

Natural Law without Nature

In September 1991, during Senate hearings to confirm Clarence Thomas's appointment to the US Supreme Court, partisanship was on display. Thomas, a Republican nominee, had indicated he would apply natural law philosophy to the Constitution. Joe Biden, the Democrat chair, tried to bait Thomas with a point that, although true, was intended to entrap. In jurisprudence, Biden said, there is a tension between natural law philosophy and legal positivist philosophy—the former can be applied in either liberal or conservative ways, or not be applied at all. Thomas stared at him blankly, refusing the bait.

Reflecting on the hearing many years later, Thomas claimed to have no idea what Biden was talking about. To him the hearing was about politics, not jurisprudence, it was about preventing the wrong kind of black man—a conservative—from being appointed to the Supreme Court. Of course Thomas understood the tension between natural law and legal positivism—he is a lawyer, the tension is central to jurisprudence—but at that moment stonewalling Biden was more important.

John Finnis gestures towards the rationale for this in *Natural Law & Natural Rights* (1980):

In 1953 Leo Strauss prefaced his study of natural law with the warning that “the issue of natural right presents itself today as a matter of party allegiance. Looking around us, we see two hostile camps, heavily fortified and guarded. One is occupied by liberals of various descriptions, the other by the Catholic and non-Catholic disciples of Thomas Aquinas”.

In this febrile climate, Biden was keeping a foot in both the liberal and Catholic camps, a perilous manoeuvre akin to standing on quicksand (and a useful metaphor to describe his subsequent political career).

In constitutional republics with separation of powers, appointments to the judiciary are politi-

cal, because an independent judiciary can usurp the executive and the legislature. For this reason, judicial appointments across the Anglosphere are made along party lines increasingly understood to be progressive or conservative. The confirmation hearings of Thomas in 1991, Kavanaugh in 2018, and Barrett in 2020 were animated by a desire to deprive Republicans of judicial influence, to prevent them from making conservative decisions. The motive here is not judicial philosophy but political power.

One conservative decision is the overturning of *Roe v Wade*. What progressives feared would happen in fact happened in June this year. In deciding that the US Constitution contains no right to abortion—and no such right can be inferred from its penumbras and emanations—the Supreme Court has returned the abortion issue where it belongs, with the people's elected representatives in each US state. Citizens who vote for politicians who make judicial appointments can now see how the culture wars are being played out.

Abortion is always the intentional ending of a human life (murder). At a press conference in 2019, Pope Francis equated it with hiring a hitman to solve a problem. Because the murder is always performed by someone other than the pregnant woman, it is always a dereliction of parental responsibility. It might be a duty, under particular circumstances, but it is never a right. To call it a right to something—woman's choice, bodily autonomy, reproductive health, social justice—is to hide behind the whataboutism, sophistry and gaslighting that have dominated public discourse since the sexual revolution.

Across the Anglosphere, as political institutions become increasingly progressive, so do expectations of what political action can accomplish, and the law becomes an instrument for imposing whatever political action is desired. What started as a quest for basic security has become a demand for the removal of any and all risks once accepted as a natural part of life (all the tragedy and comedy between conception and death). This creates

a risk-averse population that demands and tolerates a highly regulated society, with little sense of what human being and human nature are, or what human freedom and human necessity involve, or how highly regulated societies operate (they are undemocratic, prohibitively expensive and ultimately unsustainable).

The result is a tendency to use the law to impose values on those who do not share those values. This works both ways. If the tenor of public rhetoric is a guide, the freedom to reject Christian values has become more important than the freedom to hold those values. Yet imposed conformity is dangerous, whether it is secular or religious. Ever since the Anglosphere rejected the correspondence theory of truth in favour of cultural relativism, public discourse has been less about values—what they are, how they are derived—and more about the manipulation of public fear of what the bogeyman might do when not lurking just out of sight, as he always is, with the reds under the beds.

Within natural law, there must be a connection between human law and a universal order intelligible through reason. Within legal positivism, no such connection is required, the law is whatever legal authority decrees and enforces, it is the precedence of legal fact created by humans, based solely on social fact (what people do). The problem with natural law is the loss of consensus about what the universal order includes, or excludes, and how the term *reason* is defined and measured (it is slippery and randomly invoked). The problem with legal positivism is the potential for unrestrained authority to commit atrocities (Hitler was a legally elected authority).

If natural law can be said to have a history, it shadows the history of metaphysics. It begins with Aristotle's empiricist response to the pure rationalism of Platonic idealism, with its mental distinction between material things and their essences in the Theory of Forms. Aristotle's compromise, his teleology, looks for final causes—"that for the sake of which"—to explain the nature and structure of reality. Thomas Aquinas incorporated Aristotelian teleology into medieval scholasticism, by positing that humanity's end—its *telos*—is revealed in nature, by reason, independent of scriptural revelation.

Here Finnis quotes from Aquinas's *Summa Theologica*:

whatever is contrary to the order of reason is contrary to the nature of human beings as such; and what is reasonable is in accordance with human nature as such. The good of the human being is being in accord with reason, and human evil is being outside the order of reasonableness.

Finnis explains what this means:

for Aquinas, the way to discover what is morally right (virtue) and wrong (vice) is to ask, not what is in accordance with human nature, but what is reasonable. And this quest will eventually bring one back to the *underived* first principles of practical reasonableness—principles which make no reference at all to human nature, but only to human good.

How are practical reason and human good defined and measured? Aristotle used the term *eudaimonia*—human flourishing—to describe the highest human good. But surely *eudaimonia* is higher than practical reason?

Benedict XVI identified the problem in his Regensburg Lecture: "When Kant stated that he needed to set thinking aside in order to make room for faith", he "anchored faith exclusively in practical reason, denying it access to reality as a whole". This reality, the *Logos*—with its many meanings including word, reason, story, text, theory, ratio, proportion, definition—cannot be limited to the practical sphere. For Heraclitus, it is something we must learn about if we are to understand the world's true significance. For Benedict, it is "God who has revealed himself as logos and, as logos, has acted and continues to act lovingly on our behalf". In the beginning was the *Logos* (John 1:1).

Medieval scholasticism, as a systematic method of explaining the nexus between faith and reason, was displaced by the conflicts of modernity. The key conflict revolves around the immanent critique of metaphysics theorised by Cultural Marxists during their Long March. This conflict tends to be described as a war between rationalism and materialism, transcendence and immanence, or science and religion, but the war is really over worldviews.

Worldviews with a *telos* revolving around the Christian *logos* are attacked because they challenge the totalitarian utopianism of the sexual revolution, the idea that anyone can do whatever they want—sexually—and nothing bad will happen to them or to society. No culture in human history has succeeded in realising such a utopia. It is irrational, impossible, dangerous, against nature (including human nature), and opposed to *eudaimonia* itself. But it is seductive. We erroneously call it freedom. We desire it, even as it destroys us. The instinct for life is opposed by the instinct for death.

As the British empiricist David Hume famously observed, in every moral system he encountered, the author proceeds "in the ordinary way of reasoning", but suddenly (and imperceptibly) shifts

from the propositions *is* and *is not* to *ought* and *ought not*. Because this shift introduces a new relation, affirmation or distinction, it requires explanation. A reason for this new relation, affirmation or distinction must be given, because it is “not founded merely in the relations of objects, nor is it perceived by reason”.

The observation—that a reason must be given for what reason does not perceive—has been interpreted many ways. Finnis believes two ways are the most plausible and both make a similar point. First, Hume is “announcing the logical truth ... that no set of non-moral (or ... non-evaluative) premisses can entail a moral (or evaluative) conclusion”. Second, Hume is attacking eighteenth-century rationalists, “an attack whose centrepiece is the contention that rational perception of moral qualities of actions could not of itself provide a motivating guide to action”. Hume was making a point about the inadequacy of pure reason in any discussion of moral agency.

Kant famously credited Hume for waking him from his dogmatic slumbers. His *Critique of Pure Reason* (1781) and *Groundwork for the Metaphysics of Morals* (1785) extend Hume’s thinking. The categorical imperative—“Act only according to that maxim whereby you can, at the same time, will that it should become a universal law”—is Kant’s attempt to restate the Golden Rule, treat others as you wish to be treated, in philosophical terms. But philosophy is an intellectual process, not an emotional one. By definition, it comes from the mind rather than the heart.

The mind of the Enlightenment was oriented towards four fundamental notions: a commitment to reason, a stress on “nature” and appeal to what is “natural”, a belief in the idea of progress, and the rejection of any authority or tradition that did not withstand rational scrutiny. As an Enlightenment philosopher, Kant tried to separate morality and ethics from metaphysics and theology. For Benedict, this is impossible. To limit reason to the practical (or utilitarian, commonsense) sphere is to limit a fundamental aspect of *Logos*.

Kant assumes “nature does nothing unnecessarily”, not “by instinct or by the guidance of innate knowledge” but by the “reason” which “nature gives” humanity in order “to reach its ends”. In other words, humanity has a *telos* grounded in “reason” and “nature”. Finnis believes Kant is here resuming “the most important themes touched upon 2,000 years earlier in Stoic thought about *natura*”.

To paraphrase Finnis: the Stoics were aware of *natura* as a word with a variety of meanings and shifting references. An elaboration of Stoic ethics would include: (i) the primary inclinations, needs

or objects of “natural” impulses in which humans are to live in health of mind and body (*prima naturae*); (ii) to pursue this *prima naturae* in a particular and appropriate manner, reasonably, by way of a plan harmonious with itself, with human *natura* and with universal *natura*; (iii) to the aspects of human and universal *natura* which reason—natural philosophy’s *explicatio naturae*—discovers by investigation and comparison. For the Stoics:

human life has its meaning, choice its significance, practical reason its objectivity, just in so far as they fit into a vast divine plan (*logos*) of the cosmos, one aspect of which is the cosmopolis of gods and men in the harmony (*homologia*) of their respective communities.

The idea that humanity has a *telos* in nature (Greek *physis*, Latin *natura*), discernible through reason, as part of a divine plan (*logos*), is indeed ancient.

After Kant there is the shift in modernity, from assuming a divine plan to assuming humanity is its only reference point and therefore it can ignore nature and rewrite natural law to suit itself. Human *natura* is now confined to mental processes, how the mind works. Universal *natura* is now confined to the biosphere, the thin envelope or atmosphere on which life depends. Rather than being the source of our embodiment, this confinement is the source of our disembodiment, our sense of separation from our bodies, and the world.

Evolutionary biologists Heather Heying and Bret Weinstein introduce their book, *A Hunter Gatherer’s Guide to the 21st Century* (2021), by emphasising their commitment to first principles, foundational assumptions—like mathematical axioms—that cannot be deduced from any other assumption. This helps them avoid falling prey to the naturalistic fallacy, the idea that “what is” in nature is “what ought to be”. The fallacy was first articulated by G.E. Moore in *Principia Ethica* (1903) and is closely related to Hume’s *is/ought* fallacy.

Moore exemplifies the difficulty modern moral philosophers have with defining the good. There are many ways of explaining this difficulty, each participating in the immanent critique of metaphysics in some way. They all reject Aristotelian definitions of *eudaimonia*, Thomistic definitions of *telos*, and Christian definitions of the *Logos*, because these rejections—part of the inheritance of Marxist materialism—are modernity’s defining features.

Heather and Bret are not moral philosophers. They are evolutionary biologists whose chief concern is how to interpret the data of evolution

correctly. For them, this means doing science correctly by following the scientific method strictly. If their first principles do not involve philosophical questions about rationality, pure or practical, it is because the data of evolution are not rational, they are evidential. This distinction will seem counter-intuitive, particularly to Rationalists, yet evidence falls within the broadest definition of *logos*, different in degree but not in kind from the *Logos*.

Heather and Bret are refugees displaced by the culture wars. Their commitment to evidence-based science forced them from Evergreen State College in 2017. Bret had objected to a dangerous precedent—banning white people from the traditional campus Day of Absence—and mobs of deranged student activists made death threats. The Day of Absence was originally intended to highlight under-appreciated roles, but it became one group telling another group to go away. What had begun as a call to consciousness was now a show of force—bullying—which Bret regarded as “an act of oppression in and of itself”.

As a result, they realised their evolutionary lens had to be rebranded to maintain its explanatory force. Until then, their lens described evolution ecologically, how organisms adapted to nature, construed as the forces of climate, predators and parasites over millions of years. After Evergreen, they realised their lens had to account for the dire and unhealthy pace of social constructionism. Change is happening faster than humans can adapt. Humans have become their own dominant competitor within their evolutionary niche, and humanity is destroying itself as a result.

Their book explores the tensions between their evolutionary lens and what they call the hyper-novel challenges of the twenty-first century. As evolutionary biologists they “have done empirical work on sexual selection and the evolution of trade-offs, senescence, and morality”. They believe humans are unique within their niche, as evolved biological sexes (man and woman).

According to the evidence of evolution—the data—maleness and femaleness predate modern humans by millions of years. Binary sexual characteristics were hard-wired before the primates split into dry-nosed and wet-nosed groups. They are not social constructs of patriarchy, to be deconstructed by Cultural Marxists. They represent hierarchies older than society itself. Bret and Heather believe “humans are extraordinarily well adapted to, and

equipped for, change”. But change is happening at a pace too rapid for brains, bodies and societies to adapt. Most worrying, “some of the most fundamental truths—like the fact of two sexes—are increasingly dismissed as lies”.

Bret and Heather are impressive examples of maleness and femaleness. Bret is a biological man with a highly competent male brain. Heather is a biological woman with a highly competent female brain. Watching them interacting, as a professional couple as well as husband and wife, is inspiring. They present as the evolutionary equivalent of what a natural philosopher might call “made for each other”, although this complementarity, of which they are highly aware, needs to be explained by natural selection, somehow, while confounding for the naturalistic fallacy. (Did Heather regard Bret as a hypergamous choice? If so, how does natural selection explain that choice? What makes the selection natural?)

They are dedicated to debunking the lies of the culture, wherever those lies oppose their sense of evidence-based science. Their Dark Horse Podcast regularly exposes scientific studies that are poorly designed, badly described, or tainted by ideological influences that should not be interfering with the scientific method. As they pointed out in a recent pod-

cast, written into the West’s DNA is the idea that free speech includes the free exchange of ideas. It is therefore of great concern that Big Tech is controlling our behaviour by creating an environment which effectively censors any speech it disagrees with by not allowing it to be heard. If most consumers have yet to realise it, this algorithm-controlled environment prevents the free exchange of ideas, creating a world of compelled listening, as damaging to human freedom as compelled speech.

The contemporary Anglosphere finds itself in a state of cultural derangement directly attributable to the sexual revolution: (i) the belief that anyone can do whatever they want—sexually—and nothing bad will happen to them or to society; (ii) the belief that sex and gender are functionally independent, from each other and from evolutionary biology too; (iii) the belief that biological men can become biological women and vice versa; (iv) the denial of any biological or existential difference between heterosexuality and homosexuality. We live in an age where facts are scientific if they serve whatever ideology is currently hegemonic, and

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unscientific if they do not. Scientists now reinforce this cultural derangement, because it bankrolls their research, controls government and education, and drives public policy.

A Hunter Gatherer's Guide to the 21st Century discusses a common misunderstanding of our age, that because men and women work side-by-side, and are equal under the law, they are the same. To ignore their differences, to demand they be the same, is sexism of another kind. We were sexual beings long before we were human, and our desire to reproduce is hard-wired. It is a fool's game to pretend, as our culture now pretends, "that sex equals gender, or that gender has no relationship to sex, or that either sex or gender is not wholly evolutionary".

While Bret and Heather identify with the Left rather than the Right, as progressives rather than conservatives, they know their evolutionary lens remains firmly upstream from everything else. Theirs is a necessary corrective, when the cultural pursuit of hyper-novelty ignores the hard-wiring of human evolution. When a hyper-novelty appears in a population, it is always attached to a narrative of freedom and emancipation. The hyper-novelty causing the current cultural derangement are grounded in the totalitarian utopianism of the sexual revolution.

Bret and Heather invoke an important parable about this, Chesterton's fence, which urges caution when making changes to systems not fully understood. If there are fences preventing a population from adapting to a hyper-novelty—like ignoring the distinctions between sex and gender, between heterosexuality and homosexuality, or between biological men and biological women—the fences should not be removed until their function is understood. The Anglosphere's existential crisis is caused by removing too many of Chesterton's fences.

What are the consequences of removing the fence between heterosexuality and homosexuality? Bret and Heather believe there is much to say about homosexuality, which they do not discuss, apart from a "short tease": lesbians and gay men are both attracted to individuals of the same sex, yet the differences between them, in terms of their evolutionary origins and how their relationships tend to play out, are both large and consistent in evolutionary terms. Female homosexuality cannot be separated from female evolution (being a woman, having a female sexuality). Male homosexuality cannot be separated from male evolution (being a man, having a male sexuality). Despite these adaptations, "heterosexuality remains the norm".

Bret and Heather believe heterosexual monogamy is the best mating system. This is as close as

they get to saying heterosexuality is normal, in a way that studiously avoids the naturalistic fallacy while still acknowledging the importance of the fence separating heterosexuality from homosexuality. However, all concepts of normal, irrespective of how they are derived, are anathema to those who see humans as blank slates, as raw material independent of biology. Anything less than believing humans can become whatever they want to become—free from biology—is now understood as conservative or religious prejudice, yet it is one thing to avoid the naturalistic fallacy and another thing entirely to proceed with the normalisation of homosexuality as if heterosexuality does not matter.

Bret and Heather warn about the threats posed by hyper-novelty, particularly when cultural elites start demanding adaptations that are unethical or for which no cultural consensus exists. They monitor their language when expressing themselves, though, because it is difficult to speak about what being a man and a woman means without violating the naturalistic fallacy in some way. Those who want to appear scientific studiously avoid conflating biology and nature for strategic reasons, as doing so risks confusing "what is" with "what ought to be". But biology and nature have been conflated throughout history, so divorcing them is confusing and dangerous. Knowledge of nature exists in a liminal space between scientific and other kinds of knowledge, including the knowledge embodied in the philosophical and religious theories of natural law.

When Bret and Heather say "heterosexuality remains the norm" or suggest that heterosexual monogamy is the best mating system, they do so from the perspective of evolutionary biology. The knowledge they present about this is self-evidently true—to them and those who think like them—but it is now regarded as lies by those who control the humanities, the social sciences, and increasingly the natural sciences too. Now that gender ideology is hegemonic, protected by public policy, enforced by legislation, aided and abetted by the media, one cannot publish what was once an accepted fact about sexual differences in biology—for example, puberty is real and does different things to boys and girls—without being censored.

The most insidious aspect of gender ideology is its tendency to invoke the exception to demonstrate the rule, and by every measure gender dysphoria is an exception. According to the data, without ideologically-driven and state-sponsored clinical interventions, over 80 per cent of minors with gender dysphoria will grow out of it and become adjusted to their biological sex. Most dysphoric boys will

become gay men. Dysphoric girls may become lesbian, or may not, since many of them are simply what was once known as tomboys. According to Abigail Schrier's *Irreversible Damage* (2020), adolescent girls presenting with gender dysphoria really suffer from social contagion. Like anorexia nervosa, this is a recent phenomenon, a trend, a hyper-novelty, an example of immature female self-actualisation gone wrong.

When the Anglosphere allowed same-sex couples the right to marry, and have children, it did so without consensus, or serious debate about the normative role biological parents (fathers and mothers) play in human procreation, and in the lives of their biological children (sons and daughters). Whatever passed for debate was framed as human rights rather than human responsibilities—or biological imperatives—while chanting the idiotic mantra Love-is-Love. To stray from the progressive script was to be accused of hate speech and be regarded as unworthy of belonging to liberal democratic society.

In lesbian studies there is a body of qualitative research struggling to be accepted within the mainstream of the scientific literature, which studiously ignores the fact that two women need sperm to reproduce. Political correctness protects lesbian couples from ethical questions about how they become pregnant. There is also the ethical question of whether the sperm donor has a right to be identified as the biological father (as he does in some jurisdictions). One lesbian couple received unwanted publicity when they sued a fertility clinic for discrimination, because the designer embryo they ordered turned out to be not what they wanted.

In the gay world, there are high-profile attempts to gaslight the population by promoting the legal fiction that two men can give birth. In the US, conservative commentator David Rubin—whose *shtick* is self-promotion—has announced that he and his male partner are expecting twins via separate surrogacies. The role of the surrogates (the birth mothers) in these high-profile pregnancies is not discussed, or is kept hidden, lest the contrived gaslighting narratives around them either evaporate or are subjected to moral scrutiny.

Rubin has not clarified the relationship he and his male partner have with their surrogates, or how the “twins” are biologically twinned. In a recent interview with Jordan Peterson, Rubin solemnly promised to find female role models for his designer children as they grow up. This raises large questions: What is a mother? What is motherhood?

Are they just female role models, accessories for gay men to acquire for their designer children in the brave new world we are creating?

The hyper-novelty of same-sex procreation is exceedingly dangerous.

Once a consensus had been reached, that the Big Bang Theory was true, it became obvious the universe had a beginning, and the idea of a creator was again possible. Once it was understood that the Big Bang did not create nature, the biosphere necessary for life—a succession of lesser bangs was needed for that—the idea of a design again became possible. Once that happened, the idea of the design having a *telos*, a function or purpose, also became possible. These possibilities remain beyond the explanatory power of science.

In *The Devil's Delusion: Atheism and its Scientific Pretensions* (2009), polymath David Berlinski—a secular Jew who is agnostic about intelligent design—warns against the hubris of scientism:

We do not know how the universe began. We do not know why it is there. Charles Darwin talked speculatively of life emerging from a “warm little pond.” The pond is gone. We have little idea how life emerged, and cannot with assurance say that it did. We cannot reconcile our understanding of the human mind with any trivial theory about the manner in which the brain functions. Beyond the trivial, we have no other theories. We can say nothing of interest about the human soul. We do not know what impels us to right conduct or where the form of the good is found.

In *Human Nature* (2019), Berlinski makes the point:

No one disposing of essentialism in biology is disposed to disregard it in logic, mathematics, physics, or ordinary life. Human beings are not indefinitely malleable. There are boundaries beyond which they cannot change. We are not simply apes with larger brains or smaller hands, and the distance between ourselves and our nearest ancestors is what it has always appeared to be, and that is practically infinite.

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