

## The Rhetoric of Absolute Right and the Unintended Relativism of Natural Right Doctrine

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Most methods used to evaluate public policy, including the dominant costs-benefits based 'welfare economics,' are ultimately reduced to some philosophical or ideological position. In the multitude of such positions the natural right philosophy seems to be the most difficult to deal with. The difficulty is based on the claim of the proponents of this philosophy that natural right is, well, natural and therefore 'self-evident' and absolute. However, that rigid absolutism is actually a matter of individual interpretations. Therefore, despite the name, the natural right is as relativistic as any other philosophical or ideological approach. But the absolutism inherent in natural right theory makes political positions rigid and prevents individuals from engaging in a political compromise which is the essence of a democratic political system and on which the vitality of democracy depends.

There are many ways one can argue against public policies, and there are many methods to evaluate policies. The most widely used is 'welfare economics,' which "is manifested in such familiar techniques as cost-benefit and cost-effectiveness analysis." Although such formulas can be very complex, in most cases they come down to economic calculation. The question is: what exactly are the benefits and what are the costs? But even in a seemingly straightforward business or economic calculations, other variables will enter the picture. The problem is that costs and benefits are not always easily defined and often cannot be reduced to dollars and cents. Policy analysts are practical people; they want things done quickly and accurately, and as John Maynard Keynes would say, they also want to believe "to be exempt from any intellectual influence." They don't realize that, Keynes continues, they "are usually the slaves of some defunct economist." [1]. Or defunct philosopher, we might add. Or just a philosopher, or just an ideologue. Thus, in most cases, even the straight forward costs benefits analysis is based on certain philosophical and ideological premises.

In a recent debate, a war one could say, over the Affordable Care Act of 2010, some of the simpler arguments have been over the actual monetary cost of the program. A simple question and following calculations: can the country afford to spend enormous resources to insure a small segment of the population? And even if we can, is this done at the expense of some other needed programs? Some other arguments, also in the economic realm, suggested a destruction of competitiveness, shortage of physicians, the ruin for the insurance companies, and all kinds of other calamities. But again, very quickly the matters that are seemingly just economic in nature began entering the realm of political philosophy. Although many arguments are still about the immediate costs and immediate benefits, the moral and ideological positions acquire greater importance. This is unavoidable. They provide a coherent theory for what is right and what is wrong, what is the value, and how things ought to be. Politics is about ideology and political factions, no matter how critical of which was James Madison or others at the time of writing the constitution, are facts of life. But some ideologies or philosophies seem to be more rigid than others. One approach in conservative critique of the new law seems to be especially rigid. It is used widely to take strong moral position.

As one conservative journal, "First Things," said, the main argument against the Affordable Care Act should be based on the

philosophy of natural right. The journal adds that by arguing on the basis of other factors, the conservatives "may be deflecting themselves from the most powerful arguments against Obamacare, the arguments that run to the root of the law in "natural rights" [2]. Clearly, a natural right argument and rhetoric is as legitimate as anything else. And, at the same time, it could be as extreme and as demagogic as anything else. But natural right philosophy is also very easily used in demagoguery. It is simple, straightforward and 'natural.' Any reference to 'natural' is always effective. "But it's natural!" one can hear the exclamation. Just think for a moment how "natural" is being used to sell food. And the food should be a simple matter, much simpler than moral positions. And because of that it also doesn't leave much to compromise. And a compromise is the essence of a democratic political system.

More than twenty years ago Mary Ann Glendon published a book on the dangers of, what she called the Rights Talk [3]. She wrote: "The strident rights rhetoric that currently dominates American political discourse poorly serves the strong tradition of protection for individual freedom for which the United States is justly renowned. Our stark, simple rights dialect puts a damper on the process of public justification, communication, and deliberation upon which the continuing vitality of a democratic regime depends" [4]. Her argument is much broader than the topic of this modest article, but the key point of the absolute and uncompromising character of "rights talk" remains the same. But the question now is why this particular philosophy is more problematic than many others?

In one sense natural right is simply a set of postulates that began gaining in popularity with the Enlightenment, the liberal philosophy, the American Declaration of Independence of 1776, the French Declaration of the Rights of Man and Citizen of 1789, and received a wide recognition at least since the end of the World War II. The 1948 Universal Declaration of Human Rights reads: "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... Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status... Everyone has the right to life, liberty and security of person... No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

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But they are not natural right per se; they are accepted generally by adherents of all kinds of philosophies: Marxists, positivists, utilitarian philosophers, Kantians, etc. For, some of the ethical values have been established not by some belief in eternal truth, but by other, often more practical methods. For example, Jeremy Bentham explained the principle of equality by the calculus of pleasures and pains. Natural right, on the other hand, would suggest that there is a higher moral law that transcends the boundaries of empirical experience. It is unchangeable. That law (or rights) provides universal moral rules, known by reason alone. In other words, there is an absolute standard and we can 'discover it' just like we would discover mathematical truths.

Then, since they are axiomatic in character (again, self-evident), perhaps they should be treated the same as axioms in deductive sciences (e.g., mathematics). Already the ancients believed that we were born with certain truths. For example, we don't need any proof to know that  $79 + 56 = 56 + 79$ . It is self-evident. It is so-called the commutative axiom of addition: for any two numbers  $a$  and  $b$ ,  $a + b = b + a$ . We do learn it in elementary school, but even these who never attended any school could figure it out without much difficulty. So, why not accept one of the truths of natural right, say "all men are created equal," as also obvious and not that difficult to see.

But there is a difference. Although we can accept certain statements as axiomatic, the axiomatic nature of natural rights resembles intuitional stage of deductive sciences. In that stage, the axioms are taken as obvious without any need for proof. In the next, axiomatic abstract stage of deductive sciences, the axioms that seem so obvious are 'tested' by a model (a system) that would actually verify the validity of the axioms in an abstract form. Of course one could argue that the strict requirements of logic and mathematics cannot be applied to such concepts as freedom, equality, and moral laws in general. That could be true, but if so, we have to admit that natural rights theory is not verifiable, it is intuitional, it is based on something that seems self-evident and obvious but it may not be. Well, how one can know it? Again and again we come back to the same crucial and unanswerable question. This is not to say that the intuitive belief in the equality of men needs to be rejected. As I said earlier, they are generally accepted now in all liberal democracies. Further, they are an intrinsic part of a modern political system. Even dictators don't openly argue against these ideals and strive to prove that their countries respect equality and freedom. The promise of Marcus Aurelius of a polity in which there is the same law for all has been fulfilled by most political systems today [5].

So, why continue the argument if the belief in these ideals (regardless of their sources) is widespread and continue to gain even greater acceptance? My reason may sound paradoxical, but I fear the relativism of the natural right doctrine. First, if natural right is considered a "higher law," one immutable truth, then no argument against it can be accepted. What remains is the understanding of that truth. But there are two problems. One is that we cannot know if that truth exists in the first place. Second, as a consequence of the first, the understanding of that truth turns into a battle of the "authorities," with anyone being able to claim to be the one who knows the truth. And since there is not even a certain level of probable 'proof' of the validity of one or the other view, we are risking very diverse views, each claiming to be right. Once more, there is nothing wrong with diverse views and a debate. The problem is that if these positions are seen as the only true morality, there is no possibility of a debate. The natural right doctrine, thus, looks more here like religion than a philosophy that can be examined, argued, questioned, etc. This is how Leszek Kołakowski presents such religious positions (in a hypothetical statement of a believer): "My certainty, he

says, far from being a set of gratuitously accepted beliefs, is rooted in a perception which produces a coherent image of the world. All people who share a similar experience understand each other without difficulty and if you refuse to admit their testimony this is because you lack the corresponding faculty, or rather lack the will to acquire it. People with normal hearing can communicate in a perfectly intelligible language in matters concerning music, yet a person born deaf would find their words meaningless." [6].

The above is a perfect illustration of the reasoning of Leo Strauss, the great defender of natural right. He writes: "Some of the greatest natural right teachers have argued that, precisely if natural right is rational, its discovery presupposes the cultivation of reason, and therefore natural right will not be known universally" [7]. So, who possesses this wonderful power of reason to see it and who does not? The well known fallacy of *petitio principii* comes to mind: "I know natural right if I have a cultivated reason. If I don't know natural right I don't have cultivated reason." Simple like that. Leo Strauss is either unaware of the nonsense of such statements or his mind is clouded by his deep theological belief in the infallibility of natural right. He writes: "The lack of universal agreement can be explained by a corruption of human nature in those who ignore the true principles. So, we who dare to question the validity of natural right philosophy are like the savages that are not expected to have knowledge of natural right.

Even though later in his *Natural Right and History* Strauss says that it is true that not all men agree with the natural right and that there is a great variety of ethical views, in the introduction he suggests (quoting an American diplomat) that "the natural and the divine foundation of the rights of man... is self-evident to all Americans." What is more interesting, Strauss suggests that it is only now (he writes in the early 1950s) that the Americans begin abandoning natural right. But who is Leo Strauss to know at which point the society abandons the belief in natural right? What is his method in identifying what is adherence to the natural right idea? For Strauss every human calamity is caused by the abandonment or not understanding of natural right. It is an argument of the "begging the question" kind. In short, the theory is not falsifiable. It provides any and all answers to any possible problem; it is always right. It seems that "natural rights" often takes place of our own deep beliefs what is morality. Among countless examples of using natural right as a front for one's moral beliefs, is a recent book by Charles R. Kesler: *I am the Change: Barack Obama and the Crisis of Liberalism* [8]. As many others, it invokes natural right as a rhetorical weapon against policies one doesn't like, in this case, among others, the Affordable Care Act.

Strauss never explains this problem in his *Natural Right and History* [9]. He avoids it and hides behind his erudite knowledge of philosophy. But what good three hundred pages do if one cannot find any answer there? My suspicion is that Strauss is not interested in the answer. He is not interested in debating the issue. Risking argumentum ad hominem I would say that I must agree with Mortimer Adler, Strauss' colleague from the University of Chicago, who characterized Strauss' attitudes as follow: "We met several times and discussed our reading of Plato and Aristotle. I soon learned that Strauss read these great authors as if they were devoid of any serious error, in spite of the fact that on many points they appeared to contradict one another. I also learned that for Strauss the radical changes in our social and political institutions that have occurred since antiquity had no bearing on the likelihood that Aristotle made grave errors about natural slavery and about the natural inferiority of women. In his view, these were not errors..." [10].

But the point here is not anymore whether or not we have some

kind of a priori sense of natural right. Although there is no possibility (at least at this moment) of any objective verification of the existence of natural law, let's assume that we can actually 'cultivate our reason' to discover natural right. Let us use the example of the Declaration of Independence of July 4, 1776. One author argues that it is the Declaration that is one of the best sources for understanding natural right. Probably every school child knows the following excerpt from the paper: "We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." Wonderful words, but what is their specific meaning? The real problem, thus, is not whether these words are true (and axiomatic) but how to understand and interpret them.

In the book *Storm Over the Constitution*, a collection of polemics written by (and against) Professor Jaffa, one of the critics says: "For those who share his conservative moral values, Jaffa's natural justice prescription for constitutional adjudication would yield consistently satisfactory results—so long as Jaffa is doing the adjudicating. But natural justice also can be invoked by, say, Justice Brennan who is no less certain than Jaffa of his ability to discern his own liberal version of natural justice—the constitutional vision of human dignity..." [11]. Thus, how do we know whose reason, to use Leo Strauss' words, is more highly cultivated, that of Jaffa or that of Brennan? As I said earlier, the argument is meaningless and unanswerable. There must be a better way to establish what should be the method of guiding our moral conduct. Without it we fall into the worst form of dogmatism. It would be entirely to the faithful to decide when and where there is adherence to the natural right principles.

For example it is not all that certain that the authors of the Declaration really meant "all men." Maybe they wished it to be "all men." Maybe they sensed that no man should be subjugated by another. And yet, they had serious reservations. The beauty and the power of the 1787 Constitution lay not in the fact that it brought real liberty to all inhabitants of the colonies, but in its democratic potential. The compromise on slavery that sometimes is portrayed as so difficult and torturous, in reality was very easy to accept by people who were not only accustomed to the institution of slavery, but also didn't believe in the equality of all races. In *Notes on Virginia* Jefferson writes: "Deep rooted prejudice... the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions, which will probably never end but in the extermination of the one or the other race." [12]. One could argue that Jefferson wanting to end slavery was also forerunner of racial segregation. Was it not in the nation interest to segregate races to avoid convulsions?

If one thought that Jefferson writes about simple hostility between the races that needs not to be allowed to reach a serious conflict stage, he would be wrong. In the paragraphs following the earlier statement, Jefferson elaborates on "the real distinctions which nature has made." Blacks are not as beautiful as whites, claims Jefferson. The color of the skin is one proof, but there is more. Black man prefers white woman just like "is the preference of the Oran-utan for the black woman over those of his own species." They even have "a very strong and disagreeable odor." They may be brave and adventuresome, but that's only because they are stupid ("this may perhaps proceed from a want of forethought, which prevents their seeing a danger till it be present.") "In reason they are much inferior" They don't have poetry, "one could scarcely be found capable of tracing and comprehending the investigations of Euclid... in imagination they are dull, tasteless, and anomalous".

Is this the same person who wrote the Declaration? Is it possible

that Jefferson would like to have his fate in the hands of government consisted of or voted by these inferior creatures? Yes, they may be equal in a sense that should not be enslaved, but would Jefferson suggest going beyond this basic equality? I believe that Jefferson would clearly stand by George Wallace and repeat: "Segregation today, segregation tomorrow, segregation forever!" After all, Jefferson didn't see anything wrong with finding differences among men. He wrote: "The circumstance of superior beauty is thought worthy attention in the propagation of our... domestic animals; why not in that of man?" Neither Jefferson nor Madison really believed in whites and blacks living side by side in full equality.

Of course Jaffa insists that the Declaration (and the Fourteenth Amendment) is clear enough to base on it any law or a constitutional interpretation of a law. He writes: "If Chief Justice Earl Warren, in his opinion for the Court in *Brown v. Board of Education* [13] had grounded his interpretation on the Declaration of Independence, as the source of the meaning of the 'equal protection' clause, he would have declared the Constitution to be color blind... Warren turned instead to modern 'psychological knowledge' to define the wrongfulness of segregated schools. Yet... one could find psychologists to give expert testimony to support any thesis... Because of the arbitrary way he arrived at his conclusion, we have been visited ever since by a plague of race based 'remedies,' in which 'equal' (and the Constitution) means whatever the judge wants it to mean." But Jaffa is saying this now (and perhaps would have said it in 1954). It is not all that certain that his views on what is natural would have been at the time of the *Plessy's* decision in 1896. That leads us again to the problem of applying this general postulate of equality to specific situations. Natural right doctrine can be very powerful in its postulates and general principles, but it offers very little in terms of solving more specific moral problems. It has very little to say on the question of affirmative action, capital punishment, gay marriages, gender equality, and many more even more specific issues.

Strauss, Jaffa, Kessler and others who support natural right see the doctrine as the only acceptable guide to the truth and suggests that anything else is arbitrary. Actually, it is the other way around. Since the natural right doctrine is not falsifiable, it leads to relativism (within the general framework of the natural right ideals) while other methods, no matter how weak and limited, lead to a productive debate. It was not my intention to argue which method, whether it is the categorical imperative, the utilitarian principle, the Rawls' "veil of ignorance," the costs-benefits of welfare economic, or a combination of them, is more effective in solving our problems. I only argued that, unfortunately, natural right theory is not one of them.

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