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WILLIAM CULLEN BRYANT AND THE POETRY OF NATURAL LAW

by

STEVEN M. RICHMAN*

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I. INTRODUCTION

Is nature normative? Can we become better people and fashion just societies based upon principles or laws of nature? What, if anything, from a legal perspective is to be learned from observation of an ant colony, a lightning storm or the movement of clouds?

The question has more than academic interest, as noted in Lloyd Weinreb's *Natural Law and Justice*, in which he argues for a return to natural law's ontological basis.¹ Tracing its roots in Greek expressions of natural law that allowed for free will in an otherwise determinate natural order, Weinreb surveys the history of natural law only to find that what began as ontological became deontological, which led natural law theories away from nature and reason and towards a focus on concepts of morality. He argues ultimately that such deontological theories fail to answer the question of human freedom within a causal universe in the same way that the original versions of ontological natural law also

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1. LLOYD L. WEINREB, *NATURAL LAW AND JUSTICE* (1987).

failed.² In seeking, however, a return to some ontological basis for natural law as the preferred way to accommodate antinomic notions of liberty and equality, desert and entitlement, and freedom and cause, he stresses the role that an understanding of nature can provide, particularly since "[i]ncreasing control over nature by the discovery of its laws increases human freedom in one sense."³

For Weinreb, the human condition is a constant state of striving, but he views the search for natural law as one that seeks the ideal within the real or, as becomes apparent from his conclusions, within nature. This is not to say that we can definitively rationalize conflicting concepts of liberty, equality, justice, entitlement and desert, but that we can accept an imperfect ability to explain these concepts. We can do so, Weinreb seems to be saying, by reaffirming the value of inquiry into the laws of nature, or at least familiarity with a concept of community and a natural predisposition of a particular community over time to come to an equilibrium that satisfies its members' notions of a proper reconciliation of these concepts, which reconciliation allows for self-determination to move within a loose, if ultimately fixed, determinate background natural order.⁴ In so doing he sounds themes discernible within the poetry of William Cullen Bryant (1794-1878), a practicing lawyer and the country's first major poet.

It is no longer necessary to justify the use of literature to approach law, or vice versa. We live by analogy and metaphor; to the extent that exploration of one medium yields light upon another, it has value. This article explores Weinreb's notions from the perspective of a lawyer/poet practicing and writing at a formative period of both American law and letters, with the argument that Bryant's poetry sets forth an ontological viewpoint of a normative natural order that allows for the self-determinative exercise of freedom.

Weinreb articulates his journey as an exploration of the dispute between natural law and legal positivism, and what justice adds to concepts of liberty and equality, in the context of what he terms "the central fact of the human condition: human moral responsibility in a causally determinate natural order."⁵ Similarly, Bryant engaged in such a search for order. His inspiration was based on personal immersion in the natural world. His poetry was also in large part political, but may be read more in contemporary terms as a political morality, a concern with community. Paradoxically, even within a seemingly rigid force of natural order Bryant found a freedom that became lost when nature was forgotten.

2. *Id.*

3. *Id.* at 264.

4. *Id.* at 258-59 ("[N]o fully determinate order can satisfy the requirement of justice that desert be individual. . .").

5. *Id.* at vii.

This is not to say that Bryant was simply a poet of the woods; it has been argued elsewhere that he in some ways was apprehensive of the natural world and moved away from it towards civic duty, but nonetheless paid close attention to nature's "lessons."⁶ As a practicing lawyer he often had occasion to compare "natural" with "human" order. It is that contrast of influence that allows an examination of Weinreb's themes in Bryant's poetry, and vice versa, again taking up the principal challenge of law and literature to enable insight into the nature of law from a variety of angles and interpretative methods.

II. SEEKING THE NORMATIVE NATURAL ORDER IN HISTORY AND TRADITION

Searching for a normative natural order is not a fool's errand, but rather, a profound attempt to render meaning from apparently random events in the natural world and sustain a belief in one's ability to be self-determinative. One does not look upon terminal illness in a child as a sign of punishment for evil, as Weinreb points out, but nonetheless "[h]uman beings are apart from nature and a part of it," and therefore we should regain "the original understanding of natural law as a theory about the nature of being, the human condition in particular."⁷ Similarly, in one of his most famous and influential poems, *Thanatopsis*, Bryant emphasizes nature as a source of understanding: "To him who in the love of Nature holds/Communion with her visible forms, she speaks/A various language Go forth, under the open sky, and list/To Nature's teachings, while from all around/Earth and her waters, and the depths of air/Comes a still voice"⁸

Therefore, in seeking a normative natural order, what is sought in the end is an awareness of the forces of nature, our place within nature, and a deeper understanding of how law comports with that interaction. That deeper understanding enables us to move from descriptive to prescriptive involvement with law, and towards a more relevant concept of natural law. It is a sophisticated concept, and Weinreb moves up and down the natural law hill, from the Greeks to present deontological theories, in pursuing it. Bryant as well moved between country and city, between the world of the woods and that of law, politics and journalism, in arriving at a similar understanding.

By way of historical background and analysis, Weinreb asserts that earlier Greek views of nature were that nature embodied a normative order,⁹ so that

6. See generally ROBERT A. FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE 174-95 (1984).

7. WEINREB, *supra* note 1, at 7.

8. WILLIAM CULLEN BRYANT, THE POETICAL WORKS OF WILLIAM CULLEN BRYANT 21 (Roslyn 2d ed. 1915) [hereinafter POETICAL WORKS]. All of Bryant's poems quoted in this article are found in and taken from POETICAL WORKS.

9. WEINREB, *supra* note 1, at 32-42.

"the ontological aspect of natural law, which becomes its distinctive characteristic, can fairly be described as Platonic."¹⁰ Thomas Aquinas shifted the focus and changed the question from one that asked whether nature was a normative natural order, to one inquiring how human beings can be part of the natural order and still be morally responsible.¹¹ Weinreb sums up the Thomistic concept by noting "[n]atural law, then, is the link between the eternal law in the mind of God and the moral law for human beings, between nature (providence) and reason A just law is in conformity with reason and nature, hence also natural law, and is binding in conscience."¹² "Human freedom [is therefore] consistent with natural order."¹³

With the rise of nation-states, such questions became matters for political, as opposed to religious, arenas. The remaining issue was resolution of how one could accept self-determination if a natural order predisposed one's actions. Weinreb summarizes the theories of Hobbes, Locke and Rousseau, in which the question was not how human beings could be free in a normative natural order, but rather how they could be free in a society of laws not of their own making. In essence, the man-made "social contract" took the place of nature for determination of a normative order.¹⁴ Immanuel Kant was the Rubicon, making natural law deontological and linking freedom to morality, thereby separated from a phenomenal order.¹⁵ Natural law therefore became a home for theories of morality and of justice, disconnected from its roots in nature; the deontological view was that it is a "mistake" to accept nature as a normative order. It is this last point that Weinreb rejects, in essence claiming the original connection of natural law theories to nature was not a mistake, even if that particular historical connection was flawed in the formulations of the Greeks and the Scholasticists.¹⁶

Comparably, Bryant, as a poet, recognized throughout his verse the imperative of a connection between nature and morality, nature and community, nature and law. As a law student, Bryant certainly missed his time outdoors, and in a very basic way, felt that a separation from nature for pursuit of legal studies had its negative impact. From his reading of Coke, he wrote:

O'er Coke's black-letter page,
Trimming the lamp at eve, 't is mine to pore,

10. *Id.*

11. *Id.* at 1-2; for a general discussion, *see also* ST. THOMAS AQUINAS, ST. THOMAS AQUINAS ON POLITICS AND ETHICS (Sigmund ed. 1988).

12. WEINREB, *supra* note 1, at 59-60.

13. *Id.* at 60.

14. *Id.* at 67-90.

15. *Id.* at 90-96.

16. *Id.* at 96-98.

Well pleased to see the venerable sage
 Unlock his treasur'd wealth of legal lore;
 And I that loved to trace the woods before,
 And climb the hill, a play mate of the breeze,
 Have vow'd to tune the rural lay no more,
 Have bid my useless classics sleep at ease,
 And left the race of bards to scribble, starve and freeze.¹⁷

Of more moment and directly relevant to Weinreb's argument is Bryant's more mature poem *The Ages*.¹⁸ Emphasizing American tradition and culture, the poem is an example of legal thinking in Bryant's poetry, and in particular, an argument for the value of community¹⁹ that emphasizes the normative force of tradition and acceptance within an extended community.²⁰ Exalting Nature ("Look on this beautiful world, and read the truth/In her fair page"), Bryant traces the history of Western civilization.²¹ Following early chaos,

The weak, against the sons of spoil and wrong,
 Banded, and watched their hamlets, and grew strong;
 States rose, and, in the shadow of their might,
 The timid rested. To the reverent throng,
 Grave and time-wrinkled men, with locks all white,
 Gave laws, and judged their strifes, and taught the way of right.²²

This argument of the dominance of the original strong as part of a natural order, finds parallel in the early Greek formulations of natural law; nothing is innately more "natural" than the "law of the jungle," to which Bryant alludes. It

17. Letter from William Cullen Bryant to Jacob Porter (April 26, 1813), in 1 LETTERS OF WILLIAM CULLEN BRYANT 28 (William Cullen Bryant & Thomas G. Voss, eds., 1975) [hereinafter LETTERS].

18. POETICAL WORKS, *supra* note 8, at 10-20.

19. Weinreb distinguishes between communitarian arguments, which he generally rejects, and those that find value in community. WEINREB, *supra* note 1, at 249-59. Communitarian views that efface the self in view of a greater good are disputed by him, and probably would be by Bryant, but like Bryant, Weinreb argues for individual responsibility within a community and finds a normative value in a community that develops certain traditions and an accepted course of conduct over a period of time; slavery was not such an accepted course in the United States as witnessed by the intense opposition to it. *Id.*

20. "Bryant himself in later years did not regard it as his best poetry, but, considering it an important statement of his credo and his hopes for his country, he placed it first in all his collected volumes" CHARLES H. BROWN, WILLIAM CULLEN BRYANT 101 (1971).

Put another way in language relevant to the theme of this article: "The basis for the poet's optimism is the growth of human liberty, made possible by the new natural environment of the North American continent." ALBERT F. MCLEAN, JR., WILLIAM CULLEN BRYANT 77 (updated ed. 1989).

21. *The Ages*, POLITICAL WORKS, *supra* note 8, at 12.

22. *Id.* at 14.

is only when the weak follow a natural impulse and unite to become the strong is a sense of balance (and law) restored. And this, too, Bryant seems to suggest, is part of the natural order, a natural evolution that makes secure the force of law within a stable community.²³

In fact, following the domination of this new strong group, "bolder spirits seized the rule" and tyranny resulted, followed by civilizations in Greece and Rome, until a "ray of brightness from above" with the birth of Christ, and a period of "saintly rottenness" that was "shielded by priestly power, and watched by priestly eyes." Ultimately, revolution and the colonization of the New World: "Europe is given a prey to sterner fates," but America "shalt never fall." Arguably, Bryant's poem can be read to suggest that Europe was seen as abandoning natural law's basis in nature, and becoming subject to an ordering based on an artificial government or society. Such views were found in Hobbes, Rousseau or Locke where a social contract replaced nature as an underpinning of the social order.²⁴

Bryant's concept of community emphasizing American tradition and culture is evident in *The Ages*. It is also consistent with a Thomistic view of community; Aquinas, in defining law as "a rule or measure of action by which one is led to action or restrained from action," wrote that law is directed toward the common good since "[t]he individual is part of a perfect whole that is the community."²⁵ Aquinas, though, invokes God as the ultimate source of law which is discerned by people through reason.²⁶ On the other hand, the American version of natural law following independence was man-made, not God-given.²⁷ If that is so, then the significance of early American natural law is not inconsistent with the role of community in the natural law formulations of Aquinas, and Bryant's for-

23. It is a point made in Bryant's lecture ON POETRY IN ITS RELATION TO OUR AGE AND COUNTRY, reprinted in DANIEL G. HOFFMAN, AMERICAN POETRY AND POETICS 269-276 (1962); also found in 1 THE PROSE WRITINGS OF WILLIAM CULLEN BRYANT 24-35 (Parke Godwin ed.) (New York, D. Appleton 1884) ("Our people are too much in love with peace and gain, the state of society is too settled, and the laws too well enforced and respected, to allow of wild and strange adventures.").

24. Some have suggested that so-called modern natural law, as opposed to medieval natural law, began with Thomas Hobbes and "tends to be primarily and mainly a series of 'rights,' of subjective claims originating in the human will." Rauol Berger, *Natural Law and Judicial Review: Reflections of an Earthbound Lawyer*, 61 U. CIN. L. REV. 5, 11 (1992) quoting LEO STRAUSS, THE POLITICAL PHILOSOPHY OF HOBBS at vii-viii (Elisa M. Sinclair trans., 1963). John Locke added the notion of "the pursuit of wealth, which would channel hostility into free economic competition." *Id.* at 13. Ultimately, the American version of natural law following independence was man-made, not God-given. *Id.* at 19.

25. ST. THOMAS AQUINAS, THE TREATISE ON LAW QU. 90 THE ESSENCE OF LAW, in Sigmund *supra* note 11, at 44.

26. See *supra* notes 11-13 and accompanying text.

27. See *supra* note 16 and accompanying text. Interestingly enough, Weinreb concludes

mulation-without resort to a divinity, but beginning with nature and the community that fits within that natural order, is consistent with such a natural law theory.

III. COMMUNITY, LIBERTY AND EQUALITY

Throughout Bryant's poetry, and implicit in the discussions of natural law, words are used representing significant concepts that form essential components of a just society, such as liberty and freedom. In terms of "liberty," Weinreb asserts that all liberties alter the natural distribution of power, since it confirms power in some persons while denying it in others.²⁸ Nature left to itself is dispositive of liberty only as power; it is a matter of individual self-determination to limit the exercise of individual liberty.²⁹ Within communities, though, certain conventions "are so fully part of the pattern of life that the question of justification does not arise; for members of the community, it would be as out of place as if it were asked about the phenomena of nature."³⁰ Such a "natural" understanding suffices to maintain a general concept of liberty.³¹

Equality can only be understood as a human value in the context of liberty.³² Once again, as in a natural order, Weinreb notes that "[a] community's settled understandings give content to the ideal of equality"³³ Having examined these concepts, Weinreb concludes that "the effort to solve the problem of freedom within a determinate order by transferring it from nature to civil society does not succeed."³⁴ He finds the three concepts are used both prescriptively as well as descriptively in contemporary usage, which he relates to "efforts in the past to locate the ideal in the real, to which I have referred as the idea of normative natural order."³⁵ Provided the "community is intact," the notions of liberty and equality, and therefore justice, remain in balance.³⁶

that "[o]ur current preoccupation with individual rights obscures the Founders' concern with the rights of the community rather than the individual." WEINREB, *supra* note 1, at 24. This concept of community permeates Bryant's poetry and seems to be at the core of what Weinreb is attempting to establish.

28. WEINREB, *supra* note 1, at 156-57.

29. *Id.* at 157.

30. *Id.* at 158.

31. *Id.* at 157.

32. *Id.* at 161.

33. WEINREB, *supra* note 1, at 182.

34. *Id.* at 224.

35. *Id.*

36. *Id.* at 232. He notes that "[j]ustice is concerned only with the situation, natural or otherwise, of human beings." *Id.* at 235. "Every general theory of justice is an effort to provide a principled basis for the normative boundary between a person and his circumstances" *Id.* at 237. The idea of justice is both descriptive and normative, with both found within the person himself. *Id.* at 249.

In other words, a community formed against a background that is in essence a normative natural order will have a moral balance; that balance will be disturbed by the intrusion of "unnatural," or artificial, non-rational policies imposed. Along these lines, *The Rats and Mice*, an early and uncollected political poem of Bryant's, forms an intriguing parallel to Weinreb's conception of normative natural order, replete with the antinomic concepts he identified:

Once on a time, as saith our story,
 Within a single edifice
 A nation flourished in its glory,
 Whose citizens were rats and mice.
 The politics they prospered under
 Passed far and widely for a wonder,
 So based were they on reason's laws,
 And equal rights of vermin;—
 So planned, the general good to cause
 And cleanly keep Justitia's ermine.

Community, a normative natural order based on reason, equality, justice—these form the ideal state governed by a prescriptive, if not descriptive, natural law. This is comparable to the theme developed by Weinreb when he notes the importance of a cohesive community to the ability of notions of liberty and equality, and therefore justice, to remain in balance.³⁷

In the next two stanzas of the poem, Bryant describes the mice as becoming traders since only they could fit into the crevices that led to the outside world, and the rats stayed in the cellar where they became statesmen and politicians. The rest of the poem becomes an allegory of a community that has slavery, and offers a defense of free of speech. In the opening stanza, though, the balance provided by a system of natural law is established—before the imposition of the non-natural phenomenon of slavery.

Weinreb would argue that the natural peaceful relation built upon the mutual respect of the rats and mice for each other, prior to artificial inflammation of animosity, is part of a natural background with relevance to the present time as well. As he notes,

A community's conventions accomplish what nature alone—the causal interactions of human behavior—does not. Within a community at any time, conventional understandings will prescribe that

37. See *supra* note 25 and accompanying text.

a great deal of conduct is the actor's own business. . . they express pervasive attitudes and habits of thought, grounded in the practices of everyday life and institutional arrangements too far-reaching to be questioned seriously without large disruption of the social order.³⁸

He further writes that,

the conventions of community operate at different levels. . . . Some matters of convention . . . are so fully part of the pattern of life that the question of justification does not arise; for members of the community, it would be as out of place as if it were asked about the phenomena of nature. In that way, an absolute right to liberty, with variable content, is sustained.³⁹

In the poem, the very thing that Weinreb called out of place occurred: the conventions were questioned and forcibly changed by deliberate provocation.

Weinreb's principal criticism of deontological natural law is that the argument by those who attempt to use a concept of natural law to resolve the problem of freedom by transferring the determinate order from nature to civil society simply does not succeed.⁴⁰ Bryant makes the point another way by condemning a determinate civil society that perverts (or even simply ignores) nature. Weinreb says of slavery and racial discrimination that "[t]hey were all too obviously not natural phenomena; they had been established and practiced deliberately."⁴¹ So Bryant in *The Death of Slavery*, writes: "Within that land wert thou enthroned of late,/And they by whom the nation's laws were made,/And they who filled its judgment-seats obeyed/Thy mandate, rigid as the will of Fate."⁴² The poem takes on a bitter tone:

Fierce men at thy right hand,
With gesture of command,
Gave forth the word that none might dare gainsay
And grave and reverend ones, who loved thee not,
Shrank from thy presence, and in blank dismay
Choked down, unuttered, the rebellious thought;
While meaner cowards, mingling with thy train,
Proved, from the book of God, thy right to reign.⁴³

38. WEINREB, *supra* note 1, at 138-39.

39. *Id.* at 158.

40. *Id.* at 224.

41. *Id.* at 232.

42. POETICAL WORKS, *supra* note 8, at 317-19.

43. *Id.* at 318.

Bryant's bitter attack on those who would distort natural law (which was based on "natural" tolerance for people and condemnation of slavery) by resorting to "the book of God" and an artificial strength supports Weinreb's arguments relating to the non-natural phenomena that infect an otherwise just society.

Comparably, in *The African Chief*, Bryant vividly contrasts the nobility of an enslaved African chief with the hypocrisy of Christian charity in this country: "[c]hained in the market-place he stood,/A man of giant frame,/Amid the gathering multitude/That shrunk to hear his name."⁴⁴ He continues: "Vainly, but well that chief had fought,/He was a captive now,/Yet pride, that fortune humbles not,/Was written on his brow."⁴⁵ The chief offers ransom money, and the response is "Not for thy ivory nor thy gold/Will I unbind thy chain;/That bloody hand shall never hold/The battle-spear again./A price that nation never gave/Shall yet be paid for thee;/For thou shalt be the Christian's slave,/In lands beyond the sea."⁴⁶ Pleading to be released to be back with his family, he gives up his gold, which is taken (although he remains shackled) and he ultimately goes mad.⁴⁷ The madness of the African chief is not "natural." Such a practice destroys community and interferes with natural concepts of equality and justice.

Numerous of Bryant's poems deal with condemnation of slavery, a distinct theme of natural law.⁴⁸ Despite a recognition of the reality of human conduct, Bryant still believed in a kind of natural law influence; "[s]omehow-all violence, tyranny, greed, and corruption notwithstanding-human society could share with natural processes the propensity to renew itself and to bring forth fresh, beautiful forms of life."⁴⁹ As in *Rats and Mice*, community was important to Bryant because it provided balance; it was when "reason's laws" were abandoned and influences outside the community (the investigating cat) were brought in that the balance was destroyed. As Weinreb notes, "[w]hile a community is intactat all,

44. *Id.* at 101.

45. *Id.* at 102.

46. *Id.*

47. *Id.* at 103. Notes to the POETICAL WORKS indicate the source for the story to be found in the *African Repository* for April 1825; "the subject of it was a warrior of majestic stature, the brother of Yarradee, king of the Solima nation. He had been taken in battle, and was brought in chains for sale to the Rio Pongas, where he was exhibited in the market-place, his ankles still adorned with massy rings of gold which he wore when captured. The refusal of his captors to listen to his offers of ransom drove him mad, and he died a maniac." POETICAL WORKS, *supra* note 8, at 407-08.

48. "Nearly one-fifth of the poems composed by William Cullen Bryant make reference, if only in passing, to political ideas or events. . . . When considered in the light of Bryant's career and personal inclinations, the themes of the political verse are predictable: freedom, the rights of mankind, the nobility of the human spirit, human progress." MCLEAN, *supra* note 20, at 68.

49. *Id.* at 68-69.

the ideas of liberty and equality will have some reasonably definite, uncontroversial normative content, which has an objective basis in the community's way of life."⁵⁰ The greater the number in the community and the more established the common understandings, the more accepted (and normative) the "laws" will be. Bryant, in *The Better Age*, finds comparable force in community:

Thus in the works of mercy that engage
The minds and hands of thousands, we behold
Signs of a blessed future. They who watch
Beside the sick-beds of the poor, who seek
And lead the erring back to the right way⁵¹

Within the community, though, force is required in some capacity, just as in the natural world force reacts against force to produce an equilibrium. The "law of the jungle" is nothing more than a necessity for the maintenance of liberty for all involved. (This calls to mind Kipling's apt lines: "Now this is the Law of the Jungle as old and as true as the sky;/And the Wolf that shall keep it may prosper, but the Wolf that shall break it must die."⁵²). Put another way by Weinreb, "[l]iberty, then, depends on the equality constricted by a restriction of liberty."⁵³ Liberty and equality are mutually dependent and mutually opposed; with limited resources in a society and naturally disproportionate distribution of talent and ability, some degree of force is necessary to overcome a "survival of the fittest" natural order.⁵⁴ This is not counterintuitive; for the strong to protect the weak is also a "natural" outgrowth and part of the natural order, to the extent that reason is natural and provides the basis for self-determination within that natural order.

Not just liberty, but its antinomy, equality, is also a function of community:

A community's settled understandings give content to the ideal of equality As in the case of liberty, the result may be that what is only 'very natural' to the members of a community acquires an aspect of inevitable rightness that makes it seem 'natural' in another sense. The community's conventions support principles of equality and are in turn supported by them.⁵⁵

50. WEINREB, *supra* note 1, at 232.

51. POETICAL WORKS, *supra* note 8, at 377.

52. RADYARD KIPLING, THE LAW OF THE JUNGLE, in THE SECOND JUNGLE BOOK 29 (New York, The Century Co. 1895).

53. WEINREB, *supra* note 1, at 225.

54. *Id.* at 226.

55. *Id.* at 182.

The value of such lessons relating to nature and natural law are present in William Tell, a poem about the Swiss hero who "while thy prison-walls were dark around,/Didst meditate the lesson Nature taught,/And to thy brief captivity was brought/A vision of thy Switzerland unbound." Nature provides the background normative order: mountains "proclaim/The everlasting creed of liberty."⁵⁶

The parallel is striking. For Weinreb, there is an ineluctability to nature that establishes a right to liberty regardless of the particular community. Over time, a perception within the community can shift and become established as defining the baselines for liberty and convention; he cites the shift from smoking to non-smoking as the example in current American society.⁵⁷ In an extreme situation, non-natural phenomena may be imposed, but they cannot last against the stronger currents of tradition and acceptance of "natural" conditions within community. Comparably, for Bryant, nature imposes and is a symbol for liberty, in the form of mountains in the background. Like societal conventions of Weinreb, they are vast, pervasive, near-permanent, formed over time. And while other less fundamental forces may come and go, the mountains, like Weinreb's background normative order, persist.

In Weinreb's arguments against facile formulations of liberty and equality, he raises questions as to the limits of understanding, but in the end reverts to "nature," or the force of community traditions in itself a natural product, for a finding of stability and resolution of the parameters of free will within a natural order. In a "natural moral order" in which all get what they deserve, there can be no self-determined action.⁵⁸ To resolve this one could argue that a normative natural order allows everyone to get what they deserve.⁵⁹ In the end, the "starting point" is "freedom, our awareness of ourselves and others as self-determining, morally responsible persons, acting consequentially within a causally determinate natural order."⁶⁰

This "causally determinate natural order" is not to be taken literally, as in the manner of the ancient Greek notion of god-determined fate. Rather, it forms a kind of challenge, a broad harness in which law may move smoothly:

56. POETICAL WORKS, *supra* note 8, at 118.

57. WEINREB, *supra* note 1, at 139-40.

58. *Id.* at 221.

59. *Id.* at 222. Weinreb suggests that this is the solution offered by Robert Nozick in ANARCHY, STATE AND UTOPIA (1994). *Id.* At the other extreme he posits John Rawls' A THEORY OF JUSTICE (1971), which rejects desert in favor of universal entitlement. *Id.* at 222-23.

60. WEINREB, *supra* note 1, at 223.

Increasing control over nature by the discovery of its laws increases human freedom in one sense. We are freed from subjection to unalterable conditions of existence and can reshape them to approximate more closely a concrete idea of justice. The "accidents" of our lives, whether they are unforeseen calamities and strokes of fortune or simply the arbitrary distribution of endowments, can more nearly be corrected. Entitlement, determined by human law, encroaches on nature, and we are able to establish a just background order where it had previously to be assumed. From another point of view, human freedom is not increased. Once we have reduced phenomena to order and learned the causes that make their occurrence determinate, no room is left for desert.⁶¹

Bryant recognizes this. In *The Antiquity of Freedom*, freedom is not "as poets dream" a "fair young girl" with "wavy tresses gushing from the cap/With which the Roman master crowned his slave" but rather, "[a] bearded man,/Armed to the teeth," and "one mailed hand/Grasps the broad shield, and one the sword."⁶² The metaphor for freedom is one of supreme strength, veteran of "old wars" and whose "massive limbs are strong with struggling." Significantly, though, this image of freedom is not a function of "human hands," but rather, its birthright is such that freedom was "twin-born with man."⁶³ Freedom sat side by side with "Man" in nature, made ready to avoid the snares of Tyranny, another metaphorical image. In other words, as Weinreb suggests, "[w]hen a community defines the liberties of its members, by inclusion or exclusion, it confronts the antinomic conditions of complete justice not as a philosophic problem but as an intensely practical one . . . unless (contrary to Hobbes) we assume that nature is normatively ordered, it is liberty without responsibility or freedom, because there can be no desert."⁶⁴

IV. BRYANT, WEINREB AND THE IDEALVERSUS THE REAL

We are part of nature and act accordingly; on some level, this must be recognized. By mastering nature, or at least the awareness of our place in it, we can help define the community we create and our conceptions of freedom. This notion is reflected clearly in Bryant's nature poetry, in which he, too, begins with a background of nature and derives its relevance to his own search of order.

61. *Id.* at 264-65.

62. POETICAL WORKS, *supra* note 8, at 199.

63. *Id.*

64. *Id.* at 230.

For Bryant, "The ground of the moral sentiment lay not in man but in Nature-Nature apart from man. In the end, poems about Nature were lessons learned, not experiences lived through. The teacher was God; and the poet went to this greatest of teachers in His classroom of Nature so that he himself could become a teacher."⁶⁵ The poem that clearly shows this is *A Forest Hymn*.

In *A Forest Hymn*, a solemn poem about the grandeur of the trees, the real sanctuary of God (as opposed to the man-made buildings) Bryant concludes with "Be it ours to meditate,/In these calm shades, thy milder majesty,/And to the beautiful order of thy works/Learn to conform the order of our lives."⁶⁶ Similarly, in *Inscription for the Entrance to a Wood*,⁶⁷ the "haunts of Nature" in the forest are the antidote for the "haunts of men." Rain and the power of nature is contrasted with "Fraud, the coward" and "Strength, the ruffian" that are part of commerce, in *A Rain-Dream*. As man-made "strifes" oppress one, inspiration is found in watching the power of the natural force, rain, that stops birds from flying and beasts from walking the field. The poem begins with a disdainful reference to fraud that "tracks his prey by stealth" and contrasts the more open and honest, and natural, rain.⁶⁸

Another example is *Noon*, an unfinished poem, in which Bryant admonishes people: "[a]mid the overflow of day,/Behold the power which wields and cherishes/The frame of Nature."⁶⁹ Yet despite the silence of nature, "All the while/A ceaseless murmur from the populous town/Swells o'er these solitudes . . ." "Noon, in that mighty mart of nations, brings/No pause to toil and care." And finally, "Thus, in this feverish time, when love of gain/And luxury possess the hearts of men,/Thus is it with the noon of human life."⁷⁰

It is consistent with the arguments put forward to interpret such poetry against the backdrop of natural law as understood by lawyers of the time. Bryant learned law as a clerk to Samuel Howe and Congressman William Baylies from 1811 through 1814,⁷¹ and matured into a practicing lawyer at a time when natural law was an integral part of the American legal psyche.⁷² For example, in the context of the formulation of law in post-revolutionary America, Cicero remained rel-

65. ROY HARVEY PEARCE, *THE CONTINUITY OF AMERICAN POETRY* 207 (1961)

66. *POETICAL WORKS*, *supra* note 8, at 82.

67. *Id.* at 24-25.

68. *Id.* at 226.

69. *Id.* at 205.

70. *Id.* at 206.

71. FERGUSON, *supra* note 6, at 178.

72. See, e.g., Russell Kirk, *Natural Law and the Constitution of the United States*, 69 *NOTRE DAME L. REV.* 1035, 1037-39 (1994). See also ROSCOE POUND, *AN INTRODUCTION*

evant.⁷³ There were those who found direct expression of a natural law philosophy in political discourse based upon natural phenomena themselves, which was an attractive viewpoint to the extent that order was the goal of Jefferson and others who were impressed by and recorded the natural occurrences within the new country.⁷⁴ The Constitution established "nexus between natural law and the man-made or positive law."⁷⁵ To the extent that "Jefferson claims that the Declaration of Independence was based on the common sense of the ancients and moderns that provided a harmonizing sentiment, it is clear that natural law philosophy is at the very core of this common sense," with the overriding commonality throughout the ages being "that human nature is, in significant respects, determinate, unchanging and structured."⁷⁶

Coke and Blackstone were the leading authorities studied, and it is evident from his writings, such as the one quoted above, that Bryant was exposed to them. Blackstone described a jurisprudential system in terms of nature, no less than likening it to the universe, with interconnected subordinate systems.⁷⁷ Coke's views on "natural law" are complex and subject to differing interpretations;⁷⁸ it is significant here to note simply that Coke was read in a context of "natural law," whatever that meant, and that Bryant must have formed views as to Coke himself, even if subconsciously. Berman argues that while Coke's view that "reason is the life of the law" would be consistent with St. Thomas Aquinas, and that Coke in a way supplanted natural law with a faith in historical, traditional and common law notions that embodied and superseded natural law in its Medieval incarnations.⁷⁹

From a poetic standpoint as well, nature was a prime influence. Before

TO THE PHILOSOPHY OF LAW 19-21 (Rev. ed. 1954)

73. FERGUSON, *supra* note 6, at 76.

74. *Id.* at 46-47.

75. *Id.* at 62.

76. Robert P. George, *Natural Law and Civil Rights: From Jefferson's 'Letter to Henry Lee' to Martin Luther King's 'Letter from Birmingham Jail,'* The 1993 St. Ives Lecture before the Columbus School of Law (Apr. 21, 1993) in 43 CATH. U. L. REV. 143, 147-153 (1993).

77. FERGUSON, *supra* note 6, at 32.

78. Coke wrote "[t]he law of nature is that which God at the time of creation of man infused into his heart," WEINREB, *supra* note 1, at 7; in this view, Weinreb notes that Coke viewed the law as "a work of reason in this sense, that it is the nature of law to be reasonable; and that the test of its reasonableness, he thinks, is its ability to withstand the test of time." *Id.* Others suggest a less "natural law" orientation to Coke, or limit him to a kind of natural law philosophy that simply asserts the role of common law and reason as opposed to strict positivism as coming from the monarch. See, e.g., RICHARD A. POSNER, THE PROBLEM OF JURISPRUDENCE 10-11 (1994); CARL J. FRIEDRICH, THE PHILOSOPHY OF LAW IN HISTORICAL PERSPECTIVE 77-83 (2d ed. 1963) ("The natural law viewpoint of the King, which is also represented by Bacon, is clearly opposed to Coke's view.").

79. Harnold J. Berman, *The Origins of Historical Jurisprudence: Coke, Selden, Hale*, 103

Bryant, the politically charged poet Philip Freneau had made extensive use of nature in his poetry, as part of the naturalism influence in late eighteenth century poetry.⁸⁰ Freneau presumed a natural order that was reflected in political action. He is a prelude to Bryant, part of the cultural context in which Bryant wrote, although Bryant himself apparently had little respect for, nor was he influenced by, Freneau.⁸¹

At the core of his argument, Weinreb asserts that whether or not others recognize a person's rights in reality, those rights are there and discernible, and each person has responsibility within a normative natural order.⁸² Bryant's poetry emphasizes that. Poems such as *The African Chief* reaffirm the basic rights present with each person, regardless of the current or contemporaneous society's reaction. Those rights are ontological; they flow from an affinity with nature and a need to be in and a part of nature. Bryant's background of nature is normative. It is instructive. When people forsake nature, and forsake their natural (and normative) communities, an amoral order results. Nature provides a perspective which itself causes people to act a certain way; as in Bryant's *The Mystery of Flowers*, where each flower "has her moral rede," it is clear that "The faintest streak that on a petal lies/ May speak instruction to initiate eyes."⁸³

This has been argued recently in terms of the Declaration of Independence, which "preserves the existential reference of constitutional concepts, gives it a certain content and valence by directing our attention to 'nature.'"⁸⁴

YALE L. J. 1651, 1689-1693 (1994).

80. HARRY HAYDEN CLARK, INTRODUCTION TO POEMS OF FRENEAU xlvi-lviii (Harry Hayden Clark ed., 1960). See in particular Freneau's poem *Reflections on the Constitution, or Frame of Nature*, in which he writes "Here beauty, order, power behold/Exact, all perfect, uncontroled [sic]; /All in its proper place arranged, /Immortal, endless, and unchanged." *Id.* at 414-15. In the *Citizen's Resolve*, he contrasts the permanence of trees. *Id.* at 226. See also *On the Universality and Other Attributes of the God of Nature*, *Id.* at 422., *On The Uniformity and Perfection of nature*, *Id.* at 423, and *On the religion of nature*. *Id.* at 424, as other examples of Freneau's poetry in this regard.

81. BROWN, *supra* note 20, at 83-84. Brown notes that "Bryant seems not to have known Freneau's nature poems, which made him a predecessor of Bryant himself in writing about the American countryside," *id.*, yet Van Wyck Brooks asserts that Bryant "must have encountered Philip Freneau in the circle of Gulian Verplanck" in New York. VAN WYCK BROOKS, *THE WORLD OF WASHINGTON IRVING* 252 (1944). See also JOHN BIGELOW, WILLIAM CULLEN BRYANT 46 (Boston & New York, Houghton Mifflin 1890) (Freneau's "occasional productions, distinguished by a coarse strength of sarcasm and abounding with allusions to passing events, which are perhaps their greatest merit.").

82. See also LLOYD L. WEINREB, NATURAL LAW AND RIGHTS, IN NATURAL LAW THEORY 278-305 (Robert P. George, ed., 1994).

83. POETICAL WORKS, *supra* note 8, at 396.

84. Ronald R. Garet, *The Resolution of Independence*, 29 HOUS. L. REV. 867, 870 (1992).

The "twin intuitions" of such an appeal is in terms of each person having a nature which yields certain rights, and living in nature which yields certain laws.⁸⁵ The Greek gods were part of a determinative background order, and Aquinas references the Judeo-Christian God as the divine providence that establishes eternal law, which is discerned by reason and is directed toward the common good. Weinreb does not resort to a theological basis, and this suggests a further affinity with Bryant.

Bryant's poem *The Conjunction of Jupiter and Venus* is particularly interesting in this regard. Among other things, it demonstrates the ambivalence Bryant seemed to feel towards organized religion, and his own abiding faith in a personal, almost pantheistic, approach.⁸⁶ Beginning with the statement "I would not always reason. The straight path/Wearies us with the never-varying lines,/And we grow melancholy," Bryant contrasts (and personifies Reason) and calls "her" his "counsellor,/But not my tyrant," noting "the spirit needs/Impulses from a deeper source than hers,/And there are motions, in the mind of man,/That she must look upon with awe."⁸⁷ While he bows to her, he is also mindful of "the fair illusions of old time /Illusions that shed brightness over life,/And glory over Nature." At the time of the meeting of Jupiter and Venus, he notes a time of peace; a fruitful autumn follows a year of drought. These "[e]mblems of power and beauty . . . Shine brightest on our borders, and withdraw/Toward the great Pacific, marking out/The path of empire." Having "tamed" the native tribes, the people are happy and "wear softer hearts,/And shudder at the butcheries of war,/As now at other murders."⁸⁸ The poem concludes with a reference to Greece and hope for its future.⁸⁹

Even if not attributable to a particular religion, "in a sense, all of Bryant's poems of nature are traceable to a concern for religious values."⁹⁰ One might almost call a belief in ontological natural law "religious" in that sense, namely, that there is something beyond our present comprehension.⁹¹ To the extent that ontological natural law depends upon order, and the Aquinistic or Greek view was that God or gods supplied that order, Bryant's poetry contains this thread. Bryant's New England was a world of an increasing liberalism and deterioration

85. *Id.* at 872-73.

86. POETICAL WORKS, *supra* note 8, at 111-13. "Bryant, as most of his poetry testifies, found this deeper source [expressed in *Conjunction*] in nature and in his conception of the past, the present, and the future as constituting a process that, though set in motion by the Creator, was in a constant state of renewal." BROWN, *supra* note 20, at 397-98.

87. *Conjunction*, POETICAL WORKS, *supra* note 8, at 111.

88. *Id.* at 112.

89. *Id.* at 113.

90. MCLEAN, *supra* note 20, at 39.

91. Compare ST. ANSELM, *Proslogion*, Chapter 2 *God Truly is*: "Without doubt, therefore, there exists, both in the understanding and in the reality, something than which a greater can-

of strict Calvinistic predestination; "the liberal consciousness, its initial awe of a Newtonian machine-universe rubbed thin, turned to an image of the Creator with which the heart might make contact, a beneficent Father whose construction of the natural order, according to the revealed laws of physics, was accompanied by generous goodwill toward men."⁹²

Bryant's poem *The Earth is Full of Thy Riches* has been cited as an example of this attitude, although Bryant is distinguished from Freneau "not because he rejects natural philosophy, but because his lyricism travels farther down the road of personal involvement with the facts of nature."⁹³ Bryant has been interpreted as viewing poetry not purely as entertainment but as imparting wisdom; he embodied a moralism within his poems.⁹⁴ He "was convinced that a genuinely American poetry might minister to the moral needs of its readers, guiding them and their institutions in the paths of democratic righteousness."⁹⁵

Although it has been asserted in some quarters that Bryant never "articulated" his beliefs in a systematic way and provided only a philosophical "framework,"⁹⁶ such an interpretation did not attempt to place Bryant's poetry in the context of natural law theory or discuss it in terms of Bryant's own legal training and practice. That training would have been marked by an acceptance of the importance of common as opposed to statutory law as a dynamic part of effectuation of social change and as an "instrument of policy,"⁹⁷ For example, in commenting on the risks inherent in judges interpreting statutes, John Adams made an observation of some relevance here, finding that such judicial interpretation with the result that "one Construction or Consequence is piled up upon another until we get an immense distance from Fact, Truth and Nature."⁹⁸

Consequently, Bryant was more than likely keenly aware of what Weinreb has discussed in terms of *kosmos* and *physic*, and may even be seen to

not be thought," quoted in THE EXISTENCE OF GOD 26 (John Hick, ed. 1964).

92. MCLEAN, *supra* note 20, at 40.

93. *Id.* at 40-41.

94. BROWN, *supra* note 20, at 145. Brown further notes "Bryant's constant drawing upon nature in his own poetry to find illustrations for moral ideas." *Id.* See also PEARCE, *supra* note 65, at 206, quoting Bryant's second *Lectures on Poetry*: "Among the most remarkable of the influences of poetry is the exhibition of those analogies and correspondences which it behold between the things of the moral and of the natural world. I refer to its adorning and illustrating each by the other-infusing a moral sentiment into natural objects, and bringing images of visible beauty and majesty to heighten the effect of moral sentiment."

95. PEARCE, *supra* note 65, at 206.

96. MCLEAN, *supra* note 20, at 42-43.

97. MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 1780-1860 1-3 (1977).

98. *Id.* at 5 (*emphasis added*), quoting from and citing John Adams, *Case No. 46*, in 2 LEGAL PAPERS OF JOHN ADAMS 199 (L. Kinvin Wroth and Hiller B. Zobel, eds. 1965).

implicitly reject the same determinate natural orders in favor of a view comparable to Weinreb, that is, as one of instruction and balance. This is not to say that Bryant deliberately set out to formulate a jurisprudential philosophy in his poetry. It is merely to suggest that the influence of legal training and practice combined with and manifested itself within his poetry, and it is possible to argue a comparable (if not prescient) position to that espoused by Weinreb.

Bryant knew the realities of legal practice. When he began, though, he tired of the provincial, backwater practice among "bigoted" persons in his first place of practice, Plainfield, and left for Great Barrington.⁹⁹ Within a year he expressed regret to his father that he did not go to Boston to practice in the initial instance; he did "not relish this business of skulking about in holes and corners of the earth."¹⁰⁰ It is not surprising, therefore, that poetry remained a paramount interest over law; in 1817 he answered his mentor Baylies' question as to whether he was pleased with his profession by writing "the Muse was my first love and the remains of that passion which not rooted out yet chilled into extinction will always I fear cause me to look coldly on the severe beauties of Themis."¹⁰¹

In 1821 he had written that he was "one who does not follow the study of law very eagerly, because he likes other studies better; and yet devotes little of his time to them, for fear that they should give him a dislike to law."¹⁰² He was therefore no stranger to the "real world" of practice, and was described as "an active, learned, and rather fiery young lawyer" with a more than average number of reported decisions for the time for one his age.¹⁰³ He once referred to his profession as "a shabby business."¹⁰⁴ This abhorrence of the rough and tumble side of law, or at least legal practice, may have found expression in his poetry through his idealization of nature. It was certainly at least one contemporaneous view that though he "was not particularly distinguished as a lawyer, but might have become so could he have overcome his disgust with a profession in whicheven then more

99. Letter From William Cullen Bryant To An Unidentified Friend (Dec. 1816), in LETTERS, *supra* note 17, at 64.

100. Letter From William Cullen Bryant To His Father Peter Bryant (Jan. 10, 1818), in LETTERS, *supra* note 17, at 77-78.

101. Letter From William Cullen Bryant to William Baylies (May 27, 1817), in LETTERS, *supra* note 17, at 71. Themis was the goddess of law and justice, daughter of Uranus and Gaea, represented by holding the scale for weighing opposing claims.

102. Letter From William Cullen Bryant to Edward Channing (June 2, 1821), in LETTERS, *supra* note 17, at 105.

103. BIGELOW, *supra* note 81, at 38 n.1, quoting from an obituary of Bryant appearing in the BERKSHIRE EAGLE (June 20, 1878).

104. Letter From William Cullen Bryant to Richard Dank (Mar. 30, 1825), in LETTERS, *supra* note 17, at 177. This letter was written the same year he wrote *The African Chief and A Forest Hymn*, discussed in this article, and sheds light on his view of law that seemingly tolerated the shameful circumstances of *The African Chief* and that ignored the lessons of nature

than at present [1878]—law was not synonymous with justice."¹⁰⁵ On the other hand, it has been argued that Bryant's poetry was better during his career as a lawyer than during his career as a journalist, the former having provided an appropriate creative tension.¹⁰⁶

The prescriptive and descriptive nature of justice that Weinreb claims to be found within each person form the threads of Bryant's poetry, which has been read as a search for order.¹⁰⁷ Just as Weinreb views the deontological approaches of natural law as abandonment of what it originally had to teach, so Bryant may be read as supporting the proposition that there is a methodology to be learned from a discourse with nature.

V. BRYANT, WEINREB AND THE ORDER OF NATURE

The point becomes more complex when actual prescriptive formulae are sought, even if they ultimately are unascertainable. Weinreb argues that liberty without a normative background of justice is unacceptable, and equality must be related to liberty. Without an independent basis to decide which qualities to protect, all will fend for themselves at the expense of others. It is the community and long practice that has yielded a normative content. Nature "expresses its preferences authoritatively, in its own laws, or not at all."¹⁰⁸ In other words, it is not a mechanical application of "nature" to the extent that what is, must be because it is, and if it is, it is naturally so; normative content is found in the community members' conception as being self-determinative within a just social order. And the principles of liberty and equality are the governing principles that form the boundaries once we are removed from the "state of nature."¹⁰⁹ Justice itself becomes an "intervention" in the natural order, and depends upon the exercise of freedom; "unless justice is reduced to mere chance, it appears to follow that the exercise of freedom must be according to justice."¹¹⁰ And that freedom is a "determinate order, determined normatively," with justice an attempt to draw boundaries between a person and his surroundings.¹¹¹ Ultimately, since "[h]uman life as we know it is possible only in community; the contribution of nature are inseparable from the effects of some form of nature."¹¹²

present in *A Forest Hymn*. See *supra* note 31 and accompanying text.

105. BIGELOW, *supra* note 81, at 38 n.1.

106. FERGUSON, *supra* note 6, at 173-78. See also Robert A. Ferguson, *William Cullen Bryant: The Creative Context of the Poet*, 53 NEW ENG. Q., 431-63 (1980).

107. FERGUSON, *supra* note 6, at 175.

108. WEINREB, *supra* note 1, at 230.

109. *Id.* at 234.

110. *Id.* at 234-35.

111. *Id.* at 235-38.

112. *Id.* at 241.

Justice is therefore the "larger idea," and the notion of a normative background against which all receive their deserts "all the way down," regardless of their self-determinative acts, brings the notion of a normative natural order "to its narrowest focus," meaning that the *kosmos*, or order, is within each individual.¹¹³

Bryant comes to Weinreb's aid in *The Order of Nature*, in which Bryant translates a poem by the Roman philosopher Boethius.¹¹⁴ In so doing, he develops a clear argument in favor of ontological natural law that strikes a responsive chord in Weinreb's conclusions as to the place of justice in a natural order. Weinreb argues that if desert were no longer applicable, then freedom would vanish. As traditional values of a community shift, or as "a slowly accumulating shift in the fundamental conceptual system by which facts are ordered," then just as original sin and fate no longer explain our own experience, so desert and freedom would not be necessary.¹¹⁵ The poem itself likewise suggests a fundamental shift of value towards a recognition of love and a divinely-inspired natural order, as contrasted with the starkly political environment in which Boethius was figuratively and literally imprisoned.

To the extent that Bryant, trained as a lawyer, was reading Boethius's *The Consolation of Philosophy*,¹¹⁶ and writing this poem in 1866, the year after the American Civil War and the assassination of Lincoln, the poem provides a means of evaluating the confluence of legal and literary influence that presages modern themes. The views find sympathy within Weinreb's analysis that "the issue . . . is meaningful freedom within a morally indifferent universe."¹¹⁷

Boethius wrote *Consolations* in prison and stylistically combined Platonic dialog and poetry to explore his way back to God. Of relevance here is *Book IV, Poem 6*, which Bryant translated. *Book IV* itself has been read to form a synthesis of two antinomic ideas comparable to the approach taken by Weinreb. Boethius unites "the idea of a mutable Fate governing and revolving all things . . . [and the idea] of God as the 'still point of the turning world . . .'"¹¹⁸ One might almost say self-determination and a normative natural order, using Weinreb's terms. Watts identifies Philosophy, who lectures to Boethius, as setting forth in

113. *Id.* at 249.

114. POETICAL WORKS, *supra* note 8, at 329-30.

115. *Id.* at 265.

116. ANCIUS BOETHIUS, THE CONSOLATION OF PHILOSOPHY (Betty Radice ed. & transl. V.E. Watts Trans., Penguin Classics ed., 1969) [hereinafter CONSOLATION].

117. WEINREB, *supra* note 1, at 265.

118. V.E. Watts, *Introduction to Consolation*, *supra* note 116, at 24.

this poem a "cosmic power of love" that integrates with human affairs and functions in "concord" with the natural elements.¹¹⁹

Just before the poem, Philosophy tells Boethius that "God orders all things and directs them towards goodness." Interestingly Bryant translates in a vein more akin to Weinreb (and the more classic translation of H.F. Stewart and E.K. Rand)¹²⁰ with a de-emphasis on God and a shift to a less defined natural order:

Thou who wouldst read, with an undarkened eye,
The laws by which the Thunderer bears sway,¹
Look at the stars that keep, in yonder sky,
Unbroken peace from Nature's earliest day.¹²¹

On the other hand, Watts translates Boethius' opening lines as directly a function of God:

If you desire to see and understand
In purity of mind the laws of God,
Your sight must on the highest point of heaven rest
Where through the lawful covenant of things
The wandering stars preserve their ancient peace.¹²²

Bryant translates consistently with his own view that reaches back to Thanatopsis and the "language" of nature and its instructive power. He uses the word "read" instead of "see and understand;" he refers initially to the "Thunderer" rather than God. Indeed, Watts' version (which makes no attempt to rhyme and strives to be a more literal one) refers to the laws of God, that is, God-made, as opposed to Bryant's reference to laws that are used (or even govern) the Thunderer.

Geoffrey Chaucer, translating in the English of his day and closer in time, combines the two: "Yif thou, wys, wilt demen in thi pure thought the ryghtes or the lawes of the heye thondrere (*that is to seyn, of God*), loke thou and byhoold

119. *Id.* at 25.

120. ANCIUS BOETHIUS, THE THEOLOGICAL TRACTATES AND CONSOLATION OF PHILOSOPHY OF BOETHIUS (H.F. Stewart and E.K. Rand Trans., 1918) (Loeb Classical Library ed. 1962). This version uses the word "thunderer" as well.

121. WILLIAM CULLER BRYANT, THE ORDER OF NATURE, in POETICAL WORKS; *supra* note 8 at 329.

122. ANCIUS BOETHIUS, *Book IV Poem 6*, in CONSOLATION, *supra* note 116, at 141.

the heightes of the sovereyn hevене. Ther kepyn the sterres, by ryghtful alliaunce of thinges, hir oolde pees."¹²³

Bryant celebrates "the elemental harmony" of nature:

The elemental harmony brings forth
And rears all life, and, when life's term is o'er,
It sweeps the breathing myriads from the earth,
And whelms and hides them to be seen no more:

While the Great Founder, he who gave these laws,
Holds the firm reins and sits amid his skies
Monarch and Master, Origin and Cause,
And Arbiter supremely just and wise.¹²⁴

Compare Watts, following up the lines relating to the seasons:

This mixture brings to birth and nourishes
All things which breathe the breath of life on earth;
This mixture seizes, hides, and bears away
All things submerged in death's finality.
Meanwhile there sits on high the Lord of things,
Who rules and guides the reins of all that's made,
Their king and lord, their fount and origin,
Their law and judge of what is right and due.¹²⁵

Chaucer's view:

This atempraunce norysscheth and bryngeth forth alle thinges
that brethith lif in this world; and thilke same atempraunce,
ravysschyng, hideth and bynymeth, and drencheth undir the
laste deth, alle thinges iborn.

Among these things sitteth the heye makere, kyng and lord,
welle and bygynnyng, lawe and wys juge to don equite,
and governeth and enclyneth the brydles of thinges.¹²⁶

123. GEOFFREX CHAUCER, BOECE, in *THE POETICAL WORKS OF CHAUCER*, 373, 433 (F.N. Robinson, ed. 1933).

124. *POETICAL WORKS*, *supra* note 8, at 330.

125. *CONSOLATION*, *supra* note 116, at 142.

126. *CHAUCER*, *supra* note 123, at 433.

Bryant references the various seasons as the elemental harmony. In other words, for him there is a normative background, a natural order: it is elemental and it is in harmony. The other translations use less editorial words, such as Watts' use of mixture.

The final two stanzas by Bryant:

He guides the force he gave; his hand restrains
And curbs it to the circle it must trace:

Else the fair fabric which his power sustains
Would fall to fragments in the void of space.

Love binds the parts together, gladly still
They court the kind restraint nor would be free;
Unless Love held them subject to the Will
That gave them being, they would cease to be.¹²⁷

Watts:

All things that he with motion stirs to go
He holds and when they wander brings them back;
Unless He call them home to their true path,
And force them back their orbits to perfect,
Those things which stable order now protects,
Divorced from their true source would fall apart.
This is the love of which all things partake,
The end of good their chosen goal and close:
No other way can they expect to last,
Unless with love for love repaid they turn
And seek again the cause that gave them birth.¹²⁸

Chaucer:

And tho thinges that he stirethy to gon by moevynge, he
with draweth and aresteth, and affermeth the moevable or
wandrynge thinges. For yif that he ne clepide nat ayein
the ryght goynge of thinges, and yif that he ne constreynede
hem nat eftsones into roundnesses enclyned, the thingis
that ben now contynued by stable ordenaunce, their
scholden departen from hir welle (*that is to seyn, from*

127. POETICAL WORKS, *supra* note 8, at 330.

128. CONSOLATION, *supra* note 116, at 142.

hir bygynnyng), and failen (*that is to seyn, tornen into noght*). This is the comune love to alle thingis, and alle thinges axen to ben holden by the fyn of good. For elles ne myghten they nat lasten yif thei ne comen nat eftsones ayein, by love retorned, to the cause that hath ye ven hem beinge (*that is to seyn, to God*).¹²⁹

McLean says of this poem and Bryant's translation that "in spite of his loss of personal contact with nature, [Bryant] could still speak boldly and militantly of the harmony and order of natural law."¹³⁰ (In both Watts' and Chaucer's translations of *Consolations* there is no title for the particular poem, but Bryant not only supplies one (*The Order of Nature*), but one that is directly expressive of themes developed in *A Forest Hymn* and *Conjunction of Jupiter and Venus*. Given the numerousness of poems in *Consolation*, it is also telling that Bryant chose this one to translate.)

Boethius is concerned in Book IV, where the poem appears, with good and evil. He argues that freedom is essential to the wicked-if freedom is removed, it is like relieving criminals of punishment. One of the points made just prior to the appearance of the poem is that when men are evil, and other evil men who suffer injustice at their hands, they themselves will reform. If God allows evil, it is because of the assurance that good will form to balance it and eliminate it. In other words, the natural balance will be restored; as Boethius writes, "For a certain order embraces all things, and anything which departs from the order planned and assigned to it, only falls back into order, albeit a different order, so as not to allow anything to chance in the realm of Providence."¹³¹ We can compare this to the closing lines of another of Bryant's more famous poems, *To A Waterfowl*:

He who, from zone to zone,
Guides through the boundless sky thy certain flight,
In the long way that I must tread alone,
Will lead my steps aright.¹³²

In his translation of Boethius, Bryant found a topic within the mainstream of his thought developed throughout his original poetry. His version (as compared to that of another contemporary translator, Watts) resonates the themes of Weinreb as well in terms of a background normative order against which self-

129. CHAUCER, *supra* note 123, at 433.

130. MCLEAN, *supra* note 20, at 47.

131. CONSOLATION, *Book IV Poem 6*, *supra* note 116, at 140.

132. POETICAL WORKS, *supra* note 8, at 27. This poem has been praised as one of Bryant's best-written, whose message is crystal clear: "The God who guides the waterfowl in its migra-

determination is exercised. By his choice of this poem, he seems to synthesize not only his views on the utility of the language of nature as instructive, but the ideal of a greater force (whether denominated "Thunderer" or "God" or simply "nature") that embodies love and order for those with the ability to discern it. For Weinreb, the search for such discernment is the critical thing; we simply must "achieve what we aspire to achieve, nor give over the aspiration," regardless of our ultimately mastery of understanding.¹³³

Or, as Bryant wrote in *Castles in the Air*, there is

The realm of Castles in the Air. The foot
Of man hath never trod those shining streets;
But there his spirit, leaving the dull load
Of bodily organs, wanders with delight
And builds its structures of the impalpable mist"¹³⁴

VI. CONCLUSION

Bryant looked to his own country, both politically, culturally and in terms of natural surroundings, to craft his poetry.¹³⁵ That environment was alive to the varying and deep currents of natural law. To the extent that natural law still embodied reference to nature itself and notions of a great "clockwork," or background normative order, Bryant was a part of that culture. We know that he studied Coke and that he practiced actively in courts at a time when judges and lawyers still paid homage to natural law. His significant poetry, much of it written during his period as a law student and lawyer, reflects a normative natural order within which self-determination is recognized as a lofty element of concepts of freedom, equality and liberty. As such, Bryant's poetry provides a key to Weinreb's argument for ontological natural law and, conversely, an understanding of the intellectual framework of an ontological natural law as set forth by Weinreb provides an insight into the poetry of the lawyer/poet Bryant. Nothing more should be asked from such a confluence of law and literature.

tory flight, keeping it safe from the hunter, will similarly guide us through life to a final refuge." HYATT H. WAGGONER, *AMERICAN POETS FROM THE PURITANS TO THE PRESENT* 41 (1968).

133. WEINREB, *supra* note 1, at 265.

134. POETICAL WORKS, *supra* note 8, at 383.

135. See BRYANT, ON POETRY IN ITS RELATION TO OUR AGE AND COUNTRY, *supra* note