

# **The Different Meanings of *Natural Law* and the Difference This Makes**

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**We live in a time when our understanding of the natural forces at work in the universe is rapidly expanding. That said, physicists and astronomers do not yet have a provable theory of the origins of the universe; and, for the most part they are reluctant to publicly challenge the widespread belief in a conscious creator. And yet, there are some – myself included – who have rejected this possibility on the basis of the evidence and, what we suggest, is common sense. The historical record convinces us that life on this planet has evolved without conscious direction or guidance, subject only to the limitations imposed and potentials offered by the natural forces at play.**

**What our experience so clearly reveals is that our species emerged from a purely instinctive stage of evolution with an ability to contemplate -- and react to -- our environment. And, for hundreds of successive generations of early humans the world they experienced was inexplicable. Threats to their survival were constant and everywhere. Weather changed from sweltering heat to freezing cold, from drenching rains to prolonged periods of drought. The ground periodically shook and swallowed everything. The top of mountains sometimes breathed toxic smoke and fire.**

**Frozen balls of ice fell to the ground during storms. Bolts of lightning brought down trees and ignited great fires. Powerful storms raged along the coasts and washed away entire portions of the land. Swirling funnels of air stormed across the plains, destroying everything in their path. The sun disappeared with regularity over the horizon, only to reappear just as regularly. The darkened sky revealed an enormous white object and countless glowing objects.**

**What to make of all these terrifying events? Gradually, over a very long period of time, one person here and there began to recognize patterns in what to most others seemed to be random events. They became the knowledge-bearers, and passed their skills on to younger protégés. As their knowledge of the environment increased and improved the survival chances of the group, their status rose. The knowledge-bearers then developed their own rituals to further distinguish themselves from others in the group and to generate deeper insight into the unexplainable, into the supernatural. In nearly every human society their role eventually evolved into that of a priestcraft. Humankind had created the gods, and the priestcraft capitalized on human fears of the unknown to become the channel by which the gods communicated their directives.**

**Over thousands of years, the rituals and superstitious responses of people became increasingly formalized. The result was the establishment of the institution of religion. As oral tradition was supplemented by written language among the ancients, the power of the priestcraft over human affairs intensified.**

**The gods, all powerful, were accepted as the unquestioned organizers of the natural world and rulers over human behavior. And, as generations of philosophers gave thought to the role of the gods in directing our actions, they offered a theological basis for moral judgments. Historians generally point to the Stoics of the Hellenistic period as the first school of philosophers to connect the moral concept of justice with that of natural law.**

**Aristotle and later Roman writers then asserted that the laws of any society must be based on natural (i.e., the equivalent of moral) law in order to be just. And yet, Aristotle accepted the idea of moral relativism, that natural law could be different for different societies and at different times. When the writings of these ancients were rediscovered and examined, Christian theologians sought to define natural law as the law dictated by the God embraced by Christianity. In this sense, moral relativism was resurrected and institutionalized.**

**The natural law of Christianity was given concrete form in the writings of Thomas Aquinas. He declared that our free will demanded we make use of our "God-given" reasoning powers to act justly -- in accord with natural law. Mortimer Adler states the obvious when he writes: "[M]an often violates the moral rules which constitute the law of his specifically human nature." By this he means, I surmise, that we do not consistently adhere to the objective rules of behavior securing our natural rights as members of society.**

**A great risk of injustice occurs, I believe, when the specific elaboration of such moral rules is based on a claim of divinely-inspired natural law. Arguably, the fundamental moral principles at the core of the world's most widely-embraced religions have an essential commonality. One is hard-pressed, however, to find an unblemished connection between this commonality and the supposedly divinely-inspired written preachings of individual prophets as interpreted by those self-selected to the priestcraft.**

**What we know from history, what we observe in our everyday experience is that human behavior most subject to natural law falls in the realm of behavior over which we have virtually no conscious control. Some portions of our brain function without conscious effort (i.e., without contemplation) to perform necessary bodily functions. This, I argue, is the extent to which human activity is governed by natural law. When we explain these functions we do so descriptively, with no reason to raise questions of moral law.**

**We can, therefore, say that our species is subject to the same natural laws as other creatures and life forms as well as all that makes up the material universe. The philosopher need not be concerned with these descriptive laws. Only in the realm of conscious human behavior are moral judgments required. And, not only philosophers have an obligation to answer these "ought" questions. As we are all subject to the positive law of society, of the nation-state, the securing and protection of our natural (i.e., our moral) rights is our individual and collective responsibility.**

**For reasons of clarity of thought and of expression, I hold the position that we must limit the use of the term “natural law” to descriptive statements only, and frame all prescriptive statements as elements of “moral law.”**

**If, then, there is such a thing as objective moral law, independent of religious doctrine, from where does it arise? Have we acquired, over the hundreds of thousands or even millions of years of human existence a hard-wired, if imperfect, moral sense of right and wrong? Jefferson, for one, thought so, although he credited “he who made us” with “endowing” us with our moral sense. And yet, Jefferson observed that our moral sense “may be strengthened by exercise.” An intriguing question for scientists is to what extent the moral sense of biological parents is passed on to their offspring. Nature and nurture combine to reinforce either positively or negatively the moral sense with which we are born. Which is the more powerful influence we do not yet know with any certainty.**

**From every generation since the days of Plato, Socrates and Aristotle, at least a few thoughtful, inquiring members of our species have contributed to the potential refinement of our moral sense. They examined the norms and rules of behavior of their own societies against what reasoning convinced them was the ideal (i.e., what is consistent with their construct of the moral law).**

**The cumulative effect of their efforts has been to keep alive the dialogue on moral law and – equally important -- the rights derived therefrom. That such rights exist as abstract values is a position held by those who trace our origins to an existence in the state of nature, out of which we come together to form societies. We, in the English-speaking societies, can trace the ideal basis of our socio-political arrangements and institutions to the writings by John Locke.**

**In his Second Treatise of Civil Government, Locke establishes the state of nature as a pre-societal existence, “a state of perfect freedom to order [our] actions, and dispose of [our] possessions and persons, as [we] think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.” Robert V. Andelson, in Imputed Rights (1971) reminded his readers of one of the most serious threats to such an existence: “In the state of nature rights exist but they are enforceable only in proportion to their claimants’ power.” Reason suggests, therefore, that the protection of the natural rights of the individual requires a collective commitment to do so. This, Locke realized and offered the pragmatic solution:**

**Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature.”**

**Rational behavior brings us together voluntarily to form societies, to secure and protect our natural rights and to enhance our prospects for survival. At least that is how Locke explained the ideal. However, by this standard, are there any societies where positive law lives up to the ideal? With the exception of the few remaining communitarian tribal societies, hierarchy has been the consistent instrument of entrenched power grabbed and held by minority elites. Such power always has been maintained by a shrewd combination of direct force, institutionalized ritual, and appeal to the**

**darker influences on our behavior. In the process, moral relativism has displaced moral law as the basis for positive law in society after society. Locke observed that positive law too often permitted the exercise of license by some, in violation of the liberty of others. The constant struggle to secure our natural rights is a struggle to prevent the exercise of license, another word for which is "privilege."**

**Thankfully, defenders of moral law have never been fully silenced, if not embraced by the people of their era. Thomas Paine comes to mind as such a stalwart defender of our natural rights who called for an end to privilege. In our own time, one of the most influential philosophers of moral was Mortimer J. Adler. Adler asks: "[W]hat is a moral right as contradistinguished from a legal right?" And answers:**

**"It is obvious at once that it must be a right that exists without being created by positive law or social custom. What is not the product of legal or social conventions must be a creation of nature, or to state the matter more precisely, it must have its being in the nature of men. Moral rights are natural rights, rights inherent in man's common or specific nature, just as his natural desires or needs are. Such rights, being antecedent to society and government, may be recognized and**



**enforced by society or they may be transgressed and violated, but they are inalienable in the sense that, not being the gift of legal enactment, they cannot be taken away or annulled by acts of government.” (From: The Time of Our Lives: The Ethics of Common Sense, 1970).**

**If we are ever to lift the people of this world from the oppression that denies them what Adler called “the goods of a decent human existence,” we need to find our way to a universal understanding of what constitutes moral law. A necessary first step, I submit, is to consistently treat natural law as descriptive of “what is” while treating moral law as prescriptive of ‘what ought to be.’”**