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Educational Materials for Late Medieval Transformations

INTRODUCTION

In this essay, Paul Sigmund introduces the natural law thinking of the late medieval period and its place in the larger natural law tradition. The 14th through 16th centuries saw developments in thought about politics and natural law that helped prepare the way for the ideas of the Enlightenment that inspired the [American Founders](#).

Sigmund summarizes the developments in natural law thinking under two headings: 1) greater emphasis on the rights of the individual, especially to property and freedom; and 2) the derivation of the authority of governments not directly from God (the claim of theorists of the “divine right of kings”), but by the intermediary of the consent of the governed. Sigmund then explores various proponents of these views and the historical context of their work.

In the early 1300s, William of Ockham theorized about an individual natural right to property to defend contemporary Franciscan teachings on spiritual poverty. He also used the idea of a “state of nature” (among other notions) to defend rule by consent of the governed in both the Church and the state.

The 15th-century papal schism in the Catholic Church provided another occasion for the development of government by consent through the conciliarist movement, as did the 16th-century [Protestant Reformation](#). These religious controversies in turn inspired innovations in political theory. Figures like the Catholic [Nicholas of Cusa](#) and the Anglican [Richard Hooker](#) presented arguments for freedom, natural equality, and government by consent that would come to have enormous influence on political thought.

As you study the source readings, try to determine how these late medieval ideas relate to earlier ideas of natural law, and consider how they may have influenced later political thought.



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WILLIAM OF OCKHAM

William of Ockham was born around the year 1287 in the small village of Ockham, near London. At a young age his parents gave him over for membership in the Franciscan Order, and he entered a Franciscan house in London. He studied there until he began his formal theological education around 1310, possibly at Oxford. By 1324, Ockham had become known for his controversial theological views and was called to Avignon, which was then the seat of the Papacy, for questioning on charges of heresy. After further conflict with Pope John XXII in the ensuing years, Ockham fled Avignon in 1328 for the protection of the Holy Roman Emperor, Louis IV of Bavaria. He lived out the rest of his days in and around Munich and eventually died in 1347.

Ockham was well known for a variety of controversial philosophical and theological views. Today he is best remembered for his principle of parsimony (widely referred to as “Ockham’s Razor”), which is embodied by the maxim “Entities must not be multiplied beyond necessity.” Ockham sought to simplify Scholasticism, which he thought had grown needlessly complex, and he used this principle of parsimony to justify the rejection of a variety of important Scholastic concepts and distinctions, such as metaphysical universals. For this, Ockham’s is the name most famously associated with nominalism.

To read more about William of Ockham's life and works, please click [here](#).

RICHARD HOOKER

Richard Hooker was born in 1553 in the town of Heavitree, near Exeter, in England. His family was neither wealthy nor noble, but through the patronage of Bishop John Jewel he was able to study at Oxford. In 1585, Hooker was appointed as Master (or rector) of the Temple Church in London, where he engaged in a famous public debate with the prominent Puritan theologian and preacher Walter Travers.

Hooker draws on [St. Thomas Aquinas](#)' work on natural law in his own most influential work, [Of the Laws of Ecclesiastical Polity](#). This work is an attempt, in eight books, to settle problems related to the governance of the Church. Hooker was an early proponent of what became known as latitudinarianism, which emphasizes the importance of a person's private piety and intent over the specific contents of his beliefs and minimizes the importance of specific doctrine. He died on November 3, 1600.

To read more about Richard Hooker's life and works, please click [here](#).



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Bellarmino, Robert:

(1542-1621) an Italian Jesuit and Cardinal who wrote extensively on theology and politics. The main purpose of his work was to defend Catholicism and the Pope against the claims of Protestant theologians and kings. He criticized the theory of the "divine right of kings" and argued for an "indirect" power of the Pope to intervene in politics for religious reasons.

Calvin, John:

(1509-1564) a Swiss lawyer and [Protestant](#) theologian who established a theocratic government in the city of Geneva. His thinking as epitomized in the *Institutes of the Christian Religion* gave rise to the Calvinist movement in Protestantism, a large branch of which is modern Presbyterianism.

canon law:

the legal system of the Catholic Church.

conciliarism:

the doctrine that plenary councils of the Church's bishops are a higher authority than the Pope.

Council of Constance:

(1414-1418) a council of the Church's bishops held at Konstanz (in modern Germany). The assembled bishops resolved the Great Western Schism in the Church by deposing all three claimants to the papal throne and electing a new pope.

divine right of kings:

the doctrine that a king's authority over his nation is granted to him by God in such a way that it can be challenged by no earthly power.

ethical voluntarism:

the doctrine that, because God's will (*voluntas* is Latin for "will") determines right and wrong, and because God is omnipotent, God may command that which contradicts human reason.

Holy Roman Empire:

by the late middle ages and early modern period, the loose federation of central Europe's German-speaking states and northern Italy, united by the government of the Holy Roman Emperor. The Emperor was elected by certain princes of the Empire's constituent states. The empire was founded in 800 A.D. by the Frankish king Charlemagne and was conceived as a continuation of the ancient Roman Empire in the West.

Huguenots:

French Calvinists.

Luther, Martin:

(1483–1546) German priest and theologian whose criticisms of the Catholic Church launched the [Protestant Reformation](#) in 1517. His followers are today known as Lutherans.

nominalism:

the doctrine of some philosophers that, whenever we describe several things using the same noun or adjective ("dog," "white," etc.), the commonality that we may think we notice in those things ("dogness," "whiteness," etc.) does not itself exist, either in the things or somewhere else; no two beings are objectively the same in any respect. Therefore, the nouns or adjectives by which people group many things under one heading (philosophers call these words "universals") are no more than the names that they agree to use for those things (*nomina* is Latin for "names").

Reichstag:

the Parliament of the princes of the Holy Roman Empire.

Stuart monarchs:

Kings of England for most of the 1600s. The Stuart royal family was seen as having absolutist inclinations and Catholic sympathies. Charles I was executed in the English Civil War in 1649 and his son James II was expelled in the "Glorious Revolution" of 1688.



I. In the late Middle Ages, natural law thinking developed in ways that would later have a great influence on American thought about law.

A. Thinkers of the late Middle Ages were the first to emphasize individual rights.

B. In opposition to theories of the divine right of kings, these thinkers began to develop a theory of government by consent of the governed.

II. The Late Middle Ages

A. William of Ockham.

1. Though some scholars have argued that William of Ockham's thought was incompatible with natural law, the language of natural law plays an important role in his thought.
2. Ockham used arguments from Roman and canon law to defend an individual right to property and government by consent of the governed.
3. Anticipating later thinkers, he described the condition of man before governments as a "state of nature."

B. Conciliarism: the doctrine that the Church council rather than the Pope was the highest authority in the Church.

1. [Nicholas of Cusa](#) developed a detailed version of conciliarism. He argued that councils of bishops could depose the Pope and that ecclesiastical officials and laws required the approval of representative councils.
2. The Church never adopted Nicholas of Cusa's proposals, but later thinkers were influenced by his arguments.

III. The Reformation

A. Early [Protestants](#) acknowledged the natural law, although they believed man was too sinful to act according to it without supernatural help.

1. Luther and Calvin both believed that there was a universal natural law, although it was not emphasized in their theological writings.

B. Reformed natural law found application in the political conflicts of the time.

1. The Huguenots appealed to the natural law to justify their opposition to the French king's attempts to impose Catholicism on the nation.
2. The pseudonymous author of the [Vindiciae Contra Tyrannos](#) argued that kings held their power only by the consent of the people. Kings who violated the rights of the people could justly be overthrown.
3. Robert Bellarmine, though not a Protestant, adopted similar arguments to challenge the idea of the divine right of kings. His ideas were discussed favorably by [John Locke](#).

IV. John Locke and [Richard Hooker](#)

A. Richard Hooker's [Of the Laws of Ecclesiastical Polity](#) is quoted repeatedly by John Locke and connects Locke's theory of natural law to the late medieval tradition.

1. Hooker's aim was to defend Anglicanism as a middle way between Catholicism and Puritanism. His thought about law is very similar to the Catholic teaching of [Thomas Aquinas](#).
2. According to Hooker, the English monarchy and English church were established by the original consent of the English people and are therefore binding authorities for later generations.

B. Unlike Hooker, Locke argued against the idea of a nationally established church and maintained that legitimate government required the individual consent of each citizen rather than the original collective consent of the nation.



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I. Basic Interpretation

As you read through the primary sources in this section, keep in mind the following questions:

1. What were the two major developments in natural law thinking in the 14th through the 16th centuries?
2. What is the theory of the divine right of kings? What responses did it provoke from late medieval natural law thinkers?
3. What do these authors think is the basis of a government's legitimacy?
4. What did the conciliarists believe about authority in the Church? Did their beliefs have consequences for secular government?
5. From what do these authors think the natural rights of man are derived? Do they agree with one another?
6. How are the religious controversies between Catholics and Protestants reflected in Reformation-era debates about politics and natural law?

II. Connections to Other Thinkers

The authors presented in this section were conscious of belonging to a long tradition of reasoning about the natural law. Consider how they interact with other representatives of that tradition and prepare the way for later, different conceptions of natural law.

1. William of Ockham and Thomas Aquinas are generally considered philosophical opponents on the basis of their very different views on metaphysics. In your reading of Ockham's thought about the natural law, can you find any major differences with Aquinas? Ockham distinguishes three senses of "natural law;" he bases his distinction on the conditions under which our reason can come to know the natural law. Aquinas also seems to distinguish between every human being's inborn knowledge of the moral law ("synderesis") and the knowledge of the natural law that is attained only after active reasoning. To what extent are these accounts similar or different? Do Ockham and Aquinas mean the same thing by "natural law"?
2. Richard Hooker acknowledges that his thought is indebted to that of Thomas Aquinas when he cites Aquinas in support of his own arguments. Aquinas argues that we know the natural law through our "participation in the eternal law," that is, through a "share of the eternal reason" that is in us (*Ia IIae, q. 90, a. 2*). After a close reading of sections of Hooker's *Of the Laws of Ecclesiastical Polity*, to what extent do you think Hooker agrees with this? Are there any important differences between Hooker's and Aquinas's accounts of natural law?
3. When discussing the rights of people to elect their own leaders, William of Ockham argues that although people have the right to govern themselves, they may "relinquish" that right to another if they so choose. There are obvious similarities here to the so-called "contract theories" of Locke and Hobbes, according to which people who come together in society cede their rights to a ruler for the sake of the benefits that only a government can provide. From your reading of William of Ockham, do you think he would agree with later "contract theorists" on the origin and nature of government? Do you notice any differences between medieval theories of representation and the later theories of the Enlightenment?

4. Richard Hooker seems to argue that the basic principles of the natural law are self-evident. He says, for example, that “the main principles of reason are in themselves apparent” and that “the light of reason” is adequate to enable us “to know truth from falsehood, and good from evil,” and, to a certain extent, to understand “the will of God.” Is Hooker making an argument from “common sense,” as [Thomas Reid and James Wilson](#) would do in the 18th century? To what extent does Hooker reconcile arguments from common sense with arguments from theology? If general agreement on a moral principle is one of the signs that that principle belongs to the natural law, how can arguments from natural law be used to resolve moral disagreements? In your opinion, do Hooker’s theological arguments allow him to solve this problem?
5. The thinkers discussed in this section, even if they do not all directly argue that the people may depose their rulers, agree that there are certain duties and responsibilities that rulers cannot ignore. The ruler, for instance, is bound to follow both the written and the natural law in all his actions. Clearly these philosophers would disagree with thinkers such as [Machiavelli or Guicciardini](#), who argue that power does not require any justification, and with proponents of the divine right of kings, who contend that monarchs’ power is absolute because it is based on their descent from rulers chosen by God himself. Imagine a debate between proponents of these views. How might they go about convincing one another of their positions? Is there any common ground that you think they would all agree on? Or do their views diverge so widely that no engagement among them is possible?
6. To a greater or lesser extent, all the thinkers discussed in this section introduce religious ideas into their political thought. This would have been unacceptable to later thinkers such as the [Social Darwinists](#) or the more modern liberal theorists, who insist on considering politics as a purely natural, this-worldly system and want to purge all metaphysical and theological arguments from the sciences of politics and morals. To what extent could the theories of these late medieval thinkers stand on their own as secular political arguments? How might they defend their theological and metaphysical approach to these political questions?
7. At the beginning of the *Politics*, [Aristotle](#) argues that there are “natural slaves,” people who are naturally incapable of managing their own lives and must therefore follow the directions of another. Nicholas of Cusa was a student of Aristotle’s works, and he seems to have been influenced by Aristotle’s idea of natural slavery when he says that “those who are best endowed with reason are naturally the lords and rulers of others.” Do you think a follower of Cusa would go so far as to agree with Aristotle that some people are slaves by nature? If he believes that some people are naturally better able to rule than others, how can Nicholas of Cusa defend the ideas of human equality and government by consent?
8. Aristotle insists that the city (*polis*) exists not merely for the sake of life, but for the sake of the good life: the purpose of political society is not merely to provide protection against the dangers of the state of nature, but to guide citizens toward virtuous living. For Aristotle, “man is by nature a political animal,” and human life outside of civil society is essentially incomplete. Nicholas of Cusa, on the other hand, says that the state was established for “preserving peace,” while Richard Hooker writes that government was necessary only due to “the corruption of our nature.” Hooker even goes so far as to say that “there [was] no impossibility in nature considered by itself, but that men might have lived without any public regiment.” Why do these authors think the establishment of political society was necessary? To what extent do they think politics is necessary or useful for the good life? Unlike Aristotle, these authors recognize the Church as an institution independent of governments. How might this have affected their view of the ultimate purpose of government?

9. The [framers](#) of the [American Constitution](#) were very careful to establish checks and balances within the structure of government so as to minimize and control abuses of power. Fearing the “tyranny of the majority,” they put structural and procedural limits on the power of elected representatives to make and remake laws at will. Centuries earlier, Nicholas of Cusa [argued](#) that a government that makes decisions “for the preservation of the commonwealth by common consent . . . will not diverge from the way that is right and useful for the times.” Do you think Nicholas’s confidence in representative institutions was justified? Were the American founders right to place checks on the power of the majority? Does democracy demand that we assume that, in any given case, the majority knows best?

III. Critical Interpretation

With a basic understanding of these late medieval thinkers, let us examine their ideas about natural law more critically. How sound are their arguments for government by consent of the governed? What are the religious and philosophical premises that underlie their conclusions? Are there implications of their ideas that are not explicitly stated? Use the questions below as a guide:

1. William of Ockham argues that “supposing that some prelate or prince is to be placed over some other people, it can be deduced by evident reason that . . . they have the right to elect the one who is to be placed over them.” How does he defend his claim that all political bodies “can make their own law for themselves”? Defenders of the idea of divine right would have argued that this premise is false. How might Ockham respond to their arguments? Do you think the idea of self-government is as “evident” as he says?
2. Almost all the political thinkers discussed in this section examine the separate institutions of Church and state and the relationship between them. In this, they differ both from ancient thinkers, for whom religion and politics were inseparable, and from modern liberal thinkers, for whom religion is a private matter with little bearing on politics. In your opinion, is the late medieval idea of the separate authorities of Church and state merely a result of the political context in which these authors wrote, or can it be defended in its own right? How do they think the Church ought to relate to the state, and vice versa? Do you agree with them? What advantages and drawbacks might there be to such a position?
3. William of Ockham establishes as a basic principle that, according to “evident reason,” no one ought to be governed except by his consent. Does he explain what this “evident reason” is? How does he justify his arguments for government by consent? The idea of government by consent itself seems to present problems. If people have, by natural law, the right to establish the laws they want, do they then have a right to establish laws that run against the natural law? Which takes precedence: people’s right to govern themselves, or their responsibility not to violate the natural law? In your reading of William of Ockham’s political thought, do you see anything that might resolve this dilemma? How might the other authors in this section have resolved this problem?
4. Most of those who argue for government by consent do not expect that the government will secure the consent of each and every citizen; it is enough, they argue, for the government to have the consent of a “majority,” a term that is never explicitly defined as numerical. Do you think these thinkers are justified in substituting the consent of the “majority” for the consent of the whole political body? Practically speaking, it may always be impossible for any proposal to win the approval of every citizen; but is this enough to override the objections of a minority of citizens who may not agree with the election of a ruler or the establishment of a new law? If

government gains its authority only by the consent of the governed, how can a government have legitimate authority over individual citizens who have not consented to it?

5. Many of the authors discussed in this section justify their political views with arguments taken from the Bible or from Church law. Is this merely a concession to the religious authorities of their times, or is there something essentially theological about the claims they make? Is absolute religious doctrine compatible with an idea of government by consent of the governed? Are the ideas of these late medieval thinkers a natural development out of older religious thinking about law, or are they a first step toward undermining the religious foundations of medieval political thought? Defend your conclusions with reference to the original sources.
6. Nicholas of Cusa, like later liberal thinkers, [argues](#) that “by nature men are equally powerful and equally free.” This claim is part of his argument for the necessity of government by consent of the governed. At the same time, however, he describes a government system that clearly includes aristocratic elements such as social ranks. Is this compatible with his belief in the basic equality of all men? Do you think Nicholas’s political vision successfully balances his republican ideals with the monarchical institutions of his time?
7. Richard Hooker argues that, although government must be by consent, only the generation that founds a government need actually give its consent. He says that “we do consent, when that society whereof we are part hath at any time before consented” and that “the act of a public society of men done five hundred years [ago] standeth as theirs who presently are of the same societies.” Should we accept this line of reasoning? Can the consent of earlier generations be taken to imply the consent of their descendants to the same government? Why or why not? Does this argument of Hooker’s accurately describe the way political societies work?

IV. Connections to Contemporary Concerns

The political thought of the late Middle Ages introduced many ideas about politics and natural law that had a tremendous impact on later thinkers whose influence is still felt today. To better understand this, let us now turn to some present-day issues, analyze them in terms of these medieval ideas, and consider how our modern political thought may have developed or departed from them.

1. Nicholas of Cusa places a great emphasis on the rule of law as opposed to the rule of men. He allows that rulers may make decisions on their own in situations where the law does not apply, but he insists that they are bound by the law and that new laws that are made cannot overturn laws accepted by custom and usage. Likewise, in American law tremendous emphasis is placed on the limitations of the government’s powers and on the importance of precedent in legal decisions. Some progressives, who advocate a “living constitution” that can be adapted to meet the needs of every age, have argued that such a dependence on precedent prevents the government from responding effectively to new problems. Do you agree with this argument? What are some advantages and drawbacks to the rule of law? Are the limitations on the government entailed by the rule of law a prudent curb on the state’s power or a crippling limitation?
2. Nicholas of Cusa [argues](#) that there are two criteria for a just government: that it 1) “[tend] to the common good” and 2) act “according to the will of its subjects.” But what ought a government to do when these criteria come into conflict? It is not uncommon that proposals for the sake of the common good are put forward without significant public support. Would a government be justified in overriding the popular will for the sake of the common good? Would

the government be bound to adopt popular measures that harmed the public good? How do you think this tension should be resolved? Consider some examples from history in which rulers have had to confront this problem.

3. The “wall of separation between church and state” is a long-standing principle in American law. According to the Supreme Court, this principle demands that the government not act so as to promote religious belief or worship. For the authors discussed in this section, however, political questions of natural right were intimately bound up with religion. This line of thought extended even to the American Declaration of Independence, where it is written that all men “are endowed by their Creator with certain inalienable rights.” If natural rights, and the right to self-government, are tied up with questions of religion, on what grounds can they be observed by a secular government such as our own? In your opinion, how much do these ideas really depend on religion? Can they have a place under a secular constitution such as our own? Why or why not?
4. A major theme that emerges from the thinkers discussed in this section is that government must be by consent of the governed. Since the American Revolution, this has been an important theme in American political thought as well. But how accurately does it describe the situation of our current government? Is Richard Hooker correct in his belief that the consent of a founding generation implies the consent of their descendants? Is it really the case that all American citizens have given their consent to the government, especially if most of the Constitution was written over two hundred years ago? What, in your opinion, does “government by consent” really mean?
5. Democratic ideas like government by consent of the governed are likely to be brought up in any civics class. Usually, however, these ideas are mentioned only in the context of the Enlightenment and the American Revolution. Why is it that the late medieval exposition of these ideas receives so much less attention? Does the medieval conception of these ideas, as discussed in the primary sources in this section, fundamentally differ from our modern understanding? What sort of influence do you think these late medieval authors have had, directly or indirectly, on modern American political discourse?

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