

Canadian Right to Arms

Part Four

The Idea of Natural Rights

Ed Hudson

At my request my wife edits my speaking notes.

And when Jayne read my concluding remarks to the previous section, she said to me,

"you cannot just leave that as your conclusion - that Positive Law wins."

I would like to assure my wife, and assure you, that I do not accept that Positive Law has displaced the theory of Natural Law and Natural Rights from our system of justice.

But to give you that assurance I am going to have to violate a principle that my now deceased duck-hunting buddy drilled into me.

In one of our many discussions of the Firearms Act and gun control, Gene would always say:

"Never mention God and guns in the same paragraph."

Gene was concerned that in a secular society like Canada any argument that included "God and guns" might be contrived to make me look like a religious buffoon.

But because the philosophy of Natural Law is so closely connected to God, - with due respect to my departed friend - I am going to talk about God and guns.

God, Guns and the Rule of Law

The Preamble of the 1982 Canadian Charter of Rights and Freedoms, states:

Whereas Canada is founded upon principles that recognize

the supremacy of God
and
the rule of law:

Let's drill that in;

Two principles:

FIRST: the supremacy of God

AND

SECOND: the rule of law.

Now when I dig into Supreme Court cases I find that
the Supreme Court of Canada speaks glowingly of "the Rule of Law".

For example:

The theory of the 'Rule of Law' is well established in Canada by in

Reference re Manitoba Language Rights

Supreme Court of Canada

1985

In this 1985 decision the Supreme Court stated:

The rule of law, a fundamental principle of our Constitution,
must mean at least two things.

First,

the law is supreme over officials of the government ...

And Second,

The rule of law is a philosophical view of society
which in the Western tradition
is linked with basic democratic notions.

The Court declared:

The constitutional status of the rule of law is beyond question.

But the Supreme Court dismisses the supremacy of God as almost a troublesome
inconvenience.

I submit that while the Supreme Court may dismiss God as irrelevant,
We need to be aware of the value that Parliament placed on God.

Note Well the preamble to the 1960 Canadian Bill of Rights.

The Parliament of Canada affirms that

the Canadian Nation is founded upon principles that
acknowledge the supremacy of God.

Canadian Bill of Rights

1960

Therefore I think we can reasonably conclude that the supremacy of God should
have significant meaning in Canadian law.

**God
and
Natural Rights**

While the Supreme Court may not like to speak about God,
I think God is relevant to our situation.

I would like to refer to the work of British scholar Brian Tierney,
formerly Professor Emeritus at Cornell University.

Before becoming a world authority on Western history and cannon law,
Dr. Tierney completed ninety bombing missions
over Germany as an R.A.F air navigator.

What Professor Tierney does is take over a thousand years of medieval
Catholic Church canon law

- articles that were written in Latin -
and shows how the work of these Catholic writers became the foundation of
Natural Law and Natural Rights.

According to Tierney:

The doctrine of individual rights is
a product of the great age of creative legal thought that
established the foundations of the Western legal tradition.

The idea of natural rights is derived
from an understanding of human nature itself
as rational, self-aware, and morally responsible.

This will be a quick overview of nine of these religious authors from this period.
Tierney first introduces us to an Italian monk named Gratian,

Gratian
Decretum of Gratian
1140 AD

In 1140 AD Gratian compiled a comprehensive exposition on canon law from
over thirty-eight hundred religious texts.

Gratian declared:

the rights of liberty
could never be lost
however long a man was held in bondage

Gratian stated that any human law contrary to natural law
was to be held null and void.

Pope Innocent III
1160 - 1216

Pope Innocent III declared:

members of a minority in a corporate community cannot be deprived of their
individual rights by a vote of the majority.

Godfrey of Fontaines, Belgium wrote:

each one is bound by the law of nature

to sustain his life ...
by the law of nature ...
this right cannot be renounced.

Godfrey of Fontaines

1250 - 1309

Henry of Ghent, Belgium

spoke of individual rights, specifically

the natural rights to preserve life
and to acquire the necessities of life.

Henry of Ghent

Belgium, 1289

William of Ockham, England

William speaks of liberty as defining a core of spiritual autonomy

inherent in the human person,

granted by God and nature, a freedom of choice

evident reason shows that it is

licit for a person to repeal force with force.

the inalienable natural right,

the right of self-preservation.

William of Ockham

1287 - 1347

Jean Gerson, France

No human law could take away

the natural right of self-defense.

It is based on the title of natural existence

conferred by God himself.

Jean Gerson, France

1363 - 1429

Jacques Almain, France

by natural law,

every-one was obliged to preserve his own being,
so that self-preservation was both a right and a duty,
and so an inalienable right.

Jacques Almain, France

1480 - 1515

Bartolomé de las Casas, Seville 1484 - 1566

Bartolomé de las Casas

"Protector of the Indians"

Seville, Spain

1484 - 1566

Author of

A Short Account of the Destruction of the Indies

and *Historia de Las Indias*

Las Casas focused on the Spanish atrocities committed against the indigenous peoples of America.

I quote las Casas:

As regards humans,

it is shown from the beginning of their rational nature, they were born free, ...

For liberty is a right necessarily instilled
in a man from the beginning of rational nature.

For las Casas

Liberty was "more precious and priceless" than any riches a people might possess.

"No prince or king, however supreme ...

may alienate any city, land, or fortified place however small ...

unless the citizens or inhabitants freely consent to such alienation.

This specially applies to us:

it is fitting that all whom the matter touches
be called and their free consent obtained,
otherwise what is done has no validity.

Bartolomé de las Casas

Francisco Suarez

Spanish priest, philosopher and theologian:

the natural right that anyone has to nourish,
protect, and preserve his own body.

Francisco Suarez

1548 - 1617

I now turn to Hugo Grotius,
author of Freedom of the Seas
and :

On the Law of War and Peace

Hugo Grotius

Mare Liberum 1609 Freedom of the Seas

De jure belli et pacis 1625 On the Law of War and Peace

1583 - 1645

Holland

Hugo Grotius was a very amazing person.

When Grotius wrote Freedom of the Seas in 1609 he immediately became famous by demonstrating to the law courts why the Dutch should be able to keep the "booty" from their capture of a Portuguese ship full of spices.

However, in 1618 Grotius was condemned to life in prison for being on the wrong side of a religious controversy.

While in prison he was allowed to write.

His wife would bring him books and manuscripts in a huge wooden chest.

After three years his wife helped him escape by concealing him in that book chest.

Grotius fled to Paris where he became aware of the brutality of the Thirty Years War

Throughout the Christian world I observe a lack of restraint in relation to war, such as even barbarous races should be ashamed:

it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.

During this time Grotius wrote On the Law of War and Peace.

Grotius argued that man was a higher kind of animal, marked by a social instinct that impelled humans to live with their own kind in a peaceful, ordered society.

For Grotius human nature was the "the mother of natural law."

Grotius wrote that God willed the existence of his creation and so gave to each individual the natural propensities necessary for self-preservation.

From these principles he deduced two laws:

It is licit to acquire and retain the things useful to life
and
It is licit to defend one's own life

To Grotius,
... each person's life, limbs and liberty were his own.

If a person's rights were attacked
natural law permitted him
to resist force with force.

And
The law of nature is a dictate of right reason ...
an act is either forbidden or enjoined
by the author of nature, God.

In Grotius' hypothesis on warfare:

War between nations is justified by the Natural Law of personal self-defense.

Grotius that his thesis is proved by the general agreement of all nations, and especially the wise.

Grotius quotes the Roman orator:

Well known by Cicero

in regard to the use of force in defense of life,

in which he bears witness to nature herself:

There is this law, which is not written, but born with us;
which we have not learned, have not received, have not read,
but the elements of it have been engraven in our hearts
and minds with her own hand ...

so that if our lives are threatened with assassination
or open violence from the hands of robbers or enemies,
every possible means of securing safety is morally right.

Marcus Tullius Cicero 106 BC - 43 BC

Grotius continues:

Now this law, making so accurate a distinction in the merits of the case,

seems not only to imply impunity for killing any one, in self-defence,

but to explain a natural right,

founded not on any special divine command,

but on the common principles of justice.

One of my best friends fervently believes that God commands us not to kill.

Thou Shall Not Kill

Exodus 20:13

King James Version

1611

Therefore she thinks that I should not be allowed to have a gun to protect myself.

I fully understand where she is coming from.

Like my friend,

I grew up attending a church that taught us that the Ten Commandments clearly say:

"Thou Shall Not Kill."

The problem that my friend has - and I used to have - is that she bases her belief on the King James Version of the Bible of 1611.

The King James Version of the Bible is perfectly good if one enjoys reading in the Bible in the language of Shakespeare.

But the modern English translations of Exodus 20:13 contain a very significant difference from the King James Version:

"You shall not murder."

New American Standard Bible (NASB) 1995

"You shall not murder."

New International Version (NIV) 2011

"You shall not murder."

English Standard Version (ESV) 2011

There is major difference between murder and killing.

And to underscore that there is a noteworthy difference between killing and murder,

we need to note Exodus 22:2

If a thief is caught in the act of breaking into a house
and is struck and killed in the process,
the person who killed the thief is not guilty of murder.

Exodus 22: 2

New Living Translation

Thus the Bible says we may kill in defence of our homes.

There is a major, biblically recognized difference in killing in self-defense and murder.

Now to summarize why I put so much emphasis on God:

Whereas Canada is founded upon principles that recognize
the supremacy of God and the rule of law:

the Canadian Nation is founded upon principles that
acknowledge the supremacy of God.

The rule of law is a philosophical view of society
which in the Western tradition
is linked with basic democratic notions.

The doctrine of individual rights is
a product of the great age of creative legal thought that
established the foundations of the Western legal tradition.

I firmly believe we have a Right to defend ourselves.

That is a Right that the Government of Canada cannot deny nor take away.

As Grotius wrote:

"What we have been saying would have a degree of validity
even if we should concede that which cannot be conceded
without the upmost wickedness,
that there is no God .. ."

(Etiamsi daremus, quod ... non esse Deum.)

**** END ****
