

The dilemma of natural law in an organised society

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Natural law has been a question throughout the history, which was regarded from many perspectives. It has influenced many fields, most dominantly ethics as a moral teaching, state foundations and basic laws of all kind of ideologies, which also includes Western democracy, as well as theology. Rousseau already stated in his preface to his discourse on inequality that “We cannot see without surprise and disgust how little agreement there is between the different authors who have treated this great subject. Among the more important writers there are scarcely two of the same mind about it. Not to speak of the ancient philosophers, who seem to have done their best purposely to contradict one another on the most fundamental principles, the Roman jurists subjected man and the other animals indiscriminately to the same natural law, because they considered, under that name, rather the law which nature imposes on herself than that which she prescribes to others; or rather because of the particular acceptance of the term law among those jurists; who seem on this occasion to have understood nothing more by it than the general relations established by nature between all animated beings, for their common preservation.”¹

To understand natural law, he introduces the state of nature. However, he rejects that man ever lived in such a state as he writes: “It has not even entered into the heads of most of our writers to doubt whether the state of nature ever existed; but it is clear from the Holy Scriptures that the first man, having received his understanding and commandments immediately from God, was not himself in such a state; and that, if we give such credit to the writings of Moses as every Christian philosopher ought to give, we must deny that, even before the deluge, men were ever in the pure state of nature; unless, indeed, they fell back into it from some very extraordinary circumstance; a paradox which it would be very embarrassing to defend, and quite impossible to prove.”² So we can conclude that from the beginning when a society forms, there is no more natural state. Most other writers of his time used to see the state of nature within the existing societies and thus their natural law was

biased by the fact that the state which they described never existed, and all their assumptions are not really based on a natural state, as the society is already somehow regulated, and thus there is already positive law opposing to the natural state with its natural law. Hobbes' *ius naturale* takes as ground that in a lawless space, people will seek for all kind of might to preserve one's own being³, which in return means that the state of nature consists of a “bellum omnium contra omnes”⁴, which means that only through giving away one's own rights by transferring them to an individual or collective this can be ended.

Locke does not doubt the existence of a natural law, as for him it is manifested to all human-beings. However, unlike Hobbes, Locke claims that the natural law is no thought experiment, but exists in real, and thus already historically existent.⁵

The flaws of Locke's theory are far too obvious. If the law of nature ever came into use through a state of nature, then an Anarchist society must have existed in which people did not organise and subsume under laws, but live in a way following their basic nature, which are despite the human instincts, mainly reason. Thus, a society in a natural state must be reasonable. However, even in early history, people organised themselves as all kinds of clans and communities are a pre-stage of organisation. Even the Greek polis (πόλις), despite violating equality, lacked all grounds of natural law, as all positive laws were founded on mythological laws.

According to Locke, however, all people who live in a state of nature are equal and free⁶, however, since it exists for real, it might be used by punishing people who are abusing the rules of the natural law⁷.

Anyways, since the natural law is not achievable, there cannot be any punishment. Even further, this indicates that the views of extreme Anarchists can not be hold up, as they propagate that there is a human nature, a kind of natural Good-being, which just gets destroyed through the statist elites and their ideological enforcement.

But even Hobbes who talked of a thought experiment missed the point when he suggested to give away one's own rights to avoid a war against all human-beings. Even the premise that all humans seek for unlimited might is wrong. To take an egoistic nature as premise is very problematic. Indeed, in fact people tend to be egoistic, but in an ideal society, all people do not try to harm others for their own well-being. People always tend to choose good for the collective, in hope to be integrated in the struggle to survive. The creation of states, and thus hierarchies destroys this seek to be good, since people now want all the might so that their survival is ensured. Thus, Hobbes' premises only work in a statist society and thus beyond natural law. Rousseau gets the point when he says: “Religion commands us to believe that,

God Himself having taken men out of a state of nature immediately after the creation, they are unequal only because it is His will they should be so: but it does not forbid us to form conjectures based solely on the nature of man, and the beings around him, concerning what might have become of the human race, if it had been left to itself”⁸.

If human-beings are not pushed towards any direction, any kind of command, then we reach the state of nature, however, this seems to be impossible, as I showed above, since people always organised in some forms, and the result is always the creation of positive laws based on the society. However, to find out which kind of rules are positive law and which kind of law must be of nature, one must sum up all kinds of religions and mythology and find rules that apply to all societies in the world. We can call them primary ethics⁹.

In the beginning of humanity, people always gave rules and laws in form of stories and myths to show that these rules are not arbitrarily made by a man, but something higher and respectable. All kind of early morality goes back to these sayings which were later written down in Hesiod’s Theogony, Homer’s Odyssey and Iliad, the Dutch folk song Van Here Halewijn (which contains pre-Christian Germanic themes), Sturluson’s Prose Edda, Latvian Daina’s from pre-Christian era, and other works all around the globe. However, the questions which have to be handled were all the same everywhere in the world, and thus Pre-Socratic Greek philosophy is very close to Ancient Chinese philosophy, however, neither the Greek nor the Chinese philosophy are more authentic or more developed, but all of them are of same worth, which rejects the idea that Europe was the center of scientific development.

To be able to find primary ethics, one shall take a look at the big religions in the world, as well as analysing seemingly common values in different societies.

In Christianity basic ethics is defined by the Ten Commandments written in the Bible.

These Commandments are as follows: 1. Thou shalt have no other gods before me. (meaning: You shall have no other gods before me.); 2. Thou shalt not make unto thee any graven image. (meaning: You shall not make for yourself a carved image [of God].); 3. Thou shalt not take the name of the Lord thy God in vain. (meaning: You shall not make wrongful use of the name of the Lord your God); 4. Remember the sabbath day, to keep it holy.; 5. Honour thy father and thy mother. (meaning: Honour your father and your mother.); 6. Thou shalt not kill. (meaning: You are not to kill anyone.); 7. Thou shalt not commit adultery. (meaning: You are not to commit adultery.); 8. Thou shalt not steal. (meaning: You are not to steal anything.); 9. Thou shalt not bear false witness against thy neighbour. (meaning: You are prohibited to lie.); 10. Thou shalt not covet. (meaning: You are not to desire things that belong to others.) – see King James Bible, Exodus 20:1-17. Thus, Christianity emphasizes on a strict monotheism, in

which there is a Highest Being which cannot really be imagined in form (otherwise it would make no sense to forbid images), and thus is universal in its nature – note that Spinoza later made God and nature equally when saying *deus sive natura* – which is no wonder since he created everything and therefore everything must be mirrored in it (that’s why people say, everyone is a part of God). The ethics include a guaranteed day for rest, honoring one’s own family, prohibition of killing, prohibition of giving wrong testimony (though I avoid the word ‘lie’ here, since the difference between a white lie and a lie is that a lie always includes wrong testimony in front of others), and the protection of property.

In Islam, there are five main duties (arkan) which every Muslim has to fulfill. The first one is the *testimony* (*shahada*), declaring belief in the oneness of God (لا إله إلا الله) and the affirmation that Muhammad is his prophet. The Oneness of God is called tawhid, a principle which affirms that all names of God are the names of the One and only God, thus God has different names, but he is not divisible or separable in different beings. The second duty is the *prayer* (*salat*). Every Muslim has to pray five times a day on a certain time. The third duty is the *zakat*, which tells every Muslim to support the poor by making donations. The fourth duty is the *fast* (*saum*), and the fifth duty is the *pilgrimage* (*hajj*).

In Judaism, the collective body of religious law from the Torah is called Halakha (הלכה), which includes 613 commandments. They can also be found in the Old Testament of the Bible. However, “there is no central Jewish ethic that is applied. According to liberal Jews, ethical values have to be applied to the time where people are living, therefore they are not ‘timeless’, while ritual laws are considered to be timeless.”¹⁰

In Hinduism, ethical behavior is called *nitisastra*, which literally means ethics as well as morality.¹¹ Hindus in general agree that *non-violence* (*ahimsa*), *self-restraint* (*dama*), *asteya* (*non-stealing*), *inner purity* (*saucha*) and *truthfulness* (*satyam*) are the major ethical principles.

¹² However, the exact dealing with the principles varies on time, local place, role in society and the general situation, and thus “that again which is virtue may, according to time and place, be sin” but “Under certain conditions, ‘acts that are (apparently) evil’ can be permitted if they ‘produce consequences that are good’”¹³.

However, Hinduism itself is a difficult term, since it is a cluster of different religious teachings that go back to the same scriptures. As Glasenapp points out: “Manche Hindus verehren Fetische, Himmelskörper, Pflanzen und Tiere, sie beten zu guten und bösen Geistern, zu Heroen und vergötterten Heiligen, sie haben ein Pantheon, das an Reichhaltigkeit kaum übertroffen werden kann, und andere verehren wieder nur einen geistigen Gott. Manche stellen sich Gott theopanistisch als eins mit der Welt vor, und andere leugnen überhaupt das

Dasein eines höchsten Weltenlenkers. Die einen bringen dem Gegenstande ihrer Verehrung blutige Schlachtopfer dar, und andere scheuen sich, selbst Ungeziefer zu töten. Die einen ergeben sich orgiastischer Wollust, und andere suchen durch rasende Askese ihre Sinne zu ertöten. Überblickt man die Vielgestaltigkeit der Formen, in denen sich der Hinduismus äußert, dann ist es, als fände man dort alle Stadien vereinigt, welche das religiöse Bewußtsein der Menschheit durchlaufen hat, vom Animismus und Dämonenkult der Wilden und den polytheistischen Naturreligionen bis zu den spiritualistisch-ethischen Offenbarungsreligionen monotheistischen und theopanistischen Gepräges." ¹⁴ As a result, one can say, everything can be found in Hinduism. It even shows discrepancies between the ethics mentioned above, as some Hindus do not dare to harm any animal, while others sacrifice them. Hinduism includes polytheistic teachings as well as monotheistic teachings, and thus the common labeling as simply 'polytheistic' as often done in common Western speech is simply wrong and even further misleading. Even further, it leads to a false image that can be found in the Western World, as well as in the Middle East, where the common belief is that Hindus do not realize the existence of the one and only God. In conservative circles, this leads even to a degradation of Hinduism. On the other hand, one could find a synthesis between monotheism and polytheism. One could say that the many gods are just the different manifestations of the one God and that all is part of the one. In this way, polytheism is no threat to monotheism. If monotheists accepted this idea, then a lot of wars could be avoided. It makes no difference how the one and only God is called and in which ways it is manifested. Even the monotheists agree, that there are many names for God, but all these names are just different facettes of the One. Why can't we simply take Plato and accept that the One shows itself in the Many, and the many go back to the one ? ¹⁵

However, indeed, for Hindus, it does not matter in how many Gods one believes, the important thing is the socio-ethical component. As Glasenapp states: "Das einigende Band, das sie alle zu einem Ganzen zusammenschließt, ist nicht der gemeinsame Glaube an bestimmte Götter oder das Fürwahrhalten bestimmter religiöser Lehren, sondern ein Komplex von gewissen allgemein anerkannten sozial-ethischen Grundanschauungen. In der ganzen Welt offenbart sich dem Hindu ein ewiges Gesetz, der Dharma. Dieser Dharma manifestiert sich als Naturgesetz in den Eigenschaften, die einem Dinge oder einem Wesen eigentümlich sind, sofern es ein wirklicher Repräsentant seiner Gattung sein soll, z. B. im Abwärtsfließen des Wassers, im Milchgeben der Kühe. Er manifestiert sich weiterhin aber auch als Sittengesetz, als die Norm, die Summe der ethischen und rechtlichen Vorschriften, Gebote

und Pflichten, denen ein Wesen nachkommen muß, um seiner natürlichen Bestimmung zu entsprechen." ¹⁶

Here again, we find natural law as key term, however, natural law according to Hinduism is 'nature as it is'. Everything that is as it can be found today goes back to something, but it is a principle given by natural law, probably even divine law. Thus divine law and natural law in Hinduism goes together, and also explains the role of man and its value, and thus "Auch die Menschen zerfallen für den Hindu in eine große Zahl von Kategorien, die von Geburt einen mehr oder weniger umfangreichen Teil des Dharma zu verwirklichen suchen und sich dementsprechend auf einer höheren oder geringeren Stufe der Reinheit befinden. Über dreitausend solcher Menschenklassen werden in Indien angenommen, die sogenannten Kasten" ¹⁷.

Hindus traditionally claim Buddhism to be one of a nihilistic form of their teachings, since it comes from India and is thus one of their many different varieties of teachings. However, unlike Jainism that is still by many considered a Hindu teaching, Buddhism emancipated itself out of Hinduism when it was exported into foreign countries and made its way to state religion in Ancient China ¹⁸. Buddhism has its own scriptures and indeed cannot be counted to Hinduism since it was founded as opposition to Hinduism and its caste system. The five main ethics of Buddhism are 'abstain from killing', 'abstain from taking what is not given', 'abstain from sensual misconduct', 'abstain from false speech', 'abstain from liquors, wines, and other intoxicants, which are the basis for heedlessness' ¹⁹. Like Hinduism, Buddhist ethics does not give testimony about the existence of God, and Buddhists might believe in gods, spirits, or reject any transcendental Being at all. However, there are several Buddhist teachings that have the idea that all Buddhas and Bodhisattvas are just the mirror of one Being in the universe. This Highest Being is the Primordial Buddha (Adibuddha) in Indonesia, and Guanyin in Korea. The monotheistic thought in Buddhism might be no surprise, since Daoism played an important role in Korea as well, and according to Daoism, everything goes back to the One, in this case, the Dao. Daoist ethics are that fluid that they cannot be summarized at all. In fact, there are just two principles, the first is that everything is a manifestation of the Dao, and the second is the need of detachment to get into a state of non-acting. The pantheistic view of Daoism shares a lot of parallels with Hinduism and Platonism, both knowing the idea of a supersoul, also known as world-soul (ψυχή τοῦ παντός). The Greek term literally means 'soul of everything'. This kind of soul is necessary to Plato since it describes all movement in the world, and thus shares parallels to Zhuangzi who regards the movement of the world to go back to a cosmic principle which should not be disturbed and

which regulates everything. It is no coincidence that this Being reminds of God, however, we should leave the consciousness of God and the theodicy which arises out of it aside at this point. Sikhism has ten prohibitions which are 1) Cutting hair, 2) Intoxication (alcohol, drugs, tobacco), 3) Superstition and rituals, 4) Material obsession, 5) Sacrifice of Creatures, 6) Non-family-oriented living, 7) Worthless talk (includes lying and gossip), 8) Priestly class (there are no priests in Sikhism), 9) Eating meat killed in a ritual (as rituals are forbidden!), 10) Having extramarital sexual relations.²⁰

All the teachings that were compared until now had the following ideas in common that are seemingly natural law and thus universal, no matter whether one believes in a God or not: 1) Do not kill!, 2) Do not steal!, 3) Do not lie/ betray!, 4) Do not desire material obsession!, 5) Love your Next as you love yourself! (a.k.a. The Golden Rule)²¹.

To show and 'prove' the universality, we have to analyze ethics in natural relations and teachings. How does ethics play a role in Shamanic traditions? According to John Man, Tengrism completely lacks of ethical content. Tengri is neither the world's creator, nor the ultimate judge²².

According to Steve Serr, however, Ethics play an important role in Shamanism, however, "Just to get the matter straight, I am not going to fabricate or perpetuate any kind of romantic myth about shamanic ethics. Shamans are people, just like the rest of us. They grow up in certain social and environmental contexts, and are as limited and as unlimited in their potential as any other human being on the planet. I know shamans who are compassionate and wise, and I know shamans who are cagey and ignorant, and in both cases, they can be keenly intelligent. It seems that with shamans as anyone else, it is not a matter of how smart one is or how much one knows that determines whether they do helpful or harmful deeds"²³. So Serr rather focusses on the responsibility of the shaman that he has while doing his ceremonies than a general ethics for society.

However, the early myths from which animism and shamanism derive have a long tradition, in which we find one thing which was common around the whole world. In most mythological stories, man evolved out of trees and the souls of the dead go back to trees.

"Vietnam appears to [...] have a complex Soul Tree, one that however, also includes Genesis-like two-tree motif which explains how mankind lost their immortality after the burial of man at the foot of wrong tree. [...] Iranian: The first human couple, Maschia and Maschiana, issued from the ground (according to some versions out of a rotting corpse) in the form of a rhubarb plant (the Rheum ribes), which was at first single, but in process of time became divided into two. [...]India: Mahabharata: An enormous Indian fig-tree from whose branches

hung little devotees in human form. The Malabar speak of a tree whose fruit were pigmy men and women. [...] According to Hesychius of the Greeks: ‘The human race was the first fruit of the ash, and Hesiod relates that it was from the trunks of ash-trees that Zeus created the third or fourth bronze race of men. The oak was particularized as the favored tree of another tradition.’ [...] Germanic and Nordic traditions, according to the Eddas, ‘when Heaven had been made: Odin and his brothers walking by the sea shore came upon two trees. These they changed into human beings, male and female. The first brother gave them soul and life; the second endowed them with wit and will to move; the third added face, speech, sight and hearing.’ [...] In the European tradition of Saxony, Thuringians too, children are spoken of as growing on a tree. There were traditions in Latvia, Lithuania, and northern Germany of the world tree as a distant oak, birch, or apple tree with iron roots, copper branches, and silver leaves. The spirits of the dead lived in this tree. In Damascus, Syria, they have a creation myth where their progenitor was a tree out of which everything descended and came – Bushmen, zebras, oxen In the Arabic tradition, the Arabs say there is a talking tree growing at the Eastern most point of the world which bore young women on its branches instead of fruit.”²⁴

In the European tradition, the belief in a world tree was common, especially in Germany, Scandinavia and the Baltic states, which might be no surprise, since the Baltic states are the origin of the Germanic tribes, and probably the point, where Germanic and Slavic tribes separated from a proto-tribe millenias ago. Thus, they also took the early mythology. The spirits of the dead live in the tree, which can be also found in Siberian and Mongolian belief, where Mongolians put colorful strips on the trees, where the souls gather and where they meet to worship their relatives. In Judaism, the souls meet in a tree to wait there for God’s call to be reborn. The tree of life also made its way into Christianity, where it took the Jewish attributes, as well as probably Arabic, Scythian and European features. However, “Not only is there the notion of a Tree of Souls in Judaism, and the notion that souls take shelter in trees, but there is also the belief that trees have souls [...] The Turkic people had widespread belief that people take the babies under the trees (comparing with version of genealogical legend about Aday), or that the ancestors’ souls live in the tree, branches and leaves. The branches of shaman tree, according to the ideas of Turkic-Mongol people, host the souls, preparing for a new birth. [...] According to the Altai Turks, human beings are descended from trees. According to the Yakuts, White Mother sits at the base of the Tree of Life, whose branches reach to the heavens where it is occupied by various creatures that have come to life there

”²⁵. There are even further symbolism for the life tree in all societies. The Miao and Dong head clothing in China depicts the life tree, as well as Afghan crowns, Korean crowns, Chinese money trees, sacred trees in Greece, etc.

This means that the early civilisation did not lack of religion, but of moral ideas. Moral ideas seemingly are not part of the natural law, but were already early incorporated, whether it is the snake who asks Eve to take the apple from the tree (what a surprise that the story turns around a tree!) or interpretation of natural disasters as sign that a Higher Being is not happy with the way humans behave. Even today, people talk about genealogy trees, without even thinking further. Anyways, seemingly when the first humans arrived, natural law was lost. The dilemma of natural law which could be found through basic ethics is only partly solved. As such, primary ethics are part of the natural law, but the natural law as such is even deeper and cannot be found, it lies in the dark. The religions incorporated their morality through mythological moral codes, but the moral codes and the religious beliefs were separated. The only interaction was the divine reaction to misbehavior of the moral code which from time to time made it not humanly, but divinely, and was later adopted in all religions. Punishment against divine law is well-known, but are they also part of the natural law? In other ways, does divinely law only exist, if at least one human exists or is divine law even valid, when no more human inhabits this planet? If divine law is independent from humans, then it must be natural law, but if divine law exists only in a human sphere, then no religion exists without human existence, which might lead to the question ‘Where is God after he erased all humans?’. All modern religions share in common that the ethics are revealed, they are standing over the humans, since they are not human-made. And still, they are applied only on humans, not on animals. No animal is punished for killing or stealing. This shows the humanness of any law. However, if the laws were not universally, even without religion, then no life would have been possible on the earth, like we can imagine today. Thus, the primary ethics replace the natural law, which was lost on the day, humans appeared to live in communities and give each other rules that are not instinctive, such as animal hierarchies, which are also a form of organisation, but for the survival of the fittest, not for the survival of all. Humans, however, made survival for all, as their highest goal, and thus agreed not to kill, to steal, to betray/ lie, but to love each other.

Thus, the **physical inviolability** should be ensured through the following rules:

1. Do not kill other human-beings!
2. Do not steal, commit robberies or harm people to capture money or personal property!
3. Do not use violence against human-beings!²⁶

All state laws, religious laws, mythologies, educative fairy tales teach these three basic rights. They are universal, and one can explain their universality through the idea that all humans are a manifestation of God or the One, or one can explain it by saying that the nature of human-beings is to live together in peace, and thus it must have been facets of natural law that people 'live and let live'. The way in which people shall live cannot be traced back to natural law, since all kinds of societal organisation are man-made and not nature.

Rousseau came to the point that moral philosophy is just needed because of the bad character of humans, and the Anarchist Kropotkin even asked "Are we good enough?" So, the physical inviolability is not protective enough, even further, we have to protect those who cannot defend themselves, through **human inviolability**, which assumingly is a consequence of human compassion in the natural law.

4. Love your Next, as you love yourself!

5. Do not harm children, elder people, disabled or other helpless people in any way!²⁷

As next step, **social rights** have to be ensured. We cannot trace them back to natural law directly, since we do not really know what natural law is, but seemingly betrayal and injustice are universally condemned, and thus they must have a connection to natural law.

6. Do not lie, especially in situations where you could bring other people in trouble.

7. Do not betray other people's money or personal property!

8. Do not pursue wealth.

9. Do not accept injustice. Demand for justice!

10. Be honest, and be yourself!²⁸

As a conclusion, we can say, natural law consists at least of physical inviolability, human inviolability, and social rights, but they are just a part of it. We do not know which role they have within natural law and how they are conditioned to each other. However, they apply to all human-beings no matter which skin colour, religion or sexual orientation one has. They also imply a certain share to avoid inequalities among the rich and poor, but it does not regulate in which way this share has to be done. Religions teach us to make donations. Political ideologies, such as Western democracy teaches us that the social welfare state has the monopoly to conduct regulations, Communism demands revolutions to eliminate the inequalities, Anarchists see the existence of any political elite as major Evil, and Fascists see the inequality as given and do not try for a change at all, except for their in-group peers.

They all have in common that they ignore alternatives * that go back to the **given diversity**, which is seemingly part of natural law as well, but doomed that much, that people are even ready to live against their nature. Not only natural law disappeared when the state of nature

disappeared, even the human nature disappeared when state monopolies tried to make people work for them. Even further, they want to teach us that they arose out of a state of nature, but they forgot that their laws are not built on natural law, but only on qualities that are part of the natural law. The ten ethics above are the essences of these qualities. Every society shall apply these rules, but all kind of laws that can not be explained by these primary ethics or even fight them, are not in the sense of nature, as even the primary ethics are just an assumption of parts of nature, and not nature itself, but we can assume that every society when it is formed gives itself, these ten rules, as they are positive law in all societies, and thus they must be transformable to all societies in the universe that are conscience of their actions.

* it is meant that each system just thinks of its own, while in fact many systems exist in the world as alternatives or hybrides

Notes:

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