation of church and state, and segregated Christian communities governed by biblical principles. These early views were repeated by American theologians like Roger Williams and Isaac Backus and remain alive in semi-segregated Amish and Mennonite communities today. Early modern Lutherans and Calvinists, by contrast, called for the establishment of local Christian republics, governed by positive laws rooted in the Decalogue, which they took as a source of natural rights of religion, life, property, family, reputation, and procedural justice. Calvinists like Johannes Althusius, John Milton, and John Adams named these "unalienable" and "fundamental" rights that required written constitutional protection. Moreover, they argued that the chronic breach of these fundamental rights by political tyrants triggered the fundamental rights of resistance, revolt, and democratic revolution, as took place in the Netherlands, England, Scotland, America, and France from 1581 to 1789. While some modern Protestant scholars like Abraham Kuyper, Emil Brunner, Gustav Radbruch, and Wolfgang Huber offered distinct Protestant natural law teachings, Karl Barth's "Nein" to natural law has made many mainline Protestants suspicious of this mode of thinking.

**Liberalism.** Natural law defenses of democratic revolution tied early modern Protestantism to Enlightenment Liberalism. In America, Thomas Jefferson and James

Madison repeated traditional views that humans were created by God, governed by “the laws of nature and nature’s God,” and vested with the “unalienable” natural rights of life, liberty, and property. These Liberals joined Protestants in waging the American revolution against England’s abuse of these natural rights. Further bridges were forged by Samuel von Pufendorf, John Locke, Baron Montesquieu, Adam Smith, Joseph Story, and others who straddled the Christian and Liberal worlds, and used natural law arguments to defend traditional teachings on family law, charity law, criminal law, and other topics.

What made Liberal thought distinctive, however, was its defense of natural law and natural rights on rational “self-evident” grounds. Hugo Grotius had paved the way early on with his “impious hypothesis” that natural law would exist “even if there is no God.” In the nineteenth century, Immanuel Kant, John Austin, Oliver Wendell Holmes, Jr., and others further separated law from religion and morality, yielding legal positivist theories that saw natural law reasoning as an outmoded and illegitimate Christian methodology. But recent primatologists like Bernard Chapais and Frans de Waal have pointed to the “natural foundations” of morality and sociability in higher primates, which have yielded budding new scientific theories of natural law.

## **Bibliography**

Gerard V. Bradley and E.C. Brugger: *Catholic Social Teaching*, Cambridge, 2019.

M.B. Crowe: *The Changing Profile of the Natural Law*, Dordrecht, 1977.

Norman Doe, ed.: *Christianity and Natural Law: An Introduction*, Cambridge, 2017.

Rafael Domingo and Javier Martínez Torrón, eds.: *Great Christian Jurists in Spanish History*, Cambridge, 2018.

Knud Haakonssen, gen. ed.: *Natural Law and Enlightenment Classics Series*, 48- vols., Indianapolis: Liberty Fund, 2000-

Mark Hill and R.H. Helmholz, eds.: *Great Christian Jurists in English History*, Cambridge, 2016.

Judith A. Hahn: *Church Law in Modernity: Toward a Theory of Canon Law Between Nature and Culture*, Cambridge, 2019.

Mathias Schmoeckel and John Witte, Jr., eds.: *Great Christian Jurists in German History*. Tübingen, 2020.

James Brown Scott, gen. ed.: *The Classics of International Law*, 40 vols., Washington, 1911-50.

Francesco Viola: *Natural Law Theories in the Twentieth Century*, Dordrecht, 2016.

John Witte, Jr.: *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Tradition*, Cambridge, 2021.

John Witte, Jr. and Frank S. Alexander, eds.: *Modern Christian Teachings on Law, Politics, and Human Nature*, 3 vols., New York, 2006.