

# *Richard Hooker as Source of the Founding Principles of American Natural Law*

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## I

Philosophy is one of the few academic fields that enables its practitioners to work within perspectives that are radically incompatible with those of their immediate colleagues. Most philosophers believe in charting their own unique path or, for the less bold, at least believe in hitching their career to some rising academic star. My work is influenced by the Rev. William Wallace, a widely recognized expert on both Galileo and Aristotle, who takes the rather unusual view that philosophy is a gradually accumulating body of knowledge. Under this view, instead of striking out on ones' own, the true philosopher begins by studying the history of philosophy and the contributions of its major thinkers.

For example, I would argue that Parmenides's teaching on Being remains true for all time. The principles that he discovered, that nothing comes from nothing and nothing passes into nothing, are absolutely correct and remain in force today. Nor does it seem possible to overturn such a simple and fundamental metaphysical insight as this. I take Parmenides's thesis about the permanence of being to be the metaphysical root of those great constants of physics, such as the conservation of motion, matter and energy.

Another example of such an enduring truth is Aristotle's recognition that there must be a substrate in Book I of his *Physics*. No matter how radical the change, Aristotle tells us, there must be something "in which" change takes place. As my metaphysics professor, Fr. John Wippel of Catholic University, used to say: "When Fido is hit by the metro-liner, he undergoes substantial change. Nothing is left but the underlying substrate."

Reflections on such truths as these gradually lead to the conviction that

philosophy is a definite body of knowledge that grows over time. This immediately sets one apart from many contemporary thinkers who, in keeping with the Enlightenment outlook, hold that philosophy (and especially metaphysics) is a vast wasteland of conflicting theories. To my view, that is a tragically mistaken view. There is plenty of metaphysical truth out there for anyone who is willing to seek it out. And the most fruitful place to look for such wisdom is in the works of the great systematizers of the West, such as Plato, Aristotle, Augustine, Aquinas, and others. These are the figures who have sought to organize preceding philosophic wisdom in a systematic way—as well as to add further contributions of their own. There is yet another consequence of this outlook on philosophy. Given that true ideas are a reflection of the real, it follows that if reality obeys enduring principles, then there must likewise be a permanence to our ideas. Ideas do develop over time, but it doesn't make sense to say that ideas develop through a complete and radical negation of what has gone before. A completely new idea would be completely disconnected from the past. Thus Hegel's conception of *aufgehoben* is senseless because it requires a synthesis so deep that it negates the unity of the idea. In the end—despite the vast intellectual apparatus of his philosophy—Hegel was a Romantic. His claim that the synthesis of being and non-being produces becoming offends hard-headed reason.

Plato had already spoken to this point in his *Sophist*. There he tells us that the Form of Sameness is more fundamental than the Form of Difference. Why is Sameness more fundamental? The answer is simple: because every Form is the Same as itself. Thus the Form of Difference is the same as itself. This shows, Plato tells us, that the Form of Sameness must be one of the highest and most comprehensive of the Forms. Why? Because every other Form participates in it. The Form of Difference, by contrast, must be an inferior Form because no Form is different from itself. Since the Form of Difference participates in the Form of Sameness, but the Form of Sameness does not participate in the Form of Difference, it is clear that the Idea of Sameness is the more fundamental.<sup>1</sup> Again, it is very hard to argue against a metaphysical truth as straightforward and as simple as this.<sup>2</sup>

You may recall Robert Benchley's joke about there being two kinds of people in the world: those who divide the world into two kinds of people and those who do not. Well, under my view, a true philosopher is a divider—though this division occurs for the sake of preserving identity and sameness. More

<sup>1</sup> Plato, *Sophist* 254a-257b.

<sup>2</sup> One objection would be to deny the very existence of the Forms. Aristotle does indeed have the better view. But the point is that even given the non-existence of Platonic Forms, it remains true that the mental idea of difference is subordinate to that of sameness.

specifically, one divides the world into thinkers who separate the ideas of the present from those of the past from those who do not. The first group posits the existence of change so radical that no truth can endure over the ages; the second group holds that, despite the evidence of constant change all around us, there is an underlying permanence to the world that can be captured in our ideas. Hence we can and should learn from the past.

Today, in Platonic terms, intellectual life is dominated by the first type of philosopher. Postmodernism is, in many ways, simply an attack upon the Form of Sameness. It seeks to discover a difference (or *différance*) at the heart of sameness. Or better, it seeks to show that the Form of Difference is more fundamental than the Form of Sameness. This a very serious claim. For if we see difference as the more fundamental, then sameness will never be able to get a footing in the world. Contrariwise, if difference exists *within* a more fundamental reality of sameness, then there can be a permanent and unchanging core of metaphysical truth that endures over time.

## II

The June 1996 issue of the *Review of Metaphysics* was devoted to a symposium on Fred D. Miller, Jr.'s book *Nature, Justice and Rights in Aristotle's Politics* (Oxford University Press, 1995). I want to show appreciation for this work as an example of the sort of philosophy that I think makes sense and yet also offer a critique. In this book Miller argues that Aristotle had a notion of rights. He goes against the conventional academic wisdom that "rights" are a discovery of modernity. Miller, in fact, sees a direct link between the modern notion of rights and Aristotle's conception of justice in the *Politics*.

Not surprisingly, this book has come under attack by many scholars—not because it is obviously false—but because it goes against the spirit of the times. Miller points out that his view was actually the dominant one up until the 20th century. Today, however, you can find articles in academic journals, written along deconstructionist lines, that argue that John Locke's theory of natural rights had no influence whatsoever upon the mind of the American Founders. This is a preposterous claim, of course, but it is being published nonetheless—and some scholars are advancing their academic careers on its basis.

Miller attempts to revive an older view and takes some lumps for his labors, but I don't think he goes far enough—even though he makes a point of stating that Aristotle's political theory is based upon a deeper metaphysical theory of nature. I'm thinking in particular of Miller's definition of "right" as "a claim of justice which a member of a community has *against* other members of the community." Note the negative character here: "a claim of justice *against* other

members.” When I look at this definition I see the *modern* notion of right as a freedom “from” interference from others. But where is the Aristotelian core of this definition?

An Aristotelian notion of right should be defined something more like this: “a right is a good or end of human action whose attainment fulfills some intrinsic part of human nature.” When put this way, the definition properly reveals the teleological core of right. Only after stating this core is it possible to say how a violation of such an inherent natural tendency toward the good gives one a “claim of justice *against* other members” of society. When right is not grounded in teleology we have only the modern notion of right as “freedom from.” Such a definition gives prominence to how modernity differs from the ancient world, and neglects to show how the modern notion of right is the same as preceding philosophic tradition.

Natural rights theorists must be teleologists. Natural rights are “natural” precisely because they have a basis in the teleological order of nature. An “end of action” is something that belongs to us by nature. Any proper definition of natural right, therefore, must explicitly state this metaphysical core.

### III

Now my general thesis is this: that the three great natural rights of the American Declaration of Independence (life, liberty and the pursuit of happiness) are direct descendants of Thomas Aquinas’s discussion of the three types of natural goods found in his *Treatise on Law*.<sup>3</sup>

You will recall that the three goods at Q. 94.2 are the good of the individual, the good of the family, and the good of the social order or State. Thomas tells us that we have a “natural inclination” toward all three of these fundamental domains of goods. This, of course, is a teleological outlook. I will argue that the American Founders’ public profession that every human being has a natural right to life, liberty and the pursuit of happiness is fundamentally the same as Aquinas’s treatment of these three domains of natural ends. I will argue that life—or as Aquinas puts it, self-preservation—is the fundamental good of the individual; that liberty is the fundamental good of the family; and that happiness is the fundamental good of State. Thus Jefferson’s phrasing in the Declaration contains within itself a core rooted in preceding Western metaphysical tradition. Since the whole of this thesis is too large to be handled here, I will focus only on Jefferson’s use of the word “liberty.” This appears, at first glance, the most difficult of the three connections to make. So it is a fair challenge.

<sup>3</sup> *Summa Theologiae* I-II 94.2.

My strategy for defending this thesis is to see Richard Hooker as the key intermediary between Aquinas and Jefferson. (Hence, the title of my paper). Hooker's *Laws of Ecclesiastical Polity*, as is well-known, is an Elizabethan restatement of the key teachings of Aquinas's *Summa Theologiae*. Hooker attempts to chart a middle path between the excesses of the Protestant Reformers and the corruptions of Rome. His *Laws* is also one of the last systematic and comprehensive accounts of traditional metaphysics. It makes all the key distinctions, such as that between act and potency, truths self-evident to us and those self-evident in themselves, subordinate and superordinate ends in nature, etc. It identifies an ordered hierarchy of laws descending from the Eternal, to the celestial, to the natural, all the way to the human; each of which stands in a direct deductive relationship to the one which precedes it. It sees the pursuit of happiness as the final end of all human endeavor. It advances a contract theory of government to explain how we order our natural tendency to associate with others under law. It takes a theistic, teleological, and hierarchical view of the universe and the order of being. It is, in short, in the great tradition of Aristotle and Aquinas.

Still, my claim seems a somewhat odd one at first: that the principal natural good (and therefore *end*) of the family is liberty; and that Jefferson is really speaking about the good of the family when he announces his famous phrase of life, *liberty* and the pursuit of happiness. The present American understanding of liberty—dominated as it is by the Form of Difference—would reject any such association. Freedom today means the freedom of the “unbounded atom.” It is freedom *from*, not freedom *for* some larger natural good.

The standard Western outlook on freedom, however—and the one adopted by Hooker, Locke and the American Founders—is that freedom exists for the sake of the good. More specifically, it exists for the sake of the moral and intellectual virtues. These greatest of human goods, which perfect our very nature, are secured within the larger social order provided by the State. The moral virtues require fellow citizens toward whom we can act well, and the intellectual virtues require teachers and institutions of higher learning. Both types of virtue need the tranquillity of order provided by the State.

The good of liberty, under this conception, is ultimately ordered to the larger good of the human community. It is ordered to happiness and must be exercised under the Laws of Nature that govern the free association of human beings under government. Liberty, for the American Founders, includes the Lockean notion that we have a natural right to life, liberty and property, which rights cannot be abridged by others. There is indeed present here that freedom *from* interference which is so pronounced in the modern notion of right. But lying at the core of this Lockean notion is an ancient and medieval metaphysics—

transmitted by Hooker—that sees right as essentially grounded in the teleological order of nature.

When liberty is seen against the background of Hooker's metaphysics, freedom becomes a positive end of human action that enables us to fulfill an intrinsic part of our human nature. It conforms to a definition of right as "a good or end of human action whose attainment fulfills some intrinsic part of our nature." If this is granted, then we need only see that for a human being to secure the end of freedom, he must possess the power of reason. This natural power develops properly only within the well-ordered family, for it is within the family that the child learns to think morally about himself and his world and so begins to acquire the natural virtues that constitute true freedom under the Laws of Nature.

From a scholarly perspective the links are obvious: Jefferson relies upon Locke's *Second Treatise of Government*, and actually paraphrases certain lines from Book II, Chapter 2, "The State of Nature," concerning our right to "life, health, liberty or possessions."<sup>4</sup> It is also here that Locke speaks of all human beings as "the workmanship of one omnipotent, and infinitely wise maker" who creates an order of nature with "a law of nature to govern it." This is clearly echoed in Jefferson's magnificent phrase "the Laws of Nature and of Nature's God." And most importantly for my point, according to Locke, in the state of nature we are all created "free and equal" because we are all able to govern ourselves under the Laws of Nature *through the light of natural reason*.

A few paragraphs later, under "Of Paternal Power," Locke specifically takes up the question of children and notes that, because they lack reason, they are *not* born free and equal.<sup>5</sup> Until such time as they acquire reason, the parents must substitute their own rational power in order "to preserve, nourish and educate" their children.<sup>6</sup> As he puts it, "The power, then that parents have over their children, arises from that duty which is incumbent upon them, to take care of their offspring during the imperfect state of childhood."<sup>7</sup> Childhood is imperfect because it lacks the freedom that grows from a life lived under the mature direction of reason.

Locke also makes it clear that Hooker is the source of all of these ideas. Locke's views on paternal power are peppered with citations to Hooker. Hooker tells us that innocents and madmen never attain to the use of reason (and so never grasp the laws of nature); or again, Hooker tells us that the point at which

<sup>4</sup> John Locke, *Second Treatise of Government* (Indianapolis, Indiana: Hackett, 1980), paragraph 6.

<sup>5</sup> *Ibid.*, paragraph 55.

<sup>6</sup> *Ibid.*, paragraph 56.

<sup>7</sup> *Ibid.*, paragraph 58.

someone comes into possession of reason is a matter for sense to determine and this task falls to the individual parents.<sup>8</sup> Thus Locke concludes that “God has made it [the parents’] business to employ this care on their offspring, and has placed in them suitable inclination of tenderness and concern to temper this power, to apply it, as His wisdom designed it, to the children’s good, as long as they should need to be under it.”<sup>9</sup>

Thus, under the traditional view of liberty, there is a direct connection between the acquisition of freedom and the natural order of the family. This is even clearer when we examine more closely the sections of Hooker’s *Laws* cited by Locke. Children, the retarded, and the insane, are incapable of following the dictates of reason, but “in the rest there is that light of Reason, whereby good may be known from evil, and which discovering the same rightly is termed right.”<sup>10</sup> The freedom to discriminate between good and evil, independent of the authority of our parents, is a right directly tied to the proper exercise of independent reason.

Here we also see a clear connection to the teachings of Aristotle and Aquinas on the “self-evident.” Induction from the self-evident character of good and evil in nature, Hooker tells us, leads us to the fundamental Laws of Nature, which God imparts to us, “not revealing by any extraordinary means unto them, but they by natural discourse attaining the knowledge thereof.”<sup>11</sup> Such “natural discourse” occurs first and foremost within the family, for “education and instruction are the means, the one by use, the other by precept, to make our natural faculty of reason both the better and the sooner able to judge rightly between truth and error, [and between] good and evil.”<sup>12</sup>

It is thus within the family that we first learn that most fundamental principle of the natural law, that “the good is to be done and evil avoided.”<sup>13</sup> And given the intrinsic connection between rationality and liberty in Hooker and Locke, it is clear that there is a core of identity between the Jeffersonian proclamation of “liberty” as a natural right of man and the Thomistic description of the principal end of the family as the care of offspring. As Locke puts it, “The freedom [ ] of man ... is grounded on his having reason .... To turn [the child] loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free; but to thrust him out amongst brutes, and

<sup>8</sup> *Ibid.*, paragraph 60 and 61.

<sup>9</sup> *Ibid.*, paragraph 63.

<sup>10</sup> Richard Hooker, *Laws of Ecclesiastical Polity* (New York: E.P. Dutton & Co., 1965), VII.4.

<sup>11</sup> *Ibid.*, VIII.3.

<sup>12</sup> *Ibid.*, VI.5.

<sup>13</sup> See St. Thomas Aquinas, *Summa Theologiae*, I-II 94.2.

abandon him to a state as wretched, and as much beneath that of a man's, as their's." God, in order to avoid this calamity, has put the liberty-interests of children into the hands of their parents.

## IV

Let me now contrast the original American outlook on liberty with that of the most influential modern work of American political theory, Harvard professor John Rawls's *A Theory of Justice*.<sup>14</sup> In the light of my preceding remarks, the most striking aspect of Rawls's work is that it sees absolutely no connection whatsoever between freedom and the natural order of the family. Indeed, as is well known, Rawls holds that if we are to be just we must cut ourselves off from the natural world entirely. We must imagine ourselves in a purely rational domain with no families, no social ties, no civilization, and no conception of what is good by nature. Then—and only then—is there any possibility of constructing a truly just society.

Even more remarkably, Rawls actually considers the possibility that true justice might require the complete abolition of the natural family!<sup>15</sup> After all, is it fair that some children should come from good families and others from bad? That would give the fortunate ones a distinct natural advantage over the less fortunate. Although Rawls eventually decides against the abolition of the family, it is nonetheless amazing to think that he would even consider such an unnatural possibility.

Rawls's outlook is an excellent example of philosophy founded on difference. His view rejects entirely the roots of the American Republic in the great metaphysical systems of the ancient and medieval worlds. He does not see nature as a teleological ordering wherein the good of the family is ordered the larger good of the social order or State. Nor does he see that the principal aim of the family is to transmit to the child the liberty that is naturally his under the guidance of a well-formed reason. For Rawls the family is a problem and an irritant that disrupts the uniformity of reasoning operating in total abstraction from nature.

John Courtney Murray, in his *We Hold These Truths*, tells us about a possible "evil day" in future American history when there will be widespread political dissent from the founding ideals of the American Republic—a time in which the following tenets of the American Declaration of Independence will be rejected: "... that the legal order of the society—that is, the State—is subject to judgment by a law that is not statistical but inherent in the nature of man; that

<sup>14</sup> John Rawls, *A Theory of Justice* (Cambridge, Massachusetts: Belknap Press, 1971).

<sup>15</sup> *Ibid.*, p. 511.

the Eternal Reason of God is the ultimate origin of all law; that this nation in all its aspects—as a society, a state, an ordered and free relationship between governor and governed—is under God.”<sup>16</sup>

During this future time, Murray says, Catholics will find themselves increasingly forced into the paradoxical position of defending America’s founding ideals. It will be paradoxical because Catholics will defend natural theology and natural law on non-Catholic grounds, as a body of knowledge known independently of faith and thus solely by reason. During this time, “[t]he guardianship of the original American consensus, based on the Western heritage, would have passed to the Catholic community, within which [that] heritage was elaborated long before America was. And it would be for others, not Catholics, to ask themselves whether they still shared the consensus which first fashioned the American people into a body politic and determined the structure of its fundamental law.”<sup>17</sup>

It seems to me that that day has arrived.

<sup>16</sup> John Courtney Murray, S.J., *We Hold These Truths* (New York: Sheed & Ward, Inc., 1964), p. 53.

<sup>17</sup> *Ibid.*