

## N A T U R A L   R I G H T S

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Is there a rational, natural, universal moral standard for human beings, or is morality only the arbitrary beliefs of cultures and individual whims?

In my book, The Soul of Liberty, written in 1976, I derived a formula for natural moral law, a rational, natural, universal ethic which is the basis for liberty and natural rights.

This booklet summarizes and updates the book. The full derivation and discussion of natural law and its consequences for social life will be found in Soul, but this booklet improves the presentation of the ethic in Chapter 2 and corrects some errors I made in the application of the ethic, especially on economics in Chapter 5. It serves as a new introduction to The Soul of Liberty, but can also stand by itself as a complete, if abbreviated, description of natural law and its consequence, natural rights.

The Universal Ethic remains unchanged, for the formulation of natural law has withstood the test of time, after considerable feedback, discussions, and written debates on the issue. What did change is my argument in deriving it, especially with my discovery of the formulas for morality and natural rights. However, I have revised the concept of "harm," which in turn affects the application of the ethic, especially in economics. An important breakthrough was the discovery that there are three levels of morality rather than two as I had previously thought. The concept of "passive harm" - the statist's case for government control which is seldom confronted by libertarians - fits into the third level rather than being part of natural moral law. Any obligation to help others in need fits into the new category of morality, natural voluntary law, leaving no moral grounds for taxation or welfare, collapsing all arguments against individual sovereignty.

I'd like to thank all those who provided help and criticism on Soul and its ideas. They are too numerous to list here, but I do appreciate all the suggestions I've received. Your comments on this booklet are also welcomed.

## What is Natural Moral Law?

Each person has his own beliefs, views, values, biases, religion, and ideology. Each culture has its ethic, or rules for right and wrong action. If that is all there is of morality, then one cannot judge acts as right or wrong by any objective, rational, or universal standard. Liberty then becomes nothing more than a personal preference. Natural Moral Law is an ethic which is independent of personal whim or cultural values. If such an ethic exists, then there is a rational standard by which to judge acts, laws, government, and rights.

When people form a community, some rules are needed to facilitate commerce and social life and resolve disputes peacefully. Natural moral law, or the universal ethic, provides the foundation for such rules without imposing any cultural or personal bias. That way persons with different cultures and personal values can live together in maximum harmony.

## Levels of Existence

Natural law begins with the universe. The physical universe has three levels of existence that are relevant to morality, and these also make up the "moral universe."

The first is the physical level, that of matter and energy. This is the universe seen as being made up of atoms, photons and other particles that exist in space and time. All matter and energy exists on this level, including living beings when regarded as a collection of molecules. Physical and chemical laws govern the action of the particle, atoms, and molecules of the physical level.

The second level is that of life. (This discussion is restricted to known life on earth). Life is based on the physical level, but it is more than the sum of its chemical parts. It has a feature in addition: programming. Life contains self-generating materials and processes acting under self-oriented internal forces. It is programmed, designed, and directed by genetic codes which make a living being behave purposefully rather than being pulled by non-programmed chemical and physical forces.

A machine can be programmed as well, but the difference in living programs is that in life, the "medium is the message." The programming exists on the molecular level. The stuff of life is not just molecules but programmed molecules. Genetic programs direct the physiology of the living being as well as the reproduction of the programmed molecules.

This programming makes living beings behave with a direction and purpose absent in non-life. Pain and pleasure exist on the level of life. When an organism dies, then its programming ceases to function, and its pain and pleasure cease to exist.

## "Pensience"

Among more complex living beings, a sense of self develops. The programming becomes centrally directed in the brain and the organism becomes aware of its own existence and exerts more internal control over its acts. The organism becomes aware of the effects of its acts on others, and its programming provides it with the greater capacity to choose its actions rather than react in automatic fashion to stimuli.

When a living being becomes so aware that it can direct its own life self-consciously, then a third level of awareness becomes possible. The third level is that of intelligence and sentience beyond a certain threshold. It is the level of awareness and consciousness that enables a living being such as a human being to control and direct its own actions beyond the calls of genetically programmed behavior. As Ayn Rand put it, the being's "consciousness is volitional" (Virtue of Selfishness, Chapter 1).

The genetic programming of such a being is such that much of its behavior comes from social programming - that of culture. At the third level of existence, the living being must learn how to get food, mate, and relate to other fellow beings. The third level's dependence on learning requires a high capacity to reason. Since the reaction to stimuli such as food is not automatic, the living being must make choices. A high degree of intelligence is required in order to make reasoned choices possible.

Oddly enough, there seems to be no word in the English language that describes this third level of existence. 'Intelligence' is often used, but it is too narrow in one sense since humans are often ranked by intelligence, and too broad in another sense since animals are also compared with regard to intelligence. In Soul I used the word "sentience" to describe this level in its meaning of "consciously perceiving; aware". But the other meanings of the word may make this usage confusing. My present inclination is to fill this void in the language by coining a new term: "pensience," from the French word "penser," to think, akin to "pensive".

Pensience is a matter of degree, but then so is life. There is a threshold beyond which pensience gives rise to an existence that has its own distinct behavior, governed and described by laws which don't exist at the second level, life, just as at the second level there are biological laws which do not exist at the physical level. Among the laws of pensience are those of political science, economics, sociology, cultural anthropology, the psychology of humans, and ethics. The prototypes exist on the level of life, just as the prototypes of biological laws exist in organic chemistry. But the laws become fully developed only at the pensient level.

#### Definitions

A "mind" is that which consciously thinks, feels, wills, and perceives, and causes the body to act as a result. A brain is the biological tissue whose functioning produces a mind.

A "person" is a living being which exists on the pensient level. A person has a functioning mind and which has the actual or potential ability to make choices based on reason and self-awareness, and for which such choices dominate behavior rather than genetically programmed responses.

"Personal-evil" is a person's sentiment that something is harmful or disagreeable to him.

"Personal-good" is a person's sentiment that something is beneficial or agreeable to him.

"Personal-neutral" is a person's sentiment which is neither personal-good nor personal-evil.

An "activity" is a change of state of a person, an action such as throwing a ball, eating, speaking, or shooting a gun.

A "state of being" is an attribute of a person not necessarily based on any activity. For example, the color of one's skin is part of one's state of being, as is one's ethnic background or race. If you are sitting, standing, or lying down, these are states of being. The clothes you are wearing are part of your current state of being. If you alter your clothing, then that becomes an activity.

An "act" is an activity or a state of being.

The word "moral" refers to an act done by a person. This should not be confused with the other meaning of "moral" as "morally good." "Moral" in this case just means that the act was done by a person rather than by an animal or some object. "Moral" refers to the rightness, wrongness, or neutrality of any act done by a person.

For example, if a rock falls on your head, this is a "personal-evil" but not a moral evil. But if someone throws a rock at your head, this is a moral evil because it was an act done by a person.

An "ethic" is a set of rules which apply to certain acts and which give a value of good, evil, or neutral for each of the acts. For example, the Catholic ethic has a rule that abortion is evil. California has a law that says murder is evil, which is a rule of the California government's ethic. So religions, governments, and other organizations all have rules for good and evil, which are ethics. Each person also has his individual ethic, by which he judges acts to be good, evil, or neutral.

#### The Moral Equation

A set of rules can also be called a "function" in which the values good, evil, and neutral are found by applying the rule to a set or group of acts. The values are then said to be a function of the acts. The concept of morality can thus be expressed as the following equation:

$$V_m = e(A)$$

where A is a set of acts, e is some ethic, and  $V_m$  is a moral value of good, evil, or neutral. There is a fourth possible value, "undetermined," which means that the ethic was unable to give one of the other values because the act was not well described, i.e. vague or too broad a category. For example, if the act A is eating meat, the Orthodox Jewish ethic can't give a value to that since the act is not specific enough. Eating pork, for example, would be considered evil, while eating kosher beef would not be evil.

As a premise, I make the assumption that each person has a personal ethic such that for any act, his ethic will give a value of good, evil, or neutral. In other words, I assume that a personal ethic does not have any undetermined values if an act is experienced directly or well enough described. Of course it is possible to have "mixed feelings," where someone may feel a combination of good and evil values about some particular act. For example, he may suffer in the near future but benefit in the long run from some medicine. But this does not make the values undetermined, it just means that often some situations have a combination of good and bad effects.

#### Culture

A "culture" is the sum of the ideas, values, beliefs, customs, religions, traditions, tastes and practices of a given people. A cultural ethic is the ethic of a culture, the rules of the culture that give values of good, evil, and neutral to acts. Normally, a culture is made up of people who have some close relationship to one another, whether ethnic, religious, national, or ideological. There is a Jewish culture, an American culture, and an American Indian culture, for example.

A cultural ethic can be quantitatively defined as the ethic of the majority of its members for any particular act, and neutral if there is no majority for either good or evil. For example, if a majority feel that murder is evil, then the cultural ethic is that murder is evil. If, for the act of spitting on the sidewalk, 20% feel it is good, 45% feel it is evil, and 35% feel it is neutral, then for the cultural ethic, it is neutral.

A culture can be regarded as social programming. It is the total of the information, conditioning, education, and training that its members receive after conception. The contrast is genetic programming, which is the personality and character that a person has when he is conceived.

#### The Criteria

The essence of natural moral law (NML) is its independence from culture, from the arbitrary whims of individuals and groups. NML is not against culture, but the meaning of natural law is that there is some ethic by which one can judge the rules of cultures and governments and individuals, and so that ethic cannot be derived from them. Natural moral law is just another term for "cultureless ethic". If it does not derive from culture, then it must derive from nature, or the nature of persons apart from their culture. In deriving a cultureless ethic, one has to know what to look for, and so there are certain criteria that I will present, as premises, which the ethic must satisfy.

In the equation  $V = e(A)$ , "A" is called the "domain" of the function e. A "domain" is the set of variables used as arguments for a function. In other words, the domain of an ethic is the group of acts which the ethic applies to. Medical ethics, for example, would only be concerned with the acts done by those in the medical profession, so the domain of the medical ethic would be limited to the acts of doctors, nurses, etc., in dealing with their patients. The domain of the ethic of California law presumably covers only acts committed within the State of California, excluding acts done by the federal government and its agents.

For natural law to be meaningful, it cannot be limited to only certain types of acts or certain persons. There would be no objective way to limit the domain of a cultureless ethic other than to limit it to the acts of persons. Therefore the two criteria for the domain of natural law are:

- 1.) It is universal, applying to all persons.
- 2.) It is comprehensive, applying to all acts.

For natural law to be meaningful, it must be logical. It must not be self-contradictory or irrational. It must also be grounded in reality. It must not be some arbitrary set of rules. It must not be "a priori," i.e. based on some etherial theory or religious authority, but must be grounded on physical reality, which means the natural world, especially human nature. Therefore the two criteria for the ethic of natural law are:

- 1.) It is logical, consistent and logically derived.
- 2.) It is natural, based on natural reality.

These criteria imply three other qualities for NML: A cultureless ethic must be objective, which means independent of culture; absolute, or permanent and unchanging over time and place; and unique, which means there can only be one such ethic.

If we find an ethic which satisfies the two criteria for the domain and the two criteria for the function, then we can be justified in claiming to have a cultureless ethic, or natural moral law. ("Natural law" is the historical usage, which relates to proper legal law. Those who dislike the term may substitute "cultureless ethic".)

## The Premises

The second criterion tells us that a cultureless ethic must be grounded in natural reality, and so there must be premises based on nature which form the foundation for its construction. The following two premises are consequences of the previous discussion of the pensience which forms the basis for morality in human beings:

1.) Independence. Humans are not components of one mass mind. Each person is self-controlling and self-directing, or at least has the capacity for being so.

2.) Equality. All persons are equally pensient. Pensience is a genetic trait of the human species, and there are no groups which lack it. Even children have functioning pensient minds which lack only the experience and knowledge with which to base decisions on. Equality is therefore an empirical premise, based on observation, rather than an arbitrary a priori assumption. It is essentially the observation that there is no objective ground for presuming any inequality among humans, and therefore no rational grounds for making any group of humans slaves of some master group.

An equality of pensience means that each person is equally a judge of the acts of others, and each person is equally responsible for his own acts as a being with volitional consciousness. The fact that persons are unequal in size, strength, talent, intelligence, or virtue is irrelevant to pensient equality.

## Of Good and Evil

The equation for morality,  $V = e(A)$ , implies that there is no abstract good or evil apart from the ethics of actual human beings. Therefore the ethic of natural law, which I will call "n," must be based on the personal ethics of individuals. But since n must also be independent of the cultures of individuals, a cultureless ethic takes individual ethics and strips away the cultural component, leaving only the ethics which are independent of culture. Natural law is therefore the actual ethics of individuals which are independent of their cultures.

The premise of independence means that only the person affected can determine whether any act is good or evil for him. The premise of equality gives these sentiments an equal standing. If you do something which only affects yourself, then only you can be the judge of whether the act is good or bad. Natural law cannot designate such an act as good or evil, since you are the only source for any such judgment and there are no other cultureless grounds for judging the act. Therefore, natural moral law (NML) gives such an act a value of neutral. Anything you do that does not affect others may be good or bad by your own standards, but for NML, it is a neutral act.

An example would be if you bow down three times, light a candle, and recite the first sentence of Genesis when no one else is around to observe it as a ritual. NML would give this a value of neutral. The wider implication is that NML does not give any moral value to what you do with your personal life as long as it does not directly affect others. There is therefore no objective (cultureless) ground for coercively limiting such acts.

Only acts which affect others can be designated by NML as good or bad. But in doing so, NML is not making up any new values, but recognizing the moral sentiments that people already feel. Natural law begins with the personal-goods, -evils, and -neutrals that people feel. It cannot go beyond these. It can only act as a filter to eliminate those sentiments which depend on culture or which violate the premises. For example, if an atheist feels that all prayer is evil, NML cannot designate his neighbor's prayers as evil, since the neighbor's sentiments have an equal standing. It must apply its premises to acts and only accept those which are in accord with independence and equality and which are cultureless.

If person X steals from person Y, X might consider this good while Y considers it evil. But X's good is irrelevant for natural law, since this is something he does for himself, and we saw that what a person does to or for himself is neutral for NML. The evil Y feels is not something he did to himself, therefore that act is eligible for the value of wrong by NML. Similarly, if X does Y a favor, it is eligible for the value of good by NML.

#### Invasion

But how do we determine what is culture and what is not? As defined above, personal-evil is a person's sentiment that an act is disagreeable or harmful to him. Let us define an "injury" as an act that leaves someone less well off than he was before, which implies it is disagreeable and/or harmful. There are two types of injuries: those which are dependent on culture, and those which are independent of culture. Those which are dependent will be called "offenses" and those which are independent will be called "harms".

How can we separate harms from offenses? The key is the concept of "invasion". To "invade" means to "come in" or enter forcibly into someone's life. An invasion (the act of invading) is always an encroachment against the wishes of the one being invaded, and therefore an injury. An invasion includes entering someone's body, time, or possessions. Invasions can be verified objectively, without regard to culture. A culture may or may not consider some invasion to be wrong, but the fact of an invasion is objective. A knife that enters someone's body is an objective fact. The loss or pain that an invaded person feels is independent of his culture, since it depends on the fact of the invasion and the personal injury felt by the victim, regardless of what any cultural ethic has to say about it.

In contrast, a non-invasive injury always depends on culture for its effect. As an example, consider a Moslem fanatic who lives next door to a member of the Bahai faith. The Bahai practices his religion in the privacy of his home and the Moslem is not subjected to any sights or sounds of the Bahai worship. But he knows that within the house, his neighbor is practicing the Bahai religion, and this makes the Moslem feel hateful. Has there been any invasion of the Moslem? No. The injury the Moslem feels is entirely within his mind, and due totally to his culture or personal ethics. Therefore it is an offense, and not a harm.

An invasion - an act of entering another's life without his permission - is a violation of the equality premise. If person X invades the life of person Y, X sets himself up as master over Y. By using force, he enslaves Y. Y's injury constitutes a personal-evil of Y's which becomes an evil also for NML because the sentiments of Y have

an equal standing with those of X, and because these sentiments are not dependent on the arbitrary whims of culture, but are the result of an invasion, which does not depend on any cultural values for its effect. Another term for invasive harm is "coercive harm," or that harm done to a person by others, against his will.

Negligence, or an act of neglecting, is failing to take proper care in the course of some act, which results in others being injured. It is the omission to do what a reasonable person would do to avoid risk of injury to others. For example, if you flick cigarette ashes out of a car and start a fire, the injury caused is a result of your negligence and the victim may consider himself harmed as though you had deliberately caused the fire. It is therefore possible to invade another person without deliberately doing so. The critical factor is personal responsibility - the negligent person is responsible for his acts and for the failure to take care that his acts do not result in harm to others.

#### Incidental Injuries

Not all harms are necessarily "evil" for NML. For a harm to be evil, it must be direct rather than incidental. An "incidental injury" is an unintended injury that happens as a result of some other activity that was not directed against the person injured, and that is not the result of negligence.

For example, if you are operating a bakery and someone else starts a bakery across the street and takes away some of your business, you are financially less well off and therefore financially injured. But this is an indirect or incidental injury rather than a direct harm. The other baker is pursuing his business just as you are. If he were to be prevented from doing business, you would have a position of superiority, being able to prevent others from doing what you are doing just because you were there first, in effect invading the others' ability to do business at all. Much of what we do can affect others indirectly, and if any incidental effect were grounds for declaring harm, we would all mutually prevent ourselves from doing anything. For example, the act of breathing takes oxygen from the air, depriving others of oxygen. The equality premise makes us equal moral agents, and so as long as acts are not negligent or directly directed against others, natural law does not give them a value of evil.

Many protected monopolies or restraints on competition are placed in order to prevent incidental injuries, but they also end up invading the lives of would-be competitors, leaving them in an unequal status in pursuing the same type of activity as the protected enterprise.

Another example of incidental injury takes place when you leave a friend or lover for another. The one left behind may feel emotionally injured, but if the other were forced to stay friends, he would in turn become a slave.

A critical difference between an incidental injury and a direct harm is how an injury is carried to the subject. For example, sound and light can carry unwanted signals to a subject. He might see something he would rather not have. Maybe he is an atheist and you have a big cross on your roof which irritates him. The fact that photons of light from the sun are reflecting from your cross and entering the neighbor's eyes does not necessarily mean you have invaded his person. You did not originate the photons; they came from nature, and it's not your fault



that they are reflecting into your neighbor's domain. On the other hand, if you were to put lights around the cross, you would have some responsibility for the light entering the neighbors' property.

The boundary line between incidental injury and direct harm is fuzzy and a matter of judgment. When does playing the trumpet begin to intrude on your neighbors? The principle to follow is one of equality, where each person has an equal responsibility to avoid invading others, and minor injuries should be balanced with the harm of overly restricting the acts of others. Where neither party becomes a slave or master of the other, a balance is achieved.

#### Hypothetical Harm

A hypothetical harm is an harm that might take place, without there being a strong present danger. If you walk around carrying a knife, there is a chance that you might use it to stab someone. This is a hypothetical harm, as contrasted with an actual harm that has taken place. Hypothetical harms are excluded from moral wrong for NML. Almost any act could be considered hypothetically harmful. If you breathe, you exhale germs which could be harmful. If you eat with a fork, the fork could conceivably be used to stab someone. However, if a potential threat is great enough, it becomes harmful in itself. A ticking bomb has not yet done any damage, but it is very likely to and so it can be considered a "clear and present danger," or an actual harm. What constitutes a grave and immediate danger is a matter of degree and judgement. The boundary lines between harm and not harm are fuzzy. Yet the principle of hypothetical harm is still useful and vital.

#### Unknown Harm

Can someone be harmed without his knowing it? One philosopher, Joel Feinberg, noted that a person "is harmed at the time his home is burgled, even though he may not discover the harm for months... Not all harms hurt." A person is harmed if he would feel less well off given the knowledge of the crime committed against him. After all, a victim of murder may never know what hit him!

#### Self-Defense

If person X invades person Y, is it a harm for Y to defend himself, and even injure X in the process? Physically, it is a harm, and it is certainly disagreeable to X. But if this defense were to be considered evil for NML, there would be no difference between initiating an invasion and defending oneself from it. The difference is a matter of equality. The initiator has violated equality by making himself master over his victim. The victim does not make himself master by defending himself even when this injures the other person, since he is restoring equality by refusing to become a slave. The initiation of force is coercive, but the use of retaliatory force in defense is not coercive, since the initiator opened himself to a counter-attack, in effect "asking for it".

If self-defense is not coercively harmful, then neither is an alliance where individuals join together for mutual defense, and communities cooperate with one another for defense. It is also not coercively harmful to protect oneself when one realizes that one is about to become invaded, since if one must wait for the actual invasion, then the invader is placed in a superior position.

## Benevolence: Doing Good

Now let's consider acts which are agreeable or beneficial to others. A "benefit" is an act which leaves another better off, from his viewpoint, than he was before. Whereas an invasion is an unwanted intrusion into another's life, a benefit is a welcomed entering. Only the person receiving a benefit can determine whether it is indeed a benefit; the desires of the one providing it are irrelevant. Since a personal-good was defined as an act that a person feels is beneficial or agreeable to him, a benefit is a moral good.

Is a refusal to provide a benefit a type of harm? Not providing a benefit does not invade another, and therefore is not a harm. Helping others is morally good, if they desire the help, but avoiding helping others is not an evil. If someone feels injured because you did not help him, the injury is not the result of your invasion, and so cannot be considered a harm for NML.

## Harm to Nonpersons

Does harm only apply to other persons or are other living beings also covered? Since by premise all acts are covered, NML must apply to acts which affect any living beings. But because morality flows from an equality of pensience, where there is no equality, a different rule for harm may apply. More harm is done when pensience is destroyed than when only life is destroyed, and no harm is done to a non-living substance when that is destroyed. As Marcus Aurelius wrote, "The things which have life are superior to those which have not life, and of those which have life the superior are those which have reason." Because of the lesser harm done to non-persons, persons may harm non-person living beings to obtain their utility, such as for food, materials, and as pets, but any harm beyond that required by utility is pure harm and therefore evil for NML. The sadistic pleasure of seeing a living being suffer is not utilitarian, but pure harm. Persons need not sacrifice their well-being for the sake of plants and animals, but any harm done where there is no need to harm is harm not balanced by any utilitarian benefit and therefore pure harm. (See the section on "The Environment" for further discussion on plants and animals.)

## THE UNIVERSAL ETHIC

The discussion on harms and benefits can be summarized as a set of two definitions and two rules which make up the ethic of natural moral law. Because the ethic applies to all persons, I call this formulation the "Universal Ethic," as contrasted to a personal-ethic or an ethic of a group.

1. A harm is a direct, actual, invasive injury, independent of cultural or personal views.
2. A benefit is an act enhancing what the recipient deems to be his well-being.
3. All acts, and only those acts, that coercively harm others are evil (except to obtain the utility of a nonperson living being).
4. Acts that benefit others are good but not obligatory.

## Passive Harm

Harm can be committed by nonfeasance, or a failure to act as well as by acts. Negligence is one way the failure to act can cause harm to others. The failure to fulfill an obligation is another way, since that is a type of theft. Harm can also be caused by the lack of action in a case where you have not contracted to do anything and you are not negligently putting others in a dangerous situation, but where a situation exists where others are in trouble and you are able to prevent harm by helping. I call this "passive harm." For example, if a child is drowning and you can extend an arm to save it, or if a nearby house is on fire and you could call the fire service, or if you witnesses a crime and could help convict the criminal by testifying.

In The Soul of Liberty I included passive harm as a type of harm, writing (p. 45): "A witness can harm the victim of a crime and also the administration of justice by refusing to testify. A witness to an accident who refuses to help save the injured person's life or even call for help, at little cost to himself, has some responsibility for the death." Thus I included passive harm as harm for NML when the cost of helping was not excessive and "when the failure to act would directly and grievously harm another."

Passive harm is a concept that libertarians often avoid discussing. It seldom is confronted in books on ethics, liberty, or libertarianism. Yet it is a challenge to the prevailing libertarian view that committing passive harm is not an evil and should not be a legal obligation.

Although the concept of passive harm was not refuted, it did lead to disturbing consequences. Once accepted, it opens a door for coercive welfare - compelling people to support those in need in order to avoid distress. This coercive welfare constitutes taxation. Once the door is opened, the notion of forcing people to aid others threatens the moral foundation of liberty, for there is great suffering in the world and no end to the amount of resources required to relieve it. Ultimately it could enslave any person to aid those who "need" it. The concept also raises the issue of who is to decide who is needy and how much aid is required?

## Enter "Natural Voluntary Law"

To resolve the problem, I went back to the premises of NML. Equality must imply that each person is equally the judge of what aid is needed. Thus the case for intervention to force some to aid others collapses, along with the case for welfare and taxation. Yet the concept of passive harm still exists. It was then that I realized that there was a hidden premise lurking all along: the premise that there were only two levels of morality, cultural ethics and the universal ethic. Why could there not be a third level? And indeed, there is a third level: natural voluntary law, which obligates everyone, but which may not be enforced by society, leaving it up to the individual to observe. Saving a child drowning in a pool is a good example. One passively "invades" the child's life, in effect, by not helping, and so one commits passive harm, but others may not compel you to help, otherwise they are actively invading your life. (See also "Conservation".) Natural Voluntary Law is the cultureless ethic where the harm committed is passive but not negligent.

## Morality: Ought or Naught?

In ethical philosophy, the dreaded "is-ought" question always comes up when a moral code is presented. How can one get an "ought" from an "is"? How can we jump from a fact, that something "is", to an "ought," that something "should be"?

The answer is that the "ought" simply is. Where is it? In each individual. Each person has a personal ethic by which acts are agreeable or disagreeable to him. If an act is disagreeable, a person does not want others to do it. When he says, "you ought not (or should not) do this," what he means is "I don't want you to do this." The "ought" is the same as the "want" or "not want". That want is an "is" because it is in fact the actual want of the person.

The only "oughts" recognized by the Universal Ethic is the one "ought not": One ought not coercively harm others. This is a linguistic equivalent of "coercive harm to others is evil." Evil means something harmful, which is something people don't want done, and therefore something that should or ought not be done, but only because individuals have not-wants which are the basis for natural law.

## LIBERTY and FREEDOM

Freedom is an absence of restrictions or restraints. Freedom, like constraints, exists on many levels - physical, legal, moral, and personal. Political or social or individual freedom is the absence of legal restrictions on acts which are not evil and a prohibition of those which are. Liberty is social, political or individual freedom, so liberty is the absence of legal restraints on acts which do not coercively harm others and restraints on coercive harm.

Natural law thus defines liberty, or political freedom. It also endows persons with moral freedom by making any infringement on liberty an evil act.

The key to liberty is the Universal Ethic's formulation of evil as based on coercive harm to others. The concept of harm as being independent of cultural ethical views is the foundation of political freedom. Governments often define "harm" as anything the rulers don't personally like. Only when harm is independent of the personal whims of the rulers is a society free, for then there are no more rulers but equal persons.

Since social freedom and liberty are determined by natural law, they are really natural law seen from a different angle.

In a free society, people are not only free to do, they are free to be. They may do what does not coercively harm others, and they are free from the coercive harm of others.

The separation of harm from personal ethical views - from personal opinions, values, ideologies, attitudes, creeds, prejudices and beliefs - is the crucial element of individual freedom, precisely because freedom lies in the individual's ability to live by his own personal ethical views.

Liberty exists when society's law is natural law.

## The equation for liberty

We can formulate an equation for liberty:

$$Vl = (l(A) = n(A)).$$

This is a true or false statement. The function  $l(A)$  stands for the ethic made of a government's laws. If the legal ethic equals or is identical to the universal ethic, then there is liberty and  $Vl$  is true. If the legal ethic is different from the natural ethic, or natural law, then  $Vl$  is false and there is no liberty. Liberty is also a matter of degree, so we can formulate the degree of liberty as:

$$Dl = \frac{1}{2}(l(A) = n(A))$$

or the percentage of the laws (weighted for importance) which are in harmony with natural law.

## NATURAL RIGHTS

John Hospers, in Human Conduct, wrote that "a right is the reverse side, as it were, of an obligation not to interfere with its exercise." A "natural right" is something that a person has a claim to by natural law. The only natural claim persons have is a claim to liberty, and the right to liberty means that persons are obligated not to coerce others.

The right to do something means that others may not forcibly prevent someone from doing it. It means that it is evil to negate the act, or force a person not to do it. The right to live means others may not take away your life, or murder you. The right to own property means it is evil by natural law for others to destroy or steal your property.

Human rights are the same as natural rights. Since the Universal Ethic has only the one basic rule, that coercive harm is evil, there is only one natural right: the right to be free from coercive harm, which includes the legal ability to do what does not coercively harm others. All specific natural rights, such as the right to life, property, and speech, are particular types of the general right to be free from coercive harm. Like liberty, the concept of natural rights is just natural law seen from a different angle.

Since natural rights derive from natural law, it is possible to express the concept as an equation. Recall the equation for morality:  $Vm = e(A)$ , where  $A$  is an act,  $e$  an ethic, and  $Vm$  a value of good, evil or neutral. Let  $n$  be the universal ethic, or the ethic of natural law. The equation for natural rights is then:

$$Vr = (n(-A) = E).$$

If " $A$ " is an act, " $-A$ " is the negation of that act. For example, if  $A$  is life,  $-A$  is the negation of life, or murder. The function  $n(-A)$  means that we apply the universal ethic to the negation of the act  $A$ . Since murder is a type of coercive harm, for example, natural law gives it a value of "evil". The letter  $E$  stands for "evil".

If in fact  $n(-A)$  is evil, as murder is, then the statement " $n(-A)=E$ " is true, i.e. murder is indeed evil. On the other hand, if  $n(-A)$  is not true, then the statement is false. For example, if someone claims the natural right to half your income, the negation of that would be your refusal to give him half your income. The universal ethic gives this refusal a value of neutral, therefore the equation " $n(-A)=E$ " or "natural law gives your refusal a value of evil" is false.

The equation for natural rights therefore gives two values for  $V_r$ , true or false. Either the negation of the act is evil or it is not. If it's true, then the act is a right. If false, it is not a right. Natural rights is a true or false statement: either some act is a right or it is not.

Another way to express the equation is:  $r(A) = (n(-A) = E)$ . What this means is that you have a "right" to do act A if the negation of A is morally wrong or evil by natural law. The right to do A means the negation of A is evil.

#### GOVERNMENT and the STATE

Government is an agent which enforces its ethic among a given group of persons. A family, for example, can be governed by one or two parents who enforce their rules within a household. A self-governing group is not under the control of some external agent or government. Often we think of a government as a centralized agent whose ethic is called "law" and which has a wide agreement within the group that it is, legitimately or not, the ultimate enforcer of its law within the group. That agent is often called a "president," "king," "parliament," "court," or a combination of these.

A "state" is a government, not under the control of any other government, which enforces its ethic within a particular territory and which does not permit any independent government to exist within the territory. The word "state" is related to "estate". A state may have subjects outside its territory and there may be persons within the territory also subject to an external state, but actual control applies to all residents within the territory, whether subjects or "citizens" or not. For example, the United States of America is an agent which governs the persons within the boundaries of its territories and allows no exception to such governing. Subjects or citizens of the USA outside its territory are subject to the laws of the USA but the USA cannot enforce its laws on them without the cooperation of the states its citizens reside in. By not permitting full self-government within its territory, a state is a coercive entity.

In human society, there is always a government. If there is no central government, then there are self-governing individuals, families, and other groups. Wherever there are persons, there are ethics, and where there are ethics, there are agents enforcing or applying the ethics. Government always exist in human society. The question is not whether to have government, but whether the governments are proper, i.e. in harmony with natural law. Albert Jay Nock, in Our Enemy the State, made a similar distinction between government and a state.

Natural law, being the universal moral standard for humanity, determines whether the laws and policies of a government are proper, and therefore natural law determines what legal laws (the ethic of a government) should be.

A minarchy is a society with a central government but without a state, where the government is limited to enforcing natural law within a territory. No one is forced to be under the jurisdiction of the central government, though in a minarchy most of the people contract with it. An anarchist society is one without a state and also no central government of any kind, except at very local levels.

## A Constitution for a Minarchy

A minarchy offers the advantage of a uniform rule of law, without the coercion of a state. (See Anarchy or Limited Government? by John Hospers.) A constitution is a document describing the way a government is structured and prescribing its laws and policies. The constitution of a minarchy is a contract among its members, and only members or citizens who voluntarily agree to it are bound by it. The structure of the government - how and when to have elections, the officers, the location of the government headquarters - is arbitrary. Ideally the citizens would contract for a number of years, such as 5 years. The constitutional provision for laws is nonarbitrary. The laws of a proper minarchy are an implementation of natural law.

It is important for the constitution of a minarchy to define terms such as harm, crime, freedom and rights, lest they become interpreted in coercive ways, as they have been in the U.S. The constitution must not only guarantee liberty for all its citizens, but the provision for liberty must be inviolate - it must be a fixed and permanent part of the constitution. The key sentence in the constitution should be the political expression of the third principle of the universal ethic, such as: All acts, and only those acts, which coercively harm others are prohibited. The constitution should also state that any government act which violates natural law is illegitimate, and the people may ignore or oppose it. Ultimately, it is the people as individuals who are the judge of natural law and its enforcement, in accord with the premise of moral equality.

## Crimes

A crime is any act which is evil according to the universal ethic. Those who commit crimes try to make themselves superior to others by imposing their will on them. In response, the victims may use force, if necessary, to restore equality and defend themselves against the criminal. The restoration of equality is "restitution". Punishment is the response to a crime. If a punishment exceeds restitution and defense, then the criminal himself becomes a victim of coercive harm.

Justice means giving each person his due, and under natural law each person is equal before natural law. Therefore a just response to crime means equal treatment of equal crimes, and punishment up to but no greater than the criminal's due. Punishment for crimes has four aspects: the protection of society; the rehabilitation of the criminal, if possible; deterrence from crime; and the restitution of damages. None of these include revenge. (These four categories are described in Michael Scriven's Primary Philosophy (New York: McGraw-Hill, 1966).)

Deterrence and rehabilitation are secondary to protection and restitution. (See, for example, Randy E. Barnett, "Restitution: A New Paradigm of Criminal Justice," Ethics 84 (July 1977); 279. Unlike Barnett, however, I include restitution as a type of punishment as a "response to a crime.")

Killing a person is justified only for direct self-defense. Deterrence alone does not justify a punishment, since punishment must not go beyond restoring equality lest it become criminal itself. Extreme punishments such as death, torture, or physically altering a body exceed what is necessary to protect society and obtain restitution, and are therefore themselves criminal acts.

## Righteous Revolution

A government which violates natural law in a major way is not morally legitimate, and the people have the right not only to defend themselves against it but to overthrow it. Natural law even obliges people not to obey grossly evil laws, such as those compelling them to murder innocent people.

A revolution or defensive war may have to harm some innocents, but any harm must be justified by direct self-defense. To quote Soul (p.135):

"The harm committed by a revolution in any particular act must satisfy several moral requirements. It must: (1) be the least harmful alternative, (2) be the last resort, (3) be aimed directly at the enemy rather than against innocents, (4) have a good chance of furthering the goal rather than being merely an angry gesture, and (5) never exceed the harm fought against."

Many "revolutionaries" shrug off the harm they cause and terrorize the innocent just to publicize a cause, raise funds, or seek vengeance. Such acts degrade the nobility of righteous revolution.

A revolution, by declaring war on a government, becomes itself a counter-government and is bound by the same natural law as any person or government. Like any government, a revolution may properly claim legitimacy only by acting as the agent for the implementation of natural law, without violating it and becoming a criminal just like the government it is trying to overthrow.

## ECONOMICS

The physical universe has three components: space, time, and matter. (Energy is related to matter and will be considered a type of matter.) Economics has to do with what humans do with their environment in order to satisfy their desires, and therefore the economic universe also has the three components: space, time, and matter.

Economic matter can be divided into three types: raw materials (or natural resources), human bodies, and economic wealth produced by humans. Economic time is the living time of human beings. Economic space consists of the surface of the earth, the atmosphere and outer space, and the space beneath the surface of the earth.

Property is any economic matter, time, and space that can be controlled by human beings.

Ownership means control over property. Physical ownership, or possession, is the actual control over property. Moral ownership is control which is considered not evil by an ethic. Legal ownership or title is control or partial control which is considered legitimate (not illegal) by a government.

If someone invades your body - by sticking a knife in it, for example - you feel harmed and this is evil according to natural law. But why is this your harm and not someone else's? Because of the premise of independence. Only you feel the pain and only you can physically control your body. Since it is not evil for you to control your body, the Universal Ethic gives you moral ownership over your body. If someone else claimed moral ownership, he would have to invade your



body, and externally compell you to do what you did not want to do. This would make him a superior, or master, and you an inferior, or slave, violating the equality premise. Thus any claim of ownership over your body by others violates natural law. You have exclusive ownership over your body, according to the U.E. The Universal Ethic thus makes an economic as well as a moral statement. This is the origin of property rights - your body is yours. Slavery is therefore an evil according to natural law.

If your body belongs to you, then your time must also, for the body is not just matter, but matter that exists over a certain time span. Time is common to everyone, yet each person creates his own time, which is his alone. Your life is therefore your own also.

Economic wealth consists of goods produced by humans. Labor is human effort used in the production of wealth. Since you own your life, you also own your labor, and it is evil for anyone to steal your labor, including restricting or taxing it.

The production of wealth usually involves more than labor. It usually includes the use of natural resources, or products which came from the raw materials of natural resources, and it always takes place in some space. How is natural law applied to the ownership or use of raw materials and space?

#### Economic Land

Economic land is made up of economic space plus raw materials. What are the natural ethics of using land? If there is an apple growing in a wild tree in a state of nature, and you pluck it and eat it, has anyone been harmed? No. Then the act is morally neutral by natural law. It is not wrong to take the raw materials of nature, such as water, minerals, and wood.

What of economic space? Unlike materials, space is not plucked or scooped and eaten or taken away. It is always there, and a human can only exist in it, occupy it and use the materials within the space. The question is whether it is morally proper (i.e. not evil) to claim and exert an exclusive control over a certain space.

When a site is previously unclaimed, then no one is harmed by a claim, and so a first occupant may claim it. If a second person comes along and wants to claim that site, his doing so would harm the first claimant. It is like seats in a theater. You may take any unoccupied seat, and once taken, a second person may not bump you off.

How much land may be properly claimed? May you claim seats in the theater besides your own? It seems reasonable to claim one or two seats for friends that will come shortly. But may one claim three rows of seats for a gang of friends who will be by in a half hour? Or what if there is only one seat left and someone else comes and wants to use it before your friend arrives?

In a theater, the owner can make rules and the manager can resolve such questions, but in a state of nature, we need to apply reason based on the rules of the universal ethic. If one steps foot on a newly discovered and unoccupied continent and then claims the entire continent, the second person to arrive would then be excluded. While no one is harmed by an initial claim to space, what of those who come later and are denied space of their own? If the first person claims more

space then he is using or can be reasonably expected to use, he has placed himself in a superior position relative to the later comers.

A fact of nature is that space is fixed. There is only so much of it. There is a great deal of area on earth, but desirable sites are a scarce resource. Another fact is that space is a creation of nature rather than of humans, and so one cannot logically claim space as a product of labor. The ethics of land claims must take into account the premise of moral equality among persons and the question of who is being harmed by any land claims.

If 10 persons suddenly appear on an uninhabited island, natural law, being based on equality, would prescribe a division of the land into 10 equal parts. The parts would be equal by land value rather than by size, since some sites are obviously more valuable than others. If one of the persons arrived just a few seconds before the others, would his position change? The first person could legitimately have his choice among the lots, but to claim the entire island would leave the others in an unequal position.

It gets more complicated in the case where there is only enough room for 1 person to support himself on an island, and another person comes and wants to use the site. Although the second person may feel the first one is in an arbitrarily superior position, the first one may properly assert that, having established himself on that site, and is occupying no more than he is able to use, he would be harmed if he were now forcibly removed from the site. This harm overrides the claims of the second person based on equality, for equality was only considered where there were no previous claimants occupying and using the sites.

The conclusion, then, is that by natural law, occupation and use determine a claim to land. If a person uses land and then abandons it, another may then come and use it.

When a community organizes itself with a government, it may then be legally possible to have a title ownership of land without occupying it personally. Someone may wish to move away from a site for a few years but retain the legal ability to move back. Meanwhile, he could let another have use of the site for a fee, which in economics is called economic rent, or rent for short. Economic rent applies only to a payment for a site or space, not for any improvement, building, or any construction or man-made change to the site.

In a state of nature, where no government has jurisdiction, once the owner moves away, except for minor absences, the site is available to anyone and a new claimant is under no moral obligation to pay rent. However, when people get together and form a government by mutual consent, they may agree to recognize legal titles without occupancy, which would then make it easier to exchange land among one another and improve the efficiency of land use.

The question is: should the owner be entitled to collect rent or sell his land to others, i.e. to compensation from his claim to space, which nature has provided at no cost? As Albert Jay Nock observed in Our Enemy the State, Chapter 4, "By the state-system of land-tenure, each original transaction confers two distinct monopolies, entirely different in their nature, inasmuch as one concerns the right to labor-made property, and the other concerns the right to purely law-made property. The one is a monopoly of the use-value of land; and the other a monopoly of the economic rent of land."

## Land Ownership

Since land has no cost of production, what determines its value? An easy answer is supply and demand, but given the fixed supply, what determines the demand? It is a combination of the raw materials of the land and the location of the site relative to markets. Markets come from population and community capital - the streets, water and sewage, schools, police, fire protection, parks, and other "public" works. Demand also is based on the fact that land titles are recognized and protected by the community. Site value therefore derives from the community's population and works and the competition for space.

As the population and wealth of the community grow, there is a greater demand for land, and also more use of marginal land, which increases rents and land values. Those who have gotten good sites then obtain a greater and greater portion of the community's wealth as economic rent. Economic rent is the rent that the owner could get in the free market, even if he is not renting the land to someone else.

If a community recognizes land titles for lands not occupied by the owners, it is granting them the economic rent largely produced by the community. This creates an unequal situation, for there are some people who control space which others are using and having to pay rent for, whereas natural law only gives an owner/occupant a natural right to land ownership. Can you imagine an animal claiming a certain territory and then allowing other animals to use it if they pay him rent? This is unheard of in the animal world. Any animal occupying the site would regard it as its own and would defend it against others or else leave.

Therefore, if a person wishes to claim land he is not personally using it, by natural law its defense is up to him. If he can get others to voluntarily recognize his claim, or defend it against others, then he is entitled to it. But when the community - people associated with a government - recognizes and protects such land titles, and even provides services, without paying for the services, then the landowner is getting a subsidy and is placed in a position of unequal privilege.

By natural law, a person's title to land he is not using may be recognized by a government, but only when the value he receives by such recognition, protection, and public works, is paid for, value for value. Such payment is logically based on the value of the land, which reflects the demand for it by the community. The payment should equal the economic rent of the land, or what it would rent for on an open market, and then all the members of the community would benefit equally from the rental value of the community's space.

There is no sharp dividing line between property that one is occupying and that which one is not using. How large must an estate be before some of it is "unoccupied"? Therefore, once a community government is established, it is simplest and most consistent with equality for all the land owned by its members to pay economic rent to the community in exchange for services rendered: the recognition, protection, and servicing of land titles and the resulting land values. Those who do not wish to pay may secede their lands from the jurisdiction of the community and defend their lands from any challengers themselves. The economic rent may be used to fund the government and any surplus can be divided equally among the residents.

It is also possible for a community to voluntarily agree not to have landowners pay economic rent to the community, and this would not

violate natural law since it would be an uncoerced agreement. In effect the renters would be agreeing to give a periodic gift to the landowners of the economic rent. The problem would arise when the renters realized that this was indeed a gift, or when they changed their mind. If the community agreement or contract were perpetual, it would be a slave contract, and null and void. If it were renewable for a reasonable number of years (5 to 10, say), then when even one person objects, he is entitled as an equal inhabitant of that space to his equal share of the economic rent, even if the others don't wish to have it.

To summarize, the ethics of land ownership, by natural law, is based on occupation and use, where a person may claim what he can use but no more. Once a community government is established, then land titles may be recognized even without use. However, moral equality then requires that all members of the community share equally in the economic rent of the land, as the community equivalent to the equality of occupation and use. This means that each land owner should periodically pay the rental value of his land to the community. If members of the community wish to renounce their share of this payment, that is up to them. Those who do not wish to pay this may secede from the community and then those lands would not be entitled to its protection or services.

#### Economic Wealth

We saw that economic wealth consists of goods produced by human effort, using natural resources or land. Once land is occupied or when a government recognizes a proper title to land, then the owner may apply his labor to it and produce wealth. A farmer will plant crops, a craftsman will build furniture, or a shopkeeper will use the location to sell goods. Who is the proper owner of the wealth produced? A person owns his own labor, and if he is a proper claimant to the land he is using, then no one is harmed by his claiming the production as his own. The fruits of labor belong to the laborer. All wealth produced properly belongs to its producer.

#### Capital

Economic capital is wealth that is used to produce more wealth. A primitive fisherman has the choice of fishing with his hands or making a spear. With the spear he can catch more fish per day, and the spear is capital, wealth that is not consumed directly but used in the production of wealth. Typical types of capital are tools, machines, and buildings. Also, any inventory and goods in the process of being made or distributed are capital. Since wealth belongs to its producer, then capital as a type of wealth belongs to its producer.

All wealth is produced from three factors: land, labor, and capital. The wealth is then distributed to the owners of these factors as rent, wages, and interest, respectively. When capital is loaned out, the gain from the lending is interest. If one is entitled to own capital, then one is also entitled to the interest.

Typically, when capital is used, the owner hires some labor to use it in the production of wealth. The owner, or capitalist, pays wages to the workers and also pays himself wages for his managerial and entrepreneurial labor. But part of his return is also interest on his capital. The profits from an enterprise, when they come from capital and wages to the owner, are therefore the legitimate property of the owner.

### Coercive Monopoly

The great evil in economics is coercive monopoly. A coercive monopoly is the total control of property or a service by the owner(s), without competition by others. In almost all cases, a coercive monopoly can only be maintained by force, and that force is the power of a state. When the land of a country is monopolized by a few owners, only the power of the state can enforce the monopoly. When a type of business is "protected" by a government from competition, it becomes a coercive monopoly. Labor and capital can almost never maintain a coercive monopoly without the power of the state to "protect" unions or capitalists from competition, for labor and capital are always expandable if they have access to land.

Land is the chief natural monopoly, since the amount is fixed and new owners can only get land from previous owners, unless they can obtain and use free land. As Albert Jay Nock wrote (Our Enemy the State, Chapter 4), if one's "free access to land be shut off by legal preemption, he can apply his labor and capital only with the landholder's consent, and on the landholder's terms...Therefore the first concern of the State must be invariably, as we find it invariably is, with its policy of land-tenure." When landowners either pay economic rent for the use of their land or else defend a site themselves, with no government subsidy, then the coercive monopoly of land ceases.

### Regulations

The only proper economic laws or regulations are those which apply natural law, those which prohibit coercive harm, such as theft, destruction, and fraud. Otherwise, the owner should be free to do with his property or business as he sees fit.

Economic law should be based one of two assumptions: that all products are safe unless otherwise specified, or else that all products may not necessarily be safe unless specified. It seems simpler to make the first assumption. Consumers then know where they stand. It violates liberty to protect people from harming themselves, but consumers are entitled to know the risk they are taking, given one of the two assumptions.

### The Slave Contract

Slavery is the total control of one person for his entire life by another person. By natural law, may a person sell himself into slavery? In doing so, a person would give up all his natural rights. But this is impossible, for natural law is inherent in all persons by their nature. Rights cannot be given up or sold. They may only be forfeited when a crime is committed, which does not take away rights so much as restores rights to the victims. A person may volunteer to be someone's "slave," but if the slave then changes his mind, he has the right to "free" himself. What is true for slavery is then true also for other contracts, which are null and void if they submit a person to the partial control of another for a very long period of time. A marriage may not become a slave contract, for example.

### Bankruptcy

When a person makes a nonslave contract, he then harms the partner if he breaks the contract. By natural law, a government may not void a person's debts and contracts through "bankruptcy".

## THE ENVIRONMENT

In "harm to nonpersons", we saw that natural law applies to all acts, including those which affect living beings which are not persons. If a person inflicts pain on an animal, beyond the needs of utility, the excess harm done is evil. There is no objective reason to exclude other living beings from the acts subject to natural law. Pensience gives persons a moral priority -- they may use nonpersons -- but it also gives persons a responsibility, which is that their acts are subject to ethical judgment.

## Non-human Persons

All humans are persons, but are some other animals also persons? Whether or not dolphins or other animals have pensience is beyond my knowledge. But if there are dolphins, or perhaps some aliens from beyond the earth, with the volitional consciousness beyond the threshold of pensience, then they would be persons as well, morally equal to humans. There is no reason to arbitrarily exclude any species from personhood.

Even if an animal is not, to our knowledge, considered to be pensient, the higher its level of intelligence and awareness, the more harm can be done to it and the greater right it has to be free from harm by persons.

## Extinction of Species

A species of plant or animals is part of the natural resources of the earth, part of the natural inventory of the planet. When a living being is killed by a person, the person in effect claims ownership over it.

A human being can only claim absolute ownership over himself and the products he produces or obtains voluntarily from others. This does not imply any ownership over natural resources. Occupation and use of space and the natural resources in that space is morally neutral by natural law when others are not being harmed. But when an occupation or use does harm others, then clearly it is evil by natural law. A claim on natural resources is thus conditional on its effect on others. Ultimately all persons have an equal claim to the earth's wildlife. Individuals may exercise personal control when this does not coercively harm others. When a living being is in very limited supply, then others will be affected.

The species of the world, as types of living beings, are therefore the common property of all the persons of the earth. Persons may own and kill individual animals when the species is abundant, but when it is threatened with extinction, then the killing will harm others. The loss of a species destroys the common property of all persons to the biological inventory of the earth, which was here when humans appeared on earth. The only exceptions are species which are extremely dangerous to persons, such as the smallpox virus. Aside from such extreme cases, it is a crime against humanity to cause the extinction of a species.

## Ecological Harm

Besides the species as types of animals, the ecology of an environment is a natural resource. Ecology means the relationships

between the living beings in an environment. The ecology of the earth's environments belongs commonly to all persons, along with the earth's species.

Ecologies are often damaged when exotic plants and animals are introduced. Rabbits introduced to Australia created new deserts. Mammals brought into New Zealand destroyed many of the native plants and animals. Also, the destruction of some native species, such as mountain lions and other predators, by humans, results in an overabundance of herbivores - deer or rodents - which cleans out the plant life.

Liberty does not mean the "freedom" to wreck an environment, for the moral limit of freedom is harm to others.

Ecological harm, whether killing off a species or ruining an environment, often takes place because there are no clearly defined property rights in the environment. The "tragedy of the commons" takes place when there is no owner and many people come to plunder a resource until it's gone. The oceans, for example, are unclaimed, and thus whales are endangered. Recognizing property rights to all areas, including the oceans, would go far towards averting such tragedies. Property rights could be assigned to herds of animals as well as to sites. The property rights of residents are often unrecognized by states. In the Amazon, for example, the native Indians are being killed and pushed off their territories. Yet, by natural law they have a just claim to the territory they are occupying and using.

#### Pollution

To pollute means to make unclean or impure, or to contaminate in some way. Examples include litter, chemicals, radiation, and noise pollution, all of which are coercively harmful. A polluter, like any criminal, owes restitution for the harm done. Governments should, by natural law, recognize the right of any person to sue a pollutor for damaging his property, including his body. Like other ecological harm, pollution often involves the tragedy of the commons - the seas or the atmosphere has no specific owner, and public lands such as dumps also are a type of commons. A recognition of property rights to land, air, and water would help reduce pollution, if the rights were enforced. Then the true cost of polluting would be born by the pollutors rather than by humanity as a whole.

#### The Rights of Future Generations

Do future generations of humans have any rights in the present? How can they have rights if they don't exist yet? The question is better phrased in terms of coercive harm. Can a present generation coercively harm the next ones? The answer is clearly yes. Such harm is an evil, and thus the future generation has a right to be free from that harm.

Suppose someone plants a bomb that is set to explode in 50 years. The physical damage takes place in the future, thus harming a future generation. But the act of harm is committed when the act takes place. Suppose you dump poison into a lake. It may take days for it to spread and kill the fish. But the harm as an act was done when you dumped the poison.

It is possible, then, for acts of the present to harm those in the future, and such acts are no less evil than those which only harm those

in the present.

#### Conservation

Resources are either renewable or nonrenewable (fixed). Fixed resources are also nonliving, and can either be used or not used. Since natural law does not distinguish among persons, there is no evil in any individual's using any particular fixed resource as long as the person has a proper claim to the space the resource is located in. The free market automatically allocates the distribution of scarce fixed resources, since the rarer a resource, the higher its price, and the less will be demanded.

Renewable resources include living beings and the fertility of soil. The destruction of a renewable resource, such as a wildlife or the soil of a region, is similar to ecological damage. It can harm others by reducing the world's supply of the resource. Unlike fixed resources such as oil, renewable resources, by definition, need not just be used up but can be replenished indefinitely. Therefore the loss of a renewable resource harms others by reducing the stock unnecessarily, whereas using fixed resources necessarily implies using up the stock.

Sometimes people need the space that wildlife or soil exists in for other purposes, such as housing. Thus it is not an absolute evil to use up renewable resources. The free market will allocate renewable resources based on price and scarcity, and in a perfect world market, those who wanted to preserve and conserve wildlife, soil, and forests would bid up the price. However, there is one flaw: future generations cannot bid. There is another flaw: the tragedy of the commons, again. No one in particular owns the world's climate. Large-scale destruction of resources such as the equatorial jungles can have disastrous consequences on the world climate, but future generations cannot bid on the resources, and the people of the present may not find it worthwhile to bid when the benefit is the preservation of a mass public good such as the world climate.

Therefore, the mass destruction of renewable resources, which is coercively harmful to the earth as a whole (or threatens to be), must be considered a crime.

On a smaller scale, an individual farmer's destruction of soil or a small-scale destruction of a forest are also harms, but the prohibition of their acts would also infringe on their liberty. Such acts thus belong to the third level of morality, discussed under "natural voluntary law". Natural law obliges us not to cause such damage, but this may not be enforced by society, but by individual observance.

Once humans were dependent on nature for survival, but now many living beings depend on human management for their lives. Having gained control over the planet, humans as sentient persons now have the moral responsibility to preserve life on earth. This can only work well when the responsibility is individualized, so that the tragedy of the commons is minimized. The earth's surface and all wildlife can be assigned to individual owners (which can be organizations such as wildlife societies). The common heritage can, ironically, best be preserved by individual trustees who have a stake in their property.

For an analysis of how conservation is best served by property rights rather than bureaucratic controls, see Natural Resources: Bureaucratic Myths and Environmental Management, by Richard Stroup and John Baden (San Francisco: Pacific Institute for Public Policy Research).



## C H I L D R E N

Do all the rights of persons apply to children? Children being human beings, they share equality with all other persons, and therefore have the same rights as other persons. However, the application of these rights is different because the nature of children is different.

Children do not have the knowledge and experience to judge the consequences of their actions. A 1-year old infant does not know that crossing a street may be dangerous. An adult is justified in preventing the child from hurting himself. So children do not have the full right to control their acts, although where their acts are not harmful, they have that right. The one right which children lack is the right to harm themselves.

Natural right makes up for this lack by endowing children with a right which adults lack - the right to welfare, such as food, shelter, and attention. Just as ethics flows from human nature, its application to children flows from the nature of children as helpless and dependent on adults.

Does this mean that natural law makes an exception for children? Not at all. As I wrote in *Soul*, "these two differences from adult rights still stem from the basic human right not to be harmed" (p. 230).

If a child has a right to care, someone is obligated to provide it: its parents. By creating or adopting a child, parents enter into a moral contract with their child to care for it. Not to do so would coercively harm the child, who cannot survive without their aid.

If a child feels that his well being is threatened by staying with his parents or guardians, he has the right to leave them and seek refuge with others. The right of a child to liberty is equal to that of an adult, and where his acts do no harm, any restriction of the act is harm to the child.

## I N S A N I T Y

For natural law, I define "insanity" as a major lack of rationality. Often this is accompanied by a view of reality radically different from that of his society. The madman may see devils which others can't see. Or perhaps others see the devils, and he can't. The madman makes assumptions unsupported by evidence, and believes that they are facts. In that case we may all be a bit mad.

Insanity is a matter of degree, and who really knows what reality is like? What if a man murders a child and thinks he has killed the devil? Who can deny with certainty that the child was not the devil?

Since natural law is objective, acts must be judged on evidence apart from our biases, however difficult that may be. If there is no evidence that the child is the devil, it must be assumed he was not. And although reality may be an agreement among a community, society can only function ethically if there is the agreement that common sensory evidence corresponds to reality.

When an insane person commits no harm, then his acts may not be restricted, no matter how bizzare they may seem, even if he talks to martians in the street. When the insane harm others, their acts are crimes the same as any person's. Since humans act from volition rather

than from automatic genetic programming, even the act of an insane person is a conscious act. A person's rationality may determine how we treat him, but do not affect the guilt of a criminal or his responsibility to avoid harm to others.

The difficult case is when an insane person harms himself. If we fail to dissuade him, we must let him be. A free society does not control people "for their own good", no matter how odd we think the may be.

A good case can be made that society today is insane, that the world is insane. At least in a free society we would only suffer from our own irrationality rather than having to suffer coercively from the mad schemes of others.

#### THE UNCONSCIOUS

What are the ethics concerning persons who have lost consciousness and who have no chance of regaining it? If they have previously signed instructions applying to this case, and have the means to apply it, then their wishes should be followed. But what if they left no instructions?

Although the animal functioning of the body, on the level of life, does give it some rights, if its pensience is zero and there is no hope of recovering pensience, the harm committed to pensience is also zero. In that case, the artificial methods used to keep the body alive may be stopped without it being evil by natural law. If there is at least a slight chance of revival, then so long as funds are available from the person's or other given assets, the body should be kept alive.

#### ABORTION

Abortion is the killing of a human embryo.

If an embryo endangers its mother's life, then it is not wrong to abort it, as self-defense. If the embryo does not endanger its mother's life, then the mother's desires, "needs", or happiness are irrelevant to the question of whether natural law gives a value of evil to an act of abortion.

The premise of independence applies to an embryo just as any other human being. An embryo is genetically distinct from its mother, and is a separate being. Just being located inside another being does not make it part of that being. Are tapeworms part of the host's body? Of course not. Just being dependent on someone's body does not make it part of that body. A baby can be dependent on its mother's milk. This does not make it part of the mother.

The question for natural law is whether an embryo is a person.

A newborn baby is a person. Was it not a person the day before birth? It had a brain, heart, nerves, and other organs; it could feel and move. What would make it not a person? Simply being inside the mother or dependent on the mother does not disqualify it. Location and independence are not necessary criteria for personhood. Breathing and eating are also not criteria. There are persons in hospitals who are not breathing or eating but are dependent on machines for nourishment and oxygen. One must conclude that a fetus in the later stages of gestation is a person.

A human zygote, the union of a sperm and egg, is a single cell. Is

a cell a person? The mere fact that it has the potential to become a person does not make it a person. A pile of wood has the potential to become a house, but a pile of wood is not a house. A body falling off a cliff has the potential of dying, but it does not actually die until it gets splattered at the bottom of the cliff. An acorn has the potential to become a tree. Is an acorn therefore a tree? No, it is just a seed. Potential is different from actual. There is no certainty that the zygote will develop into anything.

Theoretically, most cells in the body have the genetic potential to generate a complete body. Scientists have taken cells from some animals and developed complete organisms. Does this make every cell an organism? No. Is any human cell then a person? It cannot be. Is a zygote a person? No.

A person is not a body, but a mind. In the definition given earlier, a "person has a functioning mind." If someone removed your brain and kept it alive and functioning as before, the brain and its mind would be a person, but the rest of the body would not be a person, but just meat. If the brain lost consciousness forever, it would cease to have a mind and cease to be a person. A person is not a meat body but a functioning mind.

Until the embryo develops a brain with a mind, it is therefore not a person. When does this happen? By the third month, it has acquired a brain with measurable activity. We even have a separate word for an embryo after this stage: fetus. The development of a brain and mind is gradual, but it is evident that after the fourth month, if not before, the mind has been well established, making the fetus a person. Abortion of a fetus once it has become a person is murder just as much as for any other person.

Even the abortion of an embryo before personhood is an act of harm against a living organism, and should be avoided as much as possible.

#### P R I V A C Y

"Privacy" is related to the word "private." "Private" means belonging to particular person(s) rather than the public. "Privacy" means "not in public view". An intrusion into the private affairs of others is invasive and is therefore a harm. An example is tapping someone's telephone.

The "right to privacy" means the right to be shielded from the public, unless one wants to be exposed. It is also expressed as the right to be left alone, which includes being free from unwarranted publicity.

"Slander" is the deliberate or negligent utterance of false statements damaging to one's reputation or business. "Libel" is the written equivalent of slander. Libel and slander are invasions of privacy and also a type of fraud. Since the victim is coercively harmed, slander and libel are evil acts by natural law. Freedom of speech and of the press, like any acts, stop at the limit of harm.

A "threat" is an expression of intent to harm another. It is a type of coercion, since to "coerce" means to control someone, whether physically or by intimidation. If you are compelled to act by a threat, you are coerced. A threat is also an invasion of privacy, and thus an act of harm. A threat is therefore coercively harmful.

## MARRIAGE

A marriage is a contract, even if it is unwritten. Many of the problems of marriage come up because the terms of the contract were assumed differently by each partner. A compromise among equals is the just resolution of differences - much easier said than done!

Since a slave contract has no validity by natural law, a marriage contract for life is not valid by natural law, though it can be a non-binding expression of intent. A prohibition of divorce, or any state intrusion into a marriage contract, violates natural law. In a free society, the government is not a third party to the marriage contract except by consent of the married parties. In a free society, the law should neither favor nor discriminate against marriages.

Natural law applies within a marriage just as among any persons. A spouse, for example, has no natural right to impose his will upon a mate.

Persistent nagging is a type of coercive harm.

## CIVIL LIBERTIES

Acts such as gambling, nudity, prostitution, erotic shows, pornography, and drugs, where no coercion is involved, are neutral by natural law, and any prohibition of these by a state violates natural law. Cultural ethics often place a value of evils on these acts and call them "vices". But though people may be offended by these acts, they are not harmed by the acts per se. Only when the acts are invasive are they harmful, and then it is the invasion that is harmful, not the type of act itself. For example, if someone sunbathes nude in his back yard, he may offend but does not harm his neighbors. Often, acts such as gambling or drug use are prohibited for the "good" of the person doing it, but by the premise of independence only the person doing an act can determine whether it is good for him. The prohibition is an evil, by limiting liberty.

If an invasion into another person's life is wrong by natural law, does this mean that one may never approach a stranger or call someone on the telephone? If all uninvited contact were evil, it would be impossible to reach potential friends and associates, or seek help from strangers. To some extent such an invasion can be considered an incidental injury if it turns out to be unwelcome. A contact is not evil as long as the person seeking it reasonably thinks it is not unwelcome.

## BENEVOLENCE

A benevolent act is freely given and willingly received. Forcing people to do good, whether supporting the arts or helping the needy, is not benevolence but the evil of one group forcing another to do what is good according to the coercer's value. Forcing a "good" on an unwilling recipient is not benevolence but the evil of inflicting the coercer's value onto the other. The universal ethic's golden rule of benevolence is: do unto others as they would have you do unto them.

Heroism is the utmost benevolence. Heroic benevolence is helping others at great expense or risk to oneself. This is the greatest form of moral good. A person who refuses to associate with any evil, at the cost of great inconvenience or funds, is a hero. One who is imprisoned

or martyred for expressing his beliefs is an ethical hero. Ethical nobility is a type of benevolence where one forgives other's mistakes and wrongs, without sacrificing justice in the process. The ethical saint devotes his or her life to helping others.

Love can be benevolent or selfish. Selfish love seeks to gratify the self only. Benevolent love seeks fulfillment of oneself in the fulfillment of the loved one. But a benevolent person also resists if others take advantage of his good nature, since a truly benevolent person seeks to do good by his own values rather than bend to the values of others.

#### Why Be Ethical?

An "ethical" person is one who does not coercively harm others. He may or may not also be benevolent. A challenging question in philosophy is, why should a person be ethical? A community is better off if its members are ethical, since this maximizes peace and liberty. But a particular individual may feel better off by using coercion: stealing or sadistically harming others. For many people, being ethical is satisfying because they share in the happiness of others. If not, then most would suffer from the fear of getting caught. But for those who don't empathize with others and have no worries about getting caught, no reasons will make them stop coercing except physical ones, such as guards, locks, and punishment. That is why a free society needs an adequate defense against aggressors and the threat of invasion, from external as well as internal coercers.

#### Natural Law in the U.S.A.

Natural moral law is the supreme Constitutional law of the United States of America. The Ninth Amendment to the U.S. Constitution states: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

To quote Soul, p. 298: "What 'rights' does this amendment refer to? When the Bill of Rights speaks of rights, it means natural rights, those which flow from natural law," since these are not legal laws mentioned in the Constitution but laws which people naturally have because they are persons.

Which "others" does the Amendment refer to, which other rights? There is only one basic natural right: the right to be free from coercive harm. Any particular right, such as the right to speech, religion, assembly, and security of possessions, are aspects of the basic natural right. So the "others" mentioned in the Ninth Amendment are really particular examples of the basic natural right, which may not be denied or disparaged. Natural law is therefore the highest law and foundation of the U.S. Constitution.

The powers granted by the U.S. Constitution to the federal government or the states do not in themselves give the government the authority to violate natural rights. To be consistent with the Ninth Amendment, such provisions as the interstate commerce clause may only be used to prohibit coercive harm to others. However, since the U.S. Constitution has not been so interpreted, a stronger provision for liberty must be included - an amendment stating that "All acts, and only those acts, which coercively harm others are prohibited," or wording to that effect.

## CONCLUSION

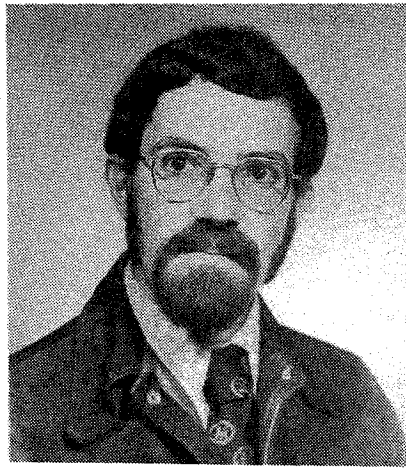
You now know what your natural rights are. You know that there is a universal ethic which is morally binding for all humanity, and which gives you the right to live by your personal ethical values as long as they are not imposed on others, and as long as you do not impose them on others. This is the equality you share with all other persons. But it is up to you and me to implement natural law and protect our rights. Natural law is not enforced by itself. The law of gravity exists on the physical level and is enforced by physics. The law of the Universal Ethic exists on the pensient level and is enforced by persons.

Some writers have asserted that natural moral law does not exist because there is nothing to prevent its violation. But this is playing with language. To say that natural law is "violated" is to make a metaphor. What it means is that someone has committed an act to which the Universal Ethic gives a value of evil. If there could be no evil acts, then there would be no Universal Ethic, no natural law.

Some have objected to the word "law", since natural moral law does not describe behavior in the way physical laws such as the "law" of gravity does. But here again, this is word play, since the term "law" for physical descriptions is a metaphor, just as it is for moral law. The more accurate term for NML is "cultureless ethic". It then becomes clear that the Universal Ethic is a set of moral rules which may or may not be enforced, just as any ethic. The difference is that, being uniquely independent of culture, the U.E. enables a community of various cultures and personal views to live together in harmony and peace, if it is the basis of their rules agreements.

Natural law cannot be violated in one sense, since acts are given values by the U.E. regardless of our cultural views. An act of murder or theft is given a value of evil, and this valuation cannot be violated by any cultural value or personal whim.

When right and wrong are arbitrary, we are left by the rule of the mighty. When right and wrong are decreed by authorities, people suffer from the slavery of having to live according to the values of others. Natural law prescribes values which are not arbitrary, yet which flow from individual values, leaving each person free to live by his or her own values. This is liberty. This is the natural law.



#### About the Author

Fred Foldvary has been an author, editor, and publisher. He is the author of The Soul of Liberty, a book on social issues and freedom. Foldvary has been the editor of Topical Time, a hobby magazine, and The Libertarian Digest. He has also written numerous articles on economics, philosophy, philately, and computing.

Among the organizations Fred Foldvary has held leadership roles in are the Libertarian Party, where he has served as Chair of the Alameda County, California, group; the Henry George School of San Francisco, where he has served as President of the Board; Embarcadero Credit Union, where he served as Board President and Chairman of the Supervisory Committee; and the Permit Imprint Collectors Society, a philatelic organization he founded. He was a libertarian candidate for state assembly in 1984.

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