

‘Implicit and Explicit Natural Law’

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Professor Iain T. Benson FRSN ©

University of Notre Dame Australia, School of Law

Sydney Australia

Extraordinary Professor, Faculty of Law

University of the Free State

Bloemfontein, South Africa

Co-editor with Tom Angier and Mark D. Retter of *The Cambridge Handbook of Natural Law and Human Rights* (Cambridge: Cambridge University Press, 2023).

INTRODUCTION: LANGUAGE and MEANING: Bentham's challenge.

As noted in Ogden and Richards *The Meaning of Meaning* (New York: Harcourt Brace, 1927, p.p. 122-123):

Many terms used in discussion where “faith”, “beautiful”, “freedom”, “good”, “belief”, “energy”, “justice”, the State” constantly occur are used with no distinct reference, the speaker guided merely by his linguistic habits and a simple faith in the widespread possession of these habits”...[Therefore, the writers continue]... we ought to regard communication as a difficult matter and close correspondence of reference for different thinkers as a comparatively rare event. It is never safe to assume that it has been secured unless both the starting-points and the routes of definition, whereby the referents of at least a majority of the symbols employed have been reached, are known.”

Jeremy Bentham's (1748-1832) challenge (in *Theory of Legislation* (London: Kegan Paul, 1891, 7th ed.) referring to “the pretended laws of nature” (85) proposes what he terms “..a treaty of conciliation with the partisans of natural rights.” He challenges as follows: “If *nature* has made such and such a law, those who cite it with so much confidence, those who have modestly taken upon themselves to be its interpreters, must suppose that nature had some reasons for her law. Would it not be surer, shorter and more persuasive, to give us those reasons directly, instead of urging upon us the will of this unknown legislator, as itself an authority?” (86-87). I propose to take up Ogden and Richards' method and Bentham up on his challenge. Here are the direct reasons for natural law demonstrating its implicit presence.

PART I – Cosmos, Ethics and Moral Language

1. Our ethical and moral frameworks emerge from what we believe about the universe. This is true for all cultures whether this insight is explicit or implicit. Our moral language, in turn, develops from what we hold to be true about tradition and beliefs (moral and religious). Both Michael Polanyi and Aldous Huxley have commented upon how avoidance of “faith” or “metaphysics” makes modern theories *appear to be* able to avoid in key ways their assumptions. Huxley, as we shall see when I discuss metaphysics in a moment, spoke of there being no such thing as “no metaphysics”. Polanyi spoke of how objectivism/positivism has forced “faith” to take on “hidden dimensions”(*Personal Knowledge*).
2. My goal in this presentation is to take a particular account of natural law, that of Canadian philosopher George Grant (obit 1988) and discuss how his insights lay the groundwork for questions about how contemporary theories hide their natural law claims, thinking that by not addressing them, they do not exist or that by not mentioning them, these other aspects will simply appear unimportant. I shall argue that this is a specious avoidance - - what, Rommen termed “metaphysicophobia”, and that it allows various contemporary schools of thought, such as liberalism, or even scientism off the hook in terms of what they take for granted. Reliance upon human reason or the reliability of the created order are, in fact, as Thomas Langan has argued (*Being and Truth*) “natural faith” however much the theorists wish to avoid any claim that their theories rest upon anything but facts. Even “new natural law” theories that claim to rely upon matters that are “self-evident”, “intrinsic goods” depend upon other matters that they do not list (such as, most obviously, the inherent teleology behind “practical reasonableness” see: Brian Bix, *Jurisprudence: Theory and Context* (London: Sweet & Maxwell, 9th ed., 2023, 71-73).

PART I – Cosmos, Ethics and Moral Language

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3. The most influential theory of morals, ethics and law in Western cultures is called natural law. It emerged from insights developed first as far as we can tell from the Greeks, picked up by the Romans and developed in the Jewish, Christian and most other traditions in one form or another. Its moral language was that of “virtues”. These included, centrally, the cardinal virtues of justice, wisdom, moderation and courage. Some of you will be aware of the replacement of this language of “virtues” with a different language in our modern period - - that of “values” which we get primarily from the philosopher of the Will - - **Nietzsche**. I have discussed and written on this elsewhere so only simply note it here as essential to understand since the subjectivism inherent in “values” is key to the Modern Mind and absent from the Original Tradition (I take this latter term from Anna and John Rist, *Confusion in the West* (CUP, 2025)).

PART I – Cosmos, Ethics and Moral Language

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4. The relationship between religious insights and philosophical insights varies within each tradition and over time in different schools within each tradition. I will not attempt to discuss these sub-groupings or different approaches here. What is important to note is that all schools of jurisprudence are, in one way or another, merely *parts* of a more **holistic** account of law within *natural law*. People are attracted (*synderesis*) to goods even though they are partial and whether or not they are aware of such attraction or the soul's capacity for the same.

PART I – Cosmos, Ethics and Moral Language

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5. There are differing accounts of natural law and different theories of the role of reason and metaphysics. Recent work has covered the origins and development of natural law theories. This includes those rooted in Graeco-Roman theorists such as Aristotle, Cicero and later developers of their theories in Aquinas through to the social contractarians Hobbes, Locke and Rousseau and then modern theorists such as Rommen, D'Entreves, Messner, MacIntyre and the so-called “new Natural Law” of Grisez, Finnis and Boyle. Recent commentators looking at the broad sweep of theories include Tom Angier’s, *Natural Law Theory* (Cambridge: Cambridge University Press, 2021) in their Elements in Ethics series. For a very useful classical account see: the late Wolfgang Waldstein, “The Capacity of the Human Mind to Know Natural Law”, Vol 11:1 *Ave Maria Law Review* (2012) 175-192. I consider Angier’s overview important and, in short compass, unlikely to be bettered.
6. One of the best descriptions of natural law in the West of which I am aware is by the Canadian philosopher **George Grant** (1919 - 1988).
7. It is to be found in Chapter 3 of George Grant’s *Philosophy in the Mass Age* (1959, 1966), “Natural Law”, sets out five key concepts that form the basis of the “natural law” approach. These are: cosmos, human reason, human nature, metaphysics and education. Let us look at these one at a time. I want to argue that most or all of these are implicit in ALL contemporary schools of philosophy *whether or not they realise this fact*.

George Grant - *Philosophy in the Mass Age*

Chapter Three – Natural Law - Five Key Points

- i. We live in a **cosmos** not in chaos (void)
- a cosmos is ordered, everything in it has a purpose. Language itself is ordered to an end - - of meaning. Therefore language, whether we acknowledge it or not, is teleological and purpose oriented. This is not considered at all or sufficiently.
 - part of this is that any **techné** (skill or art) “**how** we do something”, can only be evaluated as “fit for purpose” if we keep the **telos** (end or purpose) in view - “**why** we do something”. If we only study the techniques of disciplines but not its ends we are merely technicians who separate art from science. Science is important but its reach is not as wide or deep as religion (John MacMurray, *The Structure of Religious Experience*, 1937). The so-called “scientific paradigm” got this backwards and saw science as more important and, in a sense, free-standing when it is neither the most important nor free-standing. Technology should be the interpenetration of **techné** by *logos* but has become merely **techné** in contemporary schooling. Note that the idea of a cosmos enables us to rely upon the relationship between ends and means - -to order our understanding in terms of a teleological purpose to existence. We rely on purpose because we have a theory of order or design or purpose that points towards the idea of purpose.

George Grant - *Philosophy in the Mass Age*

Chapter Three – Natural Law - Five Key Points (cont.)

- ii. The cosmos is intelligible, it has meaning and everything in it has a purpose we can know through **human reason**. Science works because reason hypothesises in relation to what is, in our best estimation, actually the case. If it were not so, if there was not truth to discover, then the scientific method and enterprise would be incoherent. (Michael Polanyi: *Personal Knowledge* – “faith has been forced to take on hidden meanings” in modernity) This is the second big thing natural law teaches us; All schools of philosophy depend upon reason whether they acknowledge it or not. Reason and language are not random and all theories that deny teleology are dependent upon it.

- iii. There is a universal **human nature**. Modern education tends to ignore human nature. This involves the nature of both freedom and its limitations. All theories of law have conceptions of human nature whether or not they articulate them.

George Grant - *Philosophy in the Mass Age*

Chapter Three – Natural Law - Five Key Points (cont.)

- iv. We need to learn **metaphysics** (an explanation of being and causes). If we do not learn metaphysics “explicitly” they will tend to be “implicit” - Aldous Huxley once wrote: “You can have good metaphysics or bad metaphysics but you cannot have no metaphysics (*End and Means, 1937*). Modern education tends to ignore Metaphysics and drives assumed beliefs into a realm not of “disproof” but, rather, non-examination. When John Rawls says that his theory of justice “is political not metaphysical” he is simply incorrect. When HLA Hart suggests a bracketing out of metaphysics from his theory, he, too, as Tara Veness pointed out in a brilliant honours thesis several years ago, has implicit metaphysics in his theory. His theory ignores its metaphysics while it, like all theories, is dependant upon the implicit metaphysics it neither acknowledges nor addresses.

George Grant - *Philosophy in the Mass Age*

Chapter Three – Natural Law - Five Key Points (cont.)

- v. We need to be taught these things. So **education** is essential and modern education tends to be technical rather than purposive within and between disciplines. A *holistic* approach to education is needed. Modern schooling tends to fragment education by, amongst other things, placing disciplines in separate compartments which do not “speak” to each other. Within disciplines the focus is often on techniques not on purposes. Medicine, law, business, politics, education etc. become de-racinated within the disciplines as well as between them.

Tom Angier: Natural Law Theory, Conclusion

- Tom Angier, in his recent (2021) *Natural Law Theory* (Cambridge University Press) develops what he terms a via negativa of uncovering “manifest injustice”. According to Professor Angier: “This method assumes that we can discern natural law norms most readily when they are contravened” and he cites Sophocles’ *Antigone* and the actual case of Josef Frizl as examples (Frizl was the Austrian man who kept his own daughter in the dungeon of his home and had an incestuous relationship with her for many years leading to the birth of children who were themselves also kept as prisoners).
- Due reflection on both the narrative in *Antigone*, and the facts in the Frizl case, “uphold a paradigm set of natural law norms, which reflect basically an Aristotelean philosophical anthropology” (p.48).

Angier (cont'd):

- Angier analyses what he terms “two seminal challenges” to the natural law theory, 1) the fact/value distinction in metaethics; and 2) evolutionary biology. He argues that neither of these is devastating for natural law theory “even though both are significant...and need to be taken seriously” (48).
- Angier examines the “new natural law” of John Finnis et al. (life; knowledge; play; aesthetic experience; sociability or friendship; religion and practical reasonableness) and states: “while Finnis’s theory is intriguing and intellectually impressive, its strong reliance on substantially autonomous practical reason departs from traditional natural law, since it makes at best only an oblique appeal to the norms of nature. Whether it counts, strictly, as a natural law theory is, therefore, open to real doubt” (48)

Angier (cont'd)

- Arguing that natural law theory is a “promising source of ethical reflection, whose determination to keep the normative grounded in the natural is both theoretically indispensable and practically timely” Angier opts for an engagement with metaphysics which should, he says, overcome ethical theory’s “metaphysicophobia” which is, “long past its due date”.
- In conclusion he states that: “it is time that ethics returned home, namely to an unpacking of human essence and its manifold ends.” (ibid.). I saw Professor Angier this past week and he tells me that his next book *Human Nature and Human Goods* is coming out soon from Cambridge University Press.
- The claims by positivists such as HLA Hart or constructivists such as John Rawls that their theories are not metaphysical or can avoid metaphysics are dubious in view of the implicit metaphysics in their theories - - they rely on aspects of natural law such as “reason” and “human nature” even for the selection of “rules of recognition” or conceptions of “fairness” and “justice” however much they seek to narrow the perceptual framework. This abstraction proves too abstract to ground adequate theories of justice. Positivism is simply selecting a few rules out of a wider more holistic framework and making the rest implicit.

Conclusion: Positivism is partial and Natural Law the only Holistic Account.

- It is commonplace in analysis of theories of “The Rule of Law” to refer to positivist or merely procedural Rule of Law accounts as “thin”. These have been viewed, unfortunately and frankly, as consistent with a slave state (Joseph Raz quoted in Tom Bingham, *The Rule of Law*, (London: Penguin, 2010) 66. Thin accounts of the Rule of Law are therefore not supportable. The same goes for thin accounts of Natural Law - - that is to say, the implicit reliance on reason, metaphysics, and cosmos without a corresponding recognition that an implicit theory lacks both recognition of reliance (upon the implicitness) and therefore an adequate metaphysical basis for law as justice or for legal education.
- Just as Aldous Huxley argued that there is no such thing as “no metaphysics” but only good or bad metaphysics, it seems that it is time to point out that there is no such thing as “no natural law” but, rather, “thin” or “thick” conceptions of natural law. What I hope to flesh out in my own work in future is how language itself is necessarily teleological and therefore any supposed deep scepticism about meaning is actually committing a logical fallacy however clever it might appear superficially.
- Those theories which employ reason, accept human dignity or human rights or even the right to self-preservation (Hobbes was called by Leo Strauss, after all, “a natural lawyer” because he affirmed the right to self-preservation) are, whether they realise it or not “natural lawyers” however thin their conception of natural law.
- In fact, it might come as a considerable surprise to many to realise that : “we are all natural lawyers now” We just didn’t know it. The task now is to make more widely known our necessary dependence upon natural law concepts for any theory of justice that can count as a theory of justice - - the rest are all just ineffectual fragments. ***THANK YOU.***