



The Owl of Athena

# CONTRATYRANNOS

## The Natural Law Theory of Human Progress Website

### EXCURSUS #19

One of a series of monographs that expands the discussion of important topics examined in *The Natural State of Medical Practice*.<sup>1</sup>

## NATURAL LAW AND AMERICAN COLONIALISM AND EXPANSIONISM

Summary: The plight of unprivileged citizenry in many indigenous populations is recognized in part to be a consequence of immoral intrusions by colonial powers, although since the late 18<sup>th</sup> C that intrusion has been tinged with an appreciation of natural law. After concluding colonialism to be insignificant in America's history, expansionism of the new nation and its effects on tribalism of Native Americans are discussed. The frustrating confrontation between the immorality of authoritarian tribal kinships and the morality of natural rights and natural law guaranteed by the American Constitution is analyzed, and its compromise solutions are, as expected, found lacking. The immediate acceptance of American freedoms by the previously enslaved and by immigrants escaping rigidly authoritarian countries presents a striking contrast to the halting acceptance by many Native Americans, over two hundred years, of civil freedoms for the individual in America. Today, despite extensive Native American participation in, contribution to, and benefit from Americanism, on the reservations the limitations on freedom of choice of individuals within the tribal kinship are apparent in the virtual absence of private land ownership, absence of entrepreneurship, and disparate systems of law and justice, all in competition with constitutionally protected natural rights of the individual. Despite clear evidence of its immorality as shown in its infringements on individual liberty and consequent hindrance of human progress over thousands of years, tribal kinship remains a formidable force.

### Introduction

In preceding excursus the equivalence of natural law and the biblical Decalogue (popularly *The Ten Commandments*) was claimed, based on human authority over the centuries that has included Thomas Aquinas, Martin Luther, and, in his *Veritatis Splendor* (sect. 12), Jean Paul II. Then in Excursus 18 the evil of enslavement was, because of natural law, considered to

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<sup>1</sup> Volume, chapter and page number of otherwise unreferenced statements in this monograph refer to the version of the four volumes as published by Liberty Hill Press:

Vol. 1 – *The Natural State of Medical Practice: An Isagorical Theory of Human Progress*

Vol. 2 – *The Natural State of Medical Practice: Hippocratic Evidence*

Vol. 3 - *The Natural State of Medical Practice: Escape from Egalitarianism*

Vol. 4 – *The Natural State of Medical Practice: Escape from Egalitarianism*

be obvious to all persons regardless of chronological era. But the acknowledgement of that evil, as prompted by our conscience, was overshadowed by external forces, sometimes emanating from personal selfishness, sometimes from authoritarian pressures. It was, therefore, the Reformation and subsequent recognition of natural rights that permitted the common citizenry, on moral grounds consistent with natural law, to end slavery. The present excursus, in a similar analysis, considers whether colonialism in general, and American expansionism at the expense of its indigenous population in particular, has any relevance to natural law as it might apply to either indigenous people or the American Constitution.

It is to be made clear at the outset that characteristics of natural law as defined over the last 2,500 years are not issues here. The philosophical nuances, academic opinions, endless variants, cosmic interactions, and massive bibliographies are unhelpful for present purposes. As used herein the definition of natural law is simple:

*Definition of Natural Law: A body of unchanging moral principles regarded as a basis for all human conduct.*

Oxford English Dictionary

*It is the equivalence of natural law with the Decalogue that provides a degree specificity to the extent of natural law*, for natural law is more an “impulse” and a method rather than a command and a list, and the Decalogue is its codified form, the essence of which is to deny transgression of the rights of others to life, liberty, and property.<sup>2</sup> Any further characterization is based on objective evidence derived from study of contemporary primitive populations, for, as defined above, knowledge of what might be considered natural law in evolved civilizations often becomes confused with “positive,” or man-made laws, and can add little to its comprehension. Prominent among objective assessments of natural law in pre-modern society are those of Dr. James Q. Wilson, Dr. Margaret Mead, Dr. Bronislaw Malinowski, and Dr. H. Ian Hogbin.<sup>3</sup>

As background for the argument to follow, the four volumes of *The Natural State of Medical Practice* provide evidence supporting the Natural Law Theory of Human Progress. Strictly interpreted, that theory, based on the social history of medical practice over the ages, attributes all human progress, apolitical and perhaps social/political, to autonomous groups and associations throughout a population that can, without interference, freely meet, discuss, and implement a common personal interest desired for self-betterment. Axiomatically, the difficulties and tragedies that have attended human societies throughout most of history and in prehistory can be directly ascribed to transgression of natural law, those responsible for instigating transgression inevitably being the leadership classes of society.

The great mass of humanity, the unprivileged, have until recently been innocent victims of leadership with no power to affect the course of history. Only in the West since the Reformation has the unprivileged citizenry had natural rights protected by natural law, thus allowing its genius to become manifest and to broadly affect the course of history. Exemplified in the technical arena by the great lengthening of life expectancy that began in the West and then

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<sup>2</sup> See Excursus 6 for the equivalence of natural law, the Decalogue, and the Golden Rule; also see: Donald, J. A., *Natural Law and Natural Rights*, an extensive review posted on internet, 2009, by Family Guardian Fellowship.

<sup>3</sup> Mead, M. *Some Anthropological Considerations Concerning Natural Law*, in *Natural Law Forum*, 1961, paper 59, pp. 51-64; [http://scholarship.law.nd.edu/nd\\_naturallaw\\_forum/59/](http://scholarship.law.nd.edu/nd_naturallaw_forum/59/); Malinowski, B., *Crime and Custom in Savage Society*, New York, 1926, and *A New Instrument for the Interpretation of Law-Especially Primitive*, in *Yale Law Journal*, 51:1237-1254, 1942; Hogbin, H. I., *Kinship and Marriage in a New Guinea Village*, New York, 2020 (a reprint of his 1963 work); Wilson, J. Q., *The Moral Sense*, New York, 1993.

spread globally, and in the social/political arena by the abolition of slavery on moral grounds that are now universally accepted, the flourishing of Western freedoms have provided, for the first time, objective evidence of the existence of natural law and natural rights in that their (relatively) unfettered implementation has been shown to produce definite “goods” never previously experienced throughout a human society.<sup>4</sup>

## The pivotal issue

With natural law as a starting point, where do the respective parties stand as it relates to colonialism in general and American continental expansionism in particular.

The first consideration must be chronological position. The pivotal moment that would lead to the beneficence derived from adherence to natural law in governance can be fixed to the Reformation in the West. As for the date of onset of the Reformation, which is for convenience usually considered to be 1517, it took some time for society to adapt and for the social beneficence of adhering to natural law to appear. Both (1) a natural state of medical practice leading to an increase in life expectancy for the common man and woman and (2) the popular activism leading to moral abolition of slavery took about two-and-a-half centuries to evolve society-wide, that being the latter half of the 18<sup>th</sup> C. Interestingly, that same two-and-a-half century period after onset of the Reformation was required for the appearance of the first nation to codify natural rights and natural law and to introduce into the world the first society that, under its constitution, recognized no privileged citizens: the United States of America.

Thus was the concept of natural rights and natural law released into the political arena worldwide, although its recognition was variable and its implementation spotty. Nevertheless, its integration to some degree into the world’s many societies had begun. What would be its status in America, a late 18<sup>th</sup> C phenomenon?

## Colonialism

“A practice of domination, which involves the subjugation of one people to another.”  
Stanford Encyclopedia of Philosophy

Some have stated that colonialism, no matter its many defects and the great harm it has imposed on innocent unprivileged populations, has been overall a positive experience for the colonized, for it lifted the economic and often the political status of people who previously had been subject to severe and unchanging authoritarian governance over the ages that had imposed servitude over the bulk of its society. But based on the previous section we have already declared Western colonialism prior to political recognition of natural law and natural rights in the 18<sup>th</sup> C West as immoral. The reasons were simple: mercantilism, as supported by governments, and the search for wealth regardless of harm that might come to others. No effort was made to protect the natural rights of the unprivileged, and the West, through its governmental policies and

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<sup>4</sup> The four volumes of *The Natural State of Medical Practice* (Maitland FL, 2019, 2023) contain supporting evidence for this seemingly audacious claim.

its adventurous gold-hunters, was disobeying natural law on a vast scale despite the occasional moralist outrage.

But, moving into the late 18<sup>th</sup> C, the appreciation of natural law and natural rights was becoming well-known to the common citizenry in the West, and the evil consequences of international adventures for mere profit were being recognized and condemned in practice and in popular literature. Advances in understanding of moral issues were, of course, incremental, but generalizations can be made, as stated by Prof. H. Ian Hogbin: “Most colonial legal systems, however, accept the traditional doctrine of natural law and, on this ground, forbid practices which are 'repugnant to the general principles of humanity' (the phrase used in the New Guinea Ordinance), such as warfare or cannibalism. *Thus, instead of accepting relativism, the civilized peoples of the world have taken it for granted that certain basic principles, derived from truths which are apparent to unprejudiced reason, are deserving of respect by all men irrespective of their cultural background*” (italics added).<sup>5</sup> At least legally there was now some consideration of natural law and its relevance to all members of all societies.

But some regions that had been colonized then assumed nation status for the colonizers. The status of the indigenous population, however, which tended to be primitively organized by Western standards, remained subject as before. America was one of those new nations. Thus, the first issue is whether the newly formed America was a colonializing power and purposely pursuing a colonial, and therefore immoral, policy.

It is historically agreed that the period where there might be justification for this accusation followed the Spanish-American War (April-December, 1898). America had supported Cubans and Filipinos in their struggle against Spanish colonialism. At that time there was strong internal opposition to America becoming what seemed to be an imperialistic power by annexing Philippines, Cuba, Guam and Puerto Rico. Thus, one proposal for a peace plan in the Philippines was to merely maintain an American diplomatic presence in the city of Manila. But it was felt that Spain, which intended to divest itself of its island dependencies, would then merely sell the Philippines to a European colonial power, one that might at some point be adversarial to America. But then a brief re-engagement of hostilities in the Philippines provided the anti-war impetus that would cause the U.S. Congress to approve the Treaty of Paris.

A major argument for annexing the various island territories was as a circle of protection for the American mainland, thus being a matter of self-defense rather than one of commercial exploitation. As matters evolved, Cuba became independent in 1902, Puerto Ricans became American citizens in 1917, and the Philippines were given commonwealth status in 1935 (foreign affairs managed by America). Guam, roughly the physical size of Chicago, was retained as a territory for military reasons and its security clearance for admission to the island ended only in 1963.<sup>6</sup>

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<sup>5</sup> Hogbin, H. I., *Anthropology as Public Service and Malinowski's Contribution to It*, in *Man and Culture*, editor, R. Firth, London, 1960, p. 256 (1<sup>st</sup> edition, 1957).

<sup>6</sup> Spanish colonial rule had been rigorous, and when ceded to the United States internal regional struggles prevented effective Philippine governance. Internal factional differences that varied from island to island resisted integration. Despite individuals and groups who disagreed with stated American policy and fomented trouble as its government was forming, it was noted that while Americans were fighting factions of Filipinos, both Filipinos and Americans were fighting for the freedom for the Philippines. As for Guam, its territory, not its population, was exploited for reasons of security, not commerce. The “settlers” from the United States were military attachments and were assigned to establish military bases and operations, not to cultivate and exploit the indigenous population. But political control and the American presence on the island make it awkward to escape the charge of colonialism. Japanese occupation during WW II was particularly painful for the islanders.

There is the exception of brazen commercialism that clouded the 19<sup>th</sup> and early 20<sup>th</sup> century history of Hawaii, although this was initiated and guided by local American mercantile interests, not the American government. Even foreign workers were imported to supplement the workforce. The American government became complicit when it agreed with those favoring annexation of Hawaii as a territory. The clinching argument for annexation, however, was not one of commercial exploitation but as a protection against Japan as a potential threat in the Pacific. Overt antagonism to annexation was prominent within the American population.

Given the unpopularity of colonialism and imperialism among the American people and their Congress, the defensive motivation for annexation, and the absence of permanent settlers to cultivate and exploit the indigenous population as a national policy, there is limited evidence of purposeful colonial exploitation by the American government. In the greater picture, it was not guilty, on principle, of commercially exploiting or subjugating the common citizenry of those territories over which external circumstances gave it temporary hegemony.

## Expansionism

“A policy or practice of expansion and especially of territorial expansion by a nation.”  
Merriam-Webster

Has there been justification of American expansion? Expansion was limited to the North American continent, the two major expansions (Louisiana Purchase and Alaska) were purchases rather than conquests, the impetus for the former was to protect the western border of America as it then existed by commanding the Mississippi River that Spain and France were considering developing, and Texas declared itself a sovereign territory independent of Mexico and requested American statehood. The regions will nevertheless be considered immorally acquired because the indigenous populations in all these regions, plus Florida and the southwest region that Mexico refused to sell to America and was acquired militarily, had no say in the issues involved. Despite treaties that seemed to consider the indigenous populations as sovereign “nations,” they gradually lost their lands to American expansion. Hostilities between the new Americans and Native Americans continued throughout the 19<sup>th</sup> C as expansion proceeded.

The immorality of the method of expansion has not been denied by most, even though the public concept of Manifest Destiny as one of a mission for freedom of all concerned rather than mere acquisition by one party has been admirably defended.<sup>7</sup> Furthermore, both Abraham

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<sup>7</sup> The importance of mission as an example of freedom was eloquently posed by Professors Frederick and Lois Merk in *Manifest Destiny and Mission in American History* (New York, 1963), and if judged on motive alone American expansionism could arguably be considered moral. But facts are facts. The Dawes act of 1887, intended to assimilate Native Americans into the American culture was disastrous for many, permitting, as it did, the abuse not only of tribal systems but also broad abuse of the very regulations that were imposed to help assimilation. Corruption was prominent at all levels despite good intentions of federal legislation, and imposition of unwise regulations by American governance led to huge losses of tribal lands because the inability to manage acreage parceled to individuals led to it being purchased at low prices by settlers. And yet in a bit more than fifteen years (1887-1904) the number of Native American cattle increased from 8,265 to 297,611, bushels of grain per person rose from 9.13 to 15.44, and acres under cultivation rose from 237,265 to 365,469 and another fifteen years later to 890,700 (reported by Prof. E. A. Schwartz in: *What Were the Results of Allotment*. Commissioner of Indian Affairs reports, allotted and unallotted Tables are provided.) While the plan and its later modifications did not work for some, it did work for many.



Lincoln (in a speech during the Polk Presidency) and Ulysses Grant (in his memoirs after the Civil War) decried acquisition of the previously Mexican territories because they judged its intention was to increase the number of slave states rather than a federal plan to commercially subjugate the territories and exploit their occupants. Nevertheless, disregard of natural law was, in practice, grossly apparent. The cry of the conscience was faint when compared to wanton selfishness of those particular Americans who prodded the drive west, two being Presidents Andrew Jackson and James K. Polk.

Having said this, there were continual discussions between Federal and State agencies on the one hand and indigenous populations and their American supporters on the other. Some agreements were reasonable trades and compromises with land or access being offered in return for American assistance and security. Inter-marriage was common. Thomas Jefferson devised many plans to embrace Native Americans under the Constitution. There were also major attempts at assimilation, or “civilizing,” of the indigenous peoples, a process that had been under way as other Western nations proceeded with colonialization around the globe.

Civilizing may seem an inordinately pompous ambition, but the West was, in fact, a Judeo-Christian civilization (see Excursus 16), and it is only with the post-Reformation West that the element of “civilized” can be assigned as an attribute of a civilization. Furthermore, in Excursus 14 it was argued that a true civilization was civilized and *recognized and sought progress*. And volumes 1 and 3 of *The Natural State of Medical Practice* present evidence that progress cannot be realized unless citizens are free to seek self-betterment. Excursus 14 concluded that the only civilization in world history that grew to fulfill the preceding requirements is our own Western civilization, all others being merely sequential authoritarian societies, or “bubbles,” based on coercion and conquest, *i.e.*, were uncivilized, and any

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The morality of this assimilation attempt is not straight-forward. As an infraction of “positive” law, the federal program was illegal for reneging on previous treaty obligations. But as a means of distributing land to individuals and families it must be noted that the individual Native American did not own any land. It was tribal property. Furthermore, defined tribal territories were always in flux and were decided by mutual agreement based on tribal conflict. From the Decalogue point of view as a personal guide, private property was not being transgressed, especially as the end result of the Dawes Act was to be the actual acquisition of land by Native American individuals whereas before they had none. As long as decisions to join in this allotment of land were voluntary and unforced, morality may have been maintained.

But probably the core issue is marginalizing of the common citizenry by tribal leadership. As pointed out in Excursus 13, this is the mechanism by which authoritarian societies are themselves denied progress; the unprivileged are denied choice and this is a *cul-de-sac* for good ideas. Whether ownership of territorial land is considered held in common or enjoyed in common or owned by no one, this is secondary to the inability of the average citizen to go his or her own way should it differ from the tribe’s way. Thus, a major error in implementing the new American system was in its invoking, by legislation, assimilation, education, and homesteading, *en masse* assimilation, rather than basing changes on individual choice. How this could have been avoided, and whether, if implemented, it would have been successful is unknown. Instead, it was imposed by threat, and in doing so many who simply were uninterested or who might have been interested but were unable, without assistance, to successfully farm, were indirectly forced to participate. Had more individualized methods been employed to bring into entrepreneurial farming those who were disinclined initially to leave the tribe but who had the option of observing the new world they were invited to join, it might have been more successful.

For the concept of entrepreneurship is not for everybody. Each person has personal preferences that must be observed. For example, I have no interest in and would not strive to be a Wall Street millionaire for all the tea in China. My interests are parochial, modest and (relatively) inexpensive. To quietly remain in a familiar rural community, raise a family and identify with local culture is the dream of many. But options to choose cannot be closed to anyone. Government legislation must do three things: (1) provide for common defense, (2) obey natural law, and (3) never restrict my neighbor from seeking to succeed on Wall Street if so desired.

“progress” was not based on ingenuity inherent in the common citizenry but on their backs. The concept of progress did not exist.<sup>8</sup>

Applying the preceding to the issue of American expansionism, American policy, or its implementation as it relates to territories of indigenous populations, seems to have been distinctly uncivil even though the idea of and evidence for the value of progress must have been apparent. And as this occurred primarily in the 19<sup>th</sup> C, much of it following a civil war that ended slavery, one might have expected that it would have been carried out in a manner more consistent with the now fully developed concept of natural rights of the individual. Was it?

## The kinship

As will be discussed in more detail below, when enslavement ended in America the predominantly African-American population took advantage of America’s opportunities and immediately pursued self-betterment for themselves and their families in homes, in businesses, and farms throughout the nation. And throughout the last hundred years great numbers of people from around the globe have fled rigid authoritarian governments to come to America, immediately seeking employment from which they could then acquire homes, start businesses, and farm. In contrast, many Native Americans have to a great extent maintained tribal attachments formed many centuries ago, some still living in tribal units on reservations under traditional governance even though there have been recognized pathways to citizenship since 1831 and full American citizenship was granted to all Native Americans in 1924. Again, the question is why?

The indigenous populations of the North American continent, like all other assemblages of tribal institutions throughout history and prehistory, have relied on kinship as the basic organization of society, although kinship is often loosely defined. Customs and rules among tribal units have differed greatly in centuries past as would be expected in situations where communication throughout a huge region was possible only by direct contact. Also, as would be expected, tribal rivalries, wars, enslavements, rituals, and alliances had their associated political and human costs. But guiding the process throughout was the kinship, the basic unit of the tribal system, an association based on security and presumed stability rather than on its purported familial love.

The significance of kinship, especially in its broadest definitions, is great. Han Chinese have maintained a vast multilayered patrilinear Han kinship system that some date to the Shang Dynasty, 1600-1050 BC. Despite the claim that the larger size of an individual’s extended “family” in a kinship or clan is an advantage over a nuclear family when it comes to child-care, the following is also to be considered. (1) A closely knit kinship unit has been associated with greater intransigence against strangers (*i.e.*, others outside the tribe or clan), whereas the nuclear family with its strong parental attachments is associated with a more friendly and helpful interaction with outsiders.<sup>9</sup> (2) No matter its size or regulatory order, the kinship is an authoritarian unit from beginning to end. It provides for security and it is a formidable alliance

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<sup>8</sup> This is not just a personal opinion. Prof. J. B. Bury, in his *The Idea of Progress*, London, 1921, also concluded the abstract concept of “progress” was not elucidated until the 16<sup>th</sup> C. In contrast, Prof. R. A. Nesbit (*History of the Idea of Progress*, London, 1980) considered it embedded in Western society for 3000 years, a reflection of Judeo-Christian ethic.

<sup>9</sup> Wilson, J. Q., *The Moral Sense*, New York, 1993, pp. 47-48.

of common identity, and for these reasons is like mini-nationalism. But within the kinship social obligations are assigned, change is unwelcome, and, despite whatever degree of “democracy” exists, survival of the kinship is its core function. Individualism takes a distant second place, if it takes any place at all. It has been noted that kinships standardize social life in a highly prefigured way, and, by regulating the behavior of different categories of kin, “leave little leeway for spontaneity or individual differences.”<sup>10</sup> Consistent with early history throughout the rest of the world, the concept of individual liberty did not exist in American tribal kinships.

## Moral conflict

And so, to recapitulate, there was a confrontation between the immoral authoritarian kinships of Native American societies, whether a tribe or a confederacy of tribes (or tribal identities), and the evolving moral Western concept of natural rights as seemed appended to an expansionist government policy. How could an American government based on individual natural rights and natural law, however well managed, be understood by a social system that did not recognize, understand or agree with the concept of liberty of the individual. The Native American position centered on the collective group, the kinship. Freedom was desired, but it was the freedom for the tribal group under discussion and freedom from domination of the tribe by other tribes or by the new American intruders, with traditional kinship obligations remaining under tribal control. Tribal freedom included a desire for traditional lands and for the secure upbringing of children taught to maintain traditional ideas, methods and alliances, in addition to epic stories and heroes of myth and legend characteristic of all early societies. But it did not include civil liberty of the individual. And as discussed in volume 1 (p. 189ff) of *The Natural State of Medical Practice*, without liberty of the individual, which includes freedom to associate in groups with the aim of self-betterment, progress, and even virtue, is impossible.<sup>11</sup>

The conflict between natural rights and traditional authoritarianism, both argued by well-meaning people searching for common agreement, was unavoidable and insoluble. This is not surprising; the contest between natural rights and authoritarianism is the history of mankind, the history of moral vs. immoral. Compromise may be temporarily possible, but it is no real answer.

With traditional colonial powers the answer would have been simple: command and control, immoral as it has always been. With America, however, it was confusing. In the first place, extensive expansion in the Western hemisphere had already been under way for more than two hundred years by Spanish, French, British, Dutch, Danish, Portuguese, Russian, Norwegian, and Swede/Finn colonists. The immoral tactics used by these initial intruders put in place a foundation of prejudices, enmities, and victimizations that could hardly be forgotten, even entire tribal systems in Virginia and elsewhere disappearing from history. Secondly, America was new, its Constitution approved in 1789, and Americans argued both sides of the issue. Native Americans also argued for and against compromise that would permit continuation of traditional ways. To this mix must be added the tragedies caused by individuals or special interest groups who took the law into their own hands and committed atrocities, thus inflaming both sides.

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<sup>10</sup> Weiner, S., *The Rule of the Clan*, New York, 2013,

<sup>11</sup> Frederick Douglass (1818-1895) wrote in 1859 “There can be no virtue without freedom – and no peace without justice.”



Overall, the response of Native American leaders of kinships was consistent, whereas the dispensation and protection of natural rights for citizens of tribal nations by the American government was not, with many advising a hands-off approach and leaving American tribes alone to go their own way as separate nations.

But to permit tribal dominance ensured continuance of a primitive authoritarian way of life in which natural rights went unrecognized, and natural rights are what natural law is to protect. It would seem at first glance that the moral thing to do would be to purposely end tribal dominance by assisting in its disintegration and imposing the natural rights protection of the individual under the American Constitution. On the other hand, to have a clear conscience on the matter perhaps the thing to be done was nothing, which included not expanding into Native American territories. In early America the choice was made: compromise. It imperfectly did both.

There was early recognition of “original natural rights” as defined by John Marshall, in that Native American “nations” were sovereign (except to deal with foreign powers and in land transfer). It is clear that, in practice, “natural rights” of the individual was not his meaning. Natural rights were protected by the Constitution, but since Native Americans were considered citizens of other nations, their natural rights as individuals, even though they did not recognize them, could not be protected. Only if American citizenship was obtained could protection be obtained. The answer was for individuals to use a separate pathway to citizenship, perhaps by marriage or by following procedures already in place for immigrants from other countries.

But Native American societies were, like all societies prior to the Reformation and most after the Reformation, rigidly authoritarian. Democracy may occasionally have existed in some form, but it was an opening for tyranny of the democracy rather than self-betterment, and enlightened Chiefs were nonetheless Chiefs. One need not look far to identify the frequent tribal wars, slavery, and internal atrocities that can be ascribed to these authoritarian societies. Had “Europeans” never landed in the Bahamas and Plymouth Rock, the tribal systems of Native Americans, their authoritarian kinship governance, intertribal conflict, culture with no concept of progress in human betterment, tools of knapped flint, and a life expectancy of little more than thirty years would still exist from sea to shining sea.<sup>12</sup> This is not unusual. Australian aborigines roamed the three million square miles of Australia for fifty thousand years, yet never founded a town or evolved a medical professional.

America, on the other hand, which had a jewel of great price in its Constitution, decided it could not force its message on people of other nations. By treaties and by example perhaps Native Americans could be persuaded to become partners under the Constitution.

## Persuasion and example

The day of the first Thanksgiving laid out the prospects and Judeo-Christian civilization provided the means. And the only way natural law, once ingrained in society’s governance, can be lost is by authoritarian coercion, for its beneficiaries will not willingly give it up. This is

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<sup>12</sup> See: Johnston, F. E., and Snow, C. E., *The Reassessment of the Age and Sex of the Indian Knoll Skeletal Population: Demographic and Methodological Aspects*, in *Am. J. Phys. Anthropol.*, 19:237-244, 1961. Subsequent reassessments of this unusual population revealed much evidence of violence, and the rarity of an “elderly” adult in this ancient Native American population, mostly from *ca.* 3000-2000 BC, is obvious: among the approximately eight hundred Archaic period (8000 – 1000 BC) skeletal remains of Indian Knoll only one was classified as over fifty (see p. 208).

because natural law, in protecting natural rights of citizenry, guarantees a source of beneficence for the individual and subsequently for society as a whole. Once the American Constitution was implemented and pursued, the rise of America was inevitable as long as the Constitution was obeyed and not destroyed by external or internal forces. And, absent such interference, appreciation of civil liberties would have gradually spread throughout Native American societies, blunting the human tragedies and manifest destiny crusade that accompanied the relocation of post-Reformation civil liberty governance of northwest Europe to the North American continent. Then Native Americans may have begun a flight to freedom from the authoritarian kinship of the tribe to the nation with universal civil rights. But mankind is not so predictable.

The underlying story is therefore characteristic of authoritarian regimes: resistance by leadership to civil liberty. Had the common Native American citizenry of the various tribes been taken aside individually and given a choice between a continuing tribal existence (in effect a nomadic “hill fort” defensive arrangement needed for security) or a permanent and safe home for an independent nuclear family in a contemporary community of their liking, the choice may well have been the latter.<sup>13</sup> But the incomprehensible concept of individual freedom, the fear of lost tradition, leadership that resented loss of domain (although many leaders did try to enter the new system of governance), and the cupidity, insolence and immorality of many of the intruders combined to prevent a balanced introduction to the benefits of the natural law protections of the Constitution that over time would have seen transfer of Native American loyalty from tribe to Constitution. The fight was authoritarianism of the kinship against authoritarianism of the greedy few (or at times the greedy many), not the Constitution.

But the 19<sup>th</sup> C advances in Western civilization made its tangential coercive power unstoppable, and America soon expanded from sea to sea. The common humanity of the first Thanksgiving was diminished as authoritarian forces of the Native Americans met uncivilized components of the new Americans. As a result, guidance of natural law was diminished on both sides, and the beneficence to both sides, which should have complemented each other, would be but partially manifest.

The ultimate outcome is familiar to us all.<sup>14</sup> Modern civilization, with its overwhelming presence in every field of endeavor and on every continent, has, through release of the ingenuity of the common citizenry in the West for the purpose of self-betterment, produced a global phenomenon, one clear-cut objective marker being a life expectancy in many countries fast approaching eighty years. In contrast, the Native American tribal and clan system, in which the common man and woman could never contribute to self-betterment (even though private property might occasionally exist), remained linked to the past by the chains of immoral authoritarianism of the tribal kinship. Had the common Native American citizenry five hundred years ago broken free of those chains and individually or in collegial associations been allowed to seek self-betterment, it is possible, even probable, that a Native American ship soon would have landed on the British Isles or the European coast, colonized a convenient region, and over the following two centuries would have controlled extensive areas and begun the difficult task of civilizing a native and naive European population that in the 15<sup>th</sup> C remained chained to its feudal past.<sup>15</sup>

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<sup>13</sup> See vol. 4 of *The Natural State of Medical Practice* (Maitland, FL, 2023), p. 80, for more on “hill forts.”

<sup>14</sup> A brief summation is provided by the U. S. Department of Health and Human Services, Administration for Native Americans, the data obtained in 2012.

<sup>15</sup> One also wonders what John Smith and the Church of Jesus Christ of Latter-day Saints, devoted to the Decalogue, would think of this idea.

It could be argued that Native American life was not so unpleasant and the lifestyle of the new Americans was not so enviable that it was reasonable not to change. This is an unfair comparison. While the benefits of the American way of life were openly apparent and had prospects of getting better, Native American life prior to European intrusion was becoming a dim memory. The reality of its true history had been replaced by the palpable face-off between the tribes and the intruders. The delimited social status of the individual tribal member was consigned to the background because attention was now on imminent threats. But had the Western Hemisphere remained undiscovered by the Europeans, tribal systems of the 18<sup>th</sup>-19<sup>th</sup> centuries would have mirrored those of the 14<sup>th</sup>-15<sup>th</sup> and adjacent centuries. Like the massive human sacrifice rituals of the Aztec in Mexico and Inca in South America, the atrocity-filled conclusion of the Anasazi culture in the southwest, the atrocities of coastal Chumash warfare on the west coast, the extensive devastation of the Iroquois-Huron wars over fifty years in the northeast, the broad-based Mississippian warfare of the Central Illinois Valley region centering on Cahokia, chronic desecratory warfare in the Mississippian southeast, non-economic inequality spanning the north of the continent based on conflict following the introduction of the recurved bow, and other evidence of violence, the same intertribal ill will would be occurring today. This again is supported by analogy: the 50,000 years of total lack of progress in human well-being and perennial conflict (rarely major wars, as the bands were small) of Australian aborigines.<sup>16</sup>

Thus, this happened before. It also happened in early post-Reformation Europe as existing political hierarchies, over two or three centuries, were forced by public opinion to evolve systems of civil liberty that would culminate in the American Constitution. The path to individual liberty was bloody because existing leadership and its dependents, some dynastic but all very much the equivalent of a kinship, resisted that change, thereby leading to civil wars.

The chains of kinship have blocked Native American progress from its earliest days just as they have blocked progress globally throughout history and prehistory of our species. For each side there was no victory; many Native Americans have retained strong ties to their kinships rather than embrace civil liberties, and America in turn has not benefited from much Native American ingenuity, shared experience, and traditions.

In striking contrast to the dominance of kinship was the situation with the enslaved population of the new America. Release from slavery was occurring in northern states at the time of the American Revolution. It spread to other states and slavery was nationally abolished in 1863. But the freedom obtained was recognized as *freedom of the individual*, not the tribe, for any kinship affiliation or tribal allegiance among the enslaved was at most a faint memory. The unspeakable cruelty of slavery in separating families guaranteed that. But the enslaved knew the beauty of freedom, they knew the intent of the Constitution as evidenced by their own prominent spokespersons, and benefits of the existing free American society were apparent everywhere.<sup>17</sup>

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<sup>16</sup> For general references supporting the preceding, see: *North American Indigenous Warfare and Ritual Violence*, Chacon, R. J. and Mendoza, R. G., editors, Tuscon, 2007; Keeley, L. H., *War Before Civilization*, New York, 1967; and Berndt, R. M., Berndt, C. H., *The World of the First Australians*, Sidney, 1964.

<sup>17</sup> Even in the Constitution, when the institution of slavery was already under attack by many of the signers, the enslaved population were implied "citizens." In estimating population the census was, for those not free, to count five persons as three to temporarily appease "slave" states by increasing their political influence and thereby avoiding disuniting the states. "Indians" who paid no taxes were not to be counted. And desire for citizenship among the freed was apparent from the earliest days of the Republic. It was forcefully stated by Frederick Douglass in 1853: "By the principles of the Declaration of Independence we are American citizens; within the meaning of the United States Constitution, we are American citizens; by the facts of history, and the admissions of American statesmen, we are American citizens; by the hardships and trials endured; by the courage and fidelity displayed by

Thus, once released from slavery, the primarily African-American population immediately commenced, despite frequent local prejudices and ill-will, with homesteads, businesses and farms of their own. There was no two-century lapse by those released from slavery to adopt the governance of its previous enslavers, no kinship to restrain societal adaptation, no leaders who would fight to retain a traditional authoritarian social structure in the face of a nation protecting natural rights. The freedoms protected by natural law were immediately understood to transcend what are now called the “positive,” or man-made, laws of mankind. No resistance to natural law and its defense of natural rights arose from those given their freedom, no persuasion was needed, and as a result every segment of American society benefited from the participation and leadership of the formerly enslaved despite residual prejudice and animosity that delayed fulfillment of the benefits of citizenship.

Another century-old example is the rush across our borders by people from around the world. All come from rigidly authoritarian nations, but they forego their social attachments and traditions immediately and gladly accept and adapt to American freedoms.

## Conclusion

The extended kinship of the tribe and clan has, in the modern mind, become archaic, and tribalism itself is almost a derogatory term. Individualism and the nuclear family have superseded the concept of kinship. This makes a flight to freedom a realistic option for those *who realize that they are not free*, but because of the subtlety of authoritarianism in a kinship that alternative is sometimes not obvious.

Thus has been demonstrated the powerful hold of the kinship in Native American history. Native Americans have been outstanding successes in every corner of our society. But today’s social conditions include continuation of many traditional tribal practices, inasmuch as tribal regions have been and are considered under the Constitution to be nearly equivalent to separate nations. It is not surprising that living conditions there are generally less hospitable than living outside the reservation, although a degree of tribal affiliation often persists outside the reservation. Poverty and shorter life expectancy among Native Americans are not issues for this excursus, but the residue of tribalism, both its authoritarianism and unavoidable dependency on that authority, is likely their principal cause. One might even argue that the aiding and abetting of the tribal kinship has been shown to be a powerful tool for subjugating a population and, because of social impotence, preventing its proper development.

It may have been assumed that natural law, our conscience, which was shared alike by Native and new Americans, would have provided common ground for mutual accommodation, following which the conveniences and longevity fostered by the civil liberties of the Constitution would be not only accessible, but sought, by all Native Americans. And indeed this has to a great extent occurred over the past two centuries. As a Native American patient of mine once declared, when the Resident Physician’s ward presentation misrepresented him as a African-American, “No. I’m an American American.” Intermarriage has been common, and many brave Native Americans have contributed greatly in America’s wars against tyranny, including extensive combat in World War I (1917-1918) even though minor conflicts of the American Indian Wars were still occurring into the 20<sup>th</sup> C. Public opinion is highly favorable and

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our ancestors in defending the liberties and in achieving the independence of our land, we are American citizens.” But citizenship was officially bestowed on all the formerly enslaved in 1868 by the 14<sup>th</sup> Amendment.

sympathetic toward Native Americans. A third of the American population with several generations in this country carries Native American genetic material.

But Native American reservations, as “semi-sovereign nations,” cover 2.3% of the continental United States, and large Native American enterprises rely on treaty obligations for initiation and prosperity. On the reservations themselves the limitations on freedom of choice of individuals within the tribal kinship are apparent in the virtual absence of private land ownership, absence of entrepreneurship, and a variable system of laws and justice, all in competition with constitutionally protected natural rights of the individual. And traditional affection for an often idealized tribal identity may interfere with successful competition in a free market economic system. To this must be added the political maze of benefits of political, legal and economic protectionism of some Native American enterprises by the American government. A Division of Tribal Government Services (part of the Dept. of the Interior) is directed to promote the sovereignty of federally recognized Tribes and to hire staff under a Tribal Indian self-determination contract. The tribal kinship, which many hoped would disappear except in kindly legend, is, for some, becoming even more entrenched. Behold the power of the kinship.