

Interpretation

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Pierre Manent's *Natural Law and Human Rights: Toward a Recovery of Practical Reason* is a fresh addition to the branch of natural law theory that identifies the crises of the Western world with the fulfillment of modernity, rather than its failure. The modern world, on this view, runs on the exhaust fumes of a slowly disintegrating inherited moral tradition. Alasdair MacIntyre once phrased it as follows: "the language and the appearances of morality persist even though the integral substance of morality has to a large extent been fragmented and then in part destroyed."¹ Manent covers similar ground in a similar spirit, but presents his critique of moral modernity in terms of the alternative between *natural law* and *human rights*. This dualistic and polemical framing enables him to craft a refreshingly uninhibited diagnosis of some of the central pathologies of contemporary life and politics. He also develops several original and interesting ideas about the genesis of modern political thought. It is less clear, however, that Manent succeeds in matching the scope and rigor of MacIntyre's challenge to modernity, or his presentation of the natural law thesis.

Manent's particular method of argumentation is to bring into relief a series of intolerable paralyzes and vacuities at the core of modern social and political life. These are traced to the foundational ideas of Machiavelli, Luther, and especially Hobbes. The positive aspect of the argument maintains that

¹ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd ed. (Notre Dame, IN: University of Notre Dame Press, 2007), 5.

the only path forward lies in the recovery of the Thomistic doctrine of natural law. This all depends on Manent's very broad construal of natural law, which is conceived to flow from the inescapably normative aspects of human nature, and therefore also to serve as the motive and end of all practical reasoning. Hence arises Manent's central but opaque claim that without the natural law, there can be no human action at all.

I will sketch some critical points in Manent's argument and then offer a reflection on the strengths and weaknesses of this dense and bracing little book.

LIVING WITHOUT NATURAL LAW

The human need for natural law, Manent argues, is evident in the series of paralyzing dilemmas to which its denial condemns us. The first and greatest of these arises from our devotion to an indeterminate human freedom and equality. Since the principles of equality and freedom apply equally to individuals and to cultures, we in the Western world vacillate in accepting and denying the universalism of human rights. "Depending on whether we look 'elsewhere' or 'here,' either we utterly reject the idea of a universal norm, or we eagerly appeal to it" (2). This embarrassment has seeped into daily life in proportion as "people have arrived here from 'elsewhere' in large numbers" (3). The equality of cultures and the equality of individuals both follow from the denial of natural law, yet radically undermine one another. The result is a "divided state of mind" and "an insurmountable perplexity that tends to paralyze collective action" (5, 7).

Western cultural paralysis is, according to Manent, the late and inevitable outgrowth of the "state of nature" doctrines that displaced the natural law tradition at the dawn of modernity. Hobbes and his successors embraced a reductionist understanding of human nature. The natural human being was no longer understood as reasonable, or sexed, or possessed of definite capacities. Human beings generally ceased to be viewed as determined or commanded by nature; instead, the individual was conceived as a bundle of natural desires, a mere unit of organic striving or "conatus." What took on the name of "natural man" is an "individual-living-being," a desiring vector of no particular essence. Just because in the modern conception the natural man has no definite qualities, he is burdened with the mission "to recompose all the significant elements of the human world in order to make them conform to the idea he has of himself" (12). One might say that, for Manent, the Baconian conquest of nature entails the spiritual and moral indeterminacy of Sartre's existentialism.

Manent presents same-sex marriage as the preeminent symbol of the modern denial of human nature. On one hand, since natural law is rejected, sexual difference is not admitted to be normative or natural. On the other hand, and as a result, every kind of sexual orientation is naturalized. “The difference between the sexes undergoes a major loss of authority, a *diminutio capitis*” (15). Same-sex marriage therefore carries a metaphysical meaning; it “inscribe[s] into positive law the thesis according to which the just and legitimate human order excludes all reference to a natural norm or purpose.” Furthermore, the civil law becomes actively antagonistic to all normative prescription: “The law opening marriage to same-sex couples is a positive law whose intention targets the very meaning of the human order.” We are living in the midst of a heedless experiment “whose consequences yet to come, public as well as private, will no doubt be commensurate with the audacity or imprudence of what has been done” (17).

WHY NATURAL LAW WAS REJECTED

As mentioned, Manent blames the eclipse of natural law on the “state of nature” doctrines of the early moderns. The way was paved for this innovation by the eclipse of the “practical” point of view (understood in the old Aristotelian sense) by the “theoretic” point of view (understood in the modern mathematical sense). Practical reason—that is, every species of moral deliberation—depends on the existence of natural ends. Properly human action involves a practical reasoning internal to the moral agent, answering to these natural ends. The monolithic efficient causality of early modern science and philosophy destroys the practical perspective, leaving only a “theoretical” perspective. This purely “external” or third-person perspective on human action measures actions by their external effects rather than their inner meaning. “Action” in the sense of reasoned moral action ceases to be the focus of political theory or political life, which now devotes itself to the wholly external problem of “organization” (24). In sketching this distinction between the practical and theoretical, Manent presents the familiar natural law argument with a radical if puzzling twist. *Action* properly so called is possible only from an internal perspective, and only in relation to a “rule” or “norm” or “law” (these terms converge for Manent).

Recognition of the natural law is therefore the condition of having a practical or moral perspective at all. Natural law provides at once the motive and the end of action. Nor does it matter whether we speak of “natural or divine law,” since these are equally “commandments *produced by no one*.” Internal

recognition of this nonhuman law—Manent means morality as such—is therefore identical with *conscience*. Manent blames Machiavelli for replacing conscience, the interior fear of transgressing “the commandments of natural law,” with the simple animal fear of death (30). “Cutting through the knot where the fear of death is interwoven with the fear of the law, he isolates in all its purity . . . the power of fear—its shaping and founding power” (33). Conscience is thus defined as fear of the natural law. Luther popularized and extended this Machiavellian denial of both natural law and conscience. He preached the principle of “faith alone” as a means of overcoming his bad conscience. Thus the Protestant Reformation effected on a broad popular basis the demise of conscience as a guide to action that Machiavelli had pioneered for the few and the great. Today the result of this scientific or Protestant rejection of natural law, or conscience, is evident: we are in the position of “no longer knowing from what or for what we have ‘liberated’ ourselves” (41).

MAN AS THE “BEING WITH RIGHTS” AND THE *RECHTSTAAT*

The denial of conscience and the appeal to animal fear are the root principles enabling Hobbes to found the modern state. Hobbes accordingly conceives of human beings from a purely external perspective, as merely “individual-living-beings” populating a hypothetical state of nature. In this anarchic state, all men are said to have an equal right to everything—*jus in omnia*. Human rights emerge from the rejection of the limitations inherent to natural law. And man emerges newly defined as “the Being with Rights” (46ff.). But a right to everything is meaningless, Manent argues, since everyone else has the same right. Notwithstanding the inner meaninglessness of man’s existence as “the Being with Rights” (as opposed to the “political animal” or “God’s Creature”), the rights-bearing being can be passively formed into a citizen of the modern state. The modern state is not properly a political order, any more than human rights are properly a morality: “Modern natural right does not properly found a political philosophy, but a doctrine of the state” (54).

The modern state founded on the doctrine of human rights is of a peculiarly unsatisfactory character. The citizen, a mere “individual-living-being,” is deprived, as mentioned, of an internal standard or “rule of action” (57ff.). On the other side, the transference of the putatively natural *jus in omnia* to the sovereign leaves the sovereign with “no motive of his own” (58). To an already long list of converging terms—natural law, rule, norm, conscience, action, practical reason—Manent now adds the ideas of *command* and *obedience*. Lacking an interior motive, the sovereign falls short of genuinely

commanding action. Command and obedience differ from the merely passive organization of the modern state insofar as the motive of command is *practical*, which for Manent means motivated by the natural law. The preeminent motive of modern citizens—simple animal fear of death—makes their obedience passive, so that they, too, fail to act even in the sense of reasoned obedience. Moral reasoning evaporates: “since, in the new collective order, no one acts in the proper sense . . . there is no point being concerned with the internal rule of action” (59).

This politics without action—without true command or obedience—does not simply leave the social sphere alone (as liberals have often claimed), but persistently undermines it.

The immense machine of the state is busy emptying the social world of all commandment, busy producing a world without commandment, or with no other commandment than that of the state, which does not command in the proper sense—busy producing a human world in which no one either commands or obeys, in which each person is, as it were, reduced to the condition prior to action, a condition in which there is no rule available for guiding or concretizing action, such a rule being the condition of the distinction between one who commands and one who obeys. (61)

In other words, the modern state attempts to abolish all authority but its own, while its own authority has no inner motive—in Manent’s terminology it is *theoretical* rather than *practical*—answering to no possible reasoning about human ends. The state dissolves social bonds by attacking the “intermediate authorities”—Manent uses Tocqueville’s term for substate authority—that threaten its dominance. This began historically with the nobility and is now finishing with the traditional family.

As long as the state continues to function, citizens are compelled, no less than in the past, to obey laws and prevailing social norms. Modern life is itself an “opaque condition where mutilated and confused notions of commanding as well as obeying blend together.” Eschewing all explicit and true authority, the state commands without commanding, while the citizen is given over to a “general disposition to let himself be shaped, a disposition that is not really obedience since it never encounters a sincere and complete act of commanding” (68). The state’s paradoxical attempt “to give members of society only those commands necessary to lead a life without law” (72) does not, as liberals hoped, produce a creative individual autonomy. Manent savages this concept as incoherent. The actual result is passivity, confusion, and finally, anarchy: “At

the end of its course the modern state produces a social state that asymptotically approaches the state of nature as presupposed in its construction” (62).

The modern law was supposed to serve the primary purpose of securing the individual’s rights, but the exercise of all such rights presupposes the solicitude of a political order already established by law. There must first be an institution, before rights claims may be laid on it. There is therefore an infinite need and a permanent incentive to expand the scope of rights without limit, to capture institutions for one’s own benefit. This is not an arbitrary excess, but inherent to any regime in which the common sphere takes form exclusively through the assertion and counterassertion of rights.

Because rights have no basis in normative nature, but follow from the collective mediation of an original right to all things, self-revelation and the revelatory act of “coming out” replace genuine political action. Since rights respond to passions, what is considered most heroic in this society is to thrust private desire into the public sphere. “Is it not the case that to remain in secret, or merely discreet, is unjustly to disavow the law that cares for your rights?” Although the modern state has not the explicit harshness of the older forms of political order, no private feeling is left in peaceful obscurity, and no private judgment is exempted from public control. The regime of human rights entails that the self-revelations of some are thrust on others, and the “new law summons them to prove that they find nothing to remark in what they are forced to notice” (79).

WHAT, THEN, IS TO BE DONE?

To restore humanity, Manent calls for the recovery of practical reason. He observes that the beginning of order is not an-archic individualism, as Hobbes thought, but the “archic” command. “Command is action itself, its core and essence” (114). Counterintuitively, Manent insists that command is itself also a reasoning on law. Command, action, practical reason, and natural law all depend on the balancing of three universal and normative human motives: “the pleasant, the useful, and the honest (the just, the noble)” (101). These are “objective components of human nature,” and only because of these common motives are human understanding and communication possible. All these notions, including the noble, Manent takes to be unchanging and universally accessible. An Islamic terrorist, for example, seeks to serve his own idea of the noble, but “his relation to the idea is gravely distorted” (104). “Natural or divine law,” that is, the law “*commanded by no one*,” operates,

apparently indistinguishably, in “the Greek conception of reflective choice as well as the Christian conception of free will” (87).

Manent thus mutually defines his key concepts of natural law, command, obedience, rule, norm, action, conscience, free will, and practical reason. Only in obedience to the command of natural law is man truly an agent. Only an agent exercises practical reason. Only practical reason raises us by our consciences above the passivity of the animal fear of death, on which the modern state was founded. The way to recover natural law is “to hold together the idea of a human bond, of a common action, and of a commanding law.” This, Manent states bluntly, “can today be understood, formulated, and proposed in a coherent manner only within the Catholic Church, especially when this church is instructed by Saint Thomas” (129).

EVALUATING MANENT’S RETROSPECTIVE WAY FORWARD

Manent’s historical-philosophical accounting of modernity contains at least two very important insights. First, that conscience entails a peculiar kind of fear that the Machiavellian and Hobbesian emphasis on the fear of death directly displaces. Second, that the modern state undertakes to abolish command and obedience, and to replace social as well as political authority with an ultimately nihilistic theory of natural right, according to which one’s legitimate obedience is supposed to follow only from one’s own command. These insights underwrite the genuine force of Manent’s impassioned attack on modernity; they point to the urgent civilizational need that we rehabilitate authority outside the framework of rights.

At the same time, the quick association of Machiavelli and Luther, on one hand, and of Aristotle and Catholic dogma, on the other, fails to advance the intelligibility of the natural law thesis. Manent even briefly proposes the confusing idea that the root cause of the Machiavelli-Luther revolution was biblical Christianity itself. Christianity, he writes, “overdetermined” man by separating his political and religious natures (cf. 54–57). This sort of truncated argument falls dramatically short of the depth of Alasdair MacIntyre’s treatment of the differences between Christian and pagan virtue, and his account of the root causes of “moral modernity.” One need only compare Manent’s passing conflation of natural and divine law, or of Christian and pagan virtue, with MacIntyre’s frank admission that “Aristotle would certainly not have admired Jesus Christ and he would have been horrified by St. Paul.”²

² MacIntyre, *After Virtue*, 184.

MacIntyre also proposes a detailed account of the role of Stoicism in the invention of “natural law,” a concept which, after all, is not obviously present either in Greek philosophy or the Bible. It is not so much that MacIntyre establishes the natural law thesis, as that he shows, as Manent does not, what would truly be required to do so. Manent’s near total identification of natural law with practical virtue lacks even the Aristotelian concept of habit, which Thomas Aquinas acknowledges as the reason “the way of virtue does not fall under the command of the law.”³

The contemporary and diagnostic aspect of the work is altogether more praiseworthy. Manent’s use of same-sex marriage as the symbol of spiritual disorder is liable to offend some, even as others will rejoice that in France, for the time being, such ideas are still publicly entertained. The main limitation of this symbol is that it does not quite get all the way to the root of what Manent means to say. Same-sex marriage represents for Manent the denial of sexual difference. But this denial, if it can be traced to any particular modern movement, must surely be traced to feminism. It seems doubtful that either homosexual marriage or the current wave of transgenderism could have existed if the way had not been paved by the broadly feminist denial of essential sexual difference. Feminism is by far the most revolutionary and successful movement toward abstract equality and freedom of the past century, and the one most at war with Manent’s conception of innate human difference. Does Manent think that feminism follows from Hobbes? Why, in a theory of human rights, does this most powerful example of the human rights doctrine receive no mention?

Among the most incisive of Manent’s observations are those relating to the collapse of healthy authority in the modern world. It is a correct and profound observation that simple command and simple obedience have fallen into odium and total disuse, and that they consequently persist only in adulterated and hypocritical forms. One can observe this just as well in modern modes of child rearing as in corporate bureaucracy. The human being is in no sense liberated by being managed rather than ruled, as Tocqueville long ago warned us. The disappearance of command and obedience even from the private or social sphere represents a central and alarming feature of the contemporary condition that is too rarely discussed. Manent’s explication of the way the doctrine of human rights produces a society at once confessional and inquisitorial is similarly brilliant and horrifying. When a politics that

³ Thomas Aquinas, *Treatise on Law* (Indianapolis, IN: Hackett, 2000), 78.

promises individual freedom begins to invade the private sphere as much as ours has done, to protest is a human duty. Few are doing so with as much tenacity and courage as Manent.

Manent's book is short, dense, and combative. It paints in very broad strokes; this is both its virtue and its vice. There are few if any recent books providing as stark an analysis of the present loss of sanity. And if Manent has fallen short of pointing the way forward, he has perhaps done no worse than fail to accomplish the impossible.