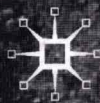


# NARRATIVE, NATURE, AND THE NATURAL LAW

From Aquinas to International Human Rights

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C. FRED ALFORD

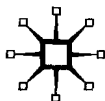


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HUMAN RIGHTS

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First published in 2010 by PALGRAVE MACMILLAN® in the United States – a division of St. Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

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ISBN: 978-0-230-62279-1

Library of Congress Cataloging-in-Publication Data

Alford, C. Fred.

*Narrative, nature, and the natural law: from Aquinas to international human rights* / C. Fred Alford.

p. cm.

ISBN 978-0-230-62279-1 (alk. paper)

1. Natural law. 2. Natural law—History. I. Title.

K460.A44 2010

340'.112—dc22

2009035089

Design by Integra Software Services

First edition: May 2010

10 9 8 7 6 5 4 3 2 1

Printed in the United States of America.

## PREFACE

Beginning with Saint Thomas Aquinas and ending with the latest developments in international human rights, I have sought to bring a fairly traditional interpretation of the natural law to some rather untraditional problems and areas. The term “traditional interpretation” refers not to the religious or ideological perspective of the book, but rather to the view that natural law is “written on the heart.” Untraditional is the way my approach uses narrative theory to put feelings into words, and words into feelings. The result is that stories, rather than argument, become the basic unit of the natural law. I do not claim that this is the only way to do natural law; I do claim that it is a fruitful way.

More than any other book of mine, I have kept the question of the reader in mind. Who am I writing for, I kept asking myself? Not, I think, for the usual audience of the academic monograph: fellow professionals interested in the technical details of the subject. I am more interested in explaining natural law and its relevance today to those who might imagine that the natural law has something interesting to say, but can’t quite figure out what. The reader will require some background in philosophy, theology, or political theory. Better yet is a firm foundation in the liberal arts, though that is becoming a rare legacy. In any case, the reader who wants to *do* something with the natural law, rather than argue about this or that detail, would be my ideal reader.

What can one do with the natural law? One can make sense of the proper relationship between morality and public life. One can explain a good deal of otherwise puzzling human behavior, particularly in groups. Evolutionary natural law, the topic of chapter 4, is particularly helpful in this regard. One can begin to understand when talk about international human rights has some basis in natural law, and when it is just talk. Of course, it’s all just talk, isn’t it? Yes and no. For natural law to add something to our discussions, nature, including human nature, must be a meaningful category, not just a term of suspicion and contempt. For too long now, at least since Immanuel Kant (1724–1804),

ethics, including that ethical theory known as the “new natural law” (discussed in chapter 4), has tried to lift ethics out of nature, so that human autonomy, ethics, and freedom might coincide. The natural law challenges this direction in ethics, and yet it is a challenge about which we must be careful. Nature does not speak for itself, but only in the stories we tell about it, stories that are never free of the dominion of fear, power, and desire—that is, society, economics, politics, and culture.

The heroes of the natural law, in my book, are the unlikely combination of Jacques Maritain and John Locke. Maritain because his background in phenomenology, coupled with his love of poetry (and perhaps his love of love), enables him to make the most sense of that old saying that natural law is “written on the heart.” In other words, Maritain makes sense of the intuitive dimension of natural law: that we know it even before we can explain it.

Locke is valuable because he helps keep us modest. Locke’s abiding concern with the “mediocrity” of men’s minds, as he puts it, coupled with the overwhelming tendency of humans to confuse the historical and social concerns of the day with the natural law, led him to limit the natural law to the basics of what today we call international human rights. By the term “basics,” I refer to the rights of life, liberty, and security of person. Within this sphere, however, natural law is absolute, a duty, not just a right. In other words, individuals have rights not because individuals automatically have rights, but because individuals are all subject to the same natural law.

My thesis (what I bring to the argument that I think is original) is an appreciation of the consequences of seeing human rights as natural law: a humility that lets the other be, that recognizes a sacred boundary between my community and another that we have a duty to respect, and to protect, with arms if need be. My inspiration for this idea comes from Reinhold Niebuhr, a Protestant theologian whose insight into the natural law is coupled with a corresponding blindness. Niebuhr’s blindness stems, in good measure, from his apparent ignorance of the contribution of Jacques Maritain to the development of the natural law.

Parts of chapters 2 and 3, on Saint Thomas and Jacques Maritain, are at points fairly technical, having to do with the status of realism in Thomas, and the influence of personalism, as the teaching is called, on Maritain. Understanding the natural law does not have to be made difficult. In some ways it is the easiest thing in the world because it is indeed natural. But the history of the natural law raises some philosophical and historical issues that are worth understanding if we

are to fully appreciate the claims natural law makes about the moral world we share.

Nevertheless, there are a number of debates among scholars over this or that aspect of Thomas, Maritain, and Locke that I have declined to address. For example, I argue that the state of nature in Locke represents his vision of life under the natural law, a position similar to one held by some members of the so-called Cambridge School. Other scholars disagree, but this is not a disagreement that will be helpful to analyze for the purposes of the argument at hand, which is to show the continued relevance—and some surprisingly radical consequences—of a rather old-fashioned way of looking at the natural law.

My thanks are reserved primarily for my students, graduate and undergraduate alike, who have forced me to understand what I was explaining to them about the natural law in classes in ancient, medieval, and modern political philosophy. It is from this effort, over a number of years, that this book came almost to write itself.

Do other professors ever have that awful feeling of talking or lecturing about some topic, only to silently say to themselves something like, “Not only do I not understand what I am saying, but I wouldn’t believe myself for a minute were I on the receiving end”? It’s the feeling I get when I can recite all the right words about a topic, define the natural law perfectly, as Thomas defines it, for example, but have not yet made the words my own, generally because I have not put them in my own terms and language, and so come to a decision about whether I believe them or not.

I can teach something I don’t believe. If I couldn’t, I wouldn’t be a teacher, but a preacher. But I find it extraordinarily difficult to teach something that I don’t understand in my own terms, my own language, my own examples from life. This book began as that struggle, even as it has come to take on something of a life of its own. For in the end, a book must address an audience, not just the needs of its author. Earlier, I described the audience I imagine as reading this book. But perhaps I will be surprised.

In thinking about narrative and the natural law, I owe an intellectual debt to a former colleague, Peter Levine, which is not fully captured in the references. Levine is currently research director of the Jonathan M. Tisch College of Citizenship and Public Service at Tufts University. He would not likely agree with many of my conclusions about the natural law.

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## CHAPTER 1



### INTRODUCTION

Natural law is not an ethical position we are asked to adopt. Neither is it a philosophical claim that we are required to found or justify. Natural law is a claim that there are certain judgments that we have already made and could not help making. Natural law is an account of what we already know about right and wrong, even if we do not know we know it, and even if we have the misfortune of never learning what we already know. We waste our time if we think that natural law can be proven, that the point is to found, ground, or in some other way demonstrate the truth of natural law. Yet, a great many academics spend their time doing just that. I would be wasting my time trying to prove natural law to you.

Would that I were clever as Socrates, calling forth your hidden (even to yourself) knowledge of the natural law merely by asking you a series of questions. The process is known as *maieutic*,<sup>1</sup> referring to the practice of midwifery, through which the questioner causes the answerer to give birth to what is already present, just waiting to be born. Since I'm not that clever, and since this is a book, not a dialogue, I will have to take the long way around.



It is civic law that we drive on the right side of the road (at least in the United States), don't drive over the posted speed limit, don't trade on insider information in the stock market, and so forth. It is natural law (reflected in the civic law) that it is wrong to murder. To call natural law "natural," means that it is wrong for the same reasons everywhere, just as "fire burns both here and in Persia," as Aristotle remarks (*Nicomachean Ethics*, 1134b27). Antigone put it as well as anyone ever has when King Creon asks her if she was aware of his proclamation against burying her brother Polyneices, and if so, why she still dared break the law.

For me it was not Zeus who made that order,  
 Nor did that Justice who lives with the gods below  
 mark out such laws to hold among mankind.  
 Nor did I think your orders were so strong  
 that you, a mortal man, could over-run  
 the gods' unwritten and unfailing laws.  
 Not now, nor yesterday's, they always live,  
 and no one knows their origin in time.  
 So not through fear of any man's proud spirit  
 would I be likely to neglect these laws,  
 draw on myself the gods' sure punishment.

(Sophocles, *Antigone*, lines 450–460,  
 Wyckoff translation)

About some speeches, explication would only lessen their impact.

In fact, natural law is all around. Today, it is most present in what is called international human rights, even though some question the relationship. Are human rights what natural law looks like in a liberal era—that is, an era in which the individual comes first? If so, then individuals are born with rights attached to them, so to speak. Another way of looking at this question, an older way, is to see individuals as possessing rights because of how each individual stands in relationship to the natural order, including his fellow man or woman. In other words, human rights come from natural law. We have human

rights only because we first share in the natural law. This is an important distinction, but it can wait.

One expression of human rights is the United Nations's Universal Declaration of Human Rights, adopted in 1948 in the aftermath of the Second World War. Much of what it says seems quite straightforward.

*Article 1*

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

*Article 3*

Everyone has the right to life, liberty and security of person.

*Article 5*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 18*

Everyone has the right to freedom of thought, conscience and religion; . . .

And so it goes—a total of 30 articles, most of them similar to these in tone and spirit, and the last ten more specific. Like most readers (I imagine), I was in almost complete agreement with the Universal Declaration of Human Rights, but soon found myself wondering. What would happen if someone said, “No, some people are superior to others. Some people deserve to be tortured. Freedom of thought and expression are too dangerous to be left to any but an elite few”? What would I, what would anyone, say to this person? For, the Universal Declaration offers little help here. It asserts these rights, but it offers no arguments for them, though if one works hard enough one can discover an argument in the Preamble, an argument based on shared membership in the human family, a point considered in chapter 3. This leads to another consideration. Perhaps one cannot argue very well for principles as basic as these. One just knows or feels (likely some combination of both) them, or one doesn't.

The Universal Declaration of Human Rights was not written in a vacuum. It was written, in part, in response to a problem faced by the Allies at the end of the Second World War. Almost everything the Germans did was totally legal according to the German civic law. The Germans were scrupulous about the law—passing laws to strip Jews of their citizenship, laws to deport them to the death camps, and so forth. When it was time for the Allies to put the architects of the Holocaust on trial in 1945, there was a problem. The German defendants said that they were following the laws of Germany. How could they be found guilty of following the civil law?<sup>2</sup>

The Allies put twenty-four of the most important captured leaders of Nazi Germany on trial in the city of Nuremberg, trials that lasted almost a year. Though there was considerable dispute about the status of the court at the time, in retrospect, the Nuremberg Trials can be seen as establishing an important principle, one reflected in the Universal Declaration of Human Rights itself, as well as in the International Criminal Court, an institution whose origin can be traced back to the Nuremberg Trials. About some acts, it is no defense to claim that one is following orders, or even the law of the land. Every human being with reason knows that it is wrong to deliberately murder innocents.

Hermann Goering, one of the leading organizers of the Holocaust, told the court that the trial was nothing more than an exercise of power by the victors of the war; justice had nothing to do with it. The trial court claimed differently. About such things as the murder of innocents, there exists a higher law that every normal human being must know. We may disagree over the details, but every normal human being knows that civil laws, or commands claiming the status of law, proclaiming the deliberate murder of women, children, and noncombatants violate the conscience of humankind.

Though the Allies never used the term “natural law,” the concept was implicit from the beginning. The Nuremberg Trials were not just a case of the victors punishing the vanquished. The trials recognized that every mature human being knows (or should know) that certain terrible acts, whether or not they

are in accord with the civic law, are wrong, and not to be committed. Furthermore, certain commands, even when given by those in a position to issue lawful orders, so violate the conscience of humankind that they are not to be obeyed. This recognition is reflected in the First Protocol of the Geneva Convention of 1977, which protects unarmed civilians from attack by air and ground forces.

Another example of the presence of the natural law in everyday political life is Martin Luther King Jr.'s "Letter from Birmingham Jail," written in 1963, during the height of the struggles against segregation in the American South. King was in jail for protesting segregation, which was legal at that time in Alabama. This is what King said about the laws he broke, ostensibly parading without a permit, but really the laws upholding segregation.

How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality.<sup>3</sup>

Still, the problem remains. What do you say to someone who counters, "I don't think such a higher law exists; I can't make any sense of it. You say it does, I say it doesn't. Who's to decide? The one with the most power, that's who." Against such an argument, at least when put forth by someone like Goering, you don't muster better counterarguments. You shoot him, as has been wisely said. We should not expect our arguments to overwhelm the wicked and unreceptive. Neither the Nuremberg Trials nor Martin Luther King Jr. relied on arguments alone. The Nuremberg Trials convicted and executed a dozen leading Nazis (Goering committed suicide the night before his planned execution), and King helped mobilize a vast civil rights movement employing civil disobedience.

## RELATIVISM?

Allan Bloom (1988), who taught at the University of Chicago for years, said that there are two things that almost every freshman there believes:

The truth is relative  
Everybody is equal

The second assumption depends on the first. If the truth weren't relative, then those who know it would be better than those who don't, and democracy itself would be impossible. Democracy depends on relativism, or so the reasoning of the young seems to conclude. That other conclusions might follow seems not to have occurred to Bloom's students, or so he tells us, such as that the truth is not relative. But we live with those who hold to false beliefs out of a combination of desire for civil peace, plus a certain modesty about our own convictions (which is not the same as relativism).

James Q. Wilson, who approaches the natural law from the perspective of evolutionary development (the topic of chapter 4), makes much the same claim as Bloom.

Ask college students to make and defend a moral judgment about people or places with which they are personally unfamiliar. Many will act as if they really believed that all cultural practices were equally valid, all moral claims were equally suspect, and human nature was infinitely malleable . . . . In most respects their lives are exemplary. Thus it was all the more shocking when . . . . I found that there was no general agreement that those guilty of the Holocaust itself were guilty of a moral horror. "It all depends on your perspective," one said . . . . To many of my students, there is no human nature that renders some actions entirely inhuman.

(Wilson 1993, 6–8)

If Bloom holds to a version of the natural law (and that is unclear), it is certainly different from Wilson's vision, which is based in human social nature as it has evolved over a hundred thousand years. Bloom's natural law would probably come closer to Antigone's belief in universal principles that are known

by all who would but look and listen. This is the implication of the title of his book *The Closing of the American Mind* to the possibility of an immediate natural experience of right and wrong.

Different as their views of the origin of natural law are, both Bloom and Wilson reveal that the issues raised by the natural law are not merely academic. Or if they are, then the issues the academy deals with are not just for ivory tower intellectuals, but concern every thinking individual:

Do we need to prove that the Nazis were wrong, or is it good enough simply to know it? And, does “know it” mean anything more, or less, than “feel it?”

Does it help to know that Martin Luther King Jr. wasn’t merely victorious in his struggle against legal segregation, but that he had natural law on his side? Did natural law help him and others of goodwill in their struggles? Does it help us better understand the history of the civil rights movement, including that history yet to be written?

What happens when students and others lose confidence in their ability to say that acts of mass murder and genocide are definitely wrong, indeed inhuman?

What about more subtle (and they are not terribly subtle) examples, such as someone living a life of drugs and crime? Do we know for certain that such a life is wrong, and does natural law tell us so?

### **A moral catastrophe**

A number of years ago, I was invited to serve on the ethics curriculum advisory panel of the local county school board. The goal was to develop an ethics curriculum for the lower grades. The advisory panel had on it those you might expect: ministers, rabbis, a couple of concerned parents, a couple of concerned teachers, and me. What should an ideal ethics curriculum teach?

We never got anywhere. We got stuck at the very beginning, at teaching students that they shouldn’t hit each other.

“How can we teach that?” said one committee member, evidently echoing the views of several other members. “Some

cultures value the physical expression of difference, and who are we to say otherwise?"

An odd thing about this conversation was that not a single member of this committee thought that students should hit each other, or should be taught that it was correct to express their differences in this way. Furthermore, no committee member knew of the existence of any culture that valued the "physical expression of difference," by students hitting each other. Not only that, but the committee understood that in a contemporary world in which a student who got hit might come back with a weapon, self-control is not just a virtue, it is a lesson in survival. The committee members simply had no confidence in their ability to judge right and wrong for the purposes of teaching others. The specter of "cultural relativism" haunted them—that someone somewhere might object to a particular value, and they would have nothing definitive to say, only their own untrustworthy judgment to fall back on. The notion that the cultivated judgment of the community, if not corrupted, is the basis of the natural law did not occur to them; I believe they would have rejected it if it had. Why? Because in theory, though not in practice, individual choice is sacred. The result can be quite confusing.

Before continuing, I should tell you something about the community in which I live. It is a planned community, originally built upon a communitarian ideal, in which three faiths were to worship separately but together in the same "Interfaith Center," which is purposefully unadorned with religious symbols. The communitarian ideal has faded over the years, but has not entirely disappeared. In other words, not every community would have responded as the representatives of this community did. Though they were a generation older, one imagines these committee members as students in one of James Q. Wilson's classes. "In my classes, college students asked to judge... will warn one another and me not to be 'judgmental' or to 'impose your values on other people' " (1993, 7).

The experience I had is sometimes, but misleadingly, called relativism. At first glance, it is similar to the situation described

by Alasdair MacIntyre in the opening pages of *After Virtue* (1981, 1–3). Imagine that an ecological catastrophe had occurred, brought on by the unfettered experimentation of scientists. Angry mobs had burned laboratories, as well as libraries filled with scientific journals. Much later, at least a generation, possibly more, scholars as well as ordinary men and women would try to reconstruct the science that had been lost. They would recover many of the terms, such as “molecule” and “inertia,” but the experimental and theoretical framework that gave these terms meaning was lost. Neither the ideal of the scientific method, nor the theories in which these terms were embedded, and which gave them meaning, was available to the new scientists. As a result, their use of the scientific terms was arbitrary, and ultimately incoherent.

This is the situation with ethics, today, says MacIntyre. Terms such as “morally right,” “the human good,” and so forth remain, but the context, which is roughly that of the Aristotelian worldview, in which the telos of a good human life was obvious for all to see, has disappeared. Absent, in other words, is the evaluative framework, the good for man and woman, that makes a judgment about a life or an action objective, not merely a matter of taste. Where once one could talk about a human life as one might talk about a watch, measuring each by objectively shared standards of excellence, that time has long passed.

Why has it passed? Because we no longer live in traditional communities of shared values. This is the environment in which natural law emerged—a world in which people understood themselves first and foremost as part of a community, so that every individual could see that his or her own good was naturally part of the common good. Perhaps the best way to explain this is to tell a story about its polar opposite.

If the good people of the ethics committee correspond to Glaucon and Adeimantus, characters in Plato’s *Republic* who represent average citizens, the Avalanche Man, as I call him, corresponds to Thrasymachus, a sophist who speaks the fearsome, brutal truth.<sup>4</sup> Among my very best students, the Avalanche Man



worked almost full time, putting himself through school, all the while maintaining an “A” average. The summer after his junior year, he worked as an intern at an investment banking firm on Wall Street, and went on to earn an MBA at Harvard.

He came back to visit me several years later (well before the Great Recession of 2008), and I asked him why he had worked so hard, studied so hard, and given up so much, for we had just been talking about how it had been easy for him to save money. It had been easy because he had no time for a social life and so had nothing to spend his money on. Nothing in college except room, board, and books, and nothing while at his investment banking job except good suits and a little room in New Jersey, a quick commute by subway to Wall Street. Working seventy- to eighty-hour weeks doesn’t leave much time to spend money.

Why do you live like this, I asked? What’s the point? Will you ever stop?

Not for now, he said. I think the country is headed for an economic disaster, an economic collapse. It’s like an avalanche. And I want as many bodies as possible between me and the bottom to cushion the fall.

I was speechless. There was nothing in the way he talked about the impending economic avalanche that suggested hostility, or that he took pleasure in the thought of being one of the few survivors of a great catastrophe. That’s just the way he had always known it would be, and he had been planning for years to be a survivor.<sup>5</sup> I thought of the Avalanche Man again on 9/11, when hundreds of men and women, paid hundreds of times less than my former student, rushed into the bottom of the collapsing avalanche of the twin towers and died trying to save others. Our society depends on that.

### **Natural law positivism**

How to characterize the position of most people in the United States today toward the natural law, since even the term seems almost a relic of a bygone era? As Vice President Joseph