

EXCURSUS 32

NATURAL RIGHTS AND THE NATURAL STATE OF NATURAL LAW

(This is an updating of the Overview of **contratyrannos.com** and a brief summary of supporting evidence because *The Natural State of Medical Practice* has revealed the role of natural rights and natural law to an extent that now dominates its other messages.)

Summary: A revolutionary theory of human progress is proposed from a review of medical practice over the ages: civil liberty of the common man and woman, the unprivileged, is the sole explanation for human progress. Using medical practice as a realistic gauge of societal progress, Western civilization's medical successes, which include in the last two centuries a doubling of the human life expectancy, owe nothing whatever to prior civilizations, and simultaneous political successes include its moral abolition of slavery, a feat without precedent. Human progress had been constrained for thousands of years by the egalitarian authoritarianism of the kinship and the autocratic authoritarianism of supposedly "great" civilizations of Mesopotamia, Egypt, India, and China. In a profound denigration of authoritarian governance, the concept of natural law is introduced. The incredible apolitical and political progress of the past three centuries in the West is attributed to increasing civil liberty following the Reformation that demanded protection of natural rights based on the equality of all before God, thereby releasing the ingenuity and motivation of the common man and woman and thus proving there is no such thing as a common man or woman. But its most basic message resides in the virtually miraculous response of the West to the unchaining of natural rights when governance was forced to ease natural law transgressions of the right to life, liberty and property of the unprivileged. The beneficence of natural law, its natural state now revealed on a civilizational scale, is thereby objectively proven.

"Natural state" is a term widely applied for many conditions and things. Its definition herein is:

The natural state is not an archetypal or ideal state but a state or condition in which a system's proper function can be effectively deployed free from external institutional influences.

While on the medical staff of a large municipal hospital in New York City, dissatisfaction with aspects of medical care prompted my inquiry into medical care of other times and places. The purpose was to seek historical practices that might improve modern medical care. The goal was to identify the natural state of medical practice, if such a state had historically existed.

The result was unexpected. Study of extant Hippocratic texts from ancient Greece confirmed their medical competence.¹ Medical progress was evolving, and yet that ancient but

¹ Adams, W. H., An Early Conception of Inflammation in the Hippocratic Treatise, *Diseases I*, in *Greek, Roman and Byzantine Studies*, 64:195-207, 2024. My small contribution is but one of many thousands of studies that, after two millennia, continue to document the remarkable objective, humane and insightful clinical findings of Hippocratic physicians.

progressive medical practice vanished within three centuries. Despite a handful of proximal writers, a new medical profession would not appear in Europe for almost two thousand years.²

Once aware of the history of Hippocratic medicine, the medical profession was then assessed in the predynastic and dynastic periods of the major civilizations of Mesopotamia (Jemdet Nasr Period and early Uruk dynasty, *ca.* 3100-2500 BC), Egypt (predynastic and early dynasties, *ca.* 3200-2700 BC), India (Indus River Valley civilization, *ca.* 2400-2000 BC), and China (Longshan culture of the Yellow Emperor, *ca.* 2500-2000 BC). Rational medical practices were confirmed in extant ancient writings that are venerated today, respectively: *Treatise of Medical Diagnosis and Prognosis*, *Papyrus Ebers*, *Charaka Samhita*, and *Huang Ti Nei Ching Su Wen*. Nascent medical progress had indeed existed. Analysis of a major primary city-state from each civilization concluded that regional ethnic groups first urbanized based on commercial opportunity.³ That early urbanization was associated with a period designated a “settlement hierarchy,” a multifocal system of management in a social system in which there is no permanent head, one that adapted to population growth and needs over time as commerce, prosperity, and security permitted. There was no autocratic rule, and the distribution of power shifted as needed. This “heterarchy” permitted a degree of civil liberty tempered by compromise.⁴

But something occurred in those early civilizations that blocked further progress within a few centuries of the medical profession’s founding. Once dynastic rule incorporated the primary city-states into their domains, medical progress ceased (the Indus River Valley civilization excepted based on climate change). Egyptian practitioners became pharaonic priests, Sumerian practitioners were replaced by exorcists, Indian practitioners became subject to the Brahmins of Hinduism, and the Chinese practitioners served and were under control of the dynastic elite. There was no significant new knowledge or scientific confirmation of old knowledge. Ancient medicine had been canonized in ways useful for monarchical power, today’s derivatives being Ayurveda and Traditional Chinese Medicine.⁵

The following twelve prehistoric civilizations and protocivilizations were then analyzed:

² F. H. Garrison, in *An Introduction to the History of Medicine* (Phila., 1921, 3rd edition, p. 85), concluded no significant advance in medicine from Hippocrates (5th C BC) to Paulus of Aegineta (7th C AD), and Dr. David Reisman (Riesman, D., *The Story of Medicine in the Middle Ages*, New York, 1936) described the medicine of the feudal period (8th C to 15th C AD) as an avocation of the clerics. Remarkably, the works of Hippocrates by Dr. Anuce Foes published in 1595 remained, in effect, the basic textbook of medicine well into the 19th C.

³ Primary city or city-state: an early city or city-state that is not a colony and is unaffiliated with a larger civilization. Primary civilization: a civilization that has not been “shaped by substantial dependence upon or control by other, more complex societies.” See: Trigger, B. G., *Understanding Early Civilizations*, Cambridge, 2003, p. 19.

⁴ Dr. Juan Castillos wrote of predynastic Egypt, “Kinship ties [were] played down and largely replaced by other types of allegiance to semi-divine king ruling over a large territory.” See: Castillos, J., *The Development and Nature of Equality in Early Egypt*, in *British Museum Studies in Ancient Egypt and Sudan*, 13:73-81, 2009. Similar statements are available for the primary city of Liangchengzhen of the Longshan culture and concurrent with the era of the presumed Yellow Emperor in northern China, with the predynastic phase of the primary city of Uruk in Mesopotamia, and with the abolition of late 6th C BC Athenian phratries by Cleisthenes.

⁵ Nunn, J. F., *Ancient Egyptian Medicine*, London, 1996, p. 206. And Prof. Heinrich von Staden identified no progress in “pervasive magico-religious” Egyptian medicine between the Middle Kingdom (1986-1759 BC) and the 2nd C AD in his Introduction to: *Herophilus: The art of Medicine in Early Alexandria*, Cambridge, 1989. For Indian medicine, Dr. A. C. Kaviratna, noted translator of the *Charaka Samhita* wrote in 1896: “No summary, however skillfully framed, can afford an adequate idea of the real contents of Charaka’s compilation.” For the *Huang Ti Nei Ching Su Wen*, Dr. Joseph Needham and L. Gwei-djen wrote “The *Nei Ching* undoubtedly contains the fundamental principles of traditional Chinese medicine.” See: *Hygiene and Preventive Medicine in Ancient China*, in *J. Hist. Med.* XVII, October 1962, #4, pp. 429-470.

Marajoara (Os Camutins)
 Norte Chico (Caral Supe)
 Poverty Point
 Cahokia
 Terramare
 Catalhoyuk
 Sintashta (Arkaim)
 Shahr-I Sokhta
 Djenne-Djenno
 Liangzhu
 Anasazi (Chaco Canyon)
 Cucuteni-Trypillia (Maidanets)

None were found to have developed medical practitioners. On analysis, this fatal defect was attributed to the egalitarian kinship of the tribe, for the primary goal of the kinship is to protect the kinship, not the individual, and it is from free associations of individuals with a common self-interest, rather than the isolated ingenuity of a single individual, that professions arise. As an example, the Cucuteni-Trypillia culture (5000-3000 BC) of eastern Europe included settlements as large as 40,000, and yet there is no evidence of a medical profession. Its societal substructure could not escape tribal affinities in a subsistence economy.

What had happened that curtailed either the initiation or the maturation of a medical profession in the preceding seventeen civilizations/protocivilizations? It surely was not intrinsic to medicine, for effective medical care is universally desired and the efforts of its practitioners appreciated.

Modern Western medicine was therefore similarly reviewed, with the following conclusions: (1) modernity in medicine first appeared in the West in the 18th C; (2) it appeared *de novo* and it can be categorically stated to be unrelated to Hippocratic medicine (the Hippocratic Oath excepted) or to any other preexisting medical practices, for medicine as a profession in the West had ceased to exist for centuries;² (3) it did not evolve from primitive medicine, priest-medicine, or shamanistic practices, the latter having no relevance whatever to the history of medicine; (4) curiously, it appeared quite specifically among the unprivileged populations of Europe and the British Isles;⁶ and (5) its global spread and monumental beneficence has produced a doubling of the life expectancy of civilizations. What had produced this seemingly miraculous event and could it explain why preceding efforts at rational medicine had failed?

It had been crudely estimated from earlier analyses that, in a local society of sufficient size (*ca.* 10,000 as a minimum), politically stable, and sufficiently commercially prosperous to support specialization, a nascent medical practice might emerge in as little as two or three centuries.⁷ Then, backtracking 200-300 years from the 18th C, we find the onset of the Protestant

⁶ Leopold Auenbrugger (1722-1809), father was an innkeeper; Rene Laennec (1781-1826), father was a civil servant; Hermann Boerhaave (1668-1738), father was a “frugal pastor”; Giovanni Morgagni (1682-1771), father died early, raised by mother; Thomas Sydenham (1624-1689), father was “Puritan gentry;” Edward Jenner (1749-1823), father was a vicar; James Lind (1716-1794), father was a merchant; John Hunter (1728-1793), father was a farmer; Alexander Gordon (1743-1827), father was a tenant farmer, to name a few.

⁷ The primary city of Miletus was founded by a migratory Hellenic population *ca.* 1000 BC on the ruins of an ancient city, reached a population 10,000 by the 8th C BC and it is circumstantially postulated that early Greek medicine originated there in the 7th C BC. The possibility that medicine emanated from the island of Cos as a product of one person, Hippocrates, is an impossibility, and the very existence of Hippocrates has questioned. Ludwig Edelstein, the great student of the *Hippocratic Corpus*, considered none to be by Hippocrates. For Egypt, the primary city of Hierakonpolis (Nekhen) had a predynastic population of about 10,000 that included an early *swmw*, a physician, and evidence from Papyrus Ebers suggests its late predynastic origin.

Reformation, commonly dated to 1517. But could religious schism be related to medical progress?

Of possible causes we can exclude religious belief, because fervent religious reverence was characteristic of both the Roman Church and the Reformers. The Renaissance can be excluded because nothing conducive to medical progress resulted from the few Renaissance era discoveries relevant to medicine.⁸ The Scientific Revolution and the Enlightenment can be excluded because they, like the medical profession, were a consequence of the Reformation. We can also exclude the privileged and aristocratic classes, for their interests remained unchanged or even hardened as the Reformation commenced, as witnessed by the Counter-Reformation. Rarely would one of their number be included among the lists of inventors and discoverers in science and other fields. Also to be excluded is medical knowledge from other cultures, for, other than the usual dabs and daubs of medical curiosity that normally leak between cultures via trade and travel, the new knowledge was unique and scientific. Another possible cause might be the printing press. Invented in the 1440's, by the time of the Reformation the printed word was widely available throughout Europe. But its great value in the 16th C was in the spread of Protestantism, for otherwise its sometimes restricted product was mainly of interest to the intellectual, clerical and aristocratic classes. Its value in new medical knowledge would not be apparent until well into the 18th C.

The 1517 Reformation itself was then analyzed for its impact on society in ways other than purely religious. The impact had been immediate. Martin Luther's writings had become widely popular in France, Great Britain and central Europe by 1519, and the venerable Erasmus of Rotterdam saw its positive effects in 1520 when he responded to Frederick of Saxony that Luther "has struck at the tiara of the pope and the bellies of the monks." Luther's vernacular New Testament was issued in 1522 and subsequently was to be broadly used. But critical to the present argument, his writings, along with increasing literacy of Europe, prompted a long-sought freeing up of the unprivileged from the heritage of serfdom. Throughout central and northern Europe and the British Isles the concept of natural rights began to emerge for reasons best expressed in 1525 in Article 3 of *The Twelve Articles of the Peasants*:⁹

The Third Article. – It has been the custom hitherto for men to hold us as their own property, which is pitiable enough, considering that Christ has delivered and redeemed us all, without exception, by the shedding of His precious blood, the lowly as well as the great. Accordingly, it is consistent with Scripture that we should be free and wish to be so. Not that we would wish to be absolutely free and under no authority. God does not teach us that we should lead a disorderly life in the lusts of

⁸ Vesalius' drawings, Fracastoro's musings, Fabricius' Atlas, Da Vinci's clever drawings, and Linacre's veneration of the ancients, for example, are unrelated to the discoveries soon to come from physician practices that would provide confirmable clinical proofs that led to modernity. Even John Locke (1632-1704) as a physician wrote that prior anatomical discoveries amounted to little more than "more superficialities...to stare at." (Locke, J., *Anatomie*, 1668.) And the deductive reasoning from ancient maxims prompted him to state that "He that in Physick shall lay down fundamental maxims and from thence drawing consequence and raising dispute shall reduce it into the regular forme of a science has indeed done something to enlarge the art of talking and perhaps laid a foundation for endless disputes." (*De Arte Medica*, 1669). William Harvey (1578-1657) was unlike the others of that era and therefore best fits into the post-Reformation category of physician rather than Renaissance. His father was a jurat in Folkestone, England.

⁹ Popularly translated by Frederick Engels, the *Twelve Articles* were demands formally presented by serfs to German aristocracy in March, 1525. In the Peasants' War of 1524-1527, the serf population of large areas of Germany was to suffer one hundred thousand battlefield deaths and perhaps another hundred thousand deaths from the associated devastation to families. Aristocrat losses were "minimal."

the flesh, but that we should love the Lord our God and our neighbour. We would gladly observe all this as God has commanded us in the celebration of the communion. He has not commanded us not to obey the authorities, but rather that we should be humble, not only towards those in authority, but towards every one. We are thus ready to yield obedience according to God's law to our elected and regular authorities in all proper things becoming to a Christian. We, therefore, take it for granted that you will release us from serfdom as true Christians, unless it should be shown us from the Gospel that we are serfs.

The peasants were not asking for privilege, nor did they seek to take the place of those holding power at that time. Their request for self-betterment was most basic: the freedom to do so.

Over the next century there was increasing intellectual support for various aspects of individual liberty and limited government, spokesmen including:

John Knox (1514-1572)
 Hubert Languet (1518-1581)
 Christopher Goodman (1520-1603)
 Theodore Beza (1519-1605)
 Thomas Helwys (1575-1616)
 Johannes Althusius (1563-1638)
 Samuel Rutherford (1600-1661)
 John Milton (1608-1664)
 John Locke (1632-1704)

Once under way, the increasing civil liberties of unprivileged European populations made autonomous specialization in goods and services possible. One, the medical profession, being practical and local, readily evolved because basic medical knowledge sufficient for scientific verification and medical progress is simple, easy, cheap, convenient, painless, and requires no technology. We call it the medical history and physical examination. Stuffy early university professors, prideful of their recent discovery of the wisdom of Hippocrates and a handful of other ancient medical writers, were soon left in the dust as average citizens began to use their pent-up ingenuity and motivation to invent and discover, with vetting through journals and associations.

The unprivileged populations have thus been shown to be the source and the engine of modern medical progress and, by implication, progress in general, for doubling of life expectancy (roughly from forty to eighty years) for the entirety of a society was not solely an accomplishment of the medical profession. Sanitation, physical safety, agricultural advances, veterinary discoveries, chemistry, toxicology, and many other disciplines were involved in medical advances, either directly or indirectly. But this was possible because Western civilization was receptive of the idea that all persons were equal before God and that the privileged were subject to the same moral guidance as the unprivileged. Every individual had natural rights, and beyond this all were subject to natural law.¹⁰

¹⁰ Natural law limitation of natural rights has its proponents, an ongoing argument. But biblical support is sound, as expressed by Maimonides: "This doctrine is an important principle, the pillar of the Law and the commandment, as it is said: 'See, I set before thee this day life and good, and death and evil' (Deut. 30:15); and again it is written, 'Behold, I set before you this day a blessing and a curse' (ibid, 11:26). This means that the power is in your hands and whatever a man desires to do among the things that human beings do, he can do whether they are good or evil;" See *The Teachings of Maimonides*, J. S. Minkin, New Jersey, 1993 (paperback edition), p. 244.

The concept of natural law was then reviewed and its role in protecting our natural rights confirmed. Among the long list of those attempting definitions of natural law, Thomas Aquinas, Martin Luther and Pope Francis all agree with the equivalence of natural law and the *Ten Commandments* of the Mosaic Covenant as a succinct, if incomplete, summary. This solidly allies Western progress with Judeo-Christianity rather than with other religions, although natural law is a universal human attribute and elements of it expectedly appear in profound human contemplations of any culture.¹¹ It is concluded that recognition and protection of natural rights of the unprivileged populations in the Judeo-Christian West could explain the *apolitical* beneficence of modernity. Its *political* relevance was then assessed.

The wrongfulness of slavery is clearly implied in the *Ten Commandments* in that *you* (second person singular) are forbidden to transgress the rights of others to life, liberty and property. It was, therefore, a reasonable consideration that some aspects of the Reformation were responsible for the moral abolition of slavery. Notably, the time from the onset of the Reformation to the moral abolition of slavery in Great Britain was the same (three centuries) as that of a documented increase in life expectancy in the West, suggesting a common origin. And the reason for the tardy devolution of abolition is fully explainable by the tardy devolution of suffrage on the unprivileged British population. In England and Wales, only 6% of the male population could vote in the 1831 Parliamentary election. Strong public response led to a major voting shift favoring the pro-reform and anti-slavery Whig party and to the Reform Bill of 1832. That in turn led to slavery's immediate abolition in 1833. It is, therefore, to increasing literacy and democratic empowerment among the unprivileged that we can attribute success in the moral abolition of slavery by Great Britain. The nobility, aristocracy and state clergy had little to do with it despite centuries of talk. The popular sentiment of the unprivileged class and its ordained religious leaders in an increasingly democratized Judeo-Christian civilization succeeded, for the first time in history, in the moral abolition of slavery.

After identifying modernity with the unprivileged population in the West, the political and *apolitical* beneficence of natural rights protection was revisited. 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. But if twenty unrelated cultures are studied and sixteen recognize the equivalent of natural law, 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.¹² 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

¹¹ Natural law is "a body of unchanging moral principles regarded as a basis for all human conduct" (Oxford English Dictionary). Its literature is vast and its limits controversial, but the point here is that, while it is shared by privileged and unprivileged alike, it is to the unprivileged that the beneficence of natural law can be ascribed.

¹² Mead, M., Some Anthropological Considerations Concerning Natural Law, in *Natural Law Forum*, paper 59, pp. 51-64, 1961.

determined, and a causal relation thereby shown. This was done with life expectancy and slavery.

There should be no debate about the goodness of extending human life expectancy, for almost all deaths can be considered premature, especially so prior to the 19th C. Our hope for a long life is real, being based on observations of those who have achieved long lives. And human slavery is an undeniable “bad” and its moral abolition is therefore a “good,” even though its practice in history and prehistory has been universal. Both of these “goods” first became popularly manifest in the 18th C West, their origin now traceable to the 16th C Reformation. Neither had precedent, although there was moral prohibition of slavery by the Essenes, a small Jewish sect of 100 BC.¹³

It was, therefore, the recognition of natural rights of *all* citizens, however limited, that made this possible. But there is more. The privileged classes throughout history in general had natural rights, or at least more natural rights than the unprivileged, but under their authoritarian cloak life expectancy remained about 35-40 years for the unprivileged and slavery was ubiquitous. The “rights” of the privileged were, at least in some instances, unnatural, were in fact transgressions of natural law. We can, therefore, be quite specific in stating that it was from the efforts of the unprivileged class in the West that we owe the more than doubling of life expectancy and the moral abolition of slavery, both of which have since marvelously globalized. And those natural rights were not bestowed by government. Government instead was forced to retract and decrease its transgressions of natural law.

As clearly stated by Prof. Randy Barnett, the purpose of natural law is to protect natural rights.¹⁴ Natural law protects us from each other, and our natural rights allow us to use our ingenuity to protect us from everything else. There is much discussion today of civil liberty and its limits within the moral, judicial, and ceremonial boundaries of Judeo-Christianity, for a collision of rights between free individuals is inevitable. These can, however, be managed by a natural law-abiding society through its positive (human) laws. Such laws will vary from society to society, whereas natural law is the same for all. This is good, for it permits the individuality of human nature and the uniqueness of cultures to persist, anathemas to the authoritarian. But the basic package is neat and the message is obvious. *As expressed in human experience over millennia, when autocratic influence fades the natural state of natural law can be clearly revealed. Natural rights do exist and by their existence the beneficence of natural law is enabled for the good of mankind.*

¹³ Lim, T., *The Earliest Commentary on the Prophecy of Habakkuk*, Oxford, 2021.

¹⁴ Barnett, R., A Law Professor’s Guide to Natural Law and Natural Rights, in *Harvard Journal of Law & Public Policy*, 1997, summer issue.