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Natural Right, Not Human Rights

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Pierre Manent, *Natural Law and Human Rights: Toward a Recovery of Practical Reason* (University of Notre Dame Press, 2021).

Pierre Manent's work, *Natural Law and Human Rights*, continues his life-long quest to understand both the nature of the political order and the nature of man as the rational, and thus, the political animal. He devoted a number of his works to study the seismic shift that occurred when the project of modernity replaced ancient political thought with modern political thought. In the 2010 work, *Metamorphoses of the City*, he recognized what has become the new central issue in his political philosophy:

It appeared to me more and more clearly that the formation of the Greek city represented a much more substantial anthropological transformation, if one can use the term, than the modern democratic revolution, which moreover was in some sense built upon the Greek one. Instead of seeing history as facilely running toward us, toward the grandeur and miseries of our democracy, I saw it more and more clearly unfolding starting from the prodigious innovation that was the first *production of the common*, something much more substantial and moreover much more interesting than the virtue and vices of our too-famous equality. I saw more and more clearly the forms of our common life unfolding from the first and master form as so many reverberations of this original conflagration, as so many metamorphoses of this primordial form. (14)

The Master Form of the Political

Natural Law and Human Rights views the modern political revolution and its current form of thought, the thought of human rights, as a decisive falling away from the prodigious innovation that first produced the master form, the true political human order of operation

and practice. This new work also concentrates its analyses upon the radical distinctions in the various anthropological doctrines found in the history of political philosophy.

Politics itself, the political order, originated at a certain time, in a certain concrete human association, the Greek *polis*. This innovation reformed human self-understanding because in the *polis*, man came to actualize his dormant natural capacity for practical reasoning in full. The idea of politics and its original conceptions arose from philosophical reflections on this original political *experience*. The political is a certain experience of certain men, the politically-minded who governed other like-minded, fellow citizens for the sake of living one communal way of life, in a shared work, a civic operation, a work of self-rule of equals by right reason, human law. Thus, for Manent, the political consists of the holding together of three factors: one, the idea of a human bond; two, of a common action; and three, of a commanding law—"that is, of practical reason in its commanding functions." This unique political operation had become for these first citizens *the* human operation, an operation surpassing in its perfection(s) the commanding operations involving one's family, one's war party, and one's clan or tribe. The concerns of pre-political men were essentially directed to what one conceived as one's private life, the life of one's own.

[T]hese rights and these new laws are not as such respectful of the existing laws, of the existing political institution and its order. This regime ignores the ends, the good, and the human order that practical reason has established. It denies what is the human order.

At some time, for some outstanding reason, circumstances arose which vigorously suggested to these pre-political individuals, the fathers of the families or the clan, that their private lives now required them also to live public, civic, lives; to unite in one common bond with other families and their households *and* through one common operation to live a shared way of life under laws, rules of action, that *they* considered as necessary for their now shared good. This good was an ethical common good, a binding good, and not merely the good of one's comfortable self-preservation. A common bond and a common concern were established through civic laws, shared rules of action and a shared *philia* or concord (*homonoia*). Although the source of each family's wealth and substance (*ousia*) remained principally the household's (*oikos*) concern, the household's good threatened by enemies was now seen to require for its good that they produce a civic common good. The measure and the rule of their actions, virtues, and other perfections was now found in, and measured by, law and the public virtues and civic operations that the law commanded. Within the political order, the concerns and cares of their souls transcended their merely private and bodily concerns. At this point in human history, men found that to be men properly, they needed to be provident not only over the private order of their lives, but they also needed to be provident for others as well, fellow citizens in a shared operation. Those fellows outside the household, but within the city, were now treated with respect and justice, and therefore were seen as equals civically. These men came to recognize that their natural needs *and* powers extended beyond their bodily and daily needs. Their souls' operations needed to be perfected within a more perfect, a political, association. The task of perfecting their own life through ethical choices and governance was now seen as requiring the tasks of some men perfecting political operations by means of the four cardinal virtues. So, the ethical operations that can perfect each person's soul were now seen to be themselves perfected precisely in the political order. As the household now required

the *polis*, so ethics now required a politics. Thus, Manent can insist that the human order is most properly found in the political order. This was the innovation of the West and the source of its strength, a strength Manent sees now to be quite weak.

State of Nature; A State of Indetermination

If man's political nature is so valuable to living a human life in full, why is this no longer recognized by modern man in *his* self-understanding? More importantly, why are we now "the being with rights"?

A civilizational crisis was reached in the early modern period when Western man began to see himself as simultaneously belonging to both a distinct political community—i.e., seen as having naturalistic rational explanation—and the supernatural community of the Church. Now man had two rules of his soul's actions because he had a proper and full allegiance and obligation to two kings. As a citizen of two distinct cities, his own soul had two perfecting common goods, two sovereign laws.

To get around this overdetermination or confusion of the human phenomenon, some resigned themselves or resolved to imagine and to produce a new basis of possible human determination, or an indeterminate basis of humanity, whose law of construction demanded that it be emptied of political as well as of Christian determination—a basis of humanity on which to build a human world that would bring to light neither the political nor the Christian phenomenon, and thus one in which the political operation as well as the Christian operation would be in principle impossible, at least in their complete forms. (57)

Modern man is thus envisaged as no longer ordered "either by the law of the city nor by the law of conscience" (127). This view of man is considered to be true because under the influence of Hobbes and now Rawls, we have come to see, or at least imagine, man as always already naturally an inhabitant of a hypothetical state of nature, and as such, each man is lawless by nature, a mere individual and not essentially a political agent. Man is now seen as "the being with rights" (cf. 46–54). The state of nature is a philosophical construct designed to render natural law as freedom under law incoherent because we now see humanity as having "the almost unlimited capacity to produce itself according to no rule or criterion" (5–6). Human nature is thus seen as involving "no principle of power or of goodness capable by itself of ordering the human world" (6).

Freedom Under Law: Not Freedom *Simpliciter*

The issue here for Manent is this: Can we, as a society, so easily dismiss the notion of natural law as not only "indefensible" but also as "devoid of meaning" (85)? Natural law teaches that man has his freedom only under law, under both natural law and divine law.

The teaching of human rights teaches that our freedom is "born as nature liberated, as nature unbound: freedom for the moderns is first of all the removal of impediments to nature" (86). Are we alone among the determinate beings that are in this world in not having a nature that in some way determines our mode of being and activity?

The definition of man as the being with rights has plausibility only on the condition of an indefinite or de-regulated human activity, or a human activity *with no other rule* than the equality of conditions at the start, an equality which

for its part demands that human beings avoid deploying capacities or competences that might give some a superiority of legitimate command over others, an intrinsic and, as it were, 'natural superiority.' (85)

Armed with this self-understanding of man as freedom and as equal, natural law is understood to be indefensible.

For Aristotle, the natural ruler, the one fit to rule is he who has foresight, who with his providence can provide for himself and others what *they* need in common to be successful in their actions. In war, in sports, and in business even we moderns recognize this natural superiority and seek such a one to be our leader. For Manent, natural law, when it is completed by the virtue of prudence, is the capacity within man to perceive and to command what ought to be done, i.e., what is not yet but which, if we are to do right, we must foresee and accomplish here and now. It is this conception of man as natural ruler *and* as naturally ruled that modern theory denies. Deliberative choice and commanding are necessary "only because the human world is *essentially albeit potentially ordered*, because it is *only thinkable or livable* by these rules and reasons that give meaning to human action, however human beings may follow them" (70). This is why Manent argues that law and its commanding is necessary for humans to be fully human. "Every action and every plan of action *confronts* us with the question of the rule of action and exposes us to the judgment of those close to us, of fellow citizens or of our conscience: is our action, or will our action be, courageous, just, prudent, moderate" (77)? The unexamined life is not worth living. We are free, but we are responsively, reflectively, and responsibly free.

What is freedom for the liberal doctrine of human rights? Manent illustrates for his readers what freedom here means by using liberalism's notion of sexual freedom. "What is this freedom if not the suppression of all natural, legal, and moral obstacles to the satisfaction of sexual desires" (86)? Notice that these desires are a given founded in our sentient and individual nature. So, "freedom here is in service of natural necessities and tendencies, or in service of a desiring nature that violently rejects any suggestion of a possible opening to freedom of reflective choice" (ibid). The principal role of reason here is to be the scout for our naturally given sense desires. Reason here is not commanding human activity for human nature to achieve its fullness, the completion of one's rational and moral capacities. Our nature here is reduced merely to our nature "as a living being. It is this unit of life and quantity of being that wants to live and persevere in being. This nature constitutes one's individuality *as a moral fact*, because they are all concerned with *this* natural unit of life.... This nature is stripped of all complexity or inner fullness." It "has nothing to teach us concerning the human beings that we are" (9).

The modern notion of freedom thus seeks to liberate our animal and passionate nature from being controlled by our reason's command, which could employ these desires for achieving man's moral good. At the core of the liberal project there is "a resolute and explicit" critique of "the Greek conception of reflective choice as well as the Christian conception of free will and conscience" (87). For these moderns, there is a radically different account of the origin or *arche* of human action at the center of human activity. For them, "the decision that determines action is the last step in a process that is finally mechanical, a competitive process that gives advantage to the strongest 'preference,' a process of which the individual is the site and the witness, but in which he does not intervene as a truly free agent" (88). Man is thus the site and the passive witness to a merely natural process, where "natural" means a process not ever to be controlled or commanded by foresight or prudence.

Each of us has the right to what we desire, to what we undergo within the depths of our

primitive animality. This “moral fact” leads us as a society to always be open to expanding the range of individual freedoms because there can always be a new right coming to the surface of consciousness in one, or in some among us. This is because in the depths of the human soul, in some disturbed or advanced individuals, there is a virtual infinity of natural urges just awaiting the next level of liberation from one’s private and hitherto unexpressed desiring nature. This becomes a desire that we, the public, must come to recognize and acknowledge as true aspects of humanity. If we fail to do so, we fail to be progressive, to be a humanitarian.

For Aristotle and Thomas Aquinas, men at the highest exercise of their practical reasoning established themselves as having dominion over themselves. Thus, freedom for them was not the goal of human virtue, it was the condition for one to be responsive to what was asked of them and to be responsible to themselves and to the others around them. The founders of modernity denied the freedom of self-mastery, the freedom under the law of nature and of God, so that they could establish this new freedom as “the ultimate or main goal” of our humanity. But as C. S. Lewis also recognized, this modern freedom only liberates man’s individual sentient nature. It does this at the cost of denying him the self-understanding of what it truly means to be free as a man. This modern freedom from the natural law, or the Tao, is necessary to make us “like masters and possessors of nature” (122). Unfortunately, it leaves us as mastered and possessed by our concrete animal nature.

Natural Right: Not Human Rights

For Lewis, it leaves us as “trouser apes” or “men without chests.” For Manent, it leaves us as slaves to human rights. “Once established in its exclusive legitimacy, the idea of rights tends to become an empty form in search of its matter, and everything, literally everything can become matter for this form. Any and all aspects of human life, from the most evident to the most secret, are henceforth open to its legitimate claim” (48). The indefiniteness of this abstract theoretical vision of human nature is the source of this instability, this progressiveness. “By reducing us to the most impoverished common denominator, it offers itself as a basis indifferently available for all imaginable human possibilities in their infinite variety” (9). It also leaves us with no impetus, no desire to retrieve “the production of the common.”

Given our increasing depoliticization, we see ourselves as living in a mere collective of individuals who lead their separate but equal lives, where no person acts in the full sense of human operation. “Under the pressure of the state, the human being is reduced to the condition prior to action, to the condition of the individual” (62). What is the individual for Manent? “The individual is defined abstractly as the being with rights and experiences himself concretely in the self’s body as suffering or enjoying, in the passivity of the self’s body *as* suffering or enjoying” (62). Thus, law has “as it were no more practical matter to rule” (78). Now, the state’s task and its law’s task is to make us all recognize and publicly acknowledge the right holder’s “subjective suffering or enjoyment.” What does recognize mean here? To recognize is “to grant it a value that can be opposed to any law or rule whatsoever” (78).

Can a society long exist under the regime of human rights? We have found that these rights and these new laws are not as such respectful of the existing laws, of the existing political institution and its order. This regime ignores the ends, the good, and the human order that practical reason has established. It denies what is the human order. “Human rights by themselves provide no positive determination of the contents, or of the ‘goods’ of human life.” (48). Before we extend the rights of access to the university, to the bar association, to marriage, and to schools of medicine, it is important *first* to have some clear idea of the meaning of the university, of the bar, of marriage, of the profession. We may practice the art of medicine for a variety of felt or subjective purposes, but the good or *telos* of medicine as a profession is

objective and thus this good can be destroyed if in our purposes, we ignore its good and its objective rules of perfection to suit our subjective purposes.

Know Thyself

Manent begins and ends this book with admonitions for us to restore the intelligence of law by recovering Thomas Aquinas' teaching on natural law and the act of command. We have seen that he does so because he wants to restore a better self-understanding among his readers of who man truly is and what human nature as practical rationality demands of their actions. Natural law already provides us with the needed rule and measure of our noble actions if we will but consult it. "Natural law guides action but does not determine it, and thus does not command it. Only the agent, enlightened by natural law, and alert to particular circumstances is fit to make the reflective choice that leads to effective action and commands it" (111). "If it were not for the authority or a resource like natural law, there could not be human law in the proper sense, since human beings would not have a way to evaluate what they choose to call Law" (112). Natural law is, as Thomas himself asserts, the light of our natural reason's participation of the divine light of God's wisdom and law. "Among all beings ... the rational creature is subject to divine providence in a more excellent way, in that it is itself made a participant in this Providence, by providing for itself and for others." [1]

This is human free action, exercising our freedom under human law and thus also under divine law.

[1] *ST* I-II, q. 91, a. 2 quoted in *NLHR*, 129.

