

The Mysteries of Natural Law

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What is the natural law? The general idea of natural law is that of an ethical law drawn from human nature rather than being defined by human individuals, societies, states, or gods. Given the historical fact that states cannot always be trusted to proclaim just laws, the idea of the natural law, independent of other lawgivers and moral fashions, can be attractive and an important assistance to liberation from tyranny. Indeed, some important appeals to natural law have been made following social upheavals in recent centuries. For example, natural law has been claimed or treated as a component of the Declaration of Independence (1776) of the United States, the Declaration of the Rights of Man and of the Citizen (1789) of France, and the Universal Declaration of Human Rights (1948) of the United Nations.

The basic idea of natural law is relatively simple and starts with observation of the natural world. This world is full of living and growing things, such as trees, birds, and cats. These things seek to continue in existence and grow to healthy maturity, and this maturity sets a standard by which good and bad can be assessed for each thing. Water and sunlight are good for trees to absorb, ripe fruit is good for birds to eat, and birds are good for cats to eat, because what is consumed sustains life and promotes healthy maturity. Conversely, their respective diseases are bad for all these living beings, insofar as such diseases impede healthy maturity. Such considerations lead to standards of good and bad that are objective but also particular to each species. For example, a bird that gets caught by a cat is good for the cat, but the cat is almost certainly bad news for the bird. Such considerations enable the basic idea of natural good and bad to be clear enough for individual animals and plants, namely that what is good promotes their maturity and flourishing, and what is bad detracts from their maturity and flourishing

Even in the natural world, however, assessments of good and bad are not always as clear cut as they seem. For example, in a recent so-called re-wilding experiment in the Netherlands, a large area called Oostvaardersplassen was set aside for herbivores to live as naturally as possible. In the absence of large predators, however, and without human intervention, the number of herbivores swelled beyond the limits of available food, leading to excessive numbers of sickly and starving animals. Rather than leaving them to starve slowly, the authorities eventually shot many of these animals. These experiments show that it is not always easy to assess clearly what is meant by good and bad in the natural world, and projects to create or re-create balanced ecosystems remain extremely challenging.

What about human beings? Drawing from the account given by St Thomas Aquinas (*Summa theologiae* I-II, q. 94, a. 2), there are five primary precepts of natural law, namely: preserve human life; marry and have children; educate the young; know the truth about God; and preserve social harmony. In one influential modern form, the Universal Declaration of Human Rights,¹ the first four of these precepts are expressed principally in the following articles: Article 3, “Everyone has the right to life, liberty and the security of person;” Article 16, “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family ...;” Article 26, “Everyone has the right to education ...;” Article 18, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Most of the remaining articles of the Declaration, such as the rights to property (Article 17), freedom of expression (Article 19), and freedom of assembly (Article 20) directly or indirectly support the fifth precept of the natural law, namely, to preserve social harmony.

Many these principles might seem self-evidently good, but even states that desire to implement them cannot immediately turn them into laws without considerable work and interpretation. As a simple example, the principle of the preservation of life, and the knowledge that cars cannot drive in opposite

¹ United Nations, ‘Universal Declaration of Human Rights’, *United Nations* (United Nations) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> [accessed 18 September 2021].

directions on the same side of the road at the same time, leads to the conclusion that any state must direct on which side of the road its people must drive. The natural law does not determine this decision, however, and the world is divided into left-handed and right-handed road traffic by country. As this example shows, natural law is insufficient to constitute the entirety of a usable corpus of law but needs to be combined with additional law, also called *positive law*, determined by the state.

A more challenging question is how one keeps the first precept, namely the preservation of life, in the face of a threat to one's society, people, and way of life. In such situations, one may have to employ another principle associated with the natural law, namely *the principle of double effect*. According to this principle, one may perform an action that has two effects: a good effect that is bound up intrinsically with the action, described as what one does in doing what one does; and a bad effect that is only a foreseen side-effect of the action and that is not disproportionately evil. On this basis, at least since the end of the Roman Empire, Christian states have not abstained from just wars on the basis of the preservation of life. As another example of double effect, although the Catholic Church condemns abortion, there are some situations, such as ectopic pregnancy, in which the Church permits medical intervention, even if the death of the developing child is foreseen, and without which both mother and child are expected to die.

There are also other and more subtle mysteries about the natural law. For example, a plant or an animal does not, apparently, decide whether to strive for health, maturity, or procreation. An acorn does not decide whether to grow into an oak, or a puppy decide whether to grow into a dog. The good for a particular living being is simply the overarching theme of whatever is done by that being, and the final mature state of the living being is also what is called its *nature*. To some extent, this fact is also true of human beings. Our children do not decide whether to grow up, and often they have a natural and rather strong desire to grow up. The biological aspects of this growth happen naturally, without any choice in the matter, but other aspects, such as getting educated, require choice and effort, which may not be willingly or easily made. The study of human nature articulates or manifests some aspects of what it means to flourish, and the broader society, especially parents, typically encourage this flourishing, but from where does the obligation or sense of obligation to flourish ultimately originate?

Another mystery is what, precisely, it means for a human being to flourish. The measure of success for non-human natural beings is usually fairly clear, namely natural health, maturity, and procreation. What, however, is the measure of success for human beings? Obviously, natural health, maturity, and procreation are important, but all kinds of human beings not only flourish but achieve greatness despite the absence of one or more such goods. As one prominent example, consider the example of Sojourner Truth, who was born into slavery in the United States. During these years of slavery, she was bought and sold, beaten, left uneducated, raped, and forcibly separated from the man she loved. This woman did not flourish by many natural measures of success. Nevertheless, when she became a free woman, she converted to Christianity and became enormously influential in the campaign to abolish slavery in the United States. In 2014, she was named as one of the “100 Most Significant Americans of All Time.”² Many similar stories of suffering and glory can be found in the lives of the saints, many of whom not only suffered physically but often apparently failed to achieve their spiritual hopes, at least until after their deaths. This pattern was, of course, set supremely by Jesus Christ himself who died by crucifixion, was raised in glory, and whose life bore its most obvious fruits after his death.

These considerations underline how a life that lacks natural flourishing may nevertheless be extremely fruitful, and often in wildly diverse ways. As a modern example, the architect Antoni Gaudí, during the last years of his life, ate frugally and dressed in old, worn-out suits. He neglected his appearance and was so poorly dressed when he died in 1926 that he was assumed to be a beggar. The focus of his life was, by then, entirely on his great project, the Basilica of the Holy Family (*Sagrada Família*) in Barcelona. This masterpiece took inordinate amounts of time to design and build, although Gaudí did not seem concerned about delays, reportedly saying, “My client is not in a hurry.” When he died, the building was still less than one quarter complete. A century later, this unique and stunningly beautiful building is the most-visited monument in Spain and is still drawing in materials, technology, and craftsmen from around the world, striving to bring Gaudí’s vision to completion by the centenary of

² T. A. Frail, ‘Meet the 100 Most Significant Americans of All Time’, *Smithsonian Magazine* <<https://www.smithsonianmag.com/smithsonianmag/meet-100-most-significant-americans-all-time-180953341/>> [accessed 22 October 2021].

his death in 2026. Although Gaudí died at the age of seventy-three, he did not have a life of abundant biological flourishing. Yet his life will probably come to be recognised as one of the most significant in the Spanish-speaking world over the past thousand years. Once again, natural biological flourishing, though important, is not exactly the same as individual flourishing.

A third mystery is how successful character traits are not explained simply by our being animals, even if we are rational animals. Consider, for example, good actions with respect to food. Over twenty-three centuries ago, the philosopher Aristotle wrote,

Similarly with regard to actions also there is excess, defect, and the intermediate. Now virtue is concerned with passions and actions, in which excess is a form of failure, and so is defect, while the intermediate is praised and is a form of success; and both these things are characteristics of virtue. Therefore virtue is a kind of mean, since it aims at what is intermediate (*EN.II.6.1106b23-28*).³

As is clear in this text, virtue aims at the intermediate or mean between two vices of excess and deficiency. In the case of temperance, the virtue is the mean between the vices of eating too much or too little. But is quantity the only thing that matters in eating virtuously?

Actually, it is easy to find evidence that temperance is a much more subtle virtue than described by Aristotle. Early Christian commentators on virtue ethics added refinements. For example, Pope St Gregory I in his commentary on the Book of Job at the end of the sixth Christian century, added species of gluttony that were later defended by St Thomas Aquinas in his *Summa theologiae* in the thirteenth century.⁴ These species include eating before time, eating too greedily, and inordinate desires for expensive foods or daintily prepared dishes. Moreover, one can add all kinds of manners and taboos about eating well or badly that are an important part of a child's social education. These taboos vary somewhat across cultures, but they often include not showing overt greed, or making gesticulations, or

³ Apart from replacing the word "excellence" with "virtue," I have used the translation from Jonathan Barnes. See Aristotle, 'Nicomachean Ethics', in 'Nicomachean Ethics', in *The Complete Works of Aristotle, Volume 2: The Revised Oxford Translation*, ed. by Jonathan Barnes, trans. by Sir David Ross and James Opie Urmson (Princeton: Princeton University Press, 1984), pp. 1747–48.

⁴ *ST II-II.148.4*, drawing from Gregory, *Moralia In Iob.* xxx, 18, par. 60.

filling one's cheeks with food, or spitting, or taking partly chewed food out of one's mouth, or paying attention to anything other than one's fellow diners and the consumables, in that order.

As Margaret Visser writes in her introduction to *The Rituals of Dinner*,

Table manners maintain and protect taboos and assumptions that seem self-evident within the culture that embraces them. They are rarely discussed, therefore, or even thought about much – until somebody breaks the rules: eats with her mouth open, points at somebody (even at herself) with a knife, spits, grabs other people's food, or is unacceptably guilty of spills. Then the reactions of eating companions are immediate and strong – either outrage ending in hostility, or disgust, which means withdrawal from and rejection of the offender.⁵

As Visser points out in this text, although table manners are not much thought about when they are practised, their contravention can have grave social consequences. Moreover, despite some cultural variation and historical development, Visser also observes that, “table manners, all things considered, are remarkably similar both historically and the world over” and that there is “a very strong tendency everywhere to prefer cleanliness or consideration for others or the solidarity of the dining group.”⁶

How do we make sense of these mysteries within the context of natural law? This question is especially important given the other challenges facing natural law, such as widespread doubts about the meaning and knowability of human nature, and the perception that natural law is a limit to one's freedom rather than a precondition for exercising that freedom. The answer, I think, can be summed up in a phrase from an influential humanist and polymath called Raymond Tallis, who has argued that human beings are both a part of nature but are also *apart from* nature.⁷ On this account, some aspects of temperance, namely that one should not eat too much or too little, are drawn from our biological natures, but the manners associated with eating are to do with the solidarity of our dining groups.

The underlying insight is that we are more than our biological natures. We are also persons in relation to other persons, and, for this reason, the rituals of eating are designed to foster and protect

⁵ Margaret Visser, *The Rituals of Dinner: The Origins, Evolution, Eccentricities, and Meaning of Table Manners*, 2nd edn (UK, Canada: Penguin Books Ltd, 2017), xix.

⁶ Visser, xix–xx.

⁷ This comment was made by Prof. Tallis at a lecture in Oxford in 2012.

relations with other persons. I also note that being a person is also acknowledged in one of the most influential modern expressions of natural law: the Universal Declaration of Human Rights, Article 6, states that, “Everyone has the right to recognition everywhere as a person before the law.”

The notion of being persons extends to spiritual matters, which are the origin of the term ‘person’. The whole story of the Jewish people and then the Christian faith is about being a person in relation to the personal God, a relationship made possible by God’s revelation and grace. When Augustine of Hippo writes of God, “Late have I loved you!”, he is expressing a passionate second-personal relationship to the revealed God. This expression goes beyond the claim that God is personal. It expresses a union with God and an alignment with God which, in the Judeo-Christian tradition, is described as a covenant with God, like a spiritual marriage of the soul. These considerations do not override the natural law, but they put it in the context of a larger goal, namely of flourishing with God forever.

These considerations introduce many changes of emphasis to natural law, in particular the special dignity of human beings as called to be children of God. Although Aristotle and the Greco-Roman world did not, in general, have moral objections to slavery, the institution gradually became intolerable with the rise of Christianity and its regard of all human persons as potential or actual children of God. An early indication of this change can be found in the *Letter of Philemon* in the New Testament, in which the elderly apostle Paul writes to the newly Christian master of an escaped and newly Christian slave that he should welcome the latter back as a beloved brother in the Lord. Slavery in Western countries largely died with the fall of the Roman Empire, and when it returned, in the early modern period, again, ultimately, it was abolished in a large part due to Christian campaigns.

Another change of emphasis involves the notion of covenant relationships, of which marriage is the most well-known. The natural law does not rule out polygamy as one mode of biological flourishing, and, in the early books of the Old Testament, there are several prominent examples of polygamous arrangements, albeit in situations that often lead to grief. Gradually, however, the notion of the exclusivity of the covenant with God impressed itself upon the institution of marriage, with the prophet Malachi referring to the Lord witnessing the covenant between a man and the wife of his youth (Mal

2:14) and warning against faithlessness and divorce. A covenant is between “I” and a non-transferrable “you”, not simply “a you,” as in each of the multiple wives of polygamy. Hence natural law, modified by an appreciation that we are persons made for being in covenant, supports monogamous marriage.

Finally, it is the notion of being persons, called to relate personally to God, that also underpins the obligations of natural law and its openness to transcendent commitments. As noted previously, there is a mystery about why we human beings ought to flourish biologically, given that, unlike other living beings, we often have a choice about such matters. The answer, I think, is that in this life, biological existence is ordinarily a precondition of personal relationship, including the relationship with God. Hence in the Old Testament, in many verses, the concern about death is principally that it seems to be break the relationship with God (e.g. Isaiah 38:18; Psalm 6:5) although other verses deny this loss (e.g. Psalm 139:8). So one answer to the source of obligation to flourish is to maintain the relationship to God. On the other hand, and especially with the perspectives highlighted by the New Testament, the biological life can also be sacrificed for the fruitfulness of the covenant with God, a goal that transcends biological life and leads to a new and eternal life with God. Hence Gaudí, for example, sacrificed his life to his architectural vision for the glory of God and the saints also put the fruitfulness of the covenant with God before any other considerations of their own biological flourishing.

In conclusion, natural law remains important today. After all, the experience of the most odious regimes of the twentieth and early twenty-first century underlines that we need an ethical law drawn from human nature rather than being defined exclusively by human individuals, societies, states, or gods. Yet natural law remains mysterious insofar as we are not merely a part of nature but also apart from nature. The latter and expanded perspective recognizes that we are not only intelligent animals, but persons made to relate to other persons in love. This appreciation shapes the natural law in many ways, including in marriage, and also underpins both the ordinary obligation to flourish biologically as well as the call to sacrifice such flourishing for the greater and transcendent goal of covenantal love.

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