

2016

## Natural Law and Agonistic Pluralism

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### Recommended Citation

Young, Daniel E. (2016) "Natural Law and Agonistic Pluralism," *Northwestern Review*: Vol. 1 : Iss. 1 , Article 5.

Available at: <https://nwcommons.nwcsiowa.edu/northwesternreview/vol1/iss1/5>

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# Natural Law and Agonistic Pluralism

## **Abstract**

John Rawls' account of political liberalism posits the necessity of a metaphysically neutral "public reason" to avoid privileging any comprehensive doctrine in the public square. The natural law tradition has been claimed by some as meeting this standard. However, thinkers such as Tracey Rowland criticize the attempt to make natural law a secular, neutral ground; she believes it must be rooted in an overtly Trinitarian and Christological theology. However, such theological assumptions are not shared by those of other comprehensive doctrines. Chantal Mouffe has also challenged Rawls' consensus conception, focusing rather on the inevitable ideological conflicts to be found in society. This approach is known as agonistic pluralism. I contend that agonistic pluralist theory can provide one way of intellectually justifying an Augustinian Thomist natural law approach to public discourse. That is, agonism's critique of the concept of "public reason" creates space for political argumentation rooted a natural law account; even an account such as Rowland's that is strongly suspicious of the possibility of an ideologically or theologically neutral common ground. This is ironic given that Mouffe's theory is premised on a rejection of the idea of "nature" as natural law theorists understand it.

## **About the Author**

Dr. Young is a political theorist with research interests in modern political thought, the political theory of international relations, and the intersection of theology and political theory. He has presented papers at several academic conferences in the United States and has authored articles, book chapters, and book reviews. His current research is on the relationship of political liberalism and natural law.

## Natural Law and Agonistic Pluralism

--- A Work in Progress ---

by Daniel Edward Young, Ph.D.

### Overview

In *Political Liberalism*, the political philosopher John Rawls addresses the question: “How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?”<sup>1</sup> The ancient natural law tradition has been invoked as a solution to this problem.<sup>2</sup> Probably the most significant contemporary exponents of this tradition have been Neo-Thomist thinkers such as Jacques Maritain and John Courtney Murray, who sought to articulate the relevance of natural law to a liberal democratic polity. They held that due to “the law written on the heart” (Romans 2:15) of all human beings, moral discourse and even agreement was possible between people of divergent religious and philosophical traditions. Thus, we could reason together about how we should order our lives together. However, the natural law tradition seems to have success as a common ground for deliberation only, if at all, where there is a common culture; some contemporary “Augustinian Thomist” natural law thinkers such as Tracey Rowland and David L. Schindler recognize this. This school of thought criticizes the attempt to make natural law a

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<sup>1</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), p. 4.

<sup>2</sup> The most accessible introduction to the natural law tradition is J. Budziszewski, *Written on the Heart: The Case for Natural Law* (Downers Grove, IL: InterVarsity Press, 1997). See also A. P. d’Entrèves, *Natural Law: An Historical Survey* (New York: Harper Torchbooks, 1965).

secular, neutral ground; it believes natural law must be rooted in an overtly Trinitarian and Christological theology. However, such Trinitarian and Christological assumptions are not shared by those of other comprehensive doctrines. If that is the case, it is not clear how a “thick” common ground for deliberation is to be found.

Behind Rawls’ view is presumably the notion that one *ought* to try to find common ground with his or her fellow citizens when seeking to advance political objectives. Absent that common ground, such an objective could simply be seen as an imposition by the stronger group on to the weaker. Unfortunately, it is not clear that in highly diverse societies there *can* be found common ground on which to base our discourse. If the Augustinian Thomist critique of other Thomist formulations of natural law is fundamentally correct, as I believe it is, can such a common ground be found? If a “thick” common ground cannot be found, perhaps we are thrown back on to a “thin” common ground posited by contemporary liberalism; perhaps a common ground based largely, if not entirely, on procedure. Political philosophers such as John Rawls and Jürgen Habermas advocate a theory that focuses on the importance of consensus in democracy; Rawls believes we are obliged to use what he calls “public reason.”<sup>3</sup> Settling at such a position would be ironic given the Augustinian Thomist critique of liberalism.

However, other political philosophers have challenged the consensus conception, focusing rather on the inevitable conflicts to be found in society. This school of thought, known as agonistic pluralism, is represented by such thinkers as Chantal Mouffe. This school recognizes the inevitability of conflict and the exercise of power in democratic politics. In this paper, I contend that agonistic pluralist theory can provide one way of intellectually justifying natural

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<sup>3</sup> In addition to Rawls’ *Political Liberalism*, see especially “The Idea of Public Reason Revisited,” first published in *The University of Chicago Law Review* 64 (Summer 1997), 765-807, and subsequently reprinted in several of Rawls’ books (*Collected Papers*, *The Law of Peoples*, and a reissue of *Political Liberalism*).

law approaches to public discourse such as Augustinian Thomism. That is, agonism’s critique of the concept of “public reason” creates space for political argumentation rooted a natural law account, even an account such as Rowland’s that is strongly suspicious of the possibility of an ideologically or theologically neutral common ground. This is ironic given that Mouffe’s theory is premised on a rejection of the idea of “nature” as natural law theorists understand it. My aim in this paper is not to claim that Augustinian Thomism is the best political theory; rather, it is the more modest claim that there is no reason such accounts should be considered “out of bounds” in a liberal society.

### **“The Intellectual Shadow-Boxing is Over”**

Part of the difficulty in examining the question of the role of natural law in liberal political theory is that the tradition of natural law is hardly monolithic. Among contemporary strands of thought we can distinguish: (1) the “*New Natural Law Theory*” represented by John Finnis and Robert George; (2) the *Neo-Thomists* represented by the late Jacques Maritain, Russell Hittinger, and J. Budziszewski; (3) the *Augustinian Thomists* represented by Tracey Rowland and David L. Schindler; and (4) the *Evangelical Protestant recovery* of natural law, particularly among the Reformed, represented by Steven Grabill and David VanDrunen (and spear-headed by Budziszewski, formerly an evangelical Episcopalian, now a Catholic).<sup>4</sup> Our main concern for this article is that the various strands differ amongst themselves in terms of how accessible natural law is to those who do not share its theological framework. Following Tracey Rowland, we can broadly divide natural law accounts into approaches that are more

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<sup>4</sup> See for instance, John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame, IN: University of Notre Dame Press, 1987), Tracey Rowland, *Culture and the Thomist Tradition: After Vatican II* (London and New York: Routledge, 2003), and Jesse Covington, Bryan McGraw, and Micah Watson, eds., *Natural Law and Evangelical Political Thought* (Lanham, MD: Lexington Books, 2012).

optimistic and those that are less optimistic about the accessibility of natural law. On the more optimistic side is the New Natural Law camp; on the more pessimistic side are the Augustinian Thomists.<sup>5</sup> Finnis and George believe that practical reason does not need to be explicitly Trinitarian and Christological (or even theistic) in order to serve as grounds for deliberation.<sup>6</sup> Like Rawls and his idea of public reason, Finnis and George believe in the possibility of a neutral framework accessible to all persons of good will.<sup>7</sup>

In formulating an alternative to this stance, I draw on two articles as touchstones. The first article is Tracey Rowland’s “Natural Law: From Neo-Thomism to Nuptial Mysticism” and the second is Ashley Woodiwiss, “Deliberation or Agony? Toward a Post-Liberal Christian Democratic Theory.”<sup>8</sup> The arguments of these articles can help us approach the question of how natural law arguments fit into liberal democracy.

In her article, Rowland correctly contends that the approach to natural law developed by such thinkers as Maritain and Finnis has been unsuccessful as an attempt to be a neutral ground of dialogue. (Note that Rowland sees both the New Natural Law Theory and Neo-Thomism as vulnerable to this critique.) There are two reasons for her claim: first, because empirically speaking it has obviously failed to serve as a common ground, and second, it is theoretically problematic to posit an account of human activity that brackets out revelation.

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<sup>5</sup> Rowland, *Culture and the Thomist Tradition*, 4, 165.

<sup>6</sup> Finnis, *Natural Law and Natural Rights*, 49; cf. Robert P. George, “Natural Law,” *Harvard Journal of Law and Public Policy* 31, no. 1 (Winter 2008):182.

<sup>7</sup> Other scholars of the natural law tradition, such as Russell Hittinger and J. Budziszewski, seem to think a more explicit public acknowledgment of God is necessary. Natural law presumes design and purpose, which presumes there is a Designer. Thus, failure to presume a Designer will cause one to reason badly.

<sup>8</sup> Tracey Rowland, “Natural Law: From Neo-Thomism to Nuptial Mysticism,” *Communio* 35 (Fall 2008), 374-396; Ashley Woodiwiss, “Deliberation or Agony? Toward a Post-Liberal Christian Democratic Theory,” in *The Re-Enchantment of Political Science: Christian Scholars Engage Their Discipline*, ed. Thomas W. Heilke and Ashley Woodiwiss (Lanham, MD: Lexington, 2001).

Regarding the first reason, the attempt to use natural law has not been successful with secular liberals, who are thoroughly uninterested; it has not even been particularly successful with Protestants, most of whom are skeptical of the idea. By liberalism, Rowland seems to have in mind an interpretation of that tradition that focuses on the maximization of human autonomy, the presumed neutrality of reason, and a resistance to transcendence, the development of virtue, and the reception of grace.<sup>9</sup> (For Rowland, liberalism is a full-orbed philosophical position, rather than just a set of political arrangements.) In addition to the lack of interest by liberals in natural law, postmodernist thought has attacked the very ideas of reason and human nature that natural law assumes. As Rowland puts it, “In other words, the post-moderns tended to be against both reason (understood in anything other than an instrumental sense) and nature (understood as a normative concept embodying stable essences). In such a culture (both intellectual and popular) it is hard to see how references to natural law could fulfill the function of a lingua franca.”<sup>10</sup>

Regarding the second reason, according to Rowland an adequate account of natural law cannot view Christian doctrines such as the Trinity and the Incarnation as a “crown” accepted by some people topping a philosophical framework agreed to by all people of goodwill. Rather, an adequate account of natural law must make those doctrines foundational. Following Karol Wojtyla and Joseph Ratzinger’s interpretation of *Gaudium et Spes*, Vatican II’s Pastoral Constitution on the Church in the Modern World, Rowland contends that natural law must be Christocentric. As she notes with approval, “[David L.] Schindler proposes there can be a universal appeal to ethics in the sense of natural law; however, any such universal appeal must be oriented, in its beginning and all along the way, to the concrete form that the universal takes

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<sup>9</sup> Rowland, *Culture and the Thomist Tradition*, chapters 3-5.

<sup>10</sup> Rowland, “Natural Law,” 377.

in the personal life of Christ and the sacramental life of the Church.”<sup>11</sup> It goes without saying that such an explicitly Trinitarian and Christological theory of natural law is not likely to be conducive to building a common language on which to debate controversial political issues.

Given such a Christological approach to natural law, Rowland contends that we ought not make any pretense that this account is palatable to liberals. She writes: “[Eberhard] Schockenhoff suggested that the life of the Christian churches must ‘bear witness to the inherent rationality of the high ethical teachings contained in the biblical history of revelation’ and put them on offer in an ‘open contest about the *humanum*, where the various world religions, political utopias, and secular humanisms challenge each other.’ In such a contest, it becomes your god against our God, your vision of human dignity against our vision. The intellectual shadow-boxing is over and the practical consequences of the acceptance of different theological starting points can be pushed to the center of the debate.”<sup>12</sup>

Here is where my second touchstone article enters the fray. Drawing on the agonistic pluralism school of democratic theory, Ashley Woodiwiss contends that the deliberative account of thinkers such as Rawls and Habermas fails to take into account the inescapability of conflict. By attempting to overcome conflict, these thinkers simply exclude as unreasonable those who disagree with the premises of how one ought to deliberate. Instead, the agonists focus on “the political”: the realm of conflict and exclusion. Woodiwiss believes that an agonistic account of democracy blends well with several strands of contemporary Christian political theory, particularly those that critique modernity’s exclusivist account of “the secular.” In particular, Woodiwiss calls for the development of a post-Christendom political theory. Woodiwiss writes:

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<sup>11</sup> Rowland, *Culture and the Thomist Tradition*, 146.

<sup>12</sup> Rowland, “Natural Law,” 380.



“I am not sure that continued evocations of natural law, sphere sovereignty, common grace, justice, and/or common good have any public purchase, or that we ought to support any contemporary regime in which they did.”<sup>13</sup> Regimes in which these indeed had purchase would be so-called “Constantinian” regimes in which the Church’s well-being is linked to that of the nation-state. Woodiwiss goes on to contend that Christian political thought needs to develop an ecclesiocentric ethic for Christian citizenship in an agonistic democracy.

It should be clear how these two articles touch. Rowland contends Christian citizens must give up a non-existent neutrality and proclaim a full-fledged Trinitarian and Christocentric account of human flourishing. Such an account will be in explicit opposition to other accounts. This coheres with an agonistic approach. While Rowland’s article is not explicitly oriented toward the political arena, Woodiwiss’s is. The question then is what would a natural law agonistic pluralism look like?

### **Chantal Mouffe and Agonistic Pluralism**

Chantal Mouffe, Professor of Political Theory at the University of Westminster, contends that contemporary liberal democratic societies are the working out of a conflict between two traditions: liberalism and democracy. The emphasis of liberalism is on liberty and the emphasis of democracy is on equality. These two concepts sit together uneasily, but in Mouffe’s account an adequate politics must incorporate both and embody the tension. For Mouffe then, politics is public debate over the balance of liberty and equality. Mouffe’s project is the recovery of what she calls “the political.” The two key concepts of “the political” are *antagonism* and *hegemony*. Drawing on Carl Schmitt, Mouffe contends that “the political” is the realm of conflict and exclusion. True consensus is not possible; where it supposedly exists, it is because the exercise

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<sup>13</sup> Woodiwiss, 157-8.

of power has veiled or removed other options. Philosophers such as Rawls and Habermas aren't truly *political* philosophers; in fact, their theories of democracy remove politics from public life.<sup>14</sup> An adequate theory of liberal democracy must take into account the inherent conflict of political life.

Mouffe is not seeking a return to pre-modern notions of community with a shared common good, but rather affirms a post-modern pluralism.<sup>15</sup> The difference between post-modern politics and both pre-modern and modern politics is that post-modern pluralism does not seek to eradicate difference, but rather to tame the conflict. Antagonism is tamed into agonism; the enemy becomes an adversary. Both sides share a common commitment to liberty and equality; the losers of the conflict live on to continue their fight for their interpretation of liberty and equality.<sup>16</sup>

According to Mouffe, liberalism's key assumptions are *rational consensus* and *individualism*; due to these assumptions “current democratic theory is unable to acknowledge the role of the ‘passions’ as one of the main moving forces in the field of politics and finds itself disarmed when faced with its diverse manifestations.”<sup>17</sup> Mouffe criticizes contemporary democratic theory for believing that “the inner goodness and original innocence of human beings was a necessary condition for asserting the viability of democracy.” Because of this “optimistic anthropology,” violence and hostility are assumed to be things of the past, to be eliminated through the establishment of progressive and rational institutions and individuals.<sup>18</sup> Furthermore,

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<sup>14</sup> Chantal Mouffe, *The Return of the Political* (London and New York: Verso, 1993), 41-59.

<sup>15</sup> Mouffe, *Return of the Political*, 62.

<sup>16</sup> Chantal Mouffe, *The Democratic Paradox* (London and New York: Verso, 2009), 13.

<sup>17</sup> Chantal Mouffe, *On the Political* (London and New York: Routledge, 2005), 24.

<sup>18</sup> Mouffe, *On the Political*, 2-3.

liberalism cannot understand collectives due to its methodological individualism.<sup>19</sup> The existence of groups gives rise to the possibility of conflict and there is no rational solution to the conflict between these groups.<sup>20</sup> In sum, Mouffe contends that liberalism is unable to grasp the pluralistic natural of society and the resultant conflicts.

For Mouffe, “What is at stake in the agonistic struggle, on the contrary, is the very configuration of power relations around which a given society is structured: it is a struggle between opposing hegemonic projects which can never be reconciled rationally. The antagonistic dimension is always present, it is a real confrontation but one which is played out under conditions regulated by a set of democratic procedures accepted by the adversaries.”<sup>21</sup>

### **Augustinian Thomism and Agonistic Pluralism**

What is here for natural law thinkers? First, natural law thinkers, at least those of the Augustinian tradition, ought to resonate with Mouffe’s rejection of an “optimistic anthropology.” She insists on the ineradicability of the political; conflict as an enduring aspect of the human condition is a key theme of Augustinianism.

Second, clearly there is a similar account of politics as a conflict of hegemonic constructs. Rowland’s “open contest about the *humanum*” coheres well with Mouffe’s account of politics as a struggle over hegemony. Rowland writes: “In this ‘civil war’ of competing traditions, [Alasdair MacIntyre] asserts that it is very important to recognize that the development and defence of a Thomist conception of justice involves ‘not merely conflict with particular opposing positions within large-scale public debate, but a rejection of the terms in

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<sup>19</sup> Mouffe, *On the Political*, 10-11.

<sup>20</sup> Mouffe, *On the Political*, 20.

<sup>21</sup> Mouffe, *On the Political*, 21.

which such debate has been framed and by reference to which it has been structured’.”<sup>22</sup> Those committed to natural law theory can present their accounts of liberty and equality in contrast to other rival accounts. As long as one is committed to the twin principles of liberty and equality, which I suspect most natural law thinkers are, one is free to argue as one wishes about the meaning and application of those terms. Mouffe describes agonistic politics as arguing about the common good. “Ideally such a confrontation [over pluralist democracy’s principles of liberty and equality] should be staged around the diverse conceptions of citizenship which correspond to the different interpretations of the ethico-political principles: liberal-conservative, social-democratic, neo-liberal, radical democratic, and the like. Each of them proposes its own interpretation of the common ‘good’, and tries to implement a different form of hegemony.”<sup>23</sup>

An apparent problem for natural law thinkers in appropriating Mouffe’s account of political life is her skepticism of the idea of human nature or essences or of the idea of the common good.<sup>24</sup> Mouffe seems to be the very epitome of the postmodernist thinker who questions the very premises that natural law relies upon to make its appeal. From her perspective, positing an account of essences or the common good is a power move which excludes those who do not fit that description. Rather, agonistic politics is about challenging all supposedly fixed accounts of the good; such a politics will enable a radical and emancipatory pluralism. Notice that in the quote in the previous paragraph Mouffe puts the word *good* in scare quotes. In general, Mouffe seems skeptical about the idea of the common good: “A modern democratic community cannot be organized around a single substantive idea of the common good.”<sup>25</sup> So

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<sup>22</sup> Rowland, *Culture and the Thomist Tradition*, 152.

<sup>23</sup> Mouffe, *Democratic Paradox*, 104.

<sup>24</sup> Mouffe, *Democratic Paradox*, 17; *On the Political*, 18.

<sup>25</sup> Mouffe, *Return of the Political*, 62.

although Mouffe seems skeptical about the idea of the common good, she describes agonistic politics as a confrontation of interpretations of the nature of the common good.

However, it seems to be for Mouffe that this confrontation of interpretations is not genuine argumentation by participants, that is, the provision of reasons with the intention of persuasion. Rather, it is simply rhetorical. Presumably this is rhetorical as she is explicitly trying to construct a non-rationalist view of democracy. For Mouffe, democratic agreement is not reached through rational debate but participation in a common form of life.<sup>26</sup> Mouffe contends that there is no rational solution to the conflict between groups. She seems to share the post-modern suspicion of reason as able to investigate the good. Instead, we are driven by the passions; our lack of “inner goodness and original innocence” blocks agreement. Thus it seems that there is no common good, and the various participants are simply arguing about their particular account of the common good (which does not in fact exist). She seems to be in the camp of what Alasdair MacIntyre refers to as emotivism. Natural law thinkers (and other thinkers) might want to say that *empirically speaking*, some conflicts cannot be resolved rationally, but they would be hesitant to say that *theoretically*, there is no rational solution.

This problem turns out to be more apparent than real. There is no need to accept Mouffe’s account of agonistic pluralism as a package deal. That is, one can accept her description of politics as agonistic while detaching it from her critique of essentialism. In this we would be following her lead: She accepts liberal democratic institutions while rejecting liberalism’s philosophical anthropology. Mouffe contends that there are multiple discourses of liberalism or modernity and that they are too often conflated together. She highlights three strands: (1) the liberal polity, with liberal and democratic traditions that only came together in

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<sup>26</sup> Mouffe, *Democratic Paradox*, 12.

the nineteenth century; (2) economic liberalism, specifically capitalism; and (3) liberalism’s philosophical anthropology—that is, discourses concerning the idea of man, which include such divergent views as Kantianism and utilitarianism. Mouffe argues that acceptance of one of these forms of liberalism does not entail acceptance of the other forms.<sup>27</sup> In other words, she believes we should reject liberal individualism (a set of doctrines concerning the nature of the human subject) while retaining political liberalism (a set of institutions). So, while a classical liberal account would derive (1) and (2) from (3), Mouffe wishes to retain (1) while rejecting (2) and (3), in the name of (1).

In the same way, we can reject as mistaken the claim that agonistic politics follows from, or leads to, anti-essentialism. We can accept an agonistic account of democratic politics while not committing ourselves to Mouffe’s philosophical anthropology. In fact, although it is beyond the scope of this paper to develop it in detail, I am skeptical that Mouffe’s philosophical anthropology can actually support her democratic theory. Mouffe is a democratic theorist, and naturally presumes the superiority of democracy to other forms of political organization. However, does her post-modernist account of politics undermine the moral necessity of democracy? Given that she is skeptical about notions of the good, can we establish the moral superiority of democracy as congruent with the good? Furthermore, how does her account of the ineradicability of hostility or antagonism square with anti-essentialism? If human nature is not fixed then it must be possible to eradicate antagonism. If it can’t be eradicated there must be at least one aspect of human nature that is fixed. Are there others? At any rate, the key point is that even if a satisfactory response to these criticisms could be formulated, it is difficult to see on

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<sup>27</sup> Mouffe, *Return of the Political*, 42, 150.

what basis essentialist accounts of the common good could be ruled out, as long as such an account purports to be an interpretation of the nature of liberty and equality.

### **Are Theological Viewpoints Admissible?**

One might concede what I have argued so far but contend that overtly theological political viewpoints such as those of Augustinian Thomism are inadmissible. Mouffe herself, albeit likely unintentionally, provides some resources for contending that we should not rule out such positions. In her recent book *Agonistics* she asks the question of whether secularization (or secularism) is a prerequisite for modern liberal democratic politics. She decides not to pursue that question; instead she asks, even if the answer is yes for Western countries, is it necessarily so in non-Western countries? Mouffe is very explicit that Western countries ought not impose Western or secular notions of democracy on non-Western societies. “Should we not rather accept that the path followed by the West is not the only possible and legitimate one? Non-Western societies can follow different trajectories according to the specificity of their cultural traditions and religions.”<sup>28</sup> She goes on to note: “Drawing the consequences of my previous reflections in the field of political theory requires adopting a pluralist approach that envisages the possibility of multiple articulations of the democratic ideal of government by the people, articulations in which religion might have a different relation to politics.”<sup>29</sup> She goes on to praise efforts to rethink the relationship between religion and politics in Islamic countries.

What about Western countries then? Given her own principles, it is unclear how she could rule out an approach such as Augustinian Thomism. Recall that a key premise of her agonistic pluralism is that the participants are arguing about the meaning and policy implications

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<sup>28</sup> Chantal Mouffe, *Agonistics: Thinking the World Politically* (London and New York: Verso, 2013), 35.

<sup>29</sup> Mouffe, *Agonistics*, 36.

of democracy. Thus each group has the right to call into question the interpretation put forth by other groups. I see no reason then why an overtly theological critique of secularist interpretations of democracy could not be made.

Indeed, there are indications in Mouffe’s writings that would support this. Mouffe explicitly states that her theory of agonistic pluralism “makes room for religious believers in the political realm in a way that is not open to other models.”<sup>30</sup> She articulates that liberalism requires certain separations, those between public and private, church and state, civil law and religious law. Furthermore, the church is considered a voluntary association. However, Mouffe does not believe that this entails a privatization of religion.<sup>31</sup>

As long as they act within constitutional limits, there is no reason why religious groups should not be able to intervene in the political arena to argue in favor of or against certain causes. Indeed many democratic struggles have been informed by religious motives. And the fight for social justice has often been enhanced by the participation of religious groups.<sup>32</sup>

Mouffe contends that in the Enlightenment era there were different ways of conceptualizing religion and politics. Some views became hegemonic, but other views may well need to be reactivated in our own time.<sup>33</sup> Presumably there is no reason theologically-inspired views could not be reactivated or reaffirmed.

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<sup>30</sup> Chantal Mouffe, “Religion, Liberal Democracy, and Citizenship,” in *Political Theologies: Public Religions in a Post-Secular World*, ed. Hent de Vries and Lawrence E. Sullivan (New York: Fordham University Press, 2006), 325.

<sup>31</sup> Mouffe, “Religion, Liberal Democracy, and Citizenship,” 321-322.

<sup>32</sup> Mouffe, “Religion, Liberal Democracy, and Citizenship,” 325.

<sup>33</sup> Mouffe, *Agonistics*, p. 34.



## **An Example**

So far this is fairly abstract. I shall now sketch out a specific Augustinian Thomist critique of liberalism and contend that it is indeed within the bounds of Mouffe’s account. In an article with the unpromising title of “The Repressive Logic of Liberal Rights,” David L. Schindler critiques contemporary liberal accounts of rights in the context of recent controversies in the United States over religious freedom and the mandated funding of insurance coverage for contraceptives.<sup>34</sup> I shall not rehearse the argument in detail. Furthermore, it is not germane to my point as to what extent Schindler’s analysis is correct. In the article, Schindler claims that liberalism’s account of freedom, ultimately rooted in John Locke, is a “freedom of indifference.” That is, it is a freedom of raw choice in which agents can choose for themselves whatever they see as tending toward their self-preservation and prosperity. Schindler contrasts that view of freedom with a view of “freedom for excellence.” Such a freedom is connected to a prior notion of human flourishing and our desire for the good and the true and in particular as it is oriented to God. Both views of freedom have an embedded metaphysics, with the supposedly non-metaphysical freedom of indifference actually having a metaphysics of an arbitrary relationship to God (one that can be chosen or not). Schindler contends that the liberal view of rights leads to the repressive triumph of the strong over the weak.

The “supremacy” is *of the* “strong” because and insofar as it is executed by, and in the name of, agents for whom freedom and rights are “bounded by nature” only in the Lockean sense described earlier. That is, while the right of each individual to self-preservation implies a duty *not to obstruct* the rights of others to their own

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<sup>34</sup> David L. Schindler, “The Repressive Logic of Liberal Rights: Religious Freedom, Contraceptives, and the ‘Phony’ Argument of the *New York Times*,” *Communio* 38 (Winter 2011): 523-547.

self-preservation, it does so *only insofar as these respective rights do not enter into competition*. The point, in other words, is that, on the liberal reading, rights are rooted precisely in a *formal-independent*, and so far adult-like, “strong” freedom that has been *originally abstracted from* any natural order of relations to, and so far from any natural order of dependence upon, God and others, and to transcendent truth and goodness. The claim to rights by the “strong” in this sense always, as a matter of principle, trumps in advance the claim by those—the “weak”—whose rights are tied to this natural order of relations, when and insofar as these respective claims enter into competition with each other. The claim to rights by the “strong” thereby also trumps the claim of those who would protect the rights of the “weak” in the event of such competition.<sup>35</sup>

Surely this account is outside the bounds of Mouffe’s requirement that we be committed to liberal democratic pluralism, especially given Mouffe’s postmodern suspicions of metanarratives?

Recall that above I noted that Mouffe argues that we need to distinguish among the strands of liberalism: political, economic, anthropological. She wishes to affirm liberalism’s political achievement: the development of the idea of liberal democratic pluralist polities. She wishes to reject liberalism’s economic doctrine (capitalism) and philosophical anthropology (individualism). As it happens, this is essentially Schindler’s critique of liberalism.<sup>36</sup> He affirms liberalism’s political intentions.

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<sup>35</sup> Schindler, “Repressive Logic of Liberal Rights,” 535.

<sup>36</sup> For his engagement with the political, economic, and anthropological dimensions of liberalism, see the various essays in David L. Schindler, *Ordering Love: Liberal Societies and the Memory of God* (Grand Rapids, MI: Eerdmans, 2011).

The burden of my positive proposal in this light, then, is that we can in the end secure the freedom and rights that are the hallmark intention of liberalism’s juridical order only by tying them to a *human nature understood to bear an intrinsic order of transcendent relations* (to the true and the good, to others, and finally to God). Liberalism’s *universalist intention* of securing equality of rights *for all*, in other words, can actually be realized *only via a metaphysics rooted in the natural truth regarding the person.*<sup>37</sup>

Mouffe’s socialist commitments lead her to affirm political liberalism which rejecting economic and anthropological liberalism. Schindler’s “radical Catholicism” leads to an analogous critique. The key point is that both Mouffe and Schindler are aiming to put forth the most adequate account of human flourishing, of which a liberal democratic polity is, at least for Westerners, an essential component.

## **Conclusion**

Where does this leave us? The approach presented here complements other approaches that critique the consensus account of democracy as incoherent. For example, following Alasdair MacIntyre’s analysis of moral philosophy, Michael J. White contends that it is inescapable that any political philosophy be “partisan and sectarian” and in conflict with other equally partisan and sectarian accounts of politics.<sup>38</sup> Building upon his own critique of public reason, Nicholas Wolterstorff has argued for a liberalism understood as requiring an “equal right to full political

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<sup>37</sup> Schindler, “Repressive Logic of Liberal Rights,” 542.

<sup>38</sup> Michael J. White, *Political Philosophy: A Historical Introduction*, 2<sup>nd</sup> ed. (Oxford: Oxford University Press, 2012), 414.

voice.”<sup>39</sup> Both accounts allow the participants to appeal to whatever reasons they find persuasive. Despite Mouffe’s hesitations about the various ideologies’ truth claims on the meaning of liberty and equality, agonistic pluralism makes a space for arguments about political truth. Mouffe requires that participants in democratic argumentation be committed to liberty and equality; the arguments are about what those terms mean or imply politically.

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<sup>39</sup> Nicholas Wolterstorff, *Understanding Liberal Democracy: Essays in Political Philosophy*, ed. Terence Cuneo (Oxford: Oxford University Press, 2012). See especially Part I for his critique of public reason and chapter 5, “Liberal Democracy as Equal Political Voice,” for his proposal of “equal voice” liberalism.