

Black Natural Law (Oxford University Press, 2016)
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Preface

On September 10, 1991, the first day of Supreme Court nominee Clarence Thomas’s confirmation hearings, then-Senate Judiciary Committee Chairman Joseph Biden announced that “the single most important task of this committee” was to uncover the meaning of Thomas’s “natural law philosophy.” A quarter century earlier, in what has become a document nearly as constitutive of the American political imagination as the Declaration of Independence, Martin Luther King, Jr., invoked natural law from a jail cell in Birmingham, Alabama. For King, natural law trumped the laws of segregation and buttressed the struggle for social justice. In contrast, Biden suspected that natural law led Thomas to his staunchly conservative views, perceived by progressives as at odds with King’s vision of social justice.

What happened in the quarter century between King and Thomas was not simply a shift in the political valence of natural law. What happened was the disintegration of the black natural law tradition. Through slavery, the Civil War, Reconstruction, and decades of Jim Crow, in the words of Frederick Douglass, Anna Julia Cooper, W. E. B. Du Bois, and many others, natural law, sometimes referred to as higher law or God’s law, provided a robust resource for black political engagement. This once-robust natural law tradition abruptly collapsed. Only ruins remain: words and phrases detached from a rich, coherent style of ethical inquiry and political practice – fragments now often conscripted for strikingly diverse political aims. This book recovers the lost black natural law tradition.

There is a long history of reflecting on natural law and of deploying natural law in politics. This tradition stretches from Aristotle and Cicero to Grotius and Hobbes to the United States Declaration of Independence and the Universal Declaration of Human Rights, placing it near the heart of Western political thought. There are Christian, Jewish and Islamic natural law traditions as well as dogmatically secular natural law traditions. Natural law traditions motivate but are also distinct from discussions of human rights and human dignity; natural law also is associated with those who would implement “Judeo-Christian” values in the contemporary world. In short, natural law means many things to many people – though proponents of any particular brand of natural law often act as if they are the only champions of natural law.

One way to approach natural law is to examine its conclusions. What does (a particular tradition of) natural law say ought and ought not to be done? Should abortion be legal? What about euthanasia, or gay marriage? Natural law promises to offer answers based on facts about the natural world or about human nature. Different natural law traditions discern or apply those facts in different ways. To give a quick example, we might conclude with Aquinas that procreation is essential to human nature. If a government passes laws that discourage or limit procreation, they run counter to the natural law. From the perspective of some adherents to natural law, such laws are not genuine laws at all, and everyone is capable of seeing this by reflecting on our own human nature. This position is more subtle than the belief that the laws of a nation ought to match the laws given by God in a sacred text. Discernment and judgment are necessary. Such added intellectual work is often forgotten in the political arena where God is rhetorically positioned as an advocate or opponent of a particular law under consideration. In the political arena, what matters most about natural law is what it prescribes: do this, don’t do that. Natural law traditions are richer than this. Their richness comes from the process rather than the

product: from the careful examination of human nature, from reflection on the implications of a particular view of human nature, and from the judgment used to apply those implications to the specifics of an ethical or political debate. My claim in this book is that this process, when engaged in collectively, catalyzes social movements and offers a critique of the wisdom of the world. While the black natural law tradition I will describe certainly opposes slavery and segregation, those conclusions are much less interesting than what natural law as a style of ethical and political engagement does. Part of what is lost in recent invocations of natural law, such as those of Clarence Thomas and more recently Ben Carson, is the richness of that process. Natural law becomes mere rhetoric, the use of God's name to support this or that policy – the use of God's name in vain.

In a sense, this book pluralizes our understanding of natural law. It adds one more tradition to the many natural law traditions which have attracted scholarly attention and which have motivated political action. While the black political leaders discussed in this book certainly did draw on both religious and secular European traditions of natural law, they also drew on black experiences of enslavement and injustice, elements of black culture, and distinctive black religious ideas and practices to formulate a largely autonomous natural law tradition. In other words, this book demonstrates that African Americans have their own tradition of ethical and political reflection; European concepts and practices need not be imported and applied to the African American context. Indeed, it may be the case that European or Catholic natural law traditions can learn much from the black natural law tradition. For example, the black natural law tradition places particular emphasis on the role of emotion in discerning natural law, a theme often neglected in European and Catholic natural law traditions.

However, this book also makes a stronger claim. Not only does it recover one more natural law tradition so as to expand the menu of natural law options, it also suggests that the black natural law tradition gets things right. To put the claim strongly, black natural law offers the best way to approach politics, not just for blacks but for everyone. It is the approach that ought to be taken. The black natural law tradition addresses the same problems addressed by other natural law traditions, but it offers more coherent and compelling responses. Where other natural law traditions start with accounts of human nature that only partially capture our humanity – for example, understanding humans as directed towards natural ends in the same way as animals or other elements of the physical world, or understanding human nature as essentially rational – black natural law appreciates the mix of reason, emotion, and imagination that makes up our humanity, and black natural law concludes that human nature is ultimately unrepresentable. Where other natural law traditions focus on the individual human being who discerns and implements natural law, the black natural law tradition appreciates the influence communities have on individuals and the need for political change to happen through social movement organizing. Where other natural law traditions offer absolute principles to guide political engagement, the black natural law tradition focuses on strategic political organizing against laws that favor the interests of the few. Finally, where other natural law traditions see each human being as equally capable of discerning the natural law, the black natural law tradition recognizes the epistemic privilege of the oppressed, the way that suffering attunes us to justice. While this book is structured as an explication of a tradition, it could equally be structured as a systematic presentation of the arguments for black natural law. This latter organization, however, would betray the claim central to black natural law that critique is a collective endeavor that must begin with careful attunement to specific circumstances.

Natural law may flourish in a variety of rich, sophisticated traditions, but in the contemporary American political arena this richness and this diversity is almost always ignored. One tradition in particular, bringing together elements of Aquinas's natural law theory and liberal political philosophy, has become hegemonic. It has been embraced by both Catholic and secular conservatives, and it has been mobilized to support hot-button conservative causes of the day – to oppose abortion, to oppose gay marriage, and to defend “traditional” standards of decency. As it has been mobilized for political purposes, the philosophical and theological richness of this tradition have been reduced, assuring its broad appeal among conservatives of various stripes but limiting its coherence. In this politicized natural law discourse, the natural law of Catholics is easily confused with evangelicals' commitment to the law of a personal God which is easily confused with libertarians' commitment to a natural right to freedom from government interference. As Biden's skeptical questioning evinces, upon entering the realm of partisan politics natural law came to mean little more than a Republican slogan, inevitably meeting with knee-jerk opposition from Democrats.

As I will discuss in more detail in Chapter 5, Clarence Thomas stood between the black natural law tradition and the politicized, conservative understanding of natural law. Thomas claimed the mantle of Frederick Douglass and Martin Luther King, Jr., but Thomas also was in dialogue with conservative intellectuals seeking to reclaim natural law as well as with politicians seeking to deploy the rhetoric of natural law to advance Republican interests. Rather than arguing that Thomas betrays the black natural law tradition, I argue that the tradition collapsed into incoherence after the civil rights movement. All that was left for Thomas to grasp were incoherent fragments, and he bound these together with conservative, politicized understandings of natural law in his ultimately incoherent political philosophy. In contrast, Martin Luther King,

Jr.'s invocations of natural law grew out King's immersion in the practices, values, and institutions of the black community, though they were certainly not unaffected by his awareness of other natural law traditions. King obviously did use natural law in political contexts, as part of his political rhetoric, but his invocations of natural law cannot be reduced to mere rhetoric employed as a political cudgel.

Black natural law is not a political program that advances a set of goals. Rather, black natural law is suspicious of the wisdom of the world, ideology. It proclaims that we, through our own human nature, can see that the world is not as it seems. The wisdom of the world is a mystification used by the powerful and the wealthy to secure their own interests. Black natural law calls us to recognize what is self-evident: that the label slave, or Negro, or prisoner does not capture the humanity of one so labeled. Furthermore, black natural law calls us to honor the higher law which acknowledges our humanity by actively challenging the wisdom of the world. It calls us to participate in social movements that oppose, for example, slavery, segregation, and mass incarceration.

The black natural law tradition largely remains silent on such issues as abortion and gay rights, for better or worse. The version of natural law theory that is politicized in the contemporary context often begins with an account of human nature as essentially rational. In the subset of these accounts that are explicitly derived from religious sources, reason is seen as the way that humans participate in God. Natural law is our way of knowing divine law. In the black natural law tradition, in contrast, what is essentially human is rather more complex. It includes the capacity to reason but also the capacities to feel and to imagine – these are all ways that we participate in God. Crucially, the black natural law tradition is committed to the view that no worldly description of the human suffices. Just as God exceeds all worldly descriptions, the

image of God in humanity exceeds all worldly descriptions. We offer worldly descriptions as approximations for what is ultimately unrepresentable, and those worldly descriptions succeed when they remind us how their referent exceeds them. The black natural law tradition claims that reasoning, feeling, and imagining are characteristically human capacities, but these are descriptions that evoke, rather than denote, human nature that is unrepresentable. When the black feminist Sylvia Wynter calls for a rejection of the concept of man, burdened with its particularly white, European, masculine associations, and for the development of a new concept of the human, this is what I take her to be seeking: a concept of the human essentially defined by what it is not, marking that which is in the world but never fully captured by the world.¹

Recovering this concept of the human is the basis of black natural law's normativity. Any worldly law or social norm that attempts to exhaustively describe human nature, for example in slavery, runs against natural law. Similarly, any worldly law or social norm that attempts to constrain our characteristically human capacities to reason, feel, and imagine runs against natural law. These human capacities are not the essence of human nature, but they do allow us to discern human nature – as exceeding all worldly description. Reason alone, or feeling alone, or imagination alone would lead to a faulty account of human nature; all must be exercised together. If they are restricted, we become blind to our own nature and to the nature of others, and this is wrong. In a theological idiom, denying or distorting human nature does violence to the image of God, ultimately setting up humans in the place of god – idolatry. Much of the work of the black natural law tradition is detecting idolatry, for the wealthy and powerful are much invested in advancing their own interests at the expense of reverence for the image of God in humanity. The world continuously applies pressure on us, through ideas that circulate and

through manipulation of our emotions, to forget the transcendence of our humanity. Black natural law requires resisting these pressures.

Unlike politicized brands of natural law popular today, the black natural law tradition is less focused on implementing the natural law than it is on enabling our right perception of the natural law. Following right perception, the black natural law tradition sees implementation of natural law as a question requiring practical wisdom rather than abstract, philosophical guidance. The distortions of the world are so great that righting perception is an enormous task, one that itself entails normative consequences. The black natural law tradition in this way focuses on ideology critique, but it also focuses on social movement organizing. The practice of organizing trains participants in the critique of ideology by putting ideology critique into practice, collectively. But organizing also names the process of implementing the natural law. When accounts of natural law are not dominated by reason, there is an uninterrupted flow from discerning the natural law to acting on the natural law, to challenging unjust worldly laws and attempting to replace them with more just laws. However, black natural law rejects the notion that just laws, though self-evident to those whose perception is undistorted, can simply be proclaimed and then implemented. The world so mangles our perception that concerted, strategic effort is needed in order to advance natural law. Social movement organizing, necessarily attentive to the complexities of a political landscape and the distribution of power, is essential for this effort.

To explore the black natural law tradition, I have chosen four figures who I take to be exemplary but not exhaustive: Frederick Douglass, Anna Julia Cooper, W. E. B. Du Bois, and Martin Luther King, Jr. Following the precepts of the tradition itself, I investigate each as a human being: not reducible to historical context but also not reducible to any set of ideas they

put forward or to a style of reasoning they offered. I argue that each of these figures *performs* the natural law, offering words or text that exemplifies the characteristically human capacities to reason, to feel, and to create. Performance does a better job than static words on a page at evoking that which cannot be represented – at evoking the human. Moreover, black natural law understood through performance is clearly contagious. Each of these authors staged performances for their audiences that sought to evoke reason, feeling, and imagination. Each sought to give readers or listeners the capacities to discern their own human nature, and so to give them the motivation to participate in ideology critique and in social movement organizing.

The four figures I have chosen are all centrally important in the canon of black political thought. None is generally understood to be a radical; each is thought to represent the mainstream in some sense. This book urges us to rethink that mainstream. Rather than seeing it characterized by a push for integration and ultimately racial harmony, we ought to see it as characterized by a commitment to ideology critique and social movement organizing. The particular targets of this critique and organizing vary depending on what problems that are most pressing at a given moment – the black natural law tradition is both principled and strategic. While I characterize this as a distinctively black tradition, it does not derive from any facts about race. Each of the four figures at the center of this book takes blacks to be in a particularly privileged position with regard to natural law. Because of the oppression faced by blacks, it is particularly obvious to blacks that worldly descriptions of human nature never suffice and that characteristically human capacities ought to be exercised, not repressed. Moreover, the most pressing targets for critique and organizing in the United States have been issues around race, though each of these figures also has a particular concern with other issues as well.

It might seem, then, that this book, with its focus on the normative implications of human nature, does not tell a particularly black story. But my contention, following the tradition I explicate, is that blacks have privileged access to natural law. In other words, all ethical and political theory ought to start with the insights of blacks rather than relegating them to a final chapter or to an example of one of many types of difference. Indeed, the discipline of black studies has been too modest in its claims, in part because of the descriptive idiom it too often privileges over the normative. This is unfortunate because the university, with its relative insulation from worldly pressures, is a particularly important site to address normative questions. Black studies need not confine itself to telling the stories of black communities, describing black concerns, and surveying black opinion. The field, born of struggle, once was centrally concerned with normative questions – what ought to be done? how ought we to live? what is a just society? – but these concerns have faded, critical inquiry replaced by dogmatic “progressive” assumptions. Recalling the black natural law tradition points to a powerful resource to revitalize and orient normative inquiry in black studies.

When I described this project to a well-known cultural studies scholar, her first question was, “What theorists are you using?” The proper response to this question, I concluded, was to expunge as many “theorists” as possible from the text, including them when essential in footnotes. I have tried to keep the focus of the text on the black figures about whom I am writing. Having immersed myself in their worlds and their ideas, I attempt to communicate to the reader how these ideas fit together, and how they participate in the black natural law tradition – in other words, how black people are capable of *doing* theory, but in an expansive, powerful sense, involving the use of reason, emotion, and imagination, carefully staged for specific audiences. This approach has two potentially problematic effects. The first is that it may seem as though

these four figures are flawless. They certainly are not. But my interest, like theirs, has been in discerning what is most human in them as displayed in their writings and speeches. I have focused on the exercise of their characteristically human capacities as they inquire into the question of the human, as they attempt to ward off ideology, or idolatry. There is plenty of secondary literature on these four figures that explores their limitations and that places them in historical context – and so nearly forecloses their humanity. To this literature I have occasionally pointed in the notes. The second worry about my approach is that it makes four very different figures appear the same. I concede that it does, but that is precisely the point that each makes. When we shed the distortions of our perception that have been thoroughly inculcated, we see that all human beings share a common humanity – or rather a point of transcendence that marks our common humanity.

In some ways this book sounds very old fashioned, with its focus on our shared human nature that leads to an account of justice. Yet I think it will become clear that what this nature involves is not so rusty. Affect theory and the emotions have attracted wide interest in the world of cultural studies, and I tap into some of those insights. But I also worry, along with the black natural law tradition, that affect entrances just as much as reason, blinding us to the complexities of our human condition. I agree with many leftist scholars who take ideology critique to be a central, if not the central, aim of scholarship. But too often ideology critique is detached from the complexities of social movement organizing, to the detriment of both. Focusing on performance yields useful insights and it is an approach that I embrace, but I do not find performance studies valuable as an end in themselves, or as “interventions.” Performance can be a way of discerning human nature that resists reduction to either reason or emotion, and it can be a way of encouraging others to discern as well. Most important of all, affect, ideology critique, and

performance must all be part of a story about justice – about injustice in the world we have and about how we can move towards a more just world. This is the story I try to tell.

Finally, a word about religion is necessary. Natural law stands astride the boundary between the religious and the secular. On the one hand, it takes human nature as its starting point. Normative conclusions can be reached in this world, by us, using our human capacities to investigate ourselves. On the other hand, natural law is often advanced in a religious context, its author named as God. Humans are said to contain the image of God. The black natural law tradition certainly uses religious language, but it is legible – and persuasive – without commitment to any specific theological beliefs or participation in any religious practices. There is something about our current cultural moment that makes us uncomfortable with religion that does not stay in its place, rather like blackness that does not stay in its place. Discomfort is productive, and I have tried to take seriously the religious language employed in the black natural law tradition. In the Afterword I offer further reflections on questions left unanswered, locating black natural law amid conversations happening in the academic study of religion.²

¹ Wynter, “Unsettling the Coloniality of Being/Power/Truth/Freedom.”

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