

# I. Introduction

What hath we wrought? Fifty years since the sexual revolution ushered in a morally permissible attitude, which sanctifies the individual at the cost of a discernable standard of decency, debates about public morality rage. Under the influence of nihilistic tendencies of modernity the question arises as to whether there is any objective standard for judging the moral character of actions. However, the subjective character of the “do what makes you happy,” hippie utilitarianism soon runs off the rails; what if what makes me happy is committing heinous crimes, including rape and murder? At this point common modern individualists will evasively retreat to one of two retorts: either man is naturally good, but man has been corrupted by society or modern liberals will assert that killing is wrong because it impairs an individual’s ability to attain his own happiness. Traditionally the objection to heinous acts consisted in citing some variation of the Natural Law or God’s will.

I must here qualify my statement by noting that the positions I characterize are those held by your average secular progressive; clearly those positions held by the intellectual elite of the academy are much more complicated, if not more convoluted. It is, however, my position for the purposes of this paper that for an act to be judged moral or immoral there must be a transcendent standard and a deity. Thus, though modern “improvements” on past secular progressive positions are deserving of a more complete description and analysis, they still turn of the basic tenets of the two simple objections posited. Further, complex theories of public morality may have the supposed advantage of being systematic, but the theories must be lived; man lives in the particulars not as an abstraction.

The first response that man is naturally good, but society has corrupted him can find a full articulation in the works of Jean-Jacques Rousseau<sup>1</sup>. If man is by nature good then a society should allow for a greater degree of individual autonomy as long as men can be kept uncorrupted. In the aforementioned case it is then incumbent upon the ruling elite to reform society's institutions while modifying the manners of society to remove all severe prejudices. Rousseau's position provides an opportunity to consider two important points which will be prominent in the consideration of practical matters. Firstly, once it is agreed upon that society must be reformed the question comes as to how society can be reformed. Those inspired by the rationalism of the French Enlightenment would posit that a metaphysical determination of what is right for society should serve as the plan for reformation. However, this armed doctrine, which ignores the particulars, failed to serve the French revolutionaries well. Critics of the French doctrine include prestigious individuals from Michael Oakeshott and FA Hayek to Edmund Burke who reject rationalism in favor of practical rationality. These advocates emphasize the importance of the particulars while viewing society as something which is organically grown rather than man made. If this view is taken then it would be destructive of society and man to apply speculative reason to society.

Further, Rousseau's position about society revolves around a conception of man as infinitely malleable, an idea traceable back to Locke's concept of *tabula rasa*. The belief in the man's malleability can be attacked on two bases. The first basis would be the Judeo-Christian conception of man and society. According to this view man is marred by original sin and incapable of being molded into a perfectly moral individual. Further, only in the City of God will

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<sup>1</sup> The full complex of Rousseau's thought has been remarkably well summarized and analyzed in Leo Strauss' *Natural Right and History* pages 252-293.

man be at peace with all other men. The City of God cannot be immanentized to create a real Garden of Eden.<sup>2</sup> The other basis of the objection could rest on evolutionary psychology's insights upon man's very gradual development. The dichotomization of the two bases is not to suggest that religion and evolutionary science are opposed; for a good study of the relationship between religion and science read most of the works by Cardinal Ratzinger who presents an elegant dynamic between the two sources of knowledge. Either way you view the issue the topic of human nature arises. Are humans any particular thing by nature? Is man a social, political animal? Along with questions about human nature come questions about man's natural inclinations. Are homosexual males' sexual impulses for other males justifiable or are there certain inclinations which are unnatural and depraved?

The second retort, that certain things are just wrong, can orient the conversation towards a real discussion of the Natural Law. However, to cite things are just wrong seems lacking; while you can argue that certain basic goods are known self-evidently, they must be defensible through dialectic arguments. Firstly, one must ask what is necessary for something to be labeled "right" or "wrong." It seems the most obvious requirement for there to be a "moral choice" would be that there is a choice at all. The question then is whether it can be agreed that there is free will; there are those who would deny free will, including Nietzsche according to some. As Nietzsche boldly declared, "It seems that the hundred-times-refuted theory of "free will" owes its persistence to this charm alone; again and again someone comes along who feels he is strong enough to refute it."<sup>3</sup> However, if this quote is read esoterically, and in context of the passage, a

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<sup>2</sup> This assumption has been vigorously rejected by many modern thinkers including Marx.

<sup>3</sup> Nietzsche, Friedrich. Beyond Good and Evil. Part 1, Section 18.

more informative point for the following discussion can be discerned. Any human who is honest with themselves will acknowledge that their lives are filled with urges and passions, lust and greed, separated from pure reason. The question is can an individual make a choice which goes against the irrational passions to choose the good? In order for this to be so man must be able to order his soul in such a manner that reason can tame the passions and his pride seeking spirit into being subservient to reason.<sup>4</sup> Does this mean that the ordering of the soul must be a task easily accomplishable for all individuals? Of course not; often the moral choice will be difficult and require a great deal a discipline. Even after a great deal of instruction the moral choice may not be accessible for certain individuals, who will need additional safeguards including customs or the coercive power of the law.

These specifications thus enumerated do not prove the existence of free will. However, not to be condescending, individuals who do not believe in free will are in a way irrelevant. If you do not believe in free will then you believe that you are not in control of your actions. If you are not in control then you cannot really be judged for your actions. Thus, if critics of free will are correct then any discussion of ethics does not really matter, and in a real sense nothing matters. The choice to believe in free will can be seen as an equivalent for Pascal's wager. If one believes in free will when in fact the will is bound there will not be a punishment. However, if one denies free will and free will is true then judgment can be passed upon one's actions; actions which were based on emotion and not in pursuit of the good. The argument preceding may justify belief in free will based on consequences and not on reasoning routed in the facts, but if

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<sup>4</sup> Plato. The Republic. Pages

there is no free will then whether or not an argument is defended dialectically instead of constructed by reason seems irrelevant.

Once the veracity of free will is agreed upon we must ascertain whether or not there is a right choice.<sup>5</sup> Is it true that reason be “is, and ought only to be, the slave of the passions, and can never pretend to any office, other than to serve and obey them”<sup>6</sup> or should reason determine what the good is? If reason is to be the standard for determining the good, the question is what is reason trying to comprehend? It will be the position of this paper that the good reason is coming into contact with is the Natural Law. What if one takes the position that there is no good or a skeptical position which denies the possibility of knowing the good? Or what if one simply identifies the good with the pleasurable? Nihilism, though a popular choice in the modern secular world, is a negation of everything and provides no real reason to live. Perhaps nihilism could be blunted for men like Nietzsche and his friends by the irony and pleasures of life, but for humanity as a whole nihilism seems insufficient, As Jose Ortega y Gasset once noted, “really to live is to be directed towards something, to progress towards a goal.”<sup>7</sup> Lacking direction or a justification for following Nietzsche’s moral code in a meaningless world, it seems the rejection of good and bad, while a position one could hold is in a way a negation of human life. Perhaps

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5 The following argument is heavily influenced by Chapter 2 of John Finnis’ Aquinas: Moral, Legal and Political Philosophy.

6 Hume, David. A Treatise on Human Nature. Book 2, part 3, section III. 1740. \_

7 Ortega y Gasset, Jose. The Revolt of the Masses. Pg 142.

the irony is just one more irony in an incomprehensible world, but as a tenet of nihilism it does not matter in any real way.

Perhaps instead, one takes the skeptical position about the good. Instead of trying to discern the truth one must root the moral philosophy in the sentiment of the people, who are driven primarily by passions. However, if one is not required to discern the good then what value is there in this true ethical system? It then seems that we are met with a peculiar paradox that skeptics deny the ability to discern the good, while simultaneously presenting their argument as something that ought to be accepted. Further, Natural Law theorists who present “the good” are not suggesting that this mode of knowledge will have the same precision as mathematical science. The role of rationalism in ethics and law will be discussed at a later point, but for now we must say that the Enlightenment thinkers who rationally determined man’s natural rights were a sharp departure from the tradition of Natural Law.

The final response, based on utilitarianism has already been discussed, but a further elaboration can be interesting. Obviously, rule utilitarianism becomes rather convoluted because there is no principled way to determine the rules without referencing something other than utility, despite the stated belief that the good is the pleasant. Thus, JS Mill’s rejection of Bentham’s statement that “Prejudice apart, the game of push-pin is of equal value with the arts and sciences of music and poetry.”<sup>8</sup> seems to be inconsistent with his other stated beliefs and thus makes the Millian system contradictory. If we accept basic utilitarianism we come to a few conclusions that may seem inappropriate. One example we could use is by most perspectives grotesque, but for this reason the idea should be pursued; what should the government’s role with pedophiles be? It

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8 Bentham, Jeremy. The Rationale of Reward. 1830.

seems plausible that the only individuals who believe that pedophiles should not be prevented from molesting children are pedophiles. The opposition could come from any variety of arguments; one that may be employed by contemporary liberals is that allowing said acts to occur will harm the child. However, if the only basis of your morals is harm or utility you must answer about further prohibitions. For instance, suppose pornographic material decreases violence by fulfilling the desires of the consumer; particularly, suppose that child pornography would prevent pedophiles from acting out on children<sup>9</sup>. As it stands there is an existing body of child pornography which pedophiles could consume.

Clearly from our earlier position a utilitarian liberal would not support the creation of new child pornography as this would cause harm, but the existing child pornography is already made and requires no further harm to children. Potentially, the government could make child pornography available to pedophiles through a national database which would serve two purposes: it would create utility for pedophiles and prevent the negative utility of child molestation. Thus, there is a strong utilitarian argument for the creation of a national child pornography database. Now having come to this conclusion we must ask ourselves if a national database of this type is something any moral people should have interest in? After all, if pedophiles are only looking at child pornography they are engaging in a “self-regarding action” as opposed to an “other-regarding action” in the form of molesting a child. However, one must

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<sup>9</sup> There has been a mixed bag of Sociology studies which have “proven” that pornography may reduce domestic violence. Supposing we accept this information then there seems to be a strong reason to support the legalization of pornography. However, before we accept a sociology study we must ask what the potential errors that could arise from the methodology of Social Science. For an interesting treatments of the issues read FA Hayek’s *The Counter-Revolution of the Sciences*.

ask oneself if the distinction between a “self-regarding action” and an “other-regarding action” is a reality or a fiction.

But what is society? What is necessary for the continuation of society? What is the nature of man?<sup>10</sup> By positing the distinction between a “self-regarding action” and an “other-regarding action” one must first accept that man is an atomized individual. However, in contrast to “atomized individual” one could posit that man is a “person.” The debate must resolve what defines humanity. However, from personal experience it appears that humans, by nature, need relations to exist and develop. The question then is what is necessary for relationships to develop? Society. More specifically, people need a common set of customs and beliefs from which people can abstract to apply to concrete situations. However, if there must be a common experience from which we abstract then the notion of an atomized individual must be rejected as a social good, but rather categorized as a type of alienation. If we are going to reject the notion of society as a collection of atomized individuals what is the implication for our perspective on the distinction between a “self-regarding action” and an “other-regarding action?” Firstly, certain actions, such as watching child pornography, may not be actively damaging another individual, but that does not mean that the action is not corrosive on society. Certain actions, such as watching pornography, damage the ability of a community to come together and work when the focus of each constituent of the society is primarily focused upon his own Epicurean delight.

We now come to acknowledge that actions which appear to be wholly “self-regarding” are an illusion. Society, as understood by its common experience constituting a basic means for

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<sup>10</sup> The following argument, which is commonly referred to as the communitarian critique, can be found in Robert P. George’s *Making Men Moral*, particularly in chapter 2.

cooperation between differing people, is too dynamic for one to hold the simplistic distinction between self-regarding action and other-regarding action. Further, the Epicurean philosophy of pleasure and pain which dominates atheistic conceptions of the law and ethics creates problems for a conception of society. In commenting on Hobbes, Leo Strauss brings to the forefront the basic assumptions of the Epicurean philosophy stating, “He(Hobbes) accepts its(Epicureanism) view that man is by nature or originally an a-political and even an a-social animal, as well as its premise that the good is fundamentally identified with the pleasant.”<sup>11</sup> Further, Strauss goes on to note that, “no pre-modern atheist doubted that social life required belief in and worship of, God or gods.”<sup>12</sup> This means that the underlying thought of prominent atheist theories of society is a thought which is admittedly corrosive on society.

So what is left? Man is not infinitely malleable, institutions cannot be simply plucked from society and reformed, utilitarian methods lead to questionable results, and the underlying logic of utilitarianism is fundamentally a-social. Thus, in asking what hath we wrought we are obligated to look to see what existed before these base methods of the modern age. Before these abstract and fallacious theories we find the Natural Law. The Natural Law in the competing accounts in a standard by which society can judge actions of individuals and actions of society itself. One key to the Natural Law is that it can be apprehended by unaided right reason. This means that all peoples, at all times had access to these basic ideas. The question then is, if everyone has access to these basic truths then why are societies not all the same? Does the

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11 Strauss, Leo. Natural Right and History. University of Chicago Press. 1953. Pg. 169

12 Ibid

Natural Law even require complete uniformity? In the following sections we will cover the history of the conception of the Natural Law and then we will apply some of the basic ideas of the Natural Law to certain topics.

## II. A Brief History

Before we begin a focused discussion on particular applications of the Natural Law it will be helpful to go through a brief history of Natural Law thinkers to familiarize ourselves with internal debates and refinements. Further, by looking at the history of these Natural Law thinkers we may be able to extricate ourselves from the typical confusion enveloping the Natural Law. However, to understand the development and, from the perspective of the paper, denigration of the Natural Law we will be forced to look at the broader intellectual climates of certain eras, most significantly the Enlightenment period. In the process we will be forced to confront certain difficult questions. Does John Locke have a coherent Natural Rights theory or is Locke perhaps more of a utilitarian? What is the real root of the Natural Law? What role does rationalism play in Natural Law thinkers? The only way to answer these questions is to proceed and develop an understanding of the Natural Law through the ages.

### A. The Ancients

As with all intellectual history we must pick a point of departure which is not wholly satisfactory; in most cases there are not really new ideas, but new combinations of old ideas which may improve the explanatory power of an argument. In the case of this paper we will begin with Plato. Certainly selecting Plato as the beginning of our discussion of the Natural Law

will not appear objectionable, but it does a certain disservice to pre-Socratic thinkers<sup>13</sup>. Having noted the disservice we are rendering onto the pre-Socratic thinkers we will summarily move on and focus on the task at hand. In beginning with Plato we must not get lost in the debates over Plato, but instead see what his contribution to Natural Law theory. However to discern Plato's contribution we must first select which interpretations to utilize. Since this is an inquiry into the Natural Law it seems most appropriate that we take two leading interpretations from prominent Natural Law thinkers: Eric Voegelin<sup>14</sup> and Leo Strauss<sup>15</sup>.

**Plato:** Among the most important question we will take on in interpreting Plato is whether or not Plato is a rationalist. The debate over whether Plato was a rationalist seems to be pointless at this point, as mainstream academia has mainly painted Plato as a rationalist, but for the purposes of this paper and understanding Aristotle the topic must be revisited. Although the entirety of Plato's work is crucial to understanding both the philosophies of Voegelin and Strauss we will begin with Book VII of *The Republic: The Allegory of the Cave*<sup>16</sup>. In the Allegory of the Cave the inhabitants of the cave are chained around their necks such that they are facing straight at a

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13 For those interested in learning more about the pre-Socratic thinkers I suggest looking at Eric Voegelin's *Order and History, Volume II*.

14 Voegelin, Eric. *Order and History, Volume III*. LSU Press. 1956. and Emberley, Peter. *Faith and Political Philosophy: The Correspondence between Leo Strauss and Eric Voegelin, 1934-1964*. University of Missouri Press. 1993.

15 Strauss, Leo. *Natural Right and History*. The University of Chicago Press. 1953. and Emberley, Peter. *Faith and Political Philosophy: The Correspondence between Leo Strauss and Eric Voegelin, 1934-1964*. University of Missouri Press. 1993.

wall. The denizens of the cave so far have only obtained knowledge of the outside or real world by shadows projected upon the wall. One man is set free from his chains and is able to turn around to see the real figures which cast the shadows upon the wall. The man, the philosopher, ascends from the cave further until he is out in the real world. At first the philosopher is blinded by the light, but eventually he acclimates himself to the pure light. The philosopher then turns around to return to the cave in order to teach the inhabitants of the cave the true nature of the images projected on the wall. Read exoterically, as Karl Popper did in *The Open Society and Its Enemies*, the implication of this passage is that an elite group of intellectuals is to pursue the truth and then impose their findings upon society; interpreted this way Plato seems to be comparable to modern totalitarians. This exoteric reading of Plato may and should be questioned. Eric Voegelin, in commenting on Karl Popper's analysis, went so far as to say, "In that Popper violated this elementary duty and stole several hours of my lifetime, which I devoted in fulfilling my vocational duty, I feel completely justified in saying without reservation that this book is imprudent, dilettantish crap."<sup>17</sup> The most problematic parts of Popper's interpretation lie in his inability to grasp the texts in the particular context. Instead Popper analyzes terminology that has developed new meanings over time. We will now move on to two interpretations which deserve more careful treatment than is possible in this broad based paper.

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16 The Allegory of the Cave can be found beginning on pg 186 of the revised translation of the Republic by CDC Reeve. Hackett Publishing 1992.

17 Emberley, Peter. Faith and Political Philosophy: The Correspondence between Leo Strauss and Eric Voegelin, 1934-1964. University of Missouri Press. 1993. Pg 67

We will begin Leo Strauss' interpretation as found in Natural Right and History.<sup>18</sup> Strauss first begins by explaining the origin of the idea of Natural Right as distinct from convention. Of great importance Strauss notes that, "the discovery of nature or of the fundamental distinction between nature and convention is the necessary condition for the emergence of the idea of natural right."<sup>19</sup> Thus, Plato should be seen as developing a type of rationalism with regards to society. Further, it should be acknowledged that Strauss' interpretation of Plato is the basis for his conception of the philosophic lifestyle. According to Strauss, a philosopher, such as Plato, engages questions about truth in such a way that philosophy envelops the entirety of one's life. For this reason Plato's texts should be seen primarily as a-political. This interpretation of Plato's texts seems to have a high degree of merit as in all of the post-Republic writing Plato seems to withdraw further and further from engaging society. Thus, the metaphysical formation of the ideal city is a rationalist project, and the philosopher may try to influence others, but the philosopher does not ultimately expect to succeed. As Strauss notes, "In other words, the simply good, which is what is good by nature and which is radically distinct from the ancestral, must be transformed into the politically good, which is, as it were, the quotient of the simply good and the ancestral: the politically good is what "removes a vast mass of evil without shocking a vast mass of prejudice." It is in this necessity that the need for

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18 Strauss, Leo. Natural Right and History. The University of Chicago Press. 1953. Pages 81-165

19 Ibid pg 93

inexactness in political or moral matters is partly founded.”<sup>20</sup> The type of thinking characterized by Strauss is commonly referred to as classical rationalism.

In distinction to this classical rationalism, Eric Voegelin presents a formulation of Plato which is decidedly anti-rationalist. Essential to understanding Voegelin’s interpretation of Plato is understanding Plato’s relationship to idealism or the ideal state. Voegelin, engaging in an philological explanation, shows firstly that to understand Plato we must understand his paired words and the notion of “by nature.” Firstly, Plato’s philosophy should be understood in contrast to the doxa of the sophists. The doxa of the sophists are hardened political ideologies which relativize the experience of the world. Indeed, if anyone were to talk of an ideal state it would be associated with sophists and not Plato. Plato’s creation of a state which is in accord with Natural Justice is but an outside standard to judge reality. It is not a plan for a potential society.<sup>21</sup>

If Plato’s philosophy is not seeking a hardened ideal, then what is the goal of Plato’s philosophy? According to Voegelin Plato is seeking to develop a differentiated consciousness for a greater understanding of experience to pursue the good necessary to strengthen the soul of the times. “The depth of experience is not unrelieved night; a light shines in the darkness. For the depth can be sensed as misery, danger, and evil only because there is also present, however stifled and obscured, the sense of an alternative.

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<sup>20</sup> Ibid 153

<sup>21</sup> For greater elaboration see Voegelin, Eric. Order and History, Volume III. LSU Press. 1956. Pages 166-167.

The illuminating inquiry, the zetema, is not carried from the outside to the initial experience, as if it were dead subject matter, but the element of seeking (zetesis) is present in the experience and blossoms out into the inquiry. The light that falls on the way does not come from an external source, but is the growing and expanding luminosity of the depth. On the one hand, therefore, the concepts of the inquiry do not refer to an external object, but are symbols evolved by the soul when it engages in the exegesis of its depth. The exegesis has no object that precedes the inquiry as a datum, but only levels of consciousness, rising higher as the Logos of the experience becomes victorious over its darkness.<sup>22</sup>

Implicit in what Voegelin is saying is the duality of life and death. In differentiating one's consciousness to comprehend experience of the transcendent, which is not a particular datum, one must empty oneself of attachment to anything particular, yet at the same time remain emotionally connected to the psyche of the existing order. Through death, existing in the cave, we find ourselves empty and thus have a necessary condition for the pursuit of the truth. However necessary this death is, it is not sufficient. Man, solely based on his volition, must detach himself from the epicurean pleasantries, reordering the soul to engage in the inquiry of truth. It is once man reorders his soul he is capable of comprehending the light shining from above. The light, truth and life, is capable of regenerating the broken psyche of a polis as Plato finds his polis. Thus, the death of the society, associated with the emptying of the soul and purging the focus on the epicurean pleasantries, is necessary for the regeneration and filling of the psyche. This is

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22 Ibid 138

highly like the concept of kenosis for Catholics as prominently displayed in the writings of Flannery O'Connor. It is important to notice that Voegelin and Strauss' distinction between what is good by nature and what is politically good share certain similarities, with the only significant contrast being the level of rationalism necessary for discerning what is good by nature.

**Aristotle:** Generally, Aristotle is juxtaposed with Plato to show the contrast between idealism and a more earth-bound focus for philosophical problems. After all Aristotle was the one who said, "Presumably, though, we had better examine the universal good, and puzzle out what is meant in speaking of it. This sort of inquiry is, to be sure, unwelcome to us, because those who introduced the Forms were friends of our; still, it presumably seems better, indeed only right, to destroy even what is close to us if that is the way to preserve truth."<sup>23</sup> Thus, the pure truth which both Strauss and Voegelin agree that Plato is seeking is repudiated by Aristotle. Aristotle believes in a truly immanentizable right polis which can be discovered by true philosophers. Thus, in certain ways Aristotle is more certain about his "discoveries" than Plato, while at the same time Aristotle is using a less rationalist position. In outlining the methodology of Political Science Aristotle notes, "and so, since this is our subject and these are our premises, we shall be satisfied to indicate the truth roughly and in outline; since our subject and our premises are things that hold good usually (but not universally), we shall be satisfied to draw conclusions of the same sort."<sup>24</sup> Aristotle is not looking for mathematical precision in his analysis, indeed

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23 Aristotle. The Nicomachean Ethics. Book 1, Chapter 6, Paragraph 1.

24 Ibid Book 1, Chapter 2, Paragraph 8

due to the complexity of the subject, mathematical precision is impossible. Further, theories should be developed around the majority of the data which the philosopher is working upon; often one response to arguments against gay marriage is that there are married couples that are infertile, why should they be allowed to marry, but this argument misses the point by focusing on the exception and not the rule.

We should notice that while outlining the methodology of Political Science Aristotle smartly remarks, “Now, fine and just things, which political science examines, differ and vary so much as to seem to rest on convention only, not on nature.”<sup>25</sup> We notice that the same distinction between nature and convention is emphasized by Aristotle as by Plato. This of course begs the question, to what degree is Aristotle building off Plato and to what degree was Aristotle qualifying Plato. It is key passages like the preceding which allows Voegelin to conclude that Aristotle is working from the Platonic framework, but qualifies certain points.

One difficulty in interpreting Aristotle is most of what we now possess are likely lecture notes and were not meant to be published. Further, we must distinguish between Aristotle qua Aristotle and what Aristotle as become through his followers. Perhaps the most important point is that Aristotle did not create a system of thought, rather his work was turned into a system by his followers. Acknowledging this, Voegelin proceeds to analyze the potential conclusions of Aristotle’s thought. One important thing to note is that by denying Plato’s distinction between the good and the political good he causes

25 Ibid Book 1, Chapter 3, Paragraph 2

certain difficulties. Voegelin lists several examples one being that man can be a good citizen without being a good man, but a good man must serve his country, but service to his country could damage the man's virtue. Further, Aristotle believes that true philosophers will be able to find the *eidos* and immanentize it.<sup>26</sup> Noting the failure of "Immanentist Metaphysics" Voegelin suggests that, "The philosopher who is in possession of the Truth should consistently go the way of Plato in the Republic; he should issue the call for repentance and submission to the theocratic rule of the incarnate Truth. Aristotle, however, does not issue such a call and, consequently, the imperfections of actualization (although technically called "perversions") tend to become essences in their own right, forming the manifold of reality; they become "characters" and the category of character is even extended from human individuals to the types of constitutions."<sup>27</sup> As a result of the failure to grasp the absolute truth by one group, while several groups simultaneously claimed to have the truth, there developed skepticism about the Truth. Among the several points Voegelin develops in the conclusion, the most forceful is that those pursuing the truth must accept that the truth is not a point simply apprehended, but a more complex field which must be felt. While Voegelin is not stating moral laws are wrong, Voegelin is noting the potential difficulties that can arise if "truths" are accepted dogmatically instead of being rationally grounded with direction the transcendent nature of the truth.

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26 The following analysis is from Voegelin, Eric. Order and History, Volume III. LSU Press. 1956. Pages 413-423

27 Ibid page 417

Despite the difficulties of Aristotle's thought, Aristotle provides part of the foundation for the "central tradition." Firstly, Aristotle notes that we must have an ethics before we can have a politics, for we must be able to judge whether the product of the law is good or bad. Further Aristotle notes that, "arguments seem to have enough influence to stimulate and encourage the civilized ones among the young people, and perhaps to make virtue take possession of a well-born character that truly loves what is fine; but they seem unable to turn the many toward being fine and good."<sup>28</sup> For the "base person, since he desires pleasure, has to receive corrective treatment by pain, like a beast of burden,"<sup>29</sup> in order to be directed towards the good. Here we find the intellectual roots of moral legislation.

**Cicero:** A great orator and Roman statesman, Cicero, and his relationship to the Natural Law are an interesting puzzle. It is highly important to note that Cicero was an academic skeptic, therefore it is prudent to understand how Cicero might have qualified a Stoic position. As Strauss notes, "the Stoic Natural Law teaching is based on the doctrine of divine providence and an anthropocentric teleology. In his *On the Nature of the Gods* Cicero subjects that theological-teleological doctrine to severe criticism, with the result that he cannot admit it as more than approaching the semblance of truth."<sup>30</sup> However, as

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<sup>28</sup> Aristotle. The Nicomachean Ethics. Book 10, Chapter 9, Paragraph 3

<sup>29</sup> Ibid Book 10, Chapter 9, Paragraph 10

<sup>30</sup> Strauss, Leo. Natural Right and History. The University of Chicago Press. 1953. Pages 154

Scipio in *The Laws* Cicero accepts the existence of the Natural Law, not because it can be deductively proven, but rather because it is necessary for the continuation of society. This sort of acceptance of necessary goods runs throughout Cicero's work. One such example is Cicero's position on religion where he states, "That an individual's own gods, whether foreign or new should be worshipped causes confusion among religions and introduces rites which are unfamiliar to our priests. It is resolved that those gods whose worship has been handed down by their fathers' should be worshipped, provided that their fathers themselves have obeyed this command."<sup>31</sup> Although this assumption is denied by later Natural Law theorists, Cicero sees prudential reasons for having one religion in a state. While Cicero does accept that there is an abstract justice, Cicero simultaneously notes that, "Our own constitution, on the other hand, had been established not by one man's ability but by that of many, not in the course of one man's life but over several ages and generations. He used to say that no genius of such magnitude had ever existed that he could be sure of overlooking nothing; and that no collection of able people at a single point of time could have sufficient foresight to take account of everything; there had to be practical experience over a long period of history."<sup>32</sup> What makes this statement so important is that though Cicero accepts the best constitution in the abstract, Cicero believes the best actualized constitution develops organically. How Cicero squares this

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31 Cicero. The Laws. Book 2, Paragraph 26.

32 Cicero The Republic. Book 2, Paragraph 2.

with other statements such as “moral excellence is reason fully developed, and it is certainly grounded in nature; the same goes for everything honorable,” at first seems questionable. How can one combine reason and anti-rationalism? As to how the best constitution develops organically we will elaborate further when we get to Sir Edmund Burke so as to not repeat; what is most striking about the connection between Cicero and Burke is that Burke said nearly the same thing about the British Constitution that Cicero said about the Roman Constitution without ever having read the quoted passage. For now we will note the peculiarity of Cicero compared to Aristotle and Plato and keep in mind that one need not be a rationalist to support the Natural Law.

**St. Thomas Aquinas**: Further buttressing the claim that one need not be a rationalist to believe in the Natural Law is St. Thomas Aquinas, the Angelic Doctor. However, before we proceed in discussing St. Thomas we must note the existence of and will examine the intense debate over the true meaning of St. Thomas’ work. St. Thomas is regarded by most as the Catholic Church’s greatest theologian and for that reason many strains of Natural Law thinkers want to claim Aquinas for their movement. For now we will touch on the uncontroversial parts of Aquinas. Firstly, Aquinas is clear that the Natural Law is capable of being apprehended by all men when utilizing right reason. Aquinas then begins his discussion of what the Natural Law is and whether it applies to all men equally. Aquinas states that, “ it is right and true for all to act according to reason: and from this principle it follows as a proper conclusion, that goods entrusted to another should be restored to their owner. Now it is true for the majority of cases: but it may happen in a particular case that it would be injurious, and therefore unreasonable, to

restore goods held in trust.”<sup>33</sup> Thus, if you borrow a chainsaw from your neighbor most of the time you should return the chainsaw; if you know your neighbor intends to use the chainsaw to kill his wife then you may refuse to return the chainsaw. Thus, “the general principles of the natural law cannot be applied to all men in the same way on account of the variety of human affairs: and hence arises the diversity of positive laws among various people.”<sup>34</sup> Thus, man is left with general moral precepts which he must qualify given the particular, but he must never transgress these basic precepts. Noting the two ways men apprehend things by reason Aquinas states, “the first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles (deductive reasoning); while the second mode is likened to that whereby, in the arts, general forms are particularized as to the details: thus the craftsmen needs to determine the general form of a house to some particular shape.”<sup>35</sup> Thus, like a craftsman who cultivates his skill by learning of the general form of houses, then through experience learns how to particularize the form of the house the legislator must learn of the general forms (moral precepts) and then through experience develop their understanding of the particulars to

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33 Aquinas, St Thomas. The Summa Theologica. Part I-II: Question 94, Fourth Article, On the Contrary

34 Aquinas, St Thomas. The Summa Theologica. Part I-II: Question 95, Second Article, Reply to Objection 3.

35 Aquinas, St Thomas. The Summa Theologica. Part I-II: Question 95, Second Article, On the Contrary.

effectively actualize the Natural Law. In this statement we may think back to Cicero who simultaneously believes in the Natural Law and slow organic growth of societies.

Aquinas further notes that any law (or custom) that is opposed to the Natural Law is not a real law for “every law is directed to the common weal of men, and derives the force and nature of law accordingly.”<sup>36</sup> Thus, a law that does not aim at improving the common good is not a real law. Thus, laws aimed at the destruction of justice, perhaps by allowing goods to be sold under false advertising, are not true laws and must be changed. The question then is how one must change the law. In Question 97, Second Article Aquinas asks “whether human law should always be changed whenever something better occurs?” Aquinas quickly notes that “to a certain extent, the mere change of law is of itself prejudicial to the common good: because custom avails much for the observance of laws, seeing that what is done contrary to general custom, even in slight matters, is looked upon as grave. Consequently, when a law is changed, the binding power of the law is diminished, in so far as custom is abolished. Wherefore human law should never be changed, unless, in some way or other, the common weal be compensated according to the extent of the harm done in this respect.”<sup>37</sup> Thus, as with Cicero we notice a preference for the organically grown; custom truly strengthens the law and to undermine custom is to undermine society. The way to reform the law is by very careful considerations of the

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36 Aquinas, St Thomas. The Summa Theologica. Part I-II: Question 96, Sixth Article, On the Contrary.

37 Aquinas, St Thomas. The Summa Theologica. Part I-II: Question 97, Second Article, On the Contrary.

particulars involved in the society and from there seek a greater approximation of the true precepts of the Natural Law. Thus, as was stated earlier the legislator must have a great deal of experience and have true emotional connection to that which he seeks to reform. Only a statesman who loves the particulars of his nation, as opposed to those abstract metaphysicians who seek to apply speculative reason, can seek the betterment of his society.

Having covered the points of agreement on Aquinas we will now briefly touch on the disagreement over Aquinas; this will give us the opportunity to discuss the role of natural inclinations in deriving the Natural Law. At this point we must look at the impact of modern science upon the philosophical tradition. From Aristotle to Aquinas and beyond, Natural Law philosophers developed metaphysical systems to derive the ends of men; according to the old view everything in the world has a teleological end. Rocks fell because that was their inherent property. Thus, certain Natural Law philosophers made arguments such as that the male sex organ's teleological end was the insemination of a woman and thus things such as masturbation and anal sex were expressly prohibited. This position was attacked from within the philosophical circle, but the true death of this idea can be connected to Darwinism. Evolution, which none today can reasonably deny, posits the theory that the universe develops in a nonteleological way. Thus, the eye which we use for sight was not designed for sight, but rather developed over an extended period of time. While some would extend this to deny the Christian doctrine, there are arguments which show the compatibility of evolution and Christianity.<sup>38</sup> Regardless, we

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38 Finnis, John. Aquinas: Moral, Legal and Political Theory. Oxford Press 1997. See Chapter 10.

find that it is very difficult to discuss the duties of man without using teleology. As Leo Strauss notes that in modernity we are “forced to accept a fundamental, typically modern, dualism of a nonteleological natural science and a teleological science of man.”<sup>39</sup> This statement is representative of Straussian and many Natural Law movements. They believe that our natural inclinations are what inform our understanding of the Natural Law. However, there is a high degree of difficulty in utilizing the older Natural Law arguments in modern society as often one will get caught up in what are the natural inclinations and what are the unnatural inclinations. For instance, for a homosexual male the teleological end of his sex organ is not insemination as he has no interest in the opposite sex. If one accepts that homosexuality is genetic then one has to find a reasonable teleological end of the homosexual male’s sex organ. I have not found a very persuasive argument for this that does not presuppose a belief in orthodox religious beliefs. It seems that teleological arguments work well once a framework is established, but in the deconstructed post-modernity the teleological argument falls on deaf ears.

Enter the New Natural Law Movement: the non-teleological New Natural Law Movement aims at avoiding the naturalistic fallacy while still positing a belief in an objective moral truth. If the NNLM attempts to construct a non-teleological argument then why do members of the NNLM look to St. Thomas Aquinas as their intellectual Godfather? Was St. Thomas Aquinas’ philosophical understanding of the Natural law based upon a teleological argument? In the famous and disputed passage of Book I-II, Question 95, Article 2 we find the statement, “The precepts of the Natural Law in man

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<sup>39</sup> Strauss, Leo. Natural Right and History. The University of Chicago Press. 1953. Page 8

stand in relation to practical matters, as the first principles to matters of demonstration. But there are several first principles.”<sup>40</sup> Further, “the precepts of the natural law are to practical reason, what the first principles of demonstrations are to speculative reason; because both are self-evident principles. Now a thing is said to be self-evident in two ways: first, in itself; secondly, in relation to us. Any proposition is said to be self-evident in itself, if its predicate is contained in the notion of the subject: although, to one who knows not the definition of the subject, it happens that such a proposition is not self-evident.”<sup>41</sup> Thus, moral reasoning based on Natural Law focuses on certain precepts which must be applied with regards to the particulars. Most importantly, Aquinas says that this is the province of practical reason. Thus, one could argue that the Natural Law is not based on natural inclinations, but rather rooted in practical reason or practical reasonableness.

Thus, the NNLM breaks from past interpretations of Aquinas, presenting a new argument which can withstand the criticism of those inspired by modern science. The self-evident precepts may not be rationally determined, but they can be dialectically defended. Aquinas begins by the basic premise that we exist and that ethics is the pursuit of the good. From these two premises Aquinas determines that, “the first precept of law... (is)...that good is to be done and evil is to be avoided. All other precepts of the Natural Law are based upon this: so that whatever the practical reason naturally apprehends as

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<sup>40</sup>Aquinas, St Thomas. The Summa Theologica. Part I-II, Question 95, Article 2

<sup>41</sup> Ibid

man's good (or evil) belongs to the precepts of the Natural Law as something to be done or avoided."<sup>42</sup> Note that the practical reason "naturally" apprehends by placing reason above all non-rational desires and passions, focusing on social cohesion and the flowering of man instead of Epicurean delights. The NNLM has artfully determined the basic human goods necessary for the flowering of humanity: practical reflection, life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion.<sup>43</sup> The prudent statesman must proceed in all matter with the aforementioned list in mind in order to make a principled decision.

## B. The Moderns

In covering the Ancients one striking feature is we have not once mentioned the concept of Natural Rights. For your contemporary student, the most common author on a doctrine of transcendent moral law is John Locke. In John Locke we find a declaration that individuals have a right to life, liberty and property and that the government is established solely to protect these rights.<sup>44</sup> These interesting sentiments warrant a separate analysis, but first we must ask about the continuity between John Locke and the tradition

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42 Ibid

43 Finnis, John. Natural Law and Natural Rights. Oxford University Press. 1980.

44 See John Locke's Second Treatise on Government.

of Natural Law. Locke uses the traditional language of the Natural Law and cites “the judicious Hooker,”<sup>45</sup> but does he espouse a similar doctrine?

In order to explain the answer to this question we must depart from the discussion of Natural Law and lead a foray into the mind of the Scientific Revolution. During this age we find an explosion in scientific knowledge through the application of new techniques. The three primary developments which allowed for such great scientific progress are rationalism, mechanism and empiricism. Rationalism, the belief that everything should be deducible from true premises without regard to past knowledge or mysticism, provides an interesting contrast to Natural Law thinking. As we noted earlier Natural Law thinkers of the past regarded ethics and the law as matters of practical reason and rationalism is clearly speculative reason. Thus, we must make ourselves ready to see the sleight of hand committed by the Moderns by substituting in rationalism in the stead of practical reason. Further, mechanism, the ability to pluck a part out, reform it and place it back into the system, as in the case of a motor. Mechanism also stands in stark contrast to the traditional Natural Law; we have already discussed through Aquinas the desirability of maintaining customs and continuity. Mechanism, when applied to society, could lead thinkers to decide to simply pluck an institution out, perhaps the law, “fix” the law, and then simply place the refurbished institution in society. The rationalism and mechanism of modern science, which influenced modern “Natural Rights” philosophers, is a negation of the beliefs of traditional Natural law. Thus, statements by critics of the supposed Natural Law like, “Natural rights is simple nonsense: natural and

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45 Ibid

imprescriptible rights, rhetorical nonsense — nonsense upon stilts,”<sup>46</sup> may be attacking the Natural Rights doctrine of the Enlightenment period, but it does not extend to traditional Natural Law. Indeed, we shall see that people like Bentham owe their intellectual lineage to supposed Natural Rights thinkers who in truth were destroyers of the Natural Law.

**Thomas Hobbes:** We shall begin with the first man to apply the new science to society: Thomas Hobbes. To understand Hobbes we must first understand his pretended doctrine of Natural Law.<sup>47</sup> The whole basis of Hobbes’ doctrine of Natural Law is “man is forbidden to do that which is destructive of his life.”<sup>48</sup> Right away we notice that the imperative is directed towards an individual man and not towards society as a whole, an obvious departure from traditional Natural Law. Hobbes wished to construct a doctrine which can be utilized anywhere in the world, treating human beings like individual atoms to be organized. We further notice that man is not enjoined to seek the good, but to avoid pain and seek pleasure. As both Strauss and Stanlis point out Hobbes has fused traditional Natural Law talk with the new Scientific Revolution’s techniques and the Epicurean notion of man. What is particularly odd is that to all those within the tradition there is a

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46 Bentham, Jeremy. Anarchical Fallacies. 1843.

47 The following analysis is dependent on Strauss, Leo. Natural Right and History. The University of Chicago Press. 1953. And Stanlis, Peter. Edmund Burke and the Natural Law. The University of Michigan Press. 1958

48 Van Baumer, Franklin. “Thomas Hobbes: Leviathan.” Yale University Press. 1978. Pg 344

sharp contrast between the Epicureans and Natural Law thinkers. Hobbes, “propounded a mechanistic psychology in which man was conceived as a purely physiological creature whose actions or “motions” were either conditioned responses to sensations, or the spontaneous overflow of infinite and self-generating passions.”<sup>49</sup> Rooting the Natural Law in individual’s self-preservation instead of the flowering of the individual, Hobbes’ scientific Natural Law falls victim to the communitarian critique that man is not an individual and further vitiating the bonds which hold man together, including custom, is destructive to society. Despite the faults in Hobbes’ theory, core ingredients continued on, even if the absolute power of the king was rejected.

**John Locke:** As with Hobbes, we find Locke’s doctrine of Natural Rights highly individualized, holding regardless of time and place, and focused on the pleasure and protection of individuals. It is essential to note, “the fundamental similarity between Locke and Hobbes in their common empirical theory of knowledge and mechanistic conception of human nature. Locke’s empiricism and denial of innate ideas is indistinguishable from Hobbes’ basic principle that all knowledge is derived from sensation of external objects. In this, Locke contradicts both his professed faith in Christian revelation and his declared belief in innate rights to life, liberty and estate of traditional Natural Law.”<sup>50</sup> Stanlis goes on to note that Locke’s Second Treatise has an

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49 Stanlis, Peter. Edmund Burke and the Natural Law. The University of Michigan Press. 1958 pg 19

50 Ibid 21

odd schizophrenia in the defense of rights and government: at one time Locke seems to defending Natural Rights while at another he seems to applying a mechanistic utilitarianism, hoping for the greatest pleasure for individuals. For this reason we can say that Locke and Hobbes' thought does not belong to the traditional Natural Law.

**Edmund Burke:** The model statesmen and patriot, Edmund Burke represents the best of the Natural Law tradition in his attempts to deal with the problems of his age. We must deal with the curious problem that from shortly after Burke's death to the early 20<sup>th</sup> Century, Burke was seen as opposed to the Natural Law. In Burke we find such passages as "what is the use of discussing a man's abstract right to food or to medicine?"<sup>51</sup> or, "government is not made in virtue of natural rights,"<sup>52</sup> however plucking such quotes out shows the potential damage of leaving the context behind. Firstly, the second quote ends with, "which may and do exist in total independence of it; and exist in much greater clearness, and in a much greater degree of abstract perfection: but their abstract perfection is their practical defect,"<sup>53</sup> which clearly cannot be construed as Burke denying the existence of "natural rights." Rather, Burke is laying siege to the faux natural right doctrine of the Enlightenment which steals the words, but the not the spirit of traditional Natural Law.

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51 Burke, Edmund. Reflections on the Revolution in France. 1790

52 Ibid

53 Ibid

With Burke's conception of the Natural Law we find an interesting blend of ideas. Firstly, it must be noted the influence of Hume on Burke. Without going into the intricacies of Hume's thought, we may simply note that theories using natural inclinations to derive what ought to be done must be rejected. Burke as a statesman and philosopher disdained systems, for systems are sublime, but there is danger in the sublime. In the stead of a philosophical system Burke employs a type of moral prudence. As with the traditional Natural Law thinkers, Burke's moral prudence disdains the use of speculative reason in social matters. However, Burke's practical rationality is much more akin to Cicero's than Aristotle's or Plato's. Like Cicero, Burke has a reverence for history and organic growth. However, one must ask how organic growth of society is preferable to more sudden change. As we discussed through Aquinas part of what gives the law temporal legitimacy is a customary acceptance of the laws; laws that are simply imposed upon the people will be found faulty. The nature of power and legitimacy can be encapsulated perfectly in Talleyrand's advice to Napoleon that one can do everything with bayonets, but sit on them. Burke saw that the particular, entailed rights of countries as essential to fulfilling the Natural Law and flowering of humans because they allowed for social integration. Further, customs and history which people use for communication could be abstracted from to solve problems. In Burke's attempts to reconcile the American colonies and England, Burke constantly decried the use of abstract theories of sovereignty, while asking people to remember the history of political struggle in England. In the case of the Welsh, the English had extended Parliamentary representation and the conflict had been resolved, while extending the greatness of England.

In a way we can say that Burke's conception of the Natural Law is much like the early common law development which explicitly accepted the Natural Law and Christianity. Certain precepts were known through experience, as with the NNLM, which cannot be transgressed. Burke's moral prudence does accept that there is an abstract justice, but that it cannot be immanentized. Instead justice must be approximated by allowing for individuals to ply their trade in a free market setting while respecting the particular customs of the nation. By allowing people economic latitude and demanding a reverence for moral norms Burke sought an economically powerful and morally vibrant nation. Change will be governed by abstracting from the pre-reflective while attempting to enlarge the ability of the polity to experience some of the basic human goods.

### III. Application of Natural Law Thinking

We will now touch on an important moral issue which continues to be debated every election cycle and in between: abortion. If one does believe in the Natural Law the pro-choice position is not a tenable one. By allowing for a mother to terminate the life of a would-be child society is allowing that mother to violate the most basic human good: life. The most common response is that the developing fetus is not a human, but often this response does not clarify when the DNA package that will develop into a human becomes a human. Consider for example Peter Kreeft's argument that if you see a lump on the side of the road that could be a person you do not run it over. Similarly, if we cannot determine exactly when the fetus becomes a human we should not just assume the bundle of cells can be dismissed whenever we see fit.

If one does accept the premise of Natural Law and wishes to present a pro-life argument how should one proceed? One common argument heard against abortion is that abortion is a violation of the rights of a fetus. However, we must ask ourselves if such a rights-based argument is the appropriate avenue. After all, did we not already point out the damage done to the Natural Law by using abstract reason to derive rights *a priori*? Further, by positing individual rights are these thinkers undermining their own position?

If we deny the existence of abstract rights then can we still talk about the rights of the fetus? In criticizing the “rights-talk” of anti-abortion advocates such as Hadley Arkes we will develop a scheme of ordered liberty which derives itself from a respect of certain precepts of the Natural Law. As we pointed out earlier the conception man as an individual is difficult to possess because of the communitarian critique. However, by positing certain natural rights which can be derived by reason, a la Kant, we see an emphasis on the individual. Once we see an emphasis on individual rights a concern over vitiating the bounds of society should develop. Can we not defend the good of life without saying that each individual has an abstract right to it? If we take such a tactic then what must be say about capital punishment of a serial murderer. Clearly the serial murderer does not respect life and executing the murderer would send a community statement about the value of life and the potential punishment for those who transgress the peace. Execution is a matter of Justice, a matter of resolving the tension between right and wrong. However, if we implement the “rights-talk” we find ourselves on shakier ground in defending execution and other forms of community defense. If man is not an individual, but a person it makes sense to treat man as such and avoid the “rights-talk.”

Instead, we will value the most basic human good: life. If life is to be valued at all it seems that the most innocent of lives should be defended. The logic that it is ok to arbitrarily end the life of a fetus, whether or not we are sure it is a “human,” but that it is unacceptable to execute a mass murderer seems a little odd. In our scheme of ordered liberty it makes sense that rights are only given in proportion to the people’s willingness to choose correctly. If all people were murdering savages it does seem questionable for them to have the same rights as a refined society. In the case of the right to life, we can say that life is a good, but that a person’s actions can nullify his claims to have his life protected. However, with the case of a fetus, as a fetus certainly could not have murdered someone, abortion cannot be accepted. The object of Natural law thinking is to pursue the course of actions which will allow for the full flowering of the person. How can a person flower if they are never given a choice as to what life they will lead.