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The Poet and The Polemist: Demystifying the Natural Law Theory of John Milton

By

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Natural law is *essential justice*, justice itself, the origin and test of all positive laws, and the ultimate measure of right and wrong. It is above all rational, discoverable through reason, and therefore justifiable.

-R.S.White

Stated here are the main tenets of natural law theory, a philosophy that upholds the existence of an underlying moral code by which the essential justice of all positive laws are measured. Historically proponents of the philosophy have championed the individual's right in discerning the rationale of legislated positive law.

The history of this theory dates back to the works of Aristotle and the early forefathers of the Christian Church. The works of these seminal philosophers had a powerful impact on the Early Modern period throughout Europe. The theory of natural law gained a particular prominence during this time, because the rights of the individual were increasingly in contention with the politics of the state. Here, natural law theories voiced by Hugo Grotius and Thomas Hobbes, among others, figured prominently in the political landscape. A more mysterious figure in the natural law movement of the Early Modern period is poet/polemist John Milton, whose work on the subject has remained largely unexamined by literary critics.¹ The analysis here attempts to demystify Milton's theory of natural law, by examining its predecessors in conjunction with a formative literary analysis of Miltonic poetry and prose.

¹ With some notable exceptions, including: Micheal Komorowski's article, "Milton's Natural Law: Divorce and Individual Property," Catherine Gimelli Martin's "The Phoenix and the Crocodile: Milton's Natural Law Debate with Hobbes Retried in the Tragic Forum of Samson Agonistes," and Glenn A. Loney's "Milton and Natural Law: with Particular Reference to the Divorce Tracts and De Doctrina Christiana."

AN INTRODUCTION TO MILTON'S NATURAL LAW

A quote from Milton's most famous work, *Paradise Lost*, sets into motion our analysis of the author's theories on natural law. In its retelling of the biblical book of Genesis, Milton's epic poem reveals a prophecy on the rise of government and the corruption of equality and natural law. The Archangel Michael predicts the appearance of the first Monarch:

One shall rise
Of proud ambitious heart, who not content
With fair equalitie, fraternal state,
Will arrogate Dominion undeserv'd
Over his brethren, and quite dispossess
Concord and law of Nature from the Earth;
Hunting (and Men not Beasts shall be his game)
With war and hostile snare such as refuse
Subjection to his empire tyrannous (xii, 24-32)

As evidenced in this sample of his work, Milton's literature is inclusive of a theory of natural law that upholds the fraternity of the state, while challenging the supremacy of government. As a nation on the brink of civil war, Milton's authorship reflects the sociopolitical tensions between citizen and institution that existed in England during the mid-seventeenth century.

Contextualizing the author's use of the term natural law, scholar Ernest Sirluck acknowledges that within Milton's literature "a genuine revolution in political theory was taking place, which the intellectual habits of the time demanded be expressed in terms of law" (52). The author's use of natural law theory espouses a "single continuous struggle for liberty" (Sirluck 1). In a moment of reflection in his *Defensio Secunda*, Milton notices a thread running through his prose works that promotes, "three species of liberty which are essential to the happiness of social life—religious, domestic, and civil" (258). This is an important structuring principle to Milton's prose. In all of his tracts, the liberty of the individual is at stake in one of these three specific realms. This thesis will focus specifically on three of his polemic tracts each corresponding, respectively,

to the religious, domestic, and civil realms: *The Reason of Church Government U'rgd Against the Prelaty*, one of Milton's anti-episcopal tracts, *The Doctrine and Discipline of Divorce*, one of Milton's divorce tracts, and the *Tenure of Kings and Magistrates*, one of Milton's regicide tracts. In championing the liberties of the individual, each of these tracts takes on a sphere of positive state or ecclesiastical law and challenges the institution that has governed the individual's rights. In each of these instances, whether referenced directly or indirectly, the crux of the author's argumentation actively relies on the theory of natural law. This analysis will begin with an exploration of the historical development of natural law theory, then move to a consideration of the implications of the theory to Milton's prose work, and finally end with an examination of Thomas Hobbes and his antithetical critique of Milton's natural law theory.

ARISTOTELIAN LAW

As one of the earliest purveyors of moral and political philosophy, many of Aristotle's foundational works focus on principles of natural law. Historians consider these works to be the genesis of natural law theory. In his seminal work *Rhetoric*, Aristotle argues for the existence of a universally binding jurisprudence known as the law of Nature. As the philosopher states, "universal law is the law of Nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other" (*Rhetoric* 103). Aristotle's commentary regarding a binding universal law of nature is one of the earliest formulations of natural law theory.

While prophetic, Aristotle's natural law theory is brief and inconclusive. The seminal philosopher seemingly shies away from laying out specific parameters of natural law. In *Ethics*, Aristotle proclaims "some think that all justice is of this sort [natural law], because that which is

by nature is unchangeable...this, however, is not true in this unqualified way, but is true in a sense; or rather, with gods it is perhaps not true at all” (*Ethics* 22). Aristotle’s commentary here hints at a division between the natural law of God and man; later theorists would debate this theoretical divide. While early Christian purveyors of natural law would argue for an intellectual link between God and man, other philosophers would contend that natural law would exist “*non esse Deum*” (*The Law of War and Peace* 5), even if God himself did not. Furthermore, Aristotle’s work denies a stable, unchangeable form of natural law. The inclusion of mutability into the legal rhetoric leaves many loopholes. To argue that all of natural law is changeable is to assume that there is no fixed moral premise to the law itself. Without a binding moral code, citizens have no recourse to the unjust laws of the state, leaving governments with the right to dictate laws in accordance with their customs and culture. As a result of the theory’s incompleteness, Aristotle’s place in the natural law movement is controversial. However, in its establishment of an external legal system, Aristotle’s commentary sets the groundwork for later natural law theory.

Throughout the centuries, philosophers, theologians, and political pamphleteers would ubiquitously reference Aristotle’s principle, building upon the precepts established in his work. The ideology, which binds together the actions of men from independent nations, is a forerunner to the international law policies of Hugo Grotius. Grotius himself is credited by many as a forefather of the natural law movement in the Early Modern period, and a major influence on the political philosophies of John Milton.

Commenting on the Aristotelian place within the natural law movement, Tony Burns separates Aristotle’s natural law theory from the subversive politics of later centuries’ sociopolitical pundits. Burns upholds Aristotle’s place as a prominent figure in the natural law

movement, but separates the philosopher's work from later theorists who accessed natural law as a "higher, critical standard of justice which individuals might use to evaluate positive law, or the customs and conventions of the society in which they live" (96). Aristotle's conservative philosophy offers "a sophisticated philosophical justification of the customs and traditions associated with the constitution of any *polis*, no matter what they might be" (Burns 105). Again, for Aristotle, natural law exists, but it is subordinate to state law and is perhaps too ethereal to be applied materially to the jurisprudence of positive law. The disunity between Aristotle and later natural law theorists is apparent, given the relative conservatism of Aristotle's theories. Ironically, although Aristotelian natural law theory is more conciliatory than revolutionary, later natural law theorists would reference it as precedent. It therefore offered a rhetorically persuasive precedent to support their direct challenges to state authority. However, if the principles of natural law theory had ended with Aristotle, there would be no further reason for debate and the work of Milton and other Early Modern polemicists would have had little rhetorical ground on which to stand. This would change with the intervention of the Christian theologians including St. Thomas Aquinas, whose work established a more solid bond between natural law and the intellect of man, and paved the way for the political application of natural law theory.

CHRISTIAN NATURAL LAW AND THE WORK OF ST. THOMAS AQUINAS

Thomas Aquinas conceived his *Summa Theologica* as a summation of Christian theology. Aquinas meant for this treatise to establish guidelines for the individual to act according to the Christian faith. Importantly, for the purposes of this thesis, the treatise includes an early Christian commentary on natural law. Aquinas's legal philosophies were based on the premise

of an interaction between humanity and the Christian God. Written in the 13th century, the treatise purposefully incorporates the work of philosophers from antiquity, including Aristotle and other ancient theorists. Thus, the *Summa Theologica* continues to affirm the existence of natural law, but contradicts Aristotle in arguing for a consistent natural law based on a fixed moral code, accessible to mankind through the human intellect. This refinement of Aristotle's theory is accomplished through an interpolation of a Christian telos into the natural law dialogue.

Aquinas comments:

the rational creature is subject to Divine providence in the most excellent way
... Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to
its proper act and end: and this participation... in the rational creature is called the natural
law. (1823)

Here Aquinas establishes the link between the divine and the human, rational creature. Unlike Aristotle, who conceived of a law that was mysterious and intangible to the human intellect, Aquinas and his fellow Christians envisioned a divine providence that allows for a determination of natural law through mankind's rational action. Through Aquinas's theory of divine providence, natural law becomes innately accessible to the human intellect and therefore, contrary to Aristotelian theory, an effective measure of positive law. Aquinas's work establishes the importance of Christianity to the development of natural law theory. Indeed the political movements of the Early Modern period would have had very little rhetorical ground upon which to stand without the support of the early Christian concept of intellectual divine providence. Although theorists Grotius and Hobbes challenge the importance of the Christian deity to their natural law models, their rhetoric itself relies upon a notion of divine existence. So too, Milton's natural law theory is indebted to the influence of Christian philosophy.

For Milton and other natural law theorists, the moral corruptibility of human intellect creates a barrier to the establishment of a natural law based on reason. For if reason can be

corrupt, so too the individual's conception of natural law. Aquinas's theory accounts for this corruption through a retelling of mankind's historical dismissal of divine providence. As Aquinas recounts, "When man turned his back on God, he fell under the influence of his sensual impulses...the more he deviates from the path of reason...he is likened to the beasts that are led by the impulse" (1829). Here Aquinas connects the voluntary dismissal of divine providence with a deliberate movement away from reason. In Aquinas's theory, the intellectual agency here to accept divine providence, allows for man to access natural law based on reason. Hence, Christianity grants mankind intellectual agency in perceiving natural law. This argument for the individual's agency in denying impulsivity, and actively partaking in moral reasoning, would inspire the natural law rhetoric of Early Modern writers Grotius, Hobbes, and particularly Milton, whose work often champions the moral reasoning of the individual when faced with immoral custom and law. The *Doctrine of Discipline and Divorce*, and the *Reason of Church Government* likewise rely on mankind's agency in denying impulses that are contrary to virtuous human action.

R.S. White in *Natural Law and English Renaissance Literature* further examines Aquinas's theory of natural law and its influence on the Early Modern period. White credits Aquinas in establishing natural law theory but highlights the lack of specificity in *Summa Theologica*. White notices that,

we look in *vain* in Aquinas for lists of what is good and what is evil in practice. ...By his concentration on the inner logic of natural law and only occasionally on what it might mean in individual cases, Aquinas's theory lays itself open to hijacking by opposing groups, conservative and radical, idealistic and skeptical, and such appropriations were exactly what happened in later ages. (White 32)

White's observation not only expresses the vanity in seeking specificity in Aquinas's theory, but also implies that perhaps Aquinas himself thought it vain to include such instructions. The

purpose of the doctrine is for Christian instruction, not legal codification. While *Summa Theologica* emphasizes humanity's capacity for moral reasoning, like much religious doctrine, it leaves its philosophies open to a hijacking by opposing groups. Aquinas's doctrine of natural law builds upon Aristotle's model in granting authority to the individual in accessing a moral code; however, much of the theory still remains incomplete. As White acknowledges, Aquinas's work does not create a fixed foundation for the incorporation of natural law theory into the politics of the state; however, his notions of innate moral reasoning will contribute to later political expositions of natural law theory in the works of John Milton and his peers in the Early Modern period.

THE NATURAL LAW OF HUGO GROTIUS

Hugo Grotius has been "often hailed as father of natural law" (Rommen 62), and the title is certainly an indication of his stature as a social commentator, and philosopher. Although the moniker is dismissive of earlier figures in the development of natural law theory, a claim can be made to Grotius's hand in politicizing what had previously been a matter of theological and philosophical debate. Inspired by the violent Thirty Years War between European nations, Hugo Grotius drafted a treatise on international law entitled *De Jure Belli ac Pacis* in 1625. As an appeal for an international law governing acts of war between nations, the treatise makes numerous references to a natural law theory that inspires a more direct regulation of positive law. Grotius's work makes a purposeful deviation from the work of previous natural law theorists and espouses a more forceful approach to the law. As the text declares that, "In our own time, as in the past there is no lack of men who make light of this branch of the law, as if it were nothing but an empty name...that for a king or a free city nothing is wrong that is to their advantage...and

that nature cannot tell what's just from unjust" (*De Jure Belli ac Pacis* 3-4). For Grotius, to make light of natural law is to relegate the theory to mere philosophical discourse, thereby discounting not only the reality of its premise, but also the importance of its applications. He argues that positive laws should not be put in place simply to uphold what was advantageous to the state, but should fulfill the higher purpose of law, which is to distinguish between just and unjust acts. According to Grotius's argument, to deny that natural law is unable to make this determination is to discount the importance of its place in the regulation of positive law. While the work of previous natural law theorists such as Aquinas and Aristotle stops short of espousing a purposeful legal imposition of natural law, Grotius's theory goes one step further and begins to open the door, philosophically, to a law that operates within the same jurisdiction as the positive law of the state. With this extra step, Grotius lays the seeds of the English Revolution and the work of political theorists such as John Milton. While Grotius never challenges the state in the form of a direct political grievance, clearly the work of this philosopher was a necessary step in the development of the natural law theory.

Another important component of Grotius's natural law theory is the existence and importance of "right reason." The theory of right reason, inherited from antiquity and in line with Aquinas's natural law, assumes that human beings are endowed with an intellectual capability to discern the inherent justice of an act or law. Grotius observes that, "the law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity, and such an act is either forbidden or conjoined by the author of nature, God" (*The Prolegomena* 15). Grotius observes here that while the origins of natural law are founded by the will of God, it is through human reason that such laws are perceived. Consequently, the human mind is predisposed to right

reason, which grants the individual the authority to determine the moral baseness of an act, and by proxy a law, and thereby accept or reject this act and/or law. This privileging of human reason and intellect greatly inspires Milton's later articulations of natural law theory. Milton would argue for human liberty based on a natural law of intellect, in contrast to positive laws of the state based on tradition and custom. While Grotius's theory was not constructed to contend directly with specific state policies, his methodologies contribute to the politicizing of the theory.

In continuing the philosophical progression of natural law theory, Grotius's *De Jure Belli* makes a direct rhetorical move to establish a subordinate relationship between positive law of the state and the law of Nature. According to the treatise, "the law of nature requires us to abide by our promises and this was the origin of civil laws...since it was necessary that men should have some way of *binding* themselves to one another, and no other natural way can be imagined" (*De Jure Belli ac Pacis* 13). Grotius's work here establishes a hierarchy between natural and civil law, giving primacy to a law of Nature that enacts civil law as its agent. The boldness of his legal argumentation was unprecedented in the natural law philosophies of Aristotle and Aquinas, which were much more cautious, placing natural law below positive law within the legal hierarchy.

Historically much has been made of Grotius's natural law theory and its movement away from philosophy into more tangible, political applications. This movement has influenced many theories about Grotius's apparent secularization of natural law. The foundation for these ideas comes from the most famous moment in *De Jure Belli* in which Grotius declares, "And what we have just said would have validity even if we granted what cannot be granted without great wickedness, that there is *no God*, or that he has no care for human affairs" (5). For Grotius, the idea of an existence without God is sheer wickedness;

however, this rhetorical move is made here perhaps to separate natural law from its theological foundations and to allow for a more nuanced discussion of legal theory. While Grotius here asserts the validity of natural law theory, later scholars and natural law theorists would presume a purposeful secularization of natural law by Grotius, famously taking this statement out of context.

Regardless of its interpretation, this statement was a key moment in the development of natural law theory, as Grotius moved the discussion away from its theological roots and into a more pointedly focused legal theory. As Paul Sigmund argues, Grotius “*separated* natural law from the *theologians* in the sense that he used it for a *secular purpose*, the creation of an *international legal system*, rather than as an adjunct of theological *speculation*” (62).

Sigmund realizes the importance of Grotius’s secular purpose to his treatise. The reason would appear to be twofold: to create a true international legal system, Grotius has to separate the law first from national religious affiliations and secondly from its theological speculations. Regardless of its initial intentions, Grotius’s work inspired subsequent interpretations that relied more on rational argumentation than on religious affiliation. Natural law theory itself became more of a platform for public debate and less a theological movement towards moral principle. Thus, John Milton’s prose works used natural law theory to argue publically for reforms to positive state and ecclesiastical law and not for speculative theological debates.

MILTON’S NATURL LAW PART I: REASON OF CHURCH GOVERNMENT

Milton’s pamphlet entitled *The Reason of Church-government Urg’d against the Prelaty* documents the author’s public dispute with the national Church of England. Milton’s argument challenges the hierarchal structure of Episcopacy in which an Anglican bishop oversees the

interactions of local churches. Milton believed in a form of church governance that allowed for a more decentralized structure headed by the congregation itself. In his anti-Episcopal tract, Milton argues that an unwritten natural law based on reason and virtue rejects the impositions of the laws of Anglican Church government. Milton explains, “tradition they say hath taught them that, for the prevention of growing schism, the bishop was heaved above the presbyter. And must tradition then ever thus to the world’s end be the perpetual cankerworm to eat out God’s commandments?” (779). For Milton, the argument that church laws prevented schisms within the church was disingenuous, and the appointment of bishops to govern the local congregations contradicted the commandments of God. Natural law here is closely tied to a scriptural interpretation of virtue and also aligns with earlier natural law theorists. For Milton, natural law and the existence of the divine remain intimately connected.

This connection is articulated continuously in Milton’s *Reason of Church Government*. Taking its cue from Aquinas, the text strongly asserts the inherent divine nature of natural law as found in the Gospel, however, Milton refines the notion of divine intervention and places it in direct opposition to church governance. Milton argues, “that which is thus *morall*, besides what we fetch from those *unwritten lawes* and Ideas which nature hath ingraven in us, the Gospell, as stands with her dignity most...lectures to us from her own authentick hand-writing... not copies of the borrow’d manuscrite of a subservient scrowl” (764). What is moral and just is determined by an independent divine law engraved within the hearts of man. While this internal law resides in the physical body, its written form is manifest in the Gospel. As the text asserts here, the divine interpretation of Scripture supersedes the positive laws of the church. While Aquinas’s theory stops at the point of internal intellectual reflection, Milton

articulates a revolutionary potential to natural law theory, declaring the unwritten law of the Gospel as superior to external law.

Prior to the Renaissance, natural law theorists had avoided direct political implications, however, for theorists of the Early Modern period such as Milton and Grotius, positive law was subject to a higher authority. While Grotius introduces a politically minded theory of natural law, enacted to deter wartime action, Milton takes Grotius one step further, applying the tenets of natural law to criticize specific church policy. Although Milton's pamphlet most directly concerns religious institutions, the author's subversive undermining of the positive authority of the Church is a step forward in the politics of natural law theory.

In addition to the subversive use of natural law to challenge church policy, *Reason of Church Government* deviates in other ways from work of previous theorists. While Aquinas believed in the recognition of natural law through discipline and virtue, Milton goes further and promotes an exclusivity that had not been considered by earlier theorists. The author notices,

it is not for every learned or every wise man...to invent or frame a discipline...but it must be of such a one as is a true knower of himselfe, and himselfe in whom contemplation and practice, wit, prudence, fortitude...so far is it from those wretched projectors...that bescaull their Pampflets every day with new forms of government for our Church" (*Reason* 753).

For Milton, the determination of law is not available to all individuals but only awarded to the disciplined few who stand out in "defiance with gaine" (753). According to this argument, only those who possess these righteous characteristics are granted authority to determine natural law.

Milton's vision of natural law lends a divisive edge to the theory that was not present when the argument was a matter of pure theology and philosophy. Hence, the politicizing of natural law in Milton's work creates a more acerbic notion of law. Adding to its divisive argumentation, Milton's tract often displays an overt disdain for those who seek to uphold the

authority of the church. This divisiveness jettisons the conservative and often stoic argumentation of previous natural law theorists. Milton's work often "defies moderation and praises surrender to anger under the aegis of zeal" (Kranidas 2). Kranidas argues that this zeal is particular to Milton himself, however, these pointed arguments were commonplace during the Renaissance period. As William Parker notices, Milton's aspersions are "not unique; they were his heritage as a child of his age; but he took his heritage, unsheathed it, sharpened it, and wielded it so enthusiastically that his own contemporaries found his language unusual" (Parker 61). Thus, one of Milton's biggest contributions to previous articulations of natural law theory is this stamp of personal defiance that accompanies the author's prose. Further, the works of Aristotle, Aquinas, and even the contemporary Grotius, are not divisively subversive to the standing institutions of the church. Milton's vision of natural law does not simply question specific church laws, but intimately attacks the legitimacy of church law at its core. Unlike many of his contemporaries, Milton's work would foreshadow the political revolutions of the next century that would supplant the rigid legal structure of the European monarchy. Predating the political movements of the Enlightenment, Milton's work here in *Reason of Church Government* is significant to the development of the potentially radical politics of natural law theory.

MILTON'S NATURAL LAW PART II: *DOCTRINE AND DISCIPLINE OF DIVORCE*

Milton takes a more direct approach in arguing for his theory of natural law in *Doctrine and Discipline of Divorce*, addressing his pamphlet to Parliament and the Westminster Assembly directly, in an effort to overturn the Canon Laws prohibiting divorce. In this tract, Milton's evocation of natural law attempts to overturn a restrictive system of marriage that binds together couples without recourse. "In defending the right to divorce, Milton read in the

law of nature a strong protection of individual agency” (Komorowski 70). Similar to his *Reason of Church Government*, Milton’s doctrine of natural law here argues for an external natural law that supersedes the positive governance of the Church of England. Further removing natural law theory from the confines of a strictly philosophical and theological debate, in this publically published tract, Milton uses the theory of natural law to justify reform of Canon Law governing divorce.

The basis for Milton’s natural law argument against Canon Law is grounded again in scriptural exegesis. The contemporary laws governing divorce ignored Moses’s allowance of marital separation in the Old Testament. Milton observes that the positive law governing marriage is “crossing a law not only written by Moses, but characterized in us by nature, of more antiquity and deeper ground than marriage itself; which law is to force nothing against the faultless properties of nature” (*Doctrine* 867). For Milton, upholding a positive Canon Law that disallows couples the right to divorce contradicts the properties of nature and is therefore contrary to natural law. Milton observes, “law and nature are not to goe contrary...to forbid divorce compulsively, is not only against nature, but against law” (*Doctrine* 915). Milton argues that this compulsivity, denying the right of separation for couples who are emotionally incompatible, is “striving vainly to glue an error together which God and nature will not...Nay, instead of being one flesh, they will be rather two carcasses chained unnaturally together” (*Doctrine* 878). In Milton’s natural law theory here, the divine continues to play a central role. While previous theorists had not argued against the legalities of divorce, Milton’s divorce tract continues the author’s progressive movement towards liberation of the individual, inspired by the beliefs of early natural law theorists.

The roots of Milton's natural law theory as articulated in *Doctrine and Discipline of Divorce* can be traced back very specifically to the work of Thomas Aquinas. It was Aquinas who first conceived of a natural law founded in the divine providence of the Christian God. In his divorce tract, Milton acknowledges that, "God indeed in some ways of his providence...hath plain enough revealed himself, and requires the observance thereof...to the lawe of nature and equity imprinted in us" (*Doctrine* 893). Milton's theory is predicated upon the fact that natural law is an inherent part of our being originating in the divine providence of God. In the *Doctrine and Discipline of Divorce*, this familiar paradigm is set up as the rationale for a natural law governing the law of marriage. In this way, Milton's divorce tract "seems to agree with Aquinas on the central points of natural law" (White 217). In Milton's natural law argument, a Canon Law prohibiting divorce deceives reason and conscience, arbitrarily adhering to the positive law of custom. As Milton states, though, "conscience in the plain demonstration of the spirit finds most evincing...for the most part that custom [Canon Law] still is silently received for the best instructor" (*Doctrine* 857). Milton's contribution to natural law theory continues to be his stamp of defiance that augments the work of earlier theorists. In borrowing from the teachings of the early church, Milton applies natural law theory in a way that was unthinkable to its original Christian theorists. While their intention was to teach the importance of obeying the inborn conscience of God, Milton uses divine conscience to argue for reform of longstanding traditions and customs that hinged upon the liberties of the individual citizen.

Nevertheless, in *Doctrine of Discipline and Divorce*, Milton's natural law theory is also derivative of Grotius's theory and its concerns with the law of charity. In establishing the connection between natural law and the law of charity, Milton argues that the disavowal of divorce based on marital incompatibility would undermine a law of charity and espouse

sentiments of animosity among members in a community. Therefore, a positive law upholding the prohibition of divorce is incongruent with the laws of nature as well as charity. In Milton's words, "I shall not much waver to affirm, that those words which are made to intimate, as if they forbade all divorce but for adultery... without care to preserve those fundamental and superior laws of nature and charity, to which all other ordinances give up their seals" (*Doctrine* 902). Milton deems the existing Canon Law an inferior ordinance to the superior natural law and its offspring, the law of charity. Milton has reasserted the hierarchy of law assumed in both Aristotle's and Grotius's works, placing natural law at the pinnacle of legal governance. Yet while Aristotle's and Grotius's works assert the hierarchy of natural law, these theorists both respect the standing law of the state and steer clear of direct subversive political impositions. Milton's arguments for divorce push further, articulating a revolutionary theory that calls for other laws to "give up their seals" (902).

In reading Milton's divorce tract as a call for radical legal reform, the historical context of the document should be examined. Even though the premise of Milton's natural law argument is an appeal to overturn the positive law of the domestic citizen, there is an underlying subversive commentary aimed at the authority of the state. Milton's *Doctrine and Discipline of Divorce* establishes the connection between the Canon Laws and the larger positive laws of the state, arguing that, "as a whole people is in proportion to an ill Government, so is one man to an ill marriage, he who marries, intends as little to conspire his own ruine" (*Doctrine* 862). In analogizing the submission to the church law of marriage as an ill submission to the law of the state, Milton gestures to the radical potential of natural law theory in undermining the laws of the state. Although Milton's tract "has little connection with the Revolution, the arguments...are largely drawn from the rationale of the Revolution, and cannot be fully

understood apart from them” (Sirluck 2). Sirluck here acknowledges the connection between Milton’s divorce tracts and the larger backdrop of the English Civil War. In attacking the Canon Laws directly, and addressing the document to Parliament itself, Milton again creates a larger gap between the natural law philosophies of earlier theorists and his own, taking the debate into the realm of civil law.

MILTON’S NATURAL LAW PART III: TENURE OF KINGS AND MAGISTRATES

Moving beyond the domestic sphere, Milton’s natural law theory continues its primary concern with the liberty of the individual. At the close of the Civil War, Milton’s prose writing turned to the political crisis. His work in this period focuses on the governance of England. In these works, Milton deviates dramatically from the conservative countenance of previous natural law theorists, articulating a pointed attack on the English monarchy.

The libertarian ideas present in Milton’s political tract *The Tenure of Kings and Magistrates* again draw upon Grotius’s work, particularly in the way in which its opening argumentation establishes the rationality of public governance through the institution of right reason. The opening passage of his tract sets up the historic failure of citizenry to be ruled by right reason, with Milton inquiring:

If men within themselves would be governed by reason, and not generally give up their understanding to a double tyranny, of custom from without, and blind affections within, they would discern better, what it is to favor and uphold the Tyrant of a Nation. But being slaves within doors, no wonder that they strive so much to have the public State conformably governed to the inward vicious rule, by which they govern themselves...Hence is it that tyrants are not often offended, nor stand much in doubt of bad men, as being all naturally servile. But in whom virtue and true worth is most eminent, them they fear in earnest. (*Tenure* 1021)

This passage assumes an inherent connection between the virtues and freedoms of the citizen and his/her innate ability to reason. Milton argues that the decision to subject oneself to inequitable

governance is a testament to the intellectual failures of the individual citizen. To be wise is equated here not only with liberty, but also with morality. He presupposes again a division of citizenship between the virtuous and the naturally servile. His argument in favor of the individual to choose its government hinges upon the intellectual ability of a citizenship elect and is determined in accordance with its tangible moral fiber. This notion that the right reasoning process of these select citizens could facilitate the usurpation of a perceived tyrant is based on a sense of moral self-righteousness that would pointedly single out his opponents as not only irrational, but also impure.

The system of government here is not one of an external nature. In Milton's theory of natural law, government is founded in the internal justice of the individual and not the legality of the state. Matthew W. Binney comments on this new hierarchical structure:

Instead of appealing to an early western nature that underscores the external authority of the state's or church's hierarchy and telos, Milton offers a new nature, articulated with Puritan Ideals and Natural law rhetoric, that emphasizes people's internal authority, justified by laws of nature, which places everyone within a higher, limitless moral community. (47)

Absent from an external hierarchal structure, Milton's conception of natural law allows for an inner authority of the selective citizen that takes precedence over positive, external law. This higher, limitless moral community is in fact a community capable of self-regulation, as well as of determining the character of a larger body politic. Contrary to earlier systems of governance, the positive law of an external authority is not permitted to supersede the internal ethics of a favored citizenship.

For Milton's natural law theory in *The Tenure of Kings and Magistrates* to be successful, the intellectual capability of the individual must be such that it is endowed with the ability to self-govern. In line with Grotius's theories, this belief in an internal natural law has its origins in the

individual's intellectual ability to reason rightly and justly. This transfer of power intellectually and legislatively echoes a more modern sociopolitical notion of equality and liberty not acknowledged in Milton's era. Matthew Binney comments, "Milton's early modern notion [of Natural law] underscores reason's critical capacity to weigh, measure, and differentiate, so that citizens make choices that align, as we shall see, with the laws of nature...People do not receive injunctions of right or wrong action from an external earthly authority" (40). Milton's theory presumes that human beings are endowed with the ability to ascertain the laws of nature based on an inner sense of social justice and morality. As such, Milton's natural law theory envisions a citizenship with the intellectual capability to determine justice on an interpersonal level, resulting in the establishment of a just external governance. The assumption here is that man as a rational creature is qualified to govern the self and by proxy the state. In his *Tenure of Kings and Magistrates*, Milton's citizenship, free from the inherent moral trappings of a tyrannical government, can willfully and dutifully usurp a morally corrupt monarch.

Regarding an argument for communal governance, Milton's natural law theory is derivative of Grotius. As Grotius mentions, "for the very nature of man, which even if we had no lack of anything would lead us into the mutual relations of society, is the mother of the law of nature" (14). Espousing these notions of a natural law that upholds the brotherhood of citizens, Milton's *Tenure of Kings and Magistrates* elaborates,

Who knows not that there is a mutual bond of amity and brother-hood between man and man over all the World, neither is it the English Sea that can sever us from that duty and relation: a straiter bond yet there is between fellow-subjects, neighbors and friends; but when any of these doe one to another so as hostility could doe no worse, what doth the Law decree less against them, than open enemies and invaders? Or if the law be not present, or too weak, what doth it warrant us to less then single defense or civil war? And from that time forward the Law of civil defensive war, differs nothing from the Law of foreign hostility.
(*Tenure* 1035-1036)

In this passage, Milton sets up a parallel between foreign and inter-domestic hostilities and their threat to a nation. To defend one's community against an external threat is likened to the defense of the citizen against the injustice of a tyrannical king. Both of these political scenarios threaten the natural bond that exists between man and nation. The individual therefore has the right in both instances to sever this relationship. Milton's argument for liberty in the civil realm is also based on a popular natural law theory that was gaining public momentum at the onset of the mid-seventeenth-century English Civil War.

MILTON'S NATURAL LAW AND THE WORK OF THOMAS HOBBS

In his study of natural law, R.S. White suggests a distinct dividing line both theoretically and chronologically between John Milton's *Tenure of Kings and Magistrates*, written in 1649, and Thomas Hobbes's *Leviathan*, written in 1651. Commenting on the relationship between these natural law theories, White observes that, "One small event in 1651 probably did more in the long run to eclipse Milton's reputation and the traditional notion of natural law upon which he relied than did any institution such as kingship. This was the publication of Thomas Hobbes's *Leviathan*, a book that came to cast a shadow over post-restoration thought" (243). As White's narrative assumes, Hobbesian natural law theory contradicts many of the structural precepts of Milton's political ideologies and ultimately works to undermine the poet/polemist's notions of civil liberty.

Hobbes's *Leviathan* directly challenges the assumptions of Milton's natural law theory. Commenting on the use of the term "conscience" in arguments that looked to natural law to justify rebellion against a monarch, Hobbes notices,

men vehemently in love with their own opinions, (though never so absurd,) and obstinately bent to maintain them, gave those their opinions also that revered

name of Conscience, as if they would have it seem unlawful, to change or speak against them; and so pretend to know they are true, when they know at most, but that they think so. (244)

Milton's theory on the innate virtue of natural law governance is influenced in many ways by Puritan notions of conscience. According to Milton, this internal arbiter of justice allows the individual to differentiate between right and wrong and thus determines appropriate action. Hobbes's critique of conscience thereby speaks directly to *The Tenure of Kings and Magistrates*. Particularly at stake here is the assumption that each individual maintains an intellectually clear conscience with which to determine the just nature of laws within the political sphere. The Hobbesian critique illuminates the problematic nature of Milton's formulation and the assumptions under which it 'pretends to know' the internal state of man.

In a sense, the assumption of a normative internal 'conscience' in Milton's theory is a by-product of his tendency to associate liberty with reason. It is the interaction between the two that allows an individual as a citizen of the state to challenge the governance of an absolute monarch. This notion of 'reason' leading to social justice and an equitable state is undermined by Hobbes's narrative that altogether denies the idea of intellectual self-governance. As such, Hobbes's *Leviathan* inverts the relationship between individual liberty and natural law. The citizen's liberty here is upheld not by his/her ability to ascertain the moral implications of natural law, but instead by the civic restraints of an external legislature. Hobbes comments that, "for the Laws of Nature (as Justice, Equity, Modesty, Mercy, and (in sum) doing to others, as we would be done to [them]), of themselves, without terror of some Power, to cause them to be observed, are contrary to our natural Passions, that carry us to Partiality, Pride, Revenge, and the like" (244). Contrary to Milton's *Tenure of Kings and Magistrates*, Hobbes's theory of natural law leads him to argue for a strict enforcement of institutional power, and so Hobbes's theory asserts that in

order to maintain civic order, a positive external law must restrain the passions and the liberty of the citizen. Interestingly, Hobbes no more dismisses the existence of a natural law governing morality than Milton himself; however, Hobbes's natural law theory deviates in two critical ways from that of Milton. It assumes first that man is naturally corrupt and incapable of self-governance through internal reason alone, and second that the threat of terror by a monarch is integral to maintaining the moralities of natural law.

Hobbes envisions man as a primal being whose inclinations tend towards disunity and violence. As such, Hobbes assumes that the 'natural' state of man is separate from an existing, yet unattainable natural law of ethics. White comments that, "Hobbes presupposes that although peace is paramount [to natural law], such a desire cannot be predisposed. Rather, he argues that men will not be good to one another unless either it is in their own self-interests or they are compelled by a sovereign body to be so" (245).

In Hobbesian theory, mankind does not possess an innate sense of sociability that drives him towards peace, but rather the tenets of a moral natural law are initiated only through the legal restrictions of a sovereign government. Hobbes proclaims, "the Passions that incline men to Peace, are Fear of Death; and desire of such things as are necessary to commodious living" (245). The implication here is that communal peace is only attainable through the authority of an external institution with the power to promote or punish. According to Hobbes, natural law places an emphasis on rewards and demerits, rather than on reason and virtue.

In order to create this distinction between primordial man and the power of the state, Hobbes's theory distinguishes between the innate natural rights of the citizen and the natural law of the government. White explains:

In his discussion [on law], Hobbes sharply reproves those who in his view confuse natural rights (*Jus Naturale*) and natural law (*Lex Naturalis*). The former

he squarely defines in individualistic terms as ‘the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature. Natural law on the other hand, is a limitation on liberty, because it determines what cannot be done and binds men to its terms as an obligation. (245)

The Hobbesian theory of natural law assumes that external sovereignty is natural and itself upholds the law, while liberty for the citizen is limited strictly to the private life of the individual and limited largely to self-defense or preservation. The distinction between the terms natural law and natural right allow for a separation between individual will and civil liberty. As such, in *Jus Naturale*, the citizen is allowed the liberty to function in accordance with his inner need for self-preservation, so long as he does not subvert an externally enforced law.

According to Hobbes, the individual citizen is prone not only to insubordination, but also more conspicuously to the corruption of social justice. This separation of the citizen from his/her conscience creates a similar ethical divide within the institution of the state as well. White acknowledges that “Hobbes has been seen, rightly or wrongly, as the grandfather of the politics of political materialism and pragmatism, the economy of market forces, [and] of possessive individualism” (243). Similarly, Catherine Gimelli Martin observes:

Nevertheless, Hobbesian political science was to triumph not merely during the short run of the Restoration but also in the long run of modern constitutional democracy. Although the modern state is hardly the monolith much less the monarchy that Hobbes envisioned, his stringent separation of religious from political thought proved so pragmatically and ethically viable that, in fact, it also seems to provide an important factor [in modern politics]. (247)

These scholars are interpreting the separation of conscience from natural law in the Hobbesian dialectic as a forerunner to a modern politic in which individual conscience is often circumvented in favor of civic order, resulting in pragmatic policies over more challenging ethical politics.

In examining the seventeenth-century natural law theorists, the antithetical relationship

between Hobbes and his theoretical opponents, Milton and Grotius, mimics the contemporary political arena where ethical considerations on issues from immigration to finance are often at odds with the custom and traditions of state law. While ‘natural law’ may seem antiquated, certainly in light of its medieval contextualization here, the tension between the positive law of the state and the moral liberties of the individual are a sociopolitical constant throughout history. Certainly, the natural law theories discussed here from Aristotle, St. Thomas Aquinas, Thomas Hobbes, Hugo Grotius, and John Milton, have played a major role in determining the fundamental structure of that argument.

PARADISE LOST: A FINAL WORD

While a detailed analysis of Milton’s poetry is beyond the scope of this examination, the poet/polemist’s work in *Paradise Lost* is in many ways a “fictional expression of the same ideas” (White 237) we find in Milton’s political prose and parliamentary addresses. It is fair to assume that Milton’s natural law inflected poetry is, in part, an allegorical response to the failure of the English Civil War and the 1660 Restoration of Charles II. Subsequent to these events, any articulation of Milton’s natural law theory in political prose would very likely “not be published and thus not be read” (White 237) due to the re-imposition of strict licensing laws. However, tucked away in a narrative retelling of the Biblical book of Genesis, Milton’s theory of natural law is free to live on.

Briefly examining Milton’s characterizations in *Paradise Lost*, the depiction of God as arbiter of reason who will “place within them as a guide/my umpire conscience” (iii 194-195), versus Satan as ruler who in “transcendent glory raised/Above his fellows, with monarchial pride” (ii, 427-428), can be read through a new critical lens as an extension of the poet’s natural

law theory. This poetic imaging of Milton's natural law theory is in many ways a continuation of the artist's dialogue with Hobbes, Grotius, and Aquinas. Book xii of the poem reinforces Milton's belief in mankind's ability to intellectually grasp the tenets of natural law:

but from Heav'n
He to his own a Comforter will send,
The promise of the Father, who shall dwell,
His Spirit, within them, and the law of faith
Working through love, upon their hearts shall write,
To guide them in all truth, and also arm
With Spiritual armour... (xii, 485-91)

The poem here contends that the divine presence within the individual guides him or her towards the attainment of truth and love. Thus, within Milton's passage is an argument for the existence of an innately virtuous citizenry. Quite a distance from the work of Hobbes who proclaimed "the Passions that incline men to Peace, are Fear of Death; and desire of such things as are necessary to commodious living" (245). It is even a great distance from Milton's earlier works which depict the spirit of virtue and natural law as prizes awarded to a privileged few. This later incantation of natural law seems to be most closely aligned with Aquinas who felt that "the rational creature is subject to Divine providence in the most excellent way... Wherefore it has a share of the Eternal Reason" (1823). The passage neatly connects to the arguments for liberty found in Milton's prose works that depict a virtuous citizenship under the rule of an oppressive and tyrannous positive law doctrine. Revisiting these passages subsequent to this discussion on natural law allows for a new and different interpretation of Milton's *Paradise Lost* and influences a reexamination of the poem under the critical lens of natural law theory.

CONCLUSION

Historically the theory of natural law has had a powerful influence on western politics in

the years following Milton's work. Representing the repressed liberty of the individual, Milton's arguments, in his anti-Episcopal tracts, his divorce tracts, and his regicide tracts, serve as a prophetic step forward in the development of several sociopolitical movements: the separation between church and state, the reformation of divorce law, and the destabilization of monarchical governance, respectively. In each of these instances, Milton challenges the cultural traditions of state law and argues for positive law based on innate moral reasoning. To understand Milton's work apart from his early influences—Grotius, Aristotle, and Thomas Aquinas—is to miss a fundamental component of his literature. Furthermore, to leave Milton out of the history of political natural law theory, as is often done, is to ignore a key figure in the development of the philosophy. As such, the poet/polemist's loquacious and assertive manner not only paved the way for a political progression in modern day civil liberties, but also represented an important progression in the history of natural law theory.

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