topic

Critics of the Natural Law Tradition

INTRODUCTION *to* CRITICS *of the* NATURAL LAW TRADITION

Throughout history, many thinkers have dissented from the natural law tradition and have proposed a variety of influential alternatives, including Machiavelli's reason of state, social Darwinism, and legal positivism.

Throughout the early modern, Enlightenment, and modern periods, many thinkers critical of the natural law tradition have expounded philosophies of human nature, law, and the role of government that have been widely influential in the Western world. Prominent among Italian Renaissance thinkers were Machiavelli and Guicciardini, who expressed the ruthless and pragmatic political ethos of their time in terms of a permissive power of the state. With the sole aim of order and stability, they advocated "reason of state" as the only guide for political rationality.

In France, thinkers like Voltaire abandoned the idea that the moral principles of the natural law could be known by human reason, even while retaining some natural law vocabulary. According to his view, natural law was not a moral command of reason, but rather a set of maxims drawn from the empirical facts about humankind in its original state. In England, thinkers like David Hume went a step further, denying that even the most empirical description of human nature could yield binding prescriptions for ethical action. For the Empiricist, human action was determined by non-rational passions, and therefore, reason's task was to find sustainable strategies for maximizing the satisfaction of desires.

In the 1900s, U.S. Supreme Court Justice Oliver Wendell Holmes gave voice to another growing trend in philosophy and jurisprudence, namely positivism. For the legal positivists, empiricism was applied to the study and practice of law, such that the law of the state must accord with changing needs, customs, and values. According to this view, even if a higher, universal law *did* exist, it was irrelevant to the question of legal validity, and could have no bearing on the law of the state, which must be concerned solely with the practical necessities of the moment.

Yet another strain of thinking opposed to the natural law tradition was that of progressivism. Inspired by Charles Darwin's scientific theory of evolution, the Social Darwinists and other progressivists argued that the chief law of social and political life was analogous to the law of the jungle: "right" was whatever led to survival and growth. With no fixed goal of human life, the norms of ethics and the goals of politics were necessarily ever-changing.

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