Intellectualism versus Voluntarism, and the Development of Natural Law from Zeno to Grotius.

by

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Statement by the Author

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Abstract

This study is concerned with the dialectic of the development of natural law theory from the third century B.C. to the beginning of the seventeenth century. Our thesis will be that this dialectic was driven by the tension between two alternative understandings of natural law: one, rooted in Stoicism, being an intellectualistic interpretation of law as human reason; and the other, rooted in the Old Testament, being a voluntaristic interpretation of law as God’s command.

The Stoic exposition of natural law was marked by a change undergone between the early Stoics and the late Roman Stoics - from a repudiation of common moral norms to an embrace of them, as a result of the dialectic of development of the key Stoic notion of ‘living according to nature’ from the early Stoics’ ‘right reason of the sage’ to Cicero’s ‘dictate of common reason’ and Seneca’s common moral precepts.

The alternative vision of moral law, as God’s Commandments, and not as human reason, was rooted in legalism and voluntarism of the Old Testament. This Old Testament legalistic (anti-intellectualistic) voluntarism was transmuted, in Paul’s hands, in the New Testament, into a new anti-legalistic (anti-intellectualistic) voluntarism.

The Church Fathers were divided over how to deal with the conflict between the Old and New Testaments’ voluntarism and pre-Christian intellectualism. On one side, the anti-
legalistic voluntarism of Paul and Augustine denied the relevance for salvation of earthly works. On the other, the legalistic intellectualism of Irenaeus and Tertullian incorporated the Stoic ‘dictate of common reason’ into the legalism of the Old Testament, and asserted the inherent value of earthly life, and thereby natural law. The core Patristic divide was between the legalism of Irenaeus and Tertullian and the anti-legalism of Augustine, and it brought a new focus on the corruption of human will.

In Scholastic thought a new divide had emerged - between the new Aristotelian intellectualism of Aquinas, and the ‘new legalistic voluntarism’ of Scotus and Ockham. A new ontological issue was at stake - the place of the free will of God in Creation. For both sides, natural law was a dictate of right reason. Nevertheless, in the matter of epistemology, to the intellectualists, human reason in discerning natural law was ‘by itself’ participating in God’s eternal law, whereas to the voluntarists human reason discerned only what God willed to make clear.

The late Scholastics attempted a new synthesis of intellectualism and voluntarism. Suarez’ contribution was to separate the question of the content of natural law, as discerned by human reason, from the question of the source of obligation under natural law, as created by God’s will.

The early modern Protestant natural lawyers, such as Hooker and Grotius, attempted to revive intellectualism, upholding of self-sufficiency of human reason. Nevertheless, they
still were unable to discard the voluntaristic question about the source of obligation under natural law.
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