ON CONNECTING NATURAL RIGHTS WITH NATURAL LAW

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Introduction and Thesis

Since the appearance of a seminal book by Leo Strauss called *Natural Right and History* (1953)[1], thinkers faithful to the natural law tradition have generally held with Strauss that a radical shift occurred some time in the 17th century, or even earlier, say, with Grotius (R. Tuck, 1980)[2], whereby natural law thinking underwent a serious and irreversible "transformation" into natural rights. Or, alternatively stated, natural law was supplanted by a concept of natural rights. This is partly because natural rights reject natural teleology, a centerpiece of a dominant natural law tradition. But it is also because Strauss understood natural rights as the child of Thomas Hobbes, a perspective repugnant to natural law.

Strauss wrote:

> If, then, natural law must be deduced from the desire for self-preservation, if, in other words, the desire for self-preservation is the sole root of all justice and morality, the fundamental moral fact is not a duty but a right; all duties are derivative from the fundamental and inalienable right

1. STRAUSS, L. (1953). *Natural Right and History*. Chicago and London: The University of Chicago Press, p. 181.

2. TUCK, R. (1980). *Natural Rights Theories*. Cambridge: Cambridge University Press.

> of self-preservation. There are, then, no absolute or unconditional duties; duties are binding only to the extent to which their performance does not endanger our self-preservation.

Strauss' point, which with few exceptions is generally correct, is that the classical natural law tradition, while limiting the authority of the state, did not enunciate *individual rights* against the state, a function which modern natural rights emphasize.

I believe the lingering ideal of the polis prevented this confrontation. If society is not distinguished from government, then the idea of confronting government with a breach of persons' rights makes no sense. For Strauss, natural *right* (not *rights*) is merely an objective basis for discerning right from wrong conduct. The two ideas can be seen as quite different. Rights facilitate; natural law obligates. Rights protect us from certain kinds of misfortune or suffering; natural law, in its teleological form, directs us to worthy ends. Rights secure alternatives and choices; natural law morally justifies *certain* alternatives and choices.

My thesis is this: Despite variances in the two concepts, natural law and natural rights, they, for the most part, work together and are compatible. In ordinary social contexts, they are even necessary to each other, most especially, natural law both conceptualizes and helps to bring about a society in which natural rights are respected and enforced. Accordingly, although there was an historical "shift" it was gradual and perspectival, not divisive. Natural rights were dimly seen as a proper extension of moral law, a development in the direction of greater moral sensitivity. Rights claims indeed reach back into the Middle Ages; while natural law claims can be seen in the modern age to function exactly as they always have: to instruct and promote human virtue within communities of associated persons and, as even Strauss acknowledges, to act as a limit upon state authority.

Strauss' thesis has been exceedingly influential. But his is not the only voice in repudiation of the continuity between natural law

and natural right. In a recent book, *Rights and Persons*, 1977)[3], A.I. Melden, basing his thinking on the notion of rights justified by John Locke, writes:

> ...neither in the Stoic conception of a natural law... nor in the Aquinian natural law that may render null and void as law the statutes of particular states, is there any intimation of the moral rights with which Locke among others was concerned.

Calling the conflation obscure and confusing, Melden writes boldly that with respect to natural rights,

> there is no appeal to the laws of nature.... And although there remains a faint echo of natural law theory in Locke's [position], the conception of a moral right that is instanced in the natural rights of persons involves a *substantial conceptual change or advance*... [my italics] from the legal conception of rights that had been employed earlier in the field of law.... If... there is [this] conceptual change involved in the Lockean doctrine of fundamental moral rights, then it is indeed a mistake to assimilate the modern Lockean doctrine of fundamental moral rights with earlier natural law theory.

The distinction is put this way by John Gueguen. "... for the moderns natural law is a restriction upon nature, a correction of nature, which aims at 'liberating' man for the pursuit of his personal ends–not at bringing him within the true freedom of nature's limits [which is the aim of classical natural law]. Thus the emphasis in the moderns [is] upon rights, a concept foreign to classical natural law" (1980)[4].

Gueguen uses "natural law" and "modern natural law" as his contrasting terminology; but the distinction he makes is the same as those who, like Strauss and Melden, contrast natural law with [modern] rights. Gueguen holds that rights are premised upon a

3. MELDEN, A. I. (1977). *Rights and Persons*. Berkeley and Los Angeles: University of California Press, pp. 228-31.

4. GUEGUEN, J. (1980). Personal correspondence with the author.

false view of man and society, namely, radical individualism and moral conventionalism. Clearly he too is tracing rights doctrine to Thomas Hobbes rather than to John Locke.

So too is A.J.G.M. Sanders in his essay, "Conflict and Consensus in South African Natural Law Thinking" (1988)[5], when he posits a striking and disparaging disparity between natural law and natural rights which he calls "two prototypes of social order". Natural law is, on his schema, a voluntary commitment of social life, "cohesive, legitimate, integrated, persistent, and depends upon (and generates) consensus, solidarity, reciprocity and cooperation". Contrariwise, rights involve not commitment but "inducement, coercion, and power... They are divisive, malintegrated and beset by contradictions. They depend upon (and generate) structured conflict, opposition, exclusion and hostility".

For entirely different reasons, M.J. Detmold, in his book *The Unity of Law and Morality* (1984)[6], rejects natural rights altogether. "I don't think there are rights in any fundamental sense. Respect for you gives reasons for action in regard to you; and this translates better into my duty than into your right.... Of course, right and duty are often correlative, but it is important which is fundamental...".

Detmold rejects rights not because he is a staunch natural law thinker but because he reduces all normative obligations to empirical norms. Duties can be formulated in terms of norms whereas rights, he believes, cannot.

The American jurist Roscoe Pound wrote something very interesting on this matter in his *An Introduction to the Philosophy*

5. SANDERS, A. J. G. M. (1988). "Conflict and Consensus in South African Natural Law Thinking". In J. HUND (Ed.), *Law and Justice in South Africa*. Johannesburg: University of South Africa.

6. DETMOLD, M. J. (1984). *The Unity of Law and Morality*. London, Boston, Melbourne and Henley: Routledge & Kegan Paul.

of Law (1954)[7]. He recognized that natural law and natural rights were distinct in that natural law was "devised for a society organized on the basis of kinship" whereas rights characterized a society "which conceived of itself as an aggregate of individuals and was reorganizing on the basis of competitive self-assertion". Nevertheless, he writes, "the convenient ambiguity of *ius*, which could mean not only right and law but 'a right', was pressed into service and *ius naturale* gave us natural rights".

I think it is clear that natural law and natural rights are in many respects different concepts and different doctrines in different contexts. And this is so even while we recognize that their historical variations robbed them of absoluteness and determinacy of meaning, such as the increasing secularization of rights or the turn from a teleological view of man's duty of perfection to a more modernistic concern (patterned on Aristotle) with the structure of legal society, such as the writings of Lon Fuller exemplify. I do not want to contest their *by-and-large* conceptual distinction, even though their historical evolutions, still going on (R.S. Hartigan, 1989)[8], make both of them indeterminate; and as we shall see, they share many attributes in common. Whatever natural law is, it is a doctrine of human duty and obligation. It is instructional of our moral obligations to conduct ourselves in certain ways. It ties into virtue and character. In contrast, natural rights prescribe a doctrine of value attribution: For persons to have a natural right is to have a kind of inalienable possession with which they can do things. A working definition of natural rights, one that will serve us here well enough, connotes rights as fundamental, normative attributes fixed equally to persons as a sign of their moral worth and dignity. Rights go in two directions at once: They expand the opportunity

7. POUND, R. (1954). *An Introduction to the Philosophy of Law*. New Haven and London: Yale University Press, p. 15.

8. HARTIGAN, R. S. (1989). Natural law, nature and biology, a modern synthesis. (Unpublished manuscript)

for people to do things and they narrow the chances for people to suffer things or be harmed.

Everyone recognizes also that rights *imply* duties and obligations. As Hospers puts it, "... a right is the reverse side of an obligation not to interfere with its exercise" (J. Hospers, 1961)[9]. If I have a right to enjoy liberty of thought or of movement, then an obligation is imposed upon everyone else not to encroach upon my liberty of thought and movement. So in this sense, rights and duties, different as they are, are related. One implies the other and both are generally reciprocal: owed *to* everyone, *by* everyone. Nevertheless, moral duties far outnumber rights, for not everyone to whom I may owe a duty has a right to my obligation. In certain important contexts, rights are not needed. They are superfluous, or even obstructive (M. Golding, 1987)[10]. Also, conversely, there are persons who possess rights but are under no corresponding duties. Babies and incompetents possess rights, but because they possess no autonomy they cannot fulfil duties to anyone.

This rights-entail-obligation rule, with its reasonable qualifications, seems firm, foundational and incontestable. No one denies it. Hence I need say no more about it.

We have already pointed out two primary lines of natural law thought: 1) the individual-aspirational line of thought toward fulfilment that is proper to one's rational humaness (teleological natural law as duties to bring oneself to a higher domain of intellectual excellence - *areté*), and 2) the line of thought (which I hold to be Aristotelian in inception and developed by the Stoics) which sees the natural law as those sets of obligations essential to community life. There are primary lines of thought in rights discourse as well. We will encounter some of these as we now ask

9. HOSPERS, J. (1961). *Human Conduct*. New York, Burlingame: Harcourt, Brace & World, Inc.

10. GOLDING, M. (1987). Moral community. *Social Science*, V. 72, nos. 2-4, Fall, pp. 128-131.

the first question relevant to our discussion: Why has a radical natural law/natural rights shift been claimed? Why is their connection denied? On what grounds is it reasonable to hold that these two moral concepts are so different that they move in separate directions, repudiating any necessary connection between them? To this enquiry we now turn.

Why is the Connection Denied?

I would like to offer a few suggestions as to why the natural law/rights distinction seems discontinuous, even opposing. The considerations I want to mention are mainly historical and perspectival; they tend to characterize how rights have been seen and the contexts shaping these perspectives. Accordingly, they tend to exaggerate, I think, the distinctions between them and this obfuscates bridging the two moral ideas. Listed below, but not in order of importance, are criticisms that I believe may have influenced sharply separating in certain minds these two moral ideas, that of natural law and that of natural rights. In a paragraph or two following each criticism, I advance my responses. These are intended to help move my thesis along toward acceptance.

1. *Criticism* Natural law presupposes community; it is a doctrine aimed at the social and moral life of man. Natural rights stress the individual and what is his due. They say nothing about what the individual owes to others except respect for others' rights.

Natural rights, too, cannot be understood except in a social setting. They are appropriately construed only as social morality– there is no point to a right unless other parties are present who can violate the right. Moreover, to save a person from the kinds of rights abuses he can suffer is the paradigm of a social duty. The above criticism that natural rights are not a social doctrine derives

from Thomas Hobbes whose doctrine was based solely on self-preservation. Hobbes had no social theory at all; his single, individual "right" was the right to life against a sovereign who might threaten this life; and he argued that all our obligations are in the end self-serving. Hobbes' philosophy respects no autonomous moral norm, no virtue for its own sake, no inherent moral worthiness in anything. These conditions countermand the idea of natural rights.

Clearly this is not the rights tradition referred to here. Hobbes as a moral egoist has no theory of moral rights whatsoever. It is a mistake to charge modern rights doctrine with a Hobbesian foundation. The emphasis of natural rights on the individual is not anti-social. Indeed, it is intended to preserve the inherent moral worth of the individual who may not be wantonly used by others or by the state for its own ends. In their function of thwarting the interference of political power with the innocently chosen activities of individuals, rights exhibit their intrinsically associational nature. To disallow ulterior coercion is at the same time to endorse the opposing value of natural, voluntary human sociality. If natural law tells us that coercion is evil, then "a moral right is something that a person has a claim to by natural law" (F. Foldvary, 1985)[11].

Let us not forget, too, on the other side of the coin, the radical individualism of Socrates who set the tone for the teleological natural law, a doctrine which cannot be understood except as presupposing the intrinsic moral worthiness of individuals freely aspiring to their duties of moral and intellectual perfection.

2. *Criticism.* We have witnessed in our times an illicit and incoherent overextension of rights to include the positive actions that were always the prerogative of duty and righteous conduct. These have come to be called "entitlements".

11. FOLDVARY, F. (1985). *Natural Rights.* Berkeley, CA.: The Gutenberg Press, p. 13.

There is no more serious criticism of rights than the above insight that rights discourse has been radically altered from invoking a security against state encroachment to an insistence that the powers of the state be used to redistribute human goods. Here rights language has shown itself to be easily debased. Rights today, in many countries, have exploded out of all proportion and feasibility. Since entitlements necessarily magnify the powers of the state, to enforce "entitlements" in law directly and explicitly contradicts the meaning of a natural right, namely, not to be coerced in one's person and in those claims or actions inalienably fixed to one's person. Let us not, then, confuse natural rights, a universal morality, with the modern positive law of entitlements which are conventional and relative to the legal state which claims to effect them.

Here, I propose, is the Great Shift: Not from natural law to natural rights but from natural rights to conventional, positive rights. From rights against the state to entitlement by use of the state. From anti-statism to its contradictory, statism. (V. Black, 1989)[12]. Were Leo Strauss living today, he would have strong arguments for another book! I believe we can reasonably trace to Enlightenment philosophy and the French Revolution, despite their necessary curatives, the weakening of natural rights proper and the theory of the limited state which rights imply. Both extremes, monarchy and Revolution, destroyed the intermediary social structures which gave context and meaning to the idea of community moral law.

3. *Criticism.* Modern rights doctrine seems to override our moral obligations to others. Natural rights have the tendency to imperil Judeo-Christian charity and relief of suffering by competing with the obligations so clearly commanded by these

12. BLACK, V. (1989). Rights, reform and the rule of law. Paper presented at the Fourteenth World Congress on Philosophy of Law and Social Philosophy. Edinburgh.

religious traditions. Natural law cannot compete because it is voluntary whereas rights are enforced.

If rights are extended to include entitlements, they do indeed usurp the moral functions of the natural law. But the so-called entitlement rights, as we saw, are not what I defend as the *natural* rights connected to natural law.

It is clear, too, that rights have to be legally enforced to be effective, whereas virtue does not–*cannot*. This important difference between moral conduct which is freely chosen and law which is involuntarily enjoined helps to reinforce the insistence that natural law and rights are incompatible types of obligation. But basic natural law precepts, such as, Do no harm to others, or respect the life and security of persons, have always been enforcible. Indeed, that natural law will be enforced, that is, will define the limits of the positive law, is what natural law theorists hope for when they affirm that the positive law should be bound by the moral law.

4. *Criticism*. Rights are role-defined. For example, contracts entail rights, and status or office entails rights. Traditionally, these are legal rights. But moral rights are something altogether different from legal rights which are specialized and constricted by the roles that define them.

Such a claim, I believe, only shows that there are different kinds of rights. The moral rights that may connect with natural law must also, like natural law, be universal. So-called "perfect rights" are indeed role-restricted; but their existence and importance do not preclude a doctrine of moral natural rights.

The natural law early on, too, was judicialized. Gratian, for example, turned natural law into an axiom of jurisprudence. This made possible the concern of natural law with the precepts of natural justice as a legal fact. One contemporary author, for instance, believes that, "Few if any jurisprudential categories have

enjoyed such a long currency as the concept of natural law" (G. Koziol, 1987)[13].

The Stoic interpretation of natural law was a formative influence on the Roman legal codes. And after the St. Bartholomew Massacre, the French Protestants made much of the binding nature of the moral law to limit the power of the kings, an exact replica of the function of natural rights. The famous *Vindiciae contra tyrannos* (of disputed authorship) in the 16th century systematized the argument and "became one of the landmarks of revolutionary literature" (G.H. Sabine, 1961)[14]. Commentators on the natural law as well known and reputable as A.P. d'Entrèves (1970)[15] and Otto von Gierke both remark on the insight that the natural law is incompatible with tyranny over persons, to constrain which was a central purpose of the natural law.

Someone might argue that to limit power (a traditional function of the natural law) is not the same as to enforce individual rights against power. But I would argue that enforcing individual rights *against* power is one of the most effective ways to *limit* power. Rights are an implementing means to the restriction of arbitrary power. Accordingly, we can understand that since one of the paramount purposes of natural law, historically, has been to limit arbitrary tyranny, then with respect to *this* function of natural law, natural rights are implied. Natural rights are a partial definition, an "operational definition", as it were, of what it is to put natural law to its most popular and significant judicial use.

13. KOZIOL, G. (1987). Lord's law and natural law. In H. J. JOHNSON (Ed.), *The Medieval Tradition of Natural Law*. Kalamazoo, MI.: Western Michigan University, pp. 103-117.

14. SABINE, G. H. (1961, 3rd ed.). *A History of Political Theory*. N. Y., Chicago, San Francisco, Toronto, London: Holt, Rinehart and Winston, p. 377.

15. d'ENTREVES, A. P.12 (1970). *Natural Law*. London: Hutchinson University Library.

5. *Criticism.* To have a natural right does not inform us what values to choose. We may, and do, use our rights to enjoy anything our egos desire. We have seen in our day that narcissism and selfish egoism have been the consequence of rights.

Such a trenchant criticism indicates grave weakness and cowardice not with respect to rights but with respect to our moral education. If rights are universal possessions, then the moral relativism and cultural conventionalism implied by the charge of selfish individualism cannot be the result only of natural rights. But rights language is easily debased, as we saw; and there is truth in the charge that wanton interpretations of what it is to have a right contribute to wanton behavior. We feel very uneasy in admitting that we have a right to do wrong or that we have a right not to do what is right. And yet the abnegation of such rights or the limitation of rights, as Rousseauss writings make manifest, only to those actions that do the right leads to tyranny.

The spread of wanton behavior into society at large makes moral education more difficult. What is essential, then, is that *natural law* be understood as the content of moral education. On this ground, to have a natural right, then, is to have, among other liberties, an opportunity to learn right conduct and good values. I shall have more to say about this in my concluding remarks.

6. *Criticism.* Natural law as understood by most philosophers has its origin in divine command. Its source is religious. Natural rights have been secular from the beginning.

The pre-Christian origins of natural law were not religious. The secular ideas set in motion by Socrates, Plato, Aristotle and the Stoics and their followers intimately penetrate natural law doctrine throughout its long history, both secular and religious. Its universality and persistence are in part attributable to the fact that its moral merits do not depend upon any special religious perspective (although in my opinion natural law is fully compatible

with such a perspective and there is no reason why it should not when appropriate be assumed or argued for).

With respect to a religious association with rights, here are the opening lines of *The Law* (1850)[16], that masterful and brilliant tract by Frederic Bastiat, the French economist, statesman and author who despised the tyranny he so presciently predicted of the French Revolution:

"*Life is a Gift from God*

We hold from God the gift which includes all others. This gift is life–physical, intellectual, and moral life.

"But life cannot maintain itself alone. The Creator of life has entrusted us with the responsibility of preserving, developing, and perfecting it....

"Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty and property existed beforehand that caused men to make laws in the first place" (p. 5).

What is Bastiat leading up to? He is leading up to natural rights. "What, then, is law? It is the collective organization of the individual right to lawful defense.

"Each of us has a natural right–from God–to defend his person, his liberty, and his property..." (p. 6).

It is true that natural rights do not *logically* depend for their coherence and validity upon a religious source. But its provision, as in Bastiat, is not inappropriate. The history of variation in both natural law and natural rights theory accommodates without contradiction a religious source as a kind of "special hypothesis" which some philosophers see fitting to provide. The American

16. BASTIAT, F. (1850). *The Law*. (7th printing 1970). Irvington-on-Hudson, N. Y.: The Foundation for Economic Education, pp. 5-6.

natural law tradition rests on religious assumptions. Is it a mere coincidence that this strong and emblematic natural rights tradition pervading the founding documents that constitute American legal society came directly out of the matrix of natural law thought?

Sometimes I wonder if there is a kind of yearning on the part of those who accept Strauss' extreme thesis–namely, that rights take their origin and inspiration from Hobbes' a-social doctrine of the state–a kind of yearning to preserve certain ideals such as the polis, the Golden Age of the Church, the securities of the legacy of the Roman Law, or the assumed tranquility of the Middle Ages with its images of social order and patrician virtue. I would like to acknowledge that there is great good in all these traditions that ought to be fostered and preserved. But in my opinion, whatever permanent goods they have bequeathed to history ought not be used to snuff out or devalue the idea of natural rights, an idea which seems to me admirably to represent advances in civilization's moral sensitivity. Just as, for example, Jacques Maritain has updated and changed Aquinas' natural law to make it applicable to contemporary experience, while yet retaining an eminent respect for its character, so may we update the natural law without distorting its spirit and direction.

In Defense of Rights

We are ready for our second question. Why is it important to argue for natural rights as in a continuous parabola with natural law, or as supporting each other? Why, for instance, can we not simply agree that coercion and the ulterior use of persons is, by natural law, an evil, and leave it at that? Suppose natural rights had never appeared in the history of mankind. Would something morally critical be missing? Would something that natural law cannot deal with be crucially absent in our moral culture? Would natural law itself perhaps lack chords in its own voice?

Well I suppose I think that a moral ideal that has been around a long time needs cautious examination, both from the perspective of why it arose–what laid the path for its appearance within the civilizing landscape of the human condition–and from the perspective of its justification. A kind of intuition tells me that natural rights are correct and crucially significant for the moral life of community; and so there is, in me, a desire to explore the interconnectedness among valid moral concepts to see what overall theoretical design or unity can be achieved, especially among concepts that have jointly been enunciated or whose concrete instrumentalities have been combined.

Natural law exhibits a hearty evolution, one that is still going on. The work of Richard Hartigan, for example, to weld natural law with the empirical findings of modern socio-biology is an example[17]. Natural rights may be just one segment of this evolution in the history of natural law, or they may not be. We have to look and see. Also, there is the element of practical application; rights have consequences of great magnitude for modern society and its citizens.

It is true, I am sorry to say, that the *legal fact* of rights spawns conflict: conflict in the law and conflict among interest groups when two rights cannot simultaneously be enforced. I have certain views on this matter which cannot be developed here. But isn't the adversarial posture a necessary by-product of protecting the innocent from the assaults of the state? Would we really want to dispense with, say, the kind of work against intimidation and terror that Amnesty International has brought to our attention, or the efforts of international courts to rectify gross rights-injustices to individuals? Isn't it exactly with respect to these projects that the adversarial posture of the individual *against* the state becomes of crucial moral importance? I do not know what justifies such moral

17. HARTIGAN, R. S., op. cit.

efforts as these except human rights. This brings me to my third point.

Rights discourse is generally stronger in rhetorical impact than discourse about our duties to our fellows, and the fact that the state can enforce a right furnishes society a stronger instrument with which to condemn evil. Francisco Suarez believed that rights were powers or capacities to do something. I do not believe this is what an *individual* right is; but Suarez is going in the right direction. Rights do generally enable or empower us to do more than we otherwise could do; it is just that rights are also possessions of young children who cannot exercise them or enjoy their empowerments. And rights also, as we saw, alleviate suffering.

In our times, times that have brought about the modern Leviathan state, rights against the powers of the state are crucial additions to our moral vocabulary. I cannot think of a concept more suited to thwart coercive, collective aims than the idea of an individual right.

Rights simply make a stronger statement than an appeal to our general duties. They assert a moral requirement with a kind of impelling force. "It is right that I be treated justly" may be an ideal. "I have a right to be treated justly" declares an imperative. Wasn't Hesiod's claim stronger when he appealed not to the fact that treating him unjustly in his inheritance was wrong but that he had a *right* to his just inheritance? This was no egotistical, self–serving claim. It was, to be sure, a *legal* right to which he appealed. But such a legal right is universalizable. It is an absolute moral truth that persons have rights to their just inheritance.

How else but through the language of rights can one express the claim that it is one's due that he be allowed to speak freely, to leave a country in which he is abused or unhappy, to associate with whom he wishes (to prefer his family to living with strangers), or to practice his chosen faith? It is not everyone's categorical moral *duty* to do these things for others. The natural law does not enjoin them. But it is everyone's duty not to interfere with those who

wish for themselves to carry them out. This latter kind of duty is implied by the corresponding right that expresses the claim. It is the right here, then, that is foundational. The right is not, like its correlate duty, derived.

There is a sense, though, in which to carry out one's obligations is stronger than a right. In coming under a natural law, one's conscience, the core of his being, is left troubled and dissatisfied if the right conduct that is owed is neglected or transgressed. One who is obliged to act rightly is thereby, by such an obligation, strengthened in his will and rectitude. If one fails this test of moral will and rectitude, one's very person, the self that defines our unity and dignity, is jeopardized.

Granted, too, if it cannot be secured by legal society a right is weak, having only ideal status. But so, too, the obligation to *do* what is right is weak if that obligation is easily ignored or carries no sanctions or unwanted consequences. In the first case, the rights-holder is weakened in his confrontational status with those who would deprive him of his right. In the second case, he to whom right conduct is owed is weakened. But he who owes it also is weakened in the loss of his sacred self.

Let us note that in tying natural law to one's conscience and sense of duty, radical individualism is presupposed. This is as it should be. Both natural law and natural rights presuppose the moral worthiness of the individual. They also presuppose what is equally important: sentience, the capacity to feel pain. These attributes utterly preclude an a-social view of man.

What I have said above may justify the notion of natural rights. Daniel Shapiro has very recently written, "Rights make a distinctive contribution to moral reasoning if there are some actions which are evaluated differently when looked at from a rights point

of view as opposed to a nonrights point of view" (1989)[18]. But how does this move us along the path of my thesis, namely, that natural law and natural rights are conceptually related? As well, that both are essential and mutually enabling parts of our moral condition?

What Supports the Connection?

Numerous voices have alleged to a relationship between natural law and natural rights. Not all of them have proved their case. Often the language is loose and unexplained; no relevant or specific connection is clarified. Not all of these voices are flattering or approving either.

Nevertheless a sampling of these voices issuing from various contemporary contexts shows us that the idea of relating natural law to natural rights is "in the air". What, then, have these thinkers claimed, and why have they made these claims about natural law and natural rights?

"[Natural law is] an ideal critique of positive law whereby to secure [natural rights] in their integrity" (R. Pound, 1954)[19].

Duties to the self presuppose rights. Rights are... derived (H. Veatch, 1985)[20].

"Burke's eloquent appeal to the 'natural rights' of traditional Natural Law enabled him... to transcend the commercial and national powers which sacrificed human rights to a narrow self-interest" (P. J. Stanlis, 1965)[21].

18. SHAPIRO, D. (1989). Conflicts and rights. *Philosophical Studies*, V. 55, nº 3, March, pp. 263-278.

19. POUND, R., op. cit.

20. VEATCH, H. (1985). *Human Rights, Fact or Fancy*? Baton Rouge and London: Louisiana State University Press.

21. STANLIS, P. J. (1965). *Edmund Burke and the Natural Law*. Ann Arbor, MI.: The University of Michigan Press, p. 60.

Natural rights are "an aspect or feature of the modern doctrine of natural law". (International Encyclopedia of the Social Sciences).

Natural rights derive from natural law. They are a consequence of natural law, flow from natural law. They are something a person has a clain to *by* natural law. "... the concept of natural rights is just natural law seen from a different angle". "I have a right to do any act whose violation [coercive prevention] is evil by natural law". Natural law tells us what is evil. All that is left we have rights to (F. Foldvary, 1985)[22].

"Natural law conveys universal natural rights that obligate everyone". The natural law is the same as "our... human rights". Natural rights are "drawn from the natural law". The natural law exists to protect natural rights (R. Francis, 1988)[23]. Francis continues:

> Natural law, practically taken, is really the same as our God-given, natural, inalienable human rights which always engender corresponding responsibilities to acknowledge, protect and promote these same rights everywhere. "Doing good and avoiding evil", the main natural law principle, operates then to protect and enhance our lives according to our basic rights and desires, reasonably taken, to live and flourish in freedom, to be happy alone and with others, to be safe and not violated in person, or property, or truthfulness, or family life....

The prominent and contemporary voice of Jacques Maritain's position on the matter is well known to many. For Maritain, it is in accordance with the

> ... dynamism [between Natural Law, the Law of Nations, and Positive Law] that the *rights* of the human person [my italics] take political and social form in the community. Man's right to existence, to personal freedom, and to the pursuit of the perfection of moral life, belongs, strictly

22. FOLDVARY, F. op. cit., p. 13.

23. FRANCIS, R. (1988). Something substantial about natural law. *Vera Lex*, V. VIII, nº 2, pp. 10-11.

> speaking, to natural law.... *natural law* deals with the rights and the duties which are connected in a *necessary* manner with the first principle: 'Do good and avoid evil'.... *For it is natural law itself which requires that whatever it leaves undetermined shall subsequently be determined*, either as a right or a duty existing for all men... (1950)[24].

Some writers *recognize* a natural law/rights connection but they do not argue for it. They see the use of a familiar and accepted language, that of natural law, as a mere strategy to persuade others of its continuity with, and therefore our acceptance of, the concept of rights. No underlying conceptual connection is claimed or justified by such a ploy. Rather, the favorable aura surrounding the use of natural law language covers up an alleged elision to natural rights.

Now what do all these asseverations come to? Some of them, as with Maritain and Veatch, are in their larger writings argued for. But most of the others offer no solid vindication of a natural law/natural rights connection other than rhetorical optimism. One of these principles with respect to the other is "drawn from", "flows out of", "protects", "is a consequence of", "criticizes", "secures", "retains", "is the same as", "is an offspring of", "is a feature or aspect of the other". Etc. Shall we really just leave it at this?

Natural Law and Natural Rights: Common Denominators

That natural law and natural rights have something to do with each other may spring from recognition of features they share in common. Most obvious are the obligations they imply, natural law directly in its commands: Do justice. Avoid ignorance. Preserve

24. MARITAIN, J. (1950). *The Rights of Man and Natural Law*. Excerpts in P. E. Sigmund (Ed.), *St. Thomas Aquinas On Politics and Ethics*. N. Y. and London: W. W. Norton & Co. 1988, pp. 172, 210-11.

life. Avoid giving offense. Relieve suffering. Natural rights indirectly in the universal obligations they entail for all persons to respect these rights. Both principles converge on the relief of suffering, and both pivot around natural justice as the proper foundation for the positive law, natural rights being, as someone has said, "those legal instruments that like natural law relieve us of human pain and torment". Both have teleological forms: natural law directly in its command to aspire to moral and intellectual improvement; natural rights indirectly in releasing individuals from political bondage so that they can move toward their chosen pursuits. The natural law, says Francis, "regulates us according to our naturally proper goals... geared toward human fulfilment or happiness".

Both traditions posit primacy of personal agency, autonomy of judgment, the inherent moral worth of persons. Natural law views this worth from the perspective of what we owe to others; natural rights from the perspective of what is persons' rightful due. Both also see the moral law as a requirement for social life. Accordingly, natural law limits the authority of the state by holding it to the moral law. Natural rights enjoin the state against abuse of persons and bind it to a duty to protect.

Both also share important and basic methodological assumptions: immutability in the broadest conception of their foundational principles, universalizability, and equality of application. And both are categorical and universal in their conceptual independence of culture, convention, positive law and political state.

Both moral concepts are based on human nature, and both are natural as well, not in the sense that they are common but in the sense that they are the product of reflective human activity created neither by arbitrary choice nor by political will.

Importantly, for both natural law and natural rights, the notion of wrong does service. Wrong is the contrary both of right conduct and rights conformity. The wrongs we do to innocent persons are

wrong both in harming the integrity of their selves and in violating the liberties derived from their rights. To say that it is not right that somebody do something is to say that it is wrong that they do it. Is this not the same as to say persons have *a right* that somebody not do this wrong to them?

But geometry and calculus both share consistency, and both are members of the class, mathematics. This does not make them cognates or require that a stronger relationship be demonstrated between them. To share features is one thing. To share meaning, or together to be necessary, or jointly to produce an outcome is another.

Some Schemata Suggesting the Connection

Have we found anything in the above analyses, both in those which disclaim a natural law/natural rights connection and in those which remark favorably on their alliance, that can be extracted to argue for an exact and meaningful relationship between these two moral ideas? Let us look at several schemata that have emerged in the course of our survey.

1. If, as I have claimed, natural rights are a distinguishably social idea in that their preservation secures the associational inclinations of man through counteracting interferences with these inclinations, then if the natural law is a guide to moral conduct, it would seem that persons must be free or rational to exercise their capacity for moral judgment. Rights preserve political liberty. Natural law is a guide to personal morality. Rights direct us to what is allowed. Natural law states what we are obligated to do. Since ought presupposes can, rights, or political liberty, would seem to be necessary to the full exercise of our duties.

But before such a relationship can be cleared for acceptance, an intervening relationship must be posited. Otherwise we are guilty of confusing political freedom with personal freedom. Is this

intervening relationship true? *A contingent relationship causally connecting the positive social–political conditions to personal freedom must prevail.*

Now I think it is a commonplace that one need not live in a free or open society in order to be a moral person and conduct one's affairs righteously. Doing good and avoiding evil is a universal moral law. It binds universally regardless of social conditions. Virtue and solicitous attention to one's obligations toward one's fellows have a way of finding their place among the stateless, the rightless, the deprived and the dispossessed. Degradation tends to corrupt, it is true–but conversely, political liberty is no guarantee of civility, righteousness, or moral heroism.

I am afraid such a paradigm as the above is too facile. It not only implies social determinism in the pretension to create a new man. The causal link between the free society and moral elevation of its citizens has also not been firmed or evidenced without contradiction. The free society is good *for* people; all else being equal, it is morally better, for numerous reasons, than oppression or anything in between. It may be that free societies are more generous than oppressive regimes which always, by nature, have more wrong with them than oppression alone. But I do not find that the political liberty that rights entail necessarily conditions us into scrupulous attention to what we owe our fellows on a day-to-day basis.

2. What if we follow the lines of teleological instead of deontological natural law? Instead of construing natural law as what we owe others by virtue of being human, we construe natural law as a mandate for moral and intellectual aspiration–as duties to perfect ourselves? Here I think we can see the possibility of a stronger natural law/rights connection. In a society where rights are instituted, individuals have greater opportunities, and where such a condition prevails, judgments regarding how one wants to implement his goals for self-improvement can wander over a wider range of possibilities. The personal freedom here that morality

requires is not just a conditioned by-product of the free society; personal freedom itself initiates awakened opportunities and alternatives by facilitating our perception of them. On this schema, natural law and natural right are simultaneously and reciprocally in causal interaction.

However with this paradigm, morally important as it is that merit and the pursuit of excellence prevail as individual and as common ends, and causally likely as it is that natural law as an aspirational imperative promotes this pursuit of excellence, there is no guarantee that the aspiration toward excellence will include moral improvement or communal caring. It seems that something else has also to be in place, something that relates to human nature but perhaps is not obviously or instantaneously available to us.

Also, for those who care, I'm afraid the religious dimension of teleological natural law gets squeezed out by an approach that is silent on the content and substance of what persons ought to aspire to–that is, what they ought to use their rights for. Ought they to aspire to the love of God? To doing what God has destined for us? To fulfilling God's will?

Since it is certain that natural rights as we know them *leave us free to choose our goals*, what certainties are there that we will choose the natural law?

In the above two schemata, we have given priority to natural rights. Yet we have not been able to assure ourselves that natural law either causally follows from a rights-conditioned society or will be chosen by free individuals in such a rights-conditioned society. Let us then see what happens when we give priority to the natural law. Given the logical and moral priority of the natural law, is there some dependable connection, causal or conceptual, to natural rights?

3. If we construe natural law in an Aristotelian mode as those social constants essential to our associational life, including natural justice, then I believe we may offer a modified parallel with natural rights. Natural rights reflect our inclinations within community to

say and do as we please without harming others who may also say and do as they please. An enforcible natural right prevents violation of these inclinations, and so natural rights as a means possess a power to protect that which natural law enjoins as a community ethic.

On this schema, we have washed out some of the historically developed differences between these two concepts, seeing them now as somewhat parallel in function, namely: Natural law describes our primary social obligations as those which we are inclined by our nature to perform; whereas natural rights reflect the moral law that socializes these inclinations mankind tends to conform to, and they protect these moral inclinations from intrusion.

It is apparent, however, that a parallel or similarity of function between two concepts does not describe a conceptual connection. And if we consider the case whereby no rights at all are enforced to protect our social inclinations from intrusion, we may declare this a tragedy but in no way does it mitigate our interpersonal obligations, which always hold. Natural rights propitiously function when they are in place; but whether they are or are not, the natural law is still primary and defines our duties even though perhaps at a diminished level of success.

4. A fourth and final paradigm recommends itself regarding a conceptual and functional mutuality between natural law and natural rights; and it is this with which I close. We are to understand teleological natural law as the moral requirement not only to do good in our personal lives or to respect those ends toward which we have obligations but also to help bring about a common good necessarily inclusive of the kind of human freedom that rights describe. Such a paradigm conceives the natural law as fundamental and first. It places upon it the imperative to do more than "do good". It charges the natural law not only with the obligation to relieve human distress but also with reaching out beyond the personal and the immediate toward constructing and

preserving the legal measures which define *flourishing* human society, namely, those natural rights experience has shown are good in themselves for people and society. It cannot be absurd to oblige the natural law to foster the natural rights of man which experience has shown us have done more than any other rules of law, when steadily and with conviction adhered to, to relieve human beings of distress and torment.

What is entailed by this way of construing the relationship is an important and indispensable *educational function for natural law*. First, the natural law itself has to be educated to extend its perspective to the common good construed in terms of natural rights. And secondly, with respect to what rights allow us to realize, the natural law has to educate rights-satisfied individuals to use their rights for the good values which morality demands. This fourth paradigm therefore postulates not rights but natural law as the primary catalyst and justification.

Here I believe we have located significant conceptual and causal connections between natural law and natural rights. *Conceptually*, natural rights become part of the constituted meaning of the natural law. That is to say, to conform to natural law is in part to enjoin the natural rights. From this it follows that *causally*, natural law aspires to the realization of rights within the community. And to enjoy a natural right is to learn to use it to act in conformity with the natural law.

This educational essential of the natural law (as old as Socrates in his defense of the morally aspirational nature of man) glides so ineluctably between the terms, it is impossible, for me at least, not to see how the educational corollary is the logical fastener, or bridge, that binds natural law to natural rights. Moral education is what is missing in some of our earlier attempts to connect these requirements, natural law and rights, of the moral institutions of life. If natural law is to serve as one of the goals of natural rights, then moral education ought to teach us what obligations are appropriate as objects of our freedom. Richard Weaver has said

that education prepares for the achievement of freedom. If this is so, then as John Henry Newman has said,

> Education is a higher word; it implies an action upon our mental nature, and the formation of a character; it is something individual and permanent... in making choices between truth and error, between right and wrong. For... liberal education introduces one to the principles of things, and it is only with reference to the principles of things that such judgments are at all possible.

Natural law introduces us to the principles of things.