

Natural Law and Natural Rights

By James A. Donald
jamesd@echeque.com

Natural law and natural rights follow from the nature of man and the world. We have the right to defend ourselves and our property, because of the kind of animals that we are. True law derives from this right, not from the arbitrary power of the omnipotent state.

Natural law has objective, external existence. It follows from the ESS (evolutionary stable strategy) for the use of force that is natural for humans and similar animals. The ability to make moral judgments, the capacity to know good and evil, has immediate evolutionary benefits: just as the capacity to perceive three dimensionally tells me when I am standing on the edge of a cliff, so the capacity to know good and evil tells me if my companions are liable to cut my throat. It evolved in the same way, for the same straightforward and uncomplicated reasons, as our ability to throw rocks accurately.

Natural law is not some far away and long ago golden age myth imagined by Locke three hundred years ago, but a real and potent force in today's world, which still today forcibly constrains the lawless arrogance of government officials, as it did in Dade county very recently.

The opponents of natural rights often complain that the advocates of natural rights are not logically consistent, because we continually shift between inequivalent definitions of natural law. They gleefully manufacture long lists of "logical contradictions". Indeed, the definitions we use are not logically equivalent, but because of the nature of man and the nature of the world, they are substantially equivalent in practice. These complaints by the opponents of natural rights are trivial hair splitting, and pointless legalistic logic chopping. It is easy to imagine in principle a world where these definitions were not equivalent. If humans were intelligent bees, rather than intelligent apes, these definitions would not be equivalent, and the concept of natural law would be trivial or meaningless, but we are what we are and the world is what it is, and these definitions, the definitions of natural law, are equivalent, not by some proof of pure reason, but by history, experience, economics, and observation.

In this paper I have used several different definitions of natural law, often without indicating which definition I was using, often without knowing or caring which definition I was using. Among the definitions that I use are:

- The medieval/legal definition: Natural law cannot be defined in the way that positive law is defined, and to attempt to do so plays into the hands of the enemies of freedom. Natural law is best defined by pointing at particular examples, as a biologist defines a species by pointing at a particular animal, a type specimen preserved in formalin. (This definition is the most widely used, and is probably the most useful definition for lawyers)
- The historical state of nature definition: Natural law is that law which corresponds to a spontaneous order in the absence of a state and which is enforced, (in the absence of better methods), by individual unorganized violence, in particular the law that historically existed (in so far as any law existed) during the dark ages among the mingled barbarians that overran the Roman Empire.
- The medieval / philosophical definition: Natural law is that law, which it is proper to uphold by unorganized individual violence, whether a state is present or absent, and for which, in the absence of orderly society, it is proper to punish violators by unorganized individual violence. Locke gives the example of Cain, in the absence of orderly society, and the example of a mugger, where the state exists, but is not present at the crime. Note Locke's important distinction between the state and society. For example trial by jury originated in places and times where there was no state power, or where the state was violently hostile to due process and the rule of law but was too weak and distant to entirely suppress it.
- The scientific/ sociobiological/ game theoretic/ evolutionary definition: Natural law is, or follows from, an ESS for the use of force: Conduct which violates natural law is conduct such that, if a man were to use individual unorganized violence to prevent such conduct, or, in the absence of orderly society, use

individual unorganized violence to punish such conduct, then such violence would not indicate that the person using such violence, (violence in accord with natural law) is a danger to a reasonable man. This definition is equivalent to the definition that comes from the game theory of iterated three or more player non zero sum games, applied to evolutionary theory. The idea of law, of actions being lawful or unlawful, has the emotional significance that it does have, because this ESS for the use of force is part of our nature.

Utilitarian and relativist philosophers demand that advocates of natural law produce a definition of natural law that is independent of the nature of man and the nature of the world. Since it is the very essence of natural law to reason from the nature of man and the nature of the world, to deduce “should” from “is”, we unsurprisingly fail to meet this standard.

The socialists attempted to remold human nature. Their failure is further evidence that the nature of man is universal and unchanging. Man is a rational animal, a social animal, a property owning animal, and a maker of things. He is social in the way that wolves and penguins are social, not social in the way that bees are social. The kind of society that is right for bees, a totalitarian society, is not right for people. In the language of sociobiology, humans are social, but not eusocial. Natural law follows from the nature of men, from the kind of animal that we are. We have the right to life, liberty and property, the right to defend ourselves against those who would rob, enslave, or kill us, because of the kind of animal that we are.

Law derives from our right to defend ourselves and our property, not from the power of the state. If law was merely whatever the state decreed, then the concepts of the rule of law and of legitimacy could not have the meaning that they plainly do have, the idea of actions being lawful and unlawful would not have the emotional significance that it does have. As Alkibiades argued, (Xenophon) if the Athenian assembly could decree whatever law it chose, then such laws were “not law, but merely force”. The Athenian assembly promptly proceeded to prove him right by issuing decrees that were clearly unlawful, and with the passage of time its decrees became more and more lawless.

The Greeks could see that we could recognize actions as inherently lawful or unlawful, without the need of the state to tell us. (They had lived through some excellent examples of lawless states.) But how is it that we know? They came out with an astonishingly modern answer, a line of reasoning that we would now call sociobiological.

Aristotle and others argued that each kind of animal has a mental nature that is appropriate to its physical nature. All animals know or can discover what they need to do in order to lead the life that they are physically fitted to live. Thus humans are naturally capable of knowing how to live together and do business with each other without killing each other. Humans are capable of knowing natural law because, in a state of nature, they need to be capable of knowing it.

This theory was demonstrated rather successfully in the “Wild West”, which history shows was not nearly as wild as many modern cities with strict gun control. Beyond the reach of state power, property rights existed, businesses functioned. (Kopel, 323 -373)

Modern sociobiology uses the phrase “social animal” to mean what Aristotle meant by “political animal” and what Thomas meant by “political and social animal”. In modern terminology, ants and bees are “eusocial” which means “truly social”. Humans, Apes, and wolves are “social”.

The problem of “how do we know natural law” is no different from the other problems of perception. The arguments used by those that seek to prove that we cannot know natural law, therefore natural law does not exist, are precisely the same as the arguments that we cannot know anything, therefore nothing exists, and many notable philosophers, such as Berkeley and Bertrand Russell, who started out arguing that natural law does not exist ended up concluding exactly that - that nothing exists.

Philosophers usually try to reason from reason alone, as is done in mathematics, though it was long ago proven that this cannot be done, except in mathematics, and perhaps not even there.

To draw conclusions about the world one must look both without and within. Like the chicken and the egg, observation requires theory and observation leads to theory, theory requires observation and theory leads to observation. This is the core of the scientific method, in so far as the scientific method can be expressed in words.

Natural law derives from the nature of man and the world, just as physical law derives from the nature of space, time, and matter.

As a result most people who are not philosophers or lawyers accept natural law as the ultimate basis of all law and ethics, a view expressed most forcibly in recent times at the Nuremberg trials. Philosophers, because they often refuse to look at external facts, are unable to draw any conclusions, and therefore usually come to the false conclusion that one cannot reach objectively true conclusions about matters of morality and law, mistaking self imposed ignorance for knowledge.

Although many philosophers like to pretend that Newton created the law of gravity, that Einstein created general relativity, this is obviously foolish. Universal gravitation was discovered, not invented. It was discovered in the same way a deer might suddenly recognize a tiger partially concealed by bushes and the accidental play of sunlight. The deer would not be able to explain in a rigorous fashion, starting from the laws of optics and the probabilities of physical forms, how it rigorously deduced the existence of the tiger from the two dimensional projections on its retina, nonetheless the tiger was there, outside the deer, in the objective external world whether or not the deer correctly interpreted what it saw. The tiger was a discovery, not a creation, even though neither we nor the deer could prove its existence by formal logic. And proof of its concrete external existence is the fact that if the deer failed to recognize the tiger, it would soon be eaten.

A determined philosopher could obstinately argue that the perception of the tiger was merely an interpretation of light and shadow (which is true), that there is no unique three dimensional interpretation of a two dimensional image (which is also true), and that everyone is entitled to their own private and personal three dimensional interpretation (which is false), and would no doubt continue to argue this until also eaten. Something very similar to this happened to a number of philosophers in Cambodia a few years ago.

History

Natural law was discovered (not invented, not created, discovered) by the stoic philosophers. This was the answer (not their answer, the answer) to the logical problems raised by Socrates. The doctrines of the stoics were demonstrated successfully by experiment, but political circumstances (the Alexandrine empire and then the Roman empire) prevented a clear and decisive experiment.

Frequently politicians or revolutionaries use natural law theory, or some competing theory to create institutions. Such cases provide a powerful and direct test of theories. Advances in our understanding of natural law have come primarily from such experiments, and from the very common experience of the breakdown or forcible destruction of state imposed order.

The bloody and unsuccessful experiment of Socrates disciple, Critias, showed that the rule of law, not men, was correct. This renewed the question "What law, who's law." Not all laws are arbitrary, there must be laws universally applicable, because of the universal nature of man. Laws governing human affairs, or at least some of those laws, must derive from some objective and external reality, not subject to the arbitrary will of the ruler or the people. If this was not so, then it would be impossible to make an unlawful law. Any law duly decreed by a legitimate ruling body, such as the Athenian assembly, would necessarily be lawful, yet history shows that this was obviously false. Some laws are clearly unlawful. Proof by contradiction.

"There is in fact a true law - namely, right reason - which is in accordance with nature, applies to all men, and is unchangeable and eternal." (Cicero) Cicero successfully argued before a Roman court that one of the laws of Rome was unlawful, being contrary to natural law, creating a legal precedent that held throughout the western world for

two thousand years. Although it was frequently violated, it was rarely openly rejected in the West until the twentieth century.

The arguments and reasoning of the Stoics were generally accepted, but not thoroughly put into practice and therefore not vigorously tested, for over a thousand years.

A philosopher can choose to disbelieve in Newton's laws, but this will not enable him to fly. He can disbelieve in natural law, but political and social institutions built on false law will fail, just as a bridge built on false physical law will fall, just as the deer that does not notice the tiger gets eaten, just as the Marxist philosophers who voluntarily returned to Cambodia to aid the revolution were for the most part murdered or tortured to death by the revolutionaries. The most extreme failure in recent times was the attempt of the Cambodian government to increase the rice harvest by central direction of irrigation, also known as "the Cambodian Autogenocide".

During the dark ages, the knowledge of natural law, like much other ancient knowledge, was kept alive by the church. This knowledge proved very useful. Hordes of armed refugees wandered this way and that, thus tribal and customary law was often inadequate for resolving disputes. Sometimes a king would rise up and impose his peoples customary law on everyone around, but such kings came and went, and their laws and institutions faded swiftly.

In those days the church persistently and rightly claimed that natural law was above customary law, and that customary law was above tribal law and the law of the kings (fiat law). Natural law was taught in the great Universities of Oxford, Salamanca, Prague, and Krakow, and in many other places.

In England the theory of natural law led to the Magna Carta, the Glorious Revolution, the declaration of right, and the English Enlightenment. It was the basis for the US revolution and the US bill of rights.

The next major advance in our knowledge of natural law after the dark ages came with the Dutch republic. The success of this experiment is almost as illuminating as the failure of Critias. The failure of Critias showed that the rule of law, not men was correct. The success of the Dutch Republic showed that the medieval understanding of natural law was sufficiently accurate.

The long revolution by the Dutch against Spain obliterated or gravely weakened those people and institutions responsible for enforcing customary law and fiat law, and little was done to replace these institutions for two generations. But it is everyone's right and duty to forcibly uphold natural law, thus in order to get a law enforced, or to get away with enforcing it oneself, ones lawyer had to argue natural law, rather than customary law. Thus the Netherlands came to be governed predominantly by natural law, rather than by men or by customary law.

Society ran itself smoothly. This showed that natural law was complete and logically consistent. Of course since natural law is external and objective it has to be complete and consistent, but our understanding of natural law is necessarily incomplete and imperfect, so our understanding of it might have been dangerously incomplete, inconsistent, or plain wrong. The experience of the Dutch strongly supports the belief that our understanding of natural law, the medieval theory of natural law as interpreted by medieval lawyers, is fairly close to the truth. If natural law was just something that somebody made up out of their heads, it would not have worked. Internal inconsistencies would have lead to conflicts that could not be resolved within natural law, requiring the man on horseback to apply fiat law or customary law to resolve them. Incompleteness would have lead to unacceptable lawless behavior. None of this happened, powerful evidence that natural law is not just something invented, but something external and objective that we are able to perceive, like the tiger, like the law of gravity.

For a long time people advocated natural law merely because they thought that if people pretended to believe it, it would lead to less bloodshed and other desirable consequences, and no great effort had been applied to the assumptions and methods of natural law theory. Now people started to advocate natural law because they had convincing evidence that our understanding of it was true. Thus came the English enlightenment, John Locke and Adam Smith.

John Locke made a major advance to our understanding of natural law, by emphasizing the nature of man as a maker of things, and a property owning animal. This leads to a more extensive concept of natural rights than the previous discussions of natural law. From the right to self defense comes the right to the rule of law, but from the right to property comes a multitude of like rights, such as the right to privacy "An Englishman's home is his castle." Further, Locke repeatedly, in ringing words, reminded us that a ruler is legitimate so far as he upholds the law.

A ruler that violates natural law is illegitimate. He has no right to be obeyed, his commands are mere force and coercion. Rulers who act lawlessly, whose laws are unlawful, are mere criminals, and should be dealt with in accordance with natural law, as applied in a state of nature, in other words they and their servants should be killed as the opportunity presents, like the dangerous animals that they are, the common enemies of all mankind.

John Locke's writings were a call to arms, an assertion of the right and duty to forcibly and violently remove illegitimate rulers and their servants.

This provided the moral and legal basis for many great revolutions, and many governments. After the American revolution the North Americans were governed more or less in accordance with natural law for one hundred and thirty years.

John Locke was writing for an audience that mostly understood what natural law was, even those who disputed the existence and force of natural law knew what he was talking about, and they made valid and relevant criticisms. In the nineteenth century people started to forget what natural law was, and today he is often criticized on grounds that are irrelevant, foolish, and absurd.

Today many people imagine that natural law is a code of words, like the code of Hammurabi, or the twelve tables, written down somewhere, on the wall of an ancient Greek temple, or some medieval vellum manuscript, perhaps revealed by God or some divinely illuminated prophet. Then when they find that no such words exist, no such prophets are recorded, they say there is no such thing as natural law, because no one wrote down what it was.

Natural law is a method, not a code. One does not reason from words but from facts. The nearest thing to a written code of natural law is the vast body of natural law precedent. But a precedent only applies to similar cases, and is thus rooted in the particular time and circumstances of the particular case, whereas natural law is universal, applying to all free men at all times and all places.

In the middle ages the Medieval scholars defined natural law in a deliberately circular fashion. There was "Ius Divinum", "Ius Commune", and "Ius Naturale". "Ius Divinum" means, more or less, the divinely revealed will of God. "Ius Commune" means, more or less, the long established customary law of nations, peoples, and states that are generally regarded as reasonably civilized.

Note that "Ius Naturale" does not derive from the customs of civilized peoples. Instead it provides with a ground on which to judge which peoples are civilized. It does not derive from the divinely revealed will of God. It provides us with a ground to judge the plausibility of claims of divine revelation concerning the will of God.

"Ius Naturale" is the law applicable to men in a state of nature. It precedes religions and kings both in time and in authority. "Ius Naturale" does not derive directly from the will of God. As Hugo Grotius pointed out in the early seventeenth century, even if there was no God, or if God was unreasonable or evil, natural law would still have moral force, and men would still spontaneously back it with physical force. God could not create men as they are, and at the same time make natural law other than what it is. A God that claimed to do that would be a mere tyrant, unworthy of worship.

Natural law derives from the method and approach then called natural philosophy. For thousands of years advocates of natural law would start with what is now the standard rationale for sociobiology, by pointing out how the wolf and the deer each have natures and inclinations appropriate for the kind of life they needed to live and to take proper care of their offspring. Today, in the language used by modern sociobiologists natural law is the ESS (Evolutionary Stable Strategy) for the use of force, employed by our species and by like species, applied by us by means of reason

to problems and circumstances that confront us today. In older language, it comes from the tree of knowledge, which made us as gods.

Although natural law is an integral part of Christianity, at least of the Christianity of Thomas and Locke, Christianity is not an integral part of natural law. If you went through Locke's second treatise of Civil Government and substituted the phrase "chance and necessity" for the phrases "divine providence" and "judgment of heaven", there would not be any great change in the meaning or force of his argument.

Many of the key themes of modern sociobiology first appeared in Locke's treatises on government, for example Second Treatise §79-81, First Treatise §56-57. Some parts of the second treatise are often consciously or unconsciously echoed on Public Broadcasting System nature and science videos whenever they discuss the family lives and social interactions of non human animals.

Locke and the other Christian advocates of natural law believe that natural law is in accordance with the will of God not because they claim a divine revelation concerning the will of God, but because they believe that the nature of man and the world reflects the will of God.

The stoics and Grotius believed in a universe governed by chance and necessity, with a God that created things, but refrained from subsequent interference. Thomas and Locke believed in a universe that reflects the continuing will of God. It makes little difference. The stoics and Saint Thomas Aquinas started from the same facts and came to the same conclusions from those facts. They merely used slightly different language to describe their reasoning.

Throughout most of our evolution, men have been in a state of nature, that is to say, without government, hierarchically organized religion, or an orderly and widely accepted means of resolving disputes. For the past four or five million years the capacity to discern evil lurking in the hearts of men has been an even more crucial survival capability than the capacity to discern tigers lurking in shadows.

The primary purpose of this capability was to guide us in who we should associate with, (so as to avoid having our throats cut in our sleep), who we should make alliance with (to avoid betrayal), who we should trade with, (to avoid being cheated), who we should avoid, who we should drive away, and who, to make ourselves safe, we should kill.

It would frequently happen that one man would, for some reason good or bad, use violence against another. When this happened those knowing of this event needed to decide whether it indicated that the person using force was brave and honorable, hence a potentially valuable ally, or foolish and eager for trouble, hence someone to be avoided, or a dangerous criminal, hence someone to be driven out or eliminated at the first safe opportunity to do so. Such decisions had to be made from time to time, and making them wrongly could be fatal, and often was fatal.

A secondary purpose of this capability was to guide us in our own conduct, to so conduct ourselves that others would be willing to associate with us, ally with us, do deals with us, and would refrain from driving us away or killing us.

Not all things that are evil, or contrary to nature, are violations of natural law. Violations of natural law are those evils that may rightly be opposed by force, by individual unorganized violence.

The Medievals took for granted that natural law was morally and legally binding on freeholder, Emperor and Pope alike, and during the dark ages and for a little time after, men often attempted to enforce natural law against the Holy Roman Emperor, and these attempts were sometimes successful. On one occasion the Holy Roman Emperor was briefly imprisoned for debt by an ordinary butcher, locked up with the beef and mutton, and held by the butcher until the bill was paid, and this action was mostly accepted as lawful and proper, though such actions were safer against some emperors than others.

The definition of natural law that I have just given is similar to that used in the middle ages, but this definition is not obviously scientific. It fails to show that natural law is legitimately part of science. To show that the study of natural

law is part of science - part of sociobiology, it is necessary to restate the definition in the same value free, game theoretic, terminology that Reeve & Nonacs would use to describe the social contract in wasps.

Here follows a definition of natural law in properly scientific terms, value free terms:

An act is a violation of natural law if, were a man to commit such an act in a state of nature, (that is to say, in the absence of an orderly and widely accepted method of resolving disputes), a second man, knowing the facts and being a reasonable man, would reasonably conclude that the first man constituted a threat or danger to the second man, his family, or his property, and if a third man, knowing the facts and being a reasonable man, were to observe the second man getting rid of the first man, the third man would not reasonably conclude that the second man constituted a threat or danger to third man, his family, or his property.

Note that in order to define natural law in a value neutral fashion we require three people, not two.

This is well illustrated in the recent events in Dade county, Florida (September - October 1992, three months before I wrote this), where property holders gave other property holders guns in the well founded expectation that those guns would be used to prevent, rather than to facilitate, unlawful transfers of property. To define natural law in Dade county you would need one looter or one corrupt official, and two home owners. In value free language, one Dade county home owner and one corrupt official is a property dispute. Two Dade county home owners and one corrupt official is natural law in action. Two Dade county home owners with nobody bothering them is spontaneous order, and of course part of the definition of spontaneous order is that it is a stable order that arises spontaneously from the action of natural law.

The scientific definition is equivalent to the medieval definition because of the nature of man and the nature of the world. The two definitions are equivalent for our kind of animal, because if someone uses violence properly, and reasonably, he does not show himself to be dangerous to a reasonable man, but if someone uses violence improperly, he shows himself to be a danger. This is obvious by direct intuition, and there is also overwhelming historical evidence for this fact. For example compare the American revolution with the Russian or Cambodian revolution. The surviving American revolutionaries prospered. The communist revolutionaries were soon executed by their new masters. Almost everyone who played a significant role in the 1917 revolution was executed or died from brutal mistreatment.

The varying definitions of natural law are clearly consistent on the issue of individual violence. On the topic of collective violence, the questions of what are just grounds for making war, how may a just war be conducted, and what may a just victor do with an unjust loser, the various definitions of natural law often seem cloudy and contradictory. There are two reasons for this apparent cloudiness. One is that there is no natural definition of a collective entity, so it all depends on what gives the collective entity its substance and cohesion, how the individual is a participant in the acts of the collective entity. The Nuremberg trials contain extensive discussions of this point. The other reason is that there is a large difference between what the victor should do and what the victor may lawfully do. The victor should be magnanimous and lenient, as at Nuremberg, but may lawfully be strict and harsh. On the questions that most commonly arise in practice, all the different definitions of natural law give clear, consistent and straightforward answers: The usual reason for war is that one group defines another group as enemy, and then uses organized collective violence to seize the property of the members of that group, and to enslave or kill them. In such case it is open season on the aggressor because they constitute a clear danger to their neighbors. In a just war it is lawful to napalm bomb enemy civilians in a defended city, though not to intentionally target enemy civilians, unlawful to bombard an open city, and unlawful to massacre prisoners under any circumstances, though individual prisoners may be executed for broad reasons. It is sometimes lawful to refuse to take prisoners, depending on the circumstances. The contradictions usually evaporate when we ask the questions that we are actually interested in, about the kind of situations that actually occur in practice. Arguments about whether a given military action was in accordance with the laws of war usually involve appeal to the facts, and arguments about the intentions and capabilities of the combatants, rather than appeal to differing concepts of the laws of war, indicating that our uncertainty concerning the laws of war is less than other sources of uncertainty.

When we apply the value free theory of iterated non zero sum two player games to the value free theory of evolution we get such value loaded concepts as trust, honor, and vengeance (Barkow, Cosmides and Tooby). In the same way, when we apply the value free theory of iterated three player non zero sum games we get such value loaded concepts as natural law.

Natural law theory is a valid part of science, because any n person natural law statement about values can be expressed as an explicitly scientific, value free statement about rational self interest, evolution, and n + 1 player game theory. It is also a valid part of the study of law and economics

In many fields of academia, straying in the direction of consideration natural law is apt to make your grants dry up, perhaps natural law theory tends to delegitimize most grant giving authorities.

Those academics who study sociobiology have been a little braver, perhaps because those who work in the hard sciences are sometimes better at looking after their own, or, as in the case of E.O. Wilson, they simply did not realize they were poking a hornets nest. Also hard science people sometimes seem to be tougher, more obstinate, stubborn, and intransigent than fuzzies.

Hobbes Criticism of natural law

The existence and force of natural law has been continually disputed by those who claim that the state should exercise limitless power over individuals.

Early in the seventeenth century Thomas Hobbes argued that the nature of man was not such that one could deduce natural law from it, or rather he argued that the natural law so deduced placed no important limits on the power of the ruler to do as he pleased, to remake society as he wished, that social order was purely a creation of state power.

Hobbes claimed that in a state of nature, it is a war of all against all, and life is “poor, solitary, nasty, brutish, and short”. This of course is a direct contradiction of the usual natural law argument that man is a social animal, adapted by nature to live mostly peaceably with his fellow men, and do business with them quietly.

Therefore, Hobbes argued, the state is entitled to unlimited power, and right is whatever the state, through its laws, says is right, and wrong whatever the state says is wrong. An “unjust law” is a contradiction in terms because the will of the state is itself the standard of justice, thus the ruler can do no wrong. The ruler is answerable to God, but everyone else is answerable only to the ruler.

Hobbes saw rights as a creation of state power: Therefore, in order that we might have more and better rights, state power should be as absolute and total as possible. The state should pervade and dominate every relationship in order to provide everyone with justice and rights, and suppress any form of association that it does not create and control, and the state should silence any criticism of its absolute power (so that we might be more free).

“Another infirmity of a Commonwealth is the immoderate greatness of a town, [...] also the great number of corporations, which are as it were many lesser Commonwealths in the bowels of a greater, like worms in the entrails of a natural man. To which may be added, liberty of disputing against absolute power by pretenders to political prudence; which though bred for the most part in the lees of the people, yet animated by false doctrines are perpetually meddling with the fundamental laws, to the molestation of the Commonwealth, like the little worms which physicians call ascarides.”

There are some people who read Hobbes, like his reasoning, like some of his conclusions, and discard the conclusions that the twentieth century has shown to be catastrophic. This is inconsistent. If you agree with his assumption that man is not a social animal, then his conclusion that the institutions of a totalitarian state are necessary and desirable, are necessary for people to be free, follows logically.

Hobbes is often called the first atheistic political philosopher. This statement is misleading. There were plenty of political philosophers before Hobbes who had little use for religion, or were hostile towards Christianity, and made little pretense of Christianity. Hobbes was, or pretended to be, a conventional Christian. What made Hobbes different is that he saw religion as a threat to the moral omnipotence of the state. Hobbes argued that subjects of Leviathan should submit not merely their actions but “their Wills, every one to his Will, and their Judgments to his Judgment.” Hobbes's Leviathan was to define the meaning of all words, including, indeed especially, the meaning of the words good and evil. Thus Hobbes's state was to be God, and man could have no other gods before the god of the state. What made Hobbes different is not that he was cynical about Christianity (there were many political philosophers before him more cynical than he) but that he was the first in the sophist tradition to propose what Plato had proposed: to divert religious impulses towards the state, as was eventually done on a large scale during the twentieth century, most vigorously in Nazi Germany and in the Communist countries.

Hobbes claim that in the state of nature life is “solitary, poor, nasty, brutish, and short” can be observed to be false. It is true that during the dark ages, spontaneous order often failed, with bloody consequences, but even a few examples of spontaneous order suffice to demonstrate the existence and force of natural law, just as any number of non tigers cannot disprove the existence of tigers, but two tigers are sufficient to prove existence. In fact a state of nature is very rarely the war of all against all, as Locke pointed out. Spontaneous order held much more often than it failed. Natural law was the norm, both morally and in practice. Of course was not effective all the time, but it was effective often enough that its existence is an indisputable fact. Hobbes history was simply wrong. He took the dramatic events of history, and ignored the commonplace, and treated the dramatic events as the norm. In addition, those dramatic and bloody breakdowns of order that did happen during the dark ages were often the result of armies of refugees fleeing the lawless and criminal activities of states.

Hobbes also argued that even if men know what is just, they will not always do what is just, and that this will often lead to war. This is of course true, but that argument does not lead to the conclusion that men should submit to absolute power. Quite the contrary. As Locke argued, and as the twentieth century dramatically showed, inequality of power does not lead to less use of unjust force, but to greater use of unjust force. Human wickedness is an argument for liberty, not an argument for absolute forms of government.

This argument is no longer used by the modern successors of Hobbes. To conclude for absolutism, it is necessary to argue, as Hobbes argued, that men *cannot* know what is just use of force, and must be provided with an arbitrary definition of justice by some authority possessing a single will, as Hobbes argued. To argue for absolutism from human evil, as both Hobbes and De Maistre also argued, is foolish, and these days nobody makes that argument, regardless of their political persuasion.

If the war of all against all occurs because men cannot know what use of force is just, then indeed law is a creation of the state, as Hobbes argued, and the state is above the law, as Hobbes argued, and social cohesion derives from the will of the ruler, as Hobbes implied. But if violent conflict occurs because of simple uncomplicated evil acts by evil men, then his arguments are invalid, and the arguments of Bastiat and Locke apply — law is collective self defense, thus the state must govern under law, it is not the source of law. The state cannot justly use force in ways that would be illegitimate for an individual in a state of nature. Social cohesion derives from arrangements to ensure that people apply retributive force justly and that the use of such force can be seen to be just, what nineteenth century people called “due process and the rule of law&”. Social cohesion does not derive from a single central will, contrary to Hobbes arguments and assumptions.

The right to bear arms

During the seventeenth and eighteenth centuries natural law was accepted in men's heads and in courts of law, as it always has been accepted in men's hearts. The advocates of absolutism were defeated, first intellectually, then politically, and then by force of arms. Kings who claimed to rule by divine right were killed or forced to flee.

The Glorious Revolution of 1688 guaranteed an Englishman's right to bear arms (a right now lost), and more importantly, prohibited the state from using what we would now call a police force. The people were armed, state was unarmed. Individuals, not the state or the mob, applied lawful force when needed. This worked well, disproving the doctrine of monopoly of force, which derives from the absolutists, notably Hobbes.

In the medieval period the state had never had a large role in maintaining order. Often it was a source of disorder. The Glorious Revolution eliminated its role in enforcement for about two hundred years, while legitimizing its role in judgment.

In a society where there is pluralistic use of force, there needs to be respect for natural law, and natural rights, in order to avoid strife and civil war. Similarly a belief in natural rights tends to result in pluralistic use of force, because people obviously have the right to defend their rights, whereas disbelief in natural rights tends to lead to an absolute monopoly of force to ensure that the state will have the necessary power to crush peoples rights and to sacrifice individuals, groups, and categories of people for the greater good. Conversely a monopoly of force leads to the denial of natural rights (by making it safe and profitable to disregard natural rights) and the disregard of natural rights necessitates a monopoly of force to avoid frequent violent conflict.

For a society where there is plurality of force to work peaceably and well, there needs to be both respect for natural rights and also a substantial number of people with a strong vested interest in the rule of law.

A yeoman was the lowest rank of landowner, one who worked his own land or his families land, in modern terminology a peasant farmer. A villain was a sharecropper, a farmer with no land of his own, semi free, more free than a serf, though not directly equivalent to the modern free laborer. Naturally yeomen had a strong vested interest in the rule of law, for they had much to lose and little to gain from the breakdown in the rule of law. Villains had little to gain, but less to lose. People acted in accordance with their interests, and so the word yeoman came to mean a man who uses force in a brave and honorable manner, in accordance with his duty and the law, and villain came to mean a man who uses force lawlessly, to rob and destroy.

In practice free societies only arose where there was no monopoly of force, the most notable and important examples being seventeenth century England and eighteenth century North America. England, in the late seventeenth and early eighteenth centuries, exemplified the medieval ideal of liberty under law, and Kingly rule under law. In the English speaking world, government started to display disregard for natural rights about fifty years after they introduced a police force, about the time that people took power who had grown up in a state where police enforced the law

The best present day example of a society with strong social controls and weak government controls, a society with plurality of force, is Switzerland. (Kopel, p278- 302) In peacetime the Swiss army has no generals, no central command. Everyone is his own policeman. By no coincidence Switzerland is also the best modern example of the right to bear arms. Almost every house in Switzerland contains one or more automatic weapons, the kind of guns that the American federal government calls "assault rifles with cop killer bullets". Switzerland has strict gun controls to keep guns out of the hands of children, lunatics and criminals, but every law abiding adult can buy any kind of weapon. Almost every adult male owns at least one gun, and most have more than one, because of social pressures and the expectation that a respectable middle class male citizen should be well armed and skillful in the use of arms. It is also no coincidence that respect for property rights in Switzerland is amongst the highest in the world, possibly the highest in the world. Switzerland also has lower tax levels than any other industrialized country.

Today the state is losing cohesion and its ability and willingness to maintain order and enforce the law is visibly diminishing. We can once again expect to see armed conflict between the modern equivalent of villains and yeomen. Indeed we are already seeing it. The recent L.A. riots (April 1992, eight months ago as I write this) are often described as a race riot, and to some extent they were. Yet there was as much violence by unpropertied Mexicans attacking Mexicans possessing small businesses, as there was violence by unpropertied blacks attacking Koreans possessing small businesses. Black shop owners had their shops looted and burnt by blacks in the same way as Korean shop owners had their shops looted and burnt by blacks. This was an attack by villains on yeomen, caused by the flight of the police, and only partially a black versus Korean race riot.

Civil Society and the State

Plainly, some kinds of society are more natural than others. When the state attempts to impose an unnatural form of society, it requires a large amount of coercive violence to impose this form, and the state undermines its own cohesion in the process.

At the time that Locke wrote, natural law was about to become customary law, because the state was disarmed and the people armed. For the most part the common law of Locke's time was already consistent with natural law, but on some matters judges had to perform contortions to render the form of common law consistent with the substance of natural law. Much common law came from Roman law, and the law of the late Roman empire was often quite contrary to natural law. Freedom of association is a right under natural law, a crime under Roman law. Under the law of the Roman empire any association not compulsory was forbidden. In order to avoid repudiating Roman law without violating natural law, the English courts had to perform elaborate contortions, and today the 59th sole prerogative of the Holy Roman Emperor still lives on in America, in the form of the concession theory, which holds that a corporation is a part of the state, a portion of state power in private hands. This bizarre and convoluted legal fiction is highly inconvenient for businessmen, vastly lucrative for lawyers, and is a dangerously potent weapon in the hands of irresponsible bureaucrats and lawless judges.

Under the code of Justinian a corporation is a fictitious person created by the fiat of the Holy Roman Emperor. Under natural law a trust is created by the promises that the officers of the trust make to it. (In the Latin of the early dark age "trustis" meant "band of comrades".)

Hobbes argued that what we would now call civil society was nonexistent, or should not exist, or existed only by the fiat of the state. He argued that voluntary and private associations should be suppressed, as a threat to the power of the state, and hence a threat to order, or should only exist as part of the apparatus of the state.

Locke argued that the legitimate authority of the state was granted to it by civil society, that the state existed by the power of civil society, that this was its source of power morally and in actual fact.

Until the twentieth century Locke's position was widely accepted as self-evident. When the state was unarmed and the people armed, as in eighteenth-century England and America, it was indeed self-evident. During the nineteenth century the utilitarians and the absolutists argued that the state derived its power from its capacity for large-scale force, and only that, and that in order to impose the greater good on reluctant groups and individuals the state should have a total and absolute monopoly of all force. They therefore argued that the power and authority of the state came from force alone, and should come from force alone, that the state did not derive its substance from the civil society, that what appeared to be private and voluntary associations in reality derived their cohesion from the power of the state, and therefore the state could and should remake them as it willed, that contracts derived their power from the coercion of the state, not from the honor of the parties to the contract, and therefore the state could decide what contracts were permissible, and had the power and the right to remake and change existing contracts.

In the twentieth century this view came to be widely accepted. People came to believe that civil society only existed by fiat of the state, that the state existed because its army and police were armed, and the people were unarmed, that the state existed by force. Even people who loved freedom, such as Hayek, reluctantly accepted this idea as true.

During decolonization the U.N. created governments in accordance with this false idea, the idea that all a state required to exist was firepower superior to that of private citizens, and that with superior firepower it could create a civil society, if needed, by fiat. The newly created governments attempted to remake or eliminate civil society in accordance with this false idea.

As a result of this false idea, in the third world and in the former Soviet empire, a number of governments have collapsed or are close to collapse. Leviathan derives his cohesion from civil society. Without a strong civil society the police, the army, the bureaucracy and the judiciary tend to dissolve into a mob of individual thieves and

hoodlums, each grabbing whatever he can, and destroying whatever he cannot. It is civil society that holds the state together. The state does not hold civil society together. Civil society is not a creation of the state. The state is a creation of civil society.

Locke has been proven right, Hobbes proven wrong, by an experiment much vaster and bloodier than that of Critias, but equally clear and decisive.

Many states have attempted to use something other than the civil society to provide the glue that hold them together, to provide them with the cohesion they need. Some have succeeded for a time, usually by using religion or the personal charisma of the leader in place of civil society. Those rulers that succeeded in using these substitutes put very great effort into their substitutes, showing that they were conscious of the weakness of their building materials, and, more importantly, showing that they were conscious that the state cannot hold itself together. It must be held together by something external to itself. It cannot give order to the rest of society, it must be given order by something outside itself.

Rulers that use something other than civil society to provide cohesion for their states are in practice a danger to their neighbors, and an even greater danger to their subjects. For this reason civil society is the only legitimate material from which a state may be made. A state based on something else is illegitimate. The neighbors of such states rightly and reasonably regard themselves as threatened, and so they should seek, and for the most part they have sought, to undermine, subvert, corrupt, and destroy such states, and to assassinate their rulers. History has shown that not only was Locke correct factually, he was also correct morally. Not only are states normally based on civil society, they should based on civil society.

The Soviet Union used the religion of communism to give their state cohesion, while the state obliterated civil society and physically exterminated the kulaks (the Russian equivalent of the English yeoman). When the rulers had faith, they were a danger to their neighbors. When they lost their faith their empire eventually fell, and their statist society is collapsing as I write, showing that democracy without economic liberty is worthless and unworkable, whilst Chile, Taiwan, and Thailand show that economic liberty eventually leads to all other liberties, because most natural rights are derived from the right to property. A civil society can only exist if there is a reasonable degree of economic freedom, if property rights are respected.

Modern opposition to natural law and natural rights.

During the nineteenth century the advocates of limitless state power made a comeback with new rhetoric, (the utilitarians) or the same old rhetoric dressed in new clothes), and in the twentieth century they were politically successful, but militarily unsuccessful.

The absolutists keep adopting new names as each old name starts to stink, but in the nineteenth century, the time when they were intellectually most successful, they mostly called themselves romantics, identifying themselves with the then fashionable artistic and cultural movement, although most of the political “romantics” were no more talented at poetry or painting than Hitler was, and most of the real romantics were not political absolutists, far from it. When the fascists came to power these totally disappeared, mostly calling themselves relativists. The name relativist failed to shake the stink of the gas ovens where the Jews were exterminated, and they are changing it yet again. Since the extermination camps set up again, in what used to be Yugoslavia, relativists have almost disappeared. Soon there will be few relativists, they will all be Post Modernists, or some such.

The absolutists argue that because people have different conceptions of what counts as right and wrong. they need a supreme power to forcibly define justice, and without that definition they wind up in conflict.

It logically follows from this that since people tend to create and impose a concept of justice and right by interacting with each other and by forming the associations that constitute civil society, then all of civil society must be subordinated to the ruler, so that his arbitrary and absolute definition of justice shall suppress all others.

By this reasoning every decision where we judge others and act accordingly must be made under the supervision of the state, which means that every aspect of civil society must be subordinated to the power of the state. (Absolutists phrase it differently, saying that every aspect of society must be provided with a common arbitrary definition of justice by the state, mere men being incapable of knowing the difference)

Hobbes' concept of inalienable rights and the fascists' concept of natural law is just as logical as the usual concepts of inalienable rights and natural law, indeed more logical. We cannot decide between these two different conceptions of natural law by pure reason, but we can easily decide by appeal to facts.

If disagreement on the nature of good is a common cause of violent conflict, then the absolutists are correct. If violent conflict is almost always a result of ordinary everyday uncomplicated, easily recognizable evil, then natural law is correct.

As Locke pointed out in his essay on toleration, holy wars are not about the true path to salvation, they are just like any other war. A group defines another as enemy, and uses organized violence to steal their land and gold. Their cause is not differing conceptions of the good, but simple uncomplicated evil. Saint Thomas Aquinas pointed out the same thing four hundred years before Locke, though he expressed himself more diplomatically.

Disagreement on the nature of the good is only a problem with minor and unimportant matters, not worth fighting over, and when the state is absent or weak, precedent on such matters swiftly becomes customary law. For example on the American frontier conflict consisted mostly of fair fights conducted more or less in accordance with the code duello, and the rest was mostly straightforward uncomplicated ordinary everyday evil, simple crime, no deep philosophizing required.

The Lex Mercatoria, the customary law governing trade between different jurisdictions, shows that people from diverse cultures and languages have no great difficulty in agreeing on what is lawful, in order to conduct business with each other. (B.L. Benson, RC Ellickson).

If the state abandons the principle that the law should be general and uniform, and instead concocts a vast multitude of special particular rules, treating one category of person very differently from another, so that one type of property can be seized in one circumstance, and another kind in another circumstance, so that a particular category of person is given a monopoly privilege of some category of business, such as taxi driving and others are excluded or have to work for the privileged and hand over the bulk of their takings to them, then in that case, in the case where generality and uniformity are abandoned, then indeed there can be no agreement - not because men do not know what is just, but because such rules are unjust. When the rules are very particular and non-uniform, then the particular groups harmed or benefited by particular rules will come into severe conflict, and this will make it necessary for the state to intervene and supervise in a multitude of matters that should be private matters between one man and another. It will become necessary for the state to take over and supervise civil society in detail.

The more a government violates the principles of uniformity and generality of the law, the more arbitrary and complex its laws become, then the more it comes to resemble an absolutist government, and the more it suffers from problems for which political absolutism appears to be the solution.

Every so often, a ruler such as King James II or Adolf Hitler, attempts to put the theories of the absolutists into effect. The theories and doctrines are immediately seen by their true face, and everyone utterly abhors them.

The absolutists then concoct a new name, and dress their doctrines in new plumage so that they sound like the normal actions of the state to sustain the rule of law, rather than what they truly are, the use of violence by the state to crush the rule of law.

Regardless of the name, and regardless of the rhetorical flourishes used to make the doctrine sound different from what it is, their doctrine remains the same: that justice is whatever courts do, that any law whatsoever is lawful, that right and wrong is what the law says it is and the law is whatever the nation says it is. This is the doctrine of absolutism, and anyone who advocates this doctrine is an absolutist, no matter how many names he thinks up for

himself. Because these ideas acquired a bad odor in the seventeenth century, people are always finding new and different ways to express these ideas, so that they sound different, whilst remaining the same, but each new form of expression again acquires a bad odor when some ruler puts it into action.

The doctrine called relativism is the same as seventeenth century absolutism, but the rhetoric that the “relativists” used to defend it sounds superficially like the rhetoric used by the opponents of absolutism, just as the name sounds as if they are opponents of absolutism. In particular, the “relativists” aped John Locke's Letter concerning Toleration, but where Lock was arguing for the liberty of the citizen, the “relativists” used similar sounding language to argue for the license of nations. The “relativists” opposed Locke, while draping themselves in Lockean symbols.

In the same way the “Post Modernists” use a name that claims that their doctrine is entirely new and unconnected with what went before, and they claim that to examine modern doctrines and compare them to medieval doctrines is a foolish waste of time (“Studying dead white males”), and that one should not compare the current doctrines of “Post Modernists” with the earlier doctrines, even earlier doctrines preached by the same people. When they defend their two thousand year old positions with three hundred old arguments, they liberally decorate their arguments with meaningless and irrelevant references to the latest fashions and newest music stars, so as to give the sound and appearance that these doctrines and arguments are brand new, and absolutely unconnected to earlier doctrines.

The absolutists/ romantics/ relativists/ post modernists continually change their name and plumage in a vain effort to escape their past, but the stink of piles rotting dead lingers on them.

The utilitarians have a more plausible and attractive appearance. They say that any act of force and coercion by the state is proper and lawful if it aims for the greatest good of the greatest number. Sounds pleasant and reasonable, does it not? Such a doctrine would be sound if the world were not what it is. and we were not as we are. It would be a fine doctrine if humans were intelligent bees instead of intelligent apes, but we are not, and it is not.

It is not sensible to ask: How shall “we” act to maximize “our” happiness? This is a nonsense question because individual desires necessarily conflict. The sensible question is: Given that individual desires conflict, how can we avoid too much violence? We can keep the peace collectively. It is impossible to pursue happiness collectively

Utilitarianism has two serious problems, problems that most utilitarians regard as advantages. The idea of the greatest good for the greatest number implies that someone should be in charge, with the authority and duty to sacrifice any one persons property, liberty, and life, for the greater good. It also assumes that a persons good is knowable, and that other people can judge this good for him, make decisions on his behalf, and balance that good with other peoples good. Since any one person is expendable, then there can be no such thing as human rights, as Bentham frankly argued. Clearly the doctrine of the greatest good is going to be highly attractive to those intellectuals who envisage themselves as being in charge of deciding what is good for other people, deciding whose property shall be confiscated for the greater good, who shall be imprisoned for the greater good, or for his own good.

Many people have attempted to construct utilitarian arguments for limiting the authority of the state, most notably John Stuart Mill, but their arguments are always feeble, implausible, strained, and forced. It is even difficult to make a convincing utilitarian argument that rape is unlawful. Feminist utilitarians who attempt to construct utilitarian arguments against rape have been forced to make unreasonable assumptions about males and male sexuality. The “rights” deduced by these convoluted, elaborate, and unconvincing rationalizations are not rights at all, but are akin to what some utilitarians call “positive rights”.

Utilitarian critics of socialism find themselves arguing that socialism leads to slower economic growth, when it is clear that in their hearts what they want to argue is that socialism leads to slavery and lawless violence by the state, but they cannot express the thought within a utilitarian framework, because slavery and lawless state violence are meaningless concepts within utilitarianism.

Utilitarianism contains false implicit assumptions about the nature of man and the nature of society, and these false assumptions lead utilitarians to the absurd conclusion that a good government should create and enforce a form of

society that in practice requires extreme coercion and intrusive supervision by a vast and lawless bureaucracy, leading to events and consequences very different to those intended.

What utilitarians mean by society is the exact opposite of “civil society”. Utilitarians continually use phrases like: “Society wants ...”, “Society creates this rule in order to ...” Utilitarians imagine, consciously or subconsciously that society exists as reified entity, a supreme being capable of itself having desires, ends, and means, capable of consciously planning specific measures to achieve specific desired goals.

This single entity is above the selfish individualism of ordinary mortals, and so rightfully possesses the limitless right to use force and coercion. They imagine that this being would welcome the enforcement of the rules that it commands. If this divine being existed, then utilitarianism would make sense, but there is no such entity.

Actual individual people need no rules to force them to pursue their own ends, and when rules are enforced on them, violating their rights for the sake someone else's ends, they invariably surprise the utilitarians by vigorously resisting such rules, thus a state that bases its legitimacy and cohesion on utilitarian principles rather than on natural rights and the rule of law, requires a very high level of violence and coercion, violence that tends to constantly increase and become more severe.

The greater good is unknowable because “Society” is not a conscious entity capable of experiencing that good. Attempts to create a simulation of this deity, using elections and like methods, have been seriously unsuccessful. The state tends to behave remarkably as if it was simply a group of mere mortals, men with their own urgent needs and desires, fallible, weak, and prone to evil, pursuing their own personal goods, no different from any other organization.

Plainly therefore the state is just another group of people, and must rightfully be subject to the same law as any other person or group of people. It has no superior right to use force to achieve its goals, and if you grant it such a right, it will in the end result in the loss of your property and in slavery.

“Society” does not exist, rights do exist, not as arbitrary fiats of the state as the utilitarians claim, but inherently as a result of the nature of man. No conflict exists between civil order and individual rights. Both concepts are based on the same fundamental principles.

The real issue is not “what is the nature of good” as utilitarians pretend. The real issue is: Are rights a discovery by individuals that enable them to get along peaceably with other individuals, or are they a creation of a supreme being such as a reified society or reified state, that imposes peace on a vicious multitude with no inherent knowledge of good and evil, thus forcing on them the peace that slaves of a common master possess.

Today instead of frankly arguing that human rights are nonsense, as Bentham did, modern utilitarians use elaborate euphemisms, such as “positive rights” and “positive freedom”. No two people seem to mean the same thing when they make distinction between positive and negative rights and liberties, and their meanings seem to change rapidly from one paragraph to the next. The effect of this supposed distinction is always to destroy the meaning of “liberty” and “right”, and usually to legitimize as slavery as liberty. This supposed concept is mere fog.

Often a “positive right” is in practice the precise opposite of a right. A “negative right” is the right to be left alone, for example “An Englishman's home is his castle”, “freedom of speech”. A “positive right” is usually a government guarantee that it will supervise, direct, and control you for your own good, for example the “right to employment”, of which Marxists are so fond. (Or used to be fond back in the days when Marxists existed outside American universities.) You will notice that the “right to employment” enjoyed by the workers on Cuban sugar plantations is in practice very similar to the “right to employment” that they enjoyed when they were slaves on those plantations. If they run away from the employment that the benevolent state has so kindly assigned to them, they will be hunted down, and, if captured, returned, beaten, and set to work again. In the same way the “right to employment” enjoyed by the workers on Russian collective farms was very similar to the “right to employment” that they enjoyed on these farms when they were serfs. Of course these modern slaves also have the “right” to a guaranteed fair wage, and so forth. Unfortunately they are not guaranteed that there will be anything in the shops for them to buy with their

guaranteed fair wages. Indeed in rural areas they are not guaranteed there will be any shops at all. They are not permitted to go to the shops that the elite goes to, and they are not permitted to travel any significant distance from their place of employment, rendering their “salaries” utterly meaningless. “Positive rights” ape the forms of a free society, without the substance.

Since the fall of communism we have heard less talk about positive rights and positive freedoms. A right is only a right if, as with the rights to life, liberty, and property, you can rightfully use necessary and sufficient force to defend yourself against those who interfere with your exercise of that right. A right is no right at all if it is granted to you by the benevolence of your masters.

Authoritarian utilitarians started by trying to transform the meaning of “good”, and they have continued to try, with some success, to change the meaning of words so as to make it impossible to express thoughts that question the legitimacy and authority of the state. They have partially succeeded with “law”, They are having some success with the word “right”. Thus in America civil rights now means almost the opposite of natural right. For example being for “gay rights” now means that you are opposed to freedom of association. Being in favor of freedom of association is now understood to mean that you are against the right of privacy. It is difficult to express the idea that the state should neither force people to accept homosexuality, nor use force to suppress homosexuality. It is now difficult to express the idea that sexuality is not the proper business of the state, that force and violence is the proper business of the state, not sin or social exclusion. This perversion of the word “rights” makes everything the business of the state, directly contrary to the normal meaning of “right”. Some people today find it very difficult to comprehend the meaning of the ninth amendment, because the language has been so perverted as to make such subversive ideas inexpressible.

The utilitarians have constructed an artificial language in which it is impossible to express such concepts “the rule of law”, “natural rights”, or any idea or fact that would reject the limitless, absolute, lawless and capricious power of the state, and they seek to impose that language on the world.

Utilitarians usually argue in the same way that Marxists and behaviorists argue. They translate any statement you make into utilitarian speak, and then state their translation: “What you are really saying is...”. Since utilitarian speak is incapable of expressing any statement that would contradict the limitless and absolute power of the state, your statements are turned into nonsense, and they then contemptuously point out that what you are saying is nonsense.

How could one express in utilitarian speak the idea that the condemnation orders issued by the government against home owners in Dade county September 1992 were unlawful, that the home owners had the right and the duty to resist attempts to evict them with all force necessary, that their effective and successful resistance was lawful regardless of what pieces of paper the government manufactured? If I attempted to say this in utilitarian speak I would end up saying that the government had not done its paper work correctly, or that government reallocation of land would be suboptimal!

When a utilitarian attempts to speak about such matters he wants to claim that the government broke its own “rule based procedures for property allocation” (rule based utilitarianism), in order to conceal from himself his own intuitive knowledge that the government acted lawlessly. His rationalization is plainly false: The governments actions were a result of consistently applying the governments utilitarian rules on substandard housing. The hurricane had made everyone's housing substandard. The government obeyed their own unlawful rules, violating the rights of their subjects. The violent wrath of their subjects was so great, that the government back tracked and chose to respect the property rights of their subjects, in violation of their own “rule based procedures for property allocation.”

Those of us who seek to protect and restore freedom must avoid using the words our enemies seek to impose on us. The only way to escape from this trap is to use the language of natural law, the language with which a free society was envisioned and created, the words for which so many people killed and died. If we submit to using words that prevent us from expressing the thought of limits to government power and authority, then there will be no limits to government power and authority.

Words carry with them systems of ideas. The only system of ideas capable of repudiating limitless and absolute state power is natural law. It is impossible to speak about limits to the power and authority of the state except in the language with which such ideas were originally expressed. No other language is available.

If someone rejects the language of natural law, refuses to use such words, pretends not to comprehend them, and rejects them as meaningless, then he is not interested in using words as a medium of communication. He is merely using them as a method of control. It is pointless to attempt to communicate with such a person.

It is most doubtful that other peoples good is knowable in principle. It certainly is not knowable in practice. In practice, whenever any organization makes a serious attempt to ascertain the greater good it is submerged in a flood of paperwork, and to defend itself against this flood of paper it strangles everything it touches in red tape. It unavoidably finds itself imposing, by increasingly lawless violence, a procrustean and arbitrary concept of the good. If I take a slight detour on my way to work I go through rent controlled East Palo Alto, where I can watch my tax dollars at play, and observe this destructive process in operation.

The most dramatic and devastating demonstration of the difficulty of knowing the greater good, and the most famous and best known, was of course the attempt of the Cambodian government to increase the rice harvest by central direction of irrigation. This led to irrigation ditches being dug in nice neat straight lines without regard to small scale topography, with the result that they failed to transport water, it led to wetland rice being planted on land that remained dry, dry land rice being planted on land that became submerged, and so on and so forth. The peasants, foreseeing death by starvation if they continued to pursue the greater good, selfishly sought to pursue their own individual good, contrary to the decrees of their masters. Their masters imagined themselves to be responsible for feeding the peasants, so they were reluctantly forced to use ever more savage terror and torture to force the starving peasants to pursue the greater good. For the sake of the greater good, the peasants were forced to watch their starving children murdered, for the sake of the greater good they were forced to maim and break those they loved with crude agricultural implements, for the sake of the greater good they were brutally and savagely tortured, for the sake of the greater good they died horrible and degrading deaths in vast numbers, all for the greatest good of the greatest number.

Similar, though less extreme, events have occurred throughout the vast majority of the third world. Cambodia was merely the most monstrous of these of these events, but there have been many others, smaller in scale but equal in horror and depravity. In countries where people live close to hunger, most of the third world, state intervention to improve people lives has invariably resulted in mass starvation, these catastrophes being most photogenic in Africa. This mass starvation has often resulted in resistance to these benefits and improvements, which has resulted in extraordinarily brutal terror and torture, to extort continued submission to government aid. Especially entertaining is the suffering of the unfortunate recipients of government to government aid. One notable example is the World Bank resettlement program in Ethiopia, where hundreds of thousands of people who failed to appreciate the generous aid their Marxist government provided them were resettled in extermination camps built by the World Bank, and shipped to those camps in cattle trucks supplied by the World Bank (Bandow, Bovard, Keyes). Another amusing example of your taxes at work providing the greatest good for the greatest number was the World Bank's Akosombo dam project (Bovard, Lappe 35 37). Most attempts to determine the greatest good for the greatest number have had similar outcomes, it is just that in affluent societies the consequences are less flagrant, less brutally obvious. In a poor society an attempt to provide the greatest good for the greatest number usually results in starvation, death, torture, and maiming. In an affluent society it merely produces poverty, fatherless children, homelessness, street crime, and discreet police violence.

Stalin tried simple utilitarianism until 1921, meta rule based utilitarianism from 1921 to 1928 and rule based utilitarianism from 1928 onwards. The problem was not errors specific to Marxism, as non Marxist socialists argue. Nor was it errors specific to socialism, as non socialist utilitarians argue. The problem was the basic assumption that the state could pursue good ends by force and coercion. In the social fabric, means are ends.

In order to argue that Stalin's analysis of utility was incorrect, utilitarians find themselves rationalizing that the Soviet Union failed because of economic errors. But this is plainly false. The Soviet Union did not lose cohesion because of economic errors. Loss of cohesion came first, economic problems came later. It suffered economic stagnation as a result of loss of social cohesion.

Mises criticism of the difficulty of economic calculation under socialism is true but irrelevant. No doubt the central plan was full of defects, but the Soviet economy did fine despite the central plan. The economy only began to falter when government organizations started raiding each other. Armed raids by one government agency to seize stuff under the control of another government agency became commonplace, rendering the plan irrelevant.

Mises theory of human action is correct, but the important thing is not to apply it merely to allocation of resources, as Mises did, but to questions of good and evil, lawful and unlawful, as Hayek did. Knowledge of the rights of man is more important than knowledge of what area should be planted with cabbages.

Whether a government consciously intends to destroy free enterprise or not, free enterprise cannot survive the destruction of the rule of law by the state, as Hayek pointed out. The rule of law is not merely a matter of the government applying its own rules in a consistent manner to all its subjects, as Stalin did in the great terror. The rule of law is not rule based utilitarianism, it is fundamentally incompatible with any form of utilitarianism. The concept of the rule of law is inexpressible in utilitarian speak, and is meaningless within the utilitarian philosophy.

Even if it were possible in principle to determine the good of others, and impose that good on them by force, history shows us that it is not practical. When one considers utilitarianism in real life, it necessary to laugh, so as to avoid weeping.

Whereas the absolutists produce mere hills of corpses, and then hygienically process the hills into useful products like soap and lampshades, the utilitarians produce them in mountains, but the utilitarians shake the stench more easily, blandly professing their good intentions and casually waving away the tens of millions of murdered women and children.

Whenever the ugly ideas of the absolutists are put into practice the absolutists change their name and rhetoric, from absolutist to romantic to relativist to post modernist, Whenever the pleasant and attractive ideas of the utilitarians are put into practice, the utilitarians shrug their shoulders and say, "but that is not what we intended, it was all a mistake, Stalin's analysis of utility was faulty. If our ideas were put into action properly all would be well," claiming that professed good intentions outweigh any number of foul deeds. By their fruit you will know them. Since the Cambodian irrigation project and the World Bank African assistance program the utilitarians have been unable to shake the stink quite so easily, and some utilitarian factions are now trying out new names. The phrase "the greater good" is at last starting to sound like a polite euphemism for lawless state violence. People are becoming embarrassed to use it, whereas a decade or so ago there was no such embarrassment.

Prediction

In the west, for the last four hundred years, society been shaped by ideas, with a lag of roughly one human lifetime between the idea and the social order. Today statism continues to grow at an ever accelerating rate, but the rationalizations that justified statism are no longer believed. The professors can fail students who disagree with them, but they can no longer convince. One can now endorse facts that tend to support natural law in a university without facing physical danger, which was not the case ten years ago. E.O. Wilson was physically attacked because his work could imply that some social orders were natural and some unnatural. Tooby and Cosmides were not attacked. The professors still summon the mob to attack the unbelievers, but the mob no longer comes.

Tooby and Cosmides do not put their politics in their science, for good politics does not make good science, but they do put their science in their politics, for good science does make good politics. They have campaigned for most of the things that Wilson was falsely accused of campaigning for.

The state commands and spends ever more wealth, intrudes into our lives in ways that are ever more intimate and detailed, exercises ever greater power, backed by ever more severe punishments, often for deeds that it only declared illegal a few years ago, while at the same time the states capacity to coerce, to collect taxes, and to generate legitimacy continues to decline at an ever accelerating rate. Ever fewer people listen to political speeches, or feel

identification with the winning party. People are less inclined to imagine that voting can make any difference, less inclined to believe that legislation or courts possess moral authority. Both trends are driven by simple and powerful forces that are easy to understand. Numerous books, both serious (public choice theory) and humorous, and even a television series ("Yes Minister") have explained these forces and why they are unstoppable. These two trends will inevitably collide in the not very distant future, are already beginning to collide. The states every increasing use of lawless coercion will collide, is already colliding, with its ever decreasing capacity to coerce. Dade County, the citizens militia in the L.A. riots, the tax revolt in Italy, all foreshadow the coming collision. The citizens of California noticed that the only Koreans who were murdered in the L.A. riots were unarmed. There were no casualties amongst those Koreans who defended their property with gunfire. Gun sales have risen accordingly.

This collision will recreate, over several decades, a situation where there is plurality of force. Free societies have only arisen where there is plurality of force. Of course plurality of force does not guarantee a free society. It merely makes it possible. Social collapse is also possible. During the coming crisis we must keep our eyes fixed on the simple ancient truths of natural rights and natural law. We must discriminate between those who use force lawfully and those who use force unlawfully, and must act accordingly, we must discriminate between those who deal honorably and those who deal dishonorably, and must act accordingly. If we do that then we will have a functioning civil society.

The Greeks, in their war with the Persians, demonstrated that the true unity that comes from common adherence to the rule of law is more powerful than the appearance of unity that comes from common submission to centralized authority.

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