



The Owl of Athena

CONTRATYRANNOS

The Natural Law Theory of Human Progress Website

EXCURSUS #3

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

EXCURSUS 3: NATURAL LAW THEORY OF HUMAN PROGRESS AS A PROOF OF NATURAL LAW AND ITS BENEFICENCE

Summary: By interpreting natural law as a statement on the inviolability of human liberty, identification of infractions of natural law become less subjective. In this excursus a proof is offered that identifies natural law as purposeful and beneficial because both increased life expectancy and an effective collegial medical association are shown to be products of human liberty. It is also confirmed that natural law is an attribute of all mankind and unrelated to race, ethnicity, unique characteristics, or social class. It concludes with the observation that natural law as a protection of natural rights in secular governance in the West, despite its limited extent and whether intended or not, has spread a beneficence of natural law globally. The tragic consequences should it be lost are predicted.

Introduction

The foundation of natural law assumes there is free will and that there lies within every individual a moral sense that helps us distinguish between good and evil when we make our choices. Its realm of importance, therefore, includes choices pertinent to our personal lives and, through participation, in political choices. The tendency to congruence of natural law with English common law has been considered a reflection of the good effect of conscience in justifying the development of legal precedent over many centuries.

Attempts have been made to define what is good or evil under natural law and thereby to fashion laws sympathetic to that concept. But just what is considered good or evil is not always clear-cut, and this has led to disputation about the merits of natural law, in part because it has been viewed by some as a list of things not to do, and proposed lists are not consistent.² There is,

¹ 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: Implications*

² Some lists of proposed laws and traits that would support natural law include the *Decalogue*, Thomas Aquinas (see ref. 4 below), the eight natural laws of C. S. Lewis in his book, *The Abolition of Man* (Oxford, 1943), and, for primitive society, see: J. F. Johnston, Jr., *Natural Law and the Rule of Law*, the Philadelphia Society, 2003. The United Nations

however, a common thread that runs through all proposals: do not trespass on the rights of others, including their “right” to life (do not murder) and property (do not steal/covet). Using this as a nonspecific interpretation of natural law, it is reasonable to consider it not as a list of things not to do but as *a statement on the inviolability of individual liberty*. Assessment of good or evil under natural law, which some define as the law of reason, thereby becomes less a matter of opinion if a question can be framed in terms of infringement of individual liberty. Legal implications and issues then become more like matters of boundary rather than definition.

From the preceding it can also be argued that natural law is but a guide for protection of the individual. To do this it delimits interpersonal behavior, and it is in this arena that its role in governance is revealed. Through the mechanism of one’s conscience, it provides a common moral base for social interactions among all people and thereby stabilizes communal existence. It is not relevant to all individual behavior, which is otherwise unabridged. It also is not a “social contract” meant to guide a society in a specific direction, a contract that would invite endless theorizing about what a perfect society might be and what methods should be imposed to attain perfection. It is instead a protection for those who might be victims of those who choose to ignore natural law, perhaps even attempting to impose their ideas of perfection on *you*. There would be few laws necessary were everyone to follow the guidance of natural law, for there would be no fear of theft or bodily harm coming from others. There would, of course, be allowance for differences of opinion, but authoritarianism would theoretically be nonexistent except for the authority of agreed-upon laws (*e.g.*, traffic laws) that would necessarily have penalties for disobeying. But to be practical, human nature is such that there will never be a shortage of transgressions of natural law, so coercion will be required to (1) protect individuals from transgressions of their natural rights, (2) defend/assist the victim of transgression, and (3) prevent the expansion of a transgression, especially to the point that an expanding association can establish its own positive laws inimical to natural law, *i.e.*, to individual liberty, and ultimately to dominate it.³

Natural law may exist, but what of it?

What is the proof that natural law exists? (1) There is a commonality in certain human social interactions across all societies that is consistent with an innate moral system, one that, underneath a panoply of positive laws and other social directives, does not vary with regard to the status of disparate individuals, societies and civilizations.⁴ (2) There is a theological and philosophical support for the existence of natural law insofar as human reason has been considered designed for its implementation and has been assigned both the ability and the responsibility of identifying its components and following its direction.⁵ (3) It is claimed that proof of natural law is self-evident, an analytic position not requiring proof. (4) A similar approach is based on

released its *Declaration of Human Rights* in 1948 listing thirty articles (rights) from which thirty wrongs can be deduced. Separate but related are lists of traits that can be considered conducive to identification of human laws consistent with the functioning of natural law: the virtuous traits of Charles Darwin (see: *The Descent of Man, and Selection in Relation to Sex*, London, 1874, 2nd edition, chapters 4 and 5), the seven “goods” identified by Dr. John Finnis (*Natural Law and Natural Rights*, Oxford, 1980), and the list of sentiments by Dr. James Q. Wilson (see ref. 4 below).

³ Positive laws are those statutory laws made by human agencies.

⁴ James Q. Wilson, *The Moral Sense*, New York, 1993. Dr. Wilson does not use the term “natural law” in his book, but separately he has stated that he hopes the moral sense and natural law are equivalents.

⁵ Paul E. Sigmund, *St. Thomas on Politics and Ethics*, New York, 1988, pp.48-50.

contradiction; if in inversion of a law is absurd, then the original version can be true. (5) It has been proposed that natural law evolved in humans by the supposedly proven mechanism of Darwinian evolution. The first of these proofs can be considered both scientifically and statistically supportable, and in fact it is considered so by many.

But even if human reason is sufficient to prove that natural law exists or if theories attached to Darwinian evolution in time become incontrovertible facts, there needs to be a determination as to *why* it exists. There is no *a priori* reason to consider natural law as beneficial, for, if such an assumption is made, natural law outside the realm of theology becomes a philosophical invention, as all that relates to it is deductive. And if we can find no reason for its existence, it is of no more significance than, for example, the Goethe bone.⁶ If twenty unrelated cultures are studied and sixteen recognize the equivalent of natural law or the Golden Rule, this would indicate with high probability that natural law is integral to all societies. On the other hand, statistical proof of its presence does not mean that it is worthwhile. Margaret Mead, who characterized natural law as a “species-specific capacity to ethicalize,” was sufficiently convinced of natural law as a proven phenomenon to affirm that, based on her experience, its presence was felt in every primitive society.⁷ But the dismal lifestyle and brutishness of most primitive societies are no proof that natural law is a good thing. It is, of course, commonly understood that expressions of natural law are easily overcome or ignored by human laws, greed, social pressure and the like. But this argument is an assumption, not proof. Perhaps natural law merely represents the aggregate consequence of random genetic change or founder effect in our ancient ancestors. To determine why natural law exists, some characteristic of society that depends on and coexists with it needs to be analyzed, its usefulness or hinderance to society determined, and a causal relation thereby shown.

The purpose of natural law

It is possible that identifying the true purpose of natural law is impossible or is even forbidden to human knowledge. For purpose of discussion, however, let us presume the purpose is a secular Eden that might result from free rein of human ingenuity. But that ingenuity would be manifested in bits and pieces of all kinds and dimensions of knowledge, its consequences unpredictable at the time of each discovery, and thus the final product would not have been an intended product. In a completely free society and given the broad spectrum of ideas of humans on just about everything they come upon, the range of possibilities that would promptly result from the discoveries and inventions of that society is enormous. How then can a secular purpose for natural law be recognized?

As an opening statement, in an authoritarian society the role of natural law is subservient to positive laws, if the former is allowed to make its existence felt at all, and it is the positive laws and those who promulgate them that will direct society. In contrast, a characteristic of natural law is its dissuasion of an individual from infringing on the rights of others; axiomatically, there is no

⁶ Goethe bone, the “incisive,” or “intermaxillary bone” in humans, is found in many mammals, and, while a curiosity of anthropology, is of little clinical interest.

⁷ Margaret Mead, *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.

constraint on actions so long as they do not infringe on the rights of others.⁸ Discovery, invention and open discussion prevail. As this applies to all persons, it provides a justification for a free and open society that will effectively direct itself, will progress even if we at the moment do not know what that direction is. Society acting in concert with natural law would be truly democratic, although not in the restrictive political sense of majority rule. Can all this be shown?

The concept of natural law promoted in this monograph must be compared to other concepts of natural law that focus on ways to legally regulate society and social morality, *i.e.*, natural law implementation as positive law. This attempt at implementation involves devising laws consistent with contemporary opinions about the role of natural law and the appropriateness of positive laws. But if the idea that natural law is to be expressed by no transgression of another's natural rights as its essence, then the transference of details of natural law to society's regulatory and legislative systems is either unnecessary or inappropriate, for the correct venue of natural law is within the individual, not a society's legal system. The answer to this dilemma is not to implement details as to what popular opinion considers is consistent with natural law, but simply to *minimize those laws that infringe on natural rights*. Seen in this light, natural law serves more as a "bill of rights" protection for the individual. All this sounds familiar.

There can, of course, be laws for punishing such crimes as are recognized by a society, *e.g.*, running a red light, and inevitably among those crimes will be natural law infractions. But the legal implication of the "bill of rights" role of natural law is limited to protection of, not granting of, the individual liberty implied in, and required by, natural law. It is not to be involved in deciding punishment for infractions of natural law. Punishment of the guilty is a separate issue and one to be managed as a community, in that the primary purpose of punishment is to prevent future such bad actions from affecting other members.

The relevance of the preceding to the present topic can now be resolved. One proof of the existence of natural law, as interpreted above, would be to show whether individual liberty is harmful, not a threat, or a benefit to society. If individual liberty is indeed a requirement for natural law to convey social benefits, then a "free" society should fare well and an "unfree" society should not. The more consistent this finding among human societies the firmer would be the proof. Furthermore, as natural law is considered embedded in every individual, one should expect its benefits (1) to proceed not from a special group of individuals within a society but throughout society, and (2) to benefit all members of society. Benefits should emanate throughout society regardless of one's status or privilege. Those benefits may be difficult to differentiate from beneficial events that might happen by chance or by authoritarian design, and it may even be difficult to identify what exactly is meant as a beneficial event. Furthermore, that event may be evanescent, permanent, minor, major, or even undetectable for the moment. It is necessary, however, that the proof of natural law beneficence be assessable through quantifiable objective effects. Allowances would have to be made for contemporary competing events, both positive and negative, for they might alter the perceptibility of a beneficial or detrimental effect attributable to natural law.

⁸ See Exkursus 6 for a more extensive treatment of this general interpretation of natural law and its association with the Ten Commandments and the Golden Rule.

Existential justification for attributing beneficence to natural law

One measure that would fulfill a basic requirement as a gauge of beneficence is life expectancy. For all societies, both an appreciation of living and a fear of dying contribute to a thankfulness for a longer life and for relief when saved from a life-threatening experience, thus broadening the scope of the presumed beneficence of a longer life and minimizing the chance that any judgment on its beneficence is merely hedonistic self-indulgence and thereby a false measure of natural law beneficence. Further support is provided by the universal desire for a longer life irrespective of status or privilege. Even those with a long life desire an even longer life. As for the method of determination of life expectancy, the society at large needs to be assessed, not just those few in society who, because of special treatment, access, or protection might have a greater life expectancy than the majority of the population. Preferably, if there is a subpopulation that has special privileges that might contribute to longer life, data from that subpopulation should be excluded from any analysis of life expectancy in that society.

The Natural State of Medical Practice looked at historical and prehistorical periods of prosperity, population increase, personal freedom, and group autonomy found in the settlement hierarchy phase of a large primary city in Mesopotamia, Egypt, India, China, and Ionic Greece, and in our modern Western civilization. Remarkably, life

	Earliest increased longevity >45 years	Earliest increase longevity >baseline
China	1970	1950
India	1970	1930
Russia	1950	1930
Egypt	1960	1950
Brazil	1950	1940
Japan	1930	1910
Peru	1950	1950
Mean value	1954	1937
USA	1900	1890
UK	1905	1875
France	1900	1820
Germany	1910	1895
Sweden	1875	1825
Canada	1900	1860
Netherlands	1890	1890
Mean value	1897	1865

expectancy has increased only in the West and only in the last 150 years. Furthermore, *The Natural State of Medical Practice* provides evidence that this is attributable to recognition of natural rights for the common citizenry subsequent to the Reformation in the 16th C (see excursus 6). While this single event is not in itself a statistically strong argument supporting a beneficent natural law,⁹ its

⁹ It has been argued that increased longevity was also apparent in ancient Greece and Rome. For the common man and woman, however, the matter is unproven and will remain so, if for no other reason than that slavery/serfdom was

significance is increased in that a longer life expectancy in the West has been followed by an increase in longevity in other regions of the world beginning about two or three generations later as shown in the above Table. In other words, it is a Western legacy, not a global inevitability.¹⁰ This evidence of human progress, the beneficence of a longer life, can therefore be attributed to increasing civil liberty of the common citizenry and thereby a consequence of adherence to natural law, its timing suggesting the Reformation as its origin.

Another gauge of beneficence could be the number or percent of people in a society living in misery. This should logically correlate with life expectancy, but perhaps this is not so. It needs to be examined. Total population is not a measure of beneficence because longer life expectancy and improved infant mortality are important contributors to total population. Even expressions of satisfaction or dissatisfaction with contemporary affairs is inadequate. It is recorded, for example, that some persons waiting to be sacrificed in Aztec rituals refused to be saved by soldiers of Cortez. And, in the closely inhabited community of Catalhoyuk of the 8th millennium BC, evidence of change or progress over a thousand years is lacking despite an estimated life expectancy of little more than thirty years. Quantitation of happiness has been attempted in modern societies using multiple markers, but their relevance to ancient society is debatable. Even the Misery Index as devised for modern societies is inappropriate, for one of its items to be analyzed is the unemployment rate, and in ancient societies there would have been no such thing as unemployment except that due to disability.

A better gauge of beneficence is medical practice, for it, along with writing, can be a measure of societal progress. In assessing quantifiable data on medical practice as it existed in major and minor civilizations throughout history and prehistory, the presence of medical care as practiced by professionals and certified in their extant medical writings has been used in *The Natural State of Medical Practice* as a gauge of societal progress.

In this analysis the definition of progress in a society was “a *social* concept based on the awareness of improvability of the human condition.” This statement may seem vague, but it is based on an acknowledgment that satisfaction and dissatisfaction coexist within societies, that at least some members of society know the difference, and, if desire is sufficiently strong (as it always is for medical care), some members will strive to improve aspects of the human condition as they see it. In other words, societal contentment is not being judged according to “what is,” because this is an open invitation to personal opinion that will vary with one’s position in society. It is, instead, oriented toward a judgment of “what can be,” an indicator that something is unsatisfactory, and it therefore becomes an issue for free choice for every member of society as to how it can be improved.

common in ancient civilizations. In addition, factors other than medical discovery may have been in play, such as the safety of local drinking water or climatic rigors.

¹⁰ By a two-tailed t-test the difference between the top and bottom mean values is significant ($p < .001$) in each column. I derived these dates from graphs available on <https://www.statistica.com>. As the mean value of age at death for most, if not all, past civilizations is in the range of 30-40 years (including some studies that exclude from their calculations deaths in childhood; see vol. 3 of *The Natural State of Medical Practice* for specific values), the first column is based on the specific year that mean life expectancy exceeded 45 years, *i.e.*, significantly greater than prior human experience. The second column is based on several years of increasing longevity that were followed by a consistent increase to the present day; *i.e.*, evidence that system-wide progress was occurring. A secondary benefit to be derived from these contrasting data is the realization of how recent the beneficent flourish of human freedom has been, much being during the lifespan of many of us at the time of this publication. As an estimated 2,500 generations (a generation being defined as 20 years) have passed since the species *Homo sapiens* first appeared on Earth, a third of American population has personally observed approximately 0.1% of its course (those over 50 years of age).

In *The Natural State of Medical Practice*, its four volumes center around a description of the evolution of medical professionals in five ancient civilizations. Evidence for a medical practice by professionals was not found in twelve other prehistoric civilizations and proto-civilizations. It was concluded that the appearance of true medical practices (termed “the natural state of medical practice”) appeared at a stage of early urbanization in some primary civilizations, a stage referred to as “settlement hierarchy,” a spontaneous organizational pyramid of management that naturally evolves as nascent urbanization becomes more complex and peacefully adapts to prospering circumstances with an enlarging population. While the nature of human intercourse during these nascent periods of development of ancient population centers is incompletely known, the circumstances surrounding this initially leaderless population of individuals were expressed in its adaptation to a new social environment that was not regulated by kinship but by commercialism. An element of endemic individual liberty and freedom of choice, appearing for the first time, permitted individuals and families to take advantage of social opportunity. Subsequently, an authoritarian centralized political structure evolved that replaced the element of freedom of choice present in the earlier settlement hierarchy. Restrictions on individual freedom and limitations on choice were imposed by those in power, one consequence being canonization of the earlier medical knowledge and its practitioners as the powerful sought to increase control over the mass of the population. The quality of medical knowledge then dramatically declined, and no new knowledge was added. It is concluded that infringements on individual liberty prevented the now subordinate municipal populations from abiding by natural law. They were deprived of opportunity for personal betterment. No further attempts to recover a “natural state of medical practice” were made. Authoritarian rule, usually associated with military conflict, then dominated the secondary civilizations that followed for many centuries. The positive association of a natural state of medical practice with freedom, supported by statistical analysis (see Appendix A of vol. 3), is strengthened further by its negative association with authoritarian civilizations.

The *Natural Law Theory of Human Progress* that has been propounded from the observations summarized in these paragraphs was originally described as “isagorial” from the Greek ἰσαγορία (isagoria), meaning “equal opportunity to speak freely in public assembly,” with “freedom of assembly” understood. But the linchpin of the theory is consistent with a beneficent natural law in that freedom of the individual and of associations of individuals permitted self-betterment to improve their status in life, the evidence being an increase in life expectancy and nascent effective medical practices that would ultimately ease the misery of disease and injury.

Natural law and human progress

It has now been shown that the initiation of human progress, assessable in the medical practices of six civilizations (including our own) and in life expectancy, can be explained as a consequence not of great men, great empires, wealth, power, an enlarging population, or miracles, but of human liberty. It is therefore considered a proof that this concurrence of progress and liberty has not been by chance (*i.e.*, all six examples of progress, out of eighteen civilizations and proto-civilizations analyzed, were associated with a degree of civil liberty or absence of a powerful political hierarchy, $p < .001$).

The weakness of the circumstantial evidence used in classifying the various civilizations is acknowledged in *The Natural State of Medical Practice* (vol. 3, p. 313), and thus the statistical significance of the analysis would benefit from more study. But it is a beginning. I have included

among the six progressing civilizations our own, which was not done in the cited reference. Thus, the six include the democracies of the modern West, ancient Greek democracy, and the “settlement hierarchy” phase in the early development of selected cities of Mesopotamia, Egypt, India and China, a period of commercial development not yet made captive by centralized authoritarian political control.

Indeed, the association of human progress with liberty can even be considered inevitable, given that natural law and inherent genius reside in every person. That the association of civil liberty with the initiation of progress can be documented in only six civilizations reflects the extraordinary efficiency, power, and cunning of the authoritarian as expressed through physical and social tyranny and suppression of natural law. Further evidence of its inevitability is seen in the course of modern Western civilization: only in the West has human freedom been permitted a long survival, now two-and-a-half centuries, thereby enabling its recent generations to document more than a doubling of life expectancy of its inhabitants, not to mention the conveniences and security of daily life.

The absence of natural law

It was argued above that at its core, natural law is as a “Constitution” in that it protects our right to be individuals with freedom of choice. By that freedom we are permitted, as individuals, to be virtuous, for it has been stated many times that virtue can exist only in a free society.¹¹ But when positive law replaces conscience in human interactions, virtue is now defined by the State, and the individual’s protection from infringement by others is subordinate to purposes of the State. Natural law continues to exist but, because of baser natures, poor judgment, or an emergency, it is disabled as a beneficent guide for protection of the individual. This is what transpired in the five major civilizations described in *The Natural State of Medical Practice*, with our own civilization now in the balance.

Furthermore, the history and prehistory of medicine shows that the beneficence of natural law will not only cease under authoritarian dictate but society can regress to a primitive state. That is, there seems to be a penalty for disregarding natural law, and that penalty involves not only cessation of progress but also the giving up of gains already made, a penalty profoundly apparent and unfathomably tragic during the European Dark Ages. And this is doubly troubling for some, for there may be many in a society who recognize, at one time or another, authoritarian decisions that are unconscionable in that they violate natural law. Those persons must therefore either act against their conscience or attempt reversal of the authoritarian stance, neither being a pleasant alternative. The penalty for disregarding natural law is particularly distressing in that the authoritarian fist in a society includes in its grasp society’s innocents, those who recognize the error being made, those who are unable to do anything about it, those who are too young to understand the issues at hand, and those unborn who will inherit the misguided efforts of their forebears.

¹¹ Frederick Douglass (1818-1895) wrote “There can be no virtue without freedom - and no peace without justice.” He viewed the U.S. Constitution as an anti-slavery document, with slavery being unconstitutional and against natural law and natural rights.

Conclusion

What would be the benefit to a society of a system of governance that would recognize the existence of natural law as a statement on liberty and would facilitate its observance in that society? Briefly, its proposed secular value as proven in the argument of this monograph and *The Natural State of Medical Practice* would lie in the freeing up of the ingenuity of the human species, for all individuals and associations of individuals could contribute to improving the status of our species on earth.¹² Without that individual freedom, the purpose of natural law, which is to protect our natural rights, is denied and expression of ingenuity is crippled; the more expansive the authoritarianism, the fewer opportunities for ingenuity. Carried to the extreme, this can ultimately lead to (1) absence of human progress, (2) permanent relegation of humans to a feral existence, and (3) a world of unending authoritarian conflict.

By misappropriating the fruits of labor of others, limiting personal choice, and usurping the position of the individual in distributing benefits, governance ignores natural law and thereby denies natural rights, depersonalizes assistance, makes personal decision and responsibility unnecessary, and through this medium attracts the naïve, the irresolute and the opportunist and thus acquires power. Power once acquired, the individual cedes his conscience to the State, the definition of good and evil becomes the aegis of the State, and with the political efficiency of centralized control and the evil inherent in obtaining mastery over the direction of society, the good genie of our conscience, our moral sense, our natural law, will again be entrapped for generations to come and leave our progeny to suffer the penalty.

¹² The role of humaneness as it applies to other sentient species is a related but separate issue and is not discussed here.