

NATURAL RIGHTS, NATURAL LAW & NATURAL JUSTICE — A Theoretical Construct

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ABSTRACT

Natural Rights and Natural Law are concepts well-known to political theory and legal discourse. Natural Justice, as used here, is a less-common concept but still integral to its better-known associates.

This essay is an attempt to construct a theoretical framework for these concepts — to demonstrate the essential character of each and the interaction between them in embryotic, untarnished society. It endeavors to explore the origin and character of each, and then their particular attributes.

More mature society, however, later determined that the introduction of Positive Law (in the sense first employed by St. Thomas Aquinas) was necessary. The essay then concludes with an exploration of the role and limitations upon Positive Law.

This essay is intended neither to be exhaustive nor to explore the tenets of these concepts as developed by its classic expositors. Rather, it was intended to provide a possible new perspective upon these concepts and to be utilized in understanding better the philosophical background of another essay by the author, of which these concepts were basic premises, and essential to the perspective, of it. For in its following form it was first included as an appendix to the author's *Interstice Amid the Fabric of Life / Volume 1 : The State of Primordial Mankind*.

Consequently, as it was not initially composed as an independent essay, its deficiencies may be obvious; further consideration and development of it would seem to be propitious. Nevertheless, this discussion is tendered as a possible modest contribution to the literature upon these issues.

Origin and Character

When the first inhabitant appeared he was unrestricted — other than by his personal mental and physical limitations, as well as by his locality's geographical features — in his liberty of choice.¹

¹ As elsewhere contrasted in this essay, **liberty** is the right to perform an act, while **freedom** is the right to not perform an act; Liberty then is *active*, and Freedom then is *passive*. In the natural state original man was not constrained in his actions by the choices of other inhabitants; only with expansion into the unitary family, extended family and community was there sufficient habitation concentration to result in inhibition and limitation of his

He was endowed with the right to select the course of his life, those means and devices to utilize in order to preserve it, the area of habitation for it, his food for survival during it, and the labor to be performed to secure those goals. These then were his **Natural Rights**.

These Natural Rights are within the control of each individual. Nevertheless, these Natural Rights cannot be exercised randomly. As Liberty is an active state, it entails conscious, intentional behavior. However, as all energy is finite, and particularly that available to any individual, there must be a direction and vector for this behavior in the natural state; otherwise the energy that would be utilized to enable performance will be dissipated and no longer available to that individual.² This dissipation of energy then would restrict the capacity of the individual in the exercise of his Natural Rights.

But such a consequence would constitute a deprivation of these Natural Rights. And the endowment of these on all persons is an axiom. Thus, since such a state is inconceivable as it would destroy the system, there must exist certain principles for the guidance and regulation in the exercise of these Natural Rights. In these principles then is the basis and substance of **Natural Law**.

Natural Law then consists of original, inviolable, universal principles governing and directing human conduct.³ Any violations, much less repudiation, of Natural Law necessarily leads to social decay and destruction. For as they are integral to the system, the system cannot survive without observance of them.⁴

Not only the inaugural inhabitant but all successive inhabitants were likewise unrestricted, endowed with these Natural Rights and subject to this Natural Law — of the same degree and equivalence, as if they had been the inaugural inhabitant. For it was the **system**, not their **predecessors**, which endowed them and subjected them. Therefore it was beyond the power of any predecessor inhabitant, either individually or collectively, to alter either.

Only when contact occurred between these inhabitants did the necessity arise for mutual restriction of the scope of their liberty. And even then the degree of this restriction was only in proportion to the duration of the contact, whether temporary or permanent.

Only in community did each of the members of it voluntarily abridge their Natural Rights — and then only some of them and only to the extent necessary to remain in community. By mutual concurrence upon appropriate and necessary restrictions in response to exigencies encountered in

choices. Liberty then was the natural state and freedom was only a bulwark erected later, to preserve a certain scope for his independence in choice. Thus, *liberty is the **prime** right*.

² Admittedly this unused or misused energy will not be destroyed, but it will instead migrate to another person.

³ As they channel this conduct in particular directions, they are also *restrictive* in that they channel conduct from certain directions. However, as Liberty remains the prime right and it is affirmative in character, emphasis should remain on the **mandatory nature**, rather than **prohibitory results** in the application, of Natural Law.

⁴ In the penultimate sentence it is demonstrated that Natural Law is essential to the *social* order. In this sentence it is demonstrated that Natural Law is essential to the *natural* order: the world existed before human life; the world in that stage of existence did not expire or devolve into destruction, but rather thrived; a natural order then must have sustained the world; the natural order then must have been sustained by Natural Law; and thus Natural Law predated the social order.

community, gradually considering alternate solutions to each unique circumstance, uniform standards of fairness and equity were identified.⁵ This then was Natural Justice.

As civil society enlarged, further adjustments to practices, in order to preserve peace and order, were required. These however, since Natural Rights, Natural Law and Natural Justice existed before any inhabitant, much less community, emerged, did not and could not redefine, much less abrogate, them.

Attributes

Natural Rights

These original rights are inherent in and implicit to nature. While these rights can be codified, they then need not be made explicit as they are integral to the system of life, and any absence of codification cannot be construed to abrogate or restrict them in any degree. None are displaced by any delegation of authority to anyone else unless possibly by explicit and unambiguous surrender.⁶

These original rights consist of those which are **primary** and **secondary**. Primary original rights cannot be divested, though secondary original rights, for predominant reasons and with unambiguous consent, can be potentially and partially divested. Those primary original rights, ones which cannot be divested, consist of the following:

- life
- self-defense
- a domicile and shelter within its curtilage
- food
- performance of productive labor

Those secondary original rights, ones which can be potentially and partially divested, consist of the following:

- movement
- clothing
- procreation

Natural Law

Natural Rights and Natural Law, being integral to the system, originate concurrently. However, as Natural Rights can be exercised in isolation, Natural Law, or at least a segment of it, initially remains inchoate. Yet, even if partially inchoate, Natural Law always remains present and active.

⁵ These standards were not developed, but rather only identified. For they are not the invention of human intellect but formed by and preexisting in nature, the only function of human intellect being to *discover* them.

⁶ While potential surrender is posited here, the theoretical possibility thereof is more complex. This question will be explored later in this Appendix.

For, as already observed, mankind in its natural state was endowed with certain essential rights. When exercised in isolation, and thereby under the control of a sole individual, order is present. However, when exercised in sufficient proximity to another individual as to limit the other person's liberty, then disorder is introduced.

This is the consequence of Natural Rights being of equivalent characteristics and with equivalent orbit in their effects when exercised. Accordingly, when an individual no longer exercises these rights in isolation, the orbit of their effect will overlap the orbit of another. But since no two properties can occupy the same space, collision between these sets of rights — even if not necessarily conflict between the individuals — is inevitable.

Accordingly, a mechanism must exist to enable order.⁷ Otherwise chaos would have necessarily soon ensued incident to this clash of orbits of Natural Rights, with all inhabitants subject to endemic war and insecurity. But entropy is not the natural state of a system, but rather is only its end, deteriorated state. Consequently, it would be impossible for disorder to be the natural state of mankind; ergo, it must be concluded that conditions promoting and constituting **order** were originally present. These conditions were the principles of Natural Law ensuring survival of mankind.

What is the *nature* of Natural Law? In analyzing it let us look at the prime Natural Right, viz, Liberty. Liberty endows each person with the right of choice. It is therefore individually-oriented, with the choices reflecting the person's unique psychological composition. As these psychological compositions are unique, the choices of any set of various persons will then proceed in disparate directions⁸; ultimately they will converge on each other. These multiple and conflicting vectors though are contrary to order, the innate quality of the natural state.

Natural Rights thus require direction. Natural Law directs the proper exercise of these Natural Rights. Natural Law then is **mandatory** in character.

Now, what are the *principles* of Natural Law? Being integral to the system, these principles are not merely inviolable but fully and perfectly integrated. But mankind's comprehension is congenitally limited and imperfect — demonstrable not merely empirically but as mankind is but an addition to and component of the system and therefore subordinate to it. Therefore, the pure

⁷ While Natural Rights are the birthright of every person, they do possess a latent potential toward *disorder*; this is not their inherent quality but only a product of misuse as the system itself tends toward entropy. The inherent quality of Natural Law is *order* and, when not obstructed by human intervention, thus operates in tandem with Natural Rights to maintain the integrity of these rights. Therefore the relationship between them is symbiotic, each enhancing and effectuating the other.

⁸ As each person is imperfect, as well as complex, his various choices will frequently themselves be of disparate quality and effect. This inconsistency will itself produce a certain degree of disorder; but it would be of relative insignificance when the person is operating in isolation. It is when the orbit of the effects of an individual's actions intersect the orbit of another — and particularly when the orbits of multiple persons intersect — that a propensity to systemic disorder is present. (Despite the deprecation in the first two sentences of this footnote of the significance of disparate individual choices, yet, when isolation ceases, they would have the potential to exacerbate systemic disorder.)

character and complete components of these principles are essentially incognizable and imperceptible.

Yet, the *core* principle is manifest. The function of Natural Law is to institute and maintain order. Thus, the core principle is **harmony**. From this core are radiated the corollary principles.

Unlike Natural Law, the scope and elements of Natural Rights are known. Each person then knows he is endowed with them. Therefore, he knows that all other persons are likewise endowed with them.

In a state of harmony there is understanding of and appreciation for the conditions and circumstances of the social environment, including the knowledge of this universality of Natural Rights. They thereby are then mandated to observe *respect for the Natural Rights* of each other inhabitant. **Respect for the Natural Rights of others** then is a prime sequential mandate of Natural Law.

Nevertheless, a course of activities by one will necessarily intrude upon the course of activities by another.⁹ Thus, some exercises of Natural Rights by one person will necessarily infringe upon some exercise of Natural Rights by another.

This infringement, though, is in conflict with the mandated respect for the Natural Rights of others. How then to resolve this conflict? One can only do so by structuring the activities in which they engage so that these observe the Natural Rights of the other inhabitants. To do so, they are mandated to *mutually cooperate* with any inhabitant who is affected by any of their activities. **Mutual cooperation** then is another prime sequential mandate of Natural Law.¹⁰

Further, if a given inhabitant is more adept and successful in accumulating resources, they are mandated to *share those resources* with those inhabitants who are less privileged — as the inequality between them will, to some degree, produce disharmony; the occasion and extent for this assistance, though, remains an election and exercise of choice by the more-privileged inhabitant, as he remains endowed with his Natural Right of Liberty. No inhabitant is compelled by any collective body of society to perform these acts of charity, but rather only compelled to so by Natural Law. **Charity** then is one more prime sequential mandate of Natural Law.

Other prime and corollary principles must exist but, not only are they beyond the ken of this writer, they are by definition not fully cognizable. Rather, only the failure to observe these principles is always cognizable; for any neglect in adhering to these principles will result in disharmony in the community — and this will be the evidence and the proof that the community is in-

⁹ Even independent of the influence of randomness, some of the vectors proceeding from a certain point will necessarily intersect some of the vectors proceeding from another point; it is impossible for all vectors from multiple points to be parallel to each other. Therefore, intrusion is an inevitable condition.

¹⁰ The combination of “mutual” and “cooperation” may appear redundant. However, one can adjust his intended actions to avoid undue imposition on the rights or actions of another without corresponding behavior by the latter. “Mutual cooperation” involves reciprocal recognition (whether with or without verbal consultation) and adjustment by both persons.

stead engaged in violation of Natural Law.

Thus, many of these principles will be discoverable only by observation of the effects in pursuing contrary principles, and not by means of *a priori* knowledge. These then are revealed empirically, during the process of resolution of a conflict between the apparent Natural Rights of disputant inhabitants, in determining the equitable and harmonious solution. In doing so the community then effectuates Natural Justice.

Natural Justice

Natural Justice is a standard that is constant. For the cornerstone of its precepts and its application is a respect for Natural Rights and an observance of Natural Law.¹¹ Yet, while it does not arise out of but precedes civil society, it is a standard that remains inchoate without civil society.

Justice is the moral consequence of an unjustified act or failure to act. While it can occur in isolation — such as, for example, a person neglecting to perform some necessary labor, and rather remaining lounging somewhere, as a consequence of which a rotten tree limb falls on him, injuring or killing him — it almost invariably occurs relationally, in determining which of two acts (or failures to act) was morally justifiable and then sanctioning the person who performed unjustifiably.

Thus, justice almost invariably depends on the existence of interactions between people. And, consequently, civil society is a prerequisite for the materialization of an understanding of what justice consists. Natural Justice is the version of justice which optimally preserves Natural Rights and employs the principles of Natural Law. Just as civil society is essential for the emergence of Natural Justice, so Natural Justice is essential for the preservation of civil society. If so, then, the revealing of Natural Justice is also essential.

Just as mankind is endowed with superior analytic intellectual capabilities — and the ability to make critical discernment — it is endowed with a sense of the contours of Natural Justice. A component of this sense of Natural Justice, and parallel to our superior critical capabilities, is the capacity to discern between actions and policies that are either just or unjust.

If we are able to discern actions that are just and unjust, then we likewise are endowed with the capacity to choose between them. For an element of discernment capacity is the employment, or non-employment, of that capacity — ergo, the capability of choice.

Integral to, and a component of, this choice and free will capacity, is the ability to choose evil acts. Therefore, while all mankind may be naturally endowed with a sense of righteousness, they are also subject to committing acts of unrighteousness. Thus both righteousness and unrighteousness dwell within each individual simultaneously and concurrently. Consequently, in these inter-

¹¹ The term “precepts” is used here in a limited sense, as Natural Justice is applied contextually and thus is inherently relational. Consequently, a set of elaborated, prescribed rules would be an aberration as the contexts are theoretically infinite. Rather, “precepts” contemplates a certain *framework* for the recognition and application of Natural Justice.

actions between people there always will be some acts that are just and some that are unjust.

Moreover, there may be some corresponding actions by multiple people that are both just, but of a varying degree of justness. In these situations in particular the discernment capability is most crucial.

For it is in those complex and challenging contexts that the character and mandates of Natural Justice emerge. For Natural Justice is disclosed and defined as situations which require its explanation arise.

As civil society develops and becomes more complex, the quality and extent of interactions between its members will expand and evolve. This though does not suggest that the inherent nature of Natural Justice evolves, but rather that its contours become more delineated, as well as more comprehensive. For the essential and common interactions between people have been and remain constant and omnipresent, and the lessons of Natural Justice learned from them are extrapolated to these emerging contexts in order to reveal and maintain its symmetrical contours.

In this Natural Justice effectuates Natural Law and preserves the harmony of civil society. Nevertheless, civil society will experience conundrums in its development where the unabbreviated exercise of Natural Rights interjects certain tensions in civil society. For this it will conclude that certain human-inspired rules are required. Hence, Positive Law is introduced.¹²

The Role of and Limitations upon Positive Law

Introduction and Role of Positive Law

In the extended family and neighborhood stages, elementary application of Natural Justice was easily administered, since: first, the disputes were, in this sparsely-settled environment, relatively-infrequent; second, the disputants were more likely to be familiar with each other, and thus more inclined to assist in amicable resolution; third, the circumstances of the disputes were relatively-uncomplicated; and, fourth, the adjudicator could have the advantage of familiarity with the parties and circumstances.

Eventually, though, as the community emerged with its greater expanse and concentration, the volume and complexity of interactions proliferated, resulting in more disputes, the greater likelihood of minimal familiarity between the disputants and adjudicator, and increased factors for consideration in crafting a solution. In addition, the proliferation of interactions occasioned a greater intertwining of them, thereby, both in the dispute and its resolution, incidentally impact-

¹² The term "Positive Law" is appropriated from, and employed in the same sense as used by, St. Thomas Aquinas in his *Summa Theologiae*. While St. Thomas' hierarchy of laws included numerous additional layers, only Positive Law and Natural Law are utilized herein.

ing other members of the community — injecting further factors for consideration.

Thus, the promulgation of subordinate rules to account for and prioritize these myriad factors was deemed to be of utility. Thus was introduced Positive Law.

Limitations upon Positive Law

Positive Law though is preceded by Natural Rights, Natural Law and Natural Justice. It is also an invention of human ingenuity rather than an inherent quality. It thus must be limited in its authority. Those limitations then should now be addressed.

Subordination to Natural Law

The nature and foundation of Natural Law is a foundation, a structure, albeit an intangible structure. An action either conforms to and matches the structure or it is incompatible with it.

Righteous actions and unrighteous actions thus can exist in the state of nature. If a person by his actions conforms to Natural Law, even if in ignorance of its requirements and mandates, then he may be deemed to act rightly.¹³

A known code of conduct, against which to measure an action, then is not required for it to be classifiable as righteous or unrighteous. Its success or failure to conform to the structure and standard of Natural Law then may be unknown — but for the stability or instability flowing from it, by which fruit it then will be known.

In the state of nature, then, an action either preserves harmony or promotes disharmony. It is the impact, or lack of impact, upon the *social order* then which qualifies it as righteous or unrighteous. As there is no code of conduct, there is no commendation for or penalty against the actor.

Without Natural Justice or Positive Law, then, an action will not be classified as wrong. However, since Natural Law is omnipresent, a wrong action, even if not explicitly prohibited, may still yield adverse consequences.¹⁴

Natural Justice, in determining the character of various actions, then (to analogize from quantum mechanics) collapses the question, by determining which action (or set of actions) is righteous. Yet, in a more-complex society where actions have proliferated (and necessarily then where wrong actions have also proliferated), advance guidance and classification was deemed prudent.¹⁵ Thus, Positive Law identified, and imposed penalties upon, unrighteous actions. Its func-

¹³ Acting rightly may or may not yield material benefits to the actor. A direct, personal ramification is not the standard by which to determine righteousness or unrighteousness.

¹⁴ It has already been posited that Natural Law is mandatory in character; it directs all people to perform righteously; it only sanctions righteous conduct. A tacit corollary, though, is that it refuses to sanction unrighteous conduct. Therefore, there is an *implicit prohibition* against unrighteous conduct — even though its explicit principles remain mandatory.

¹⁵ This was deemed prudent for, as explained in the text of the essay, the members of the polity — as a result of the

tion was to endeavor to codify the process and results which would have been employed and attained by Natural Justice.

While Positive Law then endeavored to perform the function of Natural Justice in a more complex and dispersed society, we should also consider its interaction with Natural Law. Natural Law provides mankind a direction toward which it must conform; and to conform, there are actions which it is directed to perform. Positive Law is not authorized — as it is inferior, being later in origin and of human invention — to conflict with or counter Natural Law. Therefore, Positive Law then is **prohibitory** in character.

It formally articulates the elements of unrighteous actions which Natural Justice revealed were implicitly prohibited by Natural Law. In conjunction with identifying those elements, it also imposes penalties upon the person performing these unrighteous actions. In this is its prohibitory tenor demonstrated and proven.

Positive Law then, to the extent it performs its assigned role, encompasses those actions which Natural Law implicitly prohibited. In this it parallels Natural Law, but as the analogue thereto.

But what if it does not? What if instead of promulgating the implicit prohibitions of Natural Law it conflicts with it? It would then yield an unjust society; for justice consists in what Natural Law decrees to be righteous. How then to minimize conflict between Positive Law and Natural Law?

Positive Law that mandates certain actions by individuals will obviously conflict with liberty, for it constricts the scope of choice which would otherwise be within the discretion of the individual. Positive Law that prohibits certain actions by individuals will likewise constrict liberty but, if in accordance with the strictures of Natural Law, would be a permissible restriction.¹⁶ Positive Law which expands prohibitions beyond those implicitly enjoined by Natural Law will, as indicated, produce injustice in the community.

Justifying an expansive application of Positive Law then is problematic. Rather, a narrow scope to Positive Law then would appear prudent — if not required. Nevertheless, certain conflicts will be expected to arise that would seem to require the attention and guidance by Positive Law; yet, the promulgators of it should be cautious in the imposition of it.

Perhaps, any Positive Law proposed for promulgation also should be deemed to be of temporary duration, to avoid both misconception of the prudence of it, and also to avoid binding descen-

deluge upon the community of a profuse volume and novelty of interactions — were suffering increased alienation from the traditional methods of dispute resolution and courses of interaction; more formal tribunals were established, and the persons with whom they interacted were often no longer immediate and direct but rather were often now physically separated.

¹⁶ It is possible, in an analysis of the proper scope of Positive Law, to distinguish between **positive** rights and **negative** rights of persons: a positive right is the right of the person to obligate another to perform certain actions that affect the person; and a negative right is the right that another not perform actions that interfere with the person. The latter, being prohibitory in nature, may be, in a proper instance, a permissible subject for Positive Law.

dants of the current generation to standards for which it is inapplicable in a new context. (The conundrum posed by conflicting considerations pertinent to this issue will be addressed in a succeeding sub-part.)

Finally, we began with the acknowledgment that Positive Law is of course subordinate to Natural Law. Another palliative might be a duty upon Positive Law promulgators to delineate any potential conflicts between it and Natural Law, enable these conflicts to be apparent to observation by the members of the polity through explicit notice thereof, and a duty to repeal any Positive Law proven by experience or manifest opposition to be in conflict with Natural Law (as well as to establish the mechanism therefor).¹⁷

Restriction by Limited Government Powers

The pervasive cause of excessive, and potentially unrighteous, Positive Law is attributable to a misconception of the power of government. A crucial, if not primary, corrective to the danger of such Positive Law consists of a constant recognition of and adherence to the proper function of government. Thus, a brief summary of its role would seem to be proper.

It is the duty of civil society to both secure the Natural Rights with which its members were endowed and, in conformity with Natural Justice, resolve any conflicts arising from mutual exercise of them. As it expands, though, those conflicts become more numerous and complex, and eventually, due to the inability of its members to divert sufficient time and energy from their private obligations for the considered resolution of them, government is formed by the members of civil society. Since civil society predates government, its only authority consists of the powers delegated to it by civil society. This delegation consists of only those specifically-enumerated powers granted to it, as a recipient cannot receive, nor claim to have received, more than was given.

Thus, those powers not expressly granted to government are necessarily retained by civil society. For they cannot vanish but must repose somewhere; and as there was no active dispersion of them, civil society is the only possible repository. But these retained powers of civil society are only those granted to it by its members, so that all rights not affected by or subject to those powers delegated to civil society are likewise necessarily retained by the individuals composing civil society.¹⁸

Natural Rights, and the powers associated therewith, are bestowed on each individual at birth and

¹⁷ This poses at least a facial difficulty as it has been posited that the principles of Natural Law are essentially incognizable and imperceptible. Resolution of this conundrum, though, can be attained by one of two (2) methods: one, delineating whether the particular Positive Law conflicts with Natural Justice, as the latter through practice has been disclosed and defined; and, two, observing whether the particular Positive Law produces discord and disorder. This latter consideration emphasizes the prudence of limiting the duration of any Positive Law to a short term, say, twenty (20) years at the most.

¹⁸ It is to be remembered that a **right** is the **power** to initiate or to refrain from action of some type; **liberty** is the power to initiate, and **freedom** is the power to refrain. Thus, implicit in and a component of any right is a power. Therefore, even when reference may only be made to a right, it also acknowledges the corollary power.

as a birthright. They can only be vacated by the knowing, voluntary surrender by the individual. The surrender by any individual, or group of individuals, cannot vacate these rights of another.¹⁹

Thus the powers associated with these Natural Rights are not delegated to civil society without the unanimous consent of all citizens of the polity; the withholding by even a single citizen of his consent vitiates the consent given by any (and all) other citizens. For Positive Law is obliged to retain the respect of the citizens and their voluntary compliance with it²⁰; consequently it must eschew any unequal treatment as this would have the general tendency to diminish respect for its provisions.²¹ Therefore it must be uniform; excluding even one citizen from any particular prohibition requires excluding all citizens from the prohibition.

This framework then requires that the provisions of Positive Law have as limited an ambit as possible and that its effects within this ambit be as limited as possible; in the event of any legitimate doubt as to this question, then the promulgators must refrain from expanding it. Consistent therewith, Positive Law should never suffer any extension by implication; it should rather be construed as narrowly as possible.

Even with these restrictions upon it, there remains yet one more threat from it to consider. This now will be considered in the succeeding sub-part.

Restriction by Duration

We have in the preceding sub-part visited the formative stage of social order in order to define the inherent limits upon Positive Law. Still, as there remains an innate deficiency of Positive Law to consider, let us trod it again to reveal this aspect.

When civil society emerges and then government is formed, all individuals remain endowed with, and without any implied divestment of, their Natural Rights. Only explicit and voluntary surrender of them would allow divestment. But can a person, either individually or in concert, surrender their Natural Rights?

Natural Rights, being an integral component of the natural order, are inherited from Nature. If any person, much less all of the members of a polity, surrendered them it would disrupt the very

¹⁹ In the above and following discussion on the lack of capacity to vacate, reference is being made to the Primary and Secondary Natural Rights previously identified, and the respective power to divest them. Those actions or inactions not within the scope of them are potential subjects for Positive Law — though promulgation thereof, as herein indicated, must be scrupulously administered.

²⁰ As has been repeatedly noted, Liberty is the prime Natural Right. Compulsion is inherently anathema to it. Accordingly, for a just society, adherence to Positive Law (excluding consideration of any inveterate malefactors who, by their own actions, have excluded themselves from society) must be voluntary.

²¹ Different treatment of different classes of citizens could still be consistent with this principle, depending upon the structure of the government. If it is composed of multiple levels with more-extensive powers being exercised by those levels in more-direct proximity to its citizens — such as in the neighborhoods discussed in the text, where there would be greater homogeneity — then acknowledging unique classes within those discrete communities, and exercising different authority over them would not conflict with this injunction against unequal treatment — as the citizens' combinations into those discrete communities would be voluntary.

foundation of the order. This then would inevitably lead to its collapse and chaos.

Still more central to the issue though is the attribute of the prime Natural Right, Liberty. Liberty is exercised affirmatively. Moreover, Natural Law obligations are mandatory in character; to adhere to them requires active engagement with the remainder of mankind, as well as Nature.

A surrender of Natural Rights though would narrow the scope of actions which an individual could initiate — and thereby limit his powers. Since as to those surrendered rights and powers he could no longer be active, his respective potential now would necessarily be passive. This however is inconsistent with the character of Natural Rights and Natural Law. Thus, any purported surrender of Natural Rights must be deemed void.

Nevertheless, some limited *reciprocal* divestment of Natural Rights might be permissible. Once population concentration within a community attains a certain threshold a collision between the exercise of certain rights will necessarily transpire. The respective segment of the particular right being exercised by the affected members might then, voluntarily and with consent, be divested for transfer to the *immediate* government of these members so that it then could exercise them. This then would avoid this segment of the right being deemed surrendered, as it would instead be affirmatively exercised by a different instrumentality.

However any such limited divestment would not survive the generation which transferred them — since these rights, including the divested segment, are the natural birthright of all people. As liberty is a birthright, divestment of the liberty naturally conferred upon posterity is impossible. Accordingly, any limited divestment not merely could not survive the extant generation but would have to be consented to by each member of the successor generation — as they cannot in advance be deprived of their birthrights.

Nevertheless even a purported explicit and voluntary divestment of any Natural Rights by an extant generation should be deemed void. An individual might divest himself of a material resource, and thus adversely impact his posterity by diminishing their inheritance. But Natural Rights are not posterity's inheritance from their antecedents but from Nature.

Thus, any apparent divestment is subject to strict scrutiny as both to the volition of the polity who allegedly exercised it and as to its scope. For even though no individual can engage in a *de jure* divestment of the powers later naturally bestowed upon posterity, divestment of their own powers might have a *de facto* adverse effect upon these descendants.

Accretion is an inherent force of existence; dominant structures, until their demise, tend toward accumulation.²² Within an institutional structure, there is a gravitation toward power accretion. If there are a sufficient number of competing institutions, then this dynamic can be counteracted. However, if one institution attains a dominant status, then this dynamic will remain operative.

²² If an area has numerous equivalent objects, they will tend to accumulate unattached-substances equally. However, if one of these objects attains an appreciably-greater size, then it will tend to accumulate a disproportionately larger share of these substances. By this, is meant the term “dominant”.

Accordingly, with this inertial force in institutional practice, disgorgement from it of purportedly-divested powers could be problematic. Thus, not only should surrender never be implied, it would be beyond the power of the polity to engage in any surrender that could divest posterity of a Natural Right. As Liberty is the quintessential power bestowed thereby, divestment of posterity's liberty is impossible.

Strict Construction

All Positive Law then should be cautiously promulgated and, if promulgated, strictly construed. The legislative function should only be employed as necessary and subject to approval by a predominant constituency, both of the legislature and the polity; it should be infrequently and narrowly exercised.

But if exercised, then it should be construed only as much as necessary to attain its initial objective and satisfy its expressed conditions. Rather, Natural Law should be unimpeded in performing its function of ameliorating disharmony in civil society, the use of Positive Law being the exception.

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