The Background of the Constitution

POLITICAL PHILOSOPHY had its beginnings in ancient Greece, where Aristotle, in particular, believed in a concept of "absolute justice." He believed in natural law arising from man's power to reason and, through reason, his ability to determine what justice was and to apply it. Absolute justice could never be attained in practice, but it remained the ideal by which men could measure the ethics of their relationships with others, just as the life of Christ remains the unattainable standard by which Christians of today judge their own conduct. Aristotle believed that men throughout the world would, through reason, arrive at the same views on the nature of universal justice just as the idea of "fire" is the same everywhere, but because local conditions varied, the practice of justice would vary, just as a man in Greece and a man in Persia would think of very different things if they thought of "money."

In the 13th Century, St. Thomas Aquinas wrote *Summa Theologica* in which he followed Aristotle's idea of the existence of natural law and absolute justice, but Aquinas believed that they were derived from God. He defined natural law as that portion of the eternal and divine law of God which man could discover by the use of his power to reason. Aquinas believed that natural law governed the relationships among men or between men and the state in somewhat the same way that the physical laws of God regulate the planets. Each man's conscience was a gift of God enabling him to determine the difference between good and evil, and this faculty of the human spirit decided what was or was not in keeping with natural law.

Aquinas believed that God instituted governments to meet the needs of mankind and that the state originated in His will. The state was obliged to comply with the will of God and natural law in the same manner as the individual. If the state made laws which contravened a man's conscience, he was theoretically not bound by them, but Aquinas believed that the unjust ruler would receive his punishment in the hereafter and that it was not the business of the citizen to overthrow a tyrant. Disturbance was to be avoided at all cost, even that of injustice, and obedience was more important than liberty.

By the 17th Century, Aquinas' ideas, which had been of profound importance in governmental theory for centuries, had developed into the idea that the king rules by Divine Right. Regardless of how unfair he might be, a rebellion against him was considered to be a rebellion against God, Who, it was thought, had established that particular king on that particular throne.

In 1689 John Locke, an English philosopher, wrote his *Second Treatise on Civil Government* to justify the English Revolution of the year before, to reject the idea of the "Divine Right of Kings," and to dispute Aquinas' view of the origin of the state. Locke's ideas were the basis of the philosophical justification for the American Revolution and his concept of the rights of man are basic to the Constitution.

Locke agreed with Aquinas that there was something known as "natural law" although he was much less positive about its source. To Locke, natural law meant that men, because of their humanity, have certain inalienable rights which should not be transgressed by the state or other men, and that among these inalienable rights are the right to life, liberty and property. Our Declaration of Independence expresses these ideas of Locke's when it states: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."

In this sense, natural law and the natural rights which arise from it are still a part of our law. In 1952, for example, the United States Supreme Court held that a policeman who held a suspect down and forcibly pumped his stomach to obtain evidence had violated the suspect's Constitutional rights so flagrantly that he had disregarded the principles of "a sense of justice and the requirements of certain decencies of civilized conduct." [1] In 1965 the Court

held that a husband and wife have a basic right to privacy in their marital relations.[2] While the Court denies that it rests its decisions on some abstract theory of natural law, it has frequently pointed out that our basic and inalienable rights as listed in the Bill of Rights must be protected and occasionally finds new "natural rights" it deems worthy of protection.

In modern times most countries have such highly developed codes of laws that reliance on abstract natural law alone as a basis for judicial procedure is most unusual. However, the 1962 trial of Adolf Eichmann was entirely the product of natural law. Eichmann, a leader in the Nazi extermination of the Jews, was tried in Israel for his crimes during World War II. At the time he committed his atrocities, there was no state of Israel and consequently no Israeli law. There is a principle of criminal law in all parts of the civilized world that a man should not be tried for something not specifically prohibited by a statute in force at the time he did it. In the Eichmann case, however, there was a consensus among legal experts that natural law and civilized behavior prohibit the extermination of millions of people, and so Eichmann was tried, convicted and executed under natural law.

Where Locke and Aquinas most strongly disagreed, and where our political philosophy followed Locke, was in the concept of the origin of the state. Locke believed that the source of political power was derived from the people and not, as Aquinas did, that it was imposed from above. In his *Second Treatise on Civil Government,* Locke wrote an allegory about the origin of the state and its government in which he began with a pre-political society, very similar to life in the Garden of Eden. In this society, there were no laws, no rulers, and no government and everyone was quite satisfied with his lot. This society was governed entirely by reason—as Aristotle and Aquinas had also thought that men were governed by reason—and no one was so unreasonable as to interfere with another person. However, a few citizens transgressed others' rights and it became *convenient* to establish some rules and regulations—in other words, a government. The government was established solely for the sake of convenience to permit everyone to live together with a minimum of strife and not, as Aquinas believed, because God willed it. This was called the "social contract" theory because the citizens made a promise or contract to abide by the rules to protect themselves. The basis of Locke's idea was that government existed only by the consent of the governed. In 1620 the Pilgrims wrote and signed the Mayflower Compact before they landed at Plymouth Rock. This agreement, signed by all men on the ship, set up a government and made rules under which the colony would live. This is Locke's "social contract" theory in action.

Under this theory, the only reason the government exists is to preserve the life, liberty and property of the citizens and it has no power except that which is used for the good of the people. The basic rights of the people, therefore, limit the power of the ruler, who has no right, Divine or otherwise, to interfere with them. Locke's conclusion was that if the government breaks the trust of the people who established it or if it interferes with the liberty of the citizens, they have a right to rebel and make a new contract under which they may govern themselves more conveniently. This right to rebel was the theory behind our Declaration of Independence, which declared that the colonies found government under the King of England to be highly inconvenient as well as detrimental to their liberties.

Our history as an independent nation began on July 4, 1776, when the Declaration of Independence was signed by representatives of the thirteen colonies. At this point, although we declared ourselves free of English rule, there was, of course, no system of national government, so the Second Continental Congress assembled to form one.

The Congress elected a committee of twelve men to draw up a system of government and this committee wrote the Articles of Confederation. The Articles were presented to Congress in 1777 and ratified by all the states except Maryland in 1778 and 1779. Since the colonists' objections to the English King had centered around his use of arbitrary power, they were convinced that a strong central government would soon be guilty of the same abuses. The Articles were, therefore, written with the idea of restricting the power of the national government as much as possible and of forming a league of states which would work together as separate entities.

Under the Articles, the national government was virtually powerless. There was no Executive Branch of the government, although there was a President of the Congress, and consequently no one to enforce the laws which Congress passed. The states could and did ignore any national laws which did not suit them. The national government could only request the states to send money, troops and supplies to fight the Revolution.

Internal difficulties, such as the competing curren-

cies issued by seven different states, made it obvious that the Articles were in need of revision. A conference was called at Mount Vernon in 1786 and another one in Annapolis, Maryland, without substantial improvement. Finally, in 1787 what was to become the Constitutional Convention met in Philadelphia in secret session to decide what to do. They knew that they had to create a system of government in which the national authority would be sufficient to minister to the needs of the nation. The convention had been called to revise the Articles of Confederation, but once the delegates were assembled, they agreed that the same principle of the "right to rebel" which had been invoked against the King would again apply, and since the government established by the Articles was no longer suited to the convenience of the people, they would create another one. They wrote our Constitution and developed the system of government under which we have lived for almost 200 years.

1. Who is credited with developing the concept of "natural law and absolute justice"?

2. Compare and contrast Aquinas' *Summa Theologica* and Locke's *Second Treatise on Civil Government* as they relate to natural law.

3. How does natural law influence the U.S. Supreme Court?

4. How did Locke and Aquinas disagree on the concept of "the origin of the state"?

5. Define the social contract theory. How did the theory relate to the Declaration of Independence?

6. Identify several weaknesses of the Articles of Confederation.

7. After unsuccessful meetings at Mt. Vernon and Annapolis, what was the goal of the Framers when they met in Philadelphia in 1787?