topic

Natural Law and Natural Rights in the American Constitutional Tradition

INTRODUCTION *to* AMERICAN FOUNDING *and* CONSTITUTIONALISM

A philosophy of natural rights encouraged the American revolutionaries and provided a foundation and a form for the American Republic.

The prominence of the natural rights discourse from the Early Modern thinkers played a crucial role in guiding the creation of the founding documents of the American Republic. The rhetoric and logic of the natural rights tradition can be found in the resolutions of the first Continental Congress in their appeal to 'the immutable laws of nature,' and in the affirmation of the 'unalienable rights' of man in the Declaration of Independence. The Founders sought to secure the liberty and autonomy of the citizens of the American Republic, and the Constitution and Bill of Rights display the preoccupation with and concern for the inviolable rights belonging to man.

As the Republic grew over the next hundred years, natural rights remained a guiding, though not undisputed, principle for many of its leading thinkers. Tensions and obscurities arose as the thinkers of the fledgling Republic struggled to articulate the difference between natural rights and acquired rights and to define the categories to which they belonged. Justice James Wilson, a member of the first Continental Congress, posited that the categories could be overlapping and indicated the examples of marriage, parenthood, and the education of children as instances of the innate compatibility of natural rights and the 'domestic economy.' Others, however, favored the notion that rights originate in the social contract, and are therefore derived solely from the Constitution and Bill of Rights.

President Abraham Lincoln appealed to natural rights in his affirmation of the equality of all human persons as the core proposition of the American experiment, and grounded his condemnation of slavery upon the principles as articulated in the Declaration and Constitution. His arguments and actions in defense of his opposition to slavery set the precedent for subsequent American practice, and, when the Constitutional Amendments 13-15 banned slavery and enumerated the Constitution's guarantee of the rights to life and liberty, it was for the purpose of perpetuating the authority of constitutionally based natural rights.

Natural rights would persist as a guiding principle for political activists and thinkers in twentieth-century America, as well. Martin Luther King, Jr., and the activists of the Civil Rights movement invoked them in their arguments against racial discrimination and segregation, though King also reintroduced Augustine's formulation of natural law '*iniusta lex non est lex*': an unjust law is not a law and therefore cannot bind. Natural rights have proved integral to the American theory and practice of government, and from Lincoln onward, they have been placed at the center of American constitutionalism.

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